



APPENDIX
ATTACHMENT 1

ANNUAL
REPORT 2018



LEGAL AID NC



Our Mission

Legal Aid of North Carolina is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in order to ensure equal access to justice and to remove legal barriers to economic opportunity.

What Our Clients Say About Us

Hannah faced homelessness after Hurricane Florence.

“ First off, we were told what rights we had as tenants - which none of us were aware of. It was a big sense of relief when Legal Aid came in and helped us out. I would really love for everyone to know that Legal Aid is there to help you. ”



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Bestselling novelist John Grisham on civil justice:

“In this land of ours... the land of a million lawyers... there are so many people who face eviction, deportation, violence, hunger, homelessness, loss of rights, loss of benefits, school suspensions... because they don't have lawyers. And if we can't protect these people, then we as a nation, as a society, as a culture, as a people – we are all diminished...”



Dear Friends,

This past year has been one of resilience and determination. We deeply appreciate the support of all our staff, funders, volunteers and partnering organizations. Our funding this year was critical as we took on additional disaster relief cases in the aftermath of Hurricane Florence and as we expanded other crucial programs in order to meet the needs of North Carolina’s most vulnerable communities.

Hurricane Florence

In August we began to proactively prepare for the hurricane season by coordinating with other organizations and reallocating our resources to better serve disaster victims. Immediately after Florence, we sent staff attorneys, health care Navigators and volunteers to recovery centers to educate victims about their rights and the process of applying for relief. Simultaneously, our free helpline prioritized calls from hurricane survivors. Victims were quickly connected to legal professionals who helped them with legal needs such as replacing key documents and filing insurance and FEMA claims.

Our staff and pro bono volunteers worked tirelessly to execute the first stages of our disaster relief response in the fall of 2018, resulting in our **opening over 800 disaster-related cases** – and that’s just the beginning!

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Our disaster relief efforts will continue over the next five years as victims of Hurricane Florence face new obstacles like contract scams, FEMA denials and landlord-tenant issues.

Many impoverished North Carolinians who were hurt by Hurricane Matthew, and who have not yet received relief funds, were once again devastated by Hurricane Florence. Our approach to disaster relief involves not only providing short-term legal staff, but also securing resources for the upcoming years of recovery.

Expanding Access to Health Care and Housing

In addition to our disaster-relief efforts, we continue to expand our eviction diversion and health care enrollment efforts. In 2018, we led a statewide open enrollment effort that provided health insurance coverage to over half a million families – coverage that will help prevent medical bills from condemning families to permanent poverty.

Our successful Eviction Diversion Program and Durham Expunction and Restoration Program attracted funding from the City of Durham. This will be the first time Durham’s city government will directly fund our services in an effort to ensure that all of Durham’s citizens can be a part of the city’s newfound prosperity. Our Eviction Diversion Program is serving as a model for other cities, and we may see more eviction programs in our

state in the coming years. In total, we heroically handled 26,437 cases in 2018 and touched the lives of 61,714 North Carolinians.

Thank you for your continued support. Together we can make North Carolina a more just and prosperous state.

Sincerely,

Clayton D. Morgan George R. Hausen, Jr.
Chair, Board of Directors Executive Director

Our Leaders

Clayton D. Morgan is the chair of Legal Aid of North Carolina’s board of directors.

George Hausen is the executive director of Legal Aid of North Carolina.



Past board chair S. Camille Payton passing the gavel to current board chair Clayton D. Morgan.

Kristy Fleming
Client Representative

Mary Hedgepeth
Client Representative

LaTrice Robinson
Client Representative

Jacqueline D. Grant, Esq.
Roberts & Stevens Attorneys at Law

Adrienne Kennedy
Client Representative

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The Law Office of Richard J. Rutledge

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Disability Rights NC

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Ward Black Law

James M. Talley, Jr., Esq.
Horack, Talley, Pharr & Lowndes, PA

Jonathan E. Harris, Esq.
Kilpatrick Townsend & Stockton LLP

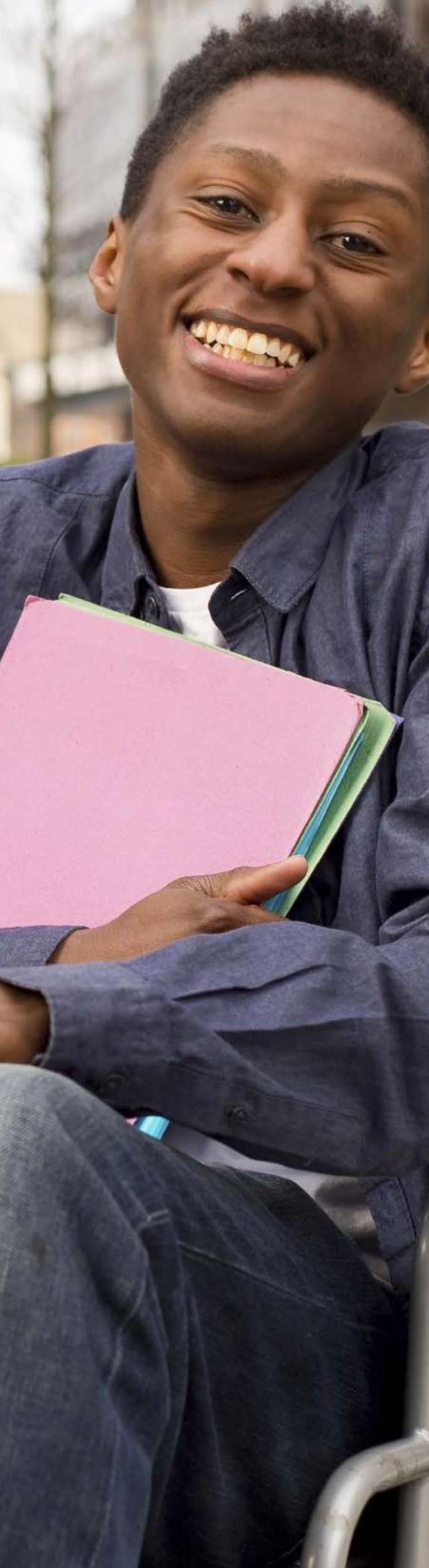
Mario E. Perez, Esq.
Public Defender’s Office Second District

Diane Wardlow
Client Representative

Kathy Dell Harris
Client Representative

Lockwood Perry
Client Representative

Monica E. Webb-Shackleford, Esq.



What We Do How We Work Our Impact

What We Do

We believe in equal access to justice for all North Carolinians – no matter their income level. When the most vulnerable in our state do not have access to legal support in civil court, they can be robbed of dignity and trapped in cycles of poverty, violence, and poor health. Civil legal help ameliorates the devastating effects of poverty by increasing access to safe and stable housing, income, health care, education and more. Our limited resources demand that we help those with the most dire civil legal needs – survivors of domestic violence, marginalized groups, children and persons with income at 125% of the poverty level or below.

The Need

Almost a quarter of North Carolina’s population struggles to make ends meet. Families all over the state face hardships like inadequate housing, food insecurity, lack of access to benefits and health care, domestic violence, discriminatory treatment, instability after natural disasters, and other obstacles.

An estimated 1.67 million North Carolinians live below the poverty level

The Legal Services Corporation (LSC) estimated in 2016 that 71% of low-income families will experience at least one civil legal issue a year including problems with health care, housing conditions, disability access, veterans’ benefits, and domestic violence. The rate is even higher for households with survivors of domestic violence or sexual assault (97%), with parents/guardians of kids under 18 (80%), and with disabled persons (80%.) To make matters worse, most Americans incorrectly believe that they have a right to an attorney in any court case. They are shocked to learn that legal assistance in a civil case is difficult and expensive to attain.

A legal advocate can be life changing for a family. We work strategically with other organizations to educate people about their rights, offer free legal advice and represent clients in legal disputes.

\$14,472 is the median annual income for a Legal Aid client and 40% of our clients earn less than \$10,000. The federal poverty threshold is \$25,750 for a household of four.

Legal intervention can change a household's circumstances, from attaining safe housing that reduces medical problems to custody agreements that ensure survivors of domestic violence can protect their family from future abuse.

Holistic Approach

We are committed to improving our clients' circumstances and helping them to break free from cycles of poverty. Our work improves the quality of life in communities facing hardship and can be instrumental in increasing health and stability. For example, civil legal intervention positively impacts clients' health by increasing the availability of resources to meet daily basic needs, ensuring healthy physical environments, creating equal access to education and employment, and reducing exposure to violence.

We do this by leading the North Carolina Navigator Consortium, which helps consumers enroll in health care coverage on HealthCare.gov. Thanks in part to the efforts of the NC Navigator Consortium, the only navigator group in North Carolina, our state consistently has the third-highest number of enrollments out of the roughly 40 states that use HealthCare.gov.

The NC Navigator Consortium helped 74,319 consumers and household members in 2018.

Our health care work also includes a Medical-Legal Partnership that connects legal and medical professionals in order to tackle the legal factors that prevent patients from becoming healthy. The partnership includes about a dozen health care centers. In conjunction with Medicaid transformation and privatization in North Carolina, we have begun outlining future partnerships with insurance companies to provide legal services to Medicaid patients.

Our commitment to our clients' wellbeing includes providing access to social workers at key offices. Social workers provide additional resources for clients and continue to strengthen our relationships with local organizations. A 2019 goal is to expand our clients' access to social workers across our practice.

Barriers to Equal Justice

Our major obstacle remains a lack of necessary resources to meet the growing need for our services.

About 37% of the state's population is eligible for our services. We can only serve 1 in 10 households who need our help.

Each year we set priorities and guidelines to ensure we serve those who need us the most and for whom legal help can have the largest impact.

This year we stretched our resources to touch the lives of 61,714 North Carolinians including 26,796 children.

For those we cannot represent, we create self-help materials and conduct clinics to expand our impact and empower communities. We conducted more than 1,200 outreach events in 2018. Online, our many self-help videos garnered 22,381 views.





What We Do **How We Work** **Our Impact**

How We Work

Legal Aid of North Carolina provides free legal information, legal advice and representation to the disenfranchised and those struggling to make ends meet. We work with clients to remove legal obstacles that trap families in cycles of poverty, violence and instability. Our practice areas help clients fulfill their basic needs, support their economic security, and ensure their safety and stability.

Our Practice Areas

Accessing Basic Needs:

- Preventing Homelessness (unsafe housing, housing discrimination, evictions, foreclosures)
- Accessing Disaster Relief and Government Benefits (FEMA, SNAP, SSI, disability)
- Increasing Access to Health Care (Medicaid, Medicare, Affordable Care Act)

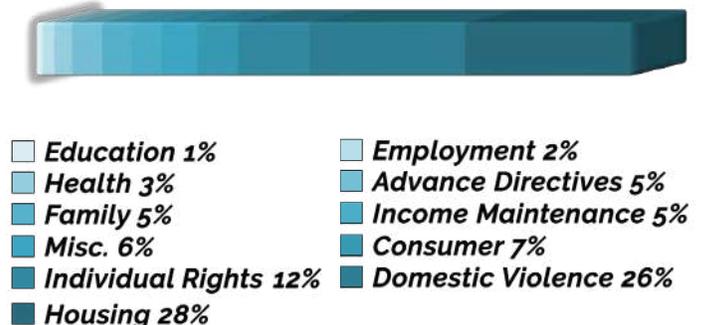
Ensuring Safety and Stability:

- Stopping Violence and Neglect (domestic violence, human trafficking, elder and child abuse)
- Keeping Children in School (disability accommodations, discipline hearings)

Supporting Economic Security:

- Securing Fair Employment (proper payment, safe conditions, accommodations, securing licenses, expunctions, opposing discrimination)
- Protecting Consumers (protection from fraud and scams, predatory lending, unfair debt collecting)

Cases in 2018



Our Commitment to Serving All Communities

Our facilities include nineteen local offices. Our local offices ensure that we are close to clients who need us and that we distribute resources throughout the state, including rural areas.

Local offices work hand-in-hand with their communities. For example, the Sylva and Pembroke offices include staff who are able to practice in Tribal court and who are aware of the unique legal obstacles facing Native Americans in North Carolina. In addition to our standard practice areas, we represent two tribes in their pursuit of federal recognition.

Legal Services Corporation estimates that 75% of rural households had at least one civil legal problem in the last year.

In addition to our regional work, we have eleven special projects: Advocates for Children’s Services, Battered Immigrant Project, Domestic Violence Prevention Initiative, Fair Housing Project, Farmworker Unit, Medical-Legal Partnership, Mortgage Foreclosure Project, NC Navigator Consortium, Senior Law Project, The Child’s Advocate, and Veterans Law Project.

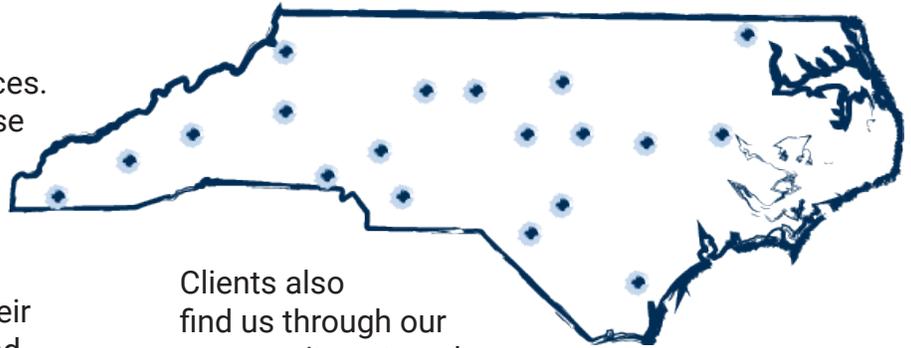
Advocates at our special projects are experts in their practice areas and are uniquely positioned to provide extra support to our local offices. Many of our special projects conduct crucial community outreach to educate vulnerable populations about their rights and build strong relationships with private and public entities.

Our distinctive structure reflects the diversity of our state and the dire need for free civil legal help.

How Clients Reach Us

Clients reach us through referrals from partnering organizations, walk-ins at local offices, calls to our helpline, and applications submitted online.

Our Offices

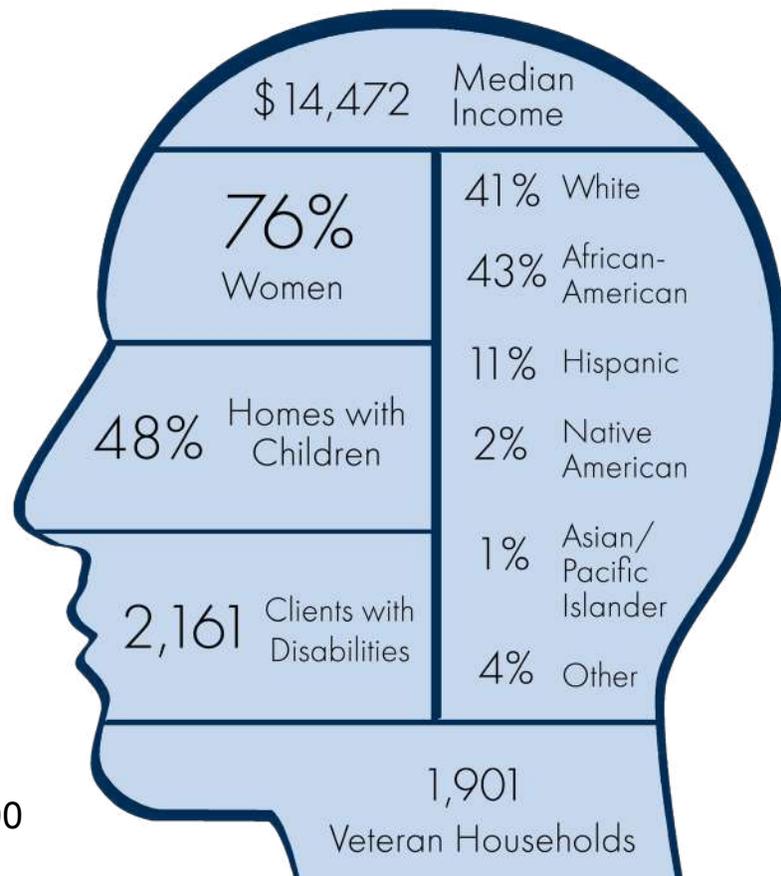


Clients also find us through our community outreach efforts. The majority of potential cases go through our innovative Central Intake Unit (CIU) which received 192,000 calls in 2018. CIU assesses client eligibility and assigns cases to different staff and volunteers.

Clients receive three types of services: informational services such as self-help clinics and educational materials, brief service and advice like a conversation with an attorney, and extended service such as representation in court.

Our informational presentations to clients, potential clients, and community groups benefited 53,529 participants in 2018.

Client Snapshot





What We Do How We Work Our Impact

Mother and Children Reunited

The Child's Advocate (TCA), one of our special projects, was appointed by Wake County Family Court to represent three children after their father abducted two of them - brothers aged six and ten - from Raleigh and took them to Jordan in violation of a domestic violence protective order. Their mother and 13-year-old sister remained in North Carolina.

TCA worked with the U.S. Attorney's Office, The National Center for Missing & Exploited Children, the U.S. State Department, and local law enforcement to determine if there was any way to get the boys back. TCA learned that the best chance of reuniting the children with their mother was to negotiate an agreement between the parents.

Orchestrating an agreement took years. There were numerous obstacles: pending criminal charges, Interpol notices, issues that could lead to the boys being detained on their way home and more. TCA negotiated with the police, the parents' attorneys, the family court judge and the Department of Justice to ensure that the boys' fares home were paid and to grant primary custody to their mother.

The boys returned safely to Raleigh and are now happily reunited with their mother and sister! The children will be seeing a trauma therapist to help them heal after the painful upheaval they endured.

About Our Special Projects That Help Children:
The Child Advocate – court-appointed advocates for children embroiled in custody battles whose role is to ensure that the child's voice is heard
Advocates for Children's Services – advocating for children in the public school system (including children with disabilities, criminal witnesses and children subjected to the school-to-jail pipeline)
Medical Legal Partnership – medical partners refer children and their families to Legal Aid to remove legal barriers that prevent children from leading healthy, happy lives



Our client, Sharon, was able to purchase her dream home outright with the proceeds from a personal injury settlement. Sharon had struggled to make ends meet for years, and the opportunity to finally own a family home was a dream come true.

Lacking experience in home ownership and its obligations, she found herself facing foreclosure from some relatively minor HOA and tax delinquencies. A foreclosure rescue outfit entered the picture and offered Sharon a loan that promised to be the answer to all her prayers. Under this pretext, she signed the “loan” documents – and unwittingly signed away ownership of her home.

After two years of discovery, mediation, and winning some issues on summary judgment, Legal Aid attorneys Jack Lloyd and Sarah Tackett took the case to trial. Sharon had her day in court and was awarded a \$1,000,000 judgment. Sharon was tearfully overjoyed – she can now keep her dream home!

Preventing Homelessness in North Carolina

Legal Aid of North Carolina prevents homelessness through several different types of housing cases. Muhammad’s story of unsafe housing and unjust treatment is typical of many of our clients:



Muhammad lived with his three young children in a rental home that was in severe disrepair. Determined to provide a stable and safe home for his family, he asked his landlord to make necessary repairs. The response: vacate in 30 days or be evicted! Afraid of facing homelessness with his three kids in tow and an eviction on his record, he called Legal Aid for help. After hearing about the horrifying conditions of the property, an attorney talked to Muhammad about his rights as a renter. Empowered by his lawyer’s advice, Muhammad filed his own action for damages against the landlord with a pro bono attorney providing expert assistance along the way. Muhammad was successful! He was awarded \$5,000 in damages and given enough time to find a suitable new home for his family.

Starting Over After a Storm

With the help of Don Pocock and Chelsea Barnes, both volunteer lawyers from Nelson Mullins Riley & Scarborough LLP in Winston-Salem, Amy from Kernersville can now rebuild her life after a tropical storm destroyed her mobile home.

Before the storm, Amy knew that the dead trees on the mobile home lot were going to cause trouble. She contacted the landlord, who acknowledged that the trees were a problem but refused to cut them down. When Tropical Storm Michael came through in October, a tree inevitably fell on her mobile home - making it unlivable!

That's when Amy contacted Legal Aid. Disaster Legal Services project volunteers Pocock and Barnes heroically took on the case and demanded \$12,000 for the client's loss. After some back and forth between the landlord and his insurance company, Amy received a check for the full \$12,000. This award will offer Amy the stability she needs to rebuild her home and her life after the storm.

Our Disaster Legal Services Project helps disaster survivors overcome the legal barriers that stand in the way of a full and just recovery.

Our Disaster Relief Services

- Help with insurance and FEMA claims
- Assistance with home repair contracts and contractors
- Help replacing wills and other legal documents destroyed in the disaster
- Protection for victims of fraud
- Help with mortgages and foreclosures and landlord-tenant problems
- Information on available disaster relief and civil legal rights
- Help when claims are denied
- Proactively fixing title issues that prevent victims from receiving support
- Outreach and services that keep communities intact as they recover



Veteran Receives Help At Last

Samuel served in the Army in the mid-1970s, and he witnessed the death of a fellow soldier. The traumatic event led to severe mental health consequences for Samuel. He felt immense guilt and needed help in coping with the aftermath.

Samuel's claims for compensation were denied because his military records contained no mention of the other soldier's death. Samuel went to many different sources asking for help - but no one could find proof that the traumatic event took place. It seemed that nobody believed Samuel's story. Desperate, Samuel went to Legal Aid for help.

Veterans Law Project attorney Daniel J. Dore believed Samuel. Dore began a campaign of old-fashioned gumshoe detective work. Eventually he uncovered an evidentiary holy grail in a back page article run in a defunct newspaper's microfiche database on file at a public library. This obscure article led to new evidence and a new claim submitted to the VA.



Samuel's voice was heard! The claim was successful. He will now receive the benefits he earned as a veteran including \$45,932 in back payments and an estimated \$118,000 over the next ten years.

Samuel can begin a new chapter of his life with the support of Legal Aid of North Carolina and the VA behind him.

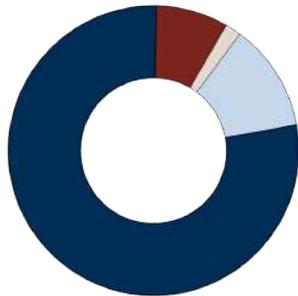
Across all practice areas, nearly 2,000 veteran households were served in 2018

"Civil legal problems – from threatened evictions to other-than-honorable discharges from the military – are often the greatest obstacles to a veteran's health, housing, stability, and productivity." - National Center for Medical-Legal Partnership, The Invisible Battlefield: Veterans Facing Health-Harming Legal Needs in Civilian Life (June 2016)

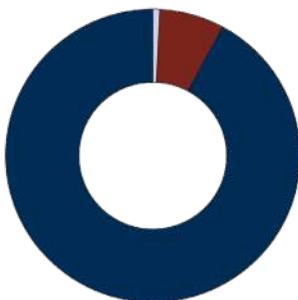
We help low-income veterans overcome legal barriers that prevent them from living fulfilling, successful lives. Veterans are served either by our accomplished generalist attorneys or by our experts at the Veterans Law Project who can assist with service-based issues such as: disability compensation, pension benefits, VA overpayments and discharge upgrades, including upgrades involving post-traumatic stress disorder, traumatic brain injury or military sexual trauma.

Financial Summary

Below is a snapshot of our 2018 financials based on our annual audit. We used the \$28.7 million we spent in 2018 to provide legal services worth \$33.5 million on the private market, and which generated \$29.2 million in benefits, awards and savings for our clients.*



- Gov. Grants (78%)
- Other Grants (8%)
- Contributions (2%)
- Other (12%)



- Programming (92%)
- Administrative (7%)
- Fundraising (1%)

Revenues

Government Grants	\$ 23,013,133
Non-Government Grants	\$2,359,750
Contributions	\$518,164
Donated Services	\$1,984,230
Other Income	\$1,548,693
Total Revenue	\$29,423,970

Expenditures

Programming Expenses	
Programming Staff	\$17,598,360
Programming Office Space	\$1,253,353
Other Programming Expenses	\$7,599,827
Administrative Expenses	
Admin. & Leadership Staff	\$1,474,486
Admin. Office Space	\$234,304
Other Admin. Costs	\$336,248
Fundraising Expenses	\$212,985
Total Expenses	\$28,709,563

Embedded in the fabric of the nonprofit community, we serve as the pass-through grantor for eighteen nonprofits who receive \$1.65 million in funds through grants we administer. Our infrastructure for reporting makes us an ideal partner for organizations big and small.

Our Major 2018 Funding Sources (\$100,000+)

Blue Cross Blue Shield of NC
 Cone Health Foundation
 Governor's Crime Commission
 Interest on Lawyers Trust Accounts (IOLTA)
 The JPB Foundation
 Kate B. Reynolds Charitable Trust
 Legal Services Corporation
 Mecklenburg County
 NC Bar Association & NC Bar Foundation

NC Division of Aging (Title III)
 NC Housing & Finance Agency
 State of North Carolina
 United Way
 U.S. Dept. of Health & Human Services
 U.S. Dept. of Housing & Urban Development
 U.S. Dept. of Justice
 Z. Smith Reynolds Foundation

*Value of legal services estimated using a conservative \$200 hourly rate for our staff and volunteer attorneys.



Our Volunteers

Disaster Relief Volunteers

- Angela Amisano
- Alexandria Andresen
- Patricia T. Bartis
- Jeffrey A. Batts
- Michael Becker
- Caroline N. Belk
- Corey J. Biazzo
- Sarah C. Blount
- Jennifer L. Bogacki
- Ryan S. Boyce
- Walter E. Brock
- Richard G. Buckner
- Gwendolyn W. Burrell
- David G. Delaney
- Tasneem A. Delphry
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- Scott Flowers
- Susan T. Fountain
- Amanda L. Gainey
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- Jerome Hartzell
- Richard Holmes
- Casey H. Howard
- Meredith Jeffries
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- Timothy Kebbe
- James L. Kiser
- Gregory A. Kleva
- Katherine Kliebert
- Andrea S. Kurtz
- Elizabeth Lane
- Dena B. Langley
- David D. Larson
- Jennifer Lechner
- Britton Lewis
- Evan Lewis
- Kaylee Lewis
- Cara N. Ludwig
- Amy Mackin
- Ann O. Margius
- Sarah McIntyre
- Erin B. Meeks
- Ronda G. Moore
- Randolph Morgan
- Nicole S. Mueller
- Paula Murray
- Kathleen M. O'Malley
- Will Parz
- Jennifer Percy
- Annalise F. Perry
- Robert E. Price
- Robert J. Ramseur
- Bonnie Refinski-Knight
- Marcia A. Rowan
- Dekhasta B. Rozier
- Stacey Schlitz
- Brian Schoolman
- Lisa Schreiner

- Samuel A. Scudder
- Jilliann Sexton
- Leticia L. Shapiro
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- David E. Sloan
- Robert Solano
- Richard M. Thigpen
- Jay P. Tobin
- Matthew L. Tomsic
- Margaret C. Trautman
- Jason L. Walters
- Matt Waters
- Kandace L. Watkins
- Sandra L. Weaver
- Missy M. Welch
- John M. Wright
- Edward Wyatt

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- Zebulon D. Anderson
- Denise P. Anderson
- Thomas W. Anderson
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- Robert B. Angle
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- Robert C. Armstrong
- Robert M. Arnold
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- Katherine Asaro
- Alison Y. Ashe-Card
- Tomomi Atamas
- Jeffrey Austin
- Saleisha N. Averhart
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- Yvonne C. Bailey
- Katherine Barber-Jones
- Richard W. Barnes
- Amy M. Batten
- Joseph T. Becker
- Suzanne R. Begnoche
- Christopher K. Behm
- Sheila R. Benninger
- Jennifer K. Bennington
- Shelby D. Benton
- Stephen R. Berndt
- Megan Bishop
- Kathy R. Blackburn
- Ryan H. Blackledge
- William H. Blackton
- William A. Blancato
- Jonathan C. Blanken
- Mitchell H. Blankenship
- Lisa Blevins
- David R. Boaz
- Richard Bobholz
- H. Arthur Bolick, II
- Ed Boltz
- Stephen T. Boone
- Jenna Borders
- Catherine Boutaud
- Tamara B. Bowles
- John A. Bowman
- Andrew B. Bowman

- Richard T. Boyette
- Chadwick E. Boykin
- Matha S. Bradley
- Jonathan L. Braverman
- Edward B. Breitschwerdt
- Danielle Brent-Bownes
- Curt Brewer
- Donald E. Britt
- Kimberly J. Brooks
- Tia Brown Black
- Shelia Brown
- Nick C. Brown
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- Stephanie J. Brown
- Susannah L. Brown
- Neilson N. Brown
- Robert W. Brown
- Rachel Buck
- Loryn Buckner
- Matt Bullard
- Jone Bullett
- Charla M. Burill
- William D. Burlington
- Whitney Butcher
- John Butler
- Tamara L. Bynum
- William Bystrynski
- Christopher J. Campbell
- Marisa S. Campbell
- Timothy M. Cannady
- William E. Cannon
- Anthony T. Capitano
- Crystal S. Carlisle
- Steven Carr
- Eugene M. Carr
- Cheryl E. Carroll
- Jon P. Carroll
- Katherine Carter
- Desire E. Carter
- Yolanda N. Carter
- Anna P. Cathcart
- Gina D. Cecil
- Kevin Ceglowski
- William S. Cherry
- Andrea C. Chomakos
- Barbara Christy
- Travis Cianciulli
- Kinna Clark
- Sandra M. Clark
- Cabell Clay
- Eva R. Clement
- Carla Clements
- Catherine G. Clodfelter
- Allison Cohan
- Donna R. Cohen
- Daniel W. Cole
- Rebecca L. Coleman
- Tobias R. Coleman
- Michael A. Colombo
- Hannah A. Combs
- Cheryl D. Comer
- Hilary B. Cooper
- Matthew A. Cordell
- Chelsea J. Corey
- Josiah Corrigan
- Daniel K. Covas
- Heather Cox
- Joshua W. Cox
- Derek Crawford
- Charles D. Creech
- Michael J. Crook
- Carson E. Crooms
- Auley M. Crouch
- Catharine Cummer
- Kathryn Curran
- Stephanie C. Daniel
- Laura P. Davenport
- Joseph Davies
- Janice L. Davies
- Kearns Davis

- Garrett L. Davis
- Valyce M. Davis
- Stephanie N. Davis
- Morgan R. Davis
- Andrew M. Davisson
- Brett A. DeWitt
- Darcel S. Dillard
- Joan S. Dinsmore
- Tamara C. DiVenere
- Phillip R. Dixon
- James K. Dorsett
- Nehmath T. Douglass
- Kristin L. Drake
- Alan Duncan
- Melissa Duncan
- Stephen Dunn
- Daniel R. Dziuban
- Kathleen L. Eaton
- Ben Edwards
- Asa C. Edwards
- Theodore C. Edwards
- Chidera Ejim
- H. M. Ellis
- Shonaka L. Ellison
- Steven B. Epstein
- Kelly P. Erb
- Lex M. Erwin
- Martin N. Erwin
- Chad W. Essick
- Ingrid L. Eubanks
- Cynthia Everson
- Sabra Faires
- Richard Farley
- Christian B. Felden
- Kimberly K. Fennell
- Nicholas A. Fernez
- Francesco Fickey Martinez
- Mark A. Finkelstein
- Leslie M. Finley
- Walter D. Fisher
- Robert A. Fleischacker
- Scott J. Flowers
- Lisa Flowers
- Niya Fonville
- Josheda Forrester
- Debra L. Foster
- Tawanda N. Foster
- Harrison B. Freedland
- James N. Freeman
- Michael Frongello
- Andrew Frost
- Jared E. Gardner
- Chelsea B. Garrett
- Doyle K. George
- Jamie S. Getty
- April M. Giancola
- George E. Gibbs
- William H. Gifford
- Robert J. Glowacki
- Jeffrey K. Goebel
- David Goldberg
- Dionne Gonder-Stanley
- Cynthia S. Grady
- Kimberly M. Grantham
- Rick E. Graves
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- Christine Hart
- Denise Hartsfield
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- Rosalia M. Hawkins
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APPENDIX
ATTACHMENT 2

The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans

June 2017

LSC | America's Partner
for Equal Justice
LEGAL SERVICES CORPORATION



About the Legal Services Corporation

The Legal Services Corporation (LSC) was established by Congress in 1974 to promote equal access to justice. LSC operates as an independent 501(c)(3) non-profit corporation and currently serves as the single largest funder of civil legal aid for low-income Americans. More than 93% of LSC's total funding is currently distributed to 133 independent non-profit legal aid programs with more than 800 offices across America. LSC's mission is to help provide high-quality civil legal aid to low-income people. To learn more about LSC, please visit www.lsc.gov.

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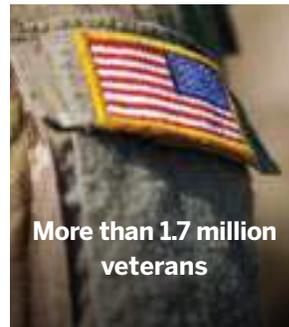
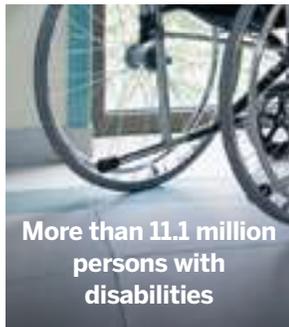
The Legal Services Corporation (LSC) contracted with NORC at the University of Chicago to help measure the justice gap among low-income Americans in 2017. LSC defines the justice gap as the difference between the civil legal needs of low-income Americans and the resources available to meet those needs. NORC conducted a survey of approximately 2,000 adults living in households at or below 125% of the Federal Poverty Level (FPL) using its nationally representative, probability-based AmeriSpeak® Panel. This report presents findings based on this survey and additional data LSC collected from the legal aid organizations it funds.

86% of the civil legal problems reported by low-income Americans in the past year **received inadequate or no legal help.**

In the past year, **71%** of low-income households **experienced at least one civil legal problem**, including problems with domestic violence, veterans' benefits, disability access, housing conditions, and health care.

In 2017, low-income Americans will approach LSC-funded legal aid organizations for support with an estimated **1.7 million** problems. They will **receive only limited or no legal help for more than half of these problems** because of a lack of resources.

More than **60 million** Americans have family incomes at or below 125% of FPL, including:



Data Source: U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates

Key Findings: Experience with Civil Legal Problems

Data Source: 2017 Justice Gap Measurement Survey



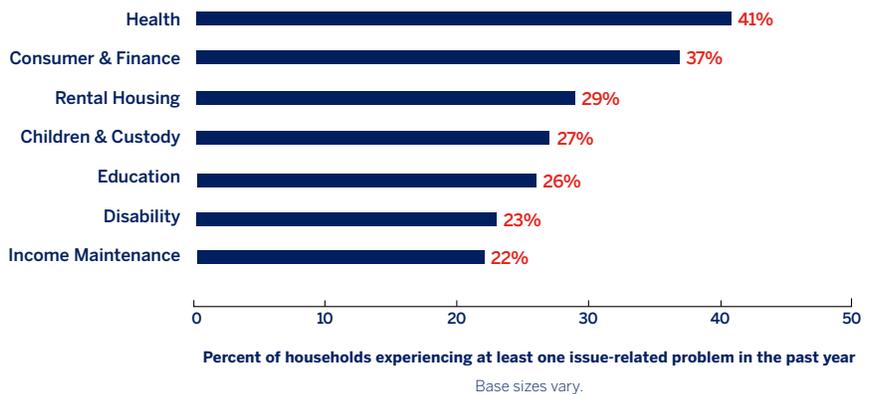
71% of low-income households have experienced a civil legal problem in the past year. **The rate is even higher for some:** households with survivors of domestic violence or sexual assault (**97%**), with parents/guardians of kids under 18 (**80%**), and with disabled persons (**80%**).

1 in 4 low-income households has experienced 6+ civil legal problems in the past year, including **67% of households with survivors of domestic violence or sexual assault.**

7 in 10 low-income Americans with recent personal experience of a civil legal problem **say a problem has significantly affected their lives.**

71% of households with **veterans or other military personnel** have experienced a civil legal problem in the past year. They face the same types of problems as others, but **13%** also report problems specific to veterans.

Common Civil Legal Problem Areas



Key Findings: Seeking Legal Help

Data Source: 2017 Justice Gap Measurement Survey



Low-income Americans seek professional legal help for only **20%** of the **civil legal problems they face.**

Top reasons for not seeking professional legal help are:

- **Deciding to deal with a problem on one's own**
- **Not knowing where to look for help or what resources might exist**
- **Not being sure whether their problem is "legal"**

Low-income Americans are most likely to seek professional legal help on problems that are more **obviously "legal,"** like **custody issues** and **wills/estates.**

Key Findings: Reports from the Field

Data Source: LSC 2017 Intake Census and LSC 2016 Grantee Activity Reports



The 133 LSC-funded legal aid organizations across the United States, Puerto Rico, and territories will serve an estimated **1 million** low-income Americans in 2017, but **will be able to fully address the civil legal needs of only about half of them.**

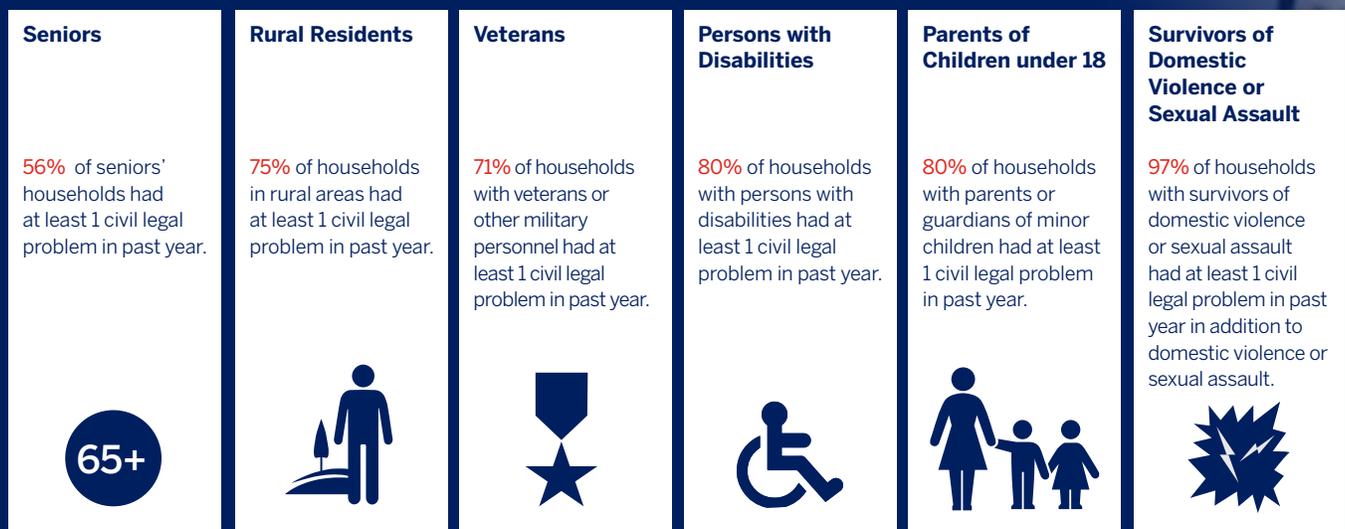
Among the low-income Americans receiving help from LSC-funded legal aid organizations, the top three types of civil legal problems relate to **family, housing, and income maintenance.**

In 2017, low-income Americans will **receive limited or no legal help** for an estimated **1.1 million** eligible problems after seeking help from LSC-funded legal aid organizations.

A lack of available resources accounts for the vast majority **(85% - 97%)** of civil legal problems that LSC-funded organizations **do not fully address.**

Special Focus

The Special Focus section of this report presents key findings for several groups of interest.



| Introduction |

The phrase “with liberty and justice for all” in the U.S. Pledge of Allegiance represents the idea that everyone should have access to justice, not just those who can afford legal representation. In criminal cases, legal assistance is a right. Americans accused of a crime are appointed legal counsel if they cannot afford it. As a general matter, however, there is no right to counsel in civil matters. As a result, many low-income Americans “go it alone” without legal representation in disputes where they risk losing their job, their livelihood, their home, or their children, or seek a restraining order against an abuser.

This “justice gap” – the difference between the civil legal needs of low-income Americans and the resources available to meet those needs – has stretched into a gulf.¹ State courts across the country are overwhelmed with unrepresented litigants. In 2015, for example, an estimated 1.8 million people appeared in the New York State courts without a lawyer.² And we know that 98% of tenants in eviction cases and 95% of parents in child support cases were unrepresented in these courts in 2013.³ Comparable numbers can be found in courts across the United States.

This study explores the extent of the justice gap in 2017, describing the volume of civil legal needs faced by low-income Americans, assessing the extent to which they seek and receive help, and measuring the size of the gap between their civil legal needs and the resources available to address these needs.



The **justice gap** is the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.

Background

The Legal Services Corporation (LSC) was created by Congress in 1974 with the mission to expand access to the civil justice system for low-income Americans. LSC supports civil legal aid organizations across the country, which in turn provide legal assistance to low-income Americans grappling with civil legal issues relating to essential human needs, such as safe housing and work environments, access to health care, safeguards against financial exploitation, and assistance with family issues such as protection from abusive relationships, child support, and custody.

In 2005 and 2009, LSC published studies measuring the justice gap.⁴ Both were consistent in finding that about 50% of people who approached LSC-funded legal aid organizations for help did not receive help because of insufficient resources. The 2009 Report, *Documenting the Justice Gap in America*, also found that many courts were seeing increased numbers of unrepresented litigants.

LSC's two previous reports on the justice gap used three approaches to describe the gap:

- An intake census – a count of people seeking assistance from LSC grantees who were not served because of a lack of resources;
- A review of state-level studies about access to civil justice and about unrepresented litigants in state and local courts; and
- A comparison of the ratio of legal aid attorneys per capita for low-income Americans with the ratio of all private attorneys per capita for all Americans.

These approaches permitted analysis that shed light on the scarcity of resources and the expressed needs that go unmet. But they left key questions unanswered about the civil legal needs experienced by low-income Americans who do not seek professional legal help and about the paths they take when facing a civil legal problem (with or without the help of LSC-funded legal aid organizations).

The 2017 Justice Gap report seeks to answer these questions. It includes analysis of data from the 2017 Justice Gap Measurement Survey, which is the first national household survey on the justice gap in over 20 years. The most recent national study that assessed the justice gap with a household survey was conducted by the Institute for Survey Research at Temple University in 1994, with funding from the American Bar Association.⁵ Since that time, a number of individual states have also conducted justice gap studies.⁶ Notably, the Washington State Supreme Court conducted a study in 2014 (refreshing work completed in 2003), which took a comprehensive look at the civil legal needs of the state's low-income households.⁷ The Washington State work served as a point of departure for the 2017 Justice Gap Measurement Survey, which is described in more detail below.

This report also presents analysis of data from LSC's 2017 Intake Census. LSC asked its 133 grantee programs to participate in an "intake census" during a six-week period spanning March and April 2017. As part of this census, grantees tracked the number of individuals approaching them for help with a civil legal problem whom they were unable to serve, able to serve to some extent (but not fully), and able to serve fully. Grantees recorded the type of assistance individuals received and categorized the reasons

individuals were not fully served where applicable. LSC sent the resulting data to NORC for analysis. The findings presented in this report are based on data from the LSC grantees that receive Basic Field Grants. See Appendix B4 for more information about the LSC 2017 Intake Census and how the data are used in this report.

In addition to the 2017 Justice Gap Measurement Survey and LSC's 2017 Intake Census, this report uses data from the U.S. Census Bureau's American Community Survey (ACS). More information about the ACS data used can be found in Appendix B1. Finally, this report uses data from LSC's 2016 Grantee Activity Reports, and more information about these data can be found in Appendix B4. Where the report relies on other data sources, this is referenced in endnotes as appropriate.

The 2017 Justice Gap Measurement Survey

LSC contracted with NORC at the University of Chicago to conduct a survey of more than 2,000 adults living in low-income households using its nationally representative, probability-based AmeriSpeak® Panel. For the purposes of the survey, "low-income households" are households at or below 125% of the Federal Poverty Level (FPL), the income eligibility standard for people seeking assistance from an LSC-funded legal aid program. The survey was administered using telephone and web interview modes, which allowed a flexible survey logic to gather detailed information about low-income Americans' civil legal needs at the individual level, household level, and level of specific civil legal problems.

The survey was designed to accomplish the following goals:

- Measure the prevalence of civil legal problems in low-income households in the past 12 months;
- Assess the degree to which individuals with civil legal problems sought help for those problems;
- Describe the types and sources of help that low-income individuals sought for their civil legal problems;
- Evaluate low-income Americans' attitudes and perceptions about the fairness and efficacy of the civil legal system; and
- Permit analysis of how experiences with civil legal issues, help-seeking behavior, and perceptions vary with demographic characteristics.

This report uses data from the 2017 Justice Gap Measurement Survey to provide insight into the extent of the justice gap in 2017. It does not present or discuss all of the findings from the survey. Readers are encouraged to see the accompanying survey report that presents results from the entire 2017 Justice Gap Measurement Survey. Additionally, the survey instrument and data will be made publicly available.

More details on the survey and the AmeriSpeak® Panel can be found in Appendix A and also at www.lsc.gov/justicegap2017.

The units of analysis and the base sizes for the survey results presented throughout this report vary. Some results are based on respondents (or their households), some are based on their civil legal problems, and others are based on subsets of respondents, households, or problems. Readers are encouraged to pay close attention to information describing the units of analysis and which sets of observations comprise the relevant bases for results. Wherever a result is based on a variable containing a small number of observations ($n < 100$), we indicate this with a special endnote, “SB-X” (where “SB” stands for “small base” and “X” corresponds to the endnote number in this series).

Report Overview

The core findings of this report are organized in four sections:

Section 1: Low-income America | Using current data from the U.S. Census Bureau and other sources, this section describes the low-income population in America. More specifically, it explores how many people live in households below 125% of the Federal Poverty Level (FPL), how they are distributed across the U.S., and how key demographics like education and racial and ethnic background are distributed among them.

Section 2: Experience with Civil Legal Problems | Using data from the 2017 Justice Gap Measurement Survey, this section presents findings on the prevalence of civil legal problems among low-income households, the types of problems they face, and the degree to which civil legal problems affect their lives.

Section 3: Seeking Legal Help | Using data from the 2017 Justice Gap Measurement Survey, this section presents findings on which types of problems are most likely to receive legal attention, where people turn for legal help, what types of legal assistance they receive, and the reasons why people do not seek legal help.

Section 4: Reports from the Field | Using data from LSC’s 2017 Intake Census and 2016 Grantee Activity Reports, this section presents findings on the assistance low-income Americans receive after seeking help from a legal aid organization funded by LSC.

The report concludes with a “Special Focus” section. This section presents key findings for six groups that are highlighted throughout the report. These groups include seniors, persons with disabilities, veterans, parents and guardians of minor children, rural residents, and survivors of domestic violence or sexual assault. At the end of Sections 1, 2, and 3, we include a page that presents related findings for these groups.⁸ The findings for these highlighted groups are then summarized in this final “Special Focus” section of the report.

Client stories are presented throughout the report. These are meant to help readers understand the types of problems faced by low-income Americans. The stories were collected by LSC, primarily through searches of grantees’ annual reports and websites, but also through specific requests to grantees for such stories. These stories were first edited by LSC’s Government Relations and Public Affairs unit and vetted by the corresponding grantees for accuracy. NORC later completed additional minor edits to the stories in an effort to shorten them for inclusion in this report. In this report, the names have been changed to protect the identity of individuals. Likewise, the accompanying photos are not of the actual clients.

Study Findings in Brief

The findings presented in this report add important, new insights to the growing body of literature on the justice gap. We find that seven of every 10 low-income households have experienced at least one civil legal problem in the past year. A full 70% of low-income Americans with civil legal problems reported that at least one of their problems affected them very much or severely. They seek legal help, however, for only 20% of their civil legal problems. Many who do not seek legal help report concerns about the cost of such help, not being sure if their issues are legal in nature, and not knowing where to look for help.

In 2017, low-income Americans will approach LSC-funded legal aid organizations for help with an estimated 1.7 million civil legal problems. They will receive legal help of some kind for 59% of these problems, but are expected to receive enough help to fully address their legal needs for only 28% to 38% of them. More than half (53% to 70%) of the problems that low-income Americans bring to LSC grantees will receive limited legal help or no legal help at all because of a lack of resources to serve them.

Based on the analysis presented in this report, we have three key findings relating to the magnitude of the justice gap in 2017:

- Eighty-six percent of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help (see Section 3);
- Of the estimated 1.7 million civil legal problems for which low-income Americans seek LSC-funded legal aid, 1.0 to 1.2 million (62% to 72%) receive inadequate or no legal assistance (see Section 4),⁹
- In 2017, low-income Americans will likely not get their legal needs fully met for between 907,000 and 1.2 million civil legal problems that they bring to LSC-funded legal aid programs, due to limited resources among LSC grantees. This represents the vast majority (85% to 97%) of all of the problems receiving limited or no legal assistance from LSC grantees (see Section 4).

Low-income America



As a general rule, LSC funds may be used only to serve the legal needs of people with family incomes at or below 125% of the Federal Poverty Level.¹⁰ This section describes this population of Americans. It explores how many people have family incomes at this level, how they are distributed across the U.S., and some key demographics of this population.

About the Data

Most of the population estimates presented in this section come from the 2015 American Community Survey (ACS) Single Year Estimates.¹¹ Note that the ACS reports on people with family incomes *below* 125% of the Federal Poverty Level rather than *at or below* this income level (which is how income eligibility for LSC-funded services is defined). Occasionally, other data sources are also used and are noted accordingly. The unit of analysis in this section is individuals.

More than 60 million Americans have family incomes below 125% of the Federal Poverty Level.

A family income below 125% of the Federal Poverty Level (FPL) corresponds to \$30,750 per year or less for a family of four.¹² Based on recent estimates from the Census Bureau, nearly one in five Americans (19%) have family incomes below 125% of FPL. This comes to about 60 million people, including approximately 19 million children (0-17 years), 35 million adults aged 18-64 years old, and 6.4 million seniors (65+ years).^{13,14}

As Figure 1 shows, some states have higher proportions of people with family incomes below 125% of FPL. The states with the highest proportions of people in low-income families include Mississippi (28%), New Mexico (26%), Arkansas (25%), and Louisiana (24%). Looking at population counts, a few other states stand out. For example, California alone has 7.7 million people with family incomes below 125% of FPL and Texas has 5.7 million people.¹⁵ Appendix B1 presents the population counts and proportions for all states in the U.S.

Most American adults with family incomes below 125% of FPL do not have any college education.

There is great disparity in education levels by income. About 62% of low-income Americans aged 25 years or older have no more than a high school education. Americans of the same age with higher family incomes are nearly three times more likely to have graduated from college (34% vs. 12%).¹⁷ Existing literature on the justice gap suggests that educational background is important for understanding access to justice.¹⁸



88% of low-income adults do not have a college degree, including **62%** who have no more than a high school education.

While low-income Americans come from very diverse racial and ethnic backgrounds, a plurality identify as white (with no Hispanic origin).

Forty-four percent of Americans with family incomes below 125% of FPL identify themselves as white and claim no Hispanic origin. Another 28% identify as Hispanic, and 21% identify as black with no Hispanic origin. Four percent identify as Asian, 1% as American Indian, 8% as another race, and 4% as two or more races.¹⁹ The life experiences of people with different racial and ethnic backgrounds are thought to be important for understanding people's likelihood to trust institutions and to seek civil legal assistance.²⁰

| Special Focus |

Millions of Americans from the various groups highlighted in this report have family incomes below 125% of FPL. This page presents population estimates for the number of low-income people for each group wherever such estimates are available. No such estimates are available for recent survivors of domestic violence or sexual assault, but we cite other information that speaks to rates of such violence among low-income Americans.

65+

Seniors

Approximately **6.4 million** seniors have family incomes below 125% of FPL.²¹



Rural Residents

Approximately **10 million** people living in rural areas of the U.S. have family incomes below 125% of FPL.²²



Veterans

More than an estimated **1.7 million** veterans have family incomes below 125% of FPL.²³



Persons with Disabilities

More than **11.1 million** people with a disability have family incomes below 125% of FPL.²⁴



Parents/Guardians of Children under 18

Approximately **18 million** families with related children under 18 have incomes below 125% FPL.²⁵



Survivors of Domestic Violence/Sexual Assault

Rates of intimate partner violence among people with family incomes at or below 100% of FPL are about **four times** the rates among people with incomes at or above 400% of FPL.²⁶

Experience with Civil Legal Problems



A large majority of low-income American households face civil legal problems in their everyday lives. These problems are most often related to basic needs like health care, safety, making ends meet, and housing. Using data from the 2017 Justice Gap Measurement Survey of low-income households, this chapter presents findings on the prevalence of civil legal problems among these households, the types of problems they face, and how civil legal problems affect their lives.

About the Data

The findings presented in this section come from the 2017 Justice Gap Measurement Survey. Respondents were presented with an extensive list of specific problems that typically raise civil legal issues. They were asked whether they had experienced any of these problems in the past 12 months and whether anyone else in their household had. While not all of the reported problems would be able to be addressed through civil legal action, the resulting data make it possible to estimate how common various civil legal problems are at the household level. A total of 88 distinct problems (divided into 12 main categories) were explored in the survey. The primary unit of analysis in this section is households.

A large majority of low-income American households face civil legal problems.

The 2017 Justice Gap Measurement Survey assessed the prevalence of various types of problems that typically raise “justiciable civil legal issues,” that is, issues that could be addressed through civil legal action. This is consistent with standard practice in the literature for measuring the prevalence of civil legal problems. While an in-depth interview with a legal professional would reveal that some of the problems reported by respondents are not actually justiciable, most will be. For ease of reporting, and to be consistent with established literature, we refer to these problems as “civil legal problems” throughout this and the next section.



71% of low-income households have experienced at least **one civil legal problem in the past year.**

Seventy-one percent of low-income households have experienced at least one civil legal problem in the past year. Many of these households have had to deal with several issues. Indeed, more than half (54%) faced at least two civil legal problems and about one in four (24%) has faced six or more in the past year alone. The civil legal problems these Americans face are most often related to basic needs like getting access to health care, staying in their homes, and securing safe living conditions for their families.

Common civil legal problems among low-income households relate to issues of health, finances, rental housing, children and custody, education, income maintenance, and disability.

As Figure 2 shows, civil legal problems related to health and to consumer and finance issues affect more households than any other type of issue. Health issues, for example, affect more than two in five (41%) low-income households. The most common problems in this area include having trouble with debt collection for health procedures (affecting 17% of households), having health insurance that would not cover medically needed care or medications (17%), and being billed incorrectly for medical services (14%).

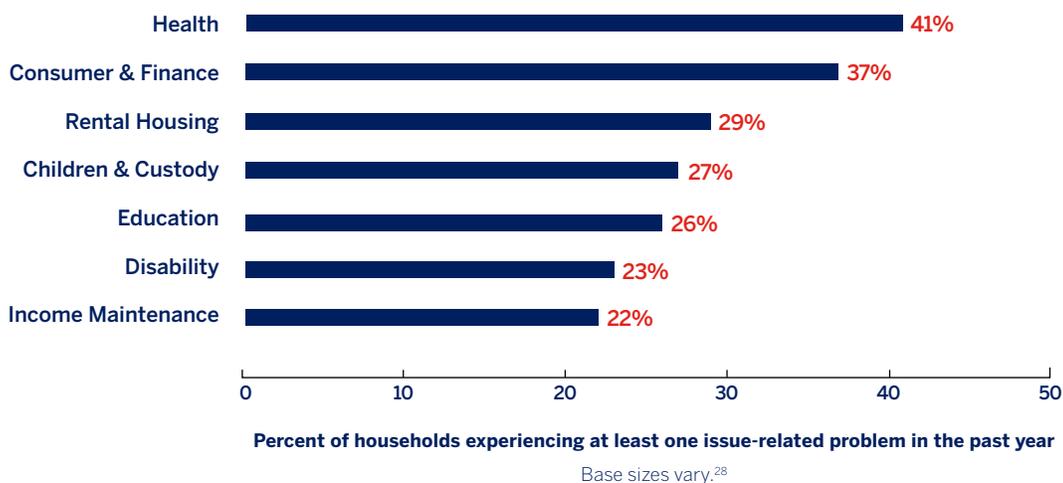
Over one-third (37%) of low-income households have experienced consumer and finance problems in the past year. These issues typically follow from not being able to make payments for debt or utilities on time. The most common issues in this area include difficulties with creditors or collection agencies (affecting 16% of households), having utilities disconnected due to nonpayment or a billing dispute (14%), and having problems buying or paying for a car, including repossession (8%).

Other common categories of civil legal problems include rental housing, children and custody, and education. Each of these problem categories affects more than one in four low-income households in which the issue is relevant (e.g., rental housing problems affect 29% of households living in a rented home). Income maintenance and disability issues affect one in five issue-relevant households.

[CLIENT STORY]



Ronald | Louisiana | Consumer and Finance | Ronald needed legal help when FEMA filed a claim against him for repayment of disaster funds issued after Hurricane Katrina. He had never even applied for, much less received, any FEMA funds. FEMA seized his income tax refund and told him he had to pay an additional \$8,000. With the help of legal aid, Ronald was able to demonstrate that the funds in question had been issued to someone else. FEMA dismissed the claim and returned the money wrongfully seized from Ronald's accounts.

Figure 2: Common Civil Legal Problem Categories²⁷

Rental Housing | A full 29% of households living in a rented home have experienced a related civil legal problem in the past year. Such problems include having a landlord fail to provide basic services or repairs (affecting 16% of rental households), having a dispute with a landlord or public housing authority over rules or terms of a lease (11%), and living in unsafe rental housing (9%).



Children and Custody | Twenty-seven percent of households with parents or guardians of children under the age of 18 have experienced a civil legal problem related to children or custody in the past year. Related problems include difficulty collecting child support payments or setting up a child support obligation (affecting 13% of these households), being investigated by Child Protective Services (9%), and having trouble with custody or visitation arrangements (8%).



Education | Twenty-six percent of households with someone who is in school or someone who has a child in school have experienced at least one civil legal problem related to education in the past year. Problems in this area include being denied access to special education services or problems with access to learning accommodations (affecting 15% of these households), attending a school that was unsafe or had problems with bullying (9%), and being suspended from school (7%).



Disability | Twenty-three percent of low-income households where someone lives with disability report at least one civil legal problem related to disability in the past year. The most common problems are being denied state or federal disability benefits or services or having them reduced or terminated (affecting 14% of these households) and being denied or experiencing limited access to public programs, activities, or services because no reasonable accommodation was made (8%).



Income Maintenance | Twenty-two percent of low-income households have experienced at least one problem related to income maintenance in the past year. Related problems include not being approved for state government assistance or having that assistance reduced or terminated (affecting 15% of households), being denied or terminated from Social Security Disability income (SSDI) or Social Security Survivors benefit (6%), and being denied or terminated from Supplemental Security Income (SSI) (6%).

Other Types of Civil Legal Problems

Other areas where low-income Americans report civil legal problems include the following:

Employment. Civil legal problems related to employment affect 19% of all low-income households. Problems include being terminated from a job for unfair reasons (8%), having a workplace grievance not taken seriously or not adequately addressed (7%), and being exposed to working conditions that were physically unsafe or unhealthy (7%).

Family. Civil legal problems related to family affect 17% of all low-income households. Problems include experiencing domestic violence or sexual assault (8%), filing for divorce or legal separation (5%), and situations where a vulnerable adult has been taken advantage of or abused (4%).

Homeownership. Civil legal problems related to homeownership affect 14% of low-income homeowners. Problems include falling several payments behind on a mortgage (9%) and having a home go into foreclosure (5%).

Veterans' Issues. Civil legal problems related to veterans' issues affect 13% of low-income households with veterans or other military personnel. Problems include difficulty getting medical care for service-related health conditions (9%), being denied service-related benefits (8%), and problems with discharge status (4%).

Wills and Estates. Civil legal problems related to wills and estates affect 9% of all low-income households. Problems include needing help drawing up a legal document like a will or advance directive (7%) and needing help with probate or administering an estate, trust, or will (5%).



Civil legal problems affect people's lives.

Civil legal problems can have a substantial impact on people's lives. Many of the civil legal problems low-income Americans face relate to life-essential matters like losing a home, dealing with debt, or managing a health issue. There are also less direct, yet important, ways these problems affect people's lives. For example, other research has shown that the stress of dealing with civil legal issues can lead to mental health conditions like anxiety and depression, which further complicate the situations of the families affected.²⁹ Many civil legal problems, like having unsafe housing and losing benefits to buy food, can also pose a threat to physical health.

For each issue that respondents indicated they had personally experienced within the last 12 months, the survey asked them to rate the effect the problem had on them on a five-point scale from "not at all" to "severe." Seventy percent of low-income Americans who personally experienced a civil legal problem in the past year, say at least one of the problems has affected them "very much" or "severely." This amounts to more than half (55%) of all the problems personally experienced by low-income Americans. The types of problems most likely to have a substantial impact are those related to veterans' issues (85%),^{SB-1} income maintenance (65%), employment (65%), rental housing (63%), and family (62%). See Figure 3 below.

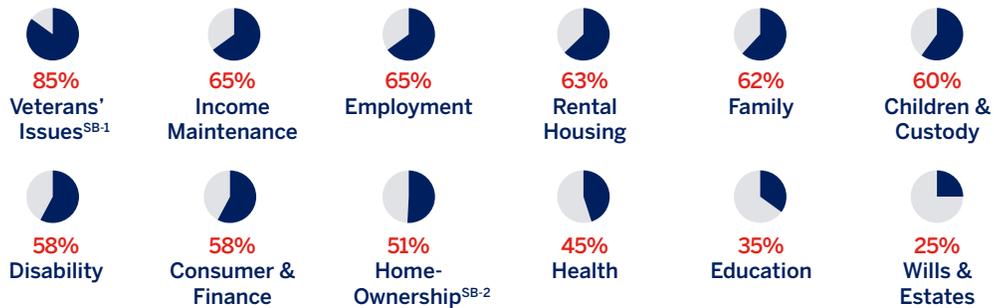
[CLIENT STORY]



Jill | Indiana | Housing | Jill, a senior and legal guardian of two young granddaughters, faced possible homelessness. Jill's sole income came from Social Security Disability benefits, which qualified her for Section 8 subsidized housing. When Jill's apartment was cited for not meeting Section 8 standards, the landlord refused to make the repairs, and the housing authority stopped its payments. The landlord filed an eviction notice for failure to pay rent despite Jill's attempts to continue paying her portion of the rent. A legal aid attorney represented Jill in small claims court, and Jill and her two granddaughters were allowed to stay in the apartment while she searched for another suitable place to live. Without an eviction on her record, Jill retained her Section 8 eligibility and found a new, safe home for her granddaughters.

Source: LSC Client Success Stories.

Figure 3: Civil Legal Problems Substantially Affecting People's Lives³⁰



Percent of personally experienced problems affecting individuals "very much" or "severely"



70% say at least one of their civil legal problems has "very much" or "severely" affected their lives.

[CLIENT STORY]



Misty | Nebraska | Income Maintenance | While giving birth to her third child, Misty, 32, went into cardiac arrest and was left with a serious heart condition that made her eligible for Social Security Disability benefits. She filed for benefits to help make ends meet and take care of her family, but was denied two times. With the help of legal aid attorneys, Misty's third application for disability benefits was expedited and shortly thereafter, she received a favorable decision. The decision, which granted her \$700 per month, also granted her Medicaid, which allowed her to secure a Ventricular Assist Device that has allowed her to live a more full life with her family again.

Source: LSC Client Success Stories.

| Special Focus | Civil legal problems are common among the groups highlighted in this report, and many have experienced multiple problems. Households with survivors of domestic violence or sexual assault are particularly likely to experience civil legal problems. Ninety-seven percent have experienced at least one problem in addition to their problems related to violence. Additionally, compared to other households, households with survivors tend to face more problems in a year and are more likely to experience problems in most of the issue areas covered in the survey.



Seniors' Households (n=286)

56% had at least 1 civil legal problem in past year

10% had 6+ problems in past year

Common problem areas: **Health (33%)**, and **Consumer/Finance (23%)**, and **Income Maintenance (13%)**



Households in Rural Areas (n=285)

75% had at least 1 civil legal problem in past year

23% had 6+ problems in past year

Common problem areas: **Health (43%)**, **Consumer/Finance (40%)**, and **Employment (25%)**



Households with Veterans or Other Military Personnel (n=297)

71% had at least 1 civil legal problem in past year

21% had 6+ problems in past year

Common problem areas: **Health (38%)**, **Consumer/Finance (36%)**, and **Employment (20%)**



Households with Persons with Disabilities (n=950)

80% had at least 1 civil legal problem in past year

32% had 6+ problems in past year

Common problem areas: **Health (51%)**, **Consumer/Finance (44%)**, **Income Maintenance (28%)**, and **Disability (23%)**



Households with Parents/Guardians of children under 18 (n=874)

80% had at least 1 civil legal problem in past year

35% had 6+ problems in past year

Common problem areas: **Health (46%)**, **Consumer/Finance (45%)**, and **Income Maintenance (28%)**, **Custody (27%)**, **Family (26%)**, **Employment (26%)**, and **Education (25%)**



Households with Recent Survivors of Domestic Violence/Sexual Assault (DV/SA) (n=194)

97% had at least 1 civil legal problem in past year in addition to DV/SA

67% had 6+ problems

Common problem areas: **Consumer/Finance (66%)**, **Health (62%)**, **Employment (46%)**, **Rental Housing (45%)**, **Income Maintenance (44%)**, and **Family (40%)** (in addition to DV/SA)



Seeking Legal Help



While most low-income Americans face at least one civil legal problem in a given year, only one in five seeks help from a legal professional. Using data from the 2017 Justice Gap Measurement Survey, this section presents findings on which types of problems are most likely to receive legal attention, where people turn for legal help, what types of legal assistance they receive, and reasons why so many people do not seek legal help. One noteworthy finding from this section is that 86% of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help.

About the Data

The findings presented in this section come from a section of the 2017 Justice Gap Measurement Survey that asked detailed questions about a subset of the civil legal problems reported by respondents. For each respondent, the survey randomly selected up to four personally-experienced problems affecting them more than “not at all.” Due to the low incidence of problems relating to veterans’ issues and disabilities, these problems were always selected if they met the other criteria. Respondents answered questions about what, if any, help they sought to address each of these problems. The unit of analysis in this section is problems.

Low-income Americans do not seek the help of legal professionals for most of their civil legal problems.

Low-income Americans report seeking the help of a legal professional for only 20% of their problems. Interestingly, people are only slightly more likely to seek professional legal help for problems that substantially affect them (24% of problems that affect them very much or severely) compared to problems that do not affect them much (17% of problems that affect them moderately or slightly).

Additionally, while we might expect to see differences in help-seeking behavior across education levels, low-income Americans with less education are only slightly less likely to seek professional legal help for their civil legal problems. Those with no more than a high school education seek professional legal help for 19% of their civil legal problems, and people with more education seek it for 22% of their civil legal problems. In fact, none of the differences observed by educational attainment are statistically significant.



Low-income Americans seek professional legal help for only
20% of the civil legal problems they face.

Low-income Americans get inadequate or no professional legal help for most of the civil legal problems they face.

Low-income Americans say they have received or expect to receive as much legal help as they need for 69% of the problems where they sought professional legal help. While this is a promising result, it is important to remember that they seek professional legal help for only 20% of their problems. Additionally, some respondents indicate that they tried to get professional legal help but were unable to do so.³¹ Taking all of this together, we find that low-income Americans receive inadequate or no professional legal help for 86% of their civil legal problems in a given year.³²

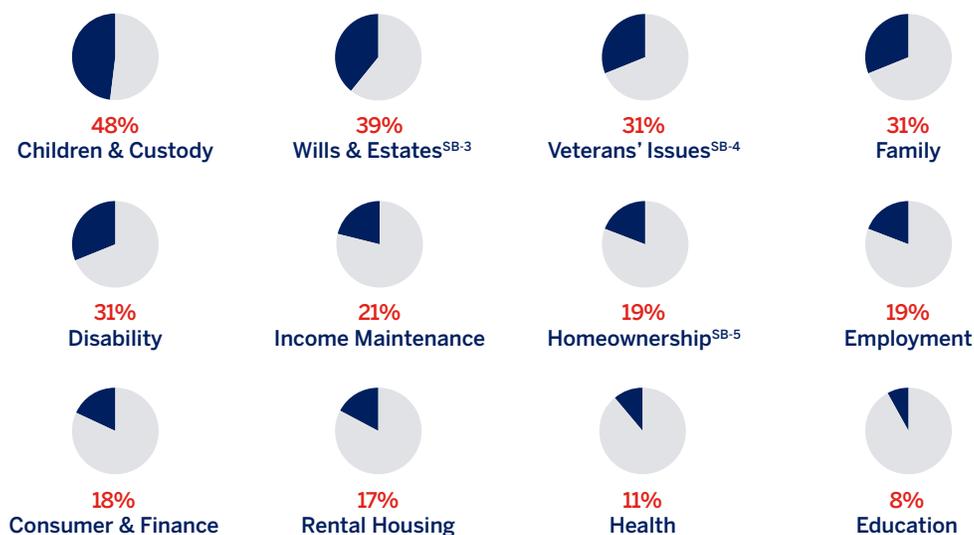


Low-income Americans receive inadequate or no professional legal help for **86%** of the civil legal problems they face in a given year.

People are more likely to seek professional legal help for problems that are more plainly “legal” in nature.

People are most likely to seek professional legal help for problems related to children and custodial issues and wills and estates. Low-income Americans seek such help for 48% of their civil legal problems related to children and custody and for 39% of their problems related to wills and estates.^{SB-3} Of all the civil legal problems explored in the survey, the ones in these categories are more obviously “legal.” Issues relating to children and child custody, for example, usually have to be decided or approved by a judge. Similarly, issues dealing with wills and estates involve legal paperwork and often lawyers as well.

While civil legal problems related to health issues and consumer and finance issues are the most commonly experienced problems among low-income Americans, they are not the problem areas most likely to get attention from a legal professional. As Figure 4 shows, people seek professional legal help for only 18% of their civil legal problems related to consumer and finance and for only 11% of those related to health.

Figure 4: Civil Legal Problems for which Professional Legal Help Is Sought³³

Percent of issue-related problems for which professional legal help is sought

Base sizes vary.

Low-income Americans who seek professional legal help rely on a variety of sources and most often receive help in the form of legal advice.

People who seek the help of a legal professional rely on various sources. They most often turn to legal aid organizations (30% of problems), paid private attorneys (29%), and social or human services organizations (24%). They go to volunteer attorneys 11% of the time and to disability service providers 10% of the time. Finally, low-income Americans reach out for help through legal hotlines for 8% of their civil legal problems.

As Figure 5 shows, when people get help from legal professionals, they are most likely to receive this help in the form of legal advice. Two in five (40%) problems receiving some sort of professional legal help are addressed with legal advice. People report receiving assistance filling out legal documents or forms for 21% of these problems, being represented by a legal professional in court for 20% of them, and getting help negotiating a legal case for 14% of them.

The legal services that people receive vary for at least two reasons. Of course, different types of problems require different types of help and to varying degrees. The help people receive also varies according to what resources might be available to help them address their specific civil legal needs. In the next section, discussion about the work of LSC grantees sheds light on how limited resources means that some cases receive more attention from legal aid professionals than others.

Figure 5: Types of Services Received from Legal Professionals³⁴



[CLIENT STORY]



Michaela | New Jersey | Veterans | Michaela is a lifelong New Jersey resident, always living there except for six years serving in the armed forces in the 1990s. While stationed in Alabama, she divorced, but a name change was not included in the divorce. As a result, when she returned to New Jersey after her service ended, she was compelled to obtain a driver's license using her married name. Michaela used her maiden name in all other matters, causing issues in the various aspects of her life that involve identification (e.g., finances, utilities, leases, etc.). A legal aid attorney represented Michaela in a name change, permitting her to resume use of her maiden name and to once and for all clarify her identification in all aspects of her life.

Source: LSC Client Success Stories.

When people do not seek professional legal help, they often turn to other resources.

Low-income Americans do not seek professional legal help for 78% of the civil legal problems they face in a given year. When someone does not seek such help, they turn to other resources about half of the time (for 54% of problems for which professional legal help is not sought). They speak with others who are not legal professionals (commonly friends and family members) for 33% of these problems, search for information online for 13% of these problems, or take both of these actions for 8% of these problems. When people search for information online, they often search for legal information about procedures to resolve a specific civil legal problem, legal rights on specific issues, or how to get legal assistance.³⁵

Many people do not seek legal help because they think they can handle their problems on their own or because they do not know where to turn for help.

Combining the survey results on seeking professional legal help with those on searching for legal information online, we find that low-income Americans do not seek either type of legal help for 72% of the civil legal problems they face in a given year. Their reasons for not seeking either type of legal help or information are varied. See Figure 6. The most common reason is that they decide to deal with the problem on their own. This is cited 24% of the time. This is consistent with previous studies that find that many people are inclined to believe they can take care of their civil legal problems on their own.³⁶ The next most common type of reason relates to not knowing where to look for help or what resources might be available. People cite this type of reason 22% of the time.

Not seeing their problem as a “legal” problem is another major barrier to seeking legal help.

We know from other studies related to the justice gap that a major reason people do not seek legal help is because they do not perceive their civil legal problems to be legal.³⁷ We find that low-income Americans cite this reason for one in five (20%) civil legal problems where no legal help was sought. This is also consistent with the findings above showing that people are more likely to seek professional legal help for issues that are more plainly legal in nature like custody issues and wills, and less likely to do so for problems like health and finances, which are not as obviously legal.

Other reasons people give for not seeking legal help are being concerned about the cost of seeking such help (14%), not having time (13%), and being afraid to pursue legal action (12%). See Figure 6.

Figure 6: Reasons for Not Seeking Legal Help³⁸



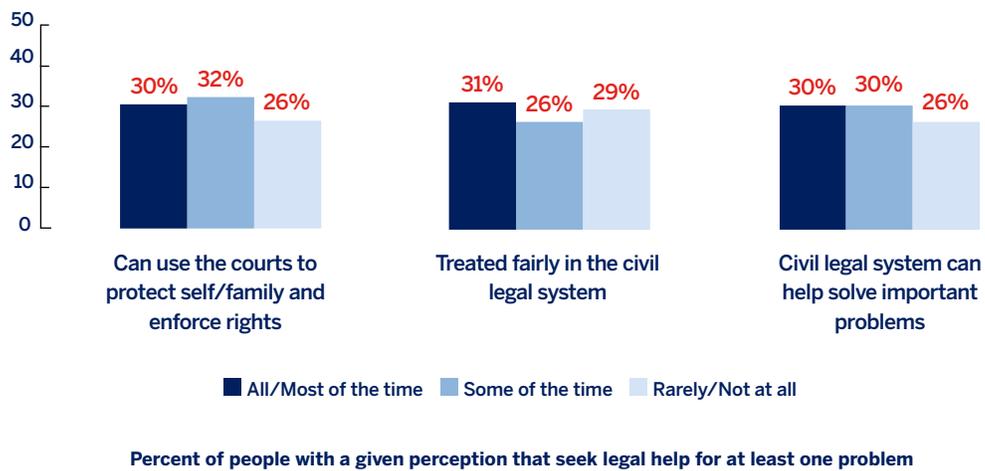
Views of the justice system do not seem to influence whether or not one seeks legal help.

The survey asked respondents the following three questions to assess their perceptions of the civil legal system:

- To what extent do you think people like you have the ability to use the courts to protect yourself and your family or to enforce your rights?
- To what extent do you think people like you are treated fairly in the civil legal system?
- To what extent do you think the civil legal system can help people like you solve important problems such as those you identified in this survey?

We compared people offering more positive views with those offering more negative views to see if there are any noteworthy differences in their patterns of seeking legal help. More specifically, we compared people to see if those holding certain perceptions would be more or less likely than others to seek legal help for at least one of their civil legal problems explored in depth in the survey. They are not. Low-income Americans who view the system in a more negative light are no more or less likely to seek professional legal help or to search for legal information online. See Figure 7.

Figure 7: Seeking Legal Help by Perceptions of the Civil Legal System³⁹



| Special Focus | Rates of seeking professional legal help do not vary much across the groups highlighted in this report.⁴⁰ All seek such help for only about one in five of their civil legal problems. For most, the two most common reasons for not seeking legal help are not knowing where to look and deciding to deal with the problem on their own. The only exception is recent survivors of domestic violence or sexual assault, who cite not being sure if a problem was a legal issue 31% of the time. Also noteworthy is that seniors are more likely than others to cite not having time as a reason for not seeking legal help.



65+
Seniors (n=306 problems)

Seek professional legal help for **19%** of problems]

Top reasons for not seeking legal help: **didn't know** where to look (22%), **decided to deal with problem on own** (21%), and **didn't have time** (19%)



Rural Residents (n=558 problems)

Seek professional legal help for **22%** of problems

Top reasons for not seeking legal help: **decided to deal with problem on own** (26%), **wasn't sure if legal** (21%), and **didn't know where to look** (18%)



Veterans (n=511 problems)

Seek professional legal help for **21%** of problems

Top reasons for not seeking legal help: **didn't know** where to look (29%), **decided to deal with problem on own** (25%), and **wasn't sure if legal** (18%)



Persons with Disabilities (n=1986 problems)

Seek professional legal help for **20%** of problems

Top reasons for not seeking legal help: **decided to deal with problem on own** (25%), **didn't know where to look** (21%), and **wasn't sure if legal** (19%)



Parents/Guardians of Children under 18 (n=1758 problems)

Seek professional legal help for **21%** of problems

Top reasons for not seeking legal help: **decided to deal with problem on own** (25%), **didn't know where to look** (21%), and **wasn't sure if legal** (20%)



Survivors of Domestic Violence/Sexual Assault (n=621 problems)

Seek professional legal help for **23%** of problems

Top reasons for not seeking legal help: **wasn't sure if legal** (31%), **didn't know where to look** (23%), and **decided to deal with problem on own** (20%)

Reports from the Field



The previous section explored the demand side of the justice gap. This section explores the supply side. Using data from LSC's 2017 Intake Census, this section presents findings on the assistance low-income Americans receive after seeking help from an LSC-funded legal aid organization. One key finding is that, given the number of low-income Americans who are expected to seek help in 2017, LSC grantees will not be able to provide adequate legal assistance for an estimated 1 million civil legal problems due to a lack of resources.

About the Data

Most of the findings in this section are based on analysis of the data collected during LSC's 2017 Intake Census. For six weeks in March and April 2017, LSC grantees tracked the individuals who contacted them seeking assistance with civil legal problems. Individuals coming to LSC grantees with problems were grouped into three main categories: unable to serve, able to serve to some extent (but not fully), and able to serve fully.⁴¹ The resulting data permit estimates of the rates at which people seeking legal help for a problem from LSC-funded legal aid organizations receive the legal assistance necessary to meet their needs. The unit of analysis in this section is problems.⁴²

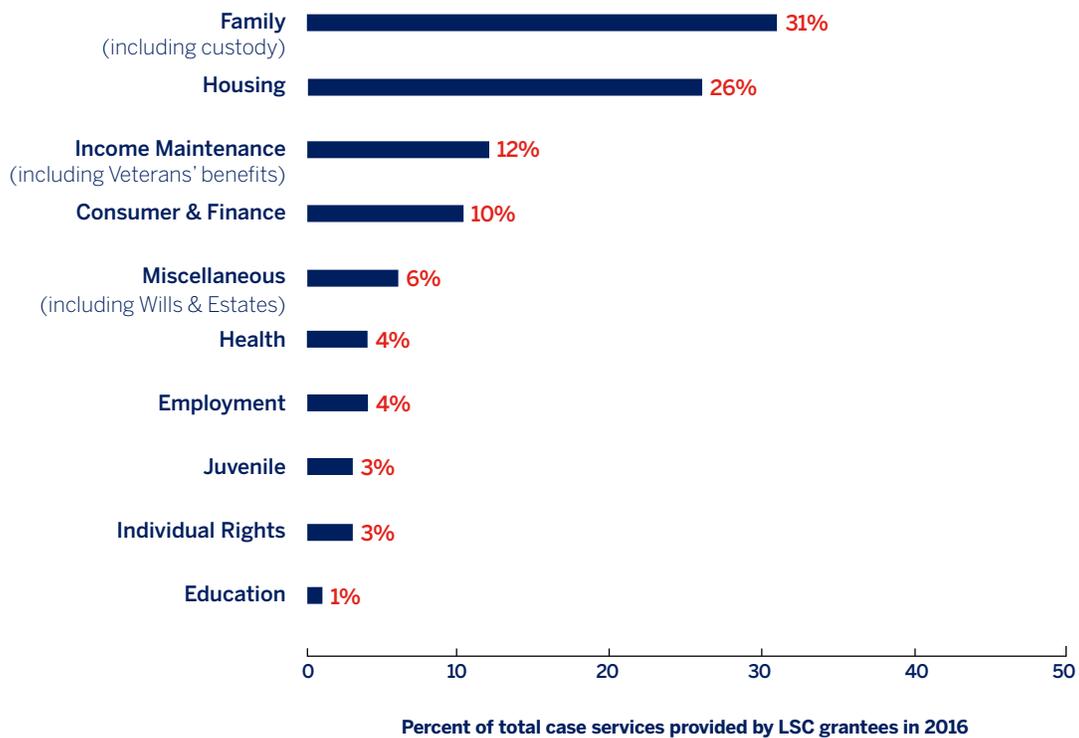
More than half of the problems receiving legal case services from LSC-funded legal aid programs involve family and housing issues.

As a general rule, to be eligible for LSC-funded legal assistance, an individual must have a family income at or below 125% of the Federal Poverty Level (FPL), and their civil legal problem cannot be related to issues for which use of LSC funds is prohibited, like abortion, euthanasia or class-action litigation.⁴³ We will refer to civil legal problems that meet these criteria as “eligible problems” or “eligible civil legal problems” throughout this section.

Not all income-eligible individuals with a legal problem receive the legal assistance they need. To maximize the use of available legal aid resources, LSC grantees develop guidelines on the types of legal problems they prioritize for service. LSC requires grantees to conduct comprehensive legal needs assessments in their communities on a regular basis to inform these guidelines. Some income-eligible individuals have problems that fall within these priority guidelines, but still do not receive the assistance they need for other reasons. We examine these instances throughout this section, trying to assess the extent to which they are shaped by a lack of resources.



The types of problems for which LSC grantees provided case services in 2016 are summarized in Figure 8.⁴⁴ Family problems, including child custody, as well as housing problems like evictions and rental repairs, form the bulk of LSC grantees' casework. The reader will notice that the distribution across the problem categories reported by LSC grantees is different from the distribution of problems experienced by low-income Americans that was presented in Section 2 (see Figure 2). This is due in large part to the types of problems LSC grantees prioritize as well as the fact that people are more likely to seek legal help for certain types of problems, as was discussed in Section 3.

Figure 8: Civil Legal Case Services by Problem Category, 2016^{45,46}

In 2017, low-income Americans are expected to approach LSC-funded legal aid organizations for help with more than 1.7 million civil legal problems.

During LSC's six-week-long Intake Census, low-income Americans approached grantees for assistance to address nearly 196,000 eligible civil legal problems. Based on this, we project that low-income Americans will approach LSC grantees with an estimated 1.7 million eligible civil legal problems in 2017.

Our projection likely underestimates the number of eligible problems that will be brought to LSC grantees. While the vast majority (89%) of reporting grantees said their intake during this six-week period was typical in terms of the number and type of problems brought to them, 12 grantees reported they processed fewer problems than normal due to staff shortages, office closures, or other reasons. Three other grantees reported it was atypical in other ways, including one who says they experienced more traffic than usual. Additionally, one grantee (out of a 133 total grantees) did not report any data for

the Intake Census and, thus, the problems they processed during the six-week period are not accounted for in the sample counts nor in the 12-month projections. Finally, LSC grantees counted individuals (not problems or case services) during the Intake Census, and it is possible that one person could seek assistance for more than one civil legal problem.

It is important to keep in mind that these estimated 1.7 million civil legal problems represent less than 6% of the total civil legal problems faced by low-income Americans. Recall from Section 3 that low-income Americans seek professional legal help for only 20% of their civil legal programs, and they turn to legal aid organizations for only 30% of the problems for which they seek such help. Taken together, this means they seek professional legal help from legal aid organizations 6% of the time. Note that this corresponds to help sought from the set of all legal aid organizations in the U.S., not just those funded by LSC.

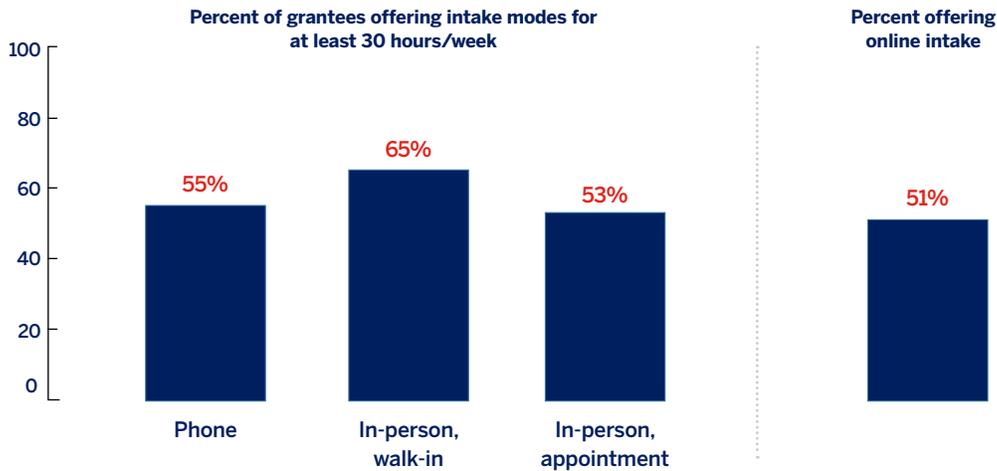
Low-income Americans likely seek the help of legal aid organizations for even more problems that do not get processed for intake.

The estimated 1.7 million problems low-income Americans will bring to LSC grantees in 2017 is more accurately described as the number of problems that LSC grantees will process for intake in 2017. There are likely other problems that people consider bringing or try to bring to an LSC grantee, but are unable to get to or through the point of intake. These situations are not captured in the Intake Census data. It is difficult to know how often this happens, but because legal aid organizations can only offer intake for so many hours and in so many ways, it is bound to happen. The types and availability of various intake modes varies across LSC grantees, depending on the resources they have at their disposal (e.g., staffing, technology, and other resources).

There are three primary intake modes currently offered by LSC-funded legal aid organizations:

- In-person: This a face-to-face interview that takes place at the legal aid program's office. This can happen on a walk-in basis or as the result of an appointment.
- Phone: This involves conducting the screening process over the phone. This often involves a mix of going through an automated process (e.g., "press two if you...") and speaking with a legal aid staff member directly.
- Online: This method involves submitting interview information via an online form or web application.

Figure 9: Intake Modes Offered by LSC-funded Legal Aid Programs⁴⁷



Most legal aid organizations have set hours for intake, which are scheduled times when new requests for assistance are received. Intake hours can vary for a variety of reasons, including program resources and community needs. Online options are the exception; these screening tools are usually available continuously and monitored regularly by staff during business hours.

When grantees submitted their Intake Census data to LSC, they also indicated how many hours per week they offered various intake modes (on average). Figure 9 presents the percent of LSC grantees that offer various intake modes for at least 30 hours per week and that offer online intake. Sixty-five percent of grantees offer in-person intake on a walk-in basis for at least 30 hours per week; 53% offer in-person intake by appointment for at least 30 hours per week; and 55% offer intake by phone for at least 30 hours per week. About half (51%) of LSC grantees offer online modes of intake.

[CLIENT STORY]



Donna | New York | Domestic Violence | Donna, a rural resident of New York State, suffered from severe mental health problems resulting from domestic violence and the sexual abuse of one of her children. She did not feel comfortable speaking about her situation before contacting an LSC grantee, who helped her address various civil legal problems she was facing. Specifically, the legal aid attorney helped Donna avoid a workfare sanction by the local Department of Social Services and won her SSI appeal, permanently removing her from the county welfare rolls. Donna received over \$40,000 in retroactive SSI benefits, which has allowed her to establish her own home and provide a college education for her child.

Low-income Americans receive some kind of legal help for 59% of the eligible civil legal problems they bring to LSC-funded organizations.

In 2017, LSC grantees will provide some form of legal assistance for an estimated 999,600, or 59%, of eligible problems presented by low-income Americans. The type and extent of help vary, depending on the requirements and complexity of a given problem and the resources available. From the Intake Census data, we can group eligible problems for which LSC grantees provide assistance into three main categories: “fully served”; “served, but not fully”; and “served, but extent of service pending” (or, for short, “served, extent pending”). This information is summarized in Table 1 along with corresponding 12-month projections for 2017.

Table 1: Distribution of Eligible Problems by Extent of Service⁴⁸

	Percent of total eligible problems	Total from 2017 Intake Census sample	Total 12-month projection
Total eligible problems	100%	195,776	1,701,400
Total served to some extent	59%	115,024	999,600
Served fully	28%	54,657	475,000
Served, but not fully	21%	41,371	359,500
Served, but extent of service is pending	10%	18,996	165,100
Not served	41%	80,752	701,800
Total problems not served or not served fully (excluding pending)	62%	122,123	1,061,300
Total problems not served or not served fully (including pending)	72%	141,119	1,226,400

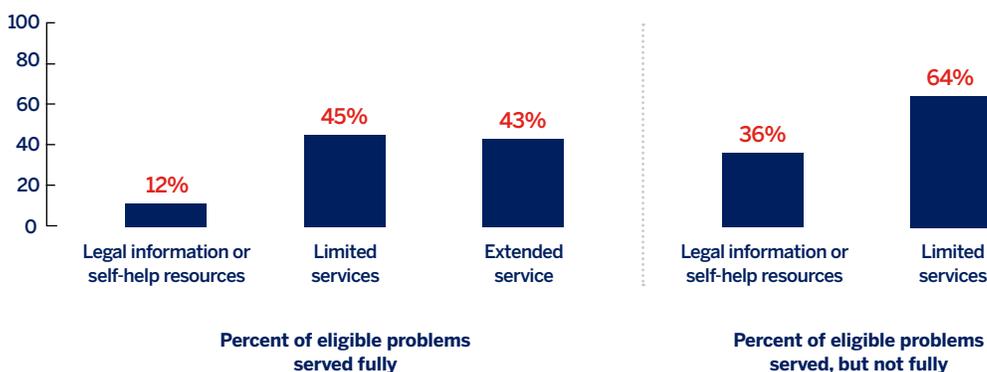
Problems fully served

LSC grantees reported they will be able to “fully serve” at least 28% of all the eligible problems low-income Americans presented during the intake census (see Table 1 above). In these instances, people receive legal assistance expected to fully address their legal needs. This can take the form of providing legal information or self-help resources (12% of fully-served problems) or of “limited services” like providing legal advice, speaking with third parties on behalf of a client, or helping to prepare legal documents (45% of fully-served problems).⁴⁹ Another 43% of fully-served problems receive “extended service,” which includes cases in which a legal aid attorney represents a client in negotiated settlements (with or without litigation), in administrative agency hearings or other administrative processes, or in a court proceeding.⁵⁰ See Figure 10.

Problems served, but not fully

Of all the eligible problems low-income Americans presented to LSC grantees during the intake census, at least 21% will receive some legal assistance, but not to the extent necessary to fully address the clients' legal needs (see Table 1 above). Help for people with these "served, not fully" problems takes the form of providing legal information or self-help resources (36% of problems served, but not fully) and "limited service" like providing legal advice, speaking with third parties on behalf of a client, or help preparing legal documents (64% of problems served, but not fully).⁵¹ See Figure 10.

Figure 10: Types of Legal Assistance Provided⁵²



Problems served, but extent of service pending

At the conclusion of the Intake Census, LSC grantees had not yet determined the level of legal assistance for 10% of eligible problems presented to them.

After seeking legal assistance from LSC grantees, low-income Americans will not receive any legal assistance for an estimated 700,000 eligible problems in 2017.

Forty-one percent of the eligible problems low-income Americans presented to LSC grantees during the intake census will not receive any legal help from grantees. This corresponds to slightly more than an estimated 700,000 problems for 2017. There are many reasons why an individual with an eligible civil legal problem might not receive legal assistance. More than half (54%) of these problems are not served because they fall outside of the guidelines grantees use to prioritize eligible problems due to limited resources. About one in four (24%) eligible problems falls within grantees' priorities, but is not served due to insufficient resources. A small portion (6%) are not served because

the grantee has identified a conflict of interest. For example, the organization might already be representing another party to the dispute. Finally, 16% do not receive legal assistance for other reasons, often involving situations where contact with a client is lost.

Low-income Americans will receive insufficient or no legal help for an estimated 1.1 million eligible problems this year alone.

Estimating the number of eligible problems for which low-income Americans will receive insufficient legal help (“underserved”) or no legal help (“unserved”) requires making some assumptions. Because the extent of legal assistance provided for the problems currently categorized as “served, but extent pending” is not known, we cannot provide a simple estimate for the percent of eligible problems that receive insufficient or no legal assistance. However, by making some assumptions about the extent to which these problems will be served, we can arrive at a range of estimates. We find that between 62% and 72% of all eligible problems brought to LSC grantees either receive no legal assistance or receive a level of assistance that is not expected to fully address the client’s legal needs. That corresponds to an estimated 1.1 to 1.2 million eligible civil legal problems expected to go unserved or underserved in 2017 alone.

The 62% figure underestimates the problems unserved or underserved. It treats “served, but extent pending” problems as being “served fully.” Conversely, the 72% figure is an overestimation, treating “served, but extent pending” problems as “served, but not fully.” In reality, the rate will fall somewhere in between. See Table 1 above.

A lack of available resources accounts for the vast majority of eligible civil legal problems that go unserved or underserved.

Civil legal problems that are unserved or underserved due to limited resources account for the vast majority of the problems that do not receive the assistance necessary to fully address the client’s needs. Table 2 presents two estimates of the number of eligible problems that go unserved or underserved for this reason. Overall, we estimate that insufficient resources account for between 85% and 97% of all unserved or underserved eligible problems, representing 53% to 70% of all eligible problems. This corresponds to an estimated range of about 900,000 to 1.2 million problems for which the assistance necessary to meet the legal needs of low-income Americans cannot be provided due to a lack of resources. See Table 2.

The upper-bound estimate of 97% is likely an overestimation. Only problems that involve a conflict of interest between parties are not included, corresponding to 3% of unserved or underserved problems. In this case, we assume the worst-case scenario and count all of the “served, but extent pending” problems as served but not to the full extent necessary and attribute this to a lack of resources.

Table 2: Estimates of Eligible Problems that are Unserved or Underserved Due to a Lack of Resources⁵³

	Lower-bound	Upper-bound
Intake Census sample count	104,364	136,278
12-month projection count	907,000	1,184,300
Percent of all eligible problems	53%	70%
Percent of all eligible problems that are unserved or underserved	85%	97%

Additionally, this 97% estimate treats eligible problems that go unserved due to “other reasons” as unserved due to a lack of resources, because many of the underlying reasons could potentially be resolved or avoided if there were more resources. For example, these reasons often involve situations where legal aid staff lose touch with clients. If there were more resources to facilitate follow-up by legal aid staff or to help clients with transportation to and from meetings, for example, many of these problems would receive the legal assistance needed. To create a simple upper-bound estimate, we assume all of these problems would have received the necessary legal assistance had more resources been available.

The lower-bound estimate of 85% is likely an underestimation. In this case, we assume that all of the “served, but extent pending” problems will be served to the full extent necessary and that none of the problems that are unserved for “other reasons” could have been successfully served had more resources been available.

See Appendix B4 for a detailed explanation of how these estimates were calculated.



In 2107, an estimated **1 million civil legal problems** brought to LSC grantees by low-income Americans **will not receive the legal assistance required** to fully address their needs due to a lack of available resources.

Special Focus

 This section presents key findings for the six groups of low-income Americans highlighted throughout this report. These groups include seniors, persons with disabilities, veterans, parents and guardians of children under 18, rural residents, and survivors of domestic violence or sexual assault.

65+

Seniors

Key findings related to the civil legal needs and experiences of low-income seniors include the following:

- Approximately 6.4 million seniors have family incomes below 125% of FPL.^a
- 56% of low-income seniors' households experienced a civil legal problem in the past year, including 10% that have experienced 6+ problems.^b
- LSC-funded legal aid organizations provided legal services to low-income Americans aged 60+ years old for about 135,000 cases in 2016.^c
- The most common types of civil legal problems for low-income seniors' households include: health (33%), consumer and finance (23%), income maintenance (13%), and wills and estates (12%).^b
- Low-income seniors seek professional legal help for 19% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 87% of all their problems.^b
- The top reasons low-income seniors give for not seeking legal help include the following:^b
 - Not knowing where to look or what resources were available (22%)
 - Deciding to deal with problem on their own (21%)
 - Not having time (19%)
 - Wasn't sure if it was a legal issue (17%)

Low-income seniors **received inadequate or no professional legal help** for **87%** of their civil legal problems in 2017.

[CLIENT STORY]



Helen | Pennsylvania | Income Maintenance | Helen is a 68-year-old widow whose only income is a monthly Social Security Administration (SSA) widow's benefit. When she sought help from an LSC grantee, she was scared, vulnerable and overwhelmed. She had just received a letter from the SSA indicating they had overpaid her \$47,000 and notifying her that they would stop her monthly benefit payment until the debt was repaid. The legal aid attorney found that the overpayment was caused by fraudulent conduct by Helen's late ex-husband that occurred after their divorce and long after they had separated. The attorney helped Helen resolve the situation, and she continued to receive her SSA widow's benefit.

Source: LSC Client Success Stories.

^aU.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months. Senior is defined as ages 65+. ^b2017 Justice Gap Measurement Survey. ^c2016 Legal Services Corporation Grantee Activity Report.



Rural Residents

Key findings related to the civil legal needs and experiences of low-income, rural residents include the following:

- Approximately 10 million rural residents have family incomes below 125% of FPL.^a
- 75% of low-income rural households experienced a civil legal problem in the past year, including 23% that have experienced 6+ problems.^b
- The most common types of civil legal problems among low-income, rural households include: health (43%), consumer and finance (40%), and employment (25%).^b
- Low-income rural residents seek professional legal help for 22% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 86% of all their problems.^b
- The top reasons low-income, rural residents give for not seeking legal help include the following:^b
 - Deciding to deal with problem on their own (26%)
 - Wasn't sure if it was a legal issue (21%)
 - Not knowing where to look or what resources were available (18%)

Low-income rural residents received inadequate or no professional legal help for **86%** of their civil legal problems in 2017.

[CLIENT STORY]



Charles | California | Housing | Charles and his wife care for their elderly parents and grandchildren in their home in rural California. They first experienced financial problems when Charles's employer reduced his work hours. Then he became ill from a life-threatening disease. He and his wife asked their lending bank for help. When the bank did not respond to their modification request, they sought help from an LSC grantee. The legal aid staff succeeded in obtaining a modification that lowered their monthly mortgage payment and established a fixed payment for principal and interest.

Source: LSC Client Success Stories.

^aU.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. Senior is defined as ages 65+. ^b2017 Justice Gap Measurement Survey.



Veterans

Key findings related to the civil legal needs and experiences of low-income veterans and other military personnel include the following:

- More than 1.7 million veterans have family incomes below 125% of FPL.^a
- 71% of low-income households with veterans or other military personnel experienced a civil legal problem in the past year, including 21% that have experienced 6+ problems.^b
- LSC-funded legal aid organizations provided legal services to low-income households with veterans for about 41,000 cases in 2016.^c
- The most common types of civil legal problems for low-income households with veterans and other military personnel include: health (38%), consumer and finance (36%), and employment (20%).^b
- Low-income veterans and other military personnel seek professional legal help for 21% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 88% of all their problems.^b
- The top reasons low-income veterans and other military personnel give for not seeking legal help include the following:^b
 - Not knowing where to look or what resources were available (29%)
 - Deciding to deal with problem on their own (25%)
 - Wasn't sure if it was a legal issue (18%)

Low-income veterans and other military personnel **received inadequate or no professional legal help** for **88%** of their civil legal problems in 2017.

[CLIENT STORY]



Bud | West Virginia | Veteran Benefits | Bud is a 68 year-old Vietnam veteran who had been receiving his Marine pension benefits for the past eight years. After a government clerk keyed in the wrong social security number, his benefits were suspended. Moreover, the Department of Veterans Affairs (VA) deemed the money he had been receiving as overpayment and threatened action against him. Bud tried to correct his record, but he was having a difficult time and, meanwhile, his savings were being depleted. An attorney with an LSC grantee's Veteran's Assistance Program worked with the Social Security office, the VA, and the Internal Revenue Service, and was eventually able to establish Bud's identity, win reinstatement of his pension, and resolve the false overpayment issue.

Source: LSC Client Success Stories.

^aU.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months. Senior is defined as ages 65+. ^b2017 Justice Gap Measurement Survey. ^c2016 Legal Services Corporation Grantee Activity Report.



Persons with Disabilities

Key findings related to the civil legal needs and experiences of low-income persons with disabilities include the following:

- More than 11.1 million people with a disability have family incomes below 125% of FPL.^a
- 80% of low-income households with someone with a disability experienced a civil legal problem in the past year, including 32% that have experienced 6+ problems.^b
- The most common types of civil legal problems among low-income households with someone with a disability include: health (51%), consumer and finance (44%), income maintenance (28%), and disability (23%).^b
- Low-income persons with a disability seek professional legal help for 20% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 87% of all their problems.^b
- The top reasons low-income persons with a disability give for not seeking legal help include the following:^b
 - Deciding to deal with problem on their own (25%)
 - Not knowing where to look or what resources were available (21%)
 - Wasn't sure if it was a legal issue (19%)

Low-income persons with a disability received inadequate or no professional legal help for **87%** of their civil legal problems in 2017.

[CLIENT STORY]



Elinor | New York | Housing | Elinor has a daughter with a disability who had to crawl four flights of stairs each day to their apartment. Her daughter spent about 30 minutes sliding down the steps to reach the wheelchair stashed under the stairwell alcove and more than an hour getting in and out of her building to attend school five days a week. When there was a vacancy on the ground floor, Elinor sought to move there, but the landlord told them “transfers” weren’t allowed. Represented by an LSC grantee lawyer, the family was able to acquire the apartment on the ground floor and maintain their \$700 rent for their three-bedroom, rent-controlled apartment.

Source: LSC Client Success Stories.

^aU.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months. ^b2017 Justice Gap Measurement Survey.



Parents of Children under 18

Key findings related to the civil legal needs and experiences of low-income parents and guardians of minor children include the following:

- Approximately 18 million families with related children under 18 have incomes below 125% of FPL.^a
- 80% of low-income households with parents or guardians of minor children experienced a civil legal problem in the past year, including 35% that have experienced 6+ problems.^b
- Common types of civil legal problems among low-income households with parents or guardians of minor children include: health (46%), consumer and finance (45%), income maintenance (28%), children and custody (27%), family (26%), employment (26%), and education (25%).^b
- Low-income parents and guardians of minor children seek professional legal help for 21% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 87% of all their problems.^b
- The top reasons low-income parents and guardians of minor children give for not seeking legal help include the following:^b
 - Deciding to deal with problem on their own (25%)
 - Not knowing where to look or what resources were available (21%)
 - Wasn't sure if it was a legal issue (20%)

Low-income parents and guardians of minor children **received inadequate or no professional legal help** for **87%** of their civil legal problems in 2017.

[CLIENT STORY]



Patricia | Georgia | Education | Patricia was worried about her 13-year-old daughter, a middle-schooler diagnosed with leukemia. She was being bullied at school and, because she was often ill or hospitalized, she needed help with academics and extra time to complete assignments. After speaking with school officials, Patricia did not feel her concerns were being heard. LSC grantee lawyers worked with the school to develop a special education plan, bringing in an education specialist from the hospital where her daughter was being treated. An individual education plan (IEP) was developed, giving Patricia's daughter the extra support she needed and permission to wear a hat to cover her bald head. School officials also addressed the bullying, making her time in school safer and more productive.

Source: LSC Client Success Stories.

^aCPS Table Creator, Current Population Survey Annual Social and Economic Supplement, US Census Bureau, 2016. <https://www.census.gov/cps/data/cpstablecreator.html>. ^b2017 Justice Gap Measurement Survey.



Survivors of Domestic Violence or Sexual Assault

Key findings related to the civil legal needs and experiences of low-income survivors of domestic violence or sexual assault include the following:

- Rates of intimate partner violence among people with family incomes at or below 100% of FPL are about four times higher than the rates among people with incomes at or above 400% of FPL.^a
- 97% of low-income households with survivors of recent domestic violence or sexual assault (DV/SA) experienced a civil legal problem in the past year (in addition to problems related to DV/SA), including 67% that have experienced 6+ problems.^b
- Common types of civil legal problems among low-income households with recent survivors include: consumer and finance (66%), health (62%), employment (46%), rental housing (45%), income maintenance (44%), and family (40%) (in addition to DV/SA-related problems).^b
- Low-income survivors seek professional legal help for 23% of their civil legal problems, receiving inadequate or no professional legal help for an estimated 86% of all their problems.^b
- The top reasons low-income survivors give for not seeking legal help include the following:^b
 - Wasn't sure if it was a legal issue (31%)
 - Not knowing where to look or what resources were available (23%)
 - Deciding to deal with problem on their own (20%)

Low-income survivors of recent domestic violence or sexual assault **received inadequate or no professional legal help** for **86%** of their civil legal problems in 2017.

[CLIENT STORY]



Frida | Washington | Domestic Violence | Frida, a domestic violence survivor, and her four children, fled abuse at the hands of her husband. The children were sexually molested by their father, confined to the house, and repeatedly threatened with weapons. During the subsequent divorce, the husband was granted unsupervised telephone contact with the children. When one child became suicidal, a legal aid attorney helped Frida secure an order to stop the phone calls. The grantee was able to secure a lifetime protection order and child support. Frida has since started her own business, and her children are doing well in therapy.

Source: LSC Client Success Stories.

^aErika Harrell, Ph.D., and Lynn Langton, Ph.D., BJS Statisticians, Marcus Berzofsky, Dr.P.H., Lance Couzens, and Hope Smiley-McDonald, Ph.D., *RTI International, Household Poverty and Nonfatal Violent Victimization, 2008–2012*, Table 2, Rate of violent victimization, by victim–offender relationship and poverty level, 2008–2012.
^b2017 Justice Gap Measurement Survey.

- ¹ This is how the Legal Services Corporation (LSC) defines the justice gap and is consistent with the way others in the literature on the topic use the term.
- ² New York State Courts Access to Justice Program, "Report to the Chief Judge and the Chief Administrative Judge of the State of New York," 2015. www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2015report.pdf.
- ³ James J. Sandman, "Rethinking Access to Justice", Hawaii Access to Justice Conference, June 20, 2014. <http://www.lsc.gov/rethinking-access-justice-james-j-sandman-hawaii-access-justice-conference>.
- ⁴ Legal Services Corporation, *Documenting the Justice Gap In America: The Current Unmet Civil Legal Needs of Low-Income Americans*. September 2005 (Updated June 2007 and September 2009). <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf>; and http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.
- ⁵ American Bar Association. 1994. *Legal Needs and Civil Justice: A Survey of Americans, Major Findings from the Comprehensive Legal Needs Study*. http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/downloads/legalneedstudy.authcheckdam.pdf.
- ⁶ See, for example: Documenting the Justice Gap in Michigan, State Bar of Michigan in Collaboration with Michigan's Legal Services Corporation Funded Providers, Spring 2012 (Updated Spring 2015). <http://www.michbar.org/file/programs/atj/pdfs/JusticeGap.pdf>;
Florida Commission on Access to Civil Justice Interim Report, October 1, 2015. http://devlamp2.flabar.org/wordpress/flaccesstojustice/wp-content/uploads/sites/3/2015/10/CivilLegalNeedsstudy_October2015_V21_Final10_14_15.pdf.
- ⁷ Washington State Supreme Court's Civil Legal Needs Study Update Committee. 2015. *2015 Washington State Civil Legal Needs Study Update*. http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf.
- ⁸ Unfortunately, given the nature of the data analyzed in Section 4, it was not possible to present findings specific to these groups in that section.
- ⁹ These figures include only problems for which LSC funds may be used to help an individual based on the person's income and the type of problem they are facing. LSC eligibility is discussed in further detail in Section 4.
- ¹⁰ See 45 CFR part 1611.3 (October 2015 Edition): <https://www.gpo.gov/fdsys/pkg/CFR-2015-title45-vol4/pdf/CFR-2015-title45-vol4-subtitleB-chapXVI.pdf>. In limited circumstances, an LSC grantee can provide legal assistance to individual up to an income of 200% of the federal poverty level: 45 CFR Part 1611.5.
- ¹¹ See Appendix B1 for details on the data used and estimates made.
- ¹² *U.S. Federal Poverty Guidelines used to Determine Financial Eligibility for Certain Federal Programs*, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, January 2017. <https://aspe.hhs.gov/poverty-guidelines>. Note that these guidelines are estimated by household size for households in the 48 contiguous states, with higher guidelines issued for households in Hawaii and Alaska, where Americans face higher prices on average for basic household necessities.
- ¹³ U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, *Table S1701, Poverty Status in the Past 12 Months*. The base for this estimate is the entire population for whom poverty status is determined.
- ¹⁴ U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. The base for this estimate is the entire population for whom poverty status is determined.

Endnotes

- ¹⁵ U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. The base for this estimate is the total number of people for whom poverty status is determined in the state.
- ¹⁶ This map is based on the map presented in the Legal Services Corporation FY2018 Budget Request, available at <http://www.lsc.gov/media-center/publications/fiscal-year-2018-budget-request>. The data are from the U.S. Census Bureau, 2015 American Community Survey 1-year estimates, Table S1701, Poverty Status in the Past 12 Months.
- ¹⁷ U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. The base for this estimate is the total number of people for whom poverty status is determined in the U.S who are age 25+.
- ¹⁸ Charn, Jeanne. "Celebrating the 'Null' Finding: Evidence-Based Strategies for Improving Access to Legal Services," 122 *The Yale Law Journal*, 2206-2234 (2013).
- ¹⁹ U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. The base for this estimate is the estimated number of people below 125% FPL.
- ²⁰ Greene, Sara Sternberg. "Race, Class, and Access to Civil Justice," 101 *Iowa Law Review* 1234-1322 (2016).
- ²¹ U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*. Senior is defined as ages 65+.
- ²² American Community Survey Single Year Estimates, 2015. Table C17024: Age by Ratio of Income to Poverty Level in the Past 12 Months. Geography: United States – Rural. The ACS defines rural as 'Territory, population and housing units not classified as urban. 'Rural' classification cuts across other hierarchies and can be in metropolitan or non-metropolitan areas.' See <https://factfinder.census.gov/help/en/index.htm#rural.htm>.
- ²³ Calculated from U.S. Bureau of the Census, American Community Survey 2015 1-Year Estimates, *Table S1701: Poverty Status In The Past 12 Months and Table S2101: Veteran Status*. To compute this estimate, the ratio of the estimated number of persons with incomes less than 125% of FPL to Persons with incomes less than 100% FPL was applied to the total number of veterans below 100% FPL to estimate the number of veterans below 125% FPL.
- ²⁴ U.S. Bureau of the Census, American Community Survey, 2015 1-year estimates, S1703: *Selected Characteristics Of People At Specified Levels Of Poverty In The Past 12 Months*.
- ²⁵ CPS Table Creator, Current Population Survey Annual Social and Economic Supplement, US Census Bureau, 2016. <https://www.census.gov/cps/data/cpstablecreator.html>.
- ²⁶ Erika Harrell, Ph.D., and Lynn Langton, Ph.D., BJS Statisticians, Marcus Berzofsky, Dr.P.H., Lance Couzens, and Hope Smiley-McDonald, Ph.D., *RTI International, Household Poverty and Nonfatal Violent Victimization, 2008–2012*, Table 2, Rate of violent victimization, by victim–offender relationship and poverty level, 2008–2012, see <https://www.bjs.gov/content/pub/pdf/hpnr0812.pdf>.
- ²⁷ 2017 Justice Gap Measurement Survey, 2017, computed variables indicating whether households and individuals experienced at least one civil legal problem in each category in the past 12 months, based on several questionnaire items.
- ²⁸ Base sizes vary and can be referenced in the supporting Justice Gap Appendix B2 Tables at www.lsc.gov/justicegap2017.

- ²⁹ Rebecca L. Sandefur, "Accessing Justice in the Contemporary United States. Findings from the Community Needs and Services Study," American Bar Foundation and University of Illinois at Urbana-Champaign, August 2014; Megan Sandel, Mark Hansen, Robert Kahn, Ellen Lawton, Edward Paul, Victoria Parker, Samantha Morton, and Barry Zuckerman, "Medical-Legal Partnerships: Transforming Primary Care by Addressing the Legal Needs of Needs of Vulnerable Populations," 29 *Health Affairs* 9, 1697-1705.
- ³⁰ 2017 Justice Gap Measurement Survey, 2017, computed variable indicating the severity of each civil legal problem that was personally experienced, based on responses to questionnaire items asking: How much did the following issue(s) personally affect you? Response options: not at all, slightly, moderately, very much, and severely.
- ^{SB1}Note small base size of n=56 for personally experienced problems relating to veterans' issues; this statistic has a large standard error. See Justice Gap Appendix B2 Tables at www.lsc.gov/justicegap2017.
- ^{SB2}Note small base size of n=84 for personally experienced problems relating to homeownership; this statistic has a large standard error. See Justice Gap Appendix B2
- ³¹ At certain points in the survey, some respondents were able to indicate that they had sought help but did not receive it. Unfortunately, not all respondents who sought help had the opportunity to explicitly indicate this so it is not possible to give an estimate of how often this occurs.
- ³² This figure includes problems for which respondents indicated (1) they sought no help of any kind, (2) they sought some sort of assistance from others and/or information online, but they did not seek the help of a legal professional, (3) they sought help from a legal professional, but were unable to get it, or (4) they sought and received help from a legal professional, but felt that they did not or would not be able to get as much legal help with the issue as they felt they needed.
- ^{SB3}Note small base size of n=69 for problems relating to wills and estates; this statistic has a large standard error. See Justice Gap Appendix B3 Tables at www.lsc.gov/justicegap2017.
- ³³ 2017 Justice Gap Measurement Survey, 2017, computed variable summarizing legal help-seeking behavior for civil legal issues, based on multiple questionnaire responses.
- ^{SB4}Note small base size of n=32 for problems relating to veterans' issues; this statistic has a large standard error. See Justice Gap Appendix B3 Tables at www.lsc.gov/justicegap2017.
- ^{SB5}Note small base size of n=45 for problems relating to issues of homeownership; this statistic has a large standard error. See Justice Gap Appendix B3 Tables at www.lsc.gov/justicegap2017.
- ³⁴ 2017 Justice Gap Measurement Survey, question 30: What kind of legal help [have you received so far / did you receive]? (multiple response).
- ³⁵ Due to limited survey data on online searches for legal information, we cannot present detailed findings on this topic.
- ³⁶ Sarah Sternberg Greene, "Race, Class, and Access to Civil Justice," 101 *Iowa Law Review*, 1263-1321 (2016); Rebecca L. Sandefur, "Accessing Justice in the Contemporary United States. Findings from the Community Needs and Services Study," American Bar Foundation and University of Illinois at Urbana-Champaign, August 2014.
- ³⁷ Rebecca L. Sandefur, "Bridging the Gap. Rethinking Outreach for Greater Access to Justice," University of Arkansas at Little Rock *Law Review* 4, 721-740, 2015.
- ³⁸ 2017 Justice Gap Measurement Survey, questions 35 and 37: Why [haven't you talked / didn't you talk] to a legal professional for this issue? Why [haven't you talked / didn't you] talk to anyone else for help or looked for information online about this issue? (multiple response).

- ³⁹ 2017 Justice Gap Measurement Survey, questions 41, 42, and 43: To what extent do you think people like you have the ability to use the courts to protect yourself and your family or enforce your rights?, To what extent do you think people like you are treated fairly in the civil legal system?, To what extent do you think the civil legal system can help people like you solve important problems such as those you identified in this survey?
- ⁴⁰ We present the total number of problems examined in this section of the survey for each group listed. Please see the Justice Gap Appendix B3 Tables at www.lsc.gov/justicegap2017 for the number of corresponding respondents as well as other supporting statistical information on these findings.
- ⁴¹ See Appendix B4 for more information about LSC's 2017 Intake Census and the resulting data analysis.
- ⁴² The Intake Census tracked the number of individuals, not the number of problems, but it is fair to assume that the number of individuals approaching LSC grantees is very close to the number of problems presented to them in this six-week period of time. It is possible that an individual had more than one problem, but this is not likely a common occurrence given the short span of time. For the remainder of this section, we assume that the number of individuals and the number of problems tracked during the Intake Census are equivalent, referring to the number of problems for the purposes of analysis. Our estimates are therefore conservative: to the extent individuals and problems are not equivalent, we are underestimating the number of legal problems for which low-income Americans will seek help from LSC grantees in 2017.
- ⁴³ For more information on the rules governing the use of LSC funds, see: <http://www.lsc.gov/lsc-restrictions-and-funding-sources>.
- ⁴⁴ Case services incorporate eligible problems for which LSC grantees provide legal advice and/or representation. Case services do not include problems for which LSC grantees provide pro se assistance if only legal information or referrals to resources is provided. Case services correspond with "cases closed" and "cases open" in the Grant Activity Reports submitted to LSC.
- ⁴⁵ Grant Activity Reports, Calendar Years 2014-2016, Legal Service Corporation. Note that the proportions calculated are based on both open and closed cases in a given calendar year.
- ⁴⁶ Note that the distribution of case services presented for 2016 is consistent with for other recent years, including 2013, 2014, and 2015.
- ⁴⁷ 2017 LSC Intake Census. Note, LSC grantees also regularly engage in outreach intake. The numbers for this are not represented in Figure 9.
- ⁴⁸ LSC 2017 Intake Census. See Appendix B4 for details on calculations.
- ⁴⁹ The problems coded as fully served with "limited services" include cases that are expected to be fully resolved with the legal assistance provided and have been closed with the following LSC Case Service Report (CSR) Closure categories: A "Counsel and Advice", B "Limited Action", and L "Extensive Service (not resulting in settlement or court or administrative action)". See the LSC 2017 Case Service Report (CSR) Handbook for more information on these definitions: <http://www.lsc.gov/csr-handbook-2017>.
- ⁵⁰ The problems coded as fully served with "extended services" include cases that have been closed with the following LSC Case Service Report (CSR) Closure categories: F "Negotiated Settlement without Litigation", G "Negotiated Settlement with Litigation", H Administrative Agency Decision, and I "Court Decision." See LSC 2017 CSR Handbook referenced above for more information: <http://www.lsc.gov/csr-handbook-2017>.
- ⁵¹ The types of cases counted as receiving more involved assistance like providing legal advice, speaking with third parties on behalf of a client, or help preparing legal documents include cases that have been closed with the following LSC CSR Closure categories AND are expected to be fully resolved with the legal assistance provided: A "Counsel and Advice", B "Limited Action", and L "Extensive Service (not resulting in settlement or court or administrative action)". See the LSC 2017 Case Service Report (CSR) Handbook for more information on these definitions: <http://www.lsc.gov/csr-handbook-2017>.
- ⁵² LSC 2017 Intake Census. See Appendix B4 for details.
- ⁵³ LSC 2017 Intake Census. See Appendix B4 for details on calculations.

Appendix A: 2017 Justice Gap Measurement Survey Methodology

Readers are encouraged to visit www.lsc.gov/justicegap2017, where they can find the full technical survey report, the questionnaire, and the codebook corresponding to the 2017 Justice Gap Measurement Survey. In this appendix, we present some important methodological information about the survey, including information about sampling, survey structure, survey administration, statistical weighting, and the demographic profile of the sample. Additional methodology details can be found in the full technical survey report.

Sampling

For this study, LSC was specifically interested in surveying approximately 2,000 adults living in households with incomes at or below 125% of the federal poverty threshold. Identifying and interviewing a large number of respondents meeting this criterion via many traditional survey methods would be logistically challenging and costly due to the amount of outreach and screening that would be necessary. To efficiently identify individuals residing in such households and interview them in a cost-effective manner, LSC contracted with NORC to conduct the survey using AmeriSpeak®, which is NORC’s probability-based panel designed to be representative of the entire U.S. household population. The AmeriSpeak Panel is designed to provide a nationally representative sample of US households for public opinion research. AmeriSpeak was built using a rigorous sampling and recruitment methodology based on probability sampling techniques employed by federally sponsored research.

There are three principal design elements responsible for the scientific integrity of AmeriSpeak. First, it is probability-based, meaning that randomly selected households are sampled with a known, non-zero probability of selection from a documented sample frame. (Almost all other commercially available household panels are based on non-probability, convenience sampling.) AmeriSpeak’s sample source is the NORC National Frame, which is an area probability sample designed to provide at least 97% sample coverage of the U.S. population, and allows for increased sample coverage for rural and low-income households. The NORC National Frame is the sample source for landmark NORC surveys such as the General Social Survey and the Survey of Consumer Finance.

Second, AmeriSpeak has the highest American Association for Public Opinion Research (AAPOR) response rate – a key measure of sample quality – among commercially available household panels. The industry-leading response rate for AmeriSpeak is attributable to the extraordinary contact and gaining cooperation techniques used by AmeriSpeak in recruiting randomly sampled US households. The gaining-cooperation techniques rely on traditional methodologies employed in federally sponsored research for decades. Households selected for AmeriSpeak are contacted in English and Spanish, by a series of U.S. mailings and by NORC telephone and field interviewers. Use of field interviewers for in-person recruitment (i.e., face-to-face interviewing) enhances response rates and representativeness for young adults, lower socio-economic households, and non-internet households.

Third, AmeriSpeak in its design facilitates the representation of US households that are commonly under-represented in online panel research. While many panels conduct surveys via the web only, AmeriSpeak recruits households using a combination of telephone and face-to-face methodologies in order to assure that non-internet, “net averse” households, and persons with low literacy levels are represented in AmeriSpeak. Moreover, after joining AmeriSpeak, panelists have the option to participate in the survey program via web or

telephone (speaking with NORC’s professional telephone interviewers). Because AmeriSpeak conducts its surveys in both the telephone and web modes of data collection, AmeriSpeak provides data collections for panelists whether they are comfortable or uncomfortable with web-based surveys.

While NORC keeps recently updated income information on file for all AmeriSpeak panelists, it was important to verify each household’s income level relative to the federal poverty guidelines for this study. NORC drew a sample of roughly 10,500 adults age 18 and older who had previously indicated that their household earnings were at or below 200% of the federal poverty level, with the plan to screen these panelists and select only those with current household incomes at or below 125% of the federal poverty threshold as eligible to complete the survey. The 2016 federal poverty guidelines set by the U.S. Department of Health and Human Services were used to determine income thresholds for screening households of various sizes.^a

Survey Structure

The household screening portion of the survey consisted of only two questions, which assessed current household size and income level. Following the screening questions, eligible respondents proceeded to a section containing questions about household characteristics. This was followed by the largest portion of the main survey instrument, which contained questions assessing the prevalence of various types of civil legal needs. LSC and NORC worked to refine a list of common civil legal issues to include in this portion of the survey, arriving at a final list of 88 distinct issues. These issues were divided into 12 categories.

Some of the categories of civil legal problems were issues that might affect any low-income family, including employment, health, consumer and finance, income maintenance, family and custodial issues, as well as assistance with wills and estates. Other categories of problems only applied to certain subpopulations – survivors of domestic violence, homeowners, renters, households with children, individuals with disabilities, and veterans, so the survey was structured in a way that used earlier answers about household characteristics to selectively present questions related to those characteristics. For example, survey respondents were asked about their living situations, and those who indicated that they owned their homes were presented with a section covering civil legal problems experienced by homeowners, while those who indicated that their homes were rented were presented with a battery of questions about issues with rental housing instead. In addition, only those respondents who indicated that someone in the household was in school (or had children in school) received the section about civil legal issues related to education, while others did not. Finally, sections about disability issues and veterans’ issues were only presented to respondents who indicated that at least one member of their household had a disability, or were military personnel or veterans, respectively.

Within each section of the survey assessing the prevalence of civil legal problems, respondents were presented with a number of specific issues and asked to indicate for each one whether they personally had experienced the issue and whether someone else in their household had experienced the issue within the last 12 months. Each of these questions allowed for multiple selections, so it was possible for respondents to indicate that the issue had been experienced both by themselves and by others. There was also an option to indicate that no one in the household had experienced the problem in the last 12 months.

To delve further into the problems affecting individual respondents, the survey dynamically presented questions about problem severity at the conclusion of each battery of problems. For each issue that

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^aU.S. Department of Health and Human Services. 2016. <https://aspe.hhs.gov/poverty-guidelines>

respondents indicated they had personally experienced within the last 12 months, they were asked to rate the effect the problem had on them on a five-point scale from “not at all” to “severe.”

Following the problem prevalence and severity sections, respondents who had reported that they were personally affected by at least one civil legal issue were presented with a section related to help-seeking behaviors. The first item in this section was a multi-part question covering each relevant civil legal problem and asking respondents to indicate whether they had talked to someone about the problem, had looked for information online, both talked to someone and gone online, or not engaged in either of these behaviors. This question covered all personally experienced problems, except for those that were rated as affecting respondents “not at all”.

Next, the survey included detailed questions about help-seeking behaviors for a subset of the problems reported. As to not overburden respondents who had reported a large number of issues, the survey randomly selected a maximum of four problems for follow-up questions. Each respondent looped through this section up to four times, depending on the number of issues he or she had reported earlier in the survey. The detailed questions included items about the current state of each problem, who (if anyone) the respondent had talked to about the problem (including legal professionals), the type of information sought online (if any), the type of legal assistance received (if any), and reasons why help was not sought (if appropriate). The final section of the survey included three questions assessing perceptions about the fairness and efficacy of the civil legal system.

Survey Administration

A total of 2,028 respondents completed the survey between the dates of January 5, and February 10, 2017, including 1,736 who completed via the web and 292 who completed via telephone. Interviews were completed in both English and Spanish, depending on respondent preference. The screener completion rate for this study was 38.5%. The incidence or eligibility rate was 56.4%. The interview completion rate was 89.1%. The final response rate was 11.2%, based on the American Association for Public Opinion Research Response Rate 3 Method.

Statistical Weighting

Statistical weights for the study-eligible respondents were calculated using panel base sampling weights to start. Panel base sampling weights for all sampled housing units are computed as the inverse of probability of selection from the NORC National Sample Frame (the frame used to sample housing units for AmeriSpeak) or address-based sample. The sample design and recruitment protocol for the AmeriSpeak Panel involves subsampling of initial non-respondent housing units. These subsampled non-respondent housing units are selected for an in-person follow up. The subsample of housing units that are selected for the nonresponse follow up have their panel base sampling weights inflated by the inverse of the subsampling rate. The base sampling weights are further adjusted to account for unknown eligibility and nonresponse among eligible housing units. The household-level nonresponse adjusted weights are then post-stratified to external counts for number of households obtained from the Current Population Survey. Then, these household-level post-stratified weights are assigned to each eligible adult in every recruited household. Furthermore, a person-level nonresponse adjustment accounts for nonresponding adults within a recruited household.

Finally, panel weights are raked to external population totals associated with age, sex, education, race/ethnicity, housing tenure, telephone status, and Census division. The external population totals are obtained from the Current Population Survey.

Study-specific base sampling weights are derived using a combination of the final panel weight and the probability of selection associated with the sampled panel member. Since not all sampled panel members respond to the screener interview, an adjustment is needed to account for and adjust for screener non-respondents. This adjustment decreases potential nonresponse bias associated with sampled panel members who did not complete the screener interview for the study.

Furthermore, among eligible sampled panel members (as identified via the survey screener questions), not all complete the survey interview for the study. Thus, the screener nonresponse adjusted weights for the study are adjusted via a raking ratio method to 125% of the federal poverty line population totals associated with the following socio-demographic characteristics: age, sex, education, race/ethnicity, and Census division.

Population totals for the 125% of the federal poverty line sample for the Justice Gap Study were obtained using the screener nonresponse adjusted weight for all eligible respondents from the screener question(s). At the final stage of weighting, any extreme weights were trimmed based on a criterion of minimizing the mean squared error associated with key survey estimates, and then, weights re-raked to the same population totals. The overall margin of sampling error was +/- 3.27 percentage points for a 50% statistic, adjusted for design effect resulting from the complex sample design.

A more detailed description of AmeriSpeak panel recruitment and management methodology, and additional information about the Justice Gap Study methodology, are included in Appendices A and B, respectively.

Sample Demographic Profile

The respondents who completed the survey represent households in the United States with incomes at or below 125% of the federal poverty level, based on the 2016 federal poverty guidelines set by the Department of Health and Human Services. These households include a range of incomes depending on household size, from \$14,850 for a single person household to \$61,520 for households of 10 or more. For a family of four, the threshold was \$30,380. About a quarter (24%) of this group have annual household incomes of \$9,999 or less, while 19% have incomes between \$10,000 and \$14,999, 31% have incomes between \$15,000 and \$24,999, and 26% have incomes of \$25,000 or more.

Roughly one third (34%) of this group are under the age of 35, and the remainder are evenly split between the age groups of 35 to 49 (23%), 50 to 64 (22%), and 65 and older (21%). There are more women than men in low-income households (58% vs. 42%). In terms of racial and ethnic identification, just under half (46%) are white, a quarter are Hispanic, 21% are African-American, and 8% fall into some other category or identify as multi-racial. Eighty-five percent live within a metropolitan area, while 15% live outside of metropolitan areas. Most have at least a high school education, but few have a college degree. Twenty-eight percent have not finished high school, while 35% have a high school diploma or equivalent, 29% have completed some college, 6% have a bachelor's degree, and 2% have a graduate degree. Over a third (35%) are currently employed, but

nearly two-thirds (65%) are not working, including 17% who are retired, 13% who are looking for work, and 21% who are not working due to disabilities.

Over a third (34%) reported that the home they live in is owned, and roughly the same number (36%) said they live in a rented home without public assistance, while 17% live in a home that is rented with public assistance, and 13% report having some other housing arrangement. Roughly a quarter are married, and three-quarters are not. Nearly 3 in 10 (28%) live alone, and about half live in households with at least two other members. Four in 10 of these households include parents of children or teenagers under the age of 18 in their households. Six in 10 have internet access at home, at work, or at some other location, while the remaining 4 in 10 only have internet access on a mobile phone or have no access at all.

Appendix B1: Section 1 Data Sources and Methodology

Most of the descriptive data on the population below 125% FPL come from the American Community Survey (ACS) 2015 Single Year Estimates. Most figures are based on data from table S1703: Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months. At times additional tables were used to provide estimates and are noted in endnotes. To estimate the number of Americans under 125% FPL for each of the groups presented in the report, we used the percent of the population that is estimated to be under 125% FPL and the total number of people estimated to comprise each group. Figures for the estimated number of veterans under 125% FPL are not readily available and had to be calculated. We estimated this figure by calculating ratio of the number of people below 100% FPL and the number of people below 125% FPL nationwide. We applied this ratio to the total number of veterans living below 100% FPL in order to estimate the total number of veterans living below 125% FPL nationwide.

Appendix Table B1.1:
Percent of state populations below 125% of the Federal Poverty Level (FPL).

Data Source: United States Census Bureau, American Community Survey 2015 1-year Estimates, Table S1703: Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months, accessed June 6, 2017.

State	Total Population	Percent of Population below 125% FPL
Alabama	4,736,333	23.8%
Alaska	720,765	13.9%
Arizona	6,671,705	22.3%
Arkansas	2,887,337	25.3
California	38,398,057	20.2%
Colorado	5,339,618	15.2%
Connecticut	3,480,932	13.7%
Delaware	920,355	15.9%
District of Columbia	638,027	21.4%
Florida	19,850,054	21.1%
Georgia	9,943,145	22.1%
Hawaii	1,394,121	13.2%

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State	Total Population	Percent of Population below 125% FPL
Idaho	1,622,116	19.9%
Illinois	12,559,422	17.8%
Indiana	6,417,418	19.0%
Iowa	3,021,823	16.3%
Kansas	2,830,943	17.3%
Kentucky	4,290,022	23.3%
Louisiana	4,541,688	24.8%
Maine	1,292,996	17.8%
Maryland	5,863,290	12.7%
Massachusetts	6,558,724	14.8%
Michigan	9,698,396	20.2%
Minnesota	5,366,594	14.0%
Mississippi	2,896,579	28.3%
Missouri	5,901,967	19.4%
Montana	1,007,727	19.1%
Nebraska	1,842,682	16.6%
Nevada	2,850,472	19.7%
New Hampshire	1,288,060	10.7%
New Jersey	8,781,575	14.3%
New Mexico	2,044,431	26.0%
New York	19,283,776	19.8%
North Carolina	9,790,073	21.8%
North Dakota	731,354	14.4%
Ohio	11,295,340	19.3%
Oklahoma	3,795,764	21.5%
Oregon	3,952,077	20.0%
Pennsylvania	12,385,716	17.0%
Rhode Island	1,016,343	18.0%
South Carolina	4,750,144	21.7%
South Dakota	829,644	18.4%
Tennessee	6,440,381	22.1%
Texas	26,846,203	21.1%
Utah	2,947,861	15.2%
Vermont	600,659	15.0%
Virginia	8,131,328	14.8%
Washington	7,036,725	16.0%
West Virginia	1,793,096	23.2%
Wisconsin	5,620,223	16.1%
Wyoming	572,319	15.0%

Appendix B2: Section 2 Data Sources and Methodology

The findings presented in Section 2, “Experience with Civil Legal Problems,” come exclusively from the 2017 Justice Gap Measurement Survey. Respondents were presented with an extensive list of specific problems that usually raise civil legal issues. They were asked whether they had experienced any of these problems in the past 12 months and whether anyone else in their household had experienced any of them.

Readers are encouraged to visit www.lsc.gov/justicegap2017, where they can find a document that supplements this appendix called, “Justice Gap Appendix B2 Tables.” This document presents a number of tables with additional information on the survey results presented in Section 2 of this report. For a given set of survey results, the tables present the calculated proportion (or “percent”) along with the standard error of the percent and the unweighted base for the corresponding variable.

On the same landing page (www.lsc.gov/justicegap2017), readers can find the full technical survey report, the questionnaire, and the codebook corresponding to the 2017 Justice Gap Measurement Survey.

Appendix B3: Section 3 Data Sources and Methodology

The findings presented in Section 3, “Seeking Legal Help,” come exclusively from the 2017 Justice Gap Measurement Survey. More specifically, this section presents findings from a part of the survey that asked detailed questions about a subset of the civil legal problems reported by respondents. For each respondent, the survey randomly selected up to four personally-experienced problems affecting them more than “not at all.” Due to the low incidence of problems relating to veterans’ issues and disabilities, these problems were always selected if they met the other criteria. Respondents answered questions about what, if any, help they sought to address each of these problems. The primary unit of analysis in this section is problems.

Readers are encouraged to visit www.lsc.gov/justicegap2017, where they can find a document that supplements this appendix called, “Justice Gap Appendix B3 Tables.” This document provides additional information on the survey results presented in Section 3 of this report. For a given set of survey results, the table presents the calculated proportion (or “percent”) along with the standard error of the percent and the unweighted base for the corresponding variable. Because the primary unit of analysis in this section is problems, the bases represent a number of problems (with the exception of Appendix Table B3.6, where individuals are the unit of analysis). For reference, we have also included the (unweighted) number of respondents corresponding to those problems.

On the same landing page (www.lsc.gov/justicegap2017), readers can find the full technical survey report, the questionnaire, and the codebook corresponding to the 2017 Justice Gap Measurement Survey.

Appendix B4: Section 4 Data Sources and Methodology

Most of the findings presented in Section 4, “Reports from the Field,” are based on data collected during the Legal Services Corporation’s (LSC) 2017 Intake Census. Additional data used in that section come from LSC’s 2016 Grantee Activity Report. This appendix provides more information about both of these data sources as well as details about the assumptions underlying estimates presented in Section 4.

The Legal Services Corporation 2017 Intake Census

Data Collection

As with LSC's two prior justice gap studies, LSC asked its grantees to conduct an Intake Census by documenting the number of individuals who approached LSC grantees with legal needs that could not be addressed because of insufficient resources. The 2017 Intake Census instrument has more categories than the two previous instruments to yield a more granular analysis of the reasons why an individual may not receive services from a grantee. LSC recognizes that this process is imperfect and will not capture all of the unmet need, which is why LSC pursued the national survey with NORC using the AmeriSpeak Panel in addition to conducting the Intake Census.

From March 6, 2017 to April 14, 2017, LSC grantees tracked and collected data about those individuals who approached their program with a legal problem. The Intake Census Instrument has three main data collection categories: (1) Unable to Serve, (2) Unable to Serve Fully, and (3) Fully Served.

Unable to Serve. An individual may fall into the "Unable to Serve" category for a number reasons, including being financially ineligible for services (with a household income that is too high) or being a non-citizen. Other reasons for placing an individual in this category are that the person's problem was not the type of legal issue the grantee handles on a regular basis (e.g., commercial transactions) or the grantee has insufficient resources to assist the individual with their problem.

The five subcategories within "Unable to Serve" are:

- Unable to Serve – Ineligible
- Unable to Serve – Conflict of Interest
- Unable to Serve – Outside of Program Priorities or Case Acceptance Guidelines
- Unable to Serve – Insufficient Resources
- Unable to Serve – Other Reasons

Unable to Serve Fully. An individual may be placed in the "Unable to Serve Fully" category if the individual received some form of legal information or legal advice to help address their problem. In this category, the grantee assesses if the case would have been appropriate for full representation if the grantee had sufficient funding. The legal information or legal advice the individual received is not expected to fully resolve the individual's case.

The two subcategories within "Unable to Serve Fully" are:

- Unable to Serve Fully – Insufficient Resources – Provision of Legal Information or Pro Se Resources
- Unable to Serve Fully – Insufficient Resources – Provided Limited Service or Closing Code "L"

Fully Served. An individual is categorized as "Fully Served" if the grantee has sufficient resources to fully address the individual's problem at an appropriate level given the facts and nature of the case. The legal assistance provided in these cases can vary from providing brief legal advice, or help filling out a form, to full legal representation in court.

The three subcategories within "Fully Served" are:

- Fully Served – Provision of Legal Information or Pro Se Resources
- Fully Served – Provision of Limited Services or Closing Code L
- Fully Served – Extended Service Case Accepted

Finally, there is an additional category called “Pending,” which includes individuals that will receive legal help of some kind, but for whom program management had not made a final decision on the level of legal assistance they will be able to provide before data collection for the Intake Census had ended. Had data collection continued for a longer period of time, such individuals would most likely have been coded into one of the following subcategories:

- Unable to Serve Fully – Insufficient Resources – Provided Limited Service or Closing Code “L”
- Fully Served – Provision of Limited Services or Closing Code L
- Fully Served – Extended Service Case Accepted

Additional information about the 2017 Intake Census, including the detailed definitions of each of these categories and the data collection instructions given to grantees, can be found at www.lsc.gov/justicegap2017.

A total of 132 LSC grantees (out of 133) submitted 2017 Intake Census data. When submitting their data, grantees were also asked to provide the average number of hours they offer intake to potential clients in various modes (e.g., by phone, online, in-person appointments, walk-in) on a weekly basis. They were also asked to indicate the extent to which the six-week Intake Census period was typical and, where applicable, to elaborate about why intake might have been atypical. Fifteen of the total 132 grantees indicated that this period was atypical for them. Twelve of the 15 who said it was atypical, say they processed fewer people for intake than usual because of holidays, staff shortages, or other reasons.

Data Analysis

Unit of Analysis. It is important to note that while the Intake Census tracked the number of individuals, the analysis in Section 4 uses problems as the unit of analysis. It is fair to assume that the number of individuals approaching LSC grantees is very close to the number of problems presented to them in this six-week period of time. It is possible that an individual had more than one problem, but this is not likely a common occurrence given the short span of time covered during data collection. Throughout Section 4, we assume that the number of individuals and the number of problems tracked during the Intake Census are equivalent, referring to the number of problems for the purposes of analysis. The estimates in this report are therefore conservative: to the extent individuals and problems are not equivalent, we are underestimating the number of legal problems for which low-income Americans will seek help from LSC grantees in 2017.

12-month Projections. Throughout this section, we provide 12-month projection estimates for the total number of problems low-income Americans will present to LSC grantees in 2017 and subsets of those problems. These projections were calculated by multiplying the relevant Intake Census figure by 8.6905 (52.14 weeks divided by 6 weeks) and rounding to the nearest hundred.

Estimating the Number of Problems Unserved and Underserved Due to Lack of Resources. In Section 4, we present a range of estimates for the number of problems presented to LSC grantees that do not receive any legal help (“unserved”) or do not receive enough legal help to fully address the client’s needs (“underserved”). In that section, we describe the assumptions we make to produce these estimates and the reasoning behind them. Here, we lay out these assumptions in terms of the original data collection coding scheme.

To produce the upper-bound estimate, we make the following assumptions:

- All observations coded as “Pending” would eventually be coded as “Unable to Serve Fully” and the reason they would not be “Fully Served” is for reasons related to a lack of resources.

Appendices

- All observations coded in the following categories were “Unable to Serve” for reasons related to a lack of resources:
 - Unable to Serve – Outside of Program Priorities or Case Acceptance Guidelines
 - Unable to Serve – Insufficient Resources
 - Unable to Serve – Other Reasons
- All observations coded in the following subcategories were “Unable to Serve Fully” for reasons related to a lack of resources:
 - Unable to Serve Fully – Insufficient Resources – Provision of Legal Information or Pro Se Resources
 - Unable to Serve Fully – Insufficient Resources – Provided Limited Service or Closing Code “L”

To produce the lower-bound estimate, we make the following assumptions:

- All observations coded as “Pending” would eventually be coded as “Served Fully.”
- All observations coded in the following categories were “Unable to Serve” for reasons related to a lack of resources:
 - Unable to Serve – Outside of Program Priorities or Case Acceptance Guidelines
 - Unable to Serve – Insufficient Resources
- None of the observations coded as “Unable to Serve – Other Reasons” would have been served if more resources were available.
- All observations coded in the following subcategories were “Unable to Serve Fully” for reasons related to a lack of resources:
 - Unable to Serve Fully – Insufficient Resources – Provision of Legal Information or Pro Se Resources
 - Unable to Serve Fully – Insufficient Resources – Provided Limited Service or Closing Code “L”

Legal Service Corporation Grantee Activity Report

Section 4 presents the distribution of the types of problems for which LSC grantees provided case services in 2016. The data for this come from the Legal Services Corporation Grantee Activity Report (GAR) data. GAR is the largest and longest running data collection effort on civil legal aid in the United States. Dating back to 1976, LSC has recorded and reported data from grantees in a variety of ways. Information from the Grantee Activity Reports is summarized on an annual basis by LSC staff for public reports and for internal use by management and program staff. The data are also publicly available through the Grantee Data Page on the LSC site and as a full dataset at LCS’s DATA.GOV site: <https://catalog.data.gov/organization/legal-services-corporation>.

The data are gathered annually from all grantees on a calendar year basis. Grantees use automated reporting forms that are accessible via the Internet. Grantees report on the conduct of their Basic Field, Agricultural Worker and Native American grant programs to LSC on a calendar year basis, using automated reporting forms that are accessible via the Internet. The reports are collected in January and February of each year.

More information about the GAR can be found at <http://www.lsc.gov/grant-activity-reports>.

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APPENDIX
ATTACHMENT 3



LEGAL SERVICES CORPORATION

LEGAL SERVICES CORPORATION

Office of Program Performance

Final Report

for

Program Quality Visit

to

Legal Aid of North Carolina

Recipient No. 634032

October 15-24, 2018

OPP Visit Team:

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Legal Aid of North Carolina 2018 Program Quality Report

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INTRODUCTION

The Legal Services Corporation (LSC) Office of Program Performance (OPP) conducted a Program Quality Visit (PQV) to Legal Aid of North Carolina (LANC) from October 15-24, 2018. OPP's team consisted of LSC program counsel Vanessa Dillen, Lewis Creekmore, Vicki Taitano; Deputy Director Joyce McGee; Director Ed Caspar; and LSC temporary employees John Johnson, Peter Dellinger, and Stephanie Edelstein.

Program Quality Visits are designed to evaluate the extent to which LSC grantees are providing the highest quality legal services to eligible clients. In conducting the evaluation, OPP relies on the LSC Act and regulations, the LSC Performance Criteria, LSC Program Letters, and the ABA Standards for the Provision of Civil Legal Aid. The on-site evaluation was organized to follow the four Performance Areas of the LSC Performance Criteria, which cover needs assessment and priority setting; access to services and engagement with the low-income community; legal work management and the legal work produced; and program management including board governance, leadership, resource development, and coordination within the delivery system.

In conducting its assessment, the team reviewed the documents provided by the program to LSC, including recent applications for funding, technology and PAI plans, workforce analysis charts, and case service and other services reports. The team also reviewed materials requested in advance of the visit, including documents relating to board governance, intake, legal work and case management policies and systems, advocates' writing samples, and the results of an online staff survey.

On-site, the team visited 16 program offices in Raleigh, Durham, Winston-Salem, Asheville, Wilson, Sylva, Morganton, Wilmington, Charlotte, Pembroke, Greensboro, Ahsokie, Pittsboro, and Greenville. Due to time constraints, the team could not visit offices in Boone, Concord, Gastonia, or Hayesville. The team interviewed program leadership, management and administrative staff, advocacy staff, and support staff. The team also interviewed members of the board of directors, judges, other funders, community partner organizations, and other state justice stakeholders. Due to scheduling and time constraints, some interviews were conducted by telephone.

SERVICE AREA and PROGRAM OVERVIEW

Legal Aid of North Carolina (LANC) is a statewide legal services program that was developed in 2002 through the merger of three LSC-funded programs.¹ As the largest provider of legal aid in North Carolina, LANC is the fourth largest law firm (public or private) in the state. LANC provides a full range of legal services to all 100 counties in North Carolina with a staff of 337, including 172 attorneys and 44 paralegals.²

¹ LANC was created through the merger of Legal Services of Southern Piedmont, North Central Legal Assistance Program, and the Legal Aid Society of Northwest North Carolina. Some of LANC's regional managers are former executive directors of the merged programs.

² Calculated from 2017 Grant Activity Reports submitted to LSC by LANC.

LANC operates from 19 field offices distributed across the state. Offices range in size from Pembroke, which has six total staff, to Winston-Salem, which has 45. The program also has an administrative office and Central Intake Unit (CIU) office in the state capital of Raleigh.

North Carolina's total population of 10,146,790 includes a poverty population of 1,521,880.³ Roughly 20 percent, or two million, live below 125 percent of the federal poverty level and are considered eligible for services under LSC funding guidelines. LANC's Native American project provides services to two distinct geographical regions. In the western part of the state, the staff serves the Eastern Band of Cherokee Indians.⁴ In the southeastern part of the state, the staff serves federally unrecognized tribes.⁵ LANC's agricultural worker program conducts extensive outreach, especially during the peak harvest period from April to late October, to provide legal services to agricultural workers, which includes a poverty population of 55,421. Agricultural workers help farms that produce tobacco, sweet potatoes, Christmas trees, apples, pickle cucumbers, and berries.

With an overall budget of \$25 million, LANC receives 51 percent of its funding from LSC. In addition to a basic field grant, LANC receives an Agricultural Worker grant and a Native American grant from LSC. In recent years, LANC has faced marked cuts to its state funding which have been offset by increased private donations, federal funding, and foundation support. For example, LANC's state funding decreased from \$3,515,854 in 2013 to \$420,106 in 2017 and revenue received from filing fees dropped from \$2,582,281 in 2013 to \$1,698,944 in 2017.⁶ These steep decreases have been offset in part by federal funding received under the Violence Against Women Act (VAWA), which increased from roughly \$1.2 million in 2013 to a little more than \$3 million in 2017. In addition, LANC received a jump in Title XX Social Security Act funding, which increased from \$437,147 in 2013 to \$1,345,731 in 2017.

In 2017, LANC closed 17,857 cases, of which 30.4 percent were in the area of family law, 28.8 percent were housing-related, and 12 percent were consumer-related. Staff case closure rates are below the national median for all categories except for contested cases, which are at the national median. A discussion about the program's case closure rates is included in this report under Performance Area 3. Private attorney involvement (PAI) closed cases were above the national median in all categories.

About a month before the visit, Hurricane Florence struck the southeastern region of North Carolina, causing large-scale flooding and damage. Residents in these areas were still recovering from the effects of Hurricane Matthew, which struck the same region two years prior. The program saw an immediate increase in the number of calls from applicants seeking assistance and worked quickly to identify emerging legal issues and expand intake capacity.

³ U.S. Census Bureau, American Community Survey, 2016 (1-year estimates).

⁴ The Eastern Band of Cherokee Indians are descendants of the 805 families that hid in the mountains of western North Carolina to escape forced migration during President Andrew Jackson's Trail of Tears in 1838-1839.

⁵ Federally unrecognized Tribes in the southeastern region of North Carolina have a complex history regarding the search for federal recognition.

⁶ Legal Services Corporation (LSC), *D-3: Actual Support and Revenue*, Grant Activity Reports (2008-2017). Grant data are allocated amounts based on fiscal year.

SUMMARY of FINDINGS

Legal Aid of North Carolina (LANC) staff are deeply committed to providing legal services to low-income people across the state of North Carolina. Staff are passionate about their work and staff morale is high. The program is led by a strong executive director with 19 years of experience who has skillfully navigated the program through a state funding crisis, is well-respected throughout the state, and is an active collaborator in the state access to justice efforts. He is supported by an engaged board of directors.

While the program has not completed a formal needs assessment since 2008, the Centralized Intake Unit (CIU) provides ongoing information about some emerging legal needs. At the time of the visit, LANC was preparing for a new round of strategic planning. Historically, the executive director has held primary responsibility for implementing the strategic plan, but the program anticipates using Management Information Exchange (MIE) to help facilitate the new process.

The program has one primary hotline, the CIU, and an additional four specialized hotlines: Senior Legal Helpline, Fair Housing Helpline, NC Navigator Helpline, and Battered Immigrant Helpline. The CIU demonstrates a commitment to continuous process improvement and is a model intake program.

LANC produces high-quality legal work. Advocates are split into 10 substantive practice groups and eight special statewide projects. Supervision and training are consistent across the program. While the program consistently pursues cases on appeal, advocates expressed a desire for more transparency about the process of selecting and staffing appellate cases.

Faced with a challenging funding environment, LANC's upper management has focused on maintaining sufficient attorney and advocate staffing levels to continue the delivery of legal services across North Carolina and has put off needed technology upgrades. While perhaps justified, this has created an urgent need to improve technology, as technology challenges have become so severe they have an impact on the ability of staff to deliver legal services.

Funding challenges have also influenced LANC's lean upper management team. The lack of resources and staff at the upper management level has meant that upper management staff could not pursue long-term, big-picture initiatives that could strengthen LANC.

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

PERFORMANCE AREA ONE. Effectiveness in identifying the most pressing civil legal needs of low-income people in the service area and targeting resources to address those needs.

Needs Assessment

Finding 1: The annual needs assessment that LANC conducts does not adequately solicit feedback directly from the low-income population.

LANC has not conducted a comprehensive formal needs assessment since 2008. However, the program annually assesses closed cases and outcomes data and the overall demographic breakdown of clients from the previous year. In addition, the program seeks data from community partners and the Client Council and is adding surveys of volunteer lawyers and managing attorneys in 2019. At the conclusion of the annual needs assessment process, the program's litigation director drafts revised priorities which are then presented to the operations committee of the board of directors for review and input. After incorporating any changes from the operations committee, the revised priorities are presented to the full board of directors for approval.

The program supplements the case closure and demographic data analysis and surveys with ongoing data analysis of callers to the CIU. One benefit of the CIU is the ability to carefully track information from callers seeking legal assistance, including location, demographic information, and type of legal problem. By analyzing this data regularly, LANC has ongoing information about long-standing and emerging legal needs across the state.

By only collecting information from CIU callers, LANC is limiting the analysis of legal needs to those who have successfully identified their problem as a legal issue. In LSC's study on the Justice Gap, we found that when low-income people do not seek legal help, in 20 percent of those instances, it was because they did not know that the issue they faced was a legal problem.⁷ This gap in knowledge is one reason the most informative and well-designed needs assessments contain direct surveys of client-eligible populations.

Recommendation I.1.1.1⁸

LANC should conduct a comprehensive legal needs assessment that includes input from the low-income community, input from stakeholders who work with the client-eligible community, relevant data such as U.S. Census data, and any other relevant needs assessments of the low-income population. LANC should consider partnering with an academic institution to design and implement the needs assessment.

Strategic Planning

Finding 2: LANC developed a strategic plan in 2014 and plans to engage in a new strategic planning process, and develop a new strategic plan in 2019.

⁷ Legal Services Corporation. 2017. *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*. Prepared by NORC at the University of Chicago (formerly known as National Opinion Research Center) for Legal Services Corporation. Washington, DC., pg. 3.

⁸ Recommendations in this report will have a Roman Numeral to identify the Performance Area, followed by three numbers identifying, respectively, the Criterion addressed by the recommendation, the number of the finding and a number designating whether it is the first, second, third, etc., recommendation under that finding. For example, III.2.14.3 designates Performance Area III, Criterion 2, finding 14, and third recommendation under finding 14. There are two levels of recommendations in this report: Tier One and Tier Two. Recommendations that are indicated with an asterisk are Tier One recommendations and are seen as having a greater impact on program quality and/or program performance. In its next Application or Renewal, the program will be asked to report on its implementation of Tier One recommendations.

LANC's most recent strategic plan was completed in March of 2014 and is a five-year plan that expires in March 2019. The 2014 strategic plan was developed through a lengthy process. At the conclusion of a day-long strategic planning meeting, LANC developed five major categories to be considered during the strategic planning process. The program created five subcommittees for each category that included staff and board members. The five subcommittees were: 1) Administrative Governance; 2) Hiring and Retention; 3) Increasing Revenue; 4) Improving Core Competencies; and 5) Technology. Each subcommittee developed key findings in their respective areas of focus. The subcommittees met over eight months and issued formal written recommendations to the board. There were opportunities for other staff involved in strategic planning to comment on the written recommendations. The board articulated top-level findings from each subcommittee and approved the final strategic plan.

The 2014 strategic plan was not well-distributed or shared with the entire staff statewide nor was it used by the staff, management, or the board to strategically guide or track the program's work. Regardless, the program has addressed many of the recommendations in the strategic plan and many staff members are engaged in activities that stem from the 2014 plan despite their unfamiliarity with the document.

Each field office and special project at LANC must create an annual work plan. Typically, the work plan is developed after a day-long meeting of all staff in the field office or special project team, during which staff input is solicited. The work plans are collected and filed for the year. A review of work plans revealed that they vary widely in format and content. While LANC should be commended for the efforts that go into developing work plans for each office and special project, the work plans do not stem from the overall strategic plan and may foster a siloed environment that conflicts with the program's "one law firm" concept.

LANC has plans to engage in a new strategic planning process using staff from the Management Information Exchange (MIE) to help facilitate the process. The new plan is expected to be developed in 2019.

Recommendation I.2.2.1*

LANC should develop a strategic planning process that includes more input from the staff, board, and the community, and develop a timeline for the process.

Recommendation I.2.2.2*

LANC should develop a strategic plan that includes short- and long-term goals for all aspects of the program, including the legal work, intake, resource development, technology, administration, communications (internal and external), human resources, and financial administration. The strategic plan should include goals, tasks, people responsible for tasks, and timelines for completion of tasks.

Recommendation I.2.2.3

Once the new strategic plan is complete and approved by the board, LANC should develop a rollout process to ensure that the staff and board are aware of the plan, its contents, and their respective role in its implementation.

Recommendation I.2.2.4

LANC should appoint a point person within the program who is responsible for regularly tracking progress on the plan and reporting to the executive director, and possibly the board, on the progress that has been made.

Evaluation and Adjustment

Finding 3: LANC’s Central Intake Unit provides the program with ongoing information about emerging legal needs.

Staff at the CIU analyze data weekly, including the legal problem, geographic location, and demographic information of applicants. This allows the program to receive contemporaneous information about emerging legal needs and make adjustments to outreach, community education, and legal strategies to meet those needs. In the aftermath of Hurricane Florence, LANC was able to quickly identify emerging legal needs and created expedited triage systems to effectively route high-priority impact cases. For example, the CIU noticed multiple calls regarding tenants of large multi-apartment complexes being barred from returning to their homes. The CIU assigned a supervising attorney to conduct initial interviews with any affected clients and begin to gather information about the emerging problem.

Finding 4. LANC tracks outcomes in limited and extended services cases but does not meaningfully analyze these outcomes.

LANC tracks outcomes in limited and extended service cases and uses this information to demonstrate overall effectiveness and impact. The program uses extended services outcomes data in presentations to funders to show program effectiveness. However, the “outcomes” tracked for limited cases are not client outcomes as they are simply the tasks completed for the client and do not show the outcome of the client’s legal problem. Some field offices review the total financial benefit to clients from representation as part of the annual work plan process but otherwise do not analyze outcomes.

Recommendation I.4.4.1

LANC should consider using outcome data to evaluate the effectiveness of specific legal strategies and to inform programmatic and strategic decisions.

PERFORMANCE AREA TWO. Effectiveness in engaging in and serving the low-income population throughout the service area.

Dignity and Sensitivity, including intake

Finding 5: The majority of intakes at LANC are handled by the program’s model Central Intake Unit (CIU).

LANC maintains a central toll-free number for legal services, open 8:30 am to 4:30 pm Monday-Friday and 5:30 pm to 8:30 pm on Monday and Thursday. Calls to this hotline are handled by the Central Intake Unit (CIU), which was launched in April 2006 and receives between 170,000 and

200,000 calls per year. The program's approach to developing a centralized intake system was to start by handling intake for a few field offices, and gradually assume more responsibility. The CIU staff collected data from the outset, which allowed for modifications to the intake process as the staff became more efficient and effective. The CIU manager reported that the largest obstacle to implementing centralized intake was ending walk-in intake at local offices. The CIU overcame this resistance through several means. First, the CIU team was consistently open to feedback from field offices. Second, the CIU team collected data and showed that the change would increase the number of extended service cases by 50 percent. As field offices gained trust in and realized the benefits of the new CIU, the conversion eventually reached all offices.

Applicants who call the main number navigate a brief phone tree before hearing an automated message and being placed in a queue, which can handle up to 282 callers. The phone tree includes basic questions about the legal problem being faced by the applicant. Applicants with legal problems clearly outside of program priorities, such as criminal law issues, are directed via the phone tree to an automated message about the North Carolina Bar Association Lawyer Referral Service.

After waiting in the queue, applicants reach an intake screener. Intake screeners ask questions regarding eligibility and the legal problem being faced by the applicant. While interviewing applicants, intake screeners enter information into Legal Files, the program's case management system. At the conclusion of the screening call, the applicant file is passed to the file assignment team. This team sorts the files and directs applicant files to either the Volunteer Lawyer Project (VLP) team or to an intake attorney. This determination is made within a day. Each morning, intake attorneys review the list of clients in their queue. Intake attorneys return calls depending on the level of urgency involved, but always return calls within one week. Most intake attorneys are generalists, although some have expertise in foreclosure law and expungements.

An intake attorney contacts the client to gather additional information and to offer brief advice. If the client's case is resolved, the file is closed. Clients that require more extended services or follow-up are referred to the field offices through Legal Files.

Field offices have varied internal procedures for triaging and assigning cases. Sometimes, the CIU refers to a specific attorney, who follows up directly. In other instances, all referrals within a certain substantive law topic are referred to a supervising attorney for review and assignment. Field offices reported that the client notes they receive from CIU are accurate, detailed and thorough, and there is a high level of coordination and cooperation between the field offices and the CIU.

The intake supervisor estimated that LANC rejects about 50 percent of all calls received, and of those rejections, about 80 percent are referred to the North Carolina Bar Association Lawyer Referral Service. Typically, the rejections are because the case type falls outside of LANC's program priorities. Intake screeners reported that they rarely reject callers for service because the phone tree system sorts out applicants who are clearly ineligible. The intake team has social work interns that have built a detailed list of social service referrals across the service area so callers with non-legal issues can also receive referrals.

Field offices occasionally ask to “close intake” for certain substantive areas, meaning they will accept no additional cases. When this happens, the regional manager must work with the litigation director to see if nearby field offices can handle the overflow cases so there is no disruption of service to clients. In the instance where an intake attorney has an applicant to be referred to a field office closed for intake on that topic, the CIU managing attorney works with the litigation director to ensure services are provided.

The aftermath of Hurricane Florence dramatically increased the number of calls to the intake line. The program normally receives about 80 calls per day and estimated that they were receiving an additional 60 calls per day following the hurricane. This was tripling the wait time for callers from an average of 15 minutes to an average of 45 minutes. To assist with handling the dramatic increase in calls, LANC trained staff at field offices to handle initial screening calls to accommodate the overflow.

Finding 6: LANC’s Central Intake Unit is a model intake system.

LANC’s intake staff members are deeply invested in their work and are dedicated to the continuous improvement of the intake system. The CIU managing attorney encourages feedback and questions from staff at every position and level of experience. For example, at the annual CIU staff retreat, which includes intake and Private Attorney Involvement staff, staff are deeply involved in the discussion and all opinions are heard. Additionally, the staff at all levels of experience are encouraged to propose improvements to the intake system on a continuous basis throughout the year. This focus on continuous improvement contributed to a strong sense of ownership among staff and created a highly efficient intake process.

The CIU extensively uses data to inform decisions about the intake process. For example, staff wanted to develop standards for the length of time between when an applicant first contacts the CIU and when the applicant receives a call back from an intake attorney. To develop these standards, CIU analyzed data that compared applicant wait time against the likelihood that LANC reached the applicant. Through this analysis, the program learned that the likelihood that LANC could reach the applicant at all dropped off dramatically after one week. As a result, the CIU developed the standard that requires intake attorneys to return phone calls within one week.

The CIU focuses on providing detailed, individualized advice from intake attorneys. Intake attorneys spend an average of two hours on each case, and that time includes the time spent talking to the applicant and the research conducted on the case. For foreclosure cases, the average time is closer to three hours. Attorneys have access to Lexis-Nexis and materials such as sample briefs from field offices. Similarly, intake screeners are encouraged to be efficient but may spend as much time as needed on a call. Intake attorneys have individual accountability for the cases they handle. The names of intake screeners are listed on the case and attorneys from field offices are encouraged to contact intake attorneys with questions or feedback. The direct communication between field offices and the intake office enables continuous improvement in the nuance and detail of the legal advice being provided by intake attorneys.

The opportunity to engage in detailed legal work, the high level of accountability, and a strong culture of investment in improvements have lead to high morale and retention.

Finding 7. In addition to the CIU, applicants access LANC via specialized hotlines and direct referrals from agencies.

Some case types are not included in the general CIU process. The program has agreements with local domestic violence and sexual assault agencies throughout the state. Some agencies refer clients to CIU, but the majority are referred directly to the domestic violence unit of the appropriate local office.

LANC maintains a separate hotline for seniors, which is open Monday-Friday from 9:00 to 11:00 am and from 1:00 to 3:00 pm. When applicants contact the senior hotline, they are first screened by a paralegal and then receive a follow-up call from an attorney or paralegal. This separate hotline is a requirement of the grant money received to deliver services directly to seniors. Attorneys who work on this hotline reported that it is a benefit for the senior population to have a separate line because they can make accommodations for seniors, such as offering extended interview times. However, while there may be a benefit to maintaining a separate hotline for seniors and for specific projects, it was not clear whether the non-CIU hotlines have the same data analysis or continuous process improvement as the CIU. There was concern that the information being provided by non-CIU hotline staff was not as detailed or thorough as the CIU.

LANC also provides a separate hotline for the Battered Immigrant Project, which is available on Tuesdays from 3:30 to 7:30 pm and on Thursdays from 9:00 am to 1:00 pm. In addition, LANC maintains two other intake phone lines, one for fair housing issues and one for the NC Navigator project.⁹ Applicants calling these lines are triaged by paralegals and referred directly to field offices for follow up. Staff on all hotlines make use of the internal referral system in Legal Files if an applicant calls the wrong hotline number to eliminate the need for repeated calls.

Very few applicants access LANC via walk-in services—in 2018, walk-ins were less than two percent of all intakes. At the time of the visit, the program did not offer online intake and staff indicated that online intake had been unavailable since February 2018. When online intake was available, the program estimated that only a third of online applicants were accepted for service. LANC anticipates that online intake will be reinstated again sometime between October 2019 and April 2020.

Recommendation II.1.7.1

The program should ensure that all intake portals outside of the CIU provide the same quality of service provided to CIU applicants.

Finding 8: Staff in the Central Intake Unit are well-trained and well-supervised.

The intake office is staffed by a team of 36. The program has nine part-time intake screeners, who are responsible for conducting initial triage and eligibility checks. They are overseen by an intake supervisor. The program has nine full-time intake attorneys, 10 part-time intake attorneys, three intake paralegals, and three support staff. Nine of the full-time intake attorneys have supervisory responsibilities. There is a managing attorney in charge of the CIU.

⁹ The NC Navigator project helps individuals enroll in affordable health insurance plans.

The intake supervisor found that the ideal schedule for screeners is to work part-time, 25 to 28 hours per week. Each shift is between five and six hours and a screener is scheduled for four to five shifts per week. This allows the program to have flexible staffing to accommodate the highest demand times from callers. The shorter shifts are also helpful in maintaining strong morale and good customer service in a work environment that is often stressful.

The program has been especially successful recruiting attorneys who are parents of young children for part-time positions. Attorneys who are recent law school graduates also find part-time positions appealing. Supervising attorneys mentor and offer ongoing training on substantive law issues and interviewing skills. The mentorship and supervision system is strong, and attorneys newly out of law school or returning to the field find LANC to be a good place to gain experience and knowledge across all poverty law topics.

The Raleigh area, where CIU is located, is home to other call centers, so there is no shortage of qualified applicants for intake screener positions. The program prioritizes hiring Spanish-speaking intake screeners. The intake supervisor estimates that annual turnover is around 25 percent, but that staff leaving CIU typically transfer to other positions within LANC.

All intake attorneys and intake screeners start with two days of training. The remainder of the training is self-paced and takes about two weeks from beginning to end for new intake screeners and two months for new intake attorneys. There are gradual, progressive steps to the training and significant oversight. Once a new intake screener is finished with initial training, the intake supervisor will conduct spot checks for the next three months. This includes listening in on calls for quality control and pulling files.

Lunch and Learn events are held for all CIU staff about once a week, and community legal education events are held about nine times a year. CIU managers respond to staff training needs. For example, after several callers threatened self-harm, a training session was offered within two weeks on suicidality and related staff ethical obligations.

The managing attorney of the intake unit runs Legal Files reports weekly to check that all clients have received timely call-backs. The program's quality control requires a second attorney to look at case files to approve them for closing, even those handled by the managing attorney. If a supervisor finds that the information provided was incomplete, intake attorneys will contact the client either by phone or mail to offer supplemental information.

The CIU managing attorney provides frequent email updates to the CIU team, and staff meets every other week to discuss policies and procedures. Supervisors regularly give performance evaluations, although they happen once every two years instead of annually.

Engagement with and access by the low-income population

Finding 9: LANC's office locations are accessible to client-eligible individuals across the service area.

LANC has 19 field offices distributed across North Carolina. The program periodically reviews data about the distance clients have to travel to get to an office, Census data about the location of low-income people, and CIU data about the geographic location of applicants. Offices are well-marked, have clean and comfortable waiting areas with informational materials, and attorney offices are appropriate and professional. Offices are conveniently located, often in a central location of a particular city or town, and are easily accessible to transportation. However, it was challenging to find the Durham office, because there is no LANC signage at street level.

Finding 10: LANC's Central Intake Unit regularly assesses potential gaps in service and addresses these gaps through targeted outreach.

The intake supervisor at CIU is also responsible for the remote legal clinics offered via video-conferencing, which are discussed in more detail under Finding 23. As part of the development of these clinics, the intake manager regularly reviews data from CIU about the applicant's legal topic, demographic data, and geographical location looking for patterns in calls to assess whether there are gaps in service. To address those gaps, LANC develops additional locations for video-conference clinics, such as community agencies and churches.

The Advocates for Children's Services (ACS) team also conducts direct outreach to parents. Some of the outreach takes place via back to school webinars, although the ACS team feels these are not as effective as in-person contact. The ACS team will occasionally ask an attorney from a field office to attend an in-person event instead. The outreach to the juvenile education network also allows the ACS team to receive updated information about trends and emerging legal needs in the field. Some staff described additional outreach efforts, such as to the Hispanic community or to a homeless shelter. These outreach efforts were coordinated at the level of the field offices or special project team.

Finding 11: The ethnic and racial diversity of the LANC staff generally reflects the diversity of the service area.

Generally, the ethnic and racial diversity of the program's staff reflects the ethnic and racial diversity of the service area, but there are some exceptions. LANC staff is 61 percent Caucasian, 25 percent African American, less than one percent Hispanic, and less than a tenth of a percent Asian. One staff member is Native American. Service area demographics show a poverty population that is 54 percent Caucasian, 33 percent African American, nine percent Hispanic, and two percent Asian.¹⁰

Diversity is well-distributed across the organization. Thirty percent of the legal management staff are African-American, and 25 percent of attorneys and paralegals are African-American. The program acknowledges they make no special efforts to recruit a diverse workforce and has arrived at the current level of diversity organically.

¹⁰ U.S. Bureau of the Census, special tabulation provided by the Legal Services Corporation (LSC) from the 2016 American Community Survey 1-year estimates.

Recommendation III.1.11.1

LANC should regularly assess staff diversity and implement recruitment and retention strategies specifically aimed at ensuring that staff diversity is reflective of the service area.

PERFORMANCE AREA THREE. Effectiveness of legal representation and other program activities intended to benefit the low-income population.

Legal Representation

Staffing and Expertise

Finding 12: While LANC has a diverse workforce with a wide range of experience levels, the program has a concentration of newer attorneys.

Of the 172 attorneys employed by LANC, 80 (46 percent) have less than five years of experience at LANC. Of those 80 attorneys with less than five years of experience, 73 arrived at LANC with no prior attorney experience. The program had 36 attorneys (20 percent) who had between five and ten years of experience at the time of the visit. There are attorneys on staff with considerable depth of experience—42 attorneys (24 percent) have between 11 and 20 years of experience and 14 attorneys (eight percent) have more than 20 years of experience.¹¹

Advocates at LANC tend to specialize in one or two practice areas, although staff at small rural offices are more likely to be generalists out of necessity.

Legal Work Management, Supervision, Training, and Support

Finding 13: LANC offers ample initial and ongoing training to its advocates.

Training, mentorship, and supervision are consistent throughout the program. All new advocate staff members receive a week of orientation and training at the CIU. This training includes an overview of the intake process, a review of substantive law, and a quick orientation regarding human resources and administration. The process includes a mix of training videos and in-person teaching sessions. As part of the training sequence, all new advocates take CIU cases. Staff interviewed gave positive feedback about the training process, which they found to be useful and well-designed.

In addition to the initial week of training, advocate staff members receive ongoing training. Many staff reported attending national conferences such as those offered by National Legal Aid and Defenders Association, National Institute for Trial Advocacy, National Consumer Law Center, and National Organization of Social Security Claimants' Representatives. Training needs are identified through the yearly office work plans and individual work plans. Managing attorneys have attended management training offered by Management Information Exchange. LANC offers frequent Lunch and Learn events and has produced several "in house" training videos. In 2016, the

¹¹ Statistics derived from 2017 Grant Reporting Data, please note that percentages do not equal 100 due to rounding.

American College of Trial Lawyers provided skills training, which was videotaped by LANC and is used as a resource.

LANC maintains practice group listservs, which attorneys throughout the program use widely. These listservs are a way for attorneys to share sample pleadings, discuss emerging issues, and formulate new legal strategies. Advocates also have access to a pleading bank on Sharepoint. In addition to the LANC-only listservs, many advocates also participate in task force listservs, which are open to other legal service agencies and community agencies.

At the time of the visit, LANC was developing a skills training series for attorneys and paralegals, scheduled to launch in 2019. Through this training series, the program hopes to transition all legal secretaries to paralegal positions, develop more case handling paralegals, and teach attorneys about community lawyering. To support this transition, which is a cultural shift at LANC, the program has an attorney skills committee and a paralegal skills committee. Staff members participate in both committees.

Finding 14: Supervision is consistent across the program.

Legal work management and supervision are consistent across all LANC offices. Staff attorneys reported that supervisors conduct regular reviews of open and closed cases and that the substantive work unit regularly meets as a team. Attorneys praised the level of supervision they received. New attorneys described a supervision model that allowed for a gradual increase in autonomy and responsibility. For example, new attorneys receive more frequent case reviews, are often accompanied to their first court hearing by a supervisor, and sometimes develop weekly work plans with their manager.

Finding 15: The program's management structure combines field offices, practice group units, and special project units.

All field offices are led by a managing attorney. Field offices are grouped into geographic regions, each led by a regional manager, who in most instances is also a managing attorney. However, the regional managers do not directly supervise the managing attorneys. Rather, the role of the regional manager is to coordinate the intake and delivery of legal services across the region.

Attorneys are divided into 10 practice groups, corresponding with the major substantive areas of law covered by LANC. These practice groups are benefits, community economic development, domestic violence, education, employment, family, housing, human trafficking, and veterans. Practice group managers are sometimes, but not always, managing attorneys or regional managers. Practice group managers are responsible for providing substantive training and general supervision of the legal work within their respective practice areas throughout the state.

In addition to the practice groups, LANC has eight statewide projects addressing special populations or legal needs. The statewide projects are advocates for children's services, fair housing, farmworker, senior, domestic violence prevention initiative, battered immigrant project, a medical-legal partnership for children, and the child's advocate. Some special project managers double as practice group managers.

Some staff reported that they have more than one supervisor, or that they report to different supervisors about different aspects of their work. For example, a staff attorney at a field office within a practice group would report to a practice group manager about supervision of their legal work but report to the managing attorney or supervising attorney of the field office regarding administrative issues. However, staff were able to clearly articulate the division of responsibility between supervisors and expressed no challenges with this structure.

Quantity and Quality of Legal Work

Finding 16: Over the past five years, LANC's case closure rates have reflected shifts in funding sources and staffing, as well as an emphasis on providing meaningful assistance in limited-service cases.

LANC's total cases closed have historically been below the national median cases closed per 10,000 poverty population. One reason for the historically low case closures could be the program's strong commitment to representation in complex cases through its heavy appellate work. Another reason could be the extensive time intake staff dedicate to callers who receive limited service. The program's extended cases are 30 percent of its total cases closed. In the past five years, total cases closed remained relatively flat in 2013 (21,535), 2014 (21,383), and 2015 (21,437). The program's total cases closed dropped in 2016 and 2017 from 19,042 to 17,857. The decrease in case numbers is reflective of losses in state funding that resulted in layoffs in 2015. In 2016, LANC had 14 fewer attorneys and eight fewer paralegals than in 2015. While funding has been replaced with Victims of Crime Act and Violence Against Women Act grants, the program is still building its staff back up to the levels it previously had. While this has the benefit of stabilizing overall funding, it has led to a change in the types of cases that LANC handles. This is reflected in its case closure data. Since 2014, LANC has helped declining numbers of clients with Income Maintenance or Employment cases, while Family Law cases have steadily risen (see discussion below under Finding 17).

LANC's extended cases closed per 10,000 poverty population is 33.7, compared to the national median of 39. The program's limited cases closed per 10,000 poverty population is 77.2, compared to the national median of 110. The program's contested cases closed per 10,000 poverty population is 19.5, compared to the national median of 19. LANC's low case numbers seem closely tied to its limited service cases. While extended and contested case numbers have remained relatively stable from year to year, the pattern of limited case closures per 10,000 poverty population decreases in line with overall case closures. LANC quickly and efficiently handles brief advice cases through the CIU and consistently examines data about the intake process to ensure that applicants are processed quickly. However, the CIU has high-quality standards about the legal advice given by attorneys. Even for brief service cases, the CIU emphasizes providing legal advice that is detailed and comprehensive. This level of detail may mean that attorneys are able to handle fewer limited service cases overall, but the legal assistance being provided is likely to have a greater impact on clients.

Finding 17: Changes in funding sources have affected the case types handled by LANC.

As indicated above under Finding 16, the elimination of state funding for legal services has led LANC to pursue other forms of funding, namely federal funding under the Victims of Crime Act (VOCA), Violence Against Women Act (VAWA), and Title XX of the Social Security Act.

As might be expected, increased VAWA funding has led to a greater focus on family law. In 2014, LANC staff closed 3,230 family law cases, and family law cases were 19.8 percent of all staff cases closed.¹² In 2017, LANC staff closed 4,192 family law cases, and family law cases were 28.8 percent of all cases closed.¹³ In comparison, staff case closures remained the same or decreased slightly in all other subject areas.

The change in funding and in case types handled has also affected the way LANC approaches litigation. In 2014, LANC reported that 1,233 cases were closed by agency decision. By 2017, this number fell by almost half to 621. The reverse effect was seen in the number of cases closed by uncontested court decision, which almost doubled from 546 in 2014 to 1,046 in 2017.

Finding 18: Advocates at LANC produce high-quality legal work and are involved in multiple innovative projects and access to justice efforts.

A review of sample work submitted by LANC advocates revealed solid, error-free legal work. However, many writing samples illustrated relatively straightforward legal work that lacked complexity. This is somewhat surprising given the overall structure of the legal service delivery model. A large percentage of the program's brief service cases are handled by the CIU. In theory, this should allow field offices to pursue extended representation cases that are more complex. This could be explained by the issues presented by clients simply do not lend themselves to complex litigation.

LANC has several innovative projects focused on systemic issues. The Medical-Legal Partnership for Children is a statewide project embedded in 14 health systems across the state. This project is notable for the deep level of collaboration between the lawyers, medical staff, and social service staff to provide holistic services for low-income children. The Advocates for Children's Services Project addresses education justice issues statewide.

LANC is also involved in impressive access to justice efforts being made in Charlotte regarding eviction rights. Last year, a well-known partner from a private law firm joined LANC. He successfully convinced the Charlotte firm that represents landlords in 80 percent of housing cases to voluntarily distribute informational materials regarding LANC and tenants' rights along with every summons.

Finding 19: Some LANC staff expressed a desire for a more transparent process in the selection of cases to pursue on appeal.

LANC's appellate practice is managed by the litigation director who leads quarterly meetings with regional and practice group managers. Prior to that meeting, regional and practice group managers

¹² All data under this finding is taken from Legal Services Corporation, *G-3: Actual Case Services (Staff & PAI)*, Grant Activity Reports (2013-2017).

¹³ Staff case closures declined overall from 2014 (16,282) to 2017 (14,564).

complete summary reports. The summary reports include a review of open and closed cases, a description of “routine” and “non-routine” cases, and a description of impact cases. The quarterly review enables the program to identify impact cases early and develop those cases appropriately.

The program has a written policy about selecting cases for appeal. The policy states that the trial attorney is responsible for completing and submitting an appeal request form to the litigation director. In practice, the managing or supervising attorney writes a memo to the litigation director. If a case is chosen for appeal, the litigation director assigns a “litigation team” that typically includes the attorney who litigated the underlying case, a mix of experienced and less-experienced attorneys, and sometimes a volunteer attorney from the private bar. There is no written policy regarding the composition of an appellate litigation team.

Attorneys throughout the program described a lack of transparency regarding the staffing of litigation teams and many staff attorneys said they did not know how to indicate their interest in being placed on an appellate litigation team. Several experienced attorneys expressed frustration regarding the process of selecting cases for appeal and wanted more information about the reasons that recommended cases were rejected for appeal. Some attorneys reported they never received an explanation for rejection of a case for appeal, which led to a perception that the process is arbitrary. Staff reported even more concern about the process of assembling litigation teams. Staff indicated that on more than one occasion, the attorney who litigates the underlying case was excluded from the litigation team handling the case on appeal. Staff reported that this was troubling and demoralizing for the staff involved.

Recommendation III.1.19.1

LANC should develop a more transparent process for selecting and rejecting cases for appeal that is well-communicated to attorney staff. The policy for staffing appellate cases should be standardized and written and provide staff attorneys with a clear mechanism for indicating interest in appellate work.

Native American Unit

Finding 20: The Native American Unit provides high-quality representation to eligible clients residing in the Qualla Boundary and Robeson County but needs additional resources to support work in support of federally unrecognized tribes.

LANC provides legal outreach and advocacy to the Native American community in two distinct geographical areas. The Sylva office, in the western part of the state, provides services to the Eastern Cherokee Band of Indians (ECBI). In the southeastern part of the state, the Pembroke office provides services to Native Americans that are not members of federally recognized tribes. These two communities have different needs owing to distinct historical factors.

The ECBI are the descendants of the families that hid in the mountains of North Carolina to escape President Andrew Jackson’s forcible removal campaign of 1838-1839, known as the Trail of Tears. The tribe strictly controls membership, limiting it to those who can provide proof they are at least 1/16 (great-grandparent) ECBI, with ancestry tracing back to the original 805 founding families.

In the 1870s, the ECBI bought their land, called the Qualla Boundary, from the U.S. government. Although this land is not a “reservation”, similar to a reservation the land is held in trust by the federal government.¹⁴ The Qualla Boundary has a total land area of almost 83 square miles and a total resident population of 9,018 people.¹⁵ Qualla Boundary land is non-contiguous and is located in five counties in North Carolina. Due to the strict tribal enrollment requirements maintained by the ECBI, many Native Americans living on tribal land are not enrolled members of the tribe.

Enrolled ECBI members receive a per capita share of the profits from the tribe’s casino and hotel. The hotel is the largest hotel in North Carolina. The annual share of profits to tribal members ranges from \$6,000-\$10,000. For enrolled children, the profits are held in trust until either age 18 for high school graduates or age 21 for non-graduates. The payout once enrolled children become entitled to the money ranges from \$100,000-\$150,000. The ECBI also use an enrolled member preference system for tribal employment and are the largest single employer in the western part of the state. Most ECBI employees earn too much to qualify for legal services, and LANC’s income guidelines for the ECBI are 200 percent above the federal poverty level.

The influx of money into the tribal land has not spared it from problems. There are high levels of drug trafficking, and drug and alcohol abuse. Crime and domestic violence are consistent problems. Some tribal members lack the financial literacy to manage the share of profits appropriately and are left in poverty. Property disputes are common because only enrolled members may own property, while non-enrolled spouses and children are only allowed a life estate. As is true in many areas with high rates of drug addiction, custody disputes are common, and grandparents are increasingly taking on caretaker roles for children whose parents are in active addiction. Potential adoption cases are complex because of the Indian Child Welfare Act.

LANC’s staff are well-versed in the complex historical, legal, and social issues facing the ECBI and other Native Americans living on tribal land. Attorneys demonstrated a deep knowledge of the relationships between state court and the tribal court system and collaborate successfully with the tribal counterpart, Tribal Legal Services. This knowledge was recently borne out in an important legal case. There is no housing code on the Qualla Boundary, so tenants have no protection. A LANC attorney successfully persuaded a tribal court judge to apply state eviction law to a tribal court eviction case. This is a tremendous outcome not just for North Carolina law, but for Native American law across the country.

In Pembroke, Native Americans face a different set of challenges. Seven tribes have been recognized by the state of North Carolina, but not by the federal government.¹⁶ Most significant is the Lumbee tribe, who if recognized would be the largest tribe on the East Coast. The history of

¹⁴ An important part of ECBI history and heritage concerns the fact that the ECBI bought the Qualla Boundary land, it was not “reserved” for them by the federal government. In order to accurately reflect the history of the Qualla Boundary, the term “tribal land” will be used, as opposed to “reservation”.

¹⁵ U.S. Census Bureau (2010). *Total Population Eastern Cherokee Reservation, NC*. Retrieved from <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkml>.

¹⁶ <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx#State>

the Lumbee claims for recognition is complex.¹⁷ Robeson County, where the Lumbee primarily reside, has the highest poverty rate in North Carolina¹⁸. The attorneys working on Native American issues in the Pembroke office are focused on pursuing federal recognition claims for tribes currently unrecognized. This work has been delayed by the inability of the Robeson office to hire an expert for a relatively modest sum to assist with the tribal recognition process.

Recommendation III.1.20.1

LANC should make retention of the identified expert to assist in the tribal recognition process an immediate program priority and set goals and timetables for obtaining federal tribal recognition on behalf of its clients.

Finding 21: LANC agricultural worker staff pursue a variety of legal strategies, including complex litigation, and have designed an effective outreach strategy.

Agricultural Worker Unit

LANC’s agricultural worker unit is based primarily in the Raleigh office. The unit does extensive outreach to connect with agricultural workers across the state during the harvest period, which generally runs from April to late October . The unit conducts outreach in teams during the evenings, Sunday-Thursday. There are generally six to seven teams at any time, made up of LANC staff and bilingual volunteers. Outreach trips generally take place in a 90-100 mile radius from the Raleigh office, with some additional overnight trips to the southeastern part of the state. Overall, the program visits an impressive 200 farms each season.

Clients contact the agricultural worker unit in many ways, including in-person during outreach, via an 800-number established for the agricultural worker unit, agency referrals, and social media. All agricultural worker unit staff and volunteers are bilingual in Spanish, and the unit maintains a spreadsheet of interpreters for 46 other languages, including indigenous languages common to farmworkers such as Mixteco.

The agricultural worker unit focuses on several legal issues. As in other agricultural areas, the program is seeing an increase in H-2A workers and has expertise in the specific legal issues faced by these workers. Specifically, the program is seeing the exploitation of H-2A workers brought from Mexico and Central America via “temporary staffing” companies. These workers are moved from farm to farm, sometimes across state lines. These workers are vulnerable to exploitation and trafficking, and LANC has several federal cases pending regarding this issue. More generally, agricultural workers describe problems including wage issues, substandard housing, and general labor law violations. The agricultural unit has deep expertise in this area, including one attorney who has practiced in agricultural worker law for 20 years. The program diligently pursues cases under federal and state law.

¹⁷Lisa Rab, “What Makes Someone Native American? One tribe’s long struggle for full recognition,” *The Washington Post Magazine*, https://www.washingtonpost.com/news/style/wp/2018/08/20/feature/what-makes-someone-native-american-one-tribes-long-struggle-for-full-recognition/?utm_term=.0f283dca32c9, accessed on February 4, 2019.

¹⁸ Ibid.

Private Attorney Involvement

Finding 22: LANC is committed to effectively integrating volunteer attorneys in the delivery of legal services to clients throughout North Carolina by offering a range of volunteer opportunities and encouraging and supporting volunteers.

LANC's Private Attorney Involvement (PAI) program has centralized and local elements. LANC has a centralized Volunteer Lawyer Program (VLP) that is co-located with the CIU. This team has eight staff, of whom two are part-time. Staff includes a non-attorney supervising coordinator, who is supervised by the CIU managing attorney. This central VLP office receives cases directly from the CIU. Besides this centralized office, five field offices assign VLP duties to a paralegal who serves as a part-time pro bono coordinator and is supervised by the managing attorney of that field office. At the Charlotte office, VLP work is planned in collaboration with the Charlotte Center for Legal Advocacy (CCLA). LANC plans to move to a centralized VLP structure gradually as pro bono coordinators retire or transition to other positions.

The core centralized pro bono program at LANC offers a wide range of volunteer opportunities, including participation in remote videoconferencing legal clinics, extended service cases, co-counseling cases, and assistance to homeless clients in shelters. LANC has been successful with the Lawyer on the Line project and Law Student on the Line project, both of which allow volunteers to provide telephone advice to eligible clients. Additionally, sometimes volunteer attorneys participate in special projects at LANC. For example, the CIU has launched a statewide expunction relief project. In 2018, pro bono advocates from a range of law firms and corporations launched the Charlotte Triage Pro Bono Project in collaboration with CCLA and LANC's Charlotte office. This collaboration specifically works on eviction defense, expunctions, and healthcare enrollment in the Charlotte area.

LANC has written policies covering every aspect of the VLP program, and the pro bono coordinator has developed flowcharts and models to ensure efficient and consistent placement and oversight of cases.

Volunteers are recruited through CLE offerings, at bar association events, and through the program's website and social media. Volunteer attorneys receive training, reference materials, an attorney mentor from LANC staff, and research materials. Volunteer attorneys reported high satisfaction with the support they received from LANC.

While the centralized VLP program is providing increased efficiency, monitoring, and oversight, some field offices were dissatisfied. Specifically, advocates from multiple field offices expressed that they felt disconnected from efforts to recruit local attorneys. Advocates described regional and local nuances that have clear effects on the willingness of local attorneys to provide volunteer assistance. Other field offices articulated that they did not receive communication from the central VLP office, and that input from field offices was not solicited sufficiently.

Recommendation III.2.22.1

LANC should develop a more comprehensive strategy for engaging field offices in local recruitment efforts and for communicating between the centralized VLP and the field offices.

Other program services and activities on behalf of the low-income population

Finding 23: LANC consistently develops new methods of delivering legal information to the client-eligible community.

LANC's primary form of outreach and legal education is the remote video-conferencing legal clinic system. These clinics are broadcast simultaneously to up to 91 locations, including community centers and libraries. The locations and topics are developed in response to a combination of requests from community partners and an analysis of the information requested by callers to the CIU. The remote video-conferencing clinic was started in the biggest counties in the state. Sometimes LANC partners with other statewide organizations—for example, legal clinics are held in 20 offices of North Carolina Works. LANC's intake manager periodically reviews the geographic distribution of the clinics. If gaps are located, the program consults the database of social service providers to find a potential new clinic location. The program reports this is an efficient and effective way to distribute information. Clinics are divided into two major categories. The first is legal information clinics. These summarize a legal topic such as employee rights or tenant rights, and information about how to access legal resources. The second is focused on *pro se* clinics. These include instructions about how to complete and file court forms, such as divorce or custody forms. At the conclusion of the remote clinics, volunteer attorneys are available to answer questions. The program estimates it serves between 150-200 locations per month.

The CIU offers a wide range of self-help packets on common legal topics, which are available on the LANC website. The program recently developed short informative videos to assist *pro se* litigants. For example, CIU found that many callers had questions about how to request a continuance in a domestic violence case. In response, the program used a mock trial room and made a video demonstrating correct court procedure.

There are additional local efforts. For example, at the Durham office, the housing unit collaborates with the Duke Civil Justice Clinic to offer an eviction defense clinic at the courthouse every other week. Various projects and field offices conduct additional community education projects. For example, the Advocates for Children's Services (ACS) project provides community education to service providers who interact with juveniles in need, such as juvenile court counselors, juvenile defenders, *guardian ad litem*s, mental health providers, and Department of Social Services social workers.

PERFORMANCE AREA FOUR. Effectiveness of governance, leadership and administration.

Board governance

Finding 24: The board is composed of diverse, engaged members who work actively to handle their duties.

LANC's board has 27 members and demonstrates racial, ethnic, gender, and geographical diversity. Board members are limited to two three-year terms, and bylaws allow a board member to rejoin after a year off the board. The full board meets quarterly, and a quorum is always present at meetings. The board's fiscal committee reviews financial information monthly, including comparing the budget to actual income and expenses. This fiscal committee includes a certified public accountant and the chief financial officer of LANC. The executive committee meets quarterly and the operations committee meets monthly. Other active committees include the personnel committee, fundraising committee, audit committee, client affairs committee, and development committee. Committees include non-board members. Committee assignments are made by the executive director and board chair annually. All committees report back to the full board.

Materials are sent to board members a week prior to each board meeting. Board members may receive the board book electronically. Board orientation is provided for all new board members, and board members frequently attend training sessions, such as the Financial Essentials Training presented by Management Information Exchange.

LANC supplements board meetings with meetings of the Client Council, a group composed of client-eligible board members and members of the community. The Client Council generally meets the day before the board meeting, and overnight accommodations are provided for client-eligible members. The agenda for Client Council meetings is set by the chairperson of the Client Council. Most Client Council members are recruited by existing members, and interviewed by one of the deputy directors before joining the council. Client Council meetings include presentations about available social services and the work of LANC. Client Council members do extensive outreach in their communities.

LANC also maintains a network of Local Advisory Councils (LAC). These local advisory councils were originally formed when organizations merged to form LANC—the councils were the boards of directors of the merged organizations. The local advisory councils have varying levels of activity. Some still meet regularly, while others meet occasionally. The board recently appointed a board liaison to each local advisory council.

The board members interviewed on-site lacked clarity on the evaluation of the executive director. Some board members thought the evaluation had happened, some thought it was upcoming. However, the board has an executive director evaluation policy adopted by the board in June 2014. The evaluation process occurs every other January, on odd-numbered years. The policy details the steps of the evaluation, which include a staff survey, board survey, and self-evaluation. There is a clear process of discussion between the board and executive director, a written evaluation, an option for the executive director to provide a response to the evaluation, and a review of the evaluation by the full board.

Finding 25: Client board members are invested in LANC's work, but not all board members reported that client board members and attorney board members were well integrated.

Client board members were deeply engaged with LANC's mission. The client board members interviewed were invested in promoting LANC to the communities they live and work within. Multiple client-eligible board members described distributing outreach materials and informational pamphlets regularly to community agencies and other key outreach points in their communities.

Client-eligible board members are active in board committees and articulated their board responsibilities well. The Client Council meetings held before board meetings typically include a training element such as a presentation from LANC staff. The chairperson of the Client Council presents at every board meeting.

The PQV team found that some client board members had concerns about interactions with attorney board members. In particular, attorney board members were reported to disengage and become inattentive when client-eligible board members were speaking during board meetings.

Recommendation IV.1.25.1

The board should consider equity and inclusion training, and/or set new expectations about how to value the contributions made by client-eligible members.

Leadership

Finding 26: LANC's executive director is highly-respected within the program and throughout the state justice community, however, he is too deeply involved in all aspects of the organization's day-to-day operations.

The executive director has been in place for over 19 years. In the past several years, he faced difficult choices due to dramatic losses in state funding. He carefully navigated his way around these obstacles and restored stable funding to the organization. Staff at every level expressed their admiration for the executive director and find him an inspiring leader. He is well-known for his impeccable work ethic and the depth of his commitment to legal services. He has a strong reputation in the state justice community and has leveraged his considerable influence to recruit high-quality board members.

The executive director has a heavy role in upper-level management and somewhat routine administrative work. He directly supervises 33 people, including all the managing attorneys and special project managers, and is involved in routine administrative duties such as mileage reimbursement requests. He hires all supervising and managing attorneys and fires any attorneys. The executive director writes almost all grant applications and is deeply involved in human resources and public relations activities. As mentioned below in Finding 35, the administrative office is currently understaffed. Administrative office staff expressed a willingness and ability to take on responsibilities that were more complex.

Some aspects of decision-making seemed to rest solely with the executive director. For example, the executive director solely decided the major topics to be addressed through the most recent strategic planning effort. The executive director seems to meet with his upper-level staff individually, and not as a management team.

Recommendation IV.2.26.1*

The executive director should find opportunities to delegate to his management team and to involve his management team in long-term planning.

Technology Infrastructure and Administration

Finding 27: LANC's underinvestment in technology directly impedes the efficiency of staff and the ability to deliver services to clients.

Staff across the program expressed deep frustration with LANC's technology, particularly the program's unreliable and unstable case management system (CMS). At the time of the visit, staff reported that IT outages were occurring with greater frequency – sometimes lasting a few hours, if not longer -- and that problems with the CMS and other systems impaired their ability complete work. Staff at the CIU and at field offices reported frequent problems, and case handlers expressed concern with entering data into the CMS, as the system would regularly crash and force users to re-enter lost information. LANC's email system is prone to similar slowdowns and crashes, though they appear to be less frequent than the CMS issues. Staff expressed these frustrations in a survey distributed before the LSC visit, and in response, a member of the Technology Initiative Grant team conducted a desk review, which informed these findings and recommendations.

There are several likely reasons for the instability and unreliability of the IT environment. The program has used Legal Files for the past 17 years. Due to funding uncertainty, LANC has not upgraded the system in six to eight years and had not explored alternative products until recently. LANC's legacy version of Legal Files is no longer a good fit for the organization given its size and the needs of its case handlers. A CMS deployed in the early-2000s is not designed to handle the significant data -- including large PDF files and other work product -- that the hundreds of LANC advocates now routinely upload to Legal Files. The program has not purged old CMS records and stores 17 years of case information on Legal Files, which is likely one of the primary reasons users are experiencing so many problems. Similarly, there is at least 10 years' worth of emails stored in its on-premise Microsoft Exchange server, which is likely causing technical problems around users' emails. The current system also doesn't offer the web browser-based mobility that many attorneys require, and the inability to customize it prevents LANC from continuing to offer an online application and exploring helpful enhancements that an up-to-date system could offer users.

Leadership is planning several key upgrades in response to these technology-related problems, including a transition to Legal Server over the next nine to 10 months and a move to Microsoft Office 365 shortly thereafter. While these upgrades should address many of the technology-related problems staff experience, LANC also needs to pursue short-term solutions to mitigate these issues over the transition period. Purging several years of data from Legal Files and Exchange should increase the reliability of these systems and help users work more efficiently over the next year.

Recommendation IV.3.27.1*

The program should develop concrete project plans for transitioning to Legal Server and Office 365 and devote the resources and staff necessary to complete this transition as soon as possible.

Recommendation IV.3.27.2*

The program should develop an electronic document retention plan that allows old case files to be cleared out of Legal Files and systematically remove files according to the plan. They should also remove or archive old emails from Microsoft Exchange.

Finding 28: LANC plans to implement several technological upgrades over the next year, but the program may not have sufficient staffing in place to support these projects.

LANC has begun an ambitious plan to upgrade several of its key technology systems. It has moved many of its offices to a hosted VoIP phone system through Mitel and upgraded bandwidth in several locations. Out of LANC's 25 offices, seven still need to be migrated to the new phone system. As mentioned above, the program is also planning to transition its CMS from Legal Files to Legal Server and move to Microsoft Office 365. Adopting these cloud-based solutions will make the program less reliant on the current virtual desktop infrastructure and the program's wide area network, both of which appear overextended under LANC's current IT approach. The program will use the newer Citrix StoreFront solution to deliver a few local applications when necessary.

The technology changes and upgrades are necessary and should proceed as soon as possible. Considering the overall size of the program (almost 350 employees), the number of offices, and the plan to pursue several projects concurrently, LANC will need to ensure sufficient personnel is in place to roll out these new systems. The technology department has the equivalent of three and a half full-time employees, including the department head. At the time of the visit, the program was planning on hiring a full-time help desk technician. The program also has the equivalent of about one and a half full-time employees through its various IT consultant contracts. Overall, the staffing level during the migration will be about six full-time employees, which may be an appropriate staffing number in the long-term, particularly once the program completes its transition to cloud-based systems that require less in-house maintenance and support.

The short-term technology needs involved in migrating several systems simultaneously will require more staffing, though. The program should consider additional staffing, whether through short-term contracts, temporary employees, or increased consulting services. The consultant groups have not been assessed in over five years, and it would be worthwhile for the program to evaluate the quality and value of these existing arrangements. Finally, the planned initiatives will require significant project management expertise, and LANC should ensure that members of its technology team (either staff or consultants) have that capacity.

Recommendation IV.3.28.1*

The program should examine current technology personnel resources and ensure sufficient resources are in place to support its upcoming major technology initiatives.

Finding 29: The program does not effectively communicate with staff regarding technology.

Staff shared considerable frustration about LANC's IT environment. Exacerbating these feelings was the lack of communication from the central office. When asked about their understanding of the cause of the technology-related problems, staff had little knowledge. Similarly, the staff at the administrative office were not fully aware of the extent to which staff across the program were

affected by technology problems, including the staff's growing frustration as key systems continued to decline. LANC did recently ask staff to complete a survey about technology-related problems, which helped lead to some of the planned upgrades, but more work needs to be done to improve communications.

When faced with an issue affecting all staff daily, the technology department should try to understand the extent of the problem, communicate the reasons for the problem, and outline proposed solutions and timeline. While some efforts had been made, it's clear that staff did not find those efforts to be commensurate with technology problems across the organization.

Recommendation IV.3.29.1

Related to finding number IV.6.36.1 below regarding communication, LANC should develop a plan to regularly update staff program-wide about technology issues and planned technology improvements. The technology department should be consistently updating administrative office staff regarding user experiences.

Finding 30: The program does not sufficiently engage in long-term technology planning. Technology initiatives are not considered as part of strategic planning.

Some staff reported that the technology department holds quarterly meetings, but these meetings had not taken place for a while. There did not seem to be any integration between the technology department and the other strategic initiatives being pursued by LANC. The technology challenges being faced by LANC were foreseeable and could have been addressed at an earlier stage with more rigorous planning. Upper-level management needs more alignment about technology needs and there should be more involvement of technology staff in long-term strategic planning.

Recommendation IV.3.30.1

The technology department should reinstate quarterly planning meetings. The technology department should consider a regular way of involving other staff in technology planning. The technology team should regularly update the rest of upper-level management.

Finding 31: The program uses technology appropriately to communicate between offices and deliver legal information and pro se services.

Several years ago, LANC received a technology initiative grant to implement a video-conferencing system, which runs on a platform called Zoom. The program implemented Zoom at all offices across the program. This has been very successful and is used regularly to communicate between offices. The program is using the video-conferencing system to deliver legal information clinics to 91 locations simultaneously. The program is planning on creating client-facing document assembly interviews through A2J Author, reinstating online intake, and demonstrates a strong commitment to helping the considerable number of self-represented litigants in North Carolina receive better assistance.

Financial administration¹⁹

Finding 32: LANC's financial management team conducts appropriate oversight.

The financial management team at LANC is led by a chief financial officer (CFO), who supervises a staff of five, which include a senior accountant, three accountants, and a staff member responsible for accounts payable. The CFO works remotely from Los Angeles. Although unconventional, there did not seem to be any issues with this remote arrangement. The CFO creates initial drafts of the budget and determines the final budget after extensive consultation with the executive director. The CFO provides monthly updates to the finance committee of the board, and quarterly updates to the full board. The program has had clean audits for several years, and the CFO works with the audit committee of the board to hire the auditor and review the audit.

The financial management team does not include a Certified Public Accountant (CPA), but staff have extensive financial management experience and have attended financial training offered by Management Information Exchange. A CPA sits on the audit committee of the board. The financial management team has an accounting manual and uses Blackbaud software. The team manages the accounting needs for 95 funding sources.

Human Resources Administration

Finding 33: The human resources team is highly-skilled but understaffed.

The human resources office is staffed by one full-time director with an MBA and a Professional in Human Resources certificate. Human resources duties are shared by the human resources director, executive director, assistant directors, public relations director and managing attorneys. As mentioned in Finding 26, the executive director takes significant responsibility for hiring and firing of attorneys. The human resources director spends much of her time onboarding new staff, preparing payroll, tracking time on payroll, and responding to staff inquiries about benefits. She has the training and ability to handle other tasks, such as working on recruitment and retention issues, and workplace culture. However, as a one-person department, she does not have the capacity to handle these higher-level human resources issues. The human resources director reported that in 14 years, she has only missed one payroll period. Having other staff available to manage payroll and answer benefits questions would allow the human resources director to perform at her full capacity.

Finding 34: Employees are supported by a generous benefits program and a detailed performance evaluation process, but LANC's low salaries and lack of a formal grievance system are a weakness.

Employees were very satisfied with the benefits offered at LANC. The program is self-insured and has an excellent health insurance plan. Additional benefits include life insurance, long-term disability, and loan repayment. Employer pension contributions have fluctuated in recent years,

¹⁹ This visit was conducted by the Office of Program Performance (OPP) for the purposes set forth in the Introduction. OPP findings and recommendations under this criterion are limited to staffing, organization, and general functions. Assessment of fiscal operations is conducted by other offices at LSC.

but the program has consistently contributed between four percent and seven percent. Paid time off is generous, and the program offers a paid sabbatical for employees after seven years of service.

Unfortunately, the staff is not as satisfied with the salary scale and some felt it was a staff retention issue. Relatedly, staff are frustrated that information about the salary scale was no longer available on an internal website. Staff found it difficult to make long-term financial decisions without knowing about potential future salary increases.

Staff described a detailed and thorough performance evaluation process, which for most people occurs annually on their hiring anniversary. However, some staff have been evaluated on more irregular timeframes, and a few staff indicated that they had never received an evaluation. CIU staff are evaluated every two years.

The program had no formal grievance system in place. Employees have the option to submit complaints anonymously via the program website. However, these are all sent automatically to the executive director. There is no formal process by which employees can submit complaints about the executive director.

Recommendation IV.5.34.1

The human resources department should ensure that all staff receives timely performance evaluations.

Recommendation IV.5.34.2

The program should create a formal grievance procedure.

Overall Management and administration

Finding 35: The program's lean staffing model for the administrative office is not providing sufficient support to a program of LANC's size.

The executive director is assisted by two deputy directors and an upper management team, including a human resources director, public relations director, IT director, and finance director. Field offices are managed by managing attorneys and split into five regions covered by regional managers. LANC has very lean overhead. The executive director estimated that overhead is only at eight percent. The administrative office is understaffed given the program's size. This was particularly apparent in the main office administrative team and in the technology, human resources, and public relations departments. In all three departments, staff described being unable to perform at the full range of their skill set because they are tasked with basic and routine administrative tasks necessary to maintain a program of LANC's size.

Recommendation IV.6.35.1*:

LANC should examine staffing levels and, as resources permit, expand staff in the administrative office to appropriately support the program, particularly in the areas of human resources and technology.

Finding 36: Program staff would appreciate more consistent and regular communication from the administrative office.

The PQV team heard repeatedly that staff were unaware of developments from the administrative office. Specifically, the staff was confused about the new skills training program for paralegals and attorneys. Staff also lacked information about the previous strategic plan and forthcoming strategic planning. As mentioned in the discussion of legal work, staff wanted more transparency about how litigation teams were compiled and appellate cases were chosen. Several staff members mentioned that they had no information about the salary scale and that this was troubling to them.

Recommendation IV.6.36.1*:

The administrative office, including the executive director, should engage in consistent, regularly scheduled communication across the program regarding proposed programmatic changes, strategic planning, litigation updates, technology updates, and other issues of concern to staff across the organization.

General Resource Development

Finding 37: The resource development team pursues a range of strategies to increase individual giving.

The resource development team is led by a director of development, who manages three full-time development staff. The program has 95 grants to manage. In 2017, corporate and individual contributions were \$750,000, which is around five percent of the program's total budget.

LANC has a diversified funding mix. LSC funds are 51 percent of total funding. Of the other funding that LANC receives, 16 percent is other federal funds, and 10 percent is state and local grants. The remaining 23 percent is a combination of foundation grants, United Way grants, IOLTA grants, Bar Association awards, and private donations.²⁰

The program is strategic about not conducting an annual gala to raise funds in that they consider such an event too low of a return for the investment. Instead, the program focuses on direct appeals to attorneys. The program focuses on retaining donors by writing personalized thank-you cards. The board is involved in this effort and writes thank you cards at every board meeting. This strategy has led to a repeat donor rate of 70 percent. The program has also benefited from large individual donations made as part of planned giving. For the upcoming year, the resource development team plans to pursue strategies including corporate giving, law firm donations, individual donations, and a capital campaign. To assist in this effort, the resource development team uses eTapestry donor management software.

The program collaborates with other legal service agencies regarding fundraising. In the western part of the state, around Asheville, LANC does not pursue fundraising because it does not want to compete with Pisgah Legal Services, a well-known local legal services provider there. In Charlotte, the non-LSC funded program, the Charlotte Center for Legal Advocacy, takes the lead in designing joint fundraising efforts and donates one-third of fundraising proceeds to LANC.

²⁰ Legal Services Corporation (LSC), D-3: *Actual Support and Revenue*, Grant Activity Reports (2008-2017).

Participation in an Integrated legal services delivery system

Finding 38: LANC is an important and trusted partner in ensuring access to justice in North Carolina.

LANC is by far the largest legal services provider in North Carolina. Other legal services providers in North Carolina serve a limited geographic range or focus on special populations. Stakeholders indicated that LANC is an eager collaborator on statewide and regional access to justice projects. LANC works with the Administrative Office of the Courts (AOC). Recently, LANC launched a project around expunctions, and as part of that project conducted research county-by-county on the expunction process. This research was deeply valuable to the AOC, which did not have comprehensive information about county-level procedures.

CONCLUSION

Legal Aid of North Carolina is a unified program with a comprehensive delivery structure aimed at providing access to justice and competent legal representation for low-income North Carolinians. Staff members are dedicated to the mission of the program and trust the program's leadership to continue to guide the program successfully through any upcoming challenges. With increased attention to technology, strategic planning, and the implementation of recommendations in this report, LANC will ensure its continued future as a cornerstone of legal services in North Carolina.

Legal Aid of North Carolina, Inc.

Administrative Office

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Serving low-income clients in all 100 counties of North Carolina

George R. Hausen, Jr., Esq.
Executive Director

www.legalaidnc.org

April 29, 2019

Vanessa Dillen, Esq
Office of Program Performance
Legal Services Corporation
3333 K Street NW Third Floor
Washington, DC 20007-3552

Dear Vanessa,

I hope this finds you well.

We have appended our responses to the outline of findings and recommendations included in the OPP draft report of the Quality Program Visit conducted by your team in October 2018.

The site visit and report were immensely helpful to us and, as you will see in our responses, we took serious issue with very few of the recommendations. We did however attempt to add some context and explanation where we thought that would be useful.

Please let me know if I can add additional information or clarify any responses that we offered. With much appreciation for your thoughtful report, I am

Sincerely,



George R. Hausen, Jr., Esq.
Executive Director



Responses of Legal Aid of North Carolina
Recipient No. 634032
To the Office of Program Performance
Draft Report for the
Program Quality Visit October 2018

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OUTLINED AND APPENDED
WITH RESPONSES

PERFORMANCE AREA ONE. EFFECTIVENESS IN IDENTIFYING THE MOST PRESSING CIVIL LEGAL NEEDS OF LOW-INCOME PEOPLE IN THE SERVICE AREA AND TARGETING RESOURCES TO ADDRESS THOSE NEEDS.

Needs Assessment

Finding 1: The annual needs assessment that LANC conducts does not adequately solicit feedback directly from the low-income population.

Recommendation 1.1.1.1 8-LANC should conduct a comprehensive legal needs assessment that includes input from the low-income community, input from stakeholders who work with the client-eligible community, relevant data such as U.S. Census data, and any other relevant needs assessments of the low-income population. LANC should consider partnering with an academic institution to design and implement the needs assessment.

LANC Response:

LANC conducted a needs assessment survey that was not completed by the time of the QPV. The survey was administered to 5700 respondents comprising members of the bench, bar, and community. Over 500 responses were received. (A copy of the report is attached to the email). The 2008 needs assessment was conducted in conjunction with the NC Equal Access to Justice Commission. In 2012, we conducted a needs assessment in collaboration with First Health, a health care provider that supports LANC MLP work.

To review our annual needs assessment process: LANC annually conducts in each of its twenty-plus offices and twelve statewide projects an individualized work plan for each advocate and for the office or project as a whole. The written reports are essentially work force and capacity reviews, along with anecdotal recommendations on client needs. Every quarter each practice group conducts a review of our work and capacity. In 2018, the practice group managers, under the supervision of the litigation director, undertook a detailed, comprehensive review and restructuring of the LANC priorities that was submitted to the LANC Board for review. In addition to the client members on its statewide board, LANC maintains with two a statewide Clients Council that regularly includes about forty active members who meet throughout the year and in-person in conjunction with LANC Board. Two staff liaisons work with the Clients Council and LANC staff, from various projects, make regular presentations about our work to the Clients Council. In addition, each local office has a Local Advisory Council (LAC) that includes members from the local bar, business leaders, and community members, including clients. Our statewide call center annually receives approximately 200,000 discrete client inquiries concerning legal needs and questions. (See OPP Finding 3, *infra*.) We track our calls and keep abreast of developing trends in the inquiries and from where they arise.

It is difficult to imagine that the traditional needs assessment model could provide any additional information, especially considering the significant time and expense involved. The client needs and organizational resource allocation and capacity that we develop in this process is more comprehensive, more dynamic and current, and thus more useful than the snapshot created by the traditional needs assessment. LANC, in spite of its size, remains highly flexible and responsive to emerging needs: We have not missed, or been late on, any emerging needs that our clients have experienced. Indeed, our ability to maintain a high-level of quality legal assistance to our clients, while enrolling 500,000 clients into the ACA in each of the last four years and responding thoroughly to the many natural disasters that have hit our state, are significant points of pride for us.

Nonetheless, LANC has begun to reach out to our stakeholders about collaborating with LANC on a needs assessment for our justice community. Last week, our Equal Access to Justice Commission concluded that it could not undertake the project this year. LANC thus will be seeking a collaboration with an academic institution to conduct a needs assessment with funding from our IOLTA program or with the use of the substantial *cy pres* awards that LANC just received.

Strategic Planning

Finding 2: LANC developed a strategic plan in 2014 and plans to engage in a new strategic planning process, and develop a new strategic plan in 2019.

Recommendation 1.2.2.1-LANC should develop a strategic planning process that includes more input from the staff, board, and the community, and develop a timeline for the process.*

LANC Response:

Although the current LANC strategic plan process initially was designed by a small board committee; i.e., the executive director and a professor from Duke Law School (and the facilitator/reporter for the strategic planning process), the final plan was developed through multiple committees that each included board, staff, clients, and other stakeholders throughout the process. The LANC Board will initiate a new strategic planning process starting with a multi-day retreat process at its June 2019 meeting. We will work to ensure that this recommendation is fully adopted and implemented in our process.

Recommendation 1.2.2.2-LANC should develop a strategic plan that includes short- and long-term goals for all aspects of the program, including the legal work, intake, resource development, technology, administration, communications (internal and external), human resources, and financial administration. The strategic plan should include goals, tasks, people responsible for tasks, and timelines for completion of tasks.*

LANC Response:

We will work to ensure that this recommendation is fully adopted and implemented into our operation.

Recommendation 1.2.2.3-Once the new strategic plan is complete and approved by the board, LANC should develop a rollout process to ensure that the staff and board are aware of the plan, its contents, and their respective role in its implementation.

LANC Response:

We attribute any general lack of awareness among staff and board to our current strategic planning objectives to the significant turnover in board and staff since the last strategic plan was adopted and implemented. The executive director has reported to the LANC Board on the status and success of the implementation of the strategic plan on numerous occasions. Moreover, the overall objectives in the plan are regularly communicated, even if they are not specifically identified as strategic planning objectives. Nonetheless, we will work to ensure that this recommendation is fully adopted and implemented into our operation.

Recommendation I.2.2.4-LANC should appoint a point person within the program who is responsible for regularly tracking progress on the plan and reporting to the executive director, and possibly the board, on the progress that has been made.

LANC Response:

We will work to ensure that this recommendation is fully adopted and implemented into our operation.

Evaluation And Adjustment

Finding 3: LANC's Central Intake Unit provides the program with ongoing information about emerging legal needs.

Finding 4. LANC tracks outcomes in limited and extended services cases but does not meaningfully analyze these outcomes.

Recommendation I.4.4.1-LANC should consider using outcome data to evaluate the effectiveness of specific legal strategies and to inform programmatic and strategic decisions.

LANC Response:

We think we are very data and outcome (including economic outcome) driven: managers at every level, including local offices, special projects, and, especially our central intake unit, are extremely data and outcome driven. We would appreciate additional information on this recommendation. Staff from our intake unit has begun a new survey of clients on closed cases. Beyond that, we will work to ensure that this recommendation is fully adopted and implemented into our operation.

PERFORMANCE AREA TWO. EFFECTIVENESS IN ENGAGING IN AND SERVING THE LOW-INCOME POPULATION THROUGHOUT THE SERVICE AREA.

Dignity And Sensitivity, Including Intake

Finding 5: The majority of intakes at LANC are handled by the program's model Central Intake Unit (CIU).

Finding 6: LANC's Central Intake Unit is a model intake system.

Finding 7. In addition to the CIU, applicants access LANC via specialized hotlines and direct referrals from agencies.

Recommendation II.1.7.1-The program should ensure that all intake portals outside of the CIU provide the same quality of service provided to CIU applicants.

LANC Response:

We will work to ensure that this recommendation is fully adopted and implemented into our operation.

Finding 8: Staff in the Central Intake Unit are well-trained and well-supervised.

Engagement With And Access By The Low-Income Population

Finding 9: LANC's office locations are accessible to client-eligible individuals across the service area.

Finding 10: LANC's Central Intake Unit regularly assesses potential gaps in service and addresses these gaps through targeted outreach.

Finding 11: The ethnic and racial diversity of the LANC staff generally reflects the diversity of the service area.

Recommendation III.1.11.1-LANC should regularly assess staff diversity and implement recruitment and retention strategies specifically aimed at ensuring that staff diversity is reflective of the service area.

LANC Response:

LANC annually analyzes its staff and board diversity and takes seriously its responsibility to inclusiveness, and indeed affirmative action, in its recruitment, hiring, promotion, and training practices. LANC has a very active Diversity Working Group that meets monthly. The Working Group recently revised the LANC Non-discrimination Policy and our EEO Policy, which recommendations were adopted by the LANC Board. Diversity remains an important LANC objective. We will work to ensure that this recommendation is adopted and enacted in our process.

PERFORMANCE AREA THREE. EFFECTIVENESS OF LEGAL REPRESENTATION AND OTHER PROGRAM ACTIVITIES INTENDED TO BENEFIT THE LOW-INCOME POPULATION.

Legal Representation

Staffing and Expertise

Finding 12: While LANC has a diverse workforce with a wide range of experience levels, the program has a concentration of newer attorneys.

Legal Work Management, Supervision, Training, and Support

Finding 13: LANC offers ample initial and ongoing training to its advocates

Finding 14: Supervision is consistent across the program.

Finding 15: The program's management structure combines field offices, practice group units, and special project units.

Quantity and Quality of Legal Work

Finding 16: Over the past five years, LANC's case closure rates have reflected shifts in funding sources and staffing, as well as an emphasis on providing meaningful assistance in limited-service cases.

Finding 17: Changes in funding sources have affected the case types handled by LANC.

Finding 18: Advocates at LANC produce high-quality legal work and are involved in multiple innovative projects and access to justice efforts.

Finding 19: Some LANC staff expressed a desire for a more transparent process in the selection of cases to pursue on appeal.

Native American Unit

Finding 20: The Native American Unit provides high-quality representation to eligible clients residing in the Qualla Boundary and Robeson County but needs additional resources to support work in support of federally unrecognized tribes.

Recommendation III.1.20.1-LANC should make retention of the identified expert to assist in the tribal recognition process an immediate program priority and set goals and timetables for obtaining federal tribal recognition on behalf of its clients.

LANC Response:

A few years ago, LANC retained a consultant, who was an identified expert, to assist our work on behalf of the Lumbee Tribe in its federal recognition efforts, which remains an historic and longstanding priority for that community. The experience did not produce a satisfactory result. LANC management also believes there may be compliance concerns that did and could attenuate our success in this effort. We request additional direction on this recommendation.

Finding 21: LANC agricultural worker staff pursue a variety of legal strategies, including complex litigation, and have designed an effective outreach strategy.

Private Attorney Involvement

Finding 22: LANC is committed to effectively integrating volunteer attorneys in the delivery of legal services to clients throughout North Carolina by offering a range of volunteer opportunities and encouraging and supporting volunteers.

Recommendation III.2.22.1-LANC should develop a more comprehensive strategy for engaging field offices in local recruitment efforts and for communicating between the centralized VLP and the field offices.

LANC Response:

Ironically perhaps, LANC centralized its pro bono efforts a few years ago because local efforts were inconsistent due to our inability to justify individual pro bono staff in areas with small private bar membership. Centralizing the pro bono team dramatically improved results in recruiting, training, and retention of volunteers. This transition came about as a consequence of our highly successful “Lawyer On The Line” project. Centralizing the pro bono effort also substantially improved our ability to place complex cases, the effectiveness and efficiency of our case management and CSR requirements, and our general pro bono administration. Although LANC cannot afford to staff a full time pro bono coordinator in each local office, we recognize that pro bono is, and always will be, a project substantially driven by familiar, i.e., local, relationships. We will work to ensure that this recommendation is adopted and implemented where practical.

Other Program Services And Activities On Behalf Of The Low-Income Population

Finding 23: LANC consistently develops new methods of delivering legal information to the client-eligible community.

PERFORMANCE AREA FOUR. EFFECTIVENESS OF GOVERNANCE, LEADERSHIP AND ADMINISTRATION.

Board Governance

Finding 24: The board is composed of diverse, engaged members who work actively to handle their duties.

Finding 25: Client board members are invested in LANC’s work, but not all board members reported that client board members and attorney board members were well integrated.

Recommendation IV.1.25.1-The board should consider equity and inclusion training, and/or set new expectations about how to value the contributions made by client-eligible members.

LANC Response:

We will work to ensure that this recommendation is fully adopted and implemented into our operation. We will include this recommendation in our strategic planning.

Leadership

Finding 26: LANC’s executive director is highly-respected within the program and throughout the state justice community, however, he is too deeply involved in all aspects of the organization’s day-to-day operations.

Recommendation IV.2.26.1-The executive director should find opportunities to delegate to his management team and to involve his management team in long-term planning.*

LANC Response:

The LANC team of assistant directors, regional managers, and local managers and supervisors by and large are exceptionally talented and dedicated lawyers. They are professionals with long experience in legal services and in their communities. They need relatively little oversight in their day-to-day management of our work and our objectives.

The executive director is decidedly not a micro-manager, but does try to ensure operational quality, innovation, and fairness in personnel decisions across a large, diverse, and widespread organization. LANC comprises many local offices and special projects, and most of these have distinct office cultures that have evolved over our long history, which includes a thirty-year pre-consolidation period, the crucible for many members of our talented management corps. Moreover, the executive director deliberately stands back from some processes in order to not impinge the discussion and free-flow of ideas and, yes, criticisms of our operation.

The managers of each LANC office and special project are delegated the responsibility not only for day-to-day operations but for annual planning as well. At the moment, long term planning on attorney and paralegal skills and career development are being led by a team of middle managers. The LANC representative to the Alliance, the name of our state's consortium of legal service providers, was an assistant director, who also chaired the group. Our domestic violence, human trafficking, elder law, ACA enrollment, and MLP work are all managed tactically and strategically (with wide latitude for decision-making), by managers who run the day-to-day operations and are the face of our program to the communities in which they work. LANC regularly employs staff committees for developing internal policies on important policy issues such as personnel and career development, operations, diversity, and priorities, along with other long term aspects of the program, in which the executive director plays no committee role.

LANC assistant directors, and all its managers, are highly-motivated, experienced, and creative managers and are given a high degree of autonomy to administer and to be creative in their areas of responsibility. We strive for inclusiveness, and all managers have the freedom to voice concerns and *carte blanche* to criticize and opine when a problem or issue arises.

Technology Infrastructure and Administration

Finding 27: LANC's underinvestment in technology directly impedes the efficiency of staff and the ability to deliver services to clients.

Recommendation IV.3.27.1-The program should develop concrete project plans for transitioning to Legal Server and Office 365 and devote the resources and staff necessary to complete this transition as soon as possible.*

LANC Response:

(See combined technology response below.)

Recommendation IV.3.27.2-The program should develop an electronic document retention plan that allows old case files to be cleared out of Legal Files and systematically remove files according to the plan. They should also remove or archive old emails from Microsoft Exchange.*

LANC Response:

(See combined technology response below.)

Finding 28: LANC plans to implement several technological upgrades over the next year, but the program may not have sufficient staffing in place to support these projects.

LANC Response:

(See combined technology response below.)

Recommendation IV.3.28.1-The program should examine current technology personnel resources and ensure sufficient resources are in place to support its upcoming major technology initiatives.*

LANC Response:

(See combined technology response below.)

Finding 29: The program does not effectively communicate with staff regarding technology.

LANC Response:

(See combined technology response below.)

Recommendation IV.3.29.1-Related to finding number IV.6.36.1 below regarding communication, LANC should develop a plan to regularly update staff program-wide about technology issues and planned technology improvements. The technology department should be consistently updating administrative office staff regarding user experiences.

Finding 30: The program does not sufficiently engage in long-term technology planning. Technology initiatives are not considered as part of strategic planning.

Recommendation IV.3.30.1-The technology department should reinstate quarterly planning meetings. The technology department should consider a regular way of involving other staff in technology planning. The technology team should regularly update the rest of upper-level management.

LANC Technology Response:

Admittedly, LANC was going through a difficult transitional period with its technology as the OPP was interviewing staff and preparing for its site visit mid-2018. (Due to the complete loss of state legislative funding and the resulting transition to other funding, LANC significantly expanded its staff but could not fund a concomitant tech expansion.) Although we do not dispute the technology findings, much has transpired and our entire technology situation has been improved and transformed since the OPP exit in October of last year.

LANC has formed a committee of managers and staff who have been working successfully with the Legal Server consultants on our case management onboarding, including the complete data mapping and transition of information from Legal Files to Legal Server. We have brought back in Gray Wilson, who retired last year and who managed our case management and reporting for over twenty years, to assist with our onboarding and data mapping.

LANC has negotiated a contract with NetSmart to take over complete maintenance and administration of our network infrastructure and servers. NetSmart was instrumental in resolving the login and stability issues that troubled us in 2018. There have been no issues since we brought them in on (on an *ad hoc* basis) to troubleshoot last November. The service contract that LANC negotiated with NetSmart is currently awaiting approval from OCE. NetSmart also will assist with firewall and thin client upgrades that are planned system-wide to support all the new software. These upgrades also are awaiting approval from OCE.

NetSmart involvement significantly bolsters our IT department and personnel resources. LANC will have sufficient IT personnel to focus on Legal Server and the attendant supporting upgrades. Nonetheless, LANC is in the process of hiring another staff person for its HelpDesk.

While we think that complaints about “effective communication” were borne out of the frustration from our midyear problems, we agree that we can do a better job of communicating with staff and updating them on system status and technology improvements. The IT staff are designing a notification tree to be used to notify the field when network and system issues arise. LANC will reform its staff technology committee and schedule it to meet quarterly.

We will otherwise work to ensure that these recommendations are fully adopted and implemented into our operations.

Human Resources Administration

Finding 33: The human resources team is highly-skilled but understaffed.

Finding 34: Employees are supported by a generous benefits program and a detailed performance evaluation process, but LANC’s low salaries and lack of a formal grievance system are a weakness.

Recommendation IV.5.34.1-The human resources department should ensure that all staff receives timely performance evaluations.

LANC Response:

Low salaries are indeed a weakness. But LANC already raises its \$25M budget in an environment with low IOLTA funding and almost no support from the state legislature, which remains hostile to our work. Our ability to impact this dynamic is limited by the political situation here and our regulations. We have used technology to reach more clients while providing quality and meaningful legal assistance. The choices left for LANC are to maintain services at the current level or to reduce services and pay staff more.

The HR director and the deputy director have devised an improved system for notifying local and project managers of upcoming evaluations and for getting these evaluations completed.

Recommendation IV.5.34.2-The program should create a formal grievance procedure.

LANC Response:

LANC has a grievance policy for employees who feel that they have been subjected to an adverse employment action that they believe violates a personnel or other policy. The LANC Board decided years ago that it regarded personnel determinations as the responsibility of management and would not address such grievances except when the employee reports directly to the executive director.

LANC will review this recommendation.

Overall Management and administration

Finding 35: The program's lean staffing model for the administrative office is not providing sufficient support to a program of LANC's size.

Recommendation IV.6.35.1:LANC should examine staffing levels and, as resources permit, expand staff in the administrative office to appropriately support the program, particularly in the areas of human resources and technology.*

LANC Response:

LANC is undertaking a review of this recommendation. However, other than technology staff, to which we have responded above, the recommendation, fails to identify any shortcomings in our administrative operation as justification for this recommendation. Moreover, at that same time that OPP finds line advocacy salaries to be a weakness, it now recommends hiring additional administrative and back office staff, simply based on our low overhead and administrative cost percentage, without identifying an operational need or deficiency. LANC recently reviewed our 2018 audit with our independent auditors. Ironically, our outside auditors were highly complimentary of our ability to maintain such tight internal controls and to successfully administer our large, geographically decentralized, and varied program with dozens of funding sources and responsibilities while maintaining low, but reasonable, administrative costs. The auditors were baffled by the recommendation.

We feel that unless there are findings of significant operational deficiencies in our administrative operation, this recommendation is unwarranted and, at the very least, does not warrant Tier 1 status.

Finding 36: Program staff would appreciate more consistent and regular communication from the administrative office.

Recommendation IV.6.36.1:The administrative office, including the executive director, should engage in consistent, regularly scheduled communication across the program regarding proposed programmatic changes, strategic planning, litigation updates, technology updates, and other issues of concern to staff across the organization.*

LANC Response:

We will otherwise work to ensure that these recommendations are fully adopted and implemented into our operations.

General Resource Development

Finding 37: The resource development team pursues a range of strategies to increase individual giving.

Participation in an Integrated legal services delivery system

Finding 38: LANC is an important and trusted partner in ensuring access to justice in North Carolina.



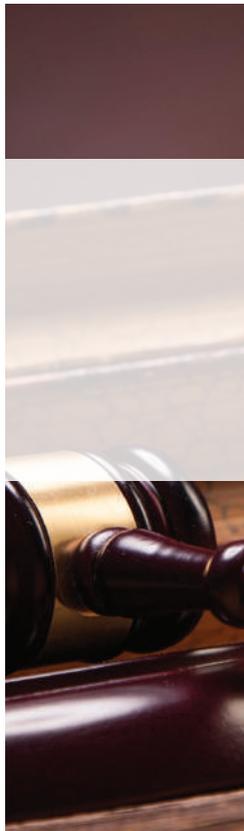
APPENDIX
ATTACHMENT 4

FINAL REPORT

MARCH

2017

RECOMMENDATIONS
FOR STRENGTHENING THE UNIFIED
COURT SYSTEM OF NORTH CAROLINA



NORTH CAROLINA
COMMISSION ON THE
ADMINISTRATION
OF LAW & JUSTICE

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North Carolina Commission on the Administration of Law and Justice (NCCALJ)
 P.O. Box 2448, Raleigh, NC 27602 // www.nccalj.org

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LETTER *from the* CO-CHAIRS

THANK YOU FOR THE OPPORTUNITY TO CO-CHAIR
THE NORTH CAROLINA COMMISSION ON THE
ADMINISTRATION OF LAW AND JUSTICE.

TO: MARK MARTIN, CHIEF JUSTICE OF THE
SUPREME COURT OF NORTH CAROLINA

The five co-chairs of the North Carolina Commission on the Administration of Law and Justice (NCCALJ) are pleased to present to you the Commission's Final Report and recommendations.

Part One of the NCCALJ Final Report provides background on our work and the overall themes that guided our recommendations. Part Two contains the individual reports of each of our five Committees.

This Final Report is the culmination of fifteen months of focused inquiry, informed dialogue, robust discussion, and extensive collaboration. We are confident that the recommendations of the Commission will significantly improve the administration of justice in the courts of North Carolina for the people of North Carolina.

Thank you for the honor of serving as the chairs of this important work.



During his speech at the North Carolina Bar Association in Cary, North Carolina, on May 27, 2015, Chief Justice Mark Martin announced the creation of the North Carolina Commission on the Administration of Law and Justice and appointed the five committee co-chairs. Pictured from left to right: David F. Levi, Justice Barbara A. Jackson, Chief Justice Mark Martin, Judge William A. Webb, Catharine Biggs Arrowood, and J. Bradley Wilson.

Catharine Biggs Arrowood
Past President, North Carolina Bar Association
Chair, Legal Professionalism Committee

Judge William A. Webb
Retired Magistrate Judge, U.S. District Court
for the Eastern District of North Carolina
Chair, Criminal Investigation and Adjudication Committee

Justice Barbara A. Jackson
Associate Justice, Supreme Court of North Carolina
Chair, Technology Committee

J. Bradley Wilson
President and CEO, Blue Cross and
Blue Shield of North Carolina
Chair, Public Trust and Confidence Committee

David F. Levi
Dean, Duke Law School
Chair, Civil Justice Committee

COMMISSION MEMBERS

DRAWN STATEWIDE FROM BUSINESS, ACADEMIA,
THE JUDICIAL BRANCH, THE LEGISLATIVE BRANCH,
THE EXECUTIVE BRANCH, THE LEGAL PROFESSION,
AND THE NON-PROFIT SECTOR

COMMISSIONERS

The NCCALJ is an independent, multidisciplinary commission comprised of leaders from business, academia, the Judicial Branch, the Legislative Branch, the Executive Branch, the legal profession, and the non-profit sector. The Commission includes these five co-chairs and five Committees:

Civil Justice Committee

Dean David F. Levi, Co-Chair
Janet Ward Black / Alfred P. Carlton Jr. /
Sheila V. Eley / E.D. Gaskins Jr. / Robert E.
Harrington / George R. Hausen Jr. / Judge

J. Calvin Hill / Robert A. Ingram / Anne H.
Lloyd / Judge Julian Mann III / Michael W.
Mitchell / Judge W. Osmond Smith III

Criminal Investigation and Adjudication Committee

Judge William A. Webb (ret.), Co-Chair
Augustus A. Adams / Sheriff Asa Buck III /
Randy Byrd / James E. Coleman Jr. / Kearns
Davis / Judge Paul A. Holcombe III / Darrin
D. Jordan / Robert C. Kemp III / Magistrate
Sharon S. McLaurin / District Attorney R.

Andrew Murray Jr. / Diann Seigle / Judge Anna Mills Wagoner

Legal Professionalism Committee

Catharine Biggs Arrowood, Co-Chair
 Dean Luke Bierman / Richard T. Boyette /
 Dean Jay Conison / Dean Phyliss Craig-Taylor /
 Representative N. Leo Daughtry / Andrew H. Erteschik / Judge A. Robinson Hassell /
 Mark W. Merritt / Richard G. Minor /
 Justice Robert F. Orr (ret.) / Raymond C. Pierce / Lisa M. Sheppard

Public Trust and Confidence Committee

J. Bradley Wilson, Co-Chair
 Dean Martin H. Brinkley / Judge Wanda G. Bryant / Sheriff Earl R. Butler / Douglas Clark / Frank E. Emory Jr. / Juan A. Flores Jr. / Frank B. Holding Jr. / John Hood / A. Dale Jenkins / Senator Floyd B. McKissick Jr. / Dean Suzanne Reynolds / Robert C. Stephens / Representative Kenneth L. Goodman (09/2015 – 02/2016)

Technology Committee

Justice Barbara A. Jackson, Co-Chair
 Carl S. Armato / Senator Harry Brown / Judge Susan R. Burch / Jason M. Hensley / Dean J. Rich Leonard / The Honorable James J. MacCallum / Chief Judge Linda M. McGee / Iristine McNair / Brooks Raiford / Carolyn V. Timmons / Rajesh Tripathi / Jeff Frazier (09/2015 – 06/2016)

- **Reporters** — Jon Williams, *Chief Reporter* / Andrew P. Atkins, *Public Trust and Confidence* / Paul Embley, *Technology* / Darrell A.H. Miller, *Civil Justice* / Matthew W. Sawchak, *Legal Professionalism* / Jessica Smith, *Criminal Investigation and Adjudication* / Mildred R. Spearman, *Public Trust and Confidence* / Kurt D. Stephenson, *Technology*

- **Ex Officio** — Mary C. McQueen, *President, National Center for State Courts* / Jonathan D. Mattiello, *Executive Director, State Justice Institute* / Maurice Green, *Executive Director, Z. Smith Reynolds* / L. David Huffman, *Executive Director, Governor’s Crime Commission* / Michael R. Smith, *Dean, UNC School of Government* / Thomas H. Thornburg, *Senior Associate Dean, UNC School of Government* / Dr. Peter M. Koelling, *Director and General Counsel, Judicial Division, American Bar Association* / Judge William M. Cameron, *Judicial Council* / The Honorable Susan S. Frye, *Chair, Conference of Clerks of Superior Court Technology Committee* / Representative Sarah Stevens, *Chair, North Carolina Courts Commission* / Chief Justice William Boyum, *Cherokee Supreme Court* / Jennifer Harjo, *Chief Public Defender, New Hanover County* / Seth Edwards, *District Attorney, Judicial District 2* / Leslie Winner, *Z. Smith Reynolds (09/2015 – 01/2016)*

- *The following additional people served as part of the Criminal Investigation and Adjudication Committee’s Subcommittee on Indigent Defense: Judge Athena Brooks, Thomas Maher, LeAnn Melton, John Rubin, and Michael Waters.*

- *The following additional people served as part of the Criminal Investigation and Adjudication Committee’s Subcommittee on Juvenile Age: Michelle Hall, William Lassiter, LaToya Powell, James Woodall, and Eric Zogry.*

EXECUTIVE SUMMARY

PUBLIC TRUST AND CONFIDENCE IN THE COURTS IS AT ITS HIGHEST WHEN THE COURTS ARE SEEN AS FAIR, ACCESSIBLE, AND EFFECTIVELY MANAGED.

This report contains the final recommendations of the North Carolina Commission on the Administration of Law and Justice (NCCALJ).

Two decades have passed since the last time North Carolina comprehensively reviewed its court system. In September 2015, increasingly aware of mounting systemic challenges, Chief Justice Mark Martin convened the NCCALJ, a sixty-five member, multidisciplinary commission, requesting that the Commission undertake a comprehensive and independent

review of North Carolina’s court system and make recommendations for improving the administration of justice in North Carolina.

The Commission’s membership was divided into five Committees: (1) Civil Justice, (2) Criminal Investigation and Adjudication, (3) Legal Professionalism, (4) Public Trust and Confidence, and (5) Technology.

Each Committee independently made recommendations within its area of study.

Highlights of the recommendations in the five reports include:

- Implementing a strategic technology plan for paperless courthouses, including e-filing
- Raising the juvenile age from sixteen to eighteen years old for crimes other than violent felonies and traffic offenses
- Reducing case delays and improving efficiency based on data analytics
- Assisting the growing number of self-represented litigants in new ways
- Taking steps to change how judges and justices are selected and retained
- Developing new tools to improve pretrial detention decision-making
- Improving the state's indigent defense system
- Surveying the public to better gauge its perception of the courts
- Training court officials to improve procedural fairness and eliminate the possibility of bias
- Creating an entity to confront changes in the market for legal services
- Restoring legal aid funding and loan repayment assistance for public interest lawyers
- Improving civic education in schools and through an active speakers bureau

The NCCALJ, through this report, presents the recommendations of the five Committees to Chief Justice Martin.

PART ONE

**“A FREQUENT RECURRENCE TO FUNDAMENTAL
PRINCIPLES IS ABSOLUTELY NECESSARY
TO PRESERVE THE BLESSINGS OF LIBERTY.”**

North Carolina Constitution, Article I, Section 35

PART ONE

1

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PART ONE

**“A FREQUENT RECURRENCE TO FUNDAMENTAL
PRINCIPLES IS ABSOLUTELY NECESSARY
TO PRESERVE THE BLESSINGS OF LIBERTY.”**

North Carolina Constitution, Article I, Section 35

INTRODUCTION

For over 200 years, North Carolina’s courts have preserved the rule of law by providing a fair and accessible forum for the resolution of disputes. That solemn duty has not changed.

What has changed is the environment in which North Carolina’s courts fulfill this duty. Driven by developments in technology, our economy, and our demographics, the North Carolina judicial system finds itself facing challenges like never before. Indeed, the pace of change is likely only to accelerate.

The North Carolina Constitution reminds us that “[a] frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.”¹ Several previous “recurrence[s] to fundamental principles” — in particular, the NCCALJ’s predecessor commissions — made great strides toward improving the quality of justice in North Carolina.

But there is still room to improve. Today, 53% of the public believes that outcomes in the courts

are fair only some of the time or not at all; 63% of the public believes that cases are not handled in a timely fashion; and only 42% of the public believes that the courts are sensitive to the needs of the average citizen.²

For any court system, this is a call to action. It is time, once again, for a recurrence to the fundamental principles that provide for the rule of law, fair and accessible courts, and the blessings of liberty.

In September 2015, Chief Justice Mark Martin convened the North Carolina Commission on the Administration of Law and Justice to undertake that vital task. At the time, he reminded the Commission that “the power to administer justice is a sacred public trust that must be guarded carefully by each generation.”

This report documents the work that this generation must do to maintain that trust, both today and in the future.

THE COMMISSION’S WORK

Earlier court reform efforts focused on basic structural issues requiring constitutional changes. The NCCALJ, by contrast, has focused its efforts primarily on improving operations within the existing administrative framework.

Many of the recommendations are within the Judicial Branch’s authority to implement on its own. Other recommendations require the support of the North Carolina General Assembly, through either legislation or appropriations.

The recommendations in this report are data-driven and based on extensive discussion. Each recommendation is important on its own, but the Commission’s body of work as a whole creates a framework for a dramatic, systemic improvement to the administration of justice in North Carolina.

The recommendations cover many aspects of the courts’ work and build on several core values:

- A court system should have the trust and confidence of the people whom it serves.
- The courts exist solely to uphold the rule of law for the people that it serves.
- Court proceedings should be fair, accessible, and effectively managed.

The Commission was structured as an independent, multidisciplinary study group comprised of sixty-five voting members, eight reporters, and over a dozen ex officio members.

Collectively, the Commission comprised a robust and diverse cross section of leaders from the business world, the nonprofit sector, state and local government, the legal profession, and academia, each of whom volunteered a significant amount of time (collectively, more than 4,000 hours) to serve on the Commission.

COMMISSION TIMELINE

2015

03.04.2015

Chief Justice Mark Martin promises to convene a commission during his State of the Judiciary address in Raleigh.

05.27.2015

Chief Justice Martin formally announces the new North Carolina Commission on the Administration of Law and Justice.

- The co-chairs of the NCCALJ's five Committees are appointed.

09.03.2015

Chief Justice Martin announces full Commission membership.

09.30.2015

Chief Justice Martin convenes the inaugural NCCALJ meeting in Raleigh.

09.30.2015

Committees begin comprehensive work.

11.19.2015

NCCALJ partners with the polling centers of Elon University and High Point University to measure public trust and confidence in North Carolina courts.

2016

01.29.2016

Full Commission meeting is held in Chapel Hill at the UNC School of Government.

06.02.2016

Commission reaches midpoint of work and produces five interim reports for public comment.

- NCCALJ announces four locations across the state for public hearings.

06.10.2016

Full Commission meeting held in Cary at the North Carolina Bar Association.

07.15.2016

Public comment period begins.

08.03.2016

Public hearing is held at the Guilford Technical Community College in Jamestown.

08.11.2016

Public hearing is held at the New Hanover County Historic Courthouse in Wilmington.

08.18.2016

Public hearing is held at the Buncombe County Judicial Complex in Asheville.

08.25.2016

Public hearing is held at the Charlotte-Mecklenburg Government Center in Charlotte.

09.06.2016

Public comment period ends.

- Committees incorporate public comment and finalize recommendations.

12.02.2016

NCCALJ holds final full Commission meeting in Raleigh.

2017

03.15.2017 Final Report is presented to Chief Justice Mark Martin.

The Commission was divided into five Committees, which correspond with five areas of inquiry: (1) Civil Justice, (2) Criminal Investigation and Adjudication, (3) Legal Professionalism, (4) Public Trust and Confidence, and (5) Technology. Committee membership can be found in the “Commission Members” section of this report.

The Commission met four times as a full body, and each Committee met many times on its own over a fifteen month period. Seeking as much public input as possible, the Commission conducted four public hearings in the summer of 2016 and also solicited comments online from Judicial Branch stakeholders and members of the general public.

Each Committee produced its own final report of recommendations, and these five reports can be found in Part Two. Additional material is provided in appendices attached to Part Two and will be available online at the Commission’s website, www.nccalj.org, through at least 2020. Also available on this website is a complete record of each Committee’s work — including minutes of meetings, presentation materials, public comments, and other materials.

BY THE NUMBERS

- 62** Meetings
- 102** Presenters, Speakers, and Panelists
- 4,200** Estimated Hours Volunteered by Commissioners
- 4** Public Hearings
 - **08/03/2016** Jamestown
 - **08/11/2016** Wilmington
 - **08/18/2016** Asheville
 - **08/25/2016** Charlotte
- 423** In attendance at Public Hearings
- 238** Public Comments
 - **211** Unique individual comments
 - **27** Judicial Branch stakeholder organizations commenting

A LOOK BACK: HOW WE GOT HERE

A Major Restructuring. North Carolina has conducted an in-depth review of its court system only a few times since becoming a state. The first was in the post-Civil War Reconstruction period. That examination led to the replacement of lifetime legislative appointment of judges with public election of judges and to the proliferation of local courts — recorders’ courts, city courts, county courts, mayors’ courts — organized around the needs of each local community. The society

served by this system was stable, rural, and agrarian.

The 20th century brought growth in population, mobility, and industry to the state, and with it, new challenges to North Carolina’s courts. The notion of equal justice became strained as the unique structure of each local court system meant that similar cases were not handled similarly in all parts of the state. This patchwork of courts,

with their accompanying differences in rules, procedures, and jurisdictional scope, defied understanding to all but insiders. It produced broad disparities in outcomes under what was, at least nominally, the same body of state law. Increasingly, these circumstances eroded and undercut the trust and confidence of the very people that the courts were intended to serve.

By the 1950s, the political, business, and legal leadership of the state decided that something needed to be done and initiated the second statewide court reform effort. The job of the North Carolina Bar Association’s Committee on Improving and Expediting the Administration of Justice in North Carolina was simple: create a system better suited to a modern, industrial state.³ That committee, known popularly as the Bell Commission (so named after its chair, Judge Spencer Bell), provided the framework for the court structure that is still in place today.

“ JUDICIAL REFORM IS NO SPORT FOR THE SHORT-WINDED. ”

Arthur T. Vanderbilt,
former Chief Justice of the
New Jersey Supreme Court

The Bell Commission envisioned a court system that was unified, uniform, and state funded, and the system that emerged by 1970 accomplished those goals. All local courts were replaced by a uniform system of district court judges and magistrates who joined with the Supreme Court, the superior courts, and the newly created Court of Appeals in a new General Court of Justice. Court

costs, jurisdiction of judges, and salaries of all court officials became uniform throughout the state. In addition, the Bell Commission’s work led to the creation of both the Court of Appeals and the Administrative Office of the Courts. It took fifteen years from the creation of the study until full implementation, but the results were profound.

The Bell Commission understood that a unified body of state law required a unified court system to administer justice under the law. The court system in the 1950s had revealed the shortcomings that resulted when local control trumped uniformity. Thus, under the Bell Commission’s leadership, the tension between uniformity and local management was resolved in favor of uniformity to the greatest extent possible.

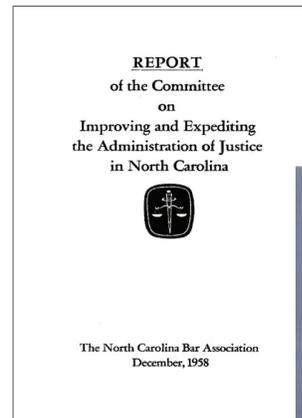
As a result, for the first time in decades, a reasonably informed citizen could understand the system. Access became easier for someone unfamiliar with the judicial system, and cases were no longer dismissed for failure to honor some local rule. In a unified system, a citizen is always in the “right court,” even if his or her case is transferred to a different level within that court system. But uniformity, like justice itself, is always a work in progress.

A New Millennium Approaches. By the 1990s, a court system created in the 1960s was serving a state that had continued to change dramatically, mostly through growth in population and caseload. As the year 2000 approached, the court system engaged in a third comprehensive review, driven by a sense that the public was frustrated by delay, partiality, and lenience on crime. This study, the Commission on the Future of Justice and the Courts in North Carolina, commonly known as the Futures Commission, examined the court system for over two years.⁴

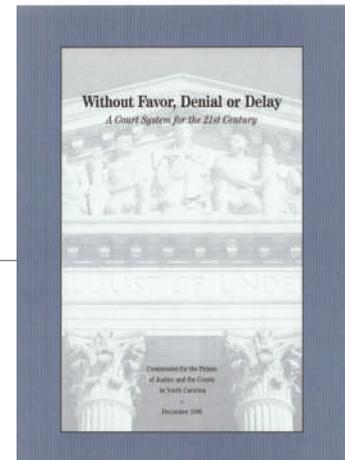
The Futures Commission, which had no then-current judicial employees among its membership, concluded that the system was structurally incapable of responding to ongoing societal change and delivering the quality of justice that the public sought. Its recommendations focused on a number of important tenets:

- Resources should be used effectively.
- Responsibility should be allocated in a way that promotes accountability.
- Courts should be self-governed with citizen input.
- Courts should embrace modern technology.
- Courts should improve services to families.

The resulting recommendations were bold. They included significant structural changes to eliminate jurisdictional distinctions between the trial courts; appointment rather than election of judges and clerks of court; creation of statewide family courts; merger of existing districts into much larger administrative units; and the transfer of much of the governance authority from the legislature to the Judicial Branch.



Bell Commission Report, 1958



Futures Commission Report, 1996

Ultimately, however, advocates of the Futures Commission’s recommendations were disappointed. The main recommendations were either not adopted or significantly weakened. An advisory Judicial Council that included citizens was created but lacked formal authority. Family Courts were established only as pilot programs.

The Futures Commission’s 1996 report remains an important document, however. The Commission’s work in identifying structural and operational pressures on the courts and in articulating principles important to the improvement of the judicial system greatly informed the work of the NCCALJ.

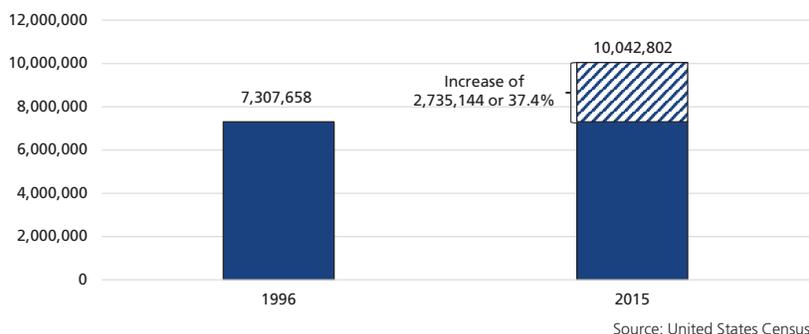
ADAPTING TO A NEW ENVIRONMENT

Today, the basic structure of the North Carolina court system remains largely as it was in the 1960s. But North Carolina itself has continued to change dramatically since the Futures Commission’s report was issued over twenty

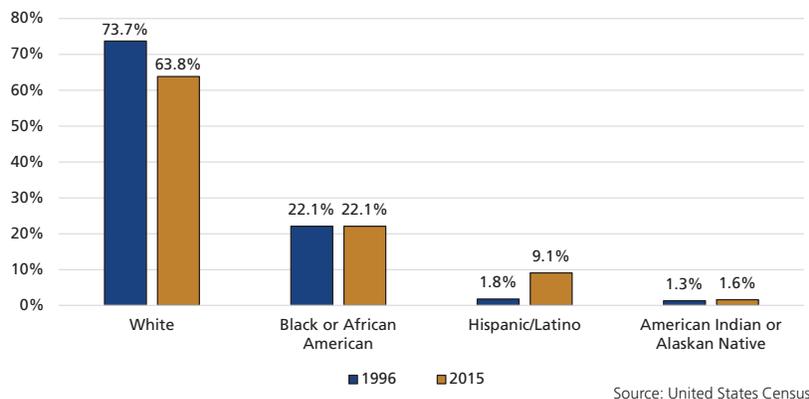
years ago. Many factors have shaped the NCCALJ’s recommendations.

Population. In the two decades since the Futures Commission’s study, North Carolina’s population

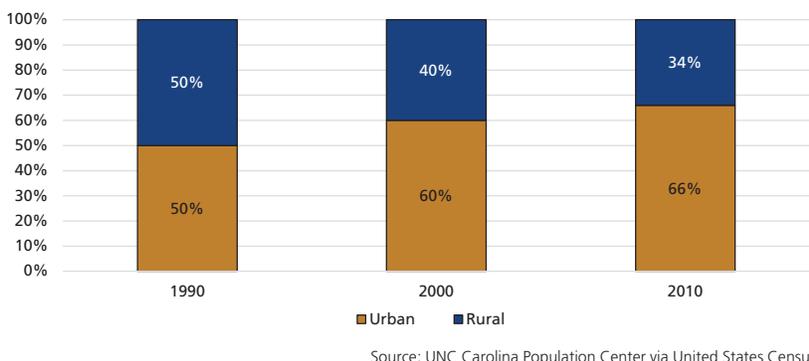
North Carolina Total Population
1996 - 2015



Select Population Demographic Changes
1996 - 2015



North Carolina Urbanization Trend
1990 - 2010



has grown by more than two million. North Carolina is now the nation’s ninth largest state, and it is more culturally, ethnically, and linguistically diverse than ever before.⁵ Urbanization has created a growing wealth divide across counties and regions. Cities and surrounding areas are growing rapidly while rural areas are not, with some even losing population. Providing uniform court services and a uniform experience for citizens is challenging when the population of the largest county in the state (Mecklenburg) is 258 times greater than that of the smallest (Tyrrell).⁶ In 1970, the population ratio between the largest judicial district and the smallest was four to one; now, it is seventeen to one. The work of the courts in each district is the same, but the population that each district serves is not.

Mobility. North Carolina’s society is also increasingly mobile. Many people live in one county and work one, two, or even three counties away. So when they need to go to the courthouse — and most court appearances must be made in person — it is a major investment of time. Efficient use of that time is more important than ever.

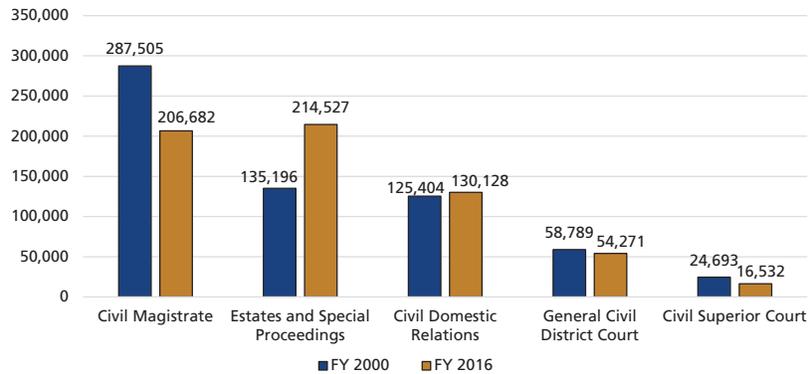
Court workload. A court’s work is the resolution of public and private disputes. One measure of that work is case filings, which range from major felonies, to private disputes

involving tens of millions of dollars, to stop sign violations, to small claims actions.

Since 2000, the courts have experienced increases in total filings followed by decreases during the recession years. The peak year for filings was 2007-08, followed by declines in every successive year. In the last two years the courts' caseload has remained relatively stable, mirroring the experiences of other state courts across the country.

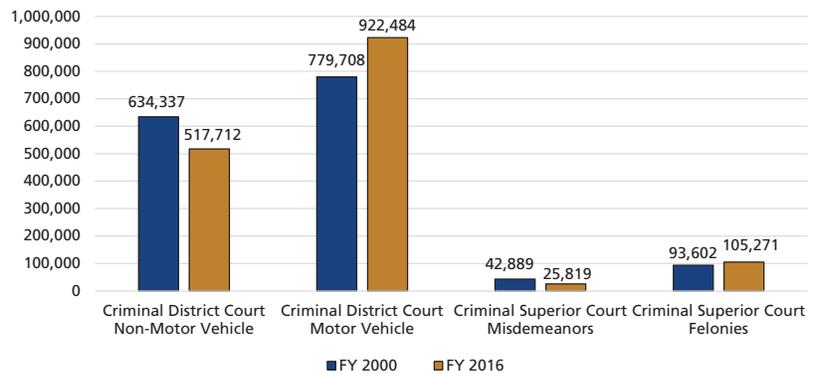
But these declines are not evenly distributed and can paint an inaccurate picture of the courts' workload. The largest declines are in the cases that take the least amount of time — namely, small claims and misdemeanor cases. The types of cases that have become more complex and resource intensive, on the other hand, have not seen significant declines. The factors driving these trends include the increasing complexity of legal and regulatory standards, changes in demographics (e.g., language interpreters are needed more often), and economic pressures on all parties involved. For example, in our traffic courts, which have the highest volume of cases in the system, people are increasingly appearing in court to contest the charges or plead to a lesser offense rather than admitting guilt and paying the penalty remotely.⁷

Civil Case Filings
FY 2000 - FY 2016



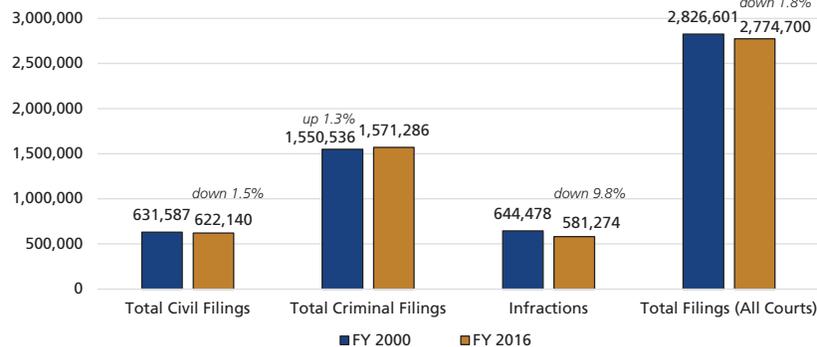
Source: North Carolina Administrative Office of the Courts

Criminal Case Filings
FY 2000 - FY 2016



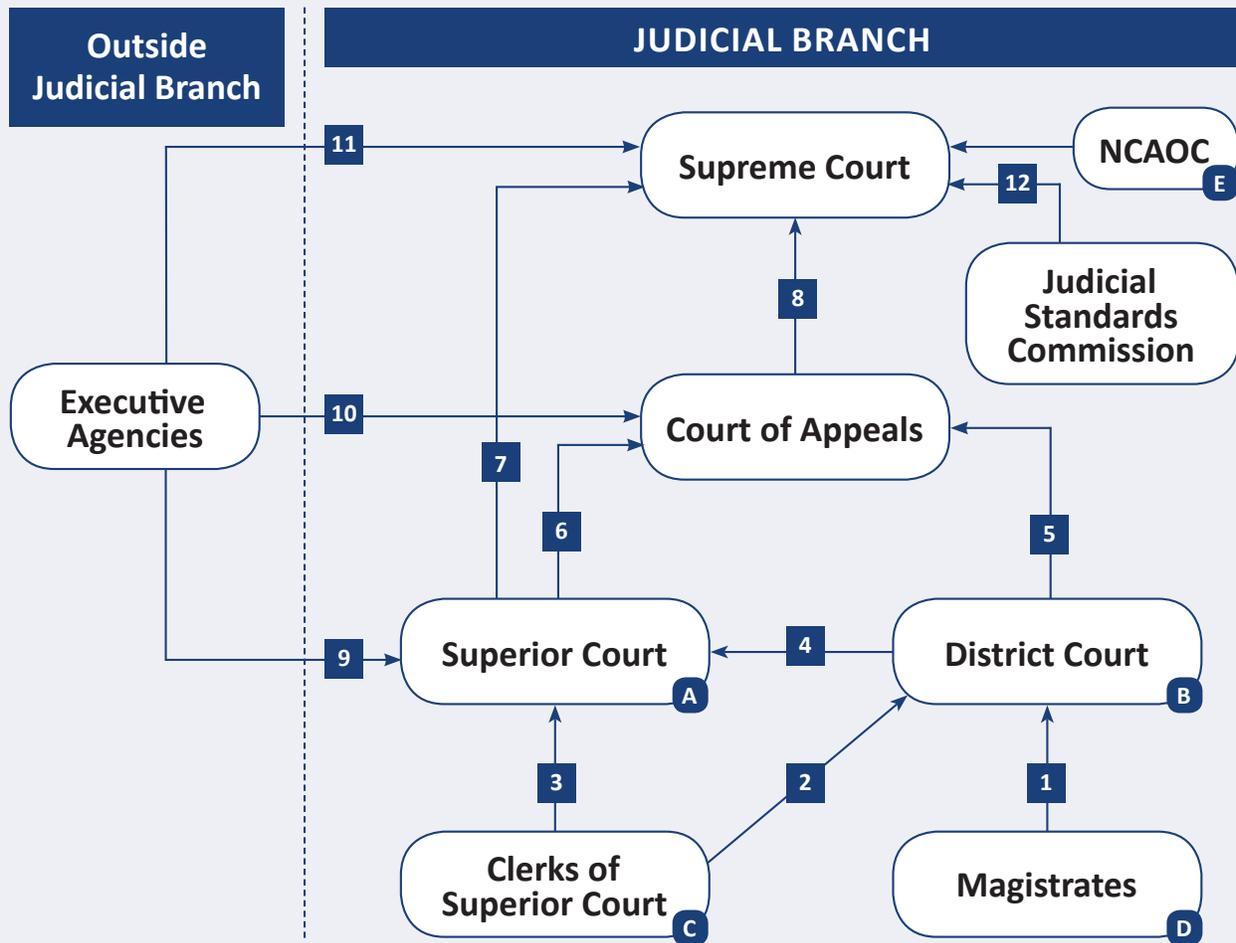
Source: North Carolina Administrative Office of the Courts

All Case Filings
FY 2000 - FY 2016



Source: North Carolina Administrative Office of the Courts

JUDICIAL BRANCH ORGANIZATIONAL STRUCTURE AND ROUTES OF APPEAL



- A. Superior courts have original jurisdiction over all felony cases and civil cases in which the amount in controversy exceeds \$25,000.*
- B. District courts have original jurisdiction over misdemeanor cases not assigned to magistrates; probable cause hearings; accept guilty / no contest pleas in certain felony cases; civil cases in which the amount in controversy is \$25,000 or less;* juvenile proceedings; domestic relations; mental health hospital commitments.
- C. Clerks of Superior Court have original jurisdiction over probate and estates, certain special proceedings (condemnations, adoptions, partitions, foreclosures, etc.); in certain cases, may accept guilty pleas or admissions of responsibility and enter judgment.

- D. Magistrates have original jurisdiction to accept certain misdemeanor guilty pleas and admission of responsibility to infractions; worthless check misdemeanors valued at \$2,000 or less; small claims in which the amount in controversy is \$10,000 or less; valuation of property in certain estate cases.
- E. The Chief Justice appoints the Director of the North Carolina Administrative Office of the Courts. The NCAOC serves the Judicial Branch through Budget Management, Communications, Court Programs, Court Services, Financial Services, General Counsel, General Services, Guardian ad Litem, Human Resources, Organizational Development, Research and Planning, and Technology.

1. Most appeals from magistrates go to the district court for de novo proceedings.
2. Appeals involving adoptions; appeals of foreclosures of a certain jurisdictional amount may go to the district court.
3. All appeals not handled by the district court.
4. Appeals in all criminal cases for de novo trial.
5. Appeals in all civil and juvenile cases.
6. All appeals which do not proceed directly to the Supreme Court.
7. Appeals in cases in which a first-degree murder defendant has been sentenced to death. Appeals from the business court. Appeals in redistricting cases. The Supreme Court conducts discretionary review of appeals directly from the trial courts in cases of significant public interest, in cases involving legal principles of major significance, in cases where delay would cause substantial harm, or in cases where the Court of Appeals docket is unusually full.

8. Appeal of right exists in cases involving certain constitutional questions and in cases in which there has been a dissent in the Court of Appeals. The Supreme Court also conducts discretionary review of appeals from the Court of Appeals in cases of significant public interest, in cases involving legal principles of major significance, in cases where delay would cause substantial harm, or in cases where the Court of Appeals docket is unusually full.
9. Appeals from administrative decisions that do not proceed directly to the Supreme Court or the Court of Appeals.
10. Appeals of the Industrial Commission, the North Carolina State Bar, the Property Tax Commission, the Commissioner of Insurance, the Department of Health and Human Services, the Secretary of Environmental Quality, and the Utilities Commission (in decisions other than general rate cases).
11. Appeals of final orders of the Utilities Commission in general rate cases.
12. Recommendations from the Commission for removal, suspension, censure, or public reprimand.

*The district and superior courts have concurrent original jurisdiction in civil actions (G.S. 7A-240). The small claims court is the proper division for the trial of civil actions in which the amount in controversy is \$10,000 or less, and the district court division is the proper division for matters of \$25,000 or less (G.S. 7A-243); the superior court division is the proper division for matters exceeding \$25,000 in controversy.

Funding. Just as caseloads have fluctuated, so has court funding. Courts need resources of all types — people, training, hardware and software, postage, filing cabinets, subscription-based references, and books, to name a few. All of these come with a price tag.

The recession that began in 2008 dramatically affected the court system’s state funding. Over four years, the courts sustained overall budget reductions of more than \$100 million and the loss of 590 full-time employees statewide.⁸ During that period, pay was frozen.

NORTH CAROLINA COURT PERSONNEL

Source: North Carolina Administrative Office of the Courts Statistical and Operational Report of Human Resources, 2016. All data as of December 31, 2016.

Total Judicial Branch Personnel – 6,000

SUPREME COURT JUSTICES

Number of Positions – 1 Chief Justice
6 Associate Justices

Method of Selection – Partisan Election
Unit of Selection – State
Length of Term – 8 years

COURT OF APPEALS JUDGES

Number of Positions – 1 Chief Judge
14 Associate Judges

Method of Selection – Partisan Election
Unit of Selection – State
Length of Term – 8 years

SUPERIOR COURT JUDGES

Number of Positions – 109
Method of Selection – Nonpartisan Election
Unit of Selection – Superior Court District
Assignment to Cases – Rotating basis among Superior Court Districts within one of eight Judicial Divisions

Length of Term – 8 years

DISTRICT COURT JUDGES

Number of Positions – 270
Method of Selection – Nonpartisan Election
Unit of Selection – District Court District
Length of Term – 4 years

DISTRICT ATTORNEYS

Number of Positions – 44
Method of Selection – Partisan Election
Unit of Selection – Prosecutorial District
Length of Term – 4 years

CHIEF PUBLIC DEFENDERS

Number of Positions – 16
Method of Selection – Appointment by the Senior Resident Superior Court Judge after nomination by the local bar
Unit of Selection – Public Defender District
Length of Term – 4 years

CLERKS OF SUPERIOR COURT

Number of Positions – 100
Method of Selection – Partisan Election
Unit of Selection – County
Length of Term – 4 years

MAGISTRATES

Number of Positions – 675
Method of Selection – Appointment by the Senior Resident Superior Court Judge after nomination by the Clerk of Superior Court
Unit of Selection – County
Length of Term – 2-year initial term, 4-year subsequent terms

Technology programs were stalled or eliminated. Travel was restricted. Equipment needs were deferred. Voluntary reductions in force were implemented. Emergency judges volunteered their time to keep cases moving. And some court programs were eliminated.

North Carolina avoided the draconian measures enacted in some states, such as curtailing sessions of civil court or closing courthouses for parts of the week due to furloughs or reduced staffing. Our court leaders were resolute in their efforts to keep the courts functioning while conserving resources. Every expenditure was scrutinized and weighed against the other needs that funding could meet.

Addressing this challenge often meant that court officials and employees assumed the duties of positions that were eliminated and changed their practices to increase efficiency. Leaders throughout the Judicial Branch — judges, clerks of court, magistrates, public defenders, assigned counsel, prosecutors, North Carolina Administrative Office of the Courts (NCAOC) staff, and courthouse staff — proved their commitment to the mission of providing fair, accessible, and efficient dispute resolution.

With a strengthening economy, the General Assembly increased court funding in 2013. For the 2015-17 biennium, the General Assembly provided Judicial Branch personnel with their first significant pay increase in many years and restored operational funding to levels that allowed the courts to resume normal operations. Basic services, like travel and equipment replacement, returned to pre-recession levels. As a result, our court system is poised to move past a time of challenges and toward a time of systemic improvement.

Technology. We live in a digital world where computers and mobile devices are ubiquitous and paper is an afterthought. The courts, meanwhile, have lagged behind. For centuries, paper has been essential for court work. In 2016, clerks' offices in North Carolina processed over 31 million pieces of paper, requiring over 4.3 miles of shelving.⁹ That paper gets moved from files to courtrooms, and back again — over and over and over, every day. Each month, hundreds of thousands of these files are pulled from shelves and carried to and from more than 500 courtrooms. The court system is awash in this daily tide of paper.

A major task of every clerk's office is to transmit information from paper onto computers. The data fields captured — who, what, where, when — grow continuously as the courts, government agencies, and the public seek more and more information about what happens in court. The Department of Public Safety, the Division of Motor Vehicles, the Department of Revenue, and the Federal Bureau of Investigation are just a few of those who seek improved access to court information.

Another technological challenge for the courts is managing one of the largest cash operations in the state. Clerks' offices processed over \$737 million in fiscal year 2015-16.¹⁰ This operation is run with technology that is generations behind industry standards and is siloed independently from other case records and financial management systems.

Pockets of innovation exist where the courts have used technology to improve their management of paperwork and accounting. But the vast majority of court processes are still paper driven. Today's court technology is a hodgepodge of old and new, including workhorses built in COBOL computer programming language from the 1980s, industry-current Java, and WebSphere applications that would be at home in any modern corporate

environment. Multi-generational technology complicates innovation and requires a workforce that is skilled both in systems that are state-of-the-art and in systems that are no longer even taught in school. Put simply, the pattern of more paper plus more unintegrated technology plus more data entry must end.

But technology also holds tremendous opportunities for addressing many of the challenges that our judicial system faces. The federal court system migrated to a paperless court system in the 1990s. There, court documents are filed and stored solely within that electronic system. Litigants file them electronically, without having to visit the courthouse, and the public can conveniently access documents for individual

cases online. Judges enter orders and judgments online, which are then filed instantly and delivered electronically to all parties. Other states have followed suit as budgets have allowed. Today, most large court systems have completed major parts of this change or are planning to do so.

North Carolina's court system needs to put paper in its place. Our Judicial Branch has been a national leader in electronic appellate filing, in maintaining an electronic warrant repository, and in e-filing traffic tickets from computers in law enforcement officers' vehicles. It is time to commit to using technology to make all kinds of court information readily available online, and to expanding the ways that citizens can interact with the courts remotely.

A FRAMEWORK FOR RECOMMENDATIONS

When Chief Justice Martin convened the Commission, he directed it to evaluate the data and identify areas for systemic improvement. Each Committee produced an independent report that can be found in Part Two of this Final Report. Taken together, the Committee reports constitute a comprehensive action plan for improving the administration of justice in North Carolina.

Each Committee's report stands alone so that the work of implementing the most important

recommendations can begin. The final section of Part One suggests initial steps to take toward implementation.

Before discussing implementation, however, we pause to consider the themes that unify this body of recommendations aimed at promoting justice for all. The Committees' reports are grounded in three fundamental principles of sound judicial administration — fairness, accessibility, and efficiency.

THE ULTIMATE GOAL — JUSTICE

Courts exist to administer justice. They ensure that criminals are appropriately punished. They resolve civil disputes ranging from commercial

conflicts to the breakdown of the most intimate of personal relationships. They enforce and protect the rights and liberties enshrined in our founding

documents. And they do so with diligence, fairness, and impartiality in every case that comes before them.

This is the essence of the rule of law — an independent judiciary that ensures just outcomes under the law, to the greatest extent possible.

A key measure of a court system’s performance of this solemn duty is the trust and confidence that the public has in its courts. To be sure, public trust and confidence is not and cannot be the sole measure for a court system. Courts, after all, are charged with protecting individual rights and liberties — a task that will inevitably require decisions that are unpopular with powerful private interests or popular majorities. But, by and large, the long-term effectiveness of any court system is tied to the credibility of its process in the eyes of the public that it serves.

The charge of this Commission was to look for improvements within the existing administrative framework. An inquiry into the “administration of law and justice” is primarily an inquiry into the processes that a court system uses to achieve justice in the cases that it handles. The Commission’s work identified three central measures by which to evaluate a court’s commitment to process: fairness, access, and efficiency.

How are individuals treated by the courts? How easy is it to get legal help and to interact with

“
**JUSTICE IS THE
 END OF GOVERNMENT.
 IT IS THE END OF
 CIVIL SOCIETY.
 IT EVER HAS BEEN
 AND EVER WILL BE
 PURSUED UNTIL
 IT BE OBTAINED,
 OR UNTIL LIBERTY
 BE LOST ...**
 Federalist No. 51

the courts? And how effective are the courts in reaching a just resolution in a timely and cost-effective manner?

Our courts make great efforts each and every day to administer justice on behalf of the citizens of North Carolina. But we can do more to strengthen and improve the processes by which they do so, and, as a result, to increase the public’s trust and confidence in our courts. These recommendations put forth a road map to do those very things.

FAIRNESS

Ask citizens what they want from a court system and an immediate answer is likely to be “fairness.”

A system is fair when cases are decided based on the law as applied to the relevant facts. Bias arising from characteristics such as wealth, social

class, ethnicity, race, religion, gender, and political affiliation have no place in a fair decision. Citizens should never have to doubt the fairness of their courts' decisions.

Yet, a 2015 national survey conducted by the National Center for State Courts revealed that only 54% of the respondents agreed or strongly agreed that state courts are “unbiased in case decisions.”¹¹ This same survey showed that only 35% of African-American respondents agreed with this statement. State courts should not be satisfied with these numbers.

The Committees' work contains many recommendations that, if implemented, will strengthen fairness in our court system. Three of these are highlighted here, and others appear in Part Two.

Juvenile responsibility for criminal offenses.

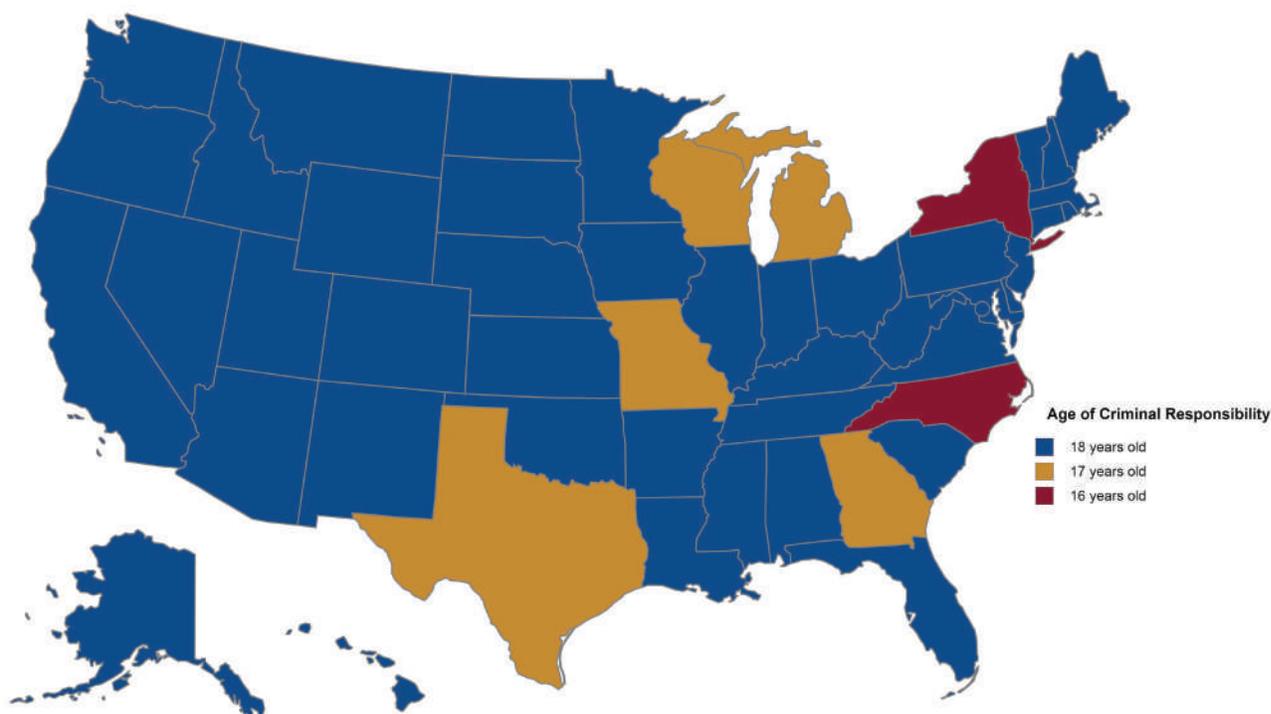
Most discussions about fairness involve questions of how one is treated, and emphasize following the law. But as the Criminal Investigation and Adjudication Committee found, there is one important situation in which following the law itself may lead to outcomes that are unfair and unwise, even if they are lawful.

North Carolina is one of only two states that treat sixteen- and seventeen-year-olds as adults under our criminal laws.¹² Sixteen- and seventeen-year-olds cannot legally drink alcohol, vote, or enter into a contract, but they can receive adult criminal convictions and a lifelong criminal record. The resulting stigma can have profound consequences for the rest of their lives.

Research on this issue has proliferated — research on crime statistics, brain development, and economic effects — and strongly weighs against

“

I'M POSITIVE THE AVERAGE CITIZEN OF THIS STATE IS NOT AWARE OF THIS INJUSTICE. I WAS NOT AWARE OF THIS LAW UNTIL MY SIXTEEN-YEAR-OLD SON WAS ARRESTED, AND TO MY SURPRISE, WAS CHARGED AS AN ADULT. BECAUSE OF HIS IMPULSIVE BEHAVIOR, HE HAS SERVED TIME WITH ADULTS, BUT MORE IMPORTANTLY, HE NOW HAS TO FIND A JOB WITH A CRIMINAL RECORD THAT HE WILL TAKE TO HIS GRAVE. HE IS NOT EVEN TWENTY YET, AND HIS FATE IS SEALED ...



... ALL BECAUSE OF A SILLY, STUPID, NON-VIOLENT ACT HE DID AS A SIXTEEN-YEAR-OLD. NO ONE IN OUR STATE SHOULD BE PENALIZED FOR LIFE ... FOR A SENSELESS IMMATURE ACT THAT WAS COMMITTED BEFORE THEY WERE 18.

Citizen Comment Submitted at August Public Hearing on Raising the Juvenile Age



applying adult criminal sanctions to youthful offenders. That data prompted the Committee’s recommendation that the age for adult criminal responsibility for all but traffic offenses and the most serious felonies be set at eighteen.

This is a complex proposal, with many implications for both the juvenile and the adult criminal justice systems. Public safety and fiscal impact are vitally important, but the Committee believes that raising the age is consistent both with those factors and with empirical, scientific consensus. The Committee’s proposal, found in Appendix A, seeks to address all of those issues in detail.

This is not a new issue. But stakeholder support for raising the age at this time, in this way is unprecedented. Put simply, it is the right thing to do, and this is the right time to do it.

Promoting procedural fairness and eliminating the possibility of bias. Research suggests that what leaves people satisfied with their court

experience more than anything else is not whether they win or lose, but how they are treated during the process.¹³ When people feel that they have been heard and respected, when they receive answers to their questions, and when they perceive that court officials don't play favorites, they are more likely to leave with confidence in the courts — even if they lose their case.

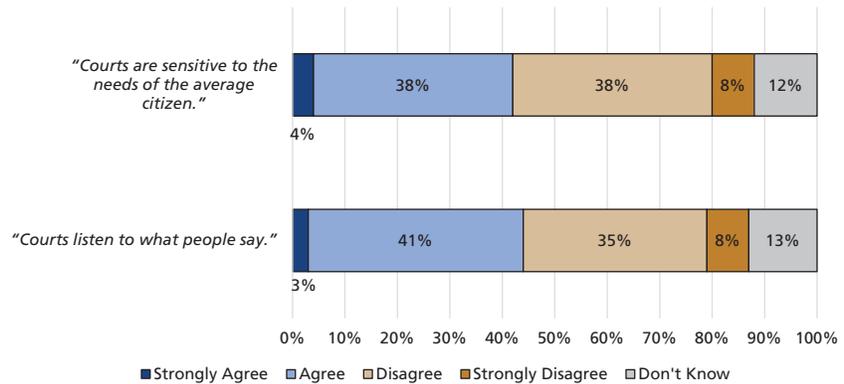
Procedural fairness is neither a new issue in, nor a unique issue to North Carolina. In 2013, the Conference of Chief Justices and the Conference of State Court Administrators urged every state to adopt a program to promote procedural fairness in its courts.

One aspect of procedural fairness that is of particular concern today is that of bias. Concerns about bias exist in many aspects of public life — in the news media, in law enforcement, and in the allocation of government resources.

Courts are not immune to this phenomenon.

In recent opinion polls sponsored by this Commission, 40% of respondents thought that whites were treated the same as everyone else in North Carolina's courts. Those numbers dropped to 33% when asked about the treatment of African-Americans and to 28% when asked about Hispanics.¹⁴ In the same poll, whites were widely viewed as being treated better, while other racial groups were viewed as receiving less favorable treatment.¹⁵

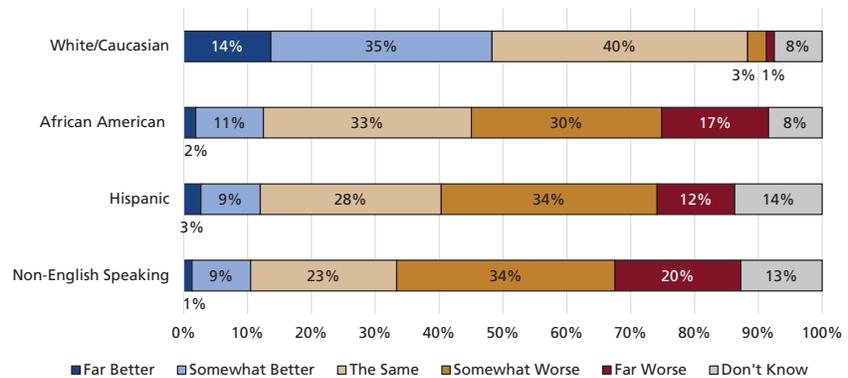
Public Perceptions of State Court Responsiveness



Source: High Point University Survey Research Center, November 2015

Public Perceptions of State Court Fairness

"Do the following groups of people receive better or worse treatment in the North Carolina State Courts?"



Source: Elon University Poll, October-November 2015

Eliminating the possibility of bias in the decisions that courts make is an essential component of promoting fairness in any court system. Thus, to foster an ongoing system-wide commitment to promoting fairness as a fundamental value, the Public Trust and Confidence Committee recommends renewed system-wide attention to programs that seek to eliminate the possibility of bias and encourage procedural fairness in our courts.

Pretrial Release Pilot. When a person is arrested for a crime, the first big decision in the case

is whether and how to grant pretrial release. For most crimes, a defendant is entitled to be released from jail to await the disposition of the case. The decision to release a defendant while his or her case is pending usually comes with strings attached — secured or unsecured bonds, electronic monitoring, ongoing monitoring by pretrial services programs, or a combination thereof, sometimes coupled with specific restrictions on whom the person must avoid and where the person may (or may not) go.

In a society that values the presumption of innocence, these conditions must strike a balance. They are not intended to punish, but to ensure that the accused will appear in court and to prevent the defendant from engaging in harmful behavior

before trial. The pretrial release decision is important; it can affect the ability of a defendant to stay employed and participate in the defense of his or her case.

These decisions, along with the balancing required to make them, are largely matters of discretion. That discretion should be exercised with a commitment to fairness. The Criminal Investigation and Adjudication Committee recommends that a pilot project be implemented to test the use of empirically valid, standardized risk measurement tools and decision matrices to assist judges in making pretrial release decisions that are informed and fair. The Committee's detailed proposal for structuring the pilot project can be found in Appendix C.

ACCESS

The right to an attorney is a core value enshrined in the Sixth Amendment to the United States Constitution, but that right rarely extends beyond criminal defendants. Getting a fair outcome is impossible if a person is not able to take a case to court, or if, upon getting there, the person does not have a lawyer or other legal assistance to help make his or her case. That is why meaningful access to the courts is a second theme that permeates the Commission's recommendations.

Self-represented litigants and pro bono programs. In the American judicial system, a person has the right to represent himself or herself, even if doing so may not be in the person's best interests. Self-representation is a practice that is growing in popularity in recent years. For some, it is because lawyers are too expensive.

Others choose to represent themselves even when they can afford an attorney. In a recent national survey of non-family law civil cases heard without a jury, 76% of the cases involved a self-represented party.¹⁶ In certain categories like family law, debt collection, and landlord-tenant cases, having at least one self-represented party is common.

The Legal Professionalism Committee strongly believes that competent legal representation is the best way to achieve justice when disputes end up in court. Statistics about low-income individuals' access to lawyers are quite discouraging, however — partly because legal aid programs have lost significant funding in recent years. Pro bono (donated legal services) programs have helped some litigants but simply do not have the capacity to come close to being a complete solution.

The Civil Justice, Legal Professionalism, and Public Trust and Confidence Committees have each recommended steps that the court system can take to better accommodate and serve self-represented litigants. Many of these recommendations involve enhanced use of technology, expanded customer assistance, and improved education programs. Some are as basic as recommending that every courthouse have simple, clear signage. Other recommendations touch on increasing language access services. Courts must keep up with the needs of our citizens. The Public Trust and Confidence Committee’s report further addresses these issues.

Other recommendations focus on promoting and enhancing efforts to encourage pro bono service. In 2014, the North Carolina Equal Access to Justice Commission estimated that private attorneys supplied approximately 18,000 hours of legal services worth more than \$3.6 million.¹⁷ The Legal Professionalism Committee recommends expanding those programs where feasible.

The Legal Profession. The legal profession is changing rapidly and faces a striking paradox.

More lawyers are practicing now than ever before, but the legal needs of our citizens are increasingly going unmet. Many reasons account for that, not the least of which is cost. In a recent North Carolina survey, 73% of respondents did not believe that average citizens can afford to hire a lawyer for their legal needs.¹⁸ The forces of supply and demand and other market forces will play a role in addressing this problem, but increasing access to legal services requires other measures as well.

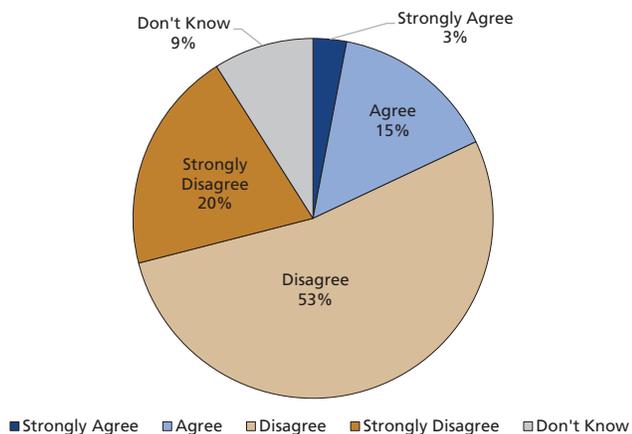
One aspect of increasing access involves the regulation of the legal profession itself.

Lawyers have a noble history. The profession arose to help safeguard the rule of law and to offer specialized skills to help people navigate legal problems. The demands of modern society have altered how the profession can accomplish those goals. Modern lawyers face economic pressures to produce revenue and limit expenses. The cost of legal education, in particular, is an increasingly significant factor. These factors frustrate the selfless, heroic “Atticus Finch” model of a lawyer that is such a part of our culture.

In addition to the challenges facing the economics of legal practice, access problems arise from the increasing variety and complexity of legal issues and from misinformation about the law that is spread through television and the Internet.

Despite significant advances in technology, the law governing the practice of law in our state has not been reviewed or changed in many years; neither have the laws and practices regulating the licensing of lawyers. In this regard, the legal profession has not

Public Perceptions of State Court Accessibility
“Most people can afford to bring a case to court.”



Source: High Point University Survey Research Center, November 2015

kept pace with other professions. The medical profession, for example, responded to access-to-healthcare issues by thinking critically about what it means to practice medicine and who should be able to do it. It is time to reconsider what it means to practice law and whether the procedures for being admitted to the profession are fair and working effectively.

The Legal Professionalism Committee believes that North Carolina can dramatically enhance access to legal services through modernizing our state’s statutory structure. And we can do so while upholding the fundamental value of protecting the public from incompetent legal practice. Among other things, the Committee recommends creating a Legal Innovation Center to begin the work of confronting the rapid changes in the market for legal services.

Indigent Defense Reforms. The adversarial model of the American justice system relies on the notion that justice occurs in a criminal case when a zealous prosecutor meets a zealous defense lawyer. When a criminal defendant cannot afford his or her own lawyer, the United States Constitution requires the government to provide that person with an attorney. Our society is unwilling to take a person’s liberty without

the assurance of fairness that comes from having lawyers on both sides of a case.

Since 2000, the North Carolina Commission on Indigent Defense Services has managed this important function. The system that it manages, however, is a patchwork. In some places, state-salaried public defenders do this work, while in others, private attorneys do the work on contract or on assignment by a judge. Standards of performance vary widely.

The Criminal Investigation and Adjudication Committee undertook a comprehensive review of the indigent defense system. As presented in Appendix D, the Committee offers specific recommendations for addressing issues that have arisen since the Office of Indigent Defense Services was established. Recommendations include expansion of public defender functions, uniform standards for determining indigency, quality control mechanisms, and budgetary changes.

The report is a road map for improving the quality of these legal services and maximizing the use of the funds provided. The result will be fewer unnecessary delays, fewer reversals, and reduced stress on victims and defendants as cases are handled more efficiently and competently.

EFFICIENCY

Undoubtedly, fairness and accessibility are fundamental values to any court system. But a system that fails to use its resources effectively or manage its work efficiently will not serve justice and will forfeit public trust and confidence.

“Case management” is not glamorous or dramatic like amending the constitution or passing new laws. But when done right, effective case management saves time, promotes good stewardship of taxpayer dollars, and increases the

efficiency of the judicial process for all involved. Case management is essential to the success of any 21st century court system.

The good news is that it is largely within the control of the court system itself. Many dedicated court officials work very hard to manage the cases in their courts, and their work provided a solid base for the Commission’s review. The Commission’s Public Trust and Confidence Committee emphasized the need for more timely case dispositions, and both the Civil Justice Committee and Criminal Investigation and Adjudication Committee spent considerable time developing recommendations for improving case management practices in North Carolina. Part Two contains their specific recommendations.

The basic principles of effective case management are hugely important.

First, the system must measure itself. Typically, time standards help fill that need. North Carolina does have some time standards, but they are not consistent with national best practices and are not as effective as they should be.

Second, the system must have clear lines of accountability. For civil cases, the clear line of accountability is the judge with administrative responsibility for the district. For criminal cases, it is less clear. The district attorney has statutory authority to schedule cases, but the presiding judge assumes responsibility once the calendar is published. That hybrid system presents some challenges, which the Criminal Investigation and Adjudication Committee’s report addresses.

Third, the system must have the data that it needs to make good decisions. North Carolina’s mix of old and new technology, designed primarily

to maintain statistics of what happened in the past, does not work well in an age that seeks to use information in real time to plan for the future. A modern, paperless, integrated court information system designed to meet the needs of case managers is at the forefront of the Technology Committee’s Strategic Plan. Until that is achieved, our courts will lack the ability to use data to improve decision-making and case management in real time.

Fourth, the system must make court appearances meaningful. Public trust and confidence suffers a significant blow every time an individual must appear in court only to learn that his or her case is continued to another appearance.

Fifth, the system must use techniques like “differentiated case management” — treating simple cases simply, and treating complex cases with greater involvement.

Sixth, the system must continually educate its officials about the need for effective case management and the tools necessary to manage well.

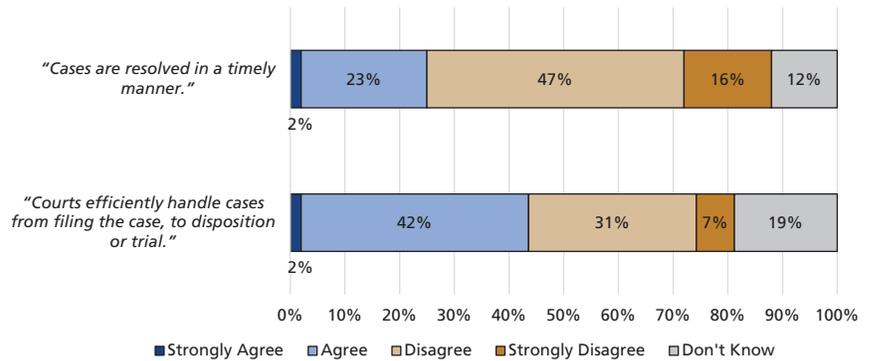
Finally, the system must create a local legal culture that values effective case management. Research demonstrates that what most distinguishes truly effective court management is not systems, technology, or resources, but local legal culture. Court proceedings require a team, and any member of that team can slow the process. When the actors in the local culture expect delays, delays happen. Cultures change slowly, and only with great effort and committed leadership. Expectations must be established, and they must be honored.

Effective case management faces many hurdles in our state. The data needed to make important systemic decisions does not exist today in a user-friendly format. As just one example, the definition of a criminal “case” is not uniform across local jurisdictions. Comparing workloads cannot be meaningful without common units of measurement. The goal of “uniformity” was intended to resolve that very problem.

One particular problem plaguing civil case management is the proliferation of local rules. Unlike the management of the criminal docket, the senior resident superior court judge and the chief district court judge have the responsibility of managing the civil docket. With that responsibility comes the discretion to supplement statewide rules with local rules that apply only in that district. To say that the rules lack uniformity across district lines is a gross understatement. Variation and unpredictability is a primary roadblock to efficient and just outcomes in a mobile society that participates in a global economy.

As identified by the Technology and Civil Justice Committees, better use of modern technology in legal practice and court processes will allow parties and attorneys to communicate by remote

Public Perceptions of State Court Efficiency



Source: High Point University Survey Research Center, November 2015

appearances instead of having to travel several hours to be physically present in a courtroom or conference room. Rigorous measurement of outcomes will help as well. The tools exist, but they are simply going unused.

The reports of the Technology, Civil Justice, and Criminal Investigation and Adjudication Committees contain detailed and specific steps that can lead to more effective case management through improved use of technology and methods to provide uniformity.

If implemented, emphasized, and monitored, these recommendations can substantially improve our justice system. They will fail, however, without commitment from state-level leaders and from court officials in every courthouse. Like justice itself, effective management will always be a work in progress, but it is possible and must be a priority.

NEXT STEPS

Commitment to the principles of fairness, access, and effective case management will help our courts ensure that justice is being done, to the greatest extent possible, in each and every case that comes through the system. Though only a handful of recommendations have been highlighted above, all of the Commission’s recommendations will help build the 21st century court system that North Carolina needs. Some of the recommendations will require legislative action. Others will need the leadership and initiative of the North Carolina Administrative Office of the Courts (NCAOC) or other bodies, such as the Commission on Indigent Defense Services. Many of the proposals can be implemented by local court officials. The Commission recognizes that all of these groups share a common desire to improve the courts. With this report’s framework in place, great progress is the expectation.

The sheer number of recommendations suggests, however, that giving one office or entity the overall task of implementation would be very helpful in coordinating these initiatives. NCAOC is the logical place for this responsibility, and it has the staffing resources and the system-wide perspective necessary for the task.

The numerous recommendations calling for internal change within the Judicial Branch will require involvement by many of NCAOC’s various offices and divisions, including Technology Services, Research and Planning, Court Services, and Court Programs. NCAOC’s Governmental Affairs Office can be assigned aspects of the Commission’s work that require legislative changes.

NCAOC has already begun work on a number of recommendations, including Juvenile

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THIS MULTI-DISCIPLINARY COMMISSION WILL CONTINUE TO ENSURE THAT THE JUDICIAL BRANCH CONSERVES ... ITS VALUABLE RESOURCES AND WILL MAKE RECOMMENDATIONS FOR HOW WE CAN STRENGTHEN OUR COURTS.

Chief Justice Mark Martin
2015 State of the Judiciary Address

”

Reinvestment and the Technology Committee’s Strategic Plan. Accordingly, the NCCALJ co-chairs recommend that the Chief Justice have the NCAOC Director take primary responsibility for carrying out the Commission’s work. The Director can then assemble advisory groups and working groups or delegate to other entities as needed to implement recommendations.

IT'S TIME TO BEGIN . . . AGAIN

The recommendations in the five Committee reports that follow, once implemented, will position the North Carolina court system to make historic advances in delivering justice to the people of North Carolina.

The Public Trust and Confidence Committee, however, has identified two additional recommendations that are vital to the future of our courts.

First, it is imperative that the public become better informed about the mission and work of the courts. Educating the public about our courts is simply too important to be left to court television shows. The story of our judicial system needs to be told through improved public awareness, civic education in the schools, judicial outreach programs, and online resources. Many notable efforts are already underway in this regard; they need to be supported and expanded as resources allow. This work is the responsibility of all in the judicial system and should be coordinated by NCAOC to ensure cohesive and consistent messaging.

Finally, this Commission began its work by asking the public, through opinion polls, what it thought about the courts. The answers were sobering but important. They helped guide the work of the Commission. The Public Trust and Confidence Committee recommends asking for the public's advice again. And again. And again. Asking for feedback should not be a one-time exercise. It should be an ongoing effort.

Ensuring that law and justice are effectively administered is not a new task. And it is never finished. As Alexander Hamilton noted in the Federalist Papers: "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit."¹⁹

Having recurred to fundamental principles, it's time to strengthen our courts to ensure justice for all.

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1. North Carolina Constitution, Art. 1, Sec. 35.
 2. Surveys were conducted by the High Point University Survey Research Center and the Elon University Poll in October and November 2015. A summary of the results of these surveys is available at <http://bit.ly/2hWGgLW>. Published December 15, 2015. Accessed December 20, 2016.
 3. Report of the Committee on Improving and Expediting the Administration of Justice in North Carolina. 1958. Available at <http://bit.ly/2gYOTE7>. Accessed December 20, 2016.
 4. *Without Favor, Denial or Delay: A Court System for the 21st Century*. 1996. Available at <http://bit.ly/2i6LeJp>. Accessed December 20, 2016.
 5. North Carolina population rank as of July 1, 2016. United States Census Bureau, Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010, to July 2016. Available at <http://bit.ly/2jAgflx>. Accessed December 20, 2016.
 6. United States Census Bureau, 2015 Population Estimates for NC State and Counties.

7. Based on a comparison of the 1972 Annual Report of the North Carolina Administrative Office of the Courts (NCAOC) to current statistics provided by the NCAOC Research and Planning Division.
8. Annual Report of the North Carolina Judicial Branch: July 1, 2012 – June 30, 2013. Available at <http://bit.ly/2h2jEbb>. Accessed December 21, 2016.
9. Based on an estimate from the NCAOC Research and Planning Division.
10. Annual Report of the North Carolina Judicial Branch: July 1, 2015 – June 30, 2016. Available at <http://bit.ly/2iLw5tv>. Accessed January 12, 2017.
11. National Center for State Courts, The State of State Courts: A 2015 NCSC Public Opinion Survey. Available at <http://bit.ly/2h14hsf>. Accessed December 20, 2016.
12. As of the release of this report (March 2017), North Carolina and New York are the only jurisdictions that prosecute both sixteen- and seventeen-year-olds in adult criminal court.
13. Comments of David B. Rottman, Ph.D, in his presentation, “Public Trust and Confidence in the State Courts: Levels, Causes, and Responses,” NCCALJ Public Trust and Confidence Committee Meeting (Raleigh, NC), November 17, 2015. Presentation materials available at <http://bit.ly/2h9B4Yg>. Accessed December 20, 2016.
14. *Id.*
15. *Id.*
16. National Center for State Courts, *The Landscape of Civil Litigation in State Courts*, 2015. Available at <http://bit.ly/2i7rEFS>. Accessed December 20, 2016.
17. North Carolina Equal Access to Justice Commission, 2014 Impact Report. Available at <http://bit.ly/2h9LLtV>. Accessed December 20, 2016.
18. *Id.* at 2.
19. The Federalist Papers, No. 51.

This report contains recommendations for the future direction of the North Carolina court system as developed independently by citizen volunteers. No part of this report constitutes the official policy of the Supreme Court of North Carolina, of the North Carolina Judicial Branch, or of any other constituent official or entity of North Carolina state government.

PART TWO

**“THE POWER TO ADMINISTER JUSTICE IS A SACRED
PUBLIC TRUST THAT MUST BE GUARDED
CAREFULLY BY EACH GENERATION.”**

Chief Justice Mark Martin

PART TWO

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CIVIL JUSTICE COMMITTEE REPORT

This report contains recommendations for the future direction of the North Carolina court system as developed independently by citizen volunteers. No part of this report constitutes the official policy of the Supreme Court of North Carolina, of the North Carolina Judicial Branch, or of any other constituent official or entity of North Carolina state government.

A MODERN CIVIL JUSTICE SYSTEM SHOULD BE FAIR, ACCESSIBLE, TRANSPARENT, EFFICIENT, AND EFFECTIVE.

INTRODUCTION

The Civil Justice Committee is one of five Committees constituting the North Carolina Commission on the Administration of Law and Justice (NCCALJ). The Civil Justice Committee is charged with evaluating the civil justice system in North Carolina, identifying areas of concern, and making preliminary recommendations for reform.

Civil justice is the process by which North Carolina's courts resolve or assist in resolving non-criminal disputes between individuals, private entities, and governmental bodies. The North Carolina

civil justice system has many parts, including the Supreme Court, the Court of Appeals, the superior court, the district court, the Industrial Commission, the Office of Administrative Hearings, and the North Carolina Administrative Office of the Courts (NCAOC). Judges, magistrates, clerks, and appointed officials, as well as a support staff that has widely varying duties and skill sets, carry out the responsibilities of this system. Although some courts also have jurisdiction over criminal matters, this Committee's task is to examine only the civil justice system.

GUIDING PRINCIPLES

- The NCCALJ's efforts are focused on how the Judicial Branch can best serve the public, ensuring that the state's court system is one that the public trusts. The Committee developed five guiding principles for our work that are vital to maintaining public trust and confidence in our courts. The Committee believes that a modern civil justice system should be FAIR, ACCESSIBLE, TRANSPARENT, EFFICIENT, and EFFECTIVE.
- A system is EFFICIENT when time and resources expended are proportionate to the needs of the case, and when litigation, lawyers, or courts do not generate unnecessary costs or delay.
- A system is EFFECTIVE when judicial officers have sufficient support, resources, and administrative structures to permit quality and timely decision-making and processing of cases, and when the system generates data to evaluate performance as measured by relevant benchmarks.

What do we mean by these principles?

- A system is FAIR when cases are decided based on the principles of law and justice and the facts and circumstances of the particular case, and not biased by the wealth, political influence, or identity of the parties. Partisanship and prejudice have no place in a fair decision.
- A system is ACCESSIBLE when the courts and court-assisted processes are open and available to all persons who wish to participate, without barriers or costs, financial or otherwise, that are so high as to deter residents from using the courts.
- A system is TRANSPARENT when participants understand how their case will be assigned, processed, and adjudicated, and when records of the proceedings are open and available to the public except when privacy or safety concerns require otherwise.

These are the guiding principles that the Committee believes are essential to a modern civil justice system that is able to meet the needs of and provide justice to the residents of North Carolina. The Committee has used these principles to determine the principal areas of focus for study and improvement, and to develop the recommendations outlined below. Going forward, these principles will inform the relevant benchmarks to be used when assessing progress toward ensuring that all residents of North Carolina have confidence in the civil justice system.

AREAS OF FOCUS

To identify its areas of focus, the Committee held ten public meetings. Among those attending, speaking, or presenting at the meetings were members of the business community; sitting judges on the business court, the superior court, and the district court; court administrators; employees of NCAOC; court executives and judges from other jurisdictions; legal aid professionals; representatives from the North Carolina State Bar; the North Carolina Conference of Clerks of the Superior Court; law students; legislative liaisons; and other members of the public.

After consulting with these stakeholders, experts, and researchers, the Committee decided to focus on the following areas, recognizing that there may be other areas of concern raised by stakeholders or the public not identified here:

- Technology
- Case management and tracking
- Judicial assignment system
- Legally trained support staff
- Legal assistance and self-represented litigation
- Civil fines, fees, and penalties

TECHNOLOGY

North Carolina was once a leader in using technology in its civil justice system but today lags behind other jurisdictions. The federal government's court system and states such as Utah have adopted a uniform and comprehensive

electronic filing and document management system. In these jurisdictions, litigants, attorneys, the courts, and the public are able to file, monitor, and review cases from the convenience of their offices or homes. By comparison, electronic filing is available only in select courts and jurisdictions in North Carolina, primarily in the Court of Appeals, the Supreme Court, the business court, and certain pilot programs in four of North Carolina's 100 counties. The result is that electronic filing and management of cases is not uniform throughout the North Carolina system and is available for only a fraction of the cases in the system.

For example, more than 200,000 civil cases were filed in the district courts and superior courts in North Carolina in fiscal year 2015-16, and the vast majority of these cases were handled in paper format. Those courts that have electronic filing and case management, such as North Carolina's Business Court and North Carolina's Court of Appeals, together managed approximately 1,800 cases, or one-tenth of the volume of the district and superior courts.

Despite security risks and considerable taxpayer expense in terms of storage and administration, paper filing and documentation remain the norm in most North Carolina courts. An estimated 31,369,840 pages were added to the clerks' case files in 2012-13, or approximately 22,960 linear feet of shelving.¹ Thousands of square feet of space are dedicated for file storage. According to some estimates, a single file room measuring 20 feet by 60 feet can cost \$360,000 to construct and \$18,000 per year to maintain. Multiplied over North Carolina's 100 counties, these costs compound quickly.

This paper system is also prone to inefficiencies and transcription errors when files are processed or converted to other formats, such as for database entry. Members of the legal aid community observed that the lack of uniform, technology-enhanced filing in North Carolina makes representation of indigent clients burdensome both for lawyers and litigants. The Committee also heard speculation that some potential litigants may not file claims at all because of perceived barriers to access, such as the need to visit a courthouse; the need to read, understand, and complete a legal form; or the need to pay other costs that technology could mitigate. There is agreement that over time, if properly implemented, savings would likely exceed the cost of implementing a technology-based, paperless system. The different stakeholder groups largely agreed that increased use of technology has the potential to substantially improve the civil justice system, both as a whole and for all of its participants: businesses, individuals, lawyers, judges, and court staff. This Committee recognizes the Technology Committee's primary role in developing a strategic plan to address the technology-related needs of the Judicial Branch.

CASE MANAGEMENT AND TRACKING

The North Carolina civil justice system currently uses the dollar amount in dispute as a rough estimate for complexity. With some exceptions, whether a case ends up before a magistrate, a clerk, a district court judge, or a superior court judge (including a business court judge) depends largely on how much money is at issue. Once a case is before a certain judicial officer, the case management process, from filing to disposition, depends on a patchwork of statewide rules, local rules, and specific practices of individual courts. For example, cases are managed by agreement of the parties, by court administrators, or by judicial assistants, rather than by a standard

case management order. One court administrator referred to the case management system there as “management by event” or “management by the passage of time.” The lack of uniformity also contributes to the difficulty of gathering reliable data about the performance of the civil justice system across the entire state, as comparisons are often inaccurate or misleading. Without standard measures of evaluation, the performance of the state's judicial system cannot be accurately assessed.

The National Center for State Courts has designed ten performance measures for state courts, called CourTools. These measures include measurement tools for time to disposition, age of active pending caseload, and clearance rates. The Supreme Court of North Carolina promulgated time-to-disposition benchmarks in 1996, but neither these benchmarks nor the National Center's performance measures have been widely communicated or used by the court system as a whole.

In the absence of more robust and standard measures of evaluation, the NCAOC supplied the following data regarding case volumes, as well as median days to disposition and median days pending for major case types in the small claims, district, and superior courts. These data points provide some basic information about the current health of the civil justice system in North Carolina.

Examining these disposition data through the lens of case management, it appears that the North Carolina courts do an adequate job of disposing of relatively simple civil cases; however, the median-days-pending metrics suggest that more complex cases often languish. This indicates that the North Carolina civil justice system is ripe for the kind of tiered / track-based case management approach that the Committee recommends, since the system

as managed now could likely benefit from a right-sizing of resources on more complex cases.

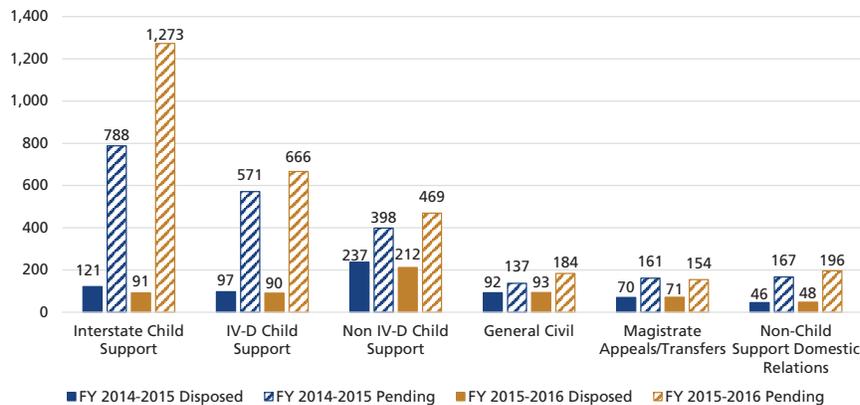
The primary concern expressed by stakeholders was dissatisfaction with the lack of uniformity across judicial districts and the resulting delays that enter into the system, especially at the superior court level. Panelists and researchers suggested that differences in representation, and costs and

time associated with discovery and discovery management, can be drivers of inefficiencies. A recent High Point University survey showed that a majority of North Carolina residents believe that the court system does not resolve cases in a timely manner.² Best practices suggested by the National Center for State Courts, such as “right-sizing” court resources to the complexity of the case, may help resolve some of these issues.

District Court — Cases Filed

Case Type	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Interstate Child Support	227	278	321	230
IV-D Child Support	37,204	33,841	31,085	30,211
Non IV-D Child Support	4,417	4,389	4,133	3,719
General Civil	45,874	48,525	51,565	50,325
Magistrate Appeals / Transfers	3,621	3,704	3,932	3,946
Non-Child Support Domestic Relations	92,492	89,784	92,902	95,968
TOTAL	183,835	180,521	183,938	184,399

District Court Civil Cases Median Days Disposed and Pending

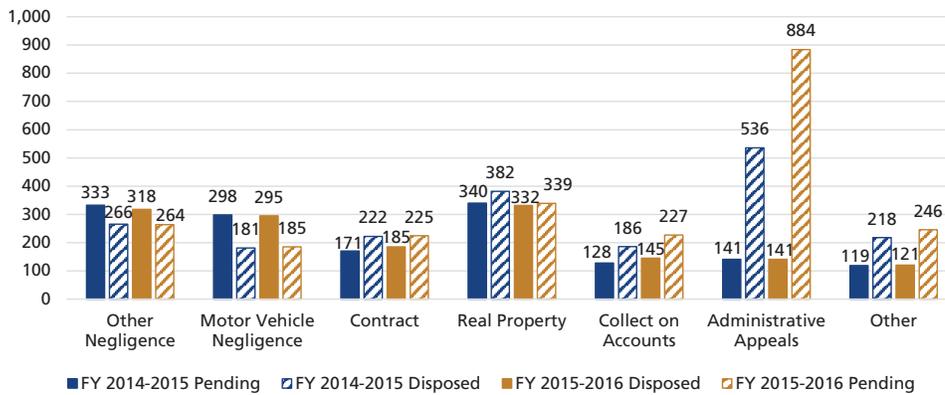


Source: North Carolina Administrative Office of the Courts

Superior Court — Cases Filed

Case Type	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Other Negligence	2,362	2,551	2,068	2,126
Motor Vehicle Negligence	4,497	4,368	4,013	3,874
Contract	4,791	4,373	3,302	3,093
Real Property	1,830	1,830	1,293	1,444
Collect on Accounts	1,386	1,140	781	579
Administrative Appeals	282	285	237	193
Other	6,337	5,877	5,571	5,223
TOTAL	21,485	20,424	17,265	16,532

Superior Court Civil Cases Median Days Disposed and Pending



Source: North Carolina Administrative Office of the Courts

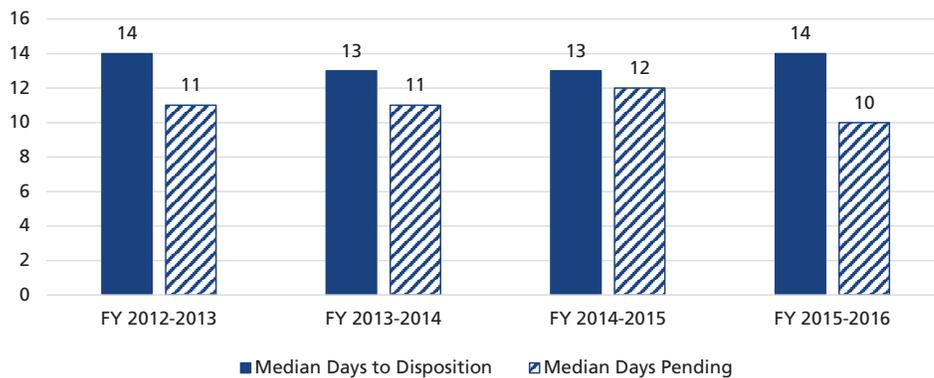
Small Claims / Magistrate's Court—Total Case Filings

	FY 12-13	FY 13-14	FY 14-15	FY 15-16
TOTAL CIVIL SMALL CLAIMS FILINGS	218,908	220,511	212,533	206,682

Small Claims / Magistrate's Court—Case Filings by Issue³

Issue Type	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Money Owed	172,488	159,269	143,648	137,038
Summary Ejectment	174,334	175,567	167,565	162,355
Motor Vehicle Lien	270	284	275	342
Possession of Personal Property	11,198	11,871	10,870	10,759
Other	9,251	13,899	15,665	20,526
TOTAL	367,541	360,890	338,023	331,020

Small Claims Cases Median Days Disposed and Pending



Source: North Carolina Administrative Office of the Courts

JUDICIAL ASSIGNMENT SYSTEM

North Carolina’s judicial assignment process is difficult to navigate, particularly for self-represented litigants and others who do not interact regularly with the court system. District court judges are assigned to dockets on a certain date, typically by the chief district court judge. Exceptions to this can be found in some of the state’s district courts that use single-judge case assignments in managing their domestic relations case dockets. Therefore, a case may not have the same judge from the beginning of the case to the end. Superior court judges rotate according to the North Carolina Constitution, which provides that “[t]he principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed.”⁴ Currently, there are eight divisions and 50 districts across the state. Superior court judges rotate through the districts in their respective divisions on a six-month cycle. As a result, in superior court, as in district court, a single case may be heard by more than one judge. Though the rotation system is intended to avoid favoritism that could result from having a permanent judge in one district, the system can also lead to inefficiency and judge-shopping. The exceptions to the rotation system are the special superior court judges, including those who make up the business court. Under Rule 2.1 of the North Carolina General Rules of Practice, some cases that are not in the business court can be specially designated as “exceptional” by the Chief Justice and receive a single judge throughout the litigation.

The superior court assignment system is implemented primarily through the North Carolina Administrative Office of Courts, working with the office of the Chief Justice. Each district court’s assignment system is typically administered by the chief district court judge. The personnel in these courts work very hard

to ensure that cases do not linger, that judicial personnel are assigned to cases as necessary, and that all participants adhere to the six-month rotation system when required and to the extent possible, while also emphasizing access and fairness. The assignment system depends on the competence and integrity of just a few individuals and therefore is sensitive to any change in personnel. The Committee heard mixed reviews from many stakeholders about whether the benefits of the judicial assignment system in North Carolina courts justified its complexity, with no clear consensus across different perspectives.

LEGALLY TRAINED SUPPORT STAFF

At the trial level, only the Business Court uses dedicated staff trained to assist the judges in investigating the law and making legal rulings. Although they may confront complex evidentiary or constitutional issues, superior court judges and district court judges have little to no research support. This lack of legally trained support staff takes place in an environment where significant numbers of law graduates are searching for full-time jobs, suggesting a potential opportunity for matching supply with demand.

LEGAL ASSISTANCE AND SELF-REPRESENTED LITIGATION

For those who cannot afford representation, a number of legal aid organizations, as well as private lawyers, offer free legal counsel in North Carolina. In 2014, the North Carolina Equal Access to Justice Commission estimated that private attorneys supplied approximately 18,000 hours of legal services worth more than \$3.6 million on a pro bono basis — that is, for little or no pay for their time and expertise.⁵ Notwithstanding their efforts, one-half of the approximately 70,000 individuals who seek a lawyer are turned away

without one, with 80 percent of the civil legal needs of low-income people in North Carolina going unmet.⁶ Legal aid is supported by private donations, by members of the legal profession, and by federal, state, and local funding. All funding levels have dropped by one-third to one-half since 2008; over the same time period, the need for legal aid has increased by 30 percent, with many clients who present significant literacy and language obstacles to representation. Attorneys working in legal aid face challenges including low wages, high debt burdens from law school, and heavy caseloads.

When litigants do not want, cannot afford, or cannot find a lawyer, they sometimes represent themselves. The number of self-represented litigants has been increasing nationwide. According to *Landscape of Civil Litigation in State Courts*, a 2015 report from the National Center for State Courts, in the early 1990s, both litigants were represented by counsel in 97% of jury trials and in 91% of bench trials. However, that percentage has now fallen to 87% for jury trials and 24% for bench trials. The *Landscape* report went on to note that in more than three-quarters of the nearly one million non-domestic civil cases in the data set, at least one party, typically the defendant, is self-represented.⁷ As in other states, the increase in self-represented litigants is a significant issue in North Carolina.

Because self-represented litigants must navigate complex procedures, they challenge the resources of the court system, which can lead to delays further exacerbated by the same types of literacy and language barriers faced by many legal aid clients. Systemwide data on the number of self-represented litigants, the types of claims most likely to involve self-represented litigants, and comparisons of their cases to others in the system are scarce, partly because of the weaknesses of

the technology and case management process outlined above. County-level analyses in the early 2000s and self-reporting by judges suggest that self-represented litigation is concentrated in areas such as domestic relations, housing, and debt collection. Self-represented litigants can account for up to half of the docket in those matters.

CIVIL FINES, FEES, AND PENALTIES

The use of civil fines, fees, and penalties is an area of concern in North Carolina and nationwide, as reflected in recent reports by government agencies and private organizations. Courts that use fines, fees, and penalties to finance their operations, as well as the potential domino effect of unpaid fines, fees, and penalties on residents, can undermine confidence in the judicial system as a whole and potentially create a “destitution pipeline” and debtors’ prison. In North Carolina, court costs and fees currently go into general state revenues. Fees generated during a criminal proceeding may be turned into civil judgments for which the individual is responsible. In 2015, 11,441 of the 794,989 criminal cases in North Carolina, or just under 1.5 percent, saw the total amount of criminal fees and fines converted into a civil judgment, according to the North Carolina Administrative Office of the Courts.⁸ However, this statistic does not capture the fines and fees that were only partially converted to a civil judgment, or those that are kept as money owed within the criminal, rather than the civil, enforcement mechanism. Although there are constitutional due process prohibitions on jailing persons who are unable to pay debts for their failure to do so, and state constitutional checks on using fees to support local or court budgets, these legal mechanisms are imperfect and not self-executing.

RECOMMENDATIONS

Consistent with the guiding principles and findings outlined above, the Civil Justice Committee offers the following recommendations.

The Committee also observes that, while these recommendations can be debated or adopted separately, some of them may be interlinked with other recommendations from this Committee or from other Committees on the Commission.

- **IMPLEMENT
ELECTRONIC FILING
AND CASE
MANAGEMENT**

Electronic filing and case management holds the potential to make the civil justice system more fair, accessible, and efficient. For example, the implementation of electronic case filing and management in Utah led to 30,000 fewer visits to the courthouse and millions of dollars saved in storage and paper.⁹ Court employees were better compensated and enjoyed increased job satisfaction. In addition, electronic filing and case management can generate data that will better enable evaluation of the performance of the entire system according to benchmarks designed to measure progress toward each of the guiding principles outlined above. Adoption of comprehensive electronic filing and case management in Utah and in the federal system can serve as a model for North Carolina. Personnel currently managing a paper system in the judicial system may then be reassigned and retrained, where appropriate, to spend time and resources on other important case management tasks not well

suitable for automation. The Committee supports the Technology Committee's work in developing a strategic plan for implementing electronic workflows in the state's courts and clerk of court offices, including e-filing and a fully integrated, centralized case management system.

- **CREATE AN
EFFICIENT, ONGOING
RULE-MAKING
PROCESS FOR
IMPLEMENTATION
OF ELECTRONIC
FILING AND
MANAGEMENT**

The rule-making process for civil litigation must be suitably flexible to capture fully the substantial cost savings of electronic filing and case management. As the experience of other jurisdictions has shown, adopting an electronic filing and case management system without rules that offer certainty about the legal significance of the electronic filing can generate expense without a corresponding benefit to the civil justice system.¹⁰ Every aspect of civil procedure is affected by the introduction of electronic filing and management. The General Assembly has already provided the courts with rule-making authority in the area of electronic filing, and this authority should extend to developing the rules necessary to integrate technology fully and comprehensively into the civil justice system.¹¹

- **INCREASE USE OF TECHNOLOGY FOR REMOTE COMMUNICATIONS**

Travel to and from courthouses is difficult for litigants with limited resources and especially burdensome for those who are self-represented. These litigants must take time off from work, find childcare, and secure transportation to come to the courthouse. For judges, travel can be expensive and takes away from time better spent on the study and adjudication of cases. With remote communication technology, in addition to electronic filing and management, the case can be delivered to the judge, rather than the judge having to travel to the case. Use of technology for remote communication (including teleconferencing and videoconferencing) in civil cases, but especially for arbitration, mediation, custody, and domestic relations matters, can be used to reduce travel and expense and make the proceedings more accessible and efficient for everyone.

- **CREATE A RULES COMMITTEE TO PROPOSE RULES OF CIVIL PROCEDURE, TO BE ADOPTED BY THE SUPREME COURT OF NORTH CAROLINA, AND SUBJECT TO REVIEW BY THE GENERAL ASSEMBLY**

The Chief Justice should appoint a rules committee modeled on civil rules committees in the federal judiciary and in other states. This committee should have representatives of the bench, bar, and staff of the courts. An academic expert in procedure may be appointed as a reporter for the committee. This committee should examine the civil rules at every level of the civil justice docket, including small claims court and all areas of domestic relations law, to ensure that the rules enable litigants and court officials to dispose of cases efficiently, fairly, and transparently. This committee should propose rules of procedure, including rules concerning the use of communication technology and electronic filing and management. The rules proposed by the committee should then be reviewed for adoption by the Supreme Court and made binding, unless the General Assembly votes to defer, alter, or reject those rules.

- **IDENTIFY AND TRACK CASES ACCORDING TO THREE CATEGORIES: SIMPLE, GENERAL, AND COMPLEX**

Cases at every level of the civil justice system should be identified early and designated as simple, general, or complex. Allocated resources should match the complexity of the case, and metrics in addition to the amount in dispute should be used to determine which track a case should be in. This “right-sizing” in case management will increase efficiencies throughout the system and ultimately should contribute to greater access as cases and claims are disposed of without expending unnecessary time or resources. “Right-sizing” cases acknowledges the unique

nature, complexity, and sensitivity of some types of cases and recognizes that not all cases require the same kind of system resources.

For example, domestic relations cases may require different forms of processing and management than other types of cases, particularly since mandatory mediation is often a part of these cases. Cases with particular features could be referred for alternative dispute resolution processes such as mediation, arbitration, and collaborative law. Data gathered from such a tracking system could also be used for future evaluation of performance of specific tracks and other measures.

- **REQUIRE USE OF UNIFORM CASE MANAGEMENT ORDERS IN ALL COURTS**

One of the principles and achievements of the Bell Commission of the 1950s was the establishment of a unified court system throughout the state of North Carolina. However, local rules and practice still vary considerably across the different judicial districts and in different levels of court, from magistrate's court to superior court. The Committee believes that efficiency, fairness, and transparency may be furthered by the use of uniform case management procedures and civil rules that are based on best practices. A case assignment system that matches the conduct of the case to the needs of the case will require new rules and case management orders, depending on whether the case is simple, general, or complex. The rules and orders will require modification over time as cases and best practices change. A civil rules committee can help supply the necessary uniformity in and flexibility of case

management orders, as one does in the federal system.

- **REASSIGN AND RETRAIN AS NECESSARY COURT SUPPORT STAFF, AND SUPPLY JUDGES WITH RESEARCH STAFF**

Some of the anticipated savings that the system generates through improved technology and streamlined procedures can be directed to improving the quality of justice delivered in the system as a whole.

The Committee suggests that some portion of expected savings from the transition to technology be used to reassign, retrain, or reinvest in judicial system support staff, including trial court administrators, clerks of court, and pools of research support personnel, so that a more precise, accurate, and efficient disposition can occur in every case.

- **RESTORE FUNDING FOR LEGAL ASSISTANCE PROGRAMS, INCLUDING LOAN REPAYMENT RELIEF**

Resources are at the heart of access to justice. Since the 2008 economic downturn, civil legal

aid funding has decreased from virtually every source while the number of North Carolinians living in poverty has increased.¹² When individuals are represented by legal aid, they are able to meaningfully access the court system, and their interests are protected regardless of how much money they have. And with skilled advocates who pursue only meritorious cases and settle many matters outside of court, legal aid conserves judicial resources.

Civil legal aid is an excellent investment of state resources that generates more than two dollars in economic benefits for each dollar in funding.¹³ The value of stopping domestic abuse, preventing unnecessary homelessness, and blocking illegal and predatory consumer practices is incalculable. The Committee recommends restoring state legal aid funding, including programs such as NCLEAF, which provides loan repayment assistance for lawyers who serve North Carolinians in need.

- **ENHANCE USE OF ONLINE FORMS; EXPLORE USE OF SELF-HELP KIOSKS AND CENTERS**

To assist self-represented litigants, forms and instructions should be improved and made available online. These online resources would help streamline common and non-technical matters such as small claims, simple divorces, or simple landlord-tenant cases. Self-help kiosks or centers, online court assistance, and online dispute resolution mechanisms should be explored as a way to match appropriate judicial resources with self-represented litigants. The Committee

agrees, however, that none of these resources should be viewed as a substitute for trained, competent counsel in appropriate cases. Through technology-enhanced tools as well as case management orders, self-represented litigants should be notified as early as practicable of the availability of legal services and how to obtain those services. Such a system should be designed to better distribute and designate the limited legal aid and pro bono attorney resources to litigants who are most in need of, and would most benefit from, their services.

- **STUDY SINGLE JUDGE ASSIGNMENT IN DISTRICT COURT, AND IN SUPERIOR COURT WITHIN SPIRIT OF ROTATION REQUIRED BY THE NORTH CAROLINA CONSTITUTION**

Some specialized courts in North Carolina, such as the Business Court and some family courts, and some specialized procedures, such as Rule 2.1, allow a single judge to be assigned to a case and to preside over that case from its beginning to its conclusion. The cases handled by single-judge assignment typically involve multiple hearings, discovery and discovery motions, motions to dismiss and for summary judgment, and numerous court dates. Single-judge-assigned cases can be complex commercial business matters or difficult and sensitive matters such as domestic relations. In the specialized cases to which it currently applies, litigants, lawyers, and judges are generally satisfied with single-judge case assignment. The

Committee believes that the judiciary should further study a method that would identify those disputes, outside of the specialized courts and the procedures currently available, for which single-judge assignment is most efficient, and create a transparent, neutral, and reliable method for making single-judge case assignments. Such a method could comply with the spirit of the state constitutional requirement that superior court judges rotate through districts by assigning such cases on a rotating basis so that the assigned superior court judge has cases from different districts.

The Chief Justice may encourage experimentation and pilot projects in the different districts and divisions to determine what method of assignment is most appropriate to satisfy the guiding principles of fairness, accessibility, transparency, efficiency, and effectiveness. Such pilot projects could build upon the experience of the business court and permit cases to be randomly or otherwise assigned to superior court judges from filing through judgment. Pilot projects should also permit cases to be assigned from filing on a geographical rotation system, permitting the judge to handle cases from different locations on a periodic basis. The pilot projects should include both rural and urban counties and be evaluated after a reasonable and sufficient period of time. Because of their high volume and number of unrepresented litigants, domestic relations cases and other matters related to family law might be an area deserving

of special consideration and further study with respect to electronic filing, case management, and tracking.

- **ENSURE THAT LAWS AND PROCEDURES RESPECTING CIVIL FINES, FEES, AND PENALTIES DO NOT CAUSE OR AGGRAVATE POVERTY OR INEQUALITY**

The Committee believes that further study of the effects of the way in which the civil justice system interacts with problems of inequality and integration into society is necessary. Such a study should be aimed at ensuring that the civil side of the justice system, alone or in combination with the criminal side, is not permitting an inequitable system to take root in North Carolina. This study may include, but is not limited to, a cost-benefit analysis of the practice of converting criminal fines or penalties into civil judgments, the use of fee waivers as an incentive to complete diversionary programs, the process and mechanisms of criminal expungements, and the effect of penalties such as suspension of licenses and criminal sanctions for failure to pay child support.

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1. Comments of Bradley D. Fowler, NCAOC Planning and Organizational Development officer, in his presentation, "Estimating the Amount of Paper in Court Files and an Overview of Data in the North Carolina State Courts," NCCALJ Technology Committee Meeting (Raleigh, NC), December 15, 2015. Presentation materials available at <http://bit.ly/2jINE1a>. Accessed January 20, 2017.
 2. 2015 survey of the High Point University Survey Research Center. A summary of the results of this survey is available at <http://bit.ly/2hWGgLW>. Published December 15, 2015. Accessed December 20, 2016.

3. A single small claims case can have multiple issues, which accounts for the difference between the “Total Civil Small Claims Filings” in the first table, and the totals of each type of case in the second table.
4. North Carolina Constitution, Art. 4, Sec. 2.
5. North Carolina Equal Access to Justice Commission, *2014 Impact Report*, 2015. Available at <http://bit.ly/2h9LLtV>. Accessed December 20, 2016.
6. *Id.*
7. National Center for State Courts, *The Landscape of Civil Litigation in State Courts*, 2015. Available at <http://bit.ly/2i7rEFS>. Accessed December 20, 2016.
8. NCAOC Research and Planning Division.
9. Comments of Dan Becker, State Court Administrator, Utah Administrative Office of the Courts, in his presentation, “Utah Court System Civil Case Management Initiatives,” NCCALJ Civil Justice Committee Meeting (Durham, NC), March 30, 2016. Presentation materials available at <http://bit.ly/2k9FCep>. Accessed January 20, 2017.
10. In Ohio, for example, electronic filing of a notice of appeal in trial court under local rules may not perfect an appeal in the appellate court without such rules. This gives rise to a wasteful “belt and suspenders” approach to filing. See *Louden v. A.O. Smith Co.*, 121 Ohio St.3d 95 (2009).
11. G.S. 7A-49.5.
12. Comments of Celia Pistolis and Rick Glazier, in their presentation, “Civil Legal Aid in North Carolina,” NCCALJ Civil Justice Committee Meeting (Durham, NC), November 6, 2015. Presentation materials available at <http://bit.ly/2jWrXbn>. Accessed January 20, 2017.
13. North Carolina Equal Access to Justice Commission, *A 108% Return on Investment: The Economic Impact to the State of North Carolina of Civil Legal Services in 2012*, 2015. Available at <http://bit.ly/2jI2DYX>. Accessed January 20, 2017.

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CRIMINAL INVESTIGATION & ADJUDICATION COMMITTEE REPORT

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EVIDENCE-BASED RECOMMENDATIONS TO IMPROVE THE STATE’S CRIMINAL JUSTICE SYSTEM

COMMITTEE CHARGE & PROCEDURES

The Criminal Investigation and Adjudication Committee of the North Carolina Commission on the Administration of Law and Justice (NCCALJ) was charged with identifying areas of concern in the state’s criminal justice system and making evidence-based recommendations for reform. Starting with a comprehensive list of potential areas of inquiry, the Committee narrowed its focus to the four issues identified below. Its inquiry into these issues emphasized data-driven decision-making and a collaborative dialogue among diverse stakeholders. The Committee was

composed of representatives from a broad range of stakeholder groups and was supported by a reporter. When additional expertise was needed on an issue, the Committee formed subcommittees (as it did for Juvenile Reinvestment and Indigent Defense) or retained outside expert assistance from nationally recognized organizations (as it did for Criminal Case Management and Pretrial Justice).

The Committee met nine times. The subcommittee on Indigent Defense met four times; the

subcommittee on Juvenile Reinvestment met twice. Commissioners heard from interested persons and more than thirty state and national experts and judicial officials. The Committee chair, reporter, and subcommittee members gave presentations to and sought feedback on the Committee’s work from a variety of groups, including for example, the N.C. Sheriffs’ Association, N.C. Senior Resident Superior Court Judges, N.C. Chief District Court Judges, N.C. Police Chiefs, and the governing body of the N.C. Police Benevolent Association. In addition to support from the Committee reporter, NCCALJ

staff, the North Carolina Administrative Office of the Courts’ Research and Planning Division, the National Center for State Courts (NCSC), and the North Carolina Sentencing Policy and Advisory Commission provided data and research. The Committee prepared an interim report, which was presented to the public in August 2016 for online feedback and in-person comments at four public meetings held around the state. That feedback was considered by the Committee in formulating its final recommendations. For more detail on all of the Committee’s recommendations, please see the attached Appendices noted below.

RECOMMENDATIONS

The Criminal Investigation and Adjudication Committee of the North Carolina Commission on the Administration of Law and Justice makes the following evidence-based recommendations to improve the state’s criminal justice system:

- **JUVENILE REINVESTMENT**

As detailed in Appendix A, the Committee recommends that North Carolina raise the juvenile age to eighteen for all crimes except violent felonies and traffic offenses. Juvenile age refers to the cut-off for when a child is adjudicated in the adult criminal justice system versus the juvenile justice system. Since 1919, North Carolina’s juvenile age has been set at age sixteen; this means that in North Carolina sixteen- and seventeen-year-olds are prosecuted in adult court. Only one other state in the nation still sets the juvenile age at sixteen. Forty-three states plus the District of Columbia set the juvenile age at eighteen; five states set it at seventeen. The Committee found,

among other things, that the vast majority of North Carolina’s sixteen- and seventeen-year-olds commit misdemeanors and nonviolent felonies; that raising the age will make North Carolina safer and will yield economic benefit to the state and its citizens; and that raising the age has been successfully implemented in other states, is supported by scientific research, and would remove a competitive disadvantage that North Carolina places on its citizens.

In addition to recommending that North Carolina raise the juvenile age, the Committee’s proposal includes a series of recommendations designed to address concerns that were raised by prosecutors and law enforcement officials and were validated by evidence. These recommendations include, for example, requiring the Division of Juvenile Justice to provide more information to law enforcement officers in the field, providing victims with a right to review certain decisions by juvenile court counselors, and implementing technological upgrades so that prosecutors can have meaningful access to an individual’s juvenile record. Importantly, the

Committee’s recommendation is contingent upon full funding. The year-long collaborative process that resulted in this proposal also resulted in historic support from other groups, including the North Carolina Sheriffs’ Association, the North Carolina Association of Chiefs of Police, the North Carolina Police Benevolent Association, the North Carolina Chamber Legal Institute, the John Locke Foundation, and Conservatives for Criminal Justice Reform. Additionally, this issue has received significant public support. Of the 178 comments submitted on it during the NCCALJ public comment period, 96% supported the Committee’s recommendation to raise the age.

- **CRIMINAL CASE MANAGEMENT**

The Committee recommends that North Carolina engage in a comprehensive criminal case management reform effort, as detailed in the report prepared for the Committee by the National Center for State Courts (NCSC) and included as Appendix B. Article I, section 18 of the North Carolina Constitution provides that “right and justice shall be administered without favor, denial, or delay.” Regarding the latter obligation, North Carolina is failing to meet both model criminal case processing time standards as well as its own more lenient time standards. Case delays undermine public trust and confidence in the judicial system and judicial system actors. When unproductive court dates cause case delays, costs are inflated for both the court system and the indigent defense system by dedicating — sometimes repeatedly — personnel such as judges, courtroom staff, prosecutors, and defense lawyers to hearing and trial dates that do not move the case toward resolution. Unproductive court dates also are costly for witnesses, victims, and defendants and their families, when they

miss work and incur travel expenses to attend proceedings. Case delay also is costly for local governments, which must pay the costs for excessive pretrial detentions, pay to transport detainees to court for unproductive hearings, and pay officers for time spent traveling to and attending such hearings. Delay also exacerbates evidence processing backlogs for state and local crime labs and drives up costs for those entities. The report at Appendix B provides a detailed road map for implementing the recommended case management reform effort, including, among other things, adopting or modifying time standards and performance measures, establishing and evaluating pilot projects, and developing caseload management templates. The report, which also recommends that certain key participants be involved in the project and a project timeline, was unanimously adopted by the Committee.

- **PRETRIAL JUSTICE**

As described in the report included as Appendix C, the Committee unanimously recommends that North Carolina carry out a pilot project to implement and assess legal- and evidence-based pretrial justice practices. In the pretrial period — the time between arrest and when a defendant is brought to trial — most defendants are entitled to conditions of pretrial release. These can include, for example, a written promise to appear in court or a secured bond. The purpose of pretrial conditions is to ensure that the defendant appears in court and commits no harm while on release. Through pretrial conditions, judicial officials seek to “manage” these two pretrial risks. Evidence shows that North Carolina must improve its approach to managing pretrial risk. For example, because the state lacks a preventative detention procedure, the only option for detaining highly dangerous defendants

is to set a very high secured bond. However, if a highly dangerous defendant has financial resources — as for example a drug trafficker may — the defendant can “buy” his or her way out of pretrial confinement by satisfying even a very high secured bond. At the other extreme, North Carolina routinely incarcerates pretrial very low risk defendants simply because they are too poor to pay even relatively low secured bonds. In some instances these indigent defendants spend more time in jail during the pretrial phase than they could ever receive if found guilty at trial. These and other problems — and the significant costs that they create for individuals, local and state governments, and society — can be mitigated by a pretrial system that better assesses and manages pretrial risk. Fortunately, harnessing the power of data and analytics, reputable organizations have developed empirically derived pretrial risk assessment tools to help judicial officials better measure a defendant’s pretrial risk. One such tool already has been successfully implemented in one of North Carolina’s largest counties. The recommended pilot project would, among other things, implement and assess more broadly in North Carolina an empirically derived pretrial risk assessment tool and develop an evidence-based decision matrix to help judicial officials best match pretrial conditions to empirically assessed pretrial risk. Such tools hold the potential for a safer and more just North Carolina.

• INDIGENT DEFENSE

As discussed in more detail in Appendix D, the Committee offers a comprehensive set of recommendations to improve the State’s indigent defense system. Defendants who face incarceration in criminal court have a constitutional right

to counsel to represent them. If a person lacks the resources to pay for a lawyer, counsel must be provided at state expense. Indigent defense thus refers to the state’s system for providing legal assistance to those unable to pay for counsel themselves. North Carolina’s system is administered by the Office of Indigent Defense Services (IDS). When the State fails to provide effective assistance to indigent defendants, those persons can experience unfair and unjust outcomes. But the costs of failing to provide effective representation are felt by others as well, including victims and communities. Failing to provide effective assistance also creates costs for the criminal justice system as a whole, when problems with indigent defense representation cause trial delays and unnecessary appeals and retrials. While stakeholders agree that IDS has improved the State’s delivery of indigent defense services, they also agree that in some respects the system is in crisis. The attached report makes detailed recommendations to help IDS achieve this central goal: ensuring fair proceedings by providing effective representation in a cost-effective manner. The report recommends, among other things, establishing single district and regional public defender offices statewide; providing oversight, supervision, and support to all counsel providing indigent defense services; implementing uniform indigency standards; implementing uniform training, qualification, and performance standards and workload formulas for all counsel providing indigent services; providing reasonable compensation for all counsel providing indigent defense services; and reducing the cost of indigent defense services to make resources available for needed reforms. Implementation of these recommendations promises to improve fairness and access, reduce case delays, and increase public trust and confidence.

This report contains recommendations for the future direction of the North Carolina court system as developed independently by citizen volunteers. No part of this report constitutes the official policy of the Supreme Court of North Carolina, of the North Carolina Judicial Branch, or of any other constituent official or entity of North Carolina state government.

LEGAL PROFESSIONALISM COMMITTEE REPORT

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THE ACCESSIBILITY AND FAIRNESS OF OUR COURT SYSTEM DEPEND, TO A SIGNIFICANT DEGREE, ON THE STRUCTURE AND PERFORMANCE OF THE LEGAL PROFESSION.

INTRODUCTION AND CHARGE OF THE COMMITTEE

This report states the recommendations of the Legal Professionalism Committee of the North Carolina Commission on the Administration of Law and Justice (NCCALJ).

The following charge has guided the work of this Committee:

The mission of the North Carolina Commission on the Administration of Law and Justice is to consider how North Carolina courts can best meet our 21st century legal needs and the expectations of

the public, ensuring that we can continue to provide justice for all.

The role of the Legal Professionalism Committee is to consider and evaluate possible changes in our system of delivery of legal services. The Committee will explore ways to address structural challenges that affect access to justice, including the barriers that create a lack of affordable legal services for large segments of our population, the costs and debt

associated with a legal education, and the challenges of developing and sustaining a legal career.

Democratic societies are founded on a shared belief in the rule of law and the integrity of the judiciary. Any change that the Committee considers must take into account the core values of our

system of justice, including the exercise of independent judgment on behalf of clients, the absence of conflicts, and the confidentiality of client communications.

The Committee will also consider the need to protect the public from unskilled advisors and the effects of unrepresented parties on the court system.

SPEAKERS WHO APPEARED BEFORE THE COMMITTEE

Multiple speakers generously shared their time and insights with the Committee. The Committee heard live or videotaped comments from the following speakers:

- Professor William Henderson, Indiana University Maurer School of Law
- Alice Mine, North Carolina State Bar
- Peter Bolac, North Carolina State Bar
- Dan Lear, Director of Industry Relations, Avvo
- Chas Rampenthal, General Counsel, LegalZoom
- Dean Andrew Perlman, Suffolk University School of Law
- Jaye Meyer, Chair, North Carolina Board of Law Examiners
- Lee Vlahos, Executive Director, North Carolina Board of Law Examiners
- Jim Leipold, Executive Director, National Association for Law Placement
- Paul Carr, President, Axiom
- Kelly Zitzmann, General Counsel, Axiom
- Reid Phillips, outside counsel for Capital Associated Industries
- Jennifer Lechner, Executive Director, North Carolina Equal Access to Justice Commission
- Sylvia Novinsky, Director, North Carolina Pro Bono Resource Center

BACKGROUND: ACCESS AND FAIRNESS

Court systems provide a forum to resolve criminal charges and civil disputes. To be effective, a court system must be accessible to people who have disputes. If a court system is to have the confidence of the public it serves, the system must apply fair processes and produce fair outcomes.

The accessibility and fairness of our court system depend, to a significant degree, on the structure and performance of the legal profession. Over the last decade, the market for law-related services has seen rapid change. The statutory framework that governs these services has not kept pace with these changes. This report recommends approaches to these issues that will promote access and fairness in our legal system.

Civil legal services are currently beyond the reach of many North Carolinians. Many of our fellow citizens cannot afford to hire a lawyer for even relatively inexpensive services, such as a will or an uncontested divorce. In a recent North Carolina poll, 73% of respondents disagreed with the statement that most people can afford to bring a case to court.¹

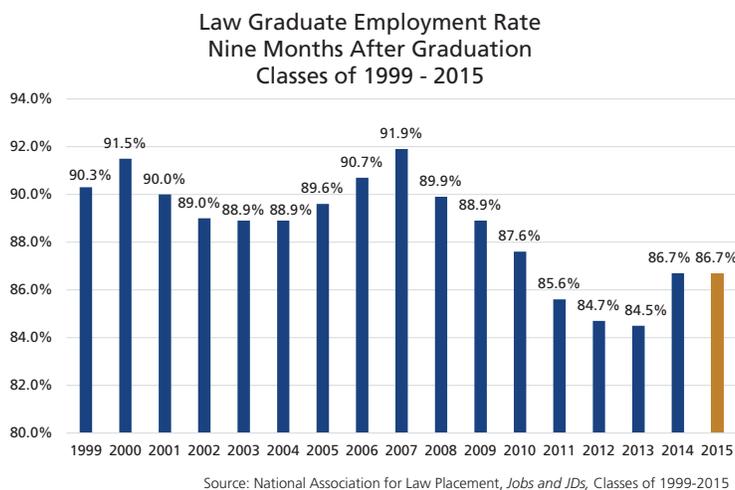
This lack of affordability affects more than indigent people. Small- and medium-sized businesses, for example, find it increasingly unaffordable to hire lawyers to address the legal issues that inevitably arise in a modern business.

These problems have led many parties to try to represent themselves — not only in transactions, but in court as well. A 2015 study by the National Center on State Courts found that “at least one party was self-represented in more than three-

quarters of civil [non-domestic] cases.”² Although some of these parties might represent themselves for idiosyncratic reasons, most of them do so because they cannot afford a lawyer (or believe that they cannot).

Access to lawyers has non-economic dimensions as well. Rural areas of North Carolina are losing lawyers to retirement and relocation. From 2004 to 2015, four of the state’s thirty judicial districts saw a net decrease in their populations of practicing lawyers. Over this period, one judicial district lost 60.7% of its lawyers.³ Further, many non-English-speaking North Carolinians have trouble finding lawyers who can advise them in their own languages.

Paradoxically, many clients’ legal needs are going unmet at the same time that many lawyers cannot find stable legal employment. The ranks of these unemployed and underemployed lawyers span the generations. As the following graph illustrates, employment rates for new law graduates in the United States lag behind the rates that prevailed before the 2008 recession:



In addition, many lawyers carry heavy debt burdens that make it untenable for them to offer low-cost legal services.⁴ Law school debt also deters many lawyers from practicing in rural areas of North Carolina.

Opinions vary on the causes of the reduced demand for lawyers. Some of the reduced demand, however, reflects an increasing gap between the services that clients are seeking and the services that lawyers are offering. Because of the Internet, the days when a client had to consult a lawyer to get even basic information on a legal problem are over. In addition, new types of providers are offering law-related services that, at least in some respects, compete with lawyers' services.

For these and other reasons, fewer clients are seeking — or can afford — the customized legal

services that most law graduates are trained to provide. This mismatch between client needs and the services lawyers are offering requires careful study and creative solutions.

The legal profession and the court system have a shared duty to promote access to justice. The Committee recognizes that people who cannot afford essential legal services should still be able to access these services. Similarly, people who lack lawyers should still have access to the courts.

Likewise, the legal profession and the court system have a shared duty to ensure that the legal system produces fair outcomes. Protecting the public from incompetent legal services promotes fair processes and fair outcomes in our legal system.

RECOMMENDATIONS

The Committee finds that the delivery of law-related services affects the access and fairness goals discussed above. Thus, the Committee has studied the delivery of law-related services in North Carolina and nationwide.

The Committee has identified several issues that are affecting, and will continue to affect, the dynamics of law-related services and the needs of the public. On these issues, the Committee makes the following recommendations:

- **A NEW NORTH CAROLINA LEGAL INNOVATION CENTER SHOULD BE CREATED**

The innovation center should study (and, if appropriate, propose changes to) the definition of the practice of law in North Carolina and the entities with the authority to adjust that definition. The innovation center's proposals should account for the evolving needs and expectations of the public, as well as the impact of technology on law-related services.

The innovation center should also study whether North Carolina should license or certify any additional categories of providers of law-related services. If the center recommends licensing or certifying any additional categories of providers, the recommendations should address how these providers should be regulated.

REASONS FOR RECOMMENDATION ONE

Currently, large numbers of North Carolinians

with law-related needs are not having those needs met by lawyers. The demand for law-related services in North Carolina and the available supply of those services are not aligned.

In our state, the majority of legal services continue to be provided by lawyers in small partnerships or solo practices. In the United States more generally, however, technology and other market forces are expanding the law-related services that are available. Technology companies and entrepreneurs are making efforts to meet the demand for affordable law-related services in new ways.

These technology-based providers offer a variety of services. Some address discrete legal problems, such as preparing wills, deeds, or contracts. Others take on larger projects, such as providing short-term lawyers to corporations, helping companies analyze high-volume contracts, and helping people comply with government regulations.

In addition, some states are experimenting with licensing independent non-lawyers to provide law-related services. These limited-license legal technicians are not admitted to the bar and generally do not have a law degree. Even so, they are authorized to help clients with a strictly defined range of law-related tasks. The goals of allowing and licensing these services include (1) offering an alternative to lawyers' services in discrete areas and (2) regulating the alternative services in the interest of consumer protection.

Chapter 84 of the North Carolina General Statutes defines the practice of law in North Carolina, limits the entities and persons who can provide services within that definition, and provides for the regulation of those persons and entities. The definition of the practice of law is broad: it includes "performing any legal service for any

other person, firm or corporation, with or without compensation." N.C. Gen. Stat. § 84-2.1 (2015).

The definition of the practice of law, as well as the statutes that control who can deliver services within that definition, limit the quantity and types of law-related services that are available in North Carolina. Although these statutes affect the balance of supply and demand, the statutes exist for good reasons — most notably, to prevent incompetent or unfit practitioners from harming the public.

In recent years, North Carolina has witnessed intense litigation regarding whether certain online services, such as LegalZoom, involve the unauthorized practice of law. To resolve this litigation, the General Assembly recently amended Chapter 84. These amendments, however, are mostly a tailored response to the issues raised in the *LegalZoom* cases.⁵

In sum, despite the evolution of the market for law-related services, North Carolina's definition of the practice of law has stayed largely unchanged. A comprehensive reexamination of Chapter 84, in the Committee's view, will be one that (1) addresses the unmet legal needs of many North Carolinians and (2) decides the status of emerging providers of law-related services.

The issues associated with the delivery of legal services are complex. They require a balance between important interests. Further, the social and economic realities that influence the market for legal services are continuing to change. For these reasons, possible changes to the regulation of law-related services in North Carolina require in-depth analysis.

The Committee recommends that North Carolina create a Legal Innovation Center to analyze these

and related issues. Such a center could parallel the American Bar Association’s recently created Center for Innovation: a center that seeks new ways to close the civil justice gap and to improve the delivery of law-related services. North Carolina’s Legal Innovation Center might be a purely private organization — perhaps an arm of the North Carolina Bar Association — or it might be a public-private hybrid.

However the North Carolina Legal Innovation Center is composed, it should study possible updates to Chapter 84. Appropriate updates would seek to address the changing nature of law-related services and would seek a better long-term match of supply and demand. In considering possible statutory updates, the center should address the effects of technological change on law-related services, as well as the wide range of law-related services that now exist or are likely to emerge. In addition, any recommended updates to Chapter 84 must protect the public from incompetent or unfit practitioners and from deceptive practices and other forms of exploitation.

- **A NEW NORTH CAROLINA LEGAL INNOVATION CENTER SHOULD STUDY (AND, IF APPROPRIATE, PROPOSE CHANGES TO) THE CHOICE OF THE ENTITIES WITH THE AUTHORITY TO REGULATE ENTRY INTO THE PRACTICE OF LAW**

Likewise, the innovation center should study (and, if appropriate, propose changes to) the choice of the entities with the authority to regulate the professional conduct of lawyers. If North Carolina decides to regulate any new types of providers of law-related services, the innovation center should study these same questions in relation to the new providers.

REASONS FOR RECOMMENDATION TWO

As noted earlier, Chapter 84 of the North Carolina General Statutes provides that only licensed lawyers can practice law. Chapter 84 also creates the framework for the regulation of law-related services in North Carolina. However, the precise effects of Chapter 84 depend on more than the text of the statutes. Those effects also depend on the choice of the institutions that implement Chapter 84, as well as the decisions and actions of those institutions.

Chapter 84 is implemented by the North Carolina State Bar, the North Carolina Board of Law Examiners, and the courts. The State Bar and the Board of Law Examiners are state agencies.

The State Bar regulates the professional conduct of lawyers by handling disciplinary matters, issuing ethical opinions, and offering information to lawyers and the public. The State Bar is governed by the State Bar Council, which is composed of fifty-nine licensed North Carolina lawyers and three members of the public. The lawyer councilors are elected, within geographic districts, by other licensed lawyers. The State Bar, through its Authorized Practice of Law Committee, makes decisions on whether to pursue unauthorized-practice charges or lawsuits against people or companies that provide law-related services.

The State Bar investigates complaints of professional misconduct, then prosecutes cases

before a statutorily created tribunal called the Disciplinary Hearing Commission. Twelve of the twenty members of this commission are lawyers appointed by the State Bar Council. The other eight members are non-lawyer citizens of North Carolina who are appointed by the Governor and the General Assembly. Each panel of the Disciplinary Hearing Commission consists of two lawyers and a public member.

The North Carolina courts, too, play a role in regulating the practice of law in this state. The courts have inherent authority to regulate the conduct of lawyers who appear before them. This authority operates in parallel with the authority of the State Bar. In addition, the North Carolina courts play a role in shaping the law on professional conduct when they decide appeals from decisions of the Disciplinary Hearing Commission, as well as lawsuits that are filed in the state trial courts in the first instance. Lawsuits alleging unauthorized practice are generally filed in the North Carolina trial courts. Decisions in those cases, as well as decisions of the Disciplinary Hearing Commission, are appealable to the North Carolina appellate courts.

The State Bar adopts rules that govern the practice of law. These rules include the Rules of Professional Conduct. The Supreme Court of North Carolina has the authority to approve, change, or reject these rules. The State Bar also administers certain programs that the Supreme Court of North Carolina has created, such as the Interest on Lawyers' Trust Accounts program and the Client Security Fund.

In the wake of *North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015), courts and federal antitrust agencies are scrutinizing the makeup, authority, and actions of state agencies that regulate licensed professionals. Our

Committee expresses no opinion on how North Carolina's entities that regulate entry into the practice of law would fare under the standards in the *Dental Board* decision.

The prospect of a *Dental Board* analysis, however, makes it appropriate to study the makeup, roles, and histories of the entities involved and what steps they can take to manage and avoid potential antitrust risks. Those who study these issues should consider whether there is a policy basis for recommending any change in the interaction of these entities. This study will complement possible changes to Chapter 84.

The Committee recommends that the new North Carolina Legal Innovation Center study these issues as well. The institutional roles discussed in Recommendation Two overlap with the regulatory issues discussed in Recommendation One. In view of these overlaps, it will be most efficient for the same body to study these issues together.

- **AN APPROPRIATE ORGANIZATION SHOULD STUDY THE STANDARDS AND METHODS THAT NORTH CAROLINA SHOULD USE IN THE FUTURE TO ASSESS CANDIDATES FOR THE PRACTICE OF LAW, AS WELL AS THE ENTITIES THAT SHOULD CARRY OUT THESE ASSESSMENTS**

This study should address the evolving scope of the practice of law, recent and future changes in the dynamics of law-related services, and the legal needs of the public. If North Carolina decides to regulate any new types of providers of law-related services, an appropriate organization should study these same questions in relation to the new providers.

REASONS FOR RECOMMENDATION THREE

Another factor that affects the supply and quality of law-related services in North Carolina is the way that the state assesses new candidates for law practice.

With narrow exceptions, all candidates for law licensure in North Carolina must be graduates of law schools approved by the State Bar Council. This list of law schools is limited to law schools accredited by the American Bar Association.

The North Carolina Board of Law Examiners administers a two-day written exam that seeks to ensure that a law graduate has a reasonable level of competence as a lawyer. One day of this exam consists of essays on selected aspects of North Carolina substantive law. The other day consists of the multiple-choice Multistate Bar Examination. Bar applicants must also pass the Multistate Professional Responsibility Examination. Further, they must undergo an extensive background check and must demonstrate good character to the satisfaction of the Board of Law Examiners.

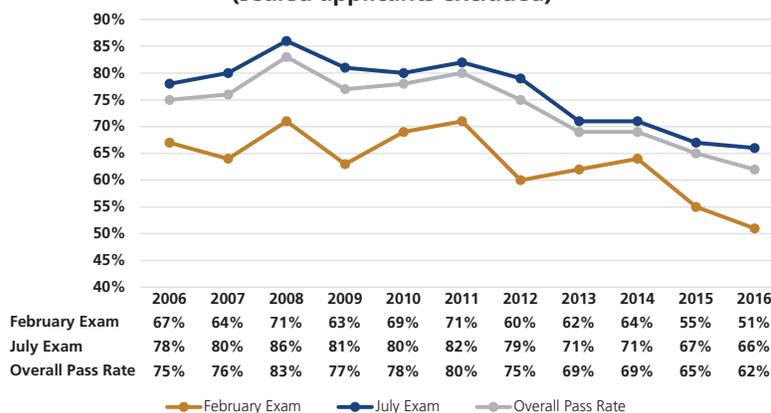
North Carolina allows licensed lawyers from thirty-six states and the District of Columbia to

apply for admission by comity — that is, without taking the North Carolina Bar Examination. These admissions require an extensive application process. Rulings on comity applications often take several months.

In contrast, under Chapter 84A of the General Statutes, North Carolina allows lawyers whose only law license is from another country (or from Puerto Rico, Guam, or the U.S. Virgin Islands) to practice law independently in this state. To do so, these foreign legal consultants, as they are called, need not be admitted to the bar of any U.S. state. However, the statute limits them to a scope of practice that is narrower than the scope allowed for North Carolina-licensed lawyers.

North Carolina’s methods of assessing candidates have remained essentially the same for decades. Over the past few years, however, the percentage of candidates who have passed the bar exam has been falling. The following table illustrates the drop:

**North Carolina Bar Examination
First-Time Test Takers Pass Rate 2006 - 2016
(sealed applicants excluded)**



Source: North Carolina Board of Law Examiners

There has also been a sharp increase in the percentage of candidates who have experienced problems during character-and-fitness inquiries.

For example, the following table compares, from 2012 to 2015, the percentage of North Carolina bar applicants who have a nondisclosure issue on their bar applications, incidents of DWI or driving after consuming alcohol, or multiple DWIs.⁶

Character and Fitness Issues Among North Carolina Bar Applicants, 2012-15

Character and Fitness Issue	Percentage of 2012 Applicants	Percentage of 2015 Applicants	Change from 2012 – 2015
Nondisclosure	30%	52%	+22%
DWI / DUI Incident	23%	43%	+20%
Multiple DWIs / DUIs	5%	18%	+13%

Source: North Carolina Board of Law Examiners, Dec. 2015

Many states have begun reassessing their methods for assessing candidates for the practice of law. Currently, twenty-five states have adopted the Uniform Bar Examination. Each state that adopts the Uniform Bar Examination has the option of adding a state-specific component to the exam. The Uniform Bar Examination is administered and graded according to uniform guidelines created by the National Conference of Bar Examiners. The exam results in a score that is portable among any of the participating states.

Some states require bar candidates to take assessments at specified points during law school.

In addition, some states are experimenting with performance-based methods of testing bar applicants. For example, a majority of states administer the Multistate Performance Test, an exam that requires an applicant to carry out simulated lawyering for a simulated client.

In October 2016, the North Carolina Board of Law Examiners recommended that North Carolina begin administering the Uniform Bar Examination, including the Multistate Performance Test, in 2019.⁷ The Board also recommended that North Carolina supplement the Uniform Bar Examination with North Carolina-specific components that will be specified in the future. To take effect, this recommendation will need the approval of the

State Bar Council and the Supreme Court of North Carolina.

The criteria and methods for admission to the practice of law must balance a number of important considerations, such as:

- The criteria must bear a reasonable relationship to the knowledge and skills that today’s and tomorrow’s clients should expect their lawyers to have.
- The criteria and methods must be calibrated to screen out applicants who would become incompetent, unfit, or dishonest lawyers. Although perfect calibration is impossible, the criteria and methods must never slight the consumer-protection function of bar admissions.
- At the same time, the criteria and methods must be fair and reasonably objective.
- The criteria and methods must be practical and cost-effective.
- The criteria and methods must be transparent. The legal profession must be able to predict — and explain — the results produced by the criteria and methods.

For many years, North Carolina has used essentially the same criteria and methods to assess candidates for the practice of law. This fact suggests that it would be beneficial to study, and possibly update, those criteria and methods. Recent circumstances reinforce that conclusion:

- Clients are seeking a wider range of services from lawyers. In some cases, they are seeking new or more limited services, such as “unbundled” strategic and technical advice, document review, or form completion.
- As shown above, pass rates on the North Carolina Bar Examination have dropped in recent years. The pass rates have dropped even though the bar exam is, in a sense, graded on a curve.
- More bar candidates present serious issues with character and fitness than in earlier eras.
- Many states are considering alternatives to the traditional bar exam, including performance-based exams and apprenticeship-like systems.

If the definition of the practice of law in North Carolina changes, this change will call for further adaptation of the skills and other characteristics required of lawyers. Moreover, if North Carolina decides to license or certify any non-lawyer providers of law-related services, the state will need to find ways to assess candidates for those roles.

Finally, the above changes suggest that an appropriate body should also study the choice of the entity that assesses candidates. Applying new standards and methods, and assessing non-lawyer providers of law-related services, might require expertise beyond the current capabilities of the Board of Law Examiners.

Bar examiners and lawyer regulators nationwide are currently studying the policy issues in this area. A qualified body — one with expertise in legal education and test methods — should study these issues in North Carolina as well.

A new North Carolina Legal Innovation Center might or might not have the above expertise. If it does, the innovation center would be a good choice to carry out this analysis. If not, another appropriate body should be chosen or created.

- **THE COMMITTEE
ENDORSES THE
WORK OF THE
NORTH CAROLINA
EQUAL ACCESS
TO JUSTICE
COMMISSION**

The Committee recommends that the Equal Access to Justice Commission explore ways to increase the help offered to self-represented litigants throughout North Carolina. The Committee also endorses the work of the related North Carolina Pro Bono Resource Center, which seeks to increase pro bono services provided by North Carolina lawyers.

REASONS FOR RECOMMENDATION FOUR

As an unfortunate side effect of North Carolina's current system for delivery of legal services, many North Carolinians have law-related needs but cannot afford lawyers.

Accommodating self-represented litigants is one of the most pressing challenges that face the North Carolina courts. Most aspects of the court system are not designed for use by people who litigate without the help of a lawyer. Most self-represented litigants have only a limited understanding of the substantive law involved in their cases, the meaning of legal terms, the rules of evidence and procedure, and filing deadlines. They face challenges at every step, including filing a lawsuit, serving process, conducting and responding to discovery, and more. These litigants are often tripped up by procedural rules and other features of our complex legal system. In sum, the absence of a lawyer makes it unlikely that unrepresented parties can achieve their objectives in court. These difficulties can erode public trust and confidence in the court system.

As another concern, when unrepresented parties try to file papers, interact with court officials and opposing counsel, and appear in court, their efforts often strain the resources of the court system and cause difficulties in the litigation process. Judges and court officials often face difficult choices about how much they can help unrepresented parties.

Self-represented litigants in North Carolina also face problems because of county-to-county variations in trial courts' forms and local rules. For example, a 2016 study found that, across a sample of twelve North Carolina counties, child custody cases triggered a total of twenty-eight different local rules.⁸ These local rules applied over and above the statewide rules that govern these cases.

The number and complexity of these rules make it extremely difficult for self-represented litigants to understand and comply with court procedures. The variations also make it difficult for pro bono lawyers to represent litigants across county lines.

Further, North Carolina court forms are not as readily accessible as they might be, especially for self-represented litigants.

To ease these challenges, courts in some states have started efforts to make the court system more user-friendly for self-represented litigants. For example, the state courts of Utah and California have launched self-help websites that provide forms, explanations of basic procedural steps, and links to the most commonly encountered substantive law.⁹ These types of resources are useful for many litigants, but less useful for litigants with limited education, English skills, or computer skills.

Courthouse navigators are an even more useful resource for self-represented litigants. These programs, currently in place in New York and Arizona, allow trained non-lawyers to help self-represented litigants without giving legal advice. Courthouse navigators use computers to retrieve information, research information about the law, collect documents needed for individual cases, and, if needed, respond to judges' or court officials' questions about a particular case. Navigators reduce the confusion of self-represented litigants, but they do more than that. They also help cases flow more efficiently through the court system. Further, navigators insulate judges and court clerks from the dilemmas that they face when self-represented litigants turn to them for advice.

After hearing about these initiatives in other states, the Committee discussed a wide range of

possible direct initiatives to fill the justice gap in North Carolina. The Committee received especially valuable information from the North Carolina Equal Access to Justice Commission. For several years, the Equal Access to Justice Commission has been studying the causes of the justice gap and possible solutions. Our Committee considers it important for North Carolina to speak with one voice on these issues. Thus, we endorse the work and recommendations of the Equal Access to Justice Commission.

Although all of the Equal Access to Justice Commission's work is important, the Committee would like to highlight and endorse the Equal Access to Justice Commission's initiatives in two areas: meeting the needs of self-represented litigants and increasing lawyers' pro bono services.

Finding Ways to Accommodate Self-Represented Litigants

The Committee encourages the Equal Access to Justice Commission to recommend measures that will reduce the burdens faced by self-represented parties and volunteer lawyers. Although the Committee defers to the Equal Access to Justice Commission on the best choice of measures, worthwhile efforts might include those listed in Exhibit 1 of this report.

None of these measures, however, should be viewed as a substitute for trained, competent counsel in appropriate cases. Through technology-enhanced tools and case management orders, the court system should notify self-represented litigants, as early as is practical in a given case, what free or low-cost legal services might be available and how to obtain them. These systems should be designed to direct legal-aid resources and volunteer lawyers' services to

the litigants who need them the most and would benefit from them the most.

Many of the initiatives recommended here, of course, cost money. This reality highlights the need for adequate funding of the North Carolina court system.

Advancing Pro Bono Efforts

Although pro bono lawyering alone is unlikely to fill the entire civil-justice gap, it has the potential to fill part of the gap.

Rule 6.1 of North Carolina's Rules of Professional Conduct affirms that each lawyer has a professional obligation to provide legal services to those who are unable to pay. The rule urges all lawyers, regardless of their professional roles, "to render at least (50) hours of pro bono public legal services per year."

Since the adoption of Rule 6.1 in 2010, however, there have been only limited efforts to educate North Carolina lawyers on their ethical duty to provide pro bono legal services. Although pro bono lawyers alone cannot serve the needs of all clients who seek help, pro bono programs and dedicated pro bono volunteer lawyers can play a crucial role in bridging the justice gap and helping legal aid organizations serve those most in need.

In 2014, the Equal Access to Justice Commission surveyed lawyers across the state to identify current pro bono activities and barriers to increasing pro bono services. According to the survey, the resources that would be most likely to encourage pro bono services include (1) an online portal to review and select pro bono opportunities, (2) manuals on skills and best practices, and (3) a statewide agency to connect

lawyers with organizations that administer pro bono activities.¹⁰

In 2016, the Equal Access to Justice Commission established the North Carolina Pro Bono Resource Center with the goal of increasing pro bono participation statewide. The initial activities of the Pro Bono Resource Center include:

- Providing support for existing pro bono activities through recruitment, training, and opportunities for collaboration;
- Communicating to lawyers statewide about pro bono projects;
- Developing pro bono projects, with an initial focus on projects to deploy recent law school graduates to meet unmet legal needs in Wake and Mecklenburg counties;
- Implementing voluntary pro bono reporting; and
- Recognizing lawyers' pro bono service statewide.

The Committee endorses these efforts. In Exhibit 1 of this report, the Committee suggests further possible initiatives for the Pro Bono Resource Center.

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1. 2015 survey of the High Point University Survey Research Center. A summary of the results of this survey is available at <http://bit.ly/2hWGgLW>. Published December 15, 2015. Accessed December 20, 2016.
 2. National Center for State Courts, *The Landscape of Civil Litigation in State Courts*, 2015. Available at <http://bit.ly/2i7rEFS>. Accessed December 20, 2016.
 3. Comments of representatives from the North Carolina State Bar in their presentation, "Active Lawyers by Judicial District vs. District Population," NCCALJ Legal Professionalism Committee Meeting (Raleigh, NC), October 6, 2015.
 4. *See, e.g.*, Noam Scheiber, "An Expensive Law Degree, and No Place to Use It," *New York Times*, June 17, 2016. Available at <http://nyti.ms/1UHnEKX>. Accessed January 12, 2017.
 5. *See* Act of June 30, 2016, Ch. 60, §§ 1-2, 2016 N.C. Adv. Legis. Serv. 198, 198-99 (codified at G.S. 84-2.1(b)-2.2).
 6. Comments of representatives from the North Carolina Board of Law Examiners in their presentation at the NCCALJ Legal Professionalism Committee Meeting (Raleigh, NC), December 1, 2015. Presentation materials available at <http://bit.ly/2ioElSp>. Accessed January 12, 2017.
 7. Minutes of the October 2016 meeting of the North Carolina Board of Law Examiners. Available upon request.
 8. Comments of representatives from the North Carolina Equal Access to Justice Commission in their presentation at the NCCALJ Legal Professionalism Committee Meeting (Raleigh, NC), May 3, 2016. Presentation materials available at <http://bit.ly/2jbEtWl>. Accessed January 12, 2017.
 9. *See* Utah Courts Self-Help Resources / Self-Represented Parties, available at <https://www.utcourts.gov/selfhelp>. Accessed November 22, 2016; and The California Courts Self-Help Center, available at <http://www.courts.ca.gov/selfhelp.htm>. Accessed November 22, 2016.
 10. Results of the online "North Carolina Pro Bono Participation Survey," conducted by the North Carolina Equal Access to Justice Commission, May 2014.

EXHIBIT 1

Suggested Initiatives for the North Carolina Equal Access to Justice Commission

- Analyzing whether the North Carolina court system is accessible to and usable by self-represented litigants. This analysis should consider whether the current level of access raises any due process issues.
- Urging the North Carolina courts to implement a “courthouse navigator” system statewide.
- Creating a statewide action plan for self-represented litigants.
- Identifying ways to streamline commonly encountered court processes to make them easier for self-represented litigants to handle.
- Standardizing forms and templates for self-represented litigants across North Carolina.
- Studying trial courts’ local rules and identifying ways to standardize or consolidate these rules as much as is reasonable.
- Creating websites with user-friendly court information and online forms, with links to live assistance from court personnel.
- Providing online triage services that give self-represented litigants routes for pursuing their cases and, at the same time, help the courts process and track cases.
- Offering standard training to help judges and court personnel work with self-represented litigants.
- Forging agreements with law schools’ clinical programs, in an effort to involve law students (under supervision) in client services.
- Developing court assistance offices, self-help centers, and courtroom-based resources to help self-represented litigants.
- Collaborating with public libraries and law libraries to help self-represented litigants.
- Collecting and analyzing data on the barriers facing unrepresented litigants, how unrepresented litigants fare in court, and the impact of efforts to help them.

Suggested Initiatives for the North Carolina Pro Bono Resource Center

- Developing a statewide campaign to educate North Carolina lawyers about their responsibility to provide pro bono legal services under Rule 6.1 of North Carolina’s Rules of Professional Conduct.
- Working with local bar organizations to develop pro bono projects throughout North Carolina.
- Expanding training opportunities for lawyers who volunteer to provide pro bono legal services.
- Supporting efforts to track and recognize North Carolina lawyers’ pro bono service.

EXHIBIT 2

Materials Reviewed by the Committee

(All links below were last accessed on October 7, 2016.)

- I. American Bar Association (ABA) Documents
 - a. ABA Commission on the Future of Legal Services, Report on the Future of Legal Services in the United States (2016), <http://abafuturesreport.com/2016-fls-report-web.pdf>.
 - b. ABA Issue Papers
 - i. ABA Commission on the Future of Legal Services, Issue Paper on the Future of Legal Services (Nov. 3, 2014), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2014_11_03_issues_paper_future_legal_services.authcheckdam.pdf.
 - ii. ABA Commission on the Future of Legal Services, Issue Paper Concerning New Categories of Legal Services Providers (Oct. 16, 2015), https://www.americanbar.org/content/dam/aba/images/office_president/delivery_of_legal_services_completed_evaluation.pdf.
 - iii. ABA Commission on the Future of Legal Services, For Comment: Issues Paper Concerning Legal Checkups (Mar. 22, 2016), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2016_legal_services_call_for_comments.authcheckdam.pdf.
 - iv. ABA Commission on the Future of Legal Services, For Comment: Issues Paper Concerning Unregulated LSP Entities (Mar. 31, 2016), http://www.americanbar.org/content/dam/aba/images/office_president/final_unregulated_lsp_entities_issues_paper.pdf.
 - v. ABA Commission on the Future of Legal Services, For Comment: Issues Paper Regarding Alternative Business Structures (Apr. 8, 2016), <http://src.bna.com/eeX>.
- II. New Models for the Delivery of Legal Services
 - a. William Henderson, Professor, Ind. Univ. Maurer School of Law, Adapting to a World that Wants a Better, Faster, Cheaper Legal Solution (Dec. 5, 2014), <http://nccalj.org/wp-content/uploads/2015/pdf/henderson-nba-presentation.pdf>.
 - b. Legal Zoom and Avvo Presentation Videos
 - i. N.C. Commission on the Administration of Law & Justice, Legal Professionalism Presentation by Chas Rampenthal (Nov. 25, 2015), <https://www.youtube.com/watch?v=6WkJn5tW0YE>.
 - ii. N.C. Commission on the Administration of Law & Justice, Legal Professionalism Presentation by Dan Lear (Nov. 25, 2015), https://www.youtube.com/watch?v=-AyDd_k11Co.

- iii. N.C. Commission on the Administration of Law & Justice, Legal Professionalism Panel Discussion (Nov. 25, 2015), <https://www.youtube.com/watch?v=nUHQwJ1MdY4>.
 - c. Axiom Global Inc., About Axiom (Feb. 2, 2016), <http://nccalj.org/wp-content/uploads/2016/01/Axiom-NCCALJ-Legal-Professionalism-Committee-Presentation.pdf>.
 - d. Raymond H. Brescia, *Uber for Lawyers: The Transformative Potential of a Sharing Economy Approach to the Delivery of Legal Services*, 64 Buff. L. Rev. 745 (2016).
 - e. Non-Lawyer Ownership in Law Firms
 - i. Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 Geo J. of Legal Ethics 1 (2016).
 - ii. Tahlia Gordon & Steve Mark, *Access to Justice: Can You Invest in It?* (April 2015), https://www.researchgate.net/publication/275608762_Access_to_Justice_Can_you_invest_in_it.
 - iii. Utah State Courts & Utah State Bar, *Non-Lawyer Legal Assistance Roles Efficacy, Design, and Implementation* (2015), https://www.utcourts.gov/committees/limited_legal/NonLawyer%20Legal%20Assistance%20Roles.pdf.
 - f. Alternative Business Structures
 - i. Stephen Roper et al., Enterprise Research Centre, *Work Organization and Innovation in Legal Services: Analysis from a "Deep Dive" Study* (2015), <http://www.enterpriseresearch.ac.uk/wp-content/uploads/2016/05/ERC-ResPap45-RoperLoveBourke.pdf>.
 - ii. Solicitors Regulation Authority, *Research on Alternative Business Structures (ABSs)* (2014), <http://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report.page>.
 - g. Limited-License Legal Technicians (LLLTs)
 - i. Wash. R. Gen. Application APR 28 ("Limited Practice Rule for Limited License Legal Technicians").
- III. Changes in the Practice of Law
- a. Mark A. Cohen, *The Future Keeps Happening to Legal Services*, Law360 (Mar. 24, 2016), <http://www.law360.com/articles/775358/the-future-keeps-happening-to-legal-services>.
 - b. Georgetown Law Center for the Study of the Legal Profession, 2016 Report on the State of the Legal Market, https://www.law.georgetown.edu/news/upload/2016_PM_GT_Final-Report.pdf.
 - c. Andrew M. Perlman, *Toward the Law of Legal Services*, 37 Cardozo L. Rev. 49 (2015).
 - d. Andrew M. Perlman, Dean & Professor of Law, Suffolk Law Sch., *Improving Access to Justice Through Technology and Regulatory Innovation* (Dec. 1, 2015), <http://nccalj.org/wp-content/uploads/2015/12/North-Carolina-Access-to-Justice.pdf>.

IV. Regulation of the Practice of Law

- a. Reid Phillips, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, *Do the North Carolina Unauthorized Practice of Law Statutes Serve Their Purpose?* (May 3, 2016), http://nccalj.org/wp-content/uploads/2016/05/NCCALJ_Unauthorized_Practice_of_Law_Presentation.pdf.
- b. Clifford Winston & Quentin Karpilow, *Should the U.S. Eliminate Entry Barriers to the Practice of Law? Perspectives Shaped by Industry Deregulation*, 106 *Am. Econ. Rev.* 171 (2016).
- c. *LegalZoom.com, Inc. v. North Carolina State Bar*, No. 11 CVS 15111, 2015 WL 6441853 (N.C. Bus. Ct. Oct. 22, 2015).
- d. Bobbi Jo Boyd, *Mapping Inter-Organizational Boundary Bureaucracy and the Need for Oversight*, 45 *Sw. L. Rev.* 631 (2016).
- e. Memorandum from Joni Nichols & Anne Evangelista to Luke Bierman regarding current regulation of the practice of law and best practices of regulation (Apr. 27, 2016).
- f. *N.C. State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015).
- g. Andrew Strickler, *N.Y. Bar Hammers ABA Plan for Legal Services Oversight*, Law360 (Feb. 5, 2016), <http://www.law360.com/articles/755705/ny-bar-hammers-aba-plan-for-legal-services-oversight>.
- h. Grant B. Osborne, *Contemplations on "An Act to Further Define ... 'Practice [of] Law,'" "Requirements for Web Site Providers" and Chapter 84 of the North Carolina General Statutes*, NCBA Blog (Aug. 24, 2016), <http://ncbarblog.com/2016/08/contemplations-on-an-act-to-further-define-practice-of-law-requirements-for-web-site-providers-and-chapter-84-of-the-north-carolina-general-statutes/>.

V. Legal Education

- a. Michele R. Pistone & Michael B. Horn, Clayton Christensen Institute, *Disrupting Law School: How Disruptive Innovation Will Revolutionize the Legal World* (2016), <http://www.christenseninstitute.org/wp-content/uploads/2016/03/Disrupting-law-school.pdf>.
- b. Press Release, Law School Admission Council, *Why LSAT Scores Should Not Be Used to Label Law Schools and Their Students* (Dec. 1, 2015), <http://www.lsac.org/docs/default-source/press-releases/lvac-statement-dec-1-final.pdf>.
- c. Memorandum from Luke Bierman to Committee regarding Commission's review of the bar examination (May 3, 2016).
- d. Victor Li, *Florida Supreme Court Approves Mandatory Tech CLE Classes for Lawyers*, *ABA Journal* (Sept. 30, 2016), <http://www.abajournal.com/news/article/florida-supreme-court-approves-mandatory-tech-cles-for-lawyers>.

VI. Assisting Self-Represented Litigants

- a. Jennifer M. Lechner, Executive Director, N.C. Equal Access to Justice Commission, Justice in Jeopardy (May 3, 2016), <http://nccalj.org/wp-content/uploads/2016/05/NCEAJC-Presentation-to-LP-Committee.pdf>.
- b. Judicial Council of California, Fact Sheet: Programs for Self-Represented Litigants (2015), <http://www.courts.ca.gov/documents/proper.pdf>.
- c. Utah State Courts, Utah Online Court Assistance Program, <https://www.utcourts.gov/ocap/>.
- d. Utah State Courts, Online Court Conceptual Design (2015), <http://nccalj.org/wp-content/uploads/2016/04/ODR.Conceptual-Design-II.pdf>.
- e. Phillip Bantz, *Master's Project Inspires Lawyers to Volunteer*, North Carolina Lawyers Weekly (Feb. 3, 2016), <http://nclawyersweekly.com/2016/02/03/masters-project-inspires-lawyers-to-volunteer/>.
- f. Memorandum from Jennifer M. Lechner, Executive Director, Equal Access to Justice Commission on Recommendations from the ABA Report on the Future of Legal Services in the U.S. to Legal Professionalism Committee (Sept. 26, 2016).

VII. Data and Research

- a. N.C. State Bar, Presentation by the State Bar (Oct. 6, 2015), <http://nccalj.org/wp-content/uploads/2015/10/NC-State-Bar-Presentation.pdf>.
- b. N.C. State Bar, Statistics Regarding the Discipline Program, 2014 and 2015 (2016).
- c. N.C. State Bar, DHC Appellate Decision Summary, 2005-16 (2016).
- d. N.C. Board of Law Examiners, Presentation to the Legal Professionalism Committee of the N.C. Commission on the Administration of Law and Justice (Dec. 1, 2015).
- e. James Leipold, Executive Director, NALP, The New Legal Employment Market (Feb. 2, 2016), <http://nccalj.org/wp-content/uploads/2016/01/NC-CALJ-February-2016.pdf>.
- f. N.C. Equal Access to Justice Commission, Local Rules/Forms Project (May 3, 2016), <http://nccalj.org/wp-content/uploads/2016/05/handouts-for-May-3.pdf>.
- g. Rebecca L. Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study* (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf.
- h. N.C. Board of Law Examiners, North Carolina Bar Examination First-Time Test Takers Pass Rate 2006-16 (2016).

This report contains recommendations for the future direction of the North Carolina court system as developed independently by citizen volunteers. No part of this report constitutes the official policy of the Supreme Court of North Carolina, of the North Carolina Judicial Branch, or of any other constituent official or entity of North Carolina state government.

PUBLIC TRUST AND CONFIDENCE

COMMITTEE REPORT

This report contains recommendations for the future direction of the North Carolina court system as developed independently by citizen volunteers. No part of this report constitutes the official policy of the Supreme Court of North Carolina, of the North Carolina Judicial Branch, or of any other constituent official or entity of North Carolina state government.

“OUR STATE’S CONSTITUTION REQUIRES THAT JUSTICE ‘BE ADMINISTERED WITHOUT FAVOR, DENIAL, OR DELAY.’”
North Carolina Constitution, Article I, Section 18

INTRODUCTION

North Carolina’s Judicial Branch serves a unique and distinctive role in the state’s system of government and in our society. The Judicial Branch’s courts interpret laws, settle disputes between citizens, and conduct criminal proceedings. Our state’s constitution requires that this duty to administer justice be exercised “without favor, denial, or delay.”¹

It is vitally important that the Judicial Branch maintain the public’s trust and confidence in our court system’s ability to provide justice for all.

According to *Court Review* in 1999: “A court that does not have the trust or confidence of the public cannot expect to function for long as an effective resolver of disputes, a respected issuer of punishments, or a valued deliberative body.”² If the people of North Carolina lose faith in the courts of our state, where else can they turn for impartial and timely justice?

As articulated in Part One of this Final Report, the ultimate goal of the North Carolina Commission on the Administration of Law and Justice (NCCALJ)

has been to improve our court system’s ability to achieve just outcomes and, in so doing, to increase the trust and confidence that North Carolinians have in their courts. To that end, the recommendations of the NCCALJ’s Public Trust

and Confidence Committee articulate broad policy aims for the Judicial Branch, many of which are echoed in greater detail within the more limited scope of the final reports of the NCCALJ’s other four Committees.

MISSION STATEMENT AND GUIDING PRINCIPLES

The mission of the NCCALJ is to address how North Carolina courts can best meet 21st century legal needs and public expectations. The role of the Committee is to identify and evaluate factors that influence public trust and confidence in the judicial system and to recommend actions that enhance this trust and confidence.

The Committee began its work by endeavoring to understand the current state of public perception of the state courts. Through a partnership with Elon University Poll and High Point University Survey Research Center, the Committee sanctioned live-caller public opinion phone surveys in October and November 2015.

After delving into the results of the surveys, the Committee identified a number of foundational principles that our state courts must abide by to enhance the trust and confidence of the public that they serve. Those principles describe a state court system that must:

- Be ACCESSIBLE to the people;
- Be an EFFICIENT user of the public’s most precious commodity, its time;
- Ensure outcomes that are both FAIR and IMPARTIAL;

- Be ACCOUNTABLE to the public as the ultimate stakeholder group; and
- Engage in regular and ongoing SELF-EVALUATION to make improvements where needed.

These guiding principles led the Committee to focus on the following goals aimed at increasing public trust and confidence in the courts of North Carolina, listed here and discussed in greater detail within this report: **conducting recurring public opinion surveys; promoting fair and equal access to the courts; eliminating actual and perceived bias in the courts; providing for the just, timely, and economical scheduling and disposition of cases; enhancing access to information and court records; recommending a selection process that ensures well-qualified and independent judges; and strengthening civics education.**

These goals are discussed in the body of this report, followed by a set of specific action items recommended by the Committee to meet these goals, organized by goal and by principle. Pursuit of these goals will foster the reform and commitment necessary for the North Carolina judicial system to promote the utmost public trust and confidence.

Throughout its work, the Committee held ten public meetings during which experts and judicial stakeholders gave presentations related to public perceptions, court performance, judicial selection, access, and fairness. The information shared in

these presentations educated the commissioners and provided a launching point for further inquiry, discussion, and consideration. A list of the presentations and presenters is available on the NCCALJ website at www.nccalj.org.

GOALS

ENSURING WELL-QUALIFIED AND INDEPENDENT JUDGES

Nothing is more fundamental to our system of justice than having qualified, independent judges to settle disputes. While 60% of respondents in the 2015 surveys agree that judges make decisions based on facts, 76% do not believe that courts are free from political influence. Respondents generally believe that judges' decisions are influenced by political parties (76%) and by the fact that they must run for election (75%). Moreover, judges' salaries often lag behind the salaries of their attorney counterparts with equivalent years of experience in the legal profession, and inadequate salaries threaten the Judicial Branch's ability to attract and retain qualified judges.³

In order to enhance and preserve the highest degree of judicial integrity, fairness, and impartiality, the Committee recommends that the General Assembly take steps to minimize the perceived impact of judicial elections on our system of justice by changing how judges and justices are selected and retained. The Committee further recommends that the General Assembly take action to secure sufficient funding for the Judicial Branch to ensure that judges and justices are provided competitive compensation packages to attract and retain qualified judges.⁴

The Committee also urges the General Assembly to tie the number of judges and justices on a given court to the workload of the relevant court. The use of other non-empirically based considerations to determine the number of judges and justices threatens public trust and confidence.

CONDUCTING A RECURRING PUBLIC OPINION SURVEY

To more effectively serve the public and to maintain and increase public trust and confidence, the Judicial Branch must periodically gauge how the public perceives North Carolina's courts. The best source of the public's perception of the Judicial Branch is the public itself. The 2015 surveys conducted by Elon University Poll and High Point University Survey Research Center have been instrumental in shaping the work of the Committee.⁵

The Committee recommends that the Judicial Branch establish and conduct a survey once every two years to measure public opinion regarding the operation of the courts. The survey should seek to measure the public's perception of fairness, timeliness, administrative efficiency, and general operation, among other factors that may be identified. The survey also must be sensitive to varying perceptions among different demographic groups. By evaluating the survey results from

year to year, the Judicial Branch will be in a strong position to address perceived weaknesses, either substantively or through public relations; to track progress over time; and to capitalize on acknowledged strengths. The Judicial Branch also should engage in systematic surveying of court system users through periodic in-person courthouse surveys and continuous online surveys for those accessing the court system through its public website, www.NCcourts.org.

PROMOTING FAIR AND EQUAL ACCESS TO THE COURTS

North Carolina's courts must be accessible to the people of our state, regardless of economic, social, or ethnic background. Yet the 2015 surveys found that a majority of respondents (73%) do not believe that most people can afford to bring a case to court. Moreover, 76% of survey respondents believe that people who have no lawyer representing them receive somewhat worse or far worse treatment in the courts. Much needs to be done to increase public confidence in equal access to the courts.

The Committee recommends that the Judicial Branch take steps to identify and remove barriers that impede fair and equal access to the courts. These barriers include physical impediments, cost factors, language issues, and the complexity of the judicial process. Courthouses must be able to accommodate persons with disabilities and eliminate any physical impediments that prohibit full access to all courthouse facilities and operations. Citizens who cannot afford an attorney should be able to access forms, educational materials, and other resources that help them understand and navigate the complicated judicial process. Court costs should be affordable for the average citizen, and the system must erase cultural and language barriers.

Fair and equal access requires simplification of court processes where possible, manageable court costs, cultural competence, and full physical access.

ELIMINATING ACTUAL AND PERCEIVED BIAS IN THE COURTS

A substantial number of respondents in the 2015 surveys believe that certain groups generally receive better treatment than others in North Carolina courts — a perception that undermines the Judicial Branch's commitment to the fair administration of justice for all. Eighty percent (80%) of respondents believe that the wealthy receive better treatment, while 48% believe that white people receive better treatment. Conversely, a significant number of respondents believe that low-income people (64%), non-English speaking individuals (53%), African Americans (46%), and Hispanics (46%) receive worse treatment in the courts. If justice is to be served without favor, denial, or delay, the Judicial Branch must create an atmosphere in which every person serving in the Judicial Branch understands the importance of bias-free courts, and every person who interacts with the Judicial Branch experiences a bias-free environment.

Empirical studies recognize the potential for disparate treatment based on demographic factors, such as race, religion, gender, primary language, economic status, or other factors.⁶ That potential bias may sometimes manifest itself unintentionally and unconsciously.⁷ To ensure a fair and impartial process, the Judicial Branch must acknowledge the potential for bias and train court personnel and judicial officials to recognize and rectify it. Uniform policies and procedures, together with consistent decision-making processes, will help minimize disparate treatment among similarly situated parties.⁸ Finally, a

workforce that reflects the diversity of the people who interact with the judicial system is critical to promoting greater understanding and acceptance of cultural differences and reducing the potential for bias.⁹

The fair administration of justice requires a commitment to uniform policies and procedures, impartial decision-making, cultural competence, a diverse workforce, and an overall bias-free environment.

PROVIDING FOR THE JUST, TIMELY, AND ECONOMICAL SCHEDULING AND DISPOSITION OF CASES

As stewards of public resources and individual citizens' time, Judicial Branch officials must strive to operate a court system that facilitates the just, timely, and economical scheduling and disposition of cases. This includes a commitment to minimizing trips to the courthouse by citizens and attorneys when feasible. Public perception is that the state's courts fail to achieve this goal, as only 25% of survey respondents agree that cases are resolved in a timely manner.

The Committee recommends that the Judicial Branch evaluate methods and take actions to encourage the just, timely, and economical scheduling and disposition of cases. Such actions include evaluation of case management strategies that encourage more efficient handling of cases by a single judge, the timely and efficient resolution of hearings and matters before the court, and the increased use of firm scheduling orders and deadlines. Using improved technology and performance metrics, the Judicial Branch should be well poised to regularly monitor court performance, identify areas for improvement, minimize inefficiency, and encourage best practices among jurisdictions. The Judicial Branch

also should focus on improving the efficiency of its interaction with public actors by eliminating unnecessary trips to the courthouse for jurors, witnesses, parties, and attorneys.

In addition, in an effort to assist the state's federal court counterparts in the just, timely, and economical resolution of their cases, North Carolina should consider whether to adopt a process by which federal courts may certify questions of North Carolina law to the Supreme Court of North Carolina. North Carolina is the only state that does not have such a process.¹⁰

ENHANCING ACCESS TO INFORMATION AND COURT RECORDS

Participation in the judicial process can be challenging, even for those with knowledge of the law. For those without such knowledge, the process can be especially difficult to navigate. People seeking general information may be unaware of what information is available and how to access it. Parties and self-represented litigants may lack sufficient information and resources to guide them through a sometimes complicated process. Information is power, but channeling that power requires open access to information and resources.

The Committee recommends that the Judicial Branch enhance access to court records, information, and resources to the greatest extent possible. The courts must use technology to increase the availability of electronic records and information and to minimize the need to visit the physical courthouse. Judicial stakeholders should explore ways to expand the availability of legal assistance for low- and moderate-income individuals and to create staffed self-help centers to provide assistance for self-represented litigants. In addition, general information about court

processes, procedures, and operations should be readily available electronically.

The fair administration of justice depends on an informed citizenry equipped with understandable legal forms, convenient access to public records, and information and resources that help them to navigate complicated judicial processes.

STRENGTHENING CIVICS EDUCATION

A low percentage of respondents in the 2015 surveys (13%) indicated that they were very knowledgeable about our state courts. Increased citizen understanding of the administration of the state court system is strongly and positively correlated with the public’s trust and confidence in the day-to-day functioning of our state courts. Civics education serves to foster citizen engagement and increase transparency — two overarching principles that are widely recognized to enhance the public’s trust in its government institutions.

The Committee recommends that the Judicial Branch strengthen civics education in North Carolina among school-aged children and adults through curricula enhancements, programmatic materials, increased social media, and court-user information at first point of contact with the court system. School-aged children should learn early on the importance of a well-functioning court system as one of the three co-equal branches of government. Adult citizens should understand how an effective and efficient court system affects their lives, even if they never come into contact with the system itself. The Judicial Branch should empower its officials and court staff to engage in public service efforts related to civics education.

Lastly, when feasible, jurors, witnesses, litigants, and others interacting with the court system should be provided relevant background information on the work of the courts and their respective roles in the judicial process.

CONCLUSION AND RECOMMENDED ACTION STEPS

The Public Trust and Confidence Committee has relied on presentations from experts, consultations with judicial stakeholders, and public input in shaping its work and developing its recommendations. The expectation is that these recommendations will result in changes that improve the user experience in state courts and enhance the overall level of public trust and confidence in the North Carolina Judicial Branch.

- **ENSURING WELL-QUALIFIED AND INDEPENDENT JUDGES**

GUIDING PRINCIPLE — Impartiality

RECOMMENDED ACTION STEPS

Separation of Powers

- The General Assembly should ensure adequate funding for all Judicial Branch functions as requested by the Judicial Branch.

- The Judicial Branch should submit its aggregate budget needs directly to the executive and legislative branches for incorporation into their respective budget documents.
- The Judicial Branch should have full authority to manage its budget and allocate its resources with a minimum of legislative and executive branch controls, including a budget with minimal line items.¹¹
- The General Assembly should make policy recommendations related to the administration of justice, but funding should not depend on actual implementation of recommended initiatives or policies.
- The General Assembly should use empirical workload data to determine the need for expansion of the number of judges or justices on a given court.

GUIDING PRINCIPLES — Accountability, Impartiality

RECOMMENDED ACTION STEPS

Secure Tenure and Salary

- The General Assembly should evaluate the salaries, benefits, and retirement plans offered to judges and justices to ensure a competitive compensation package for qualified judicial candidates designed to attract and retain the highest caliber of judges and justices.¹²
- In order to enhance and preserve the highest degree of judicial integrity, fairness, and impartiality, the General

Assembly should develop a selection process that ensures the highest caliber of judges and justices and minimizes the potential impact of campaigning and fundraising on judicial independence and public accountability.

GUIDING PRINCIPLE — Accountability

RECOMMENDED ACTION STEPS

Qualifications and Experience

- The General Assembly should establish minimum levels of qualifications and experience to qualify for service as a district court judge, superior court judge, court of appeals judge, or supreme court justice.
- The Judicial Branch should establish minimum levels of qualifications and experience for candidates appointed to fill judicial vacancies.

• CONDUCTING A RECURRING PUBLIC OPINION SURVEY

GUIDING PRINCIPLES — Accountability, Self-Evaluation

RECOMMENDED ACTION STEPS

- The Judicial Branch should work with the National Center for State Courts to establish a set of survey questions aimed at gaining an understanding of how people view North Carolina courts and judges.

- The Judicial Branch should conduct a statewide, statistically valid survey every other year.
- The Judicial Branch should compare survey results to results from prior surveys and issue a report assessing the results, areas needed for improvement, possible causes of certain trends, and other relevant factors identified by the survey results.
- The Judicial Branch should conduct participant surveys, including surveys of jurors, at county courthouses to determine participants' satisfaction with the courts.
- The Judicial Branch should adopt survey methodologies that ensure the integrity of the data collected and provide the opportunity for meaningful analysis.
- The Judicial Branch should ensure that information related to the physical addresses and locations of courthouses are easy to find and should provide directions to the courthouses and available parking areas.
- The Judicial Branch should work with county officials to ensure that each courthouse posts appropriate signage to help citizens navigate easily throughout the courthouse.
- The Judicial Branch should work with county officials and local law enforcement to ensure the safety of all employees and citizens who enter the courthouse.
- The Judicial Branch should maximize efforts to create online service options that do not require a trip to the courthouse, such as electronic filing, online payment, and disposition of compliance offenses.

- **FAIR AND EQUAL ACCESS TO THE COURTS**

GUIDING PRINCIPLE — Access

RECOMMENDED ACTION STEPS

Physical Access

- The Judicial Branch should work with county officials to eliminate physical impediments that hinder access to the courts and should take appropriate steps to accommodate persons with disabilities.

Enhanced Convenience

- The Judicial Branch should work with local judicial officials and county officials in each county to evaluate whether the public might be better served by providing court services outside of normal business hours, and, if warranted, should work with county government officials to establish regular hours outside of normal business hours in order to better serve the public.
- The Judicial Branch should work with local judicial officials and county

officials in each county to evaluate whether it is feasible to offer childcare services at the courthouse in order to enhance the public’s ability to participate in the judicial process.

GUIDING PRINCIPLES — Access, Fairness

RECOMMENDED ACTION STEPS

Cultural Barriers

- The Judicial Branch should continue to work to eliminate language barriers that hinder equal access to justice by individuals with limited English proficiency and should improve efficiencies in the provision of interpreting services.
- The Judicial Branch should educate employees on cultural competence and develop initiatives to improve cultural competence in the judicial system.
- The Judicial Branch should promote a diverse workforce that reflects the diversity of those who interact with the judicial system.
- Before requiring participation in a court-ordered program, treatment, or service offered outside the judicial process, the judicial official should make sure that the program, treatment, or service provider provides appropriate language access services to ensure meaningful participation by the party.

Evaluating the Costs of Justice

- The Judicial Branch should evaluate costs and fees to determine whether

those costs and fees preclude meaningful access to the courts or prohibit citizens from participating in the judicial process. If warranted, the Judicial Branch should seek legislative changes to modify current costs and fees.

- The Judicial Branch should evaluate the collateral consequences of costs, fines, and fees on offenders who lack the ability to pay and develop policies to minimize negative consequences based solely on inability to pay.

• **ELIMINATING ACTUAL AND PERCEIVED BIAS IN THE COURTS**

GUIDING PRINCIPLE — Fairness

RECOMMENDED ACTION STEPS

Procedural Fairness¹³

- The Judicial Branch should develop ongoing training initiatives for judicial officials and court staff designed to help them understand the principles of procedural fairness and the public’s perception of procedural fairness in the judicial process.
- The Judicial Branch should develop educational materials, bench cards, and other resources to help judicial officials and court staff implement procedural fairness in the judicial process.
- The Judicial Branch should develop consistent processes and procedures

that strengthen adherence to the four principles of procedural fairness — voice, neutrality, respect, and trust.

- The Judicial Branch should ensure that public surveys include questions aimed at measuring how well individual judicial officials and court employees, and the Judicial Branch as a whole, are adhering to the principles of procedural fairness.
- The Judicial Branch should develop a pledge of fairness that should be prominently displayed as a manifestation of its commitment to the principles of procedural fairness.
- The Judicial Branch should establish an ongoing peer review process that provides judicial officials and court employees with continuing feedback about adherence to the principles of procedural fairness and recommendations for improvement.

GUIDING PRINCIPLES —

Fairness, Impartiality

RECOMMENDED ACTION STEPS

Implicit Bias

- The Judicial Branch should develop training and educational materials to help judges, magistrates, and clerks of court understand implicit bias and to minimize its effects on the judicial process.
- The Judicial Branch should develop processes and procedures that minimize the effects of implicit bias in each case.

Institutionalizing a Bias-Free Environment

- The Judicial Branch should collect and analyze data to identify areas in which there is a disparate impact in outcomes based on identifiable demographics, evaluate the causes of such disparate impact, and identify strategies to combat it.
- The Judicial Branch should provide judicial officials, court personnel, volunteers, and other judicial stakeholders with training and education focused on ensuring cultural awareness and sensitivity in the judicial process in order to create an atmosphere in which every person who participates in the judicial process understands the importance of cultural competence and bias-free behavior in the courts.
- The Judicial Branch should develop an evaluation process that allows peer groups to observe court proceedings and interactions, and should provide feedback about adherence to the principles of procedural fairness.
- The Judicial Branch should work with stakeholder organizations to create training opportunities for court personnel to increase cultural awareness and attain a better understanding of diversity issues.
- The Judicial Branch should enhance efforts to make members of the public aware of complaint procedures against judicial officers and court personnel, and should make sure that investigations are transparent and fair.

- **PROVIDING FOR THE JUST, TIMELY, AND ECONOMICAL SCHEDULING AND DISPOSITION OF CASES**

GUIDING PRINCIPLE — Efficiency

RECOMMENDED ACTION STEPS

Case Management

- The Judicial Branch should evaluate the methods by which cases may be assigned to a single judge for the duration of the case.
- The Judicial Branch should continue to evaluate circumstances under which mandatory early mediation or other Alternative Dispute Resolution (ADR) processes may resolve disputes before significant litigation is in process.
- The Judicial Branch should evaluate technology and / or policies that would permit resolution of certain motions without hearings.
- The Judicial Branch should continue to evaluate the efficacy of specialty courts where appropriate.
- The Judicial Branch should evaluate the use of realistic, firm scheduling deadlines for both criminal and civil cases at the outset of the case, which may be extended only for good cause.
- The Judicial Branch should evaluate whether procedures can be put in

place to allow certain civil and / or criminal cases to proceed on a “fast-track” basis.

GUIDING PRINCIPLES —

Accountability, Self-Evaluation

RECOMMENDED ACTION STEPS

Performance Metrics and Data Analysis

- The Judicial Branch should establish performance metrics, including expected durations for different case types, and establish goals for a certain percentage of cases of each type to be resolved within a specific timeframe.
- The Judicial Branch should ensure the collection of data designed to improve identification of and responsiveness to delays in the court system and to assist court officials in evaluating their management performance.
- The Judicial Branch should establish a system to track motions for continuances, the parties so moving, and the reason that the continuance is requested.
- The Judicial Branch should ensure that data regarding court performance is publicly available and publicized when appropriate.
- The Judicial Branch should establish standardized procedures for data collection, develop uniform definitions for data fields, and minimize the options for free-form data fields.

GUIDING PRINCIPLE — Access

RECOMMENDED ACTION STEPS

Efficient Technology

- The Judicial Branch should continue to evaluate the increased use of video technology for court appearances.
- The Judicial Branch should continue to evaluate and expand the increased use of electronic filing of court documents.
- The Judicial Branch should increase the online availability of data on its public websites.

GUIDING PRINCIPLE — Efficiency

RECOMMENDED ACTION STEPS

General Efficiency Measures

- The Judicial Branch should evaluate methods by which juror selection and utilization can be implemented more efficiently.
- The Judicial Branch should encourage the sharing and discussion of best practices across judicial districts.
- The Judicial Branch should evaluate the feasibility of providing law clerks to superior court judges or pools of superior court judges.
- The Judicial Branch should evaluate the feasibility of using financial considerations to determine the amount of court costs and fees to be paid by civil litigants and criminal defendants. Such methods may include a tiered system based on the amount

in dispute, income, or payment of certain fees at different stages of the litigation.

- North Carolina should consider whether to adopt a process by which federal courts may certify questions of North Carolina law to the Supreme Court of North Carolina.

**ENHANCING ACCESS
TO INFORMATION
AND COURT RECORDS**

GUIDING PRINCIPLE — Access

RECOMMENDED ACTION STEPS

Court Forms

- The Judicial Branch should improve accessibility of standardized forms most commonly used by self-represented litigants.
- The Judicial Branch should encourage the use of standardized forms and evaluate the efficacy of local forms. To the extent that local forms continue to be necessary, the appropriate local judicial officials for the respective district should ensure that local forms are available on the Judicial Branch's website.
- The Judicial Branch should ensure that required forms are easy to understand and are available online.
- The Judicial Branch should explore the development of document assembly

programs that provide capability for electronic completion and filing of forms in case types with a high volume of self-represented litigants.

- The Judicial Branch should include online links to packets of forms that should be used in connection with a particular case type and include instructions on how to use the forms, prioritizing case types with the highest volume of self-represented litigants.

Enhancing Technology

- The Judicial Branch should improve the quantity and quality of resources on its website and enhance the website's navigation and search functions.
- The Judicial Branch should provide online electronic access to appropriate public court records.
- The Judicial Branch should expand options for citizens to prove compliance offenses online without a court appearance.
- The Judicial Branch should implement a centralized calendaring website that facilitates online search capability for case and docket information.
- The Judicial Branch should provide real-time video and audio streaming of proceedings before the Court of Appeals and the Supreme Court and should offer access to archived oral arguments.

Public Outreach

- The Judicial Branch should continue to expand the use of its website to inform the public about significant events and issues within the Judicial Branch.
- The Judicial Branch should continue to expand its use of social media to enhance dissemination of information about the court system's programs, services, operations, and events.

Self-Represented Litigants

- The Judicial Branch should increase information, standardized forms, and other resources available to help self-represented litigants navigate the judicial process.
- The Judicial Branch should establish a centralized office to provide information, education, and resources for self-represented litigants via telephone or online.
- The Judicial Branch should work with the North Carolina Bar Association, Legal Aid of North Carolina, Equal Access to Justice Commission, and other justice stakeholders to expand the availability of legal services for moderate- and low-income litigants.

Transcripts

- The Judicial Branch should establish a centralized repository for all court transcripts and a centralized system for accepting transcript requests,

receiving payment for transcripts, and ensuring production of a complete and accurate transcript of the record in a timely manner.

- The Judicial Branch should provide access to digital recordings of court proceedings that are digitally recorded if the recordings do not include confidential material.

GUIDING PRINCIPLES — Accountability, Self-Evaluation

RECOMMENDED ACTION STEPS

Performance Measures

- The Judicial Branch should adopt performance metrics such as CourTools to provide empirical data about court performance.
- The Judicial Branch should create and post annual reports on court performance with a focus on empirically based measures such as CourTools.
- The Judicial Branch should evaluate ways to measure public trust and confidence in the judicial system, including adherence to the principles of procedural fairness, and implement initiatives aimed at addressing public concerns and issues.
- The Judicial Branch should identify expectations of court participants, evaluate ways to measure how well courts are meeting user expectations, and develop initiatives aimed at improving the courts' ability to meet user expectations.

● STRENGTHENING CIVICS EDUCATION

GUIDING PRINCIPLE — Access

RECOMMENDED ACTION STEPS

- The Judicial Branch should work with the Department of Public Instruction to review the public school curriculum and ensure that it includes sufficient information about the Judicial Branch and its role in American government.
- The Judicial Branch should work with North Carolina community colleges and universities to provide students with information about the Judicial Branch and its role in American government.
- The Judicial Branch should continue to establish programs and encourage judges to participate in community programs that promote and enhance civics education in schools, youth programs, and other community events.
- The Judicial Branch should ensure that its website provides easy access to educational materials about the Judicial Branch and its role in the North Carolina system of government.
- The Judicial Branch should encourage court officials to establish and participate in programs that promote student visitation to county courthouses.

- The Judicial Branch should continue to increase public awareness of the Judicial Branch’s speakers bureau, which identifies judges and other court personnel willing to provide information or make presentations to schools, community groups, and other organizations interested in learning about the judicial process.
- The Judicial Branch should continue to enhance the toolkit for participants in the speakers bureau. The toolkit should include presentation templates, talking points, pamphlets, brochures, videos, and other informational materials that can be used to enhance public education about the judicial system.
- The Judicial Branch should examine methods to make better use of the jury duty experience to educate citizens and provide a more positive interaction with the courts.
- The Judicial Branch should work with the media, journalism schools, and local media organizations to provide training and education about the court system to members of the media who cover the courts.
- The Judicial Branch should work with local law enforcement agencies and local governments to supplement the curricula of existing citizens academies with information and education about the judicial process.

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1. North Carolina Constitution, Art. I, Sec. 18.
 2. Rottman, David B., and Tomkins, Alan J.; “Public Trust and Confidence in Courts: What Public Opinion Surveys Mean to Judges,” *Court Review*, 1999.
 3. See National Center for State Courts, *Judicial Salary Tracker*, available at <http://www.ncsc.org/salarytracker>. See also Testimony of Justice Stephen Breyer at the Oversight Hearing on Federal Judicial Compensation in front of the United States House Committee on the Judiciary, Subcommittee on Courts, the Internet and Intellectual Property (Washington, D.C.), April 19, 2007. Available at <http://bit.ly/2jnZo6g>.
 4. *Id.*
 5. Surveys were conducted by the High Point University Survey Research Center and the Elon University Poll in October and November of 2015. A summary of the results of these surveys is available at <http://bit.ly/2hWGgLW>. Published December 15, 2015. Accessed December 20, 2016.
 6. See Jerry Kang, Mark Bennett, Devon Carbado, Pam Casey, Nilanjana Dasgupta, David Faigman, Rachel Godsil, Anthony G. Greenwald, Justin Levinson, Jennifer Mnookin; “Implicit Bias in the Courtroom,” *UCLA Law Review* 59 (2012): 1124. See also Gill, R. D.; “Implicit Bias in Judicial Performance Evaluations: We Must Do Better Than This,” *Justice System Journal* (2014): 1-24. See also Justin D. Levinson, Robert J. Smith, Danielle M. Young; “Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury-Eligible Citizens in Six Death Penalty States,” *New York University Law Review*, Volume 89, Number 2 (May 2014).
 7. *Id.* See also, Kirwan Institute for the Study of Race and Ethnicity, *State of the Science: Implicit Bias Review*, Ohio State University. Available at <http://kirwaninstitute.osu.edu/>.
 8. See National Center for State Courts, *Strategies to Reduce the Influence of Implicit Bias*.
 9. *Id.*

10. Michael Klotz, "Avoiding Inconsistent Interpretations: *United States v. Kelly*, The Fourth Circuit, and the Need for a Certification Procedure in North Carolina," *Wake Forest University Law Review* 49 (2014): Rev. 1173, 1175.
11. This is slightly modified from Principle #19 from the National Center for State Court's *Principles for Judicial Administration*.
12. *Id.* at 3.
13. See T.R. Tyler, "Procedural Justice and the Courts," *Court Review* 44 (2008): 26. See Also David B Rottman, "Procedural Fairness as a Court Reform Agenda," *Court Review* (2008): 4. See also <http://proceduralfairness.org>.

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TECHNOLOGY

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**“ADVANCES IN TECHNOLOGY ... GIVE US THE
CHANCE TO REIMAGINE HOW COURTS AND
CITIZENS INTERACT WITH EACH OTHER.”**

Chief Justice Mark Martin

INTRODUCTION

Innovative use of technology can revolutionize the way that organizations and people conduct business and live their lives. Recent examples of the technology revolution include Amazon’s transformation of retail shopping as well as the development of smartphones and mobile apps that support banking and payment transactions.

Similarly, innovative technology has been utilized both in state and federal courts to dramatically improve the administration of justice. It is critical for North Carolina’s Judicial Branch to

employ additional technology to achieve its constitutionally mandated mission.

The implementation of technological change brings with it the promise of a truly uniform statewide court system as first envisioned by the Bell Commission almost sixty years ago. That uniformity will empower local and statewide judicial officials to better manage court performance through improved data-driven decision-making, thus promoting greater stewardship of judicial resources. It will also

remove many of the local barriers to court access for self-represented litigants and will increase the service capacity of low-income legal service providers. Additionally, through a uniform Judicial Branch online presence, the courts can meet and exceed expectations for public access to courts.

People once interacted with court officials at courthouses, face-to-face, with documents printed on paper and no ability to make instantaneous or remote contact. Due to its age, our current technology reflects these traditional practices. The preference for quick and comprehensive online access has emerged relatively recently, but there is no doubt that it is here to stay. As a recent

study shows, about 76% of Americans are willing to do some court business online. That number jumps to 86% for those under 40 years old.¹

This new preference for immediate access presents us with an opportunity. Advances in technology, together with the desire to reduce costs and improve the public's access to court services, give us the chance to reimagine how courts and citizens interact with each other. For instance, we can aim to drastically reduce manual processes and reliance on paper documents. Many state court systems have successfully transformed themselves in a similar way, leading to both increased efficiency and collaboration among court officials and the legal profession.

THE TECHNOLOGY COMMITTEE AND ITS WORK

The North Carolina Commission on the Administration of Law and Justice (NCCALJ) is an independent, multidisciplinary advisory body convened by the Chief Justice of the Supreme Court of North Carolina to recommend improvements to the judicial system. The Technology Committee is one of five Committees of this Commission. As the Commission's convener, Chief Justice Mark Martin, recently noted, "We need to make these changes because courts are essential — as essential as grocery stores or the Internet. Let's never forget the role that judicial expertise and judicial independence play in safeguarding the rule of law — a role that no one else can do better, or even equally well. If we lose business to other methods of dispute resolution, society at large will suffer. Courts are too indispensable to yield in the face of better technology, so we have to stay technologically up-to-date." The Technology Committee has focused on identifying significant

ways that technology can support the Judicial Branch's mission of providing a fair, independent, and accessible forum for the just, timely, and economical resolution of the legal affairs of the public.

The Judicial Branch's 6,000 employees work hard each day to carry out the Branch's mission. The Technology Committee's goal is to recommend ways that technology can enhance our court officials' and staffs' efficiency and effectiveness, and the timeliness of court processes, while at the same time meeting the public's expectations for accessibility and transparency. The Committee's challenge is to reimagine the courthouse and to produce a strategic plan to deliver on that vision.

The Committee held nine public meetings and heard presentations from states that are already using innovative technology to address the needs

of their citizens, from national court technology experts, and from current North Carolina judicial officials, as well as from other members of the public. In early 2016, the consulting group BerryDunn was retained to assist the Committee with the legislatively mandated need to create a strategic plan for eCourts.² The goal of an eCourts system is to increase both the efficiency and effectiveness of court processes by converting the courts' current paper-driven workflow to an electronic one, including processes such as filing and payment that have public interfaces. An eCourts system will provide the foundation for further innovation throughout the court system.

To understand the current state of the Judicial Branch's technology, BerryDunn conducted an online survey of court employees and members of the public, collecting responses from over 1,000 individuals. In addition, BerryDunn organized in-person interviews with more than 200 Judicial Branch employees and members of the bar from across the state.

Having heard from these end users, BerryDunn then reviewed the Judicial Branch's infrastructure and capabilities, and fielded reports from the other Committees of the Commission about the role that technology should play in their areas of reform.

ISSUES IMPACTING TECHNOLOGY

The Technology Services Division (TSD) of the North Carolina Administrative Office of the Courts is primarily responsible for the Judicial Branch's technology needs. TSD provides network infrastructure, hardware, software applications, technical support, and services to more than 500 courtrooms and offices spread throughout all 100 North Carolina counties. Included in the Judicial Branch are nearly 550 independently elected judges, district attorneys, and clerks of court. With the ninth largest population in the United States, the courts of our state handle roughly 2.7 million cases each year.

The approximately 200 permanent employees of TSD support more than 200 Judicial Branch software applications. They also provide ancillary services to two dozen government agencies, vendors, and private entities that interface with the court system's technology and data. The result is an extensive, statewide, inter-agency technology operation.

Within this context, the Committee and BerryDunn preliminarily identified four overarching elements that are relevant when considering the transition to greater technological functionality in North Carolina's court system:

- Technology management and governance;
- The business environment: inconsistent and paper-based;
- Technology development: software applications; and
- Anytime, anywhere access to services.

TECHNOLOGY MANAGEMENT AND GOVERNANCE

Technology management and governance address how core technology initiatives are identified,

analyzed, prioritized, and budgeted within the Judicial Branch. Without a governance process in place, important technology needs may be overlooked, less important technology projects may be prioritized, limited technology resources may be diluted or misdirected, and project completions may be delayed because of short-term changes in technology priorities. It is equally important that a governance system considers user input when developing software applications. Incorporating user input will foster effective implementation and inspire confidence in the integrity of the progress. The Committee concluded that best practices within the technology industry include a governance process that involves users and fact-based decision-making, maintains the installed technology base, and increases simplicity.

The Judicial Branch's technology governance process has historically been unstructured, irregular, and lacking external transparency. Initiatives originate haphazardly from a combination of internal ideas, field demands, executive branch or local government requests, and legislative mandates. A lack of formal technology governance has hindered the effectiveness of technology innovation and execution by being vulnerable to repeated course changes, thus making accurate and consistent budgeting and time management of technology projects difficult, if not impossible. A plan for structured governance was developed by court stakeholders in 2014 and reported to the Committee at an early meeting in 2015. The Committee has recommended that such a governance process be formalized to ensure a smooth transition through the eCourts process.

THE BUSINESS ENVIRONMENT: INCONSISTENT AND PAPER-BASED

Because the purpose of technology is to solve business problems and improve business

processes, any use of technology must be considered within the context of the state courts' business environment. North Carolina's court system is unified, but there remains a clear **lack of uniformity** with respect to the business processes that individual courts and courthouses use. Courts are managed based on local jurisdictional needs, and with 100 counties and more than 500 independently elected officials, the result is that business processes vary dramatically from courthouse to courthouse, placing an unnecessary barrier to transparent use of court services. Implementing technology improvements that accommodate a multitude of variations in local business processes would be too costly, with respect to both time and financial resources. For technology initiatives to be effective and transparent, they must be accompanied by increased business process uniformity. Systems must be designed to provide a comprehensive, vigorous, and consistent set of technology initiatives, with local variation discouraged and not centrally supported.

Another barrier to efficiency in the current North Carolina court business environment is that current processes are **primarily paper driven**. Over 30 million individual pages of paper are added to state court case files each year. Official legal records are almost entirely in paper form. System actors describe challenges resulting from an essentially paper-based case filing system. Those challenges include the fact that official decisions and notes are recorded on paper files during court and later transposed into one of the many supported software applications to create an electronic index of the same actions, leading to constant duplication of effort.

Maintaining organization of and ongoing access to court files is labor intensive because of the constraints of the paper environment.

Additionally, individuals report instances in which the only record of a case disposition is recorded on the outside of the court file before filing it in a box or filing cabinet, never to be entered into an electronic system for easy future reference. Continued reliance on a paper-based system creates data entry redundancies and limits payment processes related to cases. Simultaneous access to case files by multiple parties (e.g., judges and clerks) as well as access across county or jurisdictional lines is difficult, if not impossible.

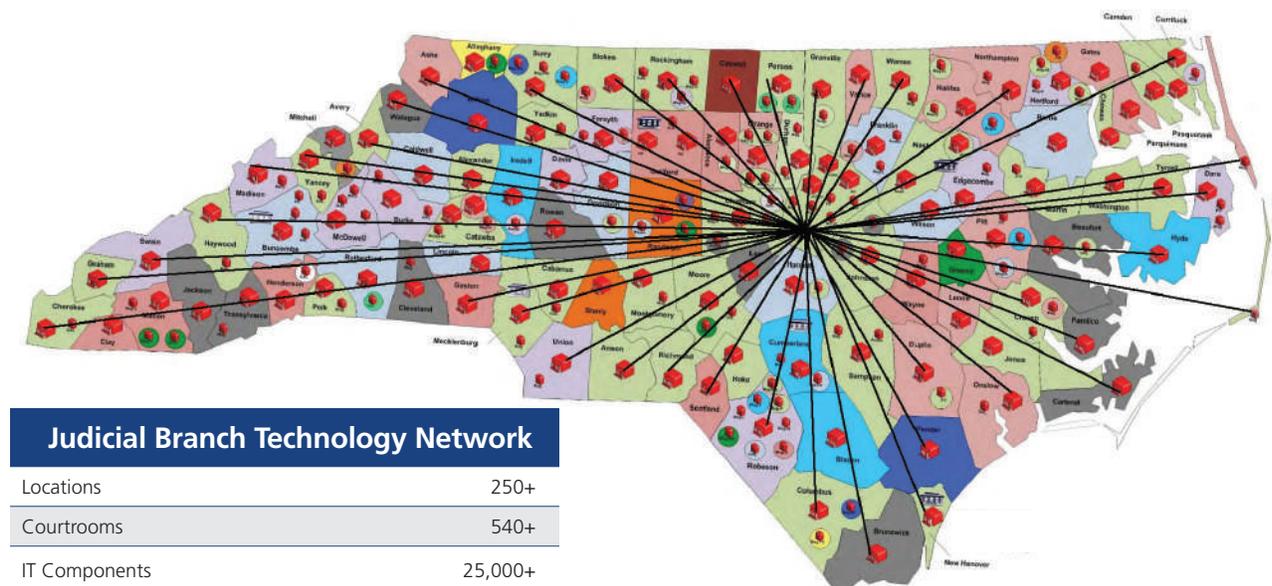
The physical impact of maintaining a paper-based system also merits scrutiny. Each year, more than four miles of shelving is needed to maintain the new case files generated during that year. Counties use attics, basements, and off-site arrangements for storage.³ Either old files must be promptly archived into microfilm or digital formats to create shelf space, or new space must be obtained. While the staffs of clerks' offices have electronic indexing systems for some case information and management tasks, paper files still serve as the primary tool for court personnel

to manage cases. Case files must be physically transported throughout courthouses, no matter what the size.

This highly paper-driven business environment is rife with opportunity for technological innovation, but the lack of uniformity across local business processes is an obstacle that needs to be thoughtfully addressed.

TECHNOLOGY DEVELOPMENT: SOFTWARE APPLICATIONS

Software applications will require an initial infusion of resources for development and implementation in addition to continuous ongoing maintenance. Software applications can be: (1) developed in house by TSD staff and contractors, (2) purchased off the shelf from third-party vendors, or (3) a combination that heavily customizes a commercial application. For example, the state's workhorse Criminal Case Information System (CCIS) was developed in house and is tied closely to North Carolina law and procedure. Microsoft Office products like Word, Excel, and



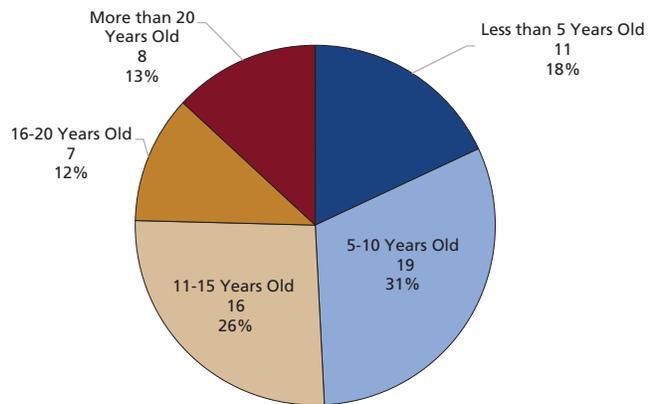
Outlook are off-the-shelf. And the clerks’ Financial Management System (FMS) is a heavily customized vendor general ledger accounting product.

The vast majority of the Judicial Branch’s 200 applications have been developed in house because they filled niche needs. This approach has provided for a greater level of technology customization interfacing with external government agencies and their various technology platforms and has allowed projects to be slowed or accelerated as agendas and funding changed. The in house approach, however, has also resulted in a proliferation of aging applications that are increasingly difficult to maintain as underlying technologies become obsolete, that require maintenance by developers who are aging out of the workforce, and that do not necessarily interface well with each other or provide the transparency that stakeholders expect and deserve.

ANYTIME, ANYWHERE ACCESS TO SERVICES

The 21st century public expects to manage their lives, their finances, their health, and a host of other things remotely from their smartphones and other electronic devices. When considering the business environment as it relates to public use of technology, the predominance of the need

Age of Existing NCAOC Enterprise-Level Technology Applications



Source: North Carolina Administrative Office of the Courts

for online information and supporting mobile technology cannot be overstated. Calendars, maps, and instructions for parties, witnesses, and jurors must be easy to access. Software applications must facilitate communications with key offices, electronic payment options, and e-filing of documents. Software applications with a public-interfacing component must be accessible across multiple types of devices, including desktops, tablets, and phones. Compatibility with smartphones is particularly important because their widespread use throughout populations of varying income levels will help reduce barriers to court access. The importance of equal access to justice has been a focal point in the Technology Committee as well as in each of the NCCALJ’s four other Committees.

STRATEGIC PLAN PRIORITIES

BerryDunn’s field work and subsequent analysis showed nearly universal Judicial Branch employee and outside user support for innovative technological improvements to increase the effectiveness, efficiency, and timeliness of court

processes. The Committee, in consultation with BerryDunn, identified the following initiatives that should be addressed in order for North Carolina’s Judicial Branch to meet the technology needs of its stakeholders. These initiatives are not ranked

because a number of them are interdependent and may need to be developed in conjunction with one another. The initiatives are:

- Governance;
- Metrics;
- Reporting and analytics;
- Enterprise Information Management System (EIMS);
- Integrated Case Management System (ICMS);
- e-Filing;
- Financial Management System (FMS);
- Electronic public access; and
- Judicial workbench.

A more extensive, technical, and detailed analysis of each of these initiatives has been provided by BerryDunn and can be found in the strategic plan attached in Appendix E. Below is an overview and summary of each of the initiatives.

• **GOVERNANCE**

As stated earlier, the Committee recognized at the beginning of the process the need for a principled governance model to implement the sweeping technology changes on the horizon. The strategic plan specifically recommends that the Judicial Branch operationalize the IT Governance Charter referenced above and implement a best-practice portfolio management framework to include

all NCAOC technology initiatives in the eCourts project. It is imperative that governance principles be established at the earliest opportunity in order to facilitate a smooth transition throughout the rest of the technology acquisition and deployment process.

• **METRICS, REPORTING, AND ANALYTICS**

The Judicial Branch's data system initially was developed to collect and compile statistics about the number of cases in the system. A master index of criminal convictions was later added. Systems were not conceived with the objective of supporting the daily management of high volume workflows. For local officials and Judicial Branch leadership to measure court performance effectively, replicate successes, and identify weaknesses, the court system must be able to collect, manage, and provide data in a useful format. That ability does not currently exist. In addition, policymakers and the public will benefit from more insight into what the aggregate data can show about the evolution of the court system through a variety of different metrics, such as changes to statutes, changes in case filing patterns, and how long it takes to resolve a particular type of case.

Initially, the strategic plan states that the Judicial Branch must identify the metrics by which to measure and run the baseline analysis — by internally determining metrics, perhaps using elements of the National Center for State Court's CourTools, defining data elements, and ensuring standardization across the state. Only after establishing baseline metrics will meaningful reporting and analytics be widely available

for internal and external judicial system stakeholders.

Case counting remains the underlying purpose for many of the Judicial Branch’s case tracking systems, and, although it provides valuable information about the status of a case, it affords little information about the case’s progression through the system. This hampers effective data-informed management decisions because system actors are unable to determine points in the case management process that require improvement. In addition, many data fields in the current case tracking systems lack standard written definitions, and this lack of uniformity in data entry creates barriers to meaningful analysis of the data that has been collected. Finally, as previously noted, much of the information pertaining to a case that would be valuable for the purpose of analysis is maintained only on paper. As a result, it is difficult, if not impossible as a practical matter, to access simple data.

These burdens on data availability prevent effective management of both the overall court system and the local needs of judicial system stakeholders across the state. Ineffective management can result in delays, inconsistent outcomes for parties, and legislative concern regarding stewardship of resources. Several of the NCCALJ’s companion Committees have stressed the importance of improving the timeliness and efficiencies of our courts. Public polling data from the Public Trust and Confidence Committee shows that the public is deeply concerned about delays in the administration of justice. Good stewardship of the courts supported by good data will positively affect every aspect of the Judicial Branch.

Significantly, Judicial Branch employees note that when data is in a format that allows for reporting, the reports provided are both useful

and informative. However, they also observe that current reporting must be accomplished by requesting new reports to be developed by TSD and the Research and Planning Division, which gets back to the issue of governance. Access to self-service information is limited in the courts, requiring days of staff time to produce and execute a report. Innovative technology solutions should offer real-time performance dashboards, providing both baseline data measurements and additional analytical modification for use by local officials and the public alike. The NCCALJ’s Public Trust and Confidence Committee has also emphasized greater access to information, because the court system’s inability to respond to its perceived shortcomings negatively affects public trust.

The demand for data in a usable format will only continue to grow. It is important for data to be available, complete, accurate, timely, and consistent throughout the court system. Similarly, use of standardized definitions is essential as the Judicial Branch implements court performance measures, such as CourTools. As the emphasis on data shifts to predictive analytics, such as assessing at case initiation whether a civil case will be simple, general, or complex in order to determine likely resourcing needs, the integrity of the data and the use of standardized definitions become increasingly important.

- **ENTERPRISE
INFORMATION
MANAGEMENT
SYSTEM (EIMS)**

TSD has procured a document management system or EIMS — a secure electronic repository,

which will be integrated with other eCourts elements, used to store, retrieve, archive, and associate a variety of documents with cases. The current process of relying upon physical access to court documents must give way to digital access in order for the system to progress.

Electronic document management provides a critical foundation for the remainder of the system and should support the transition from paper-based to digital files over time, while increasing electronic access to those files from anywhere at any time by both court employees and the public.

- **INTEGRATED CASE MANAGEMENT SYSTEM (ICMS)**

More than one million criminal and non-criminal citations — primarily traffic-related — enter the courthouse electronically each year.⁴ In most instances, however, this information is then printed out and a physical file is created. This manual process contributes significantly to the estimated 30 million pieces of paper that are added to state court case files annually.

In addition, selected data from paper files is manually keyed by authorized personnel into one or more of the Judicial Branch databases, to be accessed by various software applications. Lack of a single repository for case data significantly decreases efficiency, requires redundant data entry, and requires users to log into multiple systems, often toggling between them, to complete a business process. A single, integrated case management system would save valuable employee hours as well as reduce data entry errors.

An Integrated Case Management System (ICMS) will allow electronic processing functionality for all case types to record, track, and manage events from case initiation through case disposition, using thorough, flexible workflows that generate automated reminders and electronic notifications. The process of calendaring cases could benefit greatly from this system. To create, update, and distribute calendar information is time consuming, often requiring redundant data entry, and resulting in some courts creating their own “workarounds” (e.g., Google calendars). An electronic calendaring system that is automatically populated through a case management system would be easily accessible by both court employees and the public.

- **CENTRALIZED ELECTRONIC FILING**

Electronic filing is a means to submit documents and / or information into the EIMS and ICMS. This may occur through fillable forms or scanned documents. The e-filing system could evaluate and respond to events or initiate tasks in the ICMS. Electronic filing without robust EIMS and ICMS is of little value to the court system. Today, electronic filing is nominally an option with North Carolina’s appellate courts, the business courts, and four pilot sites for civil cases.⁵

North Carolina’s unified court system will be strengthened by the implementation of mandatory statewide electronic filing. In the near term, high-volume and forms-driven case types may present the greatest opportunity for significant and immediate savings and convenience. While some filings may still require paper to be converted to an electronic format

for storage at a later date, the document should be retrievable through an integrated case management system. A case should be maintained by an electronic workflow that allows varied dashboard views for court officials and parties, depending upon their role within the court system. Functionality should give individuals the ability to manipulate documents and information at the case level. The Civil Justice Committee has observed that uniform, technology-enhanced filing has the potential to make representation of indigent clients less burdensome for both the lawyers and the litigants themselves.

The use of electronic filing and electronic information management systems will require a thorough review and revision of filing and recordkeeping rules prior to implementation. This will ensure that all parties — including self-represented litigants — have equal access and understanding. It will also ensure that the rules address changes necessitated by electronic filing. Training both internal and external Judicial Branch stakeholders will be essential and may be accomplished by a combination of in-person training and the creation of web-based instructional videos. Developing integrated e-filing, EIMS, and ICMS is critical in order to achieve the successful modernization of the court system.

- **FINANCIAL
MANAGEMENT
SYSTEM (FMS)**

The Judicial Branch should determine the requirements for a financial management system, which will integrate with ICMS, make real-time adjustments at the clerk’s office cashier’s

**IN FISCAL YEAR
2015-16,
\$737,000,000+
WAS PROCESSED
IN CLERKS’ OFFICES
ACROSS THE STATE.**

North Carolina Judicial Branch Annual Report:
July 1, 2015 – June 30, 2016

window, support multiple charge codes, accept payment through multiple means, generate a statement, produce management reports, export and transmit transaction activity, and provide the ability to maintain case-related transaction activity. Staff using the current Financial Management System (FMS) report significant redundancies and inefficiencies with the system. Specifically, the system does not integrate well with the case management systems, requiring paper printouts of financial obligations and access to multiple systems (FMS and a case management system) to cross-reference the obligations. The Committee sees substantial benefits from rolling the financial management system into a single integrated case management system, and the recommendations from the strategic plan have the opportunity to yield significant benefits for clerks and their staffs, as well as for the public.

- **ELECTRONIC
PUBLIC ACCESS**

Electronic public access will provide the public with access to available Judicial Branch

information (including information from ICMS) through self-service kiosks and personal devices; web-based capabilities will provide the ability to conduct online searches of publicly available court records and documents, submit online payments, complete online forms, etc.

Many clerks interviewed during BerryDunn’s focus groups reported that a majority of their time is spent servicing public requests for information — information that is a public record but is not readily available to the public without calling or visiting a clerk’s office. This service is important but is also interruption-driven, causing clerks to spend time “reorienting” themselves to the task that they were working on before the inquiry. A statewide effort to make basic, relevant courthouse information available online will improve clerk’s office productivity, customer service, and transparency. In addition to making information available online, the clerk’s office should be able to provide the public with the option to conduct many other routine transactions online.

From a customer service standpoint, maintaining information available online saves individuals from having to take time off of work to drive to the courthouse. Making forms available online, creating portals for the submission of documents to the courthouse electronically, and providing

for online payment of court costs and fees are just three examples of the level of online access the 21st century public has come to expect from its institutions. As the NCCALJ’s Public Trust and Confidence Committee notes, increased access to the courts and to information about the courts has the potential to foster greater confidence in our courts.

The Judicial Branch is currently involved in a complete overhaul of its website. In the near future, public access to basic information such as forms, directories, calendars, etc. should be more easily available. Availability across platforms focusing on mobile devices is being prioritized.

• JUDICIAL WORKBENCH

Judicial Workbench, or a workbench for any courthouse actor, will serve as a dashboard / portal application that provides the electronic tools to meet the specific case processing, judicial decision-making, and management needs of trial court judges on the bench and in chambers. Dashboards should enable staff to interact digitally regarding all types of matters handled within the courthouse.

CONCLUSION

The Technology Committee has gathered a tremendous amount of information during the last fifteen months. The Committee envisions a court system that will fulfill the vision of a 21st century courthouse — where technology is used to enhance efficiency, effectiveness, and timeliness

of process, leading to greater public access to and increased confidence in the courts.

As we look to that future, let us continue to bear in mind three principles to guide us in the tasks ahead. First, we must continue to be responsible

stewards of the resources that we have been given, and that we will eventually pass on to the next generation. Second, we must work to restore public trust and confidence in the judicial process and in our courts. Finally, it is of vital importance that we always look to improve access to justice for all citizens.

We live in a time of great transition in our society, and our courts play an important role in this changing environment. The digital age has brought new ways to connect to each other and to the world around us. But it also has led to new dispute resolution options for the people that we serve. Our goal should be to modernize our courts to keep up with the digital revolution, and to make it as easy as possible for our stakeholders to interact with the court system and conduct business with our courts. If we intend to keep pace with the competition, we need to view litigants the way that we would view customers in a marketplace — not in a way that shortchanges justice, but in a way that recognizes that people have choices. And if our courts are too costly, too complicated, or too slow, the citizens that we serve will try to address

their legal needs outside of the court system, often to their own detriment.

By modernizing the resources that we have, we can continue to be responsible stewards of those resources. By working toward greater access to justice for all, we can all do our part to secure equal justice under law. And not incidentally, we can increase public trust and confidence in our courts through these efforts. As our courts do justice in every case — as they treat every citizen and every party with fairness and respect — prospective litigants will entrust more of their disputes to us, further promoting justice and fairness.

As Chief Justice Mark Martin recently remarked, “Advances in technology, together with the desire to reduce costs and improve the public’s access to court services, give us the chance to reimagine how courts and citizens interact with each other.” With the adoption of this technology plan, North Carolina will join the ranks of those other states on the vanguard of technology. North Carolina’s citizens should expect no less.

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1. National Center for State Courts, *The State of State Courts: A 2014 NCSC Public Opinion Survey*. Available at <http://bit.ly/2ikyKJN>. Accessed January 12, 2017.
 2. Per S.L. 2015-241, the Technology Committee served a dual role both as a Committee of the Commission on the Administration of Law and Justice, and as the Advisory Committee for the eCourts Strategic Plan effort.
 3. The Edgecombe County Courthouse was forced to close after flood waters from Hurricane Matthew engulfed the courthouse basement in October 2016. This is a risk that the court system will continue to face as it maintains paper records. See Lindell John Kay, “Edgecombe County Courthouse Closed Due to Flooding,” *Rocky Mount Telegram*, October 13, 2016. Available at <http://bit.ly/2ik12p6>. Accessed November 22, 2016.
 4. Per the NCAOC, more than 1.25 million electronic citations were issued in Fiscal Year 2016. These citations were issued for both criminal and non-criminal violations, such as motor vehicle and seat belt, traffic, hunting and fishing, underage drinking, and speeding violations. See <http://bit.ly/2ihlzhD>.
 5. By contrast, electronic filing is now mandatory in all federal courts.

This report contains recommendations for the future direction of the North Carolina court system as developed independently by citizen volunteers. No part of this report constitutes the official policy of the Supreme Court of North Carolina, of the North Carolina Judicial Branch, or of any other constituent official or entity of North Carolina state government.

APPENDICES

APPENDICES

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The following documents are attached to support the work of each Committee as noted and referenced in each Committee's report.

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APPENDIX A

JUVENILE REINVESTMENT
Criminal Investigation and Adjudication Committee
December 2016

JUVENILE REINVESTMENT

NCCALJ COMMITTEE ON CRIMINAL INVESTIGATION & ADJUDICATION REPORT

DECEMBER 2016

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Executive Summary

North Carolina stands alone in its treatment of 16- and 17-year-olds (“youthful offenders”) like adults for purposes of the criminal justice system. In 1919, North Carolina determined that juvenile court jurisdiction would extend only to those under 16 years old.¹ A substantial body of evidence suggests that both youthful offenders and society benefit when persons under 18 years old are treated in the juvenile justice system rather than the criminal justice system. In response to this evidence, other states have raised the juvenile age. Notwithstanding recommendations from two legislatively-mandated studies of the issue, positive experiences in other states that have raised the

¹ In 1919, the Juvenile Court Statute was passed, providing statewide juvenile courts with jurisdiction over children under the age of 16. BETTY GENE ALLEY & JOHN THOMAS WILSON, NORTH CAROLINA JUVENILE JUSTICE SYSTEM: A HISTORY, 1868-1993, at 4 (NC AOC 1994) [hereinafter NC JUVENILE JUSTICE: A HISTORY]. The intent of this legislation “was to provide a special children’s court based upon a philosophy of treatment and protection that would be removed from the punitive approach of criminal courts.” *Id.* at 5.

age, and two cost-benefit studies showing that raising the age would benefit the state economically, North Carolina has yet to take action on this issue.

After careful review, the Committee² recommends that North Carolina raise the age of juvenile court jurisdiction to include youthful offenders aged 16 and 17 years old for all crimes except Class A through E felonies and traffic offenses.³ This recommendation is contingent on:

- (1) Maintaining the existing procedure in G.S. 7B-2200 to transfer juveniles to adult criminal court,⁴ except that Class A through E felony charges against 16- and 17-year olds will be automatically transferred to superior court after a finding of probable cause or by indictment.⁵
- (2) Amending G.S. 7B-3000(b) to provide that the juvenile court counselor must, upon request, disclose to a sworn North Carolina law enforcement officer information about a juvenile's record and prior law enforcement consultations with a juvenile court counselor about the juvenile, for the limited purpose of assisting the officer in

² See *infra* pp. 24-25 for a list of Committee members and other participants.

³ Traffic offenses are excluded because of the resources involved with transferring the large volume of such crimes to juvenile court. This recommendation parallels those made by others who have examined the issue. See NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, REPORT ON STUDY OF YOUTHFUL OFFENDERS PURSUANT TO SESSION LAW 2006-248, Sections 34.1 and 34.2 (2007) [hereinafter 2007 SENTENCING COMMISSION REPORT] (excluding traffic offenses from its recommendation to raise the age); YOUTH ACCOUNTABILITY PLANNING TASK FORCE, FINAL REPORT TO THE GENERAL ASSEMBLY OF NORTH CAROLINA (Jan., 2011) [hereinafter YOUTH ACCOUNTABILITY TASK FORCE REPORT] (same). Consistent with prior recommendations, the Committee suggests that transferring youthful offenders who commit traffic offenses be examined at a later date. See 2007 SENTENCING COMMISSION REPORT, at 8 (so suggesting).

While prior working groups have recommended staggered implementation for 16- and 17-year olds, the Committee recommends implementing the change for both ages at once.

⁴ Under the existing provision, the court *may* transfer jurisdiction over a juvenile who is at least 13 years of age and is alleged to have committed a felony to superior court, where the juvenile will be tried as an adult. G.S. 7B-2200. A motion to transfer may be made by the prosecutor, the juvenile's attorney, or the court. *Id.* If the juvenile is alleged to have committed a Class A felony at age 13 or older, jurisdiction *must* be transferred to superior court if probable cause is found in juvenile court. *Id.*

⁵ Early in the development of this proposal, the N.C. Conference of District Attorneys' representative on the Committee indicated that requiring Class A-E felonies to be automatically transferred to superior court would be critical to the support of these recommendations by that organization.

Automatic transfer to superior court means that the district court judge has no discretion to retain Class A-E felony charges against 16- and 17-year olds in juvenile court. Providing for transfer by indictment meets the prosecutors' interest in being able to avoid requiring fragile victims to testify at a probable cause hearing within days of a violent crime. The Conference of District Attorneys subsequently revised its position to make support of the proposal contingent on the district attorney being given sole discretion (without judicial review) to prosecute juveniles aged 13-17 and charged with Class A-E felonies in adult criminal court. As discussed *infra* at pp. 22-24, the Committee demurred on this approach.

The Committee contemplated a statutory exclusion for Class A-E felonies but adopted this approach primarily for two reasons. First, it simplifies detention decisions for law enforcement officers. Under this approach when a juvenile is arrested for *any* crime, there will be no uncertainty with respect to custody: custody always will be with the Division of Juvenile Justice. To help implement this change, the Division of Juvenile Justice has committed to provide transportation to all juveniles from local jails to juvenile facilities (currently law enforcement is responsible for this transportation). Second, this procedure protects juveniles who are prosecuted in adult court but are found not guilty or their charges are reduced or dismissed, perhaps because of an error in charging. See *State v. Collins*, __ N.C. App. __, 783 S.E.2d 9 (2016) (with respect to three charges, the juvenile improperly was charged as an adult because of a mistake with respect to his age).

- exercising his or her discretion about how to handle an incident being investigated by the officer which could result in the filing of a complaint.⁶
- (3) Requiring the Division of Juvenile Justice to (a) track all consultations with law enforcement officers about a juvenile⁷ and (b) provide more information to complainants and victims about dismissed, closed, and diverted complaints.⁸
 - (4) Amending G.S. 7B-1704 to provide that the victim has a right to seek review by the prosecutor of a juvenile court counselor's decision not to approve the filing of a petition.⁹
 - (5) Improving computer systems to give the prosecutor and the juvenile's attorney electronic access to an individual's juvenile delinquency record statewide.¹⁰
 - (6) Full funding to implement the recommended changes.¹¹

⁶ This recommendation is designed to ensure that law enforcement officers have sufficient information to exercise discretion when responding to incidents involving juveniles (e.g., whether to release a juvenile or pursue a complaint). Although G.S. 7B-3000(b) already allows the prosecutor to share information obtained from a juvenile's record with law enforcement officers, given the time sensitive nature of officers' field decisions, it is not practical to designate the prosecutor as the officer's source for this information. Because juvenile court counselors are available 24/7, on weekends and on holidays, have access to this information, and are the officer's first point of contact in the juvenile system, they are the best source of time sensitive information for officers.

Consistent with the existing statutory provision that the prosecutor may not allow an officer to photocopy any part of the record, the Committee recommends that the counselor share this information orally only. To preserve confidentiality, if this information is included in a report or record created by the officer, such report or record must be designated and treated as confidential, in the same way that all law enforcement records pertaining to juveniles currently are so designated and treated.

⁷ This recommendation is necessary to implement recommendation (2) above.

⁸ In response to Committee discussions the Division of Juvenile Justice already has revised the Complainant/Victim Letter used for this purpose and presented the revision to the Committee for feedback.

⁹ G.S. 7B-1704 currently provides this right only to the complainant. To implement this recommendation, conforming changes would need to be made to G.S. 7B-1705 (prosecutor's review of counselor's determination).

¹⁰ G.S. 7B-3000(b) already provides that the prosecutor and the juvenile's attorney may examine the juvenile's record and obtain copies of written parts of the juvenile record without a court order. Section 12 of the Rules of Recordkeeping defines that record as the case file (the file folder containing all paper documents) and the electronic data. Currently the electronic data is maintained in the J Wise computer system, an electronic index of the juvenile record. Without access to this computer system, prosecutors encounter logistical hurdles to accessing the juvenile record to inform decisions regarding charging, plea negotiations, etc. Allowing prosecutors access to the relevant computer system removes these impediments. The prosecutor's access to computer system information should be limited to juvenile delinquency information and may not include other protected information contained in that system, such as that pertaining to abuse neglect and dependency or termination of parental rights. Additionally, the J Wise system currently allows only for county-by-county searches; it does not allow for a statewide search. Given the mobility of North Carolina's citizens, there is a need for statewide searches. To allow for meaningful access to a juvenile's delinquency record, the computer system must be improved to allow for statewide searching.

To ensure parity of access, if the prosecutor is given access to the juvenile record in the relevant computer system, the same access must be given to the juvenile's attorney. As with prosecutors, G.S. 7B-3000 already allows the attorney to have access to the record without a court order; but as with the prosecutor, lack of access to the computer system makes this logistically impossible.

Existing law prohibiting photocopying any part of the juvenile record, G.S. 7B-3000(c), would be maintained and apply to computer system records.

¹¹ Two separate studies have examined the costs of raise the age legislation. *See infra* pp. 11-12 (discussing studies).

This last contingency bears special emphasis: The stakeholders are unanimous in the view that full funding must be provided to implement these recommendations and that an unfunded or partially unfunded mandate to raise the age will be detrimental to the court system and community safety.

To ameliorate implementation costs to the juvenile justice system associated with raise the age legislation, the Committee recommends that North Carolina expand state-wide existing programs to reduce school-based referrals to the juvenile justice system.¹²

Finally the Committee recommends requiring regular juvenile justice training for sworn law enforcement officers and forming a limited term standing committee of juvenile justice stakeholders to review implementation of these recommendations and make additional recommendations if needed.¹³

A Brief Comparison of Juvenile & Criminal Proceedings

When there is probable cause that a North Carolina youthful offender has committed a crime, that person is charged like any adult. If not released before trial, the youthful offender is detained in the local jail and at risk of being victimized by sexual violence.¹⁴ The youthful offender is tried in adult criminal court and if found guilty, is convicted of a crime. Although a minor's parent or guardian must be informed when the child is charged or taken into custody,¹⁵ the criminal case proceeds without any additional requirement of notice to the parent or parental involvement. If convicted and sentenced to prison, the youthful offender serves the sentence in an adult prison facility.¹⁶ In prison, youthful offenders are significantly more likely than other inmates to be victimized by physical violence.¹⁷ The criminal proceeding and all records, including the record of arrest and conviction, are available to the public, even if the youthful offender is found not guilty. All collateral consequences that apply to adult defendants apply to youthful offenders. These consequences

¹² See *infra* pp. 18-19 (discussing such programs).

¹³ The Standing Committee should include, among others: a district court judge; a superior court judge; a prosecutor who handles juvenile matters; a victims' advocate; and representatives from the law enforcement community, the Division of Juvenile Justice, and the Office of the Juvenile Defender.

¹⁴ A report for the John Locke Foundation supporting raising the juvenile age notes: "one national survey of jails found that in one year, minors were the victims of inmate-on-inmate sexual violence 21 percent of the time, even though they only made up less than one percent of jail inmates." MARK LEVIN & JEANETTE MOLL, JOHN LOCKE FOUNDATION, IMPROVING JUVENILE JUSTICE: FINDING MORE EFFECTIVE OPTIONS FOR NORTH CAROLINA'S YOUNG OFFENDERS 5 (2013) [hereinafter JOHN LOCKE FOUNDATION REPORT], <http://www.johnlocke.org/acrobat/spotlights/YoungOffendersRevised.pdf>.

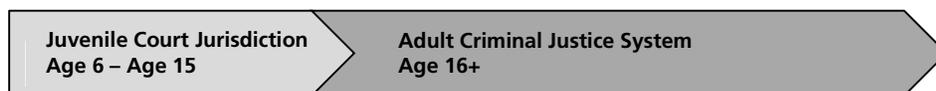
¹⁵ G.S. 15A-505(a).

¹⁶ Male youthful offenders are incarcerated at the Foothills Correctional Institution, an 858-capacity facility for males aged 18-25 years old. See N.C. Dep't Pub. Safety, *Foothills Correctional Institution*, N.C. DPS, <https://www.ncdps.gov/Adult-Corrections/Prisons/Prison-Facilities/Foothills-Correctional-Institution> (last modified Mar. 19, 2013). Female youthful offenders serve their sentences at the N.C. Correctional Institution for Women, a facility housing the largest inmate population in the state and female inmates of all ages and all custody and control statuses, including death row, maximum, close, medium, minimum and safekeepers. See N.C. Dep't Pub. Safety, *NC Correctional Institution for Women*, N.C. DPS, <https://www.ncdps.gov/Adult-Corrections/Prisons/Prison-Facilities/NC-Correctional-Institution-for-Women> (last modified Aug. 6, 2015).

¹⁷ With respect to physical violence, a report for the John Locke Foundation supporting raising the juvenile age notes: "Research has found minors are 50 percent more likely to be physically attacked by a fellow inmate with a weapon of some sort, and twice as likely to be assaulted by staff." JOHN LOCKE FOUNDATION REPORT, *supra* note 13, at 5.

include, among other things, ineligibility for employment, professional licensure, public education, college financial aid, and public housing.¹⁸

Fig. 1. Current age of legal jurisdiction.



By contrast, when a person under 16 years old is believed to have committed acts that would constitute a crime if committed by an adult, a complaint is filed in the juvenile justice system alleging the juvenile to be delinquent.¹⁹ A juvenile court counselor conducts a preliminary review of the complaint to determine, in part, whether it states facts that constitute a delinquent offense;²⁰ essentially this determination looks at whether the elements of a crime have been alleged. If the juvenile court has no jurisdiction over the matter or if the complaint is frivolous, the juvenile court counselor must refuse to file the complaint as a petition.²¹ Once the juvenile court counselor determines that the complaint is legally sufficient, he or she decides whether it should be filed as a petition, diverted, or resolved without further action.²² This evaluation can involve interviews with the complainant and victim and the juvenile and his or her parents.²³ “Non-divertable” offenses, however, are not subject to this inquiry; the juvenile court counselor must approve as a petition a complaint alleging a non-divertable offense once legal sufficiency is established.²⁴ Non-divertable offenses include murder, rape, sexual offense, and other serious offenses designated by the statute.²⁵ For all other offenses, the case may be diverted with the stipulation that the juvenile and his or her family comply with requirements agreed upon in a diversion plan or contract, such as participation in mediation, counseling, or teen court.²⁶ The diversion plan or contract can be in effect for up to six months, during which time the court counselor conducts periodic reviews to ensure compliance by the juvenile and the juvenile’s parent, guardian, or custodian.²⁷ If diversion is unsuccessful, the complaint may be filed as a petition.²⁸ If successful, the juvenile court counselor may close the case at an appropriate time.²⁹ The Division of Adult Correction and Juvenile Justice reports that for calendar years 2008-2011, 21% of complaints were diverted and 18% were closed at intake.³⁰ 76% of those diverted did not acquire new juvenile complaints within two years.³¹ If the counselor approves a complaint as a petition, the case is calendared for juvenile court. If the counselor declines to so approve a complaint, the complainant can request that the prosecutor

¹⁸ For a complete catalogue of collateral consequences, see the UNC School of Government’s Collateral Consequences Assessment Tool, a searchable database of the North Carolina collateral consequences of a criminal conviction, available online at <http://ccat.sog.unc.edu/>.

¹⁹ For the procedures for intake, diversion, and juvenile petitions, see G.S. Ch. 7B, Arts. 17 & 18.

²⁰ G.S. 7B-1701.

²¹ *Id.*

²² G.S. 7B-1702.

²³ *Id.*

²⁴ G.S. 7B-1701.

²⁵ *Id.*

²⁶ G.S. 7B-1706.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ N.C. DEP’T PUB. SAFETY, DIVISION OF JUVENILE JUSTICE, JUVENILE DIVERSION IN NORTH CAROLINA 7 (2013).

³¹ *Id.* at 2.

review that decision.³² In certain circumstances, such as where the juvenile presents a danger to the community, a district court judge may order that the juvenile be taken into secure custody.³³

For cases that go to court, the child's parent, guardian, or custodian is made a party to the proceeding and is required to attend court hearings.³⁴ If the child is adjudicated delinquent, a dispositional hearing is held after which the judge enters a disposition that provides "appropriate consequences, treatment, training, and rehabilitation to assist the juvenile toward becoming a nonoffending, responsible, and productive member of the community."³⁵ Interventions that can be imposed on delinquent youth array on a continuum. Lower level sanctions include things like restitution, community service, and supervised day programs.³⁶ Intermediate sanctions include things like placement in a residential treatment facility and house arrest.³⁷ In certain circumstances, the judge's dispositional order may require the child to be committed into State custody, in which case the child will be held in a youth development center (YDC), housing only those adjudicated as juveniles.³⁸ Upon commitment to and placement in a YDC, the juvenile undergoes a "screening and assessment of developmental, educational, medical, neurocognitive, mental health, psychosocial and relationship strengths and needs."³⁹ This and other information is used to develop an individualized service plan "outlining commitment services, including plans for education, mental health services, medical services and treatment programming as indicated."⁴⁰ A service planning team meets at least monthly to monitor the juvenile's progress.⁴¹ In contrast to the adult prison setting and because YDCs deal exclusively with juvenile populations, all of their programming is age- and developmentally-appropriate for juveniles. Because of the focus on rehabilitation, and in contrast to a judge's authority in the criminal system, the juvenile dispositional order can require action by the child's parent, guardian, or custodian, such as attending parental responsibility classes,⁴² or participation in the child's psychological treatment.⁴³ Because the juvenile record is confidential and not part of the public record,⁴⁴ barriers to employment, education, college financial aid, and other collateral consequences associated with a criminal conviction do not attach to the same extent.

North Carolina Stands Alone Nationwide in its Treatment of Youthful Offenders

Forty-three states plus the District of Columbia set the age of criminal responsibility at age 18.⁴⁵ In these jurisdictions, 16- and 17-year olds are tried in the juvenile justice system, not the adult

³² G.S. 7B-1704.

³³ G.S. 7B-1903.

³⁴ G.S. 7B-2700.

³⁵ G.S. 7B-2500.

³⁶ Juvenile Justice Disposition Chart and Dispositional Alternatives (Dec. 2015) (a copy of this document was provided by the Division of Adult Correction and Juvenile Justice, Subcommittee on Juvenile Age Meeting Feb. 18, 2016).

³⁷ *Id.*

³⁸ *Id.*; see also G.S. 7B-2506(24).

³⁹ N.C. Dep't Pub. Safety, *Youth Development Centers*, N.C. DPS, <https://www.ncdps.gov/Juvenile-Justice/Juvenile-Facility-Operations/Youth-Development-Centers> (last visited Mar. 21, 2016).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² G.S. 7B-2701.

⁴³ G.S. 7B-2702.

⁴⁴ G.S. 7B-3000. In certain circumstances, however, information in juvenile court records later may be revealed to the prosecutor, probation officer, magistrate, law enforcement, and the court. *Id.*

⁴⁵ Juvenile Justice Geography, Policy, Practice & Statistics, *Jurisdictional Boundaries*, JJGPS, <http://www.jjgps.org/jurisdictional-boundaries> (last visited Aug. 8, 2016) [hereinafter *Jurisdictional*

system. The most recent states to join this majority approach are Louisiana and South Carolina; both of those states raised the juvenile age to 18 in 2016.⁴⁶ Raise the age legislation received unanimous support in South Carolina’s legislature.⁴⁷ Five states set the age of criminal responsibility at age 17.⁴⁸ This leaves North Carolina and one other state—New York—as the only jurisdictions that prosecute both 16- and 17-year olds in adult criminal court.⁴⁹ New York’s procedure, however, is much more flexible than North Carolina’s in that it has a reverse waiver provision allowing a youthful offender to petition the court to be tried as a juvenile.⁵⁰ While other states have moved⁵¹—and continue to move⁵²—to increase juvenile age, North Carolina has not followed suit.

Most North Carolina Youthful Offenders Commit Misdemeanors & Non-Violent Felonies

Consistent with data from other states, stable data shows that only a small number of North Carolina’s 16- and 17-year-olds are convicted of violent felonies.⁵³ Of the 5,689 16-and 17-year olds convicted in 2014,⁵⁴ only 187—3.3% of the total—were convicted of violent felonies (Class A-E).⁵⁵ The vast majority of these youthful offenders—80.4%—were convicted of misdemeanors.⁵⁶ The remaining 16.3% were convicted of non-violent felonies.⁵⁷

The fact that such a small percentage of youthful offenders commit violent felonies caused Newt Gingrich to argue, in support of raising the age in New York, that “[i]t is commonsense to design the system around what is appropriate for the majority, while providing exceptions for the most serious cases.”⁵⁸ Likewise, a report on raising the age prepared by the John Locke Foundation notes, “[w]hile there are a small number of very serious juvenile offenders who should be tried as adults

Boundaries]. Please note that as of August 2016, this source had not been updated to reflect successful raise the age legislation in Louisiana and South Carolina.

⁴⁶ The South Carolina law is available here, along with a history of legislative action: http://www.scstatehouse.gov/sess121_2015-2016/bills/916.htm. The Louisiana law is here: <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1012088>.

⁴⁷ The unanimous votes in the South Carolina House and Senate are reported here: http://www.scstatehouse.gov/sess121_2015-2016/bills/916.htm.

⁴⁸ *Id.* (these states include: Georgia, Michigan, Missouri, Texas and Wisconsin). Raise the age proposals are under consideration in at least one of these states. See Newt Gingrich & Pat Nolan, *Missouri, Raise the Age*, ST. LOUIS POST-DISPATCH, Apr. 27, 2016, http://www.stltoday.com/news/opinion/missouri-raise-the-age/article_ade5dad7-12aa-54b4-b180-97d3977edfc1.html (noting that Missouri legislature is working on raise the age bill).

⁴⁹ *Jurisdictional Boundaries*, *supra* note 45.

⁵⁰ *Id.*

⁵¹ *Id.* (providing a color coded map showing the upper age of juvenile jurisdiction in U.S. states from 1997 to 2014).

⁵² See *supra* note 48.

⁵³ Convictions by Offense Type and Class for Offenders Age 16 and 17 FY 2004/05 – FY 2013/14 (chart indicating that convictions for Class A-E felonies never exceeded 4% of total convictions for this age group over ten-year period; a copy of this document was provided to the Committee Reporter by Michelle Hall, Executive Director of the North Carolina Sentencing and Policy Advisory Commission, Mar. 24, 2016).

⁵⁴ MICHELLE HALL, NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, COMPARATIVE STATISTICAL PROFILE OF YOUNG OFFENDERS IN NORTH CAROLINA 6 [hereinafter COMPARATIVE STATISTICAL PROFILE] (Presented to the NCCALJ Criminal Investigation and Adjudication Committee, Dec. 11, 2015).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Newt Gingrich, *Treating Kids As Kids to Help Curb Crime*, N.Y. POST, Mar. 20, 2015, <http://nypost.com/2015/03/20/treating-kids-as-kids-to-help-curb-crime/> [hereinafter Gingrich].

due to the nature of their crimes, in the aggregate, the limited available evidence . . . suggests that placing all 16 year-olds in the adult criminal justice system is not the most effective strategy for deterring crime or successfully rehabilitating and protecting these youngsters.”⁵⁹ Consistent with these arguments, the Committee recommends a policy that is appropriate for the majority of youthful offenders, with two safeguards for ensuring community safety with respect to the minority of youthful offenders who commit violent crimes: (1) requiring that youthful offenders charged with Class A through E felonies be tried in adult criminal court and (2) maintaining the existing procedure that allows other cases to be transferred to adult court when appropriate.⁶⁰

Raising the Age Will Make North Carolina Safer

As noted in the John Locke Foundation report supporting raising the juvenile age in North Carolina, “[r]esearch consistently shows that rehabilitation of juveniles is more effectively obtained in juvenile justice systems and juvenile facilities, as measured by recidivism rates.”⁶¹ Recidivism refers to an individual’s relapse into criminal behavior, after having experienced intervention for a previous crime,⁶² such as a conviction and prison sentence. Lower rates of recidivism means less crime and safer communities. Both North Carolina and national data suggest that prosecuting youthful offenders as adults results in higher rates of recidivism than when youthful offenders are treated in the juvenile system. Thus, raising the age is likely to result in lower recidivism, less crime, and increased safety.

North Carolina data shows a significant 7.5% decrease in recidivism when teens are adjudicated in the juvenile versus the adult system.⁶³ Experts suggest that youthful offenders have a higher recidivism rate when prosecuted in the adult criminal system because, unlike the juvenile system, the criminal system lacks the ability to implement the most targeted, juvenile-specific, effective interventions for rehabilitation within a framework of parental and community involvement to include mental health, education, and social services participation in the continuum of care.⁶⁴ North Carolina data also shows that when youthful offenders are prosecuted in the adult system, they recidivate at a rate that is 12.6% higher than the overall population.⁶⁵ Also, individuals with deeper involvement in the criminal justice system generally recidivate at higher rates than those with less involvement (for example, a sentence of probation versus one of imprisonment).⁶⁶ Contrary to the conventional rule, in North Carolina youthful offenders who receive probation recidivate at a higher

⁵⁹ JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 2.

⁶⁰ *See supra* pp. 2-4 (specifying these recommendations); *see generally* JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 2 (arguing: “As long as there are mechanisms in place which permit juvenile offenders whose crimes are individually deemed serious enough to be tried as adults, considerations of public safety and the wellbeing of state wards suggest North Carolina should seriously look at joining nearly all other states in making the juvenile justice system the default destination for 16 year-olds.”).

⁶¹ JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 3.

⁶² National Institute of Justice, *Recidivism*, NIJ, <http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx> (last modified June 17, 2014).

⁶³ COMPARATIVE STATISTICAL PROFILE, *supra* note 54, at Tables 9 and 11 (showing a two-year recidivism rate for 16-17 year old probationers to be 49.3% and a two-year recidivism rate for 15-year-olds to be 41.8%).

⁶⁴ Comments of William Lassiter, Committee Meeting Dec. 11, 2015.

⁶⁵ COMPARATIVE STATISTICAL PROFILE, *supra* note 54, at Table 9 (while the overall probation entry population recidivates at a rate of 36.7%, 16- and 17-year-olds recidivate at the much higher rate of 49.3%).

⁶⁶ NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, CORRECTIONAL PROGRAM EVALUATION: OFFENDERS PLACED ON PROBATION OR RELEASED FROM PRISON IN FISCAL YEAR 2010/11, at iii, Figure 2 (2014) (showing that two-year recidivism rate as measured by rearrests was 36.8% for probationers while the rate for persons released from prison was 48.6%).

rate than defendants who are released after a prison sentence.⁶⁷ These last two data points indicate that North Carolina's treatment of youthful offenders is inconsistent with reducing crime and promoting community safety. Overall, North Carolina data is consistent with data nationwide: recidivism rates are higher when juveniles are prosecuted in adult criminal court.⁶⁸

Additionally, evidence shows that youth receive more supervision in the juvenile system than the adult system. Because they typically present in the adult system with low-level offenses, charges against youthful offenders often are dismissed.⁶⁹ Even when youthful offenders are convicted, because they typically have little or no prior criminal record,⁷⁰ sentences are often light.⁷¹ As Newt Gingrich observed when supporting raise the age legislation in New York, "because most minors are charged with low-level offenses, the adult system often imposes no punishment whatsoever, teaching a dangerous lesson: You won't be held accountable for breaking the law."⁷²

Some assert that prosecuting youthful offenders in criminal court has an important deterrent effect. However, as noted in a John Locke Foundation report supporting raising the age in North Carolina, studies show that prosecuting juveniles in adult court does not in fact deter crime.⁷³ That report continues:

The studies all show that, perhaps due to minors' lack of maturity or less-than-developed frontal cortex, which controls reasoning, legislative efforts to inflict

⁶⁷ COMPARATIVE STATISTICAL PROFILE, *supra* note 54, at Table 9 (showing that while recidivism for overall prison releases is 48.6%, recidivism rates for youthful offenders sentenced to probation is 49.3%).

⁶⁸ As noted by Newt Gingrich when arguing in favor of raise the age legislation in New York:

Research shows that prosecuting youths as adults increases the chances that they will commit more serious crimes. A Columbia University study compared minors arrested in New Jersey (where the age of adulthood is 18) with those in New York. New York teens were more likely to be rearrested than those processed in New Jersey's juvenile court for identical crimes. For violent crimes, rearrests were 39 percent greater. Studies in other states have yielded similar results, leading experts at the Centers for Disease Control to recommend keeping kids out of adult court to combat community violence.

Gingrich, *supra* note 58; *see also* JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 3-4 (citing several studies that have compared recidivism rates for juvenile offenders tried in juvenile courts with those for juveniles tried in criminal courts); OLA LISOWSKI & MARC LEVIN, MACIVER INSTITUTE & TEXAS PUBLIC POLICY FOUNDATION, 17-YEAR-OLDS IN ADULT COURT: IS THERE A BETTER ALTERNATIVE FOR WISCONSIN'S YOUTH AND TAXPAYERS? 3, 7-9 (2016) [hereinafter LISOWSKI & LEVIN] (noting that "[i]n Wisconsin, 17-year-olds are three times more likely to return to prison if they originally go through the adult system rather than the juvenile system"; discussing studies in other states, including New York and New Jersey, Florida, and Minnesota).

⁶⁹ PowerPoint accompanying Comments of Judge Morey, Committee Meeting Dec. 11, 2015 (noting that in Durham, of the 632 misdemeanors charges taken out on 16- and 17-year-olds in 2012, 495 were dismissed), <http://nccalj.org/wp-content/uploads/2015/12/October-2015-Sentencing-Commissions-Research-and-Policy-Study-Group.pdf>.

⁷⁰ COMPARATIVE STATISTICAL PROFILE, *supra* note 54, at Table 5 (showing that less than 2% of youthful offenders present with a prior record at level III or above).

⁷¹ *Id.* at Table 7 (showing that almost 75% of youthful offenders receive non-active (community) punishment).

⁷² Gingrich, *supra* note 58.

⁷³ JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 3 (so noting and discussing data from New York, Idaho, and Georgia calling into question the notion that prosecuting juveniles in adult court has a deterrent effect).

criminal court jurisdiction and punishments upon minors have not deterred crime. Even more than adult offenders, the very problem with juvenile offenders is that too often they do not think carefully before committing their misdeeds, and they rarely, if ever, review the statutory framework to determine the consequences.⁷⁴

Other researchers agree that adult criminal sanctions do not deter youth crime.⁷⁵

Some have suggested that raising the age will give gang members additional youth to recruit for illegal activities. However, the Division of Juvenile Justice reports that only 7-8% of all youth in the juvenile justice system are “gang involved.” This figure includes youth who are recruited by gang members to help drug or other criminal activity. While this percentage is not insignificant, it shows that only a small proportion of all juveniles who enter the system are connected with gang crimes. Also, the number of juveniles who are alleged to have committed acts that constitute a gang crime offense is very, very small; from 2009-2016, only 20 juveniles in the entire system were alleged to have perpetrated such acts.⁷⁶ Finally, there is reason to believe that youth with gang connections are likely to do better in the juvenile system than the adult system. Juveniles in the YDCs are exposed to gang awareness educational and intervention programs, as well as substance abuse programming. Youth processed in the adult system and incarcerated in adult prison have no access to that crucial programming.

It should be noted that the Committee’s recommendation has built-in protections to deal with violent juveniles: (1) requiring that youthful offenders charged with Class A through E felonies be tried in adult criminal court⁷⁷ and (2) maintaining the existing procedure that allows other cases to be transferred to adult court when appropriate.⁷⁸ Notably, North Carolina’s existing transfer provision has been used for 13, 14, and 15-year-olds for many years, with no empirical evidence suggesting that violent or gang-involved youth are falling through the cracks.⁷⁹

Finally, studies show when states have implemented raise the age legislation, public safety has improved.⁸⁰

⁷⁴ *Id.*

⁷⁵ LISOWSKI & LEVIN, *supra* note 68, at 5 (noting that in 1994, after Georgia passed a law restricting access to juvenile court for certain youth, a study showed no significant change in juvenile arrest rates in the years following the statute’s enactment; noting that after New York passed a similar law in 1978, a study found that arrest rates for most offenses remained constant or increased in the time period of the study).

⁷⁶ Email from William Lassiter, Deputy Commissioner for Juvenile Justice to Committee Reporter (Sept. 20, 2016) (on file with Committee Reporter) (the offenses examined included all crimes in Article 13A of G.S. Chapter 14 (North Carolina Street Gang Suppression Act) and G.S. 14-34.9 (discharging a firearm from within an enclosure as part of a pattern of street gang activity)).

⁷⁷ According to the recommendations above, Class A-E felony charges against 16- and 17-year olds will be automatically transferred to superior court after a finding of probable cause or by indictment. *See supra* p. 2 (so specifying)

⁷⁸ *See supra* p. 2 (so specifying).

⁷⁹ The John Locke Foundation report concluded: “North Carolina [has] a robust system of transfer for felony juvenile offenders, which ensures that the most serious of juvenile offenders can be tried in adult courts even if the age of juvenile court jurisdiction is raised.” JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 1.

⁸⁰ *See, e.g.*, RICHARD MENDEL, JUSTICE POLICY INSTITUTE, JUVENILE JUSTICE REFORM IN CONNECTICUT: HOW COLLABORATION AND COMMITMENT HAVE IMPROVED PUBLIC SAFETY AND OUTCOMES FOR YOUTH 29 (2013) [hereinafter CONNECTICUT REPORT] (“Available data leave no doubt that public safety has improved as a result of Connecticut’s juvenile justice reforms.”); *see also infra* pp. 14-15 (discussing other states’ experiences with raise the age legislation).

Raising the Age Will Yield Economic Benefit to North Carolina & Its Citizens

Two separate studies authorized by the North Carolina General Assembly indicate that raising the juvenile age will produce significant economic benefits for North Carolina and its citizens:

- (1) In 2009, the Governor’s Crime Commission Juvenile Age Study submitted to the General Assembly included a cost-benefit analysis of raising the age of juvenile court jurisdiction to 18. The analysis, done by ESTIS Group, LLC, found that the age change would result in a net benefit to the state of \$7.1 million.⁸¹
- (2) In 2011, the Youth Accountability Planning Task Force submitted its final report to the General Assembly. The Task Force’s report included a cost-benefit analysis, done by the Vera Institute of Justice, of prosecuting 16 and 17-year-old misdemeanants and low-level felons in juvenile court. That report estimated net benefits of \$52.3 million.⁸²

Much of the estimated cost savings would result from reduced recidivism, which “eliminates future costs associated with youth ‘graduating’ to the adult criminal system, and increased lifetime earnings for youth who will not have the burden of a criminal record.”⁸³ Cost savings from reduced recidivism has been cited in the national discourse on raising the juvenile age. As noted by Newt Gingrich when arguing in favor of raise the age legislation in New York:

Recidivism is expensive. There are direct losses to victims, the public costs of law enforcement and incarceration and the lost economic contribution of someone not engaged in law-abiding work. When Connecticut raised the age for adult prosecution to 18, crime rates quickly dropped and officials were able to close an adult prison. Researchers calculated the lifetime gain of helping a youth graduate high school and avoid becoming a career criminal or drug user at \$2.5 million to \$3.4 million *for just one person*. An adult record permanently limits youth prospects; it becomes harder to gain acceptance to a good school, get a job or serve in the military. Juvenile records are sealed and provide more opportunity. It’s only fair to give a young person who has paid his debt to society a fresh start. It is in our best interest that youth go on to contribute to the economy, rather than becoming a drain through serial incarceration or dependence on public assistance.⁸⁴

And as noted in a John Locke Foundation report supporting raising the juvenile age, “North Carolina is not merely relying on the projections, but can look to the proven experience of other states.”⁸⁵ That report continues: “Some 48 other states from Massachusetts to Mississippi have successfully raised the age and implemented this policy change effectively and without significant complications. Many states, including Connecticut and Illinois, have found that the transition can be accomplished largely by reallocating funds and resources among the adult and juvenile systems.”⁸⁶

⁸¹ GOVERNOR’S CRIME COMMISSION JUVENILE AGE STUDY, A STUDY OF THE IMPACT OF EXPANDING THE JURISDICTION OF THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION 4-6 (2009) [hereinafter 2009 GOVERNOR’S CRIME COMMISSION REPORT].

⁸² YOUTH ACCOUNTABILITY TASK FORCE REPORT, *supra* note 3.

⁸³ LaToya Powell, *U.S. Senators Support “Raise the Age”*, N.C. CRIM. LAW BLOG (July 14, 2014), <http://nccriminallaw.sog.unc.edu/u-s-senators-support-raise-the-age/>.

⁸⁴ Gingrich, *supra* note 58.

⁸⁵ JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 7.

⁸⁶ *Id.* (providing detail on the experience in Connecticut and Illinois).

The Committee recognizes that its recommendations will require a significant outlay of taxpayer funds, with benefits achieved long-term. However, there are good reasons to believe that costs will be lower than estimated in the analyses noted above. First, the 2011 Vera Institute cost-benefit analysis estimated costs with FY 2007/08 juvenile arrest data. However, as shown in Figure 2 below, juvenile arrest rates have decreased dramatically from 2008.⁸⁷

Fig. 2. Falling arrest rates for juveniles under age 18.

	Violent Crime	Property Crime
2008	2,597	13,307
2014	1,537	7,919

Source: North Carolina State Bureau of Investigation, *Crime in North Carolina – 2014*, 7 (Nov. 2015).

These declining arrest numbers for all persons under 18 years old suggest that system costs may be lower than those estimated based on FY 2007/08 data.⁸⁸

Additionally, no prior cost analysis on the juvenile age issue has accounted for cost reductions associated with statewide implementation of pilot programs that reduce admissions into the juvenile system, as recommended by the Committee.⁸⁹ For these reasons North Carolina may experience actual costs that are less than those that have been predicted. This in fact would be consistent with the experiences of other states that have raised the juvenile age.⁹⁰

Finally, prior examination of fiscal impact may not have sufficiently taken into account current standards linked to the federal Prison Rape Elimination Act (PREA) that “are likely to raise costs in the adult justice system as county jails and state prisons spend more in areas such as staffing, programming, and facilities.”⁹¹ Thus, “[e]ven the apparent short-term cost advantages of the adult justice system will diminish.”⁹² With respect to staffing costs, male 16- and 17-year-old criminal defendants are housed at Foothills Correctional Center; females at North Carolina Correctional Institution for Women.⁹³ The Division of Juvenile Justice reports that Foothills currently houses 65 juveniles; the Institution for Women houses three. In order to comply with the sight and sound segregation requirements of PREA, every time juveniles are moved within those adult facilities, the facilities must be in lock down, with obvious staffing costs.

⁸⁷ North Carolina State Bureau of Investigation, *Crime in North Carolina - 2014*, 7 (Nov. 2015) [hereinafter *NC SBI Crime Report*], [http://crimereporting.ncsbi.gov/public/2014/ASR/2014 Annual Summary.pdf](http://crimereporting.ncsbi.gov/public/2014/ASR/2014%20Annual%20Summary.pdf).

⁸⁸ A 2013 fiscal note prepared in connection with HB 725 used data from FY 2012/13. Juvenile arrest rates likewise have declined since 2012: In 2012, 1,556 juveniles under 18 were arrested for violent crimes; that number dropped to 1,537 in 2014. *NC SBI Crime Report*, *supra* note 87. In 2012, 9,539 juveniles under 18 were arrested for property crimes; that number dropped to 7,919 in 2014. *Id.*

⁸⁹ *See infra* pp. 18-19.

⁹⁰ *See infra* pp. 14-15 (noting that in Connecticut although juvenile caseloads were expected to grow by 40% they grew only 22% and that Connecticut spent nearly \$12 million less in 2010 and 2011 than had been budgeted).

⁹¹ Press Release, John Locke Foundation, Long-Term Cost Savings Likely from Raising N.C. Juvenile Justice Age (July 17, 2013) [hereinafter John Locke Press Release] (quoting Marc Levin, co-author of JOHN LOCKE FOUNDATION REPORT), http://www.johnlocke.org/press_releases/show/713.

⁹² *Id.*

⁹³ *See supra* note 16.

Division of Juvenile Justice Already Has Produced Cost Savings to Pay for Raise the Age

Although raising the age will yield long-term economic benefit to North Carolina and its citizens, it will require a significant outlay of taxpayer funds. In its 2011 report, the Youth Accountability Planning Task Force estimated that the annual taxpayer cost of the then-considered proposal to be \$49.2 million.⁹⁴ Although there is reason to believe that actual costs may be lower than estimated in that analysis,⁹⁵ even if cost reductions are not realized, the Division of Juvenile Justice already has produced cost savings of over \$44 million that can be used to pay for raise the age.

Between fiscal year 2008-2009 and fiscal year 2015-2016, the Division of Juvenile Justice's budget was reduced from \$168,523,752 to \$123,782,978.⁹⁶ This cost savings of \$44,740,774 can be attributed to several Division changes:

- 1) *Reduction in Juvenile Pretrial Detentions through the Use of a Detention Assessment Tool.* The Division's implementation of a detention assessment tool has reduced the number of juveniles housed in detention, instead placing low risk juveniles in less expensive diversion programming and secure custody alternatives that assess juveniles' needs and provide targeted referrals and resources.⁹⁷ Specifically, detention center admissions fell from 6,246 in 2010 to 3,229 in 2015. By way of a benchmark, the annual cost per child for diversion programming is \$857; the annual cost per child of a detention center bed is \$57,593.⁹⁸
- 2) *Reduction in Commitments to Youth Development Centers.* As a result of the juvenile reform act and better utilization of less expensive community-based options for lower risk juveniles, the Division has significantly reduced the number of juveniles committed to youth development centers.⁹⁹ Because it costs \$125,000/year to confine a juvenile in a youth development center, this reduction in commitments has yielded significant savings to the state.¹⁰⁰
- 3) *Facility Closures:* Due to the reduction in pretrial detentions and commitments to youth development centers noted above, the Division has been able to close a number of detention center and youth development center facilities,¹⁰¹ repurposing portions of these facilities to

⁹⁴ See YOUTH ACCOUNTABILITY TASK FORCE REPORT, *supra* note 3.

⁹⁵ See *supra* p. 12 (noting that costs may be lower than estimated because of falling arrest rates for juveniles and potential cost reductions associated with statewide implementation of school justice partnerships designed to reduce referrals to the juvenile justice system, as recommended in this report).

⁹⁶ Juvenile Justice Cost Avoidance Since 2008 (Division of Juvenile Justice, Aug. 15, 2016) (on file with Committee Reporter).

⁹⁷ *Id.*

⁹⁸ *Id.* Because North Carolina's counties pay half of the cost of a juvenile's stay in a detention center, the decline in juvenile pretrial detentions yielded savings for the counties as well as the state. *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ The affected facilities include:

- Perquimans detention center; closed November 15, 2012; approximately \$1 million savings
- Buncombe detention center; closed July 1, 2013; approximately \$1 million savings
- Richmond detention center; closed July 1, 2013; approximately \$1.5 million savings
- Samarkand youth development center; closed July 1, 2011; approximately \$3.1 million savings
- Swannanoa Valley youth development center; closed March 1, 2011; approximately \$4.5 million savings
- Lenoir youth development center, closed October 1, 2013 (scheduled to reopen in 2017 after closing less secure Dobbs youth development center); approximately \$3 million savings

Id.

provide assessment services and crisis intervention. These closures reduced annual operational costs by \$14.1 million.¹⁰²

- 4) *Decreased Delinquency Rate.* Consistent with national trends, North Carolina has experienced a reduction in its juvenile delinquency rate.¹⁰³ Specifically, the rate of delinquent complaints per 1,000 youth age 6-15 went from 27.55 in 2010 to 20.78 in 2015. This reduced delinquency rate has reduced cost to the Division.¹⁰⁴

The Committee recommends reinvesting the \$44 million in cost savings *already achieved* by the Division of Juvenile Justice to support raise the age.

Raising the Age Has Been Successfully Implemented in Other States

Other states have enacted raise the age legislation, over vigorous objections that doing so would negatively affect public safety, create staggering caseloads and overcrowded detention facilities, and result in unmanageable fiscal costs.¹⁰⁵ As it turns out, none of the predicted negative consequences have come to pass. For example, in 2009 Illinois moved 17-year-olds charged with misdemeanors from the adult to the juvenile system.¹⁰⁶ Among other things, Illinois reported:

- The juvenile system did not “crash.”
- Public safety did not suffer.
- County juvenile detention centers and state juvenile incarceration facilities were not overrun. In fact, three facilities were closed and the state reported excess capacity statewide.¹⁰⁷

The Illinois experience was so positive that in July 2013, that state expanded its raise the age legislation to include all 17-year-olds in the juvenile justice system, including those charged with felonies.¹⁰⁸

Connecticut’s experience was similarly positive. In 2007, Connecticut enacted legislation to raise the age of juvenile jurisdiction from 16 to 18, effective 2010 for 16-year-olds and 2012 for 17-year olds.¹⁰⁹ After the change, juvenile caseloads grew at a lower-than-expected rate and the state spent nearly \$12 million less than budgeted in the two years following the change.¹¹⁰ A report on Connecticut’s experience gives this bottom line for that state’s experience: “Cost savings and

¹⁰² See *supra* note 101 (itemizing savings).

¹⁰³ Juvenile Justice Cost Avoidance Since 2008 (Division of Juvenile Justice, Aug. 15, 2016) (on file with Committee Reporter).

¹⁰⁴ *Id.*

¹⁰⁵ ILLINOIS JUVENILE JUSTICE COMMISSION, RAISING THE AGE OF JUVENILE COURT JURISDICTION: THE FUTURE OF 17-YEAR-OLDS IN ILLINOIS’ JUSTICE SYSTEM 6 (2013) [hereinafter ILLINOIS REPORT] (noting these objections), <http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/IJJC - Raising the Age Report.pdf>.

¹⁰⁶ *Id.* (noting that initial legislation was passed over opponents’ assertions that the law would lead to “unmanageable fiscal costs”). For more background on the raising the age in Illinois, see Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction: The Future of 17-Year-Olds in Illinois’ Justice System*, IJJC, <http://ijjc.illinois.gov/rta> (last visited Mar. 23, 2016).

¹⁰⁷ ILLINOIS REPORT, *supra* note 105, at 6; see also John Locke Press Release, *supra* note 91 (noting that “[a]fter Illinois raised the juvenile jurisdiction age in 2010, both juvenile crime and overall crime dropped so much that the state was able to close three juvenile lockups because they were no longer needed”).

¹⁰⁸ Illinois Public Act 098-0061.

¹⁰⁹ See CONNECTICUT REPORT, *supra* note 80, at 15-16.

¹¹⁰ *Id.* at 27 (reporting that juvenile caseloads grew at a rate of 22% versus 40% as projected).

improved public safety.”¹¹¹ As has been noted, 48 other states have increased the juvenile age “without significant complications.”¹¹²

While raise the age efforts have proved to be successful, lower the age campaigns have proved unworkable. In 2007, Rhode Island lowered its juvenile age, pulling 17-year-olds out of the juvenile system and requiring that they be prosecuted as adults.¹¹³ Proponents asserted that the change would save the state \$3.6 million because 17-year-olds would be housed in adult prisons rather than training schools. But the experiment was a failure. As it turned out, youths sentenced to adult prison had to be, for safety reasons, housed in super max custody facilities at the cost of more than \$100,000 per year.¹¹⁴ Just months later Rhode Island abandoned course and rescinded the law.¹¹⁵

Raising the Age Strengthens Families

Suppose that 16-year-old high school junior Bobby is charged with assault, after a fight at school over a girl. Because North Carolina treats Bobby as an adult, his case can proceed to completion with no parental involvement or input. This led Newt Gingrich to assert, when arguing for raise the age legislation in New York:

[L]aws that undermine the family harm society. When a 16- or 17-year-old is arrested [he or she] . . . can be interviewed alone and can even agree to plea bargains without parental consent. What parent would not want the chance to intervene, to set better boundaries or simply be a parent? The current law denies them that right.¹¹⁶

While the criminal justice system cuts parents out of the process, the juvenile system requires their participation¹¹⁷ and thus serves to strengthen parents’ influence on their teens.

Raising the Age is Supported by Science

Although North Carolina treats its youthful offenders as adults, widely accepted science reveals that adolescent brains are not fully developed.¹¹⁸ Among other things, research teaches that:

- Interactions between neurobiological systems in the adolescent brain cause teens to engage in greater risk-taking behavior.¹¹⁹
- Increases in reward- and sensation-seeking behavior precede the maturation of brain systems that govern self-regulation and impulse control.¹²⁰

¹¹¹ *Id.* at 3. More information on Connecticut’s experience is available at Raise the Age CT (a project of the Connecticut Juvenile Justice Alliance). See Connecticut Juvenile Justice Alliance, *Raise the Age CT*, <http://raisetheagect.org/index.html> (last visited Mar 23, 2016).

¹¹² John Locke Press Release, *supra* note 91.

¹¹³ 2009 GOVERNOR’S CRIME COMMISSION REPORT, *supra* note 81, at 13.

¹¹⁴ *Id.*; see also Katie Zezima, *Law on Young Offenders Causes Rhode Island Furor*, N.Y. TIMES, Oct. 30, 2007, <http://www.nytimes.com/2007/10/30/us/30juvenile.html? r=0>.

¹¹⁵ 2009 GOVERNOR’S CRIME COMMISSION REPORT, *supra* note 81, at 13.

¹¹⁶ Gingrich, *supra* note 58.

¹¹⁷ See *supra* p. 6 (noting that parents must participate in proceedings in juvenile court).

¹¹⁸ Comments of Dr. Cindy Cottle, Committee Meeting December 11, 2015; Comments of Deputy Commissioner Lassiter, Committee Meeting Dec. 11, 2015; Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANNU. REV. CLIN. PSYCHOL. 459, 465 (2009) (research shows continued brain maturation through the end of adolescence).

¹¹⁹ Steinberg, *supra* note 118, at 466; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.

¹²⁰ Steinberg, *supra* note 118, at 466.

- Despite the fact that many adolescents may appear as intelligent as adults, their ability to regulate their behavior is more limited.¹²¹
- Teens are more responsive to peer influence than adults.¹²²
- Relative to adults, adolescents have a lesser capacity to weigh long-term consequences;¹²³ as they mature into adults, they become more future oriented, with increases in their consideration of future consequences, concern about the future, and ability to plan ahead.¹²⁴
- As compared to adults, adolescents are more sensitive to rewards, especially immediate rewards.¹²⁵
- Adolescents are less able than adults to control impulsive behaviors and choices.¹²⁶
- Adolescents are less responsive to the threat of criminal sanctions.¹²⁷

This research and related data has significant implications for justice system policy. First, it suggests that adolescents are less culpable than adults.¹²⁸ If the relative immaturity of a 16-year-old's brain prevents him from controlling his impulses, he is less culpable than an adult who possesses that capability but acts nevertheless.¹²⁹ Second, the vast majority of adolescents who commit antisocial acts desist from such activity as they mature into adulthood.¹³⁰ Rather than creating a lifetime disability for youthful offenders (e.g., public record of arrest and conviction; ineligibility for employment and college financial aid, etc.), sanctions for delinquent youth should take into account the fact that most juvenile offenders “mature out of crime,”¹³¹ growing up to be law-abiding citizens. Third, response systems that “attend to the lessons of developmental psychology” are more effective in reducing recidivism among adolescents than the punitive criminal justice model.¹³² Research shows that active interventions focused on strengthening family support systems and improving abilities in the areas of self-control, academic performance, and job skills are more effective than strictly punitive measures in reducing crime.¹³³ While these type of interventions can be and are implemented in the juvenile system, they are virtually unavailable in the adult criminal justice system. Finally, because adolescents are particularly susceptible to peer influence, outcomes are likely to be better when individuals in a formative stage of development are placed in an environment with an authoritative parent or guardian and prosocial peers rather than with adult criminals.¹³⁴

Raising the Age is Consistent with Supreme Court Decisions Recognizing Juveniles' Lesser Culpability & Greater Capacity for Rehabilitation

Raising the juvenile age is consistent with recent decisions by the United States Supreme Court recognizing that juveniles' unique characteristics require that they be treated differently than

¹²¹ *Id.* at 467.

¹²² *Id.* at 468; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015; Comments of Deputy Commissioner Lassiter, Committee Meeting Dec. 11, 2015.

¹²³ Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.

¹²⁴ Steinberg, *supra* note 118, at 469; Comments of Deputy Commissioner Lassiter, Committee Meeting Dec. 11, 2015.

¹²⁵ Steinberg, *supra* note 118, at 469; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.

¹²⁶ Steinberg, *supra* note 118, at 470.

¹²⁷ *Id.* at 480; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.

¹²⁸ Steinberg, *supra* note 118, at 471.

¹²⁹ *Id.*

¹³⁰ *Id.* at 478.

¹³¹ *Id.*

¹³² *Id.* at 478-79.

¹³³ *Id.* at 479.

¹³⁴ *Id.* at 480.

adults. First, in *Roper v. Simmons*,¹³⁵ the Court held that the Eighth Amendment bars imposing capital punishment on juveniles. Next, in *Graham v. Florida*,¹³⁶ it held that same amendment prohibits a sentence of life without the possibility of parole for juveniles who commit non-homicide offenses. Then, in *Miller v. Alabama*,¹³⁷ the Court held that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment. Citing the type of science and social science research discussed in this report,¹³⁸ the Court recognized that juvenile offenders are less culpable than adults, have a greater capacity than adults for rehabilitation, and are less responsive than adults to the threat of criminal sanctions.¹³⁹ The Court found persuasive research “showing that only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior,”¹⁴⁰ stating:

[Y]outh is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuosity[,] and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient.¹⁴¹

And just this year, in *Montgomery v. Louisiana*,¹⁴² the Court took the extraordinary step of holding that the *Miller* rule applied retroactively to cases that became final before it was decided. The *Montgomery* Court recognized that the “vast majority of juvenile offenders” are not permanently incorrigible, and that only the “rarest” of juveniles can be so categorized.¹⁴³ The Court again noted that most juvenile crime “reflect[s] the transient immaturity of youth.”¹⁴⁴

The Court’s reasoning in these cases supports raising the age of juvenile court jurisdiction.

Raising the Age Removes a Competitive Disadvantage NC Places on its Youth

Suppose two candidates apply for a job. Both have the same credentials. Both got into fights at school when they were 16 years old, triggering involvement with the judicial system. But because one of the candidates, Sam, lives in Tennessee, his juvenile delinquency adjudication is confidential and cannot be discovered by his potential employer. The other candidate, Tom, is from North Carolina. Because of that, his interaction with the justice system resulted in a criminal conviction for affray. Tom’s entire criminal record is discovered by his potential employer. Who is more likely to get the job?

As this scenario illustrates, saddling North Carolina’s youth with arrest and conviction records puts them at a competitive disadvantage as compared to youth from other states.¹⁴⁵ Although some have suggested that expunction can be used to remove teens’ criminal records, there are significant barriers to expunction, such as legal fees. One district court judge reported to the Committee that

¹³⁵ 543 U.S. 551 (2005).

¹³⁶ 560 U.S. 48 (2010).

¹³⁷ 567 U.S. ___, 132 S. Ct. 2455 (2012).

¹³⁸ *See supra* pp. 15-16.

¹³⁹ *Miller*, 567 U.S. at ___, 132 S. Ct. at 2464-65.

¹⁴⁰ *Id.* at ___, 132 S. Ct. at 2464 (internal quotation omitted).

¹⁴¹ *Id.* at ___, 132 S. Ct. at 2467 (internal quotation and citation omitted).

¹⁴² 577 U.S. ___, 136 S. Ct. 718 (2016).

¹⁴³ *Id.* at ___, 136 S. Ct. at 734.

¹⁴⁴ *Id.*

¹⁴⁵ Comments of Judge Brown, Committee Meeting Dec. 11, 2015; Comments of Police Chief Palombo, Committee Meeting Dec. 11, 2015.

expunctions for youthful offenders represent only a “tiny fraction” of the total convictions.¹⁴⁶ Additionally, even if expunction is available to remove the official criminal record, it does nothing to delete information about a youthful offender’s arrest or conviction as reported on the internet by news outlets, private companies, and social media.

Reducing School-Based Referrals Can Mitigate the Costs of Raising the Age

In North Carolina, school-based complaints account for almost half of the referrals to the juvenile justice system.¹⁴⁷ This phenomenon is asserted to be part of the “school to prison pipeline,” through which children are referred to the court system for classroom misbehavior that a generation ago would have been handled in the schools. Concerns have been raised nationally and in North Carolina that excessive punishment of public school students for routine misbehavior is counterproductive and out of sync with what science and social science teach about the most effective corrective action.¹⁴⁸ Some have suggested that such referrals unnecessarily burden the juvenile justice system with frivolous complaints.¹⁴⁹

Responding to these concerns, individuals and groups throughout the nation have developed models to stem the flow of school-based referrals to the court system, instead addressing school misconduct immediately and effectively when and where it happens. In 2004, Juvenile Court Judge Steven Teske of Georgia developed one such model, in which school officials, local law enforcement, and others signed on to a cooperative agreement. The agreement provides, among other things, that “misdemeanor delinquent acts,” like disrupting school and disorderly conduct do not result in the filing of a court complaint unless the student commits a third or subsequent similar offense during the school year, and the principal conducts a review of the student’s behavior plan. Youth first receive warnings and after a second offense, they are referred to mediation or school conflict training programs. Elementary students cannot be referred to law enforcement for “misdemeanor delinquent acts” at all. Teske’s program reports an 83% reduction in school referrals to the justice system.¹⁵⁰ It also reports another significant outcome: a 24% increase in graduation rates.¹⁵¹ Two other states that have adopted similar programs—commonly referred to as school-justice partnerships—have experienced similar results.¹⁵² In fact, Connecticut has enacted a state law requiring all school systems that use law enforcement officers on campus to create school-justice partnerships.¹⁵³

North Carolina already has one such program in place. Modeled on Teske’s program, Chief District Court Judge J.H. Corpening II, has implemented a school-justice partnership program in

¹⁴⁶ Comments of Judge Brown, Committee Meeting Dec. 11, 2015.

¹⁴⁷ Presentation by Deputy Commissioner William Lassiter, Committee Meeting Dec. 11, 2015, <http://nccalj.org/wp-content/uploads/2015/12/JJ-Trends-SPAC-2015.pdf>.

¹⁴⁸ See, e.g., TERI DEAL ET AL., NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, SCHOOL PATHWAYS TO THE JUVENILE JUSTICE SYSTEM PROJECT: A PRACTICE GUIDE 1 (2014), http://www.ncjfcj.org/sites/default/files/NCJFCJ_SchoolPathwaysGuide_Final2.pdf.

¹⁴⁹ *Id.*

¹⁵⁰ Steven Teske, *States Should Mandate School-Justice Partnership to End Violence Against Our Children*, JUVENILE JUSTICE INFORMATION EXCHANGE (Dec. 8, 2015), <http://jjie.org/states-should-mandate-school-justice-partnership-to-end-violence-against-our-children/163156/>.

¹⁵¹ *Id.*

¹⁵² *Id.* (early results from Texas showed a 27% drop in referrals; two sites in Connecticut experienced reductions of 59% and 87% respectively).

¹⁵³ *Id.* (reporting that “Connecticut passed Public Law 15-168 to require all school systems using law enforcement on campus to create a school-justice partnership that limits the role of police in disciplinary matters and requires a graduated response system in lieu of arrests”).

Wilmington, North Carolina. Like Teske’s program, the Wilmington program requires that official responses to school-based disciplinary issues conform to what science and social science teaches is effective for juveniles.¹⁵⁴ The program was crafted with participation from local law enforcement, prosecutors, court counselors, the chief public defender, school officials, and community members. The group developed an approach that deals with school discipline in a consistent and positive way through a graduated discipline model.¹⁵⁵ The goal is for the schools to take a greater role in addressing misbehavior when and where it happens, rather than referring minor matters to the court system, with its delayed response. Officials in North Carolina’s Juvenile Justice system view the program as a “huge step forward” with respect to reducing school-based referrals.¹⁵⁶ Because Wilmington’s program is so new, data on its effectiveness is not available. However, based on data from other jurisdictions, statewide implementation of school-justice partnerships based on the Georgia model promises to reduce referrals to the juvenile system and thus mitigate costs associated with raising the juvenile age.

North Carolina Department of Juvenile Justice Stands Ready to Implement Raise the Age Legislation

Increasing the juvenile age will increase the number of juveniles in the juvenile justice system. Notwithstanding this, the North Carolina Division of Adult Correction and Juvenile Justice supports this recommendation and stands ready to implement raise the age legislation.¹⁵⁷ Speaking to the Committee, Commissioner Guice indicated that he was very supportive of raising the age and emphasized that North Carolina already has done the studies and developed the data on the issue. Additionally, he noted that other states have led the way and their experience with raise the age legislation suggests that “there is no reason why we can’t address this in North Carolina.” In fact, he urged the Committee, not to “back away from doing what is right” on this issue.

Every North Carolina Study Has Made the Same Recommendation: Raise the Age

In recent history, the General Assembly has commissioned two studies of raise the age legislation. Both came to the same conclusion: North Carolina should join the majority of states in the nation and raise the juvenile age. First, in 2007, pursuant to legislation passed by the General Assembly, the North Carolina Sentencing and Policy Advisory Commission submitted its Report on Study of Youthful Offenders recommending, in part, that North Carolina increase the age of juvenile jurisdiction to 18.¹⁵⁸ Second, in 2011, pursuant to legislation passed by the General Assembly, the Youth Accountability Task Force submitted its final report to the General Assembly recommending, among other things, moving youthful offenders to the juvenile justice system.¹⁵⁹ Additionally, in December 2012, the Legislative Research Commission submitted its report to the 2013 General Assembly, supporting a raise the age proposal.¹⁶⁰

¹⁵⁴ Comments of Judge Corpening, Committee Meeting Dec. 11, 2015 (describing Wilmington’s program).

¹⁵⁵ *Id.*

¹⁵⁶ Comments of Deputy Commissioner William Lassiter, Committee Meeting Dec. 11, 2015.

¹⁵⁷ Comments of Commissioner W. David Guice, Division of Adult Correction and Juvenile Justice, Committee Meeting Dec. 11, 2015; Comments of Deputy Commissioner William Lassiter, Committee Meeting Dec. 11, 2015.

¹⁵⁸ 2007 SENTENCING COMMISSION REPORT, *supra* note 3.

¹⁵⁹ YOUTH ACCOUNTABILITY TASK FORCE REPORT, *supra* note 3.

¹⁶⁰ LEGISLATIVE RESEARCH COMMISSION, AGE OF JUVENILE OFFENDERS COMMITTEE, REPORT TO THE 2013 GENERAL ASSEMBLY OF NORTH CAROLINA 12 (Dec., 2012) [hereinafter AGE OF JUVENILE OFFENDERS COMMITTEE REPORT] (supporting S 434 after consideration of identified issues), [http://www.ncleg.net/documentsites/committees/lrc/2013 Committee Reports to LRC/Age of Juvenile Offenders LRC Report.pdf](http://www.ncleg.net/documentsites/committees/lrc/2013%20Committee%20Reports%20to%20LRC/Age%20of%20Juvenile%20Offenders%20LRC%20Report.pdf).

Law Enforcement, Business, Bi-Partisan & Public Support for Raise the Age

The Committee's proposal, as contained in this report, has received historic law enforcement support. In August 2016, the North Carolina Division of the Police Benevolent Association, the state's largest law enforcement association, issued a press release supporting the Committee's raise the age proposal.¹⁶¹ In November 2016, Sheriff Graham Atkinson, President of the North Carolina Sheriffs' Association, formally notified the Committee that the Sheriffs' Association supports the Committee's proposal. Sheriff Atkinson's letter, attached as Exhibit A, notes that the Committee's proposal is "tremendously different from previous proposals to raise the juvenile age," in part because it tackles problems in the juvenile justice system identified by sheriffs and other law enforcement professionals. Sheriff Atkinson praised the Committee for its "willingness to thoroughly research the issue, engage all interested parties in frank and open factually based discussions, genuinely receive input from the sheriffs of North Carolina and . . . address the practical real world concerns identified by the sheriffs." In December 2016, the Committee's lengthy, collaborative process yielded still further law enforcement support, with an endorsement of its proposal by the North Carolina Association of Chiefs of Police.

In fact, the Committee's proposal has received historic support from a broad range of groups, including the North Carolina Chamber Legal Institute. In a letter attached as Exhibit B giving "full support" to the Committee's proposal, the Chamber notes:

[The] evidence objectively demonstrates that dealing with young offenders through the juvenile system, as opposed to prosecuting them as adults, is associated with lower rates of recidivism. It is not difficult to foresee how this outcome would, in turn, foster reduced crime rates, improved public safety, and that it would favorably impact workforce issues with resulting tangible economic benefits for North Carolina's economy.

The Committee's proposal has received support from the John Locke Foundation¹⁶² and Conservatives for Criminal Justice Reform.¹⁶³ The Locke Foundation's statement, attached as Exhibit C, applauds the Committee's "well-researched and well-reasoned proposal for raising the age of juvenile jurisdiction in North Carolina." The Locke Foundation offers only one "minor quibble," specifically that the Committee's proposal *does not go far enough*; the Locke Foundation supports expansive raise the age reform that include even juveniles charged with violent felonies.

In fact, efforts to raise North Carolina's juvenile age to 18 date back at least until the 1950s. NC JUVENILE JUSTICE: A HISTORY, *supra* note 1, at 17-18 (in 1955, the Commission on Juvenile Courts and Correctional Institutions recommended that the age limit should be so increased); *id.* at 21-22 (in 1956, the preliminary report of the Governor's Youth Service Commission made the same recommendation); *id.* at 23-24 (a 1956 study by the National Probation and Parole Association noted "the unreasonableness of classifying a sixteen or seventeen year-old youngster as an adult in connection with offenses against society" (quotation omitted)).

¹⁶¹ Press Release, NC Police Benevolent Association, North Carolina's Largest Law Enforcement Association Supports Raising the Juvenile Age (August 30, 2016), https://www.sspba.org/gen/articles/North_Carolina_s_Largest_Law_Enforcement_Association_supports_raising_the_juvenile_age_639.jsp (last visited Sept. 19, 2016).

¹⁶² *Statement Regarding the NCCALJ's "Juvenile Reinvestment" Report*, by Jon Guze, Director of Legal Studies, John Locke Foundation (on file with Commission staff).

¹⁶³ Email from Tarrah Callahan, Conservatives for Criminal Justice Reform to Will Robinson, NCCALJ Executive Director (Sept. 7, 2016) (on file with Commission staff).

Public support for raise the age in North Carolina is high. In August 2016, the Commission held public hearings to receive comments on its interim reports, including the Committee's raise the age proposal. 423 people attended those hearings, with 131 offering oral comments.¹⁶⁴ An additional 208 people submitted written comments to the Commission, as did various organizations, such as the NC Conference of Superior Court Judges and the NC Magistrates Association.¹⁶⁵ 96% of the comments submitted on this issue supported the Committee's raise the age proposal.¹⁶⁶

It is noteworthy that bills to raise the juvenile age have been introduced and supported in North Carolina by lawmakers from both sides of the aisle.¹⁶⁷ Raise the age proposals and related efforts to remove non-violent juveniles from the adult criminal justice system have enjoyed bipartisan support around the nation,¹⁶⁸ as well as support from groups such as the American Legislative Exchange Council (ALEC).¹⁶⁹

A Balanced, Evidence-Based Proposal

As noted in the letter from the North Carolina Sheriffs' Association supporting the Committee's proposal and attached as Exhibit A, this report includes more than a raise the age recommendation; it includes ten other provisions, most of which are designed to address important, legitimate concerns raised by law enforcement and prosecutors, such as the need to provide more information to officers about juveniles with whom they interact and ensuring that prosecutors have access to information about an individual's juvenile record.¹⁷⁰ Although other proposals have been made to raise the age in North Carolina, no other proposal has been as attentive as this one to the needs, interests, and concerns of those who have historically opposed this reform.¹⁷¹

¹⁶⁴ Emily Portner, Summary of Public Comments on Interim Report 1 (2016) (on file with Commission staff).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 2.

¹⁶⁷ *See, e.g.*, HB 399, 2015 Session of the N.C. General Assembly (primary sponsors: Reps. Avila (R), Farmer-Butterfield (D), Jordan (R), and D. Hall (D)), <http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2015&BillID=h399&submitButton=Go>; HB 725, 2013 Session of the N.C. General Assembly (primary sponsors: Reps. Avila (R), Moffitt (R), Mobley (D), and D. Hall (D)), <http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2013&BillID=h725&submitButton=Go>; AGE OF JUVENILE OFFENDERS COMMITTEE REPORT, *supra* note 160, at 12 (supporting S 434 after consideration of identified issues).

¹⁶⁸ *See, e.g.*, Gingrich, *supra* note 58. In 2014, U.S. Senators Rand Paul (R-KY) and Cory Booker (D-NJ) introduced the REDEEM (Record Expungement Designed to Enhance Employment) Act, encouraging states to increase the age of criminal responsibility to 18.

¹⁶⁹ *Resolution in Support of Presumptively Treating 17 Year-olds in the Juvenile Justice System*, American Legislative Exchange Council (Dec. 2015), <https://www.alec.org/model-policy/resolution-to-treat-17-year-olds-as-juveniles/> (last visited Oct. 25, 2016).

¹⁷⁰ *See supra* pp. 2-4. In his letter transmitting the Sheriffs' Association's support for the Committee's raise the age proposal, Sheriff Atkinson, President of the North Carolina Sheriffs' Association, specifically noted the proposal's attention to law enforcement concerns. *See* Exhibit A.

¹⁷¹ Committee membership included the Past President of the North Carolina Sheriffs' Association, the President of the N.C. Police Benevolent Association and the then-President of the N.C. Conference of District Attorneys. *See infra* pp. 24-25. Another elected District Attorney served on the Subcommittee on Juvenile Age and the Executive Vice President & General Counsel of the North Carolina Sheriffs' Association was actively involved in all meetings and conversations. *Id.* The Committee Chair, Committee Reporter, and the Deputy Commissioner of Juvenile Justice presented the Committee's proposal and received feedback on it at the Sheriffs' Association conference and numerous meetings and conversations occurred with that group's leadership. Outreach was made to the N.C. Police Chiefs' Association, whose leadership attended meetings, discussed the proposal with the Committee Chair and Reporter, heard from the Committee Reporter and

Although the Committee sought to accommodate all concerns, it declined to adopt a position raised by the Conference of District Attorneys: that the District Attorney be given sole authority to decide whether juveniles aged 13-17 and charged with Class A-E felonies would be prosecuted in adult court, without *any* judicial review. The original rationale for this proposal was that under current procedures, prosecutors are unable to successfully transfer juveniles charged with Class A-E felonies to adult court. Under the existing transfer provision, the district court may transfer jurisdiction over a juvenile who is at least 13 years of age and is alleged to have committed a felony to superior court.¹⁷² A motion to transfer may be made by the prosecutor, the juvenile's attorney, or the court.¹⁷³ If the juvenile is alleged to have committed a Class A felony at age 13 or older, jurisdiction *must* be transferred to superior court if probable cause is found in juvenile court.¹⁷⁴ The Committee's proposal recommends maintaining the existing procedure and providing that Class A-E felony charges against 16- and 17-year olds will be automatically transferred to superior court after a finding of probable cause or by indictment.¹⁷⁵ The Committee found that the evidence did not support the prosecutors' request for sole discretion to decide whether 13-17 year olds would be prosecuted in adult court. Specifically, the Division of Juvenile Justice reports that for the 12-year period from 2004-2016:

- Transfer was sought for 487 13-, 14-, and 15-year-olds charged with Class A-E felonies. Of those, 66% were transferred to adult court; 34% were retained in juvenile court. Ninety-one of the juveniles transferred were subject to mandatory transfer for Class A felonies. Removing this number from the data set reveals that 232 discretionary transfer motions were granted, a 58% prosecution success rate.
- Focusing on 14-year olds, transfer was sought for 101 juveniles charged with Class A-E felonies. Of those, 57% were transferred to adult court; 43% were retained in juvenile court. Twenty-four of the juveniles transferred were subject to mandatory transfer for Class A felonies. Removing this number from the data set reveals that 34 discretionary transfer motions were granted, a 44% prosecution success rate.
- Focusing on 15-year-olds, transfer was sought for 341 juveniles charged with Class A-E felonies. Of those, 71% were transferred to adult court; 29% were retained in juvenile court. Sixty-one of the juveniles transferred were subject to the existing mandatory transfer for Class A felonies. Removing this number from the data set reveals that 182 discretionary transfer motions were granted, a 65% prosecution success rate.

Thus, long-term statewide data does not support the suggestion that the prosecution is unable to obtain transfer of 13-, 14-, and 15-year-old juveniles charged with A-E felonies to adult court. After this data was presented, it was suggested that the problem was isolated and judge-specific. The evidence, however, does not support that suggestion. Data from the Division of Juvenile Justice's NC-JOIN database reveals that for the 12-year period from 2004-2016, five judges denied all transfers brought to them. None of those judges, however, had more than 8 juveniles presented (the

Deputy Commissioner at a conference, and submitted feedback to the Committee. The Committee Reporter presented the proposal to the Executive Board of the N.C. Police Benevolent Association and responded to inquiries and feedback thereafter. Finally, the Committee Reporter prepared a seven-page briefing paper for law enforcement officers addressing common issues or concerns raised about raise the age. These efforts at engagement contributed to the balanced nature of this proposal.

¹⁷² G.S. 7B-2200.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ This recommendation was a concession to a position expressed by the prosecutors early in the process. *See supra* note 5.

number of juveniles presented to these five judges were respectively: 8; 7; 7; 6; 6). At the other end of the spectrum four judges granted all transfers brought to them for a much larger population of juveniles (the number of juveniles presented to these four judges (and transferred to adult court) were respectively: 50, 42, 29, 24). All other judges had mixed results on transfers for the 2004-2016 period. Thus, if this data is read to suggest an issue with some judges always denying transfer motions it also must be read to suggest an even more significant issue with some judges always granting them.¹⁷⁶

In formal comments to the Committee, the Conference of District Attorneys offered this explanation for its request: “District Attorneys have the most intimate knowledge of the facts of each case and working with law enforcement, are able to determine when there is significant public safety risk and when the more appropriate venue for a particular juvenile would be adult court.”¹⁷⁷ It was added that “[t]his is exemplified in the processes of at least 19 other states.”¹⁷⁸ The Committee disagrees with the first point and concludes that justice is best served when a judge—the only neutral party to the proceeding—determines, according to prescribed statutory factors, whether the protection of the public and the juvenile’s needs warrant transfer to adult court, as is done under the current juvenile code.¹⁷⁹ This determination is consistent with a policy decision that the General Assembly already has made: that public safety is best protected by vesting transfer authority with judges. In enacting the existing juvenile code, the General Assembly decided that the code should be interpreted and construed so as to implement several purposes including “protect[ing] the public.”¹⁸⁰ With this purpose in mind, the General Assembly opted to vest transfer authority with judges not prosecutors. Additionally, affording prosecutors—one side in criminal litigation—sole discretion to decide this significant procedural issue conflicts with core concepts of procedural fairness¹⁸¹ and is unwarranted in light of the evidence presented above. As to the second point raised by the District Attorneys, the National Conference of State Legislatures reports that a national trend in juvenile law includes reforms of transfer, waiver and direct file statutes, “placing decisions about rehabilitation and appropriate treatment in the hands of the juvenile court.”¹⁸²

Although the Committee was open to discuss a variety of alternative procedures that might meet the prosecutors’ concerns, such as a right to appeal a denial of a transfer request, having a superior court judge determine the transfer motion, or a reverse transfer procedure, exploration of these alternatives ceased when it became clear that further discussion would not be productive.

¹⁷⁶ The Committee’s prosecutor member also suggested that the data does not fairly represent the prosecution’s experience with transfer because some prosecutors have “given up” trying to transfer cases after experience a high failure rate. This suggestion, however, is inconsistent with the data presented above regarding prosecutor’s historical success rate on transfer motions.

¹⁷⁷ Comments of the Conference of District Attorneys to Will Robinson, Commission Executive Director (Aug. 29, 2016) (relevant portion of these Comments are attached as Exhibit D).

¹⁷⁸ *Id.*

¹⁷⁹ *See generally* G.S. 7B-2203 (judges determines whether transfer will serve “the protection of the public and the needs of the juvenile” and statute delineates factors that the court must consider, including, among other things, the juvenile’s prior record, prior attempts to rehabilitate the juvenile, and the seriousness of the offense).

¹⁸⁰ G.S. 7B-1500 (purposes).

¹⁸¹ Significantly, one of the core purposes of the juvenile code is to “assure fairness and equity.” *Id.*

¹⁸² SARAH ALICE BROWN, NATIONAL CONFERENCE OF STATE LEGISLATURES, TRENDS IN JUVENILE JUSTICE STATE LEGISLATION 2011-2015, at 4 (2015) (detailing legislative action in various states), http://www.ncsl.org/documents/cj/Juvenile_Justice_Trends_1.pdf.

Committee & Subcommittee Members & Other Key Participants

To facilitate its work, the Committee formed a Juvenile Age Subcommittee to prepare draft recommendations for Committee review. Members of the Subcommittee included:

Augustus A. Adams, Committee member and member, N.C. Crime Victims Compensation Committee
Asa Buck III, Committee member, Sheriff of Carteret County & Past President, North Carolina Sheriffs' Association
Michelle Hall, Executive Director, N.C. Sentencing and Policy & Advisory Commission
Paul A. Holcombe, Committee member and N.C. District Court Judge
William Lassiter, Deputy Commissioner for Juvenile Justice, Division of Adult Correction and Juvenile Justice, NC Department of Public Safety
LaToya Powell, Assistant Professor, UNC School of Government
Diann Seigle, Committee member and Executive Director, Carolina Dispute Settlement Services
James Woodall, District Attorney
Eric J. Zogry, Juvenile Defender, N.C. Office of the Juvenile Defender

Committee members included:

Augustus A. Adams, N.C. Crime Victims Compensation Committee
Asa Buck III, Sheriff of Carteret County & Past President, North Carolina Sheriffs' Association
Randy Byrd, President, N.C. Police Benevolent Association
James E. Coleman Jr., Professor, Duke University School of Law
Kearns Davis, President, N.C. Bar Association
Paul A. Holcombe, N.C. District Court Judge
Darrin D. Jordan, lawyer, & Commissioner, N.C. Indigent Defense Commission
Robert C. Kemp III, Public Defender & Immediate Past President, N.C. Defenders' Association
Sharon S. McLaurin, Magistrate & Past President, N.C. Magistrates' Association.
R. Andrew Murray Jr., District Attorney & Immediate Past President, N.C. Conference of District Attorneys
Diann Seigle, Executive Director, Carolina Dispute Settlement Services
Anna Mills Wagoner, Senior Resident Superior Court Judge
William A. Webb, Commission Co-Chair, Committee Chair & Ret. U.S. Magistrate Judge

Other key participants in the Committee's discussions included:

Edmond W. Caldwell, Jr., Executive Vice President and General Counsel, North Carolina Sheriffs' Association
Peg Dorer, Director, N.C. Conference of District Attorneys

This report was prepared by Committee Reporter, Jessica Smith, W.R. Kenan Distinguished Professor, School of Government, UNC-Chapel Hill.

Exhibit A: Letter of Support from the North Carolina Sheriffs' Association



NORTH CAROLINA SHERIFFS' ASSOCIATION
LAW ENFORCEMENT OFFICERS AND STATE OFFICIALS
OF NORTH CAROLINA



President SHERIFF GRAHAM H. ATKINSON Surry County	First Vice President SHERIFF CARSON SMITH Pender County	Second Vice President SHERIFF JAMES E. CLEMMONS, JR. Richmond County	Third Vice President SHERIFF JOHN W. INGRAM V Brunswick County
Secretary - Treasurer SHERIFF DAVID A. MAHONEY Transylvania County	Chairman - Executive Committee SHERIFF HUBERT A. PETERKIN Hoke County	Executive Vice President and General Counsel EDMOND W. CALDWELL, JR.	

EXECUTIVE COMMITTEE
MEMBERS
(Past Presidents)

- SHERIFF EARL BUTLER
Cumberland County
- SHERIFF BRAD RILEY
Cabarrus County
- SHERIFF STEVE BIZZELL
Johnston County
- SHERIFF JERRY G. MONETTE
Craven County
- SHERIFF JAMES L. KNIGHT
Edgecombe County
- SHERIFF SAM PAGE
Rockingham County
- SHERIFF TONY E. PERRY
Camden County
- SHERIFF KEVIN FRYE
Avery County
- SHERIFF ASA B. BUCK, III
Carteret County

November 28, 2016

Judge William A. Webb
NC Commission on the Administration of Law & Justice
Post Office Box 2448
Raleigh, NC 27602

RE: Juvenile Reinvestment Report – October, 2016

Dear Judge Webb,

At the early November meeting of the North Carolina Sheriffs' Association, the Association adopted a position in support of the proposal from the NCCALJ Committee on Criminal Investigation and Adjudication to raise the juvenile age in North Carolina from 16 to 18 for all crimes except Class A through E felonies and traffic offenses. The Association's support is contingent on items (1) through (6) contained in the Committee's Juvenile Reinvestment report. As noted in the Committee's report, it bears special emphasis that "full funding must be provided to implement these recommendations and that an unfunded or partially unfunded mandate to raise the age will be detrimental to the court system and community safety."

The sheriffs of North Carolina commend you as Committee Chair and the other members of your committee, and especially the members of the Juvenile Age Subcommittee, for the willingness to thoroughly research the issue, engage all interested parties in frank and open factually based discussions, genuinely receive input from the sheriffs of North Carolina and your willingness to address the practical real world concerns identified by the sheriffs.

Specific accolades are owed to William (Billy) Lassiter, Deputy Commissioner for Juvenile Justice and Jessica Smith, W. R. Kenan, Jr., Distinguished Professor, School of Government, UNC – Chapel Hill, who served as the Committee Reporter. Both of these individuals were exceptionally committed to learning about and helping to address the real world practical concerns with the current juvenile justice system and the impact on that system of raising the juvenile age.

The proposal from your Committee is tremendously different from previous proposals to raise the juvenile age. Previous legislation that has been vigorously opposed by the Association merely deleted the number 16 and

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The North Carolina Sheriffs' Association is a Non-Profit, tax exempt organization recognized by the I.R.S.

Judge William A. Webb
November 28, 2016
Page 2 of 2

replaced it with the number 18, did not have a plan for implementation, did not have adequate funding and did not include solutions to the existing problems with the juvenile justice system identified by sheriffs and other law enforcement professionals. The report of your Committee is significantly different in that it does address the current deficiencies in the juvenile justice system that have been identified by the sheriffs and other law enforcement professionals and it makes it clear that the report is contingent on "full funding to implement the recommended changes."

The North Carolina Sheriffs' Association looks forward to working with you, Chief Justice Mark Martin and others to support this legislative proposal, and the contingencies detailed in the report, during the upcoming session of the North Carolina General Assembly.

Respectfully,



Sheriff Graham Atkinson, President
North Carolina Sheriffs' Association

cc: Chief Justice Mark Martin
Supreme Court of North Carolina

North Carolina Sheriffs

Exhibit B: Letter of Support from the NC Chamber Legal Institute



December 14, 2016

Chief Justice Mark Martin
North Carolina Supreme Court
2 E Morgan St.
Raleigh, NC 27601

Dear Chief Justice Martin:

As you know, it is the primary mission of the North Carolina Chamber Legal Institute to examine potential solutions for improving North Carolina's business legal climate and to support those policy solutions in alignment with the overall priorities identified by the statewide business community in *North Carolina Vision 2030*, the North Carolina Chamber Foundation's long-term strategy for securing our state's competitive future. To that end, I am pleased to report that the Chamber Legal Institute fully supports and urges legislative action to enact the reforms recommended in "Juvenile Reinvestment," released recently by the Criminal Investigation and Adjudication Committee, chaired by Judge William Webb, of Your Honor's North Carolina Commission on the Administration of Law and Justice.

The essential recommendation contained in this report, if acted upon by the State of North Carolina, would "raise the age of juvenile court jurisdiction to include youthful offenders aged 16 and 17." This is a worthy goal for a number of reasons which are persuasively set forth in the report. We were fully persuaded by the substantial body of factual evidence presented in your committee's report. Most importantly, this evidence objectively demonstrates that dealing with young offenders through the juvenile system, as opposed to prosecuting them as adults, is associated with lower rates of recidivism. It is not difficult to foresee how this outcome would, in turn, foster reduced crime rates, improved public safety, and that it would favorably impact workforce issues with resulting tangible economic benefits for North Carolina's economy.

The first and second of the four "Pillars of a Secure Future" outlined in *North Carolina Vision 2030* emphasize respectively the need to continually strengthen our state's *education and talent supply* systems, and the necessity to consistently strive for the most *competitive business climate* possible for attracting new economic opportunities to the state. The "Juvenile Reinvestment" report provides compelling evidence that raising the age of juvenile jurisdiction in North Carolina would bolster each of these pillars, both by increasing reform opportunities for juvenile offenders and thus improving their future chances of contributing their talents to a world-class workforce, as well as through the reduced cost and administrative burdens that would result from fewer repeat offenders clogging up the criminal justice system.

As noted in the Committee's report, a broad array of national stakeholders, from legislative policy organizations like the American Legislative Exchange Council (ALEC) to bipartisan coalitions of elected leaders, have supported similar proposals in other states. Here in North Carolina, we commend your Committee for its hard work in developing broad ranging bipartisan support from law enforcement advocacy groups including the North Carolina Division of Police Benevolent Association and the North Carolina Sheriffs' Association, the John Locke

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Suite 400
Raleigh, NC 27607

Foundation, Conservatives for Criminal Justice Reform, as well as the vast majority (96 percent) of those responding to requests for comment in public hearings held by the Committee earlier this year.

The North Carolina Chamber Legal Institute prides itself on advancing forward-thinking solutions to turn challenges into opportunities and to further secure North Carolina's economic competitiveness and business legal climate. We are pleased to give our full support to the "Juvenile Reinvestment" report and are grateful for your leadership and your Committee's hard work.

Sincerely,



Gary J. Salamido
President, NC Chamber Legal Institute

GJS:kmk

cc: Legal Institute Board of Directors

Exhibit C: Statement of Support from the John Locke Foundation



Statement Regarding the NCCALJ's "Juvenile Reinvestment" Report By Jon Guze, Director of Legal Studies, John Locke Foundation

The Criminal Investigation and Adjudication Committee of the North Carolina Commission on the Administration of Law and Justice has released a draft report entitled "Juvenile Reinvestment." By preparing and publishing this report, the Committee has taken a major step towards achieving a goal that the John Locke Foundation has advocated for many years—raising the age of juvenile jurisdiction in North Carolina.

The report begins by stating:

After careful review and with historic support of all stakeholders, the Committee recommends that North Carolina raise the age of juvenile court jurisdiction to include youthful offenders aged 16 and 17.

In support of this recommendation, the report presents a large body of factual findings. One of the most important of these findings is that recidivism rates are lower when young offenders are dealt with through the juvenile system than when they are prosecuted as adults. As the report explains, this is the primary reason why raising the age is likely to reduce crime, promote public safety, and yield substantial economic benefits.

The report states that the recommendation to raise the age is contingent on adequate funding and on a number of complimentary changes to the juvenile justice system. The Committee is certainly right to insist on adequate funding, and most of the changes to the juvenile justice system that it suggests seem eminently sensible. However, the suggestion that *all* 16- and 17-year olds who are charged with Class A-E felonies should automatically be transferred to adult jurisdiction may be an exception. These are serious crimes that merit severe punishment. However, precisely because of they are so serious, reducing the rate of recidivism by young offenders who commit such crimes is particularly desirable. The existing statutory provision provides for the automatic transfer of juveniles who are charged with Class A felonies while leaving the decision of whether to transfer juveniles charged with other serious crimes to the discretion of the court. Leaving this provision unchanged may be the best way to achieve an appropriate balance between the goals of providing adequate punishment, incapacitation, and deterrence on the one hand, and the goal of reducing recidivism on the other.

Given that fewer than 3% of young offenders are charged with serious felonies, the preceding discussion of how best to deal with such charges is a minor quibble with what is in every other way a remarkable achievement. By bringing all the relevant stake-holders together in support of this well-researched and well-reasoned proposal for raising the age of juvenile jurisdiction in North Carolina, the Criminal Investigation and Adjudication Committee has performed a valuable public service.

John Locke Foundation
919-828-3876 | www.johnlocke.org

200 West Morgan St. Suite 200
Raleigh, N.C. 27601

Exhibit D: Comments of the Conference of District Attorneys

C o n f e r e n c e o f D i s t r i c t A t t o r n e y s
N O R T H C A R O L I N A

Peg Dorer
Director

P. O. Box 3159
Cary, NC 27519

919.890.1500
919.890.1931

August 29, 2016

Will Robinson
Executive Director
North Carolina Commission on the Administration
Of Law & Justice
P.O. Box 2448
Raleigh, NC 27602

Dear Will:

District Attorneys across North Carolina have joined with citizens, other legal professionals and Chief Justice Mark Martin in the Commission’s comprehensive evaluation of our judicial system. As such, both Elected District Attorneys and assistant district attorneys have participated in discussions on numerous committees and subcommittees. Now at this interim juncture, the North Carolina Conference of District Attorneys, consisting of the 44 Elected District Attorneys, would like to offer comment on the Commission’s work.

CRIMINAL INVESTIGATION AND ADJUDICATION COMMITTEE

Juvenile Age: The Conference of District Attorneys supports the Committee’s recommendation to raise the juvenile age for 16 and 17 year olds with two priority conditions:

1. District Attorney have bind over discretion (without transfer hearings) for all juveniles 13-17 who commit A-E felonies. District Attorneys are elected by the citizens and charged with administering justice to hold the guilty accountable, protect the innocent, and ensure public safety. While juvenile courts are structured to protect the juveniles and provide opportunities for second chances and rehabilitation, they do not possess the tools to deal with the small, but violent, sector of juveniles. That is not to say that all violent juveniles should be adjudicated through adult court, but there are times when it is appropriate. District Attorneys have the most intimate knowledge of the facts of each case and working with law enforcement, are able to determine when there is significant public safety risk and when the more appropriate venue for a particular juvenile would be adult court. This is exemplified in the processes of at least 19 other states.
2. Funding is provided for processing the increased numbers of juveniles through juvenile court. Previous fiscal analyses for raising the juvenile age have only addressed the increased needs of the Division of Juvenile Justice; never the needs of the courts. This must be factored into any appropriations that are provided. Current workload formulas, which are antiquated, indicate District Attorneys are already operating at a personnel deficit of 60 assistant district attorneys, statewide. Juvenile court is much more time-consuming than adult court. This need must be met before changes to the current system are made. Raising the age will require more judges, more prosecutors and most likely more clerks to cover the additional juvenile courts required.

Only with both of these conditions met, will the District Attorneys support raising the juvenile age for 16 and 17 year olds.

EXECUTIVE COMMITTEE

Scott Thomas
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Kimberly Robb
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Billy West
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Pat Nadolski

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APPENDIX B

CRIMINAL CASE MANAGEMENT

NCSC — Implementation of a Criminal Caseload Management Plan
A Report to the Criminal Investigation and Adjudication Committee
August 17, 2016



Implementation of a Criminal Caseflow Management Plan

A Report to the North Carolina Commission on the Administration of Law and Justice

FINAL REPORT
August 17, 2016

Nial Raaen, Principal Court Consultant
Lee Suskin, Of Counsel

Daniel J. Hall, Vice President
Court Consulting Services
707 Seventeenth Street, Suite 2900
Denver, Colorado 80202-3429
(303) 293-3063



This report was prepared at the request of the North Carolina Commission on the Administration of Law and Justice (Commission) with funding support from the State Judicial Institute. The purpose of this report is to support the Commission's deliberations regarding improvements to the adjudication of criminal cases in the state's trial courts. The opinions expressed in this report are those of the authors as employees of the National Center for State Courts and do not necessarily reflect the position of the State Justice Institute, the North Carolina Administrative Office of Courts or the Commission.

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Introduction

The North Carolina Commission on the Administration of Law and Justice (Commission) was convened by Chief Justice Mark Martin in September 2015 as an independent, multidisciplinary commission that is undertaking a comprehensive evaluation of the North Carolina judicial system and will be making recommendations for strengthening the courts.

Chief Justice Martin intends for the Commission's work to provide a basis for discussion with the General Assembly to help ensure North Carolina's Judicial Branch meets the needs of its citizens and their expectations for a modern court system. The Commission will finalize its findings and recommendations in a series of reports that will be presented to the Chief Justice and made available to the public in early 2017.

The Commission includes a number of committees. This report is made to the Committee on Criminal Investigation and Adjudication Committee. The Committee identified Criminal Case Management and a number of other issues for further exploration.

The mission of the North Carolina Judicial Branch is:

To protect and preserve the rights and liberties of all the people, as guaranteed by the Constitutions and laws of the United States and North Carolina, by providing a fair, independent, and accessible forum for the just, timely, and economical resolution of their legal affairs.¹

The Superior and District Court divisions are the trial court divisions that hold trials to determine the facts of cases. The Superior Court division houses the Superior Court, which is the court with general trial jurisdiction. Generally, the Superior Court hears felony criminal cases and the District Court hears misdemeanor criminal cases and infractions. The Superior Court holds court in one location in the county, whereas some District Courts hold court in multiple places in the county. Judges for both courts are elected in non-partisan elections.

Each Superior Court district has a Senior Resident Superior Court Judge who manages the administrative duties of the court. Judges are assigned to a judicial district for a six-month period and then rotated to another district for the same time period. Each District Court district has a Chief District Court Judge who manages the administrative duties of the court.

The National Center for State Courts (NCSC) is an independent, nonprofit court improvement organization founded at the urging of Chief Justice of the United States Supreme Court Warren E. Burger. He envisioned NCSC as a clearinghouse for research information and comparative data to support improvement in judicial administration in state courts.

The Commission contracted with the NCSC to prepare this report for the Committee.

¹ Annual Report of the North Carolina Judicial Branch. July 1, 2014 – June 30, 2015.

The NCSC consultant provided general background work for this report to the Committee at its March 11, 2016 meeting² on criminal case management and then began a review of data and reports provided by the North Carolina Administrative Office of the Courts (AOC) and made a follow up call with AOC staff. This information helped identify trends or issues that impact criminal case management. This preliminary work was followed by interviews in Raleigh with trial and appellate court judges, district attorneys, defense counsel and public defenders, court administrators, and AOC staff listed in Appendix H.

These interviews provided the NCSC consultant with a better understanding of the perspective of various stakeholders, identified major trends or issues specific to criminal case management, assessed current information collection and reporting capabilities, and determined the feasibility of creating criminal caseflow performance measures. These interviews also afforded an opportunity to discuss the AOC's capacity to support statewide implementation of a criminal caseflow plan and identify additional resources from either the trial courts or the AOC that could support this effort.

This report begins with an overview of caseflow management principles and practices and the current application of those principles in North Carolina. It then presents evidence indicating that North Carolina is ripe for criminal caseflow management reform. It also reviews how key caseflow management tools may improve case management in North Carolina. The report continues with a discussion of the potential benefits of engaging in caseflow management reform, and concludes with a rubric for North Carolina to engage in a statewide criminal caseflow management improvement project.

Justice Delayed is Justice Denied

It is a legal maxim that "justice delayed is justice denied." As Chief Justice Burger noted in an address to the American Bar Association in 1970: "A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that *inefficiency and delay will drain even a just judgment of its value*; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; [and] that people come to believe the law – in the larger sense – cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets"³ (emphasis added).

This concept – that Justice Delayed is Justice Denied – is embedded in Section 18 of North Carolina's Constitution:

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

In North Carolina, just as justice may be denied as a result of problems with providing the effective assistance of counsel, justice may be denied by delays in the processing of criminal cases in the trial courts. Indications of potential problems are described below and throughout this report. Generally, delays in the processing of cases may create problems for:

² Minutes and materials from that meeting are posted online (<http://nccalj.org/agendas-materials/criminal-investigation-and-adjudication-agendas-materials/criminal-investigation-and-adjudication-meeting-materials-march-11-2016/>).

³ Burger, Warren. (1970). "What's Wrong with the Courts: The Chief Justice Speaks Out", *U.S. News & World Report* (vol. 69, No. 8) 68, 71 (address to ABA meeting, Aug. 10, 1970).

- Pre-trial detainees who sit in the county jail while waiting for the prosecution to prove to a judge or jury that they violated the law, and in the meantime cannot earn income or support their family.
- Pre-trial detainees who choose to plead guilty to a charge in order to obtain the short-term gain of getting out of jail but then must face the long term consequences of a conviction, including difficulty finding employment and, in the case of a felony, loss of voting rights.
- Victims of crimes who need resolution of their case in order to receive restitution and/or to put the emotional damage of the crime behind them.
- Witnesses who over time may become unavailable and less likely to provide credible testimony.
- Institutions and individuals who will expend additional time and cost to resolve cases.

Summary of Findings and Recommendations

Key Issues

The following is a summary of the key issues that NCSC was asked to address in this report, along with major recommendations resulting from the study:

1. Identify Indicators Suggesting That North Carolina Should Undertake Efforts to Improve the Management of Criminal Cases Through Better Caseflow Management

As detailed in this report, justice requires that North Carolina must undertake new efforts to improve the management of criminal cases.

As a first step, North Carolina needs to gather accurate information in order to determine the extent of delay in the trial courts. Current reports give a sense of the delay – median time or number not disposed within time standard goals – but they do not provide information on whether some cases are so delayed that they cause injustice to the defendants to victims, nor do the reports give any indication on the causes of that delay. Part of the challenge in obtaining accurate data includes the following:

- Courts now define cases differently, making it impossible to interpret the AOC reports or compare delay in courts within the state or with other states.
- Courts do report median time to disposition, but the median time could be influenced by the number of cases resolved at the first appearance. Reports do not make it easy for the District Attorney (DA) or the Court to determine how many cases are older than two times the time standard or four times the time standard or longer.
- There are no reports on how many cases involve pre-trial detained defendants, on how many detained defendants have had all their charges eventually dismissed, on the sentences imposed on pre-trial detainees and whether those sentences are greater than the time served as detained defendants, or on the number of detainees who plead guilty to charges that they did not commit solely because they and their loved ones could not financially or emotionally afford for them to remain in the county jail.
- There is no systematic collection of information on the number or type of hearings set per case, the number or type of hearings held, the number of hearings continued or the reason for the continuance.
- There is limited information regarding the interval between the time that the defendant, attorneys, witnesses and victims are told the case is scheduled for hearing and the time that the case is actually called for hearing.

For more detail on these issues, see the section on “Information Needed for North Carolina to Know Whether its Trial Courts Are Achieving Timely Resolution of Criminal Cases” on page 40 of this report.

North Carolina must find and allocate the resources to gather this and additional data in order to determine whether its courts are now providing timely justice, and if not, who in its population is being denied justice. Once accurate data is gathered and analyzed, North Carolina can adopt a caseflow management plan that follows the fundamentals of such plans described in this report, which will reduce any injustice now occurring.

2. Discuss Potential Benefits to the State for Addressing Criminal Caseflow Management, Including Cost Savings, Improvements in Public Trust and Confidence, and Improved User Perception of Satisfaction with, and Fairness of, Criminal Proceedings

a. Cost Savings

As described in this report, North Carolina could benefit in many ways by implementing an effective caseflow management program. Jurisdictions that have successfully implemented caseflow management practices have achieved cost savings by, for example:

- Reducing the cost of pretrial detention by reducing the length of time that defendants are jailed while they await resolution of their cases. A recent Committee study of six North Carolina counties found that, depending on the charge, the average length of pretrial detention on the study date ranged from 35 to 193 days and the cost of detention ranged from \$40 to \$60 per day.⁴ As stated above, to measure cost savings in North Carolina, the court must know and be able to report the number and age of pending cases with detained defendants. An effective case management system using differentiated case tracking can establish reduced time standards for cases involving detainees and can expedite scheduling of their cases.
- Reducing the cost of pretrial detention by reducing the time that Superior Court defendants are incarcerated while they await their first hearing in Superior Court. Detainees can now wait in jail until the DA calendars an administrative setting or first trial date.
- Reducing the cost and security risks of transporting detainees to court for unproductive hearings.
- Reducing the number of court settings per case, thereby reducing the taxpayer dollars spent on judges, prosecutors, law enforcement officers, public defenders, and court reporters and court personnel who must appear in court for unproductive hearings. As stated above, an effective case management system will result in fewer case settings per case and fewer continuances. Reducing the number of court setting will also reduce the cost to victims, witnesses and families of defendants who travel to court and may need to take time from their work and families.
- Providing more efficient coordination of individuals and tasks associated with complicated cases by utilizing early screening to allocate sufficient time and resources to resolve them.

For more detail on these issues, see the section on “Potential Benefits of Improved Criminal Case Management” on page 43 of this report.

In addition, effective caseflow management practices can save victims, defendants and their families the costs associated with taking off from work and travelling to the courthouse to attend superfluous hearings and the cost to defendants paying legal fees for private counsel. If an effective caseflow management

⁴ North Carolina Pretrial Jail Study. Buncombe, Carteret, Cumberland, Duplin, Johnston, Rowan Counties. 2016 (the study did not attempt to measure the total time of pretrial detention (from charging through trial); it measured only the length of time detainees had spent in custody on the study date).

program is implemented, the probability that every court hearing will be a meaningful event will increase, resulting in a major reduction of times that cases are scheduled for hearing and major savings in costs to taxpayers, victims and defendants.

b. Public Trust and Confidence and Improvements in User Satisfaction

NCSC conducts national surveys on public trust and confidence in the nation's courts. Surveys confirm that citizens often believe that the legal system takes too long and costs too much overall. In the most recent assessment of satisfaction, focus group participants expressed their belief that there is collusion in the judicial process, particularly by attorneys, to defer or delay court decisions. Participants also expressed concerns that the financial interests of some parties work against the efficient administration of justice.⁵

The 2015 joint Elon University and High Point University poll of citizen confidence in public institutions done for the Commission's Public Trust and Confidence Committee sheds light on the public perception of the North Carolina courts and other institutions.⁶ Public confidence in North Carolina is quite high regarding the local police or sheriff, with 81% of those surveyed expressing the opinion that they are "somewhat or very confident" in this local institution. North Carolina state courts followed with nearly 66% of respondents stating they were "somewhat or very confident" in this state institution. Approximately 40% indicated that they believe people "usually" receive a fair outcome when they deal with the court, and a small percentage (3%) answered "always."

Many respondents to the Elon/High Point poll perceive that wealthy individuals and white residents receive better treatment by the state courts than do black, Hispanic, or low income residents. Further, more than half of the respondents believe people without attorneys and those who don't speak English receive somewhat worse or far worse treatment than others in the court system.

While the impact of delay on the public may be difficult to quantify and link directly to public opinion, individuals who appear in court as parties, witnesses, and victims are certainly impacted by delay. The NCSC has noted that one of the most frequent responses to public satisfaction surveys are concerns about starting court on time and complaints about the amount of time it takes to resolve cases.

An effective caseflow management program will result in the timely resolution of criminal cases and will enable the DA and the courts to document that timely resolution. This, over time, will enhance public trust and confidence in the courts.

3. Review the Fundamental Principles of Criminal Caseflow Management and Their Application in the North Carolina Trial Courts

On pages 10 through 30, this report provides a comprehensive overview of caseflow management principles and practices and a review of their current application in North Carolina's trial courts. North Carolina is unique in the practice of prosecutorial control over setting of cases, as opposed to the principle of early and continuous *court* control. As discussed further in the report, North Carolina law does promote a cooperative approach to scheduling, which is in keeping with the principle of communication between the court, opposing parties and other criminal justice agencies.

⁵ Rutledge, Jesse (2016). *The State of State Courts: Reviewing Public Opinion*. The Court Manager. Spring 2016.

⁶Elon University (2015). Elon University Poll. Accessed May 28, 2016 at: <http://www.elon.edu/e-web/elonpoll/111915.xhtml>.

Comments from interview participants and recent studies suggest that many courts experience problems with scheduling productive and meaningful court events. High rates of continuances are the primary indicator that jurisdictions are having difficulty ensuring that all parties are ready to proceed when they appear in court. Many of the reasons for continuances (such as delays in obtaining drug and alcohol test results, overscheduling of cases, attorney scheduling conflicts and lack of preparation) are not unique to the North Carolina courts, and many jurisdictions have taken steps to address these issues through greater coordination between parties and improved scheduling practices.

4. Identify Key Components of Effective Criminal Caseflow Management That Could Be Employed in North Carolina Such as Differentiated Case Management, Performance Metrics, Evaluation, and Feedback

As discussed in this report, a set of well-established performance measures relating to caseflow management are in use across the country, and several of these are published by their respective administrative offices. Information on time to disposition, pending case age, and disposition rates was provided by the NC AOC for this report. Problems remain, however, with the accuracy of case information due to differences in how courts count cases and report dispositions. While these limitations should not inhibit progress toward developing a comprehensive caseflow management program, they will need to be addressed. In the short term, efforts to improve consistency at the local level are needed, and more long term efforts are currently underway to move to a next generation of case management software which should provide better information and reporting capabilities.

5. Propose a Step-By-Step Plan to Guide Statewide Planning Toward Improving Criminal Case Management, Including Major Activities, Key Players, and a Timeline

A number of recommendations are provided below which relate to improving the management of criminal cases. Some of these can be implemented on an individual basis, but the greatest benefit and impact would be gained through a coordinated, state-wide effort led by the Supreme Court and managed by the AOC in order to improve case information and reporting, to promote the adoption of principles through sharing of best practices and establishment of pilot projects, and to provide on-going education and monitoring to sustain the effort. The final section of this report includes an outline and sample timetable for a state-wide caseflow management improvement effort based on experiences in other states.

Key Recommendations

The following recommendations are offered for consideration:

1. The Supreme Court, a revived Judicial Council, Senior Resident Superior Court Judges, Chief District Court Judges and the AOC should exercise leadership in communicating the importance of timely resolution of cases and adoption of caseflow management principles and practices.
2. The Supreme Court should assess the suitability of current time guidelines by directing the AOC ensure that all courts use a single definition of a case and then compare current time to disposition results against the guidelines. The Court should consider modifying the guidelines based on these results, using the Model Time Standards referred to in this report as a guide.

3. The Supreme Court should endorse the use of time guidelines as a tool to help justice system leaders actively manage criminal caseloads.
4. A revived Judicial Council, or a new multi-disciplinary body created by the Supreme Court to address caseflow management, and the AOC should review the data and information needs identified in this report and develop new measures to capture and analyze the effectiveness of scheduling practices in resolving cases within established time standards.
5. The Supreme Court should consider authorizing pilot courts to test and demonstrate the benefits of criminal caseflow management best practices which have the potential for state-wide adoption.
6. The North Carolina Supreme Court should ask the AOC to develop caseflow management plan templates for adoption by courts and district attorneys that emphasize local communication and collaboration between justice system partners. A template may specify elements that should be contained in every plan, while allowing flexibility for each court to develop language that meets local needs.
7. The AOC should continue its efforts to promote data consistency with a particular emphasis on consistent and accurate caseload counts and dispositions to ensure the accuracy of reports and performance measures. This begins with a clear definition of a case and requires the assurance that all persons entering data into the system do so correctly.
8. Along with efforts to improve data accuracy and consistency, the AOC should provide prosecutors and courts with regular caseflow management reports that provide general management information, as well as more detailed information to assist judges and prosecutors who manage individual dockets and cases.
9. The AOC should provide DAs and the courts access to caseflow management reports that contain accurate information on the age and status of pending cases to enable DAs to calendar cases and enable judicial branch leaders and the public to monitor the progress of cases.
10. The AOC should conduct studies designed to further assess the status of criminal case management across the state, which should include such questions as:
 - a. What is the frequency of continuances and their impact on case age?
 - b. What are the primary reasons for continuances?
 - c. What factors account for the wide range of time to disposition across the state?
11. The AOC should develop expertise and information to assist courts in implementing caseflow management practices.
12. Caseflow management topics should be incorporated into training programs for judges, district attorneys, the defense bar, clerks, and court administrative personnel.
13. District attorneys and judges should take steps to ensure that every court hearing is a meaningful event by calendaring and conducting an effective administrative setting in Superior Court within 60 days as required by state statute,⁷ and that a similar practice be established for most criminal cases in District Court. An effective administrative setting will

⁷ N.C. Gen. Stat. § 7A-49.4.

- resolve all pretrial issues and then set the case for trial only after discovery is complete, pretrial motions are resolved and final plea negotiations have been completed.
14. The DAs and Judicial Branch leaders should review current calendaring practices, such as “bulk” scheduling, and adopt practices that reduce the number of court settings, the number of continuances and other related delays.
 15. The DAs and Judicial Branch leaders should review the practice of setting cases solely on monthly officer court days in District Court.
 16. The Supreme Court should consider whether District Judges should be authorized to calendar administrative settings for detained Superior Court defendants during the defendants’ first appearance.
 17. The Supreme Court should consider whether magistrates should be authorized and required to make a determination of indigence and assignment of a public defender at the defendant’s first appearance.
 18. The Supreme Court should assign responsibility to the Judicial Council or create a new multi-disciplinary steering committee with the responsibility and authority for providing overall caseflow management strategy and direction to implement the preceding recommendations.

Caseflow Management Principles and Practices

Caseflow management is the coordination of court processes and resources used to ensure that cases progress in a timely fashion from filing to disposition. Judges and managers in control of case scheduling can enhance justice when they supervise case progress early and continuously, set meaningful events and deadlines throughout the life of a case, and provide credible trial dates. Proven elements of practices in caseflow management include case-disposition time standards, use of differentiated case management, meaningful pretrial events and schedules, limiting continuances, time-sensitive calendaring and docketing practices, effective information systems that monitor age and status of cases, and control of post-disposition case events.

Effective caseflow management makes justice possible both in individual cases and across judicial systems and courts. It helps ensure that every litigant receives procedural due process and equal protection. Caseflow supervision is strictly a management process. The resolution of each case on its legal merits is never compromised by an effective caseflow management system.

The Impact of Local Legal Culture

The first comprehensive and rigorous national study of delay in state courts was conducted by the NCSC. In 1976, Thomas Church and fellow researchers examined civil and criminal cases disposed in 21 state trial courts of general jurisdiction. They concluded that the speed of disposition of civil and criminal litigation in a court cannot be ascribed in any simple sense to the length of its backlog, any more than court size, caseload, or trial rate can explain it. Rather, both quantitative and qualitative data generated in this research strongly suggest that both speed and backlog are determined in large part by established expectations, practices, and informal rules of behavior of judges and attorneys. For want of a better term, this cluster of related factors was labeled the “*local legal culture.*”

Court systems become adapted to a given pace of civil and criminal litigation. That pace has a court backlog of pending cases associated with it. It also has an accompanying backlog of open files in attorneys' offices. These expectations and practices, together with court and attorney backlog, must be overcome in any successful attempt to increase the pace of litigation. Church and his colleagues observed that trial court delay is not inevitable, but that "changes in case processing speed will necessarily require changes in the attitudes and practices of all members of a legal community." In accelerating the pace of litigation in a court, they noted, "the crucial element . . . is concern on the part of judges [and in North Carolina, the District Attorney as well,] with the problem of court delay and a firm commitment to do something about it." They found that attempts to alter the caseloads of individual judges by adding judges or decreasing filings are not likely to increase either productivity or speed. To reduce pretrial delay, they recommended that courts:

- Establish management systems by which the court, and not the attorneys, controls the progress of cases.
- Use trial-scheduling practices and continuance policies that create an expectation on the part of all concerned that a trial will begin on the first trial date scheduled.
- Emphasize readiness to try (rather than negotiate plea agreements) as a means to induce settlements.
- Increase effectiveness of speedy-trial standards for criminal cases through the introduction of operational consequences for violation of the standards and through reduced ease of waiver by defendants.⁸

Efforts to improve caseload management do not just serve the paramount goal of providing prompt justice. In fact, they are critically important in saving time and work for all participants in the justice system, from litigants to lawyers. Effective caseload management promotes predictability, improves lawyering, and engenders respect for the court and justice system. As an example, when trust is enhanced among lawyers, their jobs get easier. Reliability and consistency means lawyers only have to prepare once. Lawyers' reputations, as well as that of the court, are elevated when events and decisions occur as forecasted.

Improved caseload management means better time management for lawyers, too. One of the laments of both public and private attorneys is the inordinate amount of time they must spend in court, reappearing on the same case on multiple occasions. Effective caseload management can and does reduce unnecessary appearances by lawyers and litigants, saving time and inconvenience for everyone. Clients and the general public are more satisfied when they sense lawyers and the justice system aren't wasting their time.

Lastly, a little known result of more efficient caseload is improved attorney competence. NCSC's research has shown that efficient attorneys are more likely to be viewed as competent and timely, meaning that they did not delay case disposition for lack of preparation or frivolous reasons to gain time⁹ by opposing counsel, judges and court staff.¹⁰ As a result, efficiency and preparedness become virtues expected of not only judges, but the practicing bar as well. In turn, the local legal culture changes for the better.

⁸ Steelman, David, John Goerdts and James McMillan (2004). *Caseload Management – The Heart of Court Management in the New Millennium*. National Center for State Courts, Williamsburg, VA.

⁹ Griller, Gordon M. and Joseph P. Farina (2002) *Analysis of the Efficiency and Effectiveness of the Magistrate Criminal Calendar: 4th Judicial District of Ada County Idaho*. Court Connections, National Center for State Courts, Williamsburg, VA.

¹⁰ Ostrom, Brian and Roger Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (1999), p. 106ff. National Center for State Courts, Williamsburg, VA.

The ABA Standards for Criminal Cases: Speedy Trial; Timely Resolution¹¹

These standards relative to speedy trial and timely resolution of criminal cases were published by the American Bar Association with commentary in 2004. They reflect the ABA's support for the principles and objectives of effective criminal case management:

Standard 12-1.4 Systems Approach

The process for timely case resolution should take into account the perspectives of the defendants, the public, including victims and witnesses, courts, prosecutors and defense counsel and law enforcement agencies.

Standard 12-3.1 The Public's Interest in Timely Case Resolution

The interest of the public, including victims and witnesses, in timely resolution of criminal cases ... should be recognized through formal adoption of policies and standards that are designed to achieve timely disposition of criminal cases regardless of whether the defendant demands a speedy trial ... increasing public trust and confidence in the justice system.

Standard 12-3.2 Goals for Timely Case Resolution

- Each jurisdiction should establish goals for timely resolution of cases that address (1) the period from the commencement of the case (by arrest, issuance of citation, or direct filing of indictment or information) to disposition; and (2) the time periods between major case events.
- Goals for timely resolution should be developed collaboratively.
- The jurisdiction's goals for timely resolution should address at least the following time periods:
 - Arrest/citation to first appearance.
 - First appearance to completion of pretrial processes (i.e., completion of all discovery, motions, pretrial conferences, and plea, dismissal, or other disposition in cases that will not go to trial).
 - Completion of pretrial processes to commencement of trial or to non-trial disposition of the case.
 - Verdict or plea of guilty to imposition of sentence.
 - Arrest or issuance of citation to disposition, defined for this purpose as plea of guilty, entry into a diversion program, dismissal, or commencement of trial.
- Goals for timely resolution intended to provide guidance. The establishment of such goals should not create any rights for defendants or others.

Standard 12-4.3 Jurisdictional Plans for Effective Criminal Caseflow: Essential Elements

Elements of a plan for effective overall criminal caseflow management in a local jurisdiction should include:

- **Incident Reports:** Rapid preparation and transmission, to the prosecutor, of good quality police incident/arrest reports.
- **Test Results:** Rapid turnaround of forensic laboratory test results.
- **Case Screening:** Effective early case screening and realistic charging by prosecutors.
- **Appointment of Counsel:** Early appointment of defense counsel for eligible defendants.
- **Discovery:** Early provision of discovery.
- **Pleas/Sentence Negotiations:** Early discussions between the prosecutor and the defense counsel concerning possible non-trial disposition of the case.

¹¹American Bar Association (2004). *ABA Standards for Criminal Justice: Speedy Trial and Timely Resolution of Criminal Cases*.
http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_speedytrial_toc.html

- **Case Scheduling Conference:** Early case scheduling conference conducted by the assigned judicial officer to:
 - Review the status of discovery and negotiations concerning possible non-trial disposition;
 - Schedule motions; and
 - Make any orders needed.
- **Pre-Trial Caseflow Orders:** Case timetables addressing the time periods allowed for completion of discovery, filing of motions, and other case events that are set at an early stage of the case by the judge in consultation with the prosecutor and defense counsel.
- **Motions:** Early filing and disposition of motions, including motions requiring evidentiary hearings.
- **Monitoring:** Close monitoring of the size and age of pending caseloads, by the court and the prosecutor's office, to ensure that case processing times in individual cases do not exceed the requirements of the speedy trial rule and that case processing time standards are being met for the overall caseload.
- **Continuances:** A policy of granting continuances of trials and other court events only upon a showing of good cause and only for so long as is necessary, taking into account not only the request of the prosecution or defense, but also the public interest in prompt disposition of the cases.
- **Backlog Reduction Plan:** Elimination of existing case backlogs (i.e., cases pending longer than the established case processing time standards), following a backlog reduction plan developed collaboratively by the court, prosecutor's office, defense bar, law enforcement and other criminal justice agencies involved in and affected by criminal case processing.

Standard 12-4.5 Court Responsibility for Management of Calendars and Caseloads

- **Control Over the Trial Calendar:** Control over the trial calendar, and over all other calendars on which a case may be placed, should be vested in the court. Continuances should be granted only by a judicial officer, on the record. The court should grant a continuance only upon a showing of good cause and only for so long as is necessary. In ruling on requests for continuances, the court should take into account not only the request or consent of the prosecution or defense, but also the public interest in timely resolution of cases. If a ruling on the request for a continuance will have the effect of extending the time within which the defendant must be brought to trial, the judge should state on the record the new speedy trial time limit date and should seek confirmation of this date by the prosecution and the defense.
- **Caseflow Management Reports:** Reports on the age and status of pending cases should be prepared regularly for the chief judge of the court and made available to leaders of other organizational entities involved in criminal case processing.

Fundamental Principles of Caseflow Management

Research and practical experience have identified fundamental principles that characterize successful caseflow management, which are outlined below.

Definition of a Case

In order to process cases to disposition and in order to report and compare the number of cases that need to be disposed and the number that have exceeded time standards with other courts and over time in the same court, the court should have a clear definition of what constitutes a case and all courts in a state

must consistently use that definition when counting cases. A “case” could be defined in a number of ways, such as:

- A single defendant,
- A single complaint/information/indictment (charge) for one defendant, or
- All charges filed against a single defendant for a single first court appearance (arraignment).

For example, when a law enforcement officer stops a driver and charges the driver with careless and negligent driving, driving with a suspended license and disorderly conduct and then the person appears in court for a first appearance on all three charges, a court may decide to count the three charges as one case or as three cases. If the defendant pleads guilty to driving with a suspended license as a plea agreement so that the prosecutor will dismiss the disorderly conduct and careless and negligent driving charges, the court may decide to report one case resolved by plea *or* may decide to report one case resolved by plea and two cases dismissed.

In some states, a “case” is defined as all charges filed against a single defendant for the same initial appearance on court date. A criminal justice system cannot count and manage its cases or compare how it is doing with other states or compare how its counties are doing compared to the other counties until it first defines a “case” and ensures that all counties in the state use the same definition and enter the information into the case management system in accordance with the definition.

Application of the Principle in North Carolina

The Administrative Office of the Courts has defined a “case” as one file number. However, according to the AOC, there is inconsistency across counties regarding how this is handled with respect to multiple charges. In some counties each charge will be a new file number, while in others, there may be multiple charges under the same file number (case).¹²

Without a single definition that is consistently used in every North Carolina court, it is impossible to compare the number of cases filed, the age of pending cases, the number of cases closed within the time standards, or the number of cases disposed by plea or trial within North Carolina or with other states across the country.

The AOC is in the process of changing its definition of a “case” to use the defendant (or incident) as the unit of measure, rather than the ‘case.’ This new AOC definition of a case conforms with the NCSC State Court Guide to Statistical Reporting (Guide), a standardized reporting framework for state court caseload statistics designed to promote informed comparisons among state courts. The Guide directs that courts count the defendant and all charges involved in a single incident as a single case.

Changing this definition will be a major improvement as long as the AOC and Branch leadership take steps to ensure that all courts consistently enter data using this new definition. It will enable North Carolina to compare the degree of trial court timeliness with other states across the country.

Early Court Intervention and Continuous Control of Cases

A fundamental principle of caseflow management is that the court, and not the litigants, controls the progress of a case from filing to disposition. The rationale for court control of calendaring and the pace of

¹² <http://www1.aoc.state.nc.us/cpms/pages/help/Definitions.jsp>.

the adjudicatory process is based on the principle that in a democratic system of justice, the court is the only neutral party capable of resolving a dispute brought to the government in a fair, unbiased, and independent manner. All other parties have a vested interest in the outcome of a case. The court's only interest is in justice.

Early court intervention means that the court monitors the progress of the case as soon as charges are initiated and again at established intervals to ensure that the case is continuing to progress along an established time track.

Early court control involves conducting early case conferences. These conferences may be called status conferences, pre-trial conferences, or as in North Carolina, *administrative settings*. A successful early case conference enables the judicial officer to review the status of discovery, learn of negotiations concerning possible non-trial disposition, schedule motions and make any orders needed to advance the case to disposition.

Court control must also be continuous, meaning that every case should have a next scheduled event. This prevents the case from being delayed because of inattention by litigants or the court.

Application of the Principle in North Carolina

Prosecutor/Court Control of the Docket in North Carolina: While the principles of caseflow management recommend that the court, and not the attorneys, control the progress of the cases, the North Carolina legislature has decided that the District Attorney is responsible for calendaring criminal cases. Docketing of superior court criminal cases is governed by North Carolina General Statutes § 7A-49.4. Paragraph (a) refers to the establishment of a "criminal case docketing plan developed by the district attorney for each superior court district *in consultation with the superior court judges residing in that district* and after opportunity for comment by members of the bar" (emphasis added). Paragraph (b) (1) places responsibility for setting of deadlines with the court, as well as paragraphs (4) and (5) which designate the court's authority to set and defer rulings on motions, and establish the necessary number of administrative hearings to achieve fair and timely administration of justice.

While the responsibility for setting the trial calendar rests with the DA, the DA no longer has total control of the process, as the prosecutors pointed out in their presentation to the Committee at one of its meetings. Calendaring in North Carolina is a hybrid and consultative process, with docket plans developed by the DA with consultation with the Superior Court and local bar. Concerns remain that about the inequity of having one party in litigation with control over initial scheduling and the potential for using delay as a tactic to influence case outcomes.

Persons charged with a felony who are detained must be brought before a district judge within 96 hours for a first appearance at which the district judge reviews bail and conditions of release and then determines whether to assign counsel. It is possible that a defendant can then sit in jail indefinitely until the DA gets around to calendaring a trial date.

While changes in this statute should be considered as part of any improvements to criminal case management, the current practice of calendaring authority resting with prosecution does not preclude moving forward with an effort to improve criminal caseflow management on a state-wide basis by employing the techniques and best practices noted in this report. Ideally, however, the court should be responsible for case control throughout the life of a criminal case, including initial scheduling.

Under the present arrangement, the DA's Office must have the information it needs to ensure every event is meaningful and is productively moving a case toward resolution. The DA's Office does not now have

the data or information needed to effectively fulfill its responsibilities. In many other jurisdictions across the country where the Clerk's Office, judicial support staff or a Court Administrator is responsible for calendaring and caseflow management, those officials use information in the Court's database to schedule and continually monitor cases to promote fair and timely resolutions. This is the case with the schedule of civil cases. The DAs in North Carolina do not have such access.

The *ABA Standards* recommend that the office responsible for calendaring cases has access to caseflow management reports that contain the age and status of pending cases. For the DA to calendar cases and for the Court to monitor the progress of its cases, the DA and the Court need access to data and reports that provide:

- The number, age, and identity of all active pending cases.
- The number, age, and identity of all inactive pending cases.
 - An inactive case is one that cannot be scheduled for hearing for reasons such as the defendant cannot be found (an order for arrest has been issued) or the defendant is incarcerated on another matter and cannot be transferred to court.
- A list of all cases that are ready for trial, with the date that the case was filed and the date that it became trial ready. The NCSC project team recommends that a case be considered as "trial ready" only after a pre-trial conference has been held and the parties agree (or the DA certifies) that:
 - Discovery is complete. The DA has filed a certificate that all discovery has been provided to defense counsel.
 - All pre-trial motions have been filed. Motions have either been disposed or the parties agree that they can be heard at the beginning of the trial.
 - The DA and defense counsel have completed or are completing everything needed to apply mitigating factors at sentencing (or have been given reasonable time to do so).
 - The ADA and defense counsel have discussed an appropriate sentence to recommend to the Court or have agreed that the sentence can be determined by the judge, pursuant to a plea of guilty by the defendant.
- The court schedule for all cases in the District and Superior Court in a format that enables the DA to identify conflicts, i.e. any other cases calendared for the defense attorney.

Differentiated Case Management: A Case Management Tool

Differentiated Case Management (DCM) is a technique that recognizes that not all cases are created equal when it comes to scheduling and case management, since various types of cases can differ substantially in terms of the time and resources required to achieve fair and timely disposition. Some cases can be disposed of expeditiously, with little or no discovery and few intermediate events. Other cases require extensive court supervision and may include expert witnesses, highly technical issues, or difficult plea negotiations.

One of the main elements of DCM is a process for early case screening which allows for the court to prioritize cases for disposition based on factors such as prosecutorial priorities, age or physical condition of the parties or witnesses, or local public policy issues. Regardless of the criteria chosen for differentiating among cases or the case assignment system in use, two goals and four resulting objectives characterize DCM. The authors of the DCM Implementation Manual suggest the following two goals:¹³

¹³ Solomon, Maureen and Holly Bakke (1993) *Differentiated Case Management Implementation Manual*. Bureau of Justice Assistance, Washington D.C.

1. Timely and just disposition of all cases consistent with each case's preparation and case management needs.
2. Improved use of judicial system resources by tailoring their application to the dispositional requirements of each case.

To achieve these goals, which are consistent with overall caseflow management goals, a DCM program should have the following objectives:

1. Creation of multiple tracks or paths for case disposition, with differing procedural requirements and timeframes geared to the processing requirements of the cases that will be assigned to that track.
2. Provision for court screening of each case shortly after filing so that each will be assigned to the proper track according to defined criteria.
3. Continuous court monitoring of case progress within each track to ensure that it adheres to track deadlines and requirements.
4. Procedures for changing the track assignment in the event the management characteristics of a case change during the pretrial process.

The development of meaningful DCM track criteria requires the identification of factors that determine the extent of party preparation and court oversight required to achieve case resolution. Some courts differentiate on the basis of the seriousness of the case, such as the nature of the charges and whether the defendant could be sentenced to death or life in prison. Other relevant factors may include: likely defenses; the need for time to prepare and present forensic testimony or a psychiatric evaluation; or the number of defendants and the amount of discovery anticipated. Some courts have developed time tracks solely on the basis of case type while others use more complex criteria that employ a combination of these approaches. (see Vermont, Boston, Massachusetts, and Pierce County, Washington, below) Whatever approach is used, it is important that courts continually assess the effectiveness of their DCM program and make adjustments as needed to the process to ensure ongoing success.

The following are examples of how various jurisdictions have implemented time standards and DCM systems:

The Vermont Supreme Court adopted Criminal Case Disposition Guidelines in 2010.¹⁴ The guidelines use the principles of DCM to establish two tracks for misdemeanor cases: a standard track with a guideline of 100% disposed within 120 days, and a complex track, with a guideline of 100% disposed within 180 days.

Additionally, the guidelines establish three tracks for felonies:

- A standard track with a guideline of 100% disposed in 180 days
- A complex track with a guideline of 100% disposed in 365 days
- A super-complex track with a guideline of 100% disposed in 455 days

Finally, the Vermont Supreme Court identified complexity factors:

- Misdemeanor complex factors: interpreter, competency evaluation, jury trial, public defender conflict at or after the first calendar call.

¹⁴ Vermont Supreme Court Administrative Directive 24. Accessed July 24, 2016 at: <https://www.vermontjudiciary.org/LC/Shared%20Documents/Administrative%20Directive%20No.%2024%20-%20Amended%20November2010.pdf>.

- Felony complex factors: interpreter, competency evaluation, jury trial, public defender conflict at or after the first calendar call, pro se defendant, juvenile victim, multiple victims, out of state witnesses, co-defendants, pre-sentence investigation.
- Felony super-complex track: fatality or possible life sentence.

The Vermont Supreme Court also adopted **interim time standards** for the two misdemeanor tracks and the three felony tracks, with guidelines for the number of days between key events, such as arraignment, status conference, motion filing deadline, motion hearing, motion decision, jury draw/trial and sentence.

The District Court of the Commonwealth of Massachusetts has established performance goals for case management for the entire criminal caseload. The Boston Municipal Court Department of the Commonwealth of Massachusetts has adopted time standards for its misdemeanor criminal cases, with two tracks, designated in accordance with the misdemeanor's maximum period of incarceration.

The Pierce County, Washington Superior Court developed a DCM program to promote the speedy disposition of drug cases and to reduce jail overcrowding. The prosecutor and public defender were responsible for making a DCM plan designation and accompanying schedule for case events, subject to court review and approval. Three tracks were developed, including a fast track of 30 days to disposition, intermediate track that followed statutory speedy-trial requirements of 60 days for in-custody and 90 days for out-of-custody defendants, and a complex track in which the speedy trial rule was waived and cases were assigned to an individual judge for monitoring. Despite a 53% increase in criminal filings over a five-year period, average time to disposition dropped from 210 days to 90 days.

Application of the Principle in North Carolina

North Carolina has not adopted differentiated case management on a system-wide basis.

Productive and Meaningful Events

The scheduling of hearings should balance the need for reasonable preparation time by parties with the necessity for prompt resolution of the case. The court should take an active role in encouraging hearing readiness by parties and lawyers and creating the expectation that court events will occur as scheduled and will be productive. Hearings should be scheduled within relatively short intervals. When hearing preparation is expected to take a particularly long time, the court may wish to schedule intermediate "status" hearings to ensure that the preparation process is proceeding. Good communication between judges and lawyers is important in order to:

- Give attorneys reasonable advance notice of deadlines and procedural requirements.
- Notify lawyers that all requests for continuance must be made in advance of a deadline date and upon showing of good cause.
- Take consistent action in response to non-compliance of parties with deadlines.

Attorneys and litigants should expect that events will occur as scheduled. These participants may not appear or be prepared at a scheduled hearing if the certainty of the hearing being held is in doubt. This means that the court provides advance notice in the event of judicial absence or provides a back-up judge if possible. Further, court scheduling practices should ensure that the calendar is not so over-scheduled as

to create delays or continuances. Creating and enforcing firm continuance policies also improves the likelihood that hearings will be held as scheduled.

Application of the Principle in North Carolina

In North Carolina, the number of continuances and the number of hearings per case indicate that not all scheduled hearings are meaningful events.

Stakeholders reported to the NCSC consultant that continuances regularly occur in North Carolina because of:

- Lack of party preparation;
- Discovery issues;
- Scheduling conflicts;
- Overscheduling of the calendar;
- Need for additional time to determine restitution; and
- Delays in obtaining toxicology and other expert reports.

Law Enforcement Officers' Monthly Court Day

It is a common practice in North Carolina's District Court for DA's to schedule first appearances and subsequent hearings on the law enforcement officer's monthly court day. These subsequent hearing are often scheduled as trials.

This practice enables law enforcement departments to know officer availability when making their assignments to the community. However, this practice has clear implications on the ability of the DA to schedule cases for timely disposition and creates implications for the defendant having timely access to counsel.

If a defendant is arrested, the defendant initially appears before a Magistrate for a determination of probable cause and for determination of pretrial release. If a defendant charged with a felony is detained, the magistrate assigns a first court date to be held within 96 hours. If a defendant charged with a misdemeanor is detained, the magistrate assigns the officer's next court date as the first court date – this could be one to five weeks later. If the officer has a conflict (i.e. a training program), the case is rescheduled to one month later. The magistrate does not make a determination of whether to assign counsel at that time. The defendant will then be jailed until his/her first appearance before a District Court Judge.¹⁵

This practice has major implications on the delivery of justice to the defendant and major implications on the cost to taxpayers for the presumed innocent defendant's detention. As discussed below, it also has implications on the time needed to resolve the case.

The NCSC recently conducted a review of scheduling practices in one of North Carolina's District Courts – Wake County.¹⁶ In 2015, the Wake County District Attorney's Office (DA) contracted with NCSC to provide suggestions and recommendations to the DA, the District Court, defense attorneys, and law

¹⁵ See §15A-511 (Initial appearance) and §15A-601 (First appearance before a district court judge).

¹⁶ District Attorney's Office, Wake County DWI Caseflow Management, March, 2016. Gordon Griller and Lee Suskin.

enforcement agencies on how impaired driving cases (DWIs) can be better calendared and processed in order to obtain a fair and timely disposition.

In Wake County (and presumably in most of North Carolina's District Courts), cases are scheduled for a first appearance and for trial on the law enforcement officers' monthly court dates. The second court setting will be one month after the first appearance and subsequent trial dates will be one month after the previous one. Cases needing six court sessions to resolve will therefore have six trial settings over six months. Each subsequent setting requires attendance and involvement by the law enforcement officer, the ADA, the defense attorney, the defendant, the Judge and court staff. In some cases, the defendant's family and victim also appear. Few cases are resolved within six months despite having six court settings. In Wake County, half of the DWI cases have at least six trial court settings and continuances.

Because the case is set for trial, if the law enforcement officer does not appear at the hearing, defense attorneys will often move to dismiss the case. Otherwise, cases are routinely continued, because the State or the defense or the Court is not ready to proceed.

In Wake County and in some other counties in North Carolina, different judges will preside over trial settings over the life of the case. The judge sitting on a case in month 1 will not necessarily be the judge who sits on the case in month 2. The NCSC project team learned during its visit to Wake County that some defense attorneys, when considering whether to advise their clients to plead guilty to the charge believe that some judges may be more inclined to apply mitigating factors and impose a lighter sentence than others. These attorneys often observe which District Judge is assigned to court that day as they decide whether to advise their client to plead guilty or request a continuance, knowing that there will likely be a different District Judge presiding over the next court appearance.

Most Wake County DWI cases are routinely continued – cases average six and a half case settings and continuances before they are resolved; some are continued twice that many times.

It is important when monitoring continuances for the DA and Court to record who requested the delay, the length of the delay, the reason for the delay, and the age of the case at the time the continuance was granted. Data on postponed and reset cases are critical in determining the location and reasons for bottlenecks in the movement of cases from filing to disposition. More difficult to ascertain is the extent to which there is delay in setting a case for initial hearing since this remains under exclusive control of the DA.

Most egregious are situations in which cases are put on the calendar and offenders and lawyers are required to appear when it is known in advance that the case is not ready for trial. While there was no aggregate data on continuances available at the time of this study, a North Carolina Office of Indigent Defense Services (IDS) report¹⁷ sheds some light on the extent of the problem. Some 75% of those responding to the IDS survey estimated that there were at least three continuances for the average district court case. Clerks estimated that most cases have six or more continuances.

In rural courts with relatively low caseloads the impact of continuances is amplified when the available court dates are limited. It was noted that in some jurisdictions the administrative calendar is scheduled quarterly (or less), so that only a few continuances can add a substantial amount of time to reach final disposition. Although the extent to which the limitations of facilities, and in particular courtroom availability, impacts readiness is not known, the consultants' experience in other states has been that problems with facilities, such as inadequate security for high-profile cases, insufficient jury courtrooms, and other factors contribute to delay. These conditions are often more common in rural jurisdictions.

¹⁷ Office of Indigent Defense Services (2009). *District Court Scheduling Survey Report*. Durham, NC.

Court Wait Time

Another practice noted during the North Carolina stakeholder interviews, and common in many courts nationwide, is scheduling all cases at a single time, typically 9:00 am. This causes two problems: First, it creates long waiting times for those whose cases are last to be called. Second, litigants quickly realize that they do not need to be prepared as they will correctly assume that with so many cases on the docket it will not matter if their case is postponed.

Existing research on and data from North Carolina suggests that wait time contributes to court system costs. For example, the IDS sought to estimate the cost of paying for private appointed counsel (PAC) waiting-in-court time. The report found public defenders had an average of 4.55 hours of wait time per case. Wait times create problems for victims and family members who take time from their work and family obligations to sit in court for half a day to observe a five to ten-minute hearing.

The DAs and Judicial Branch leaders should review the practice of setting cases on officer court days and of setting an entire morning's cases at 9:00 AM, and should develop alternative practices that enhance timely case resolution and user satisfaction without reducing department ability to provide community safety and without creating "downtime" in the courtroom or reducing the number of matters that can be heard in a day. One alternative practice suggestion would be setting one-third of the morning's cases at 9:00 AM, one-third at 10:00 AM and one-third at 11:00 AM.

Implementing practices that result in courts conducting only meaningful hearings will reduce the number of case settings and provide judges with the time to hear cases in a more orderly scheduled manner.

Multiple Unproductive Case Settings

The practice of multiple case settings (aka "churning") is costly in many ways. There is a financial cost for defendants, their families and their victims who take a day off from work or who must pay for travel to the courthouse. Defendants must pay private counsel. Taxpayers pay for the time that judges, DAs, public defenders attend multiple hearings. There is a cost for transporting detainees, and there are major safety issues related to transporting detainees.

There are also justice implications. Multiple hearings could mean that defendants who must pay private counsel and/or defendants who are detained and not able to earn income, and who cannot support their family financially or emotionally while incarcerated, may decide that it is less costly to plead guilty to an offense that they did not commit, and to suffer the collateral consequences, than it is to require the DAs to take the time to prove their case before a Judge or jury.

In addition, because the first court appearance for most cases in District Court is on the date of the law enforcement officer's monthly court date, a defendant detained after appearing before a Magistrate could sit in the county jail for up to 30 days before their first appearance in court and their first contact with defense counsel.

Despite these challenges, a number of effective practices were identified during the interviews as having been put into place by some of North Carolina's DA's and in some of North Carolina districts to help better manage cases. Examples of these practices include:

- Early discovery and plea offers;
- Informal scheduling orders that are enforced;
- Plea discussions prior to scheduled court dates;

- Staggered setting of cases to avoid docket overcrowding;
- Continuance monitoring by the prosecutor;
- Schedule coordination and posting of office hours by the DA;
- Electronic sharing of discovery materials;
- Setting aside prosecutor and defense counsel consultation time before court begins; and
- Effective use of administrative dockets to resolve cases.

Efficient Motions Practice

If parties file pretrial motions, early court action on these motions will promote earlier case resolution. The court should decide all substantive pretrial motions before the date of trial. Some suggestions for managing the motions process include:

- Scheduling contested and uncontested motions separately to increase judicial time for hearing and deciding motions that could substantially impact the outcome of the case.
- Requiring attorneys to attach a stipulated order or certification that identifies uncontested motions.
- Setting time limits for responses to motions, and setting these deadlines just prior to the hearing date.

Application of the Principle in North Carolina

While problems with delay related to motions were not specifically identified by the small sample of individuals interviewed in the preparation of this report, they may or may not be a significant factor in overall delay. Efficient motions practice is a fundamental principle of effective criminal case management and thus should be examined as part of any criminal caseflow management reform effort.

Trial Preparation and Management

Effective use of the time between filing of charges and the first scheduled trial date is critical to successful trial management. During this time, the judge makes various decisions regarding the evidence to be introduced and an estimate of the time required to hear the case. Some states set pretrial conferences or status conferences to bring parties together for the purpose of determining issues in dispute, determining whether discovery is complete, seeking consensus on evidence and witness presentation, completing discovery, and setting a next court date. Proven trial management techniques include:

- Resolving pretrial motions before the first trial date is scheduled;
- Conducting a trial management conference shortly before a trial starts;
- Reducing unnecessary or repetitive evidence; and
- Fully utilizing the time available in a day to conduct the trial.

Application of the Principle in North Carolina

North Carolina has taken steps to enhance trial preparation and management. State statute (N.C. Gen. Stat. § 7A-49.4) requires that an administrative setting must be calendared in the Superior Court for each felony within 60 days at which:

- (1) The court shall determine the status of the defendant's representation by counsel.

- (2) After hearing from the parties, the court shall set deadlines for the delivery of discovery, arraignment (if necessary), and filing of motions.
- (3) If the district attorney has made a determination regarding a plea arrangement, the district attorney shall inform the defendant as to whether a plea arrangement will be offered and the terms of any proposed plea arrangement, and the court may conduct a plea conference if supported by the interest of justice.
- (4) The court may hear pending pretrial motions, set such motions for hearing on a certain date, or defer ruling on motions until the trial of the case.

The court may schedule more than one administrative setting if requested by the parties or if it is found to be necessary to promote the fair administration of justice in a timely manner. At the conclusion of the last administrative setting, the DA may schedule a trial date unless the court determines that the interests of justice require the setting of a different date.

Conducting effective administrative settings can reduce the number of cases set on a particular date for trial, create trial date certainty, reduce the number of cases dismissed on the trial date, reduce the number of persons who plead guilty on the trial date, and reduce the many instances where attorneys show up for trial unprepared to proceed with the trial.

Unfortunately, all indications are that the trial courts are not effectively using administrative settings. The initial impression that the NCSC gained from discussions with various stakeholders and examples of calendars suggests that the scheduling of cases for trial is particularly problematic in North Carolina. This is an indication that administrative settings are not successful at achieving what they were set up to accomplish.

Experience shows that successful caseflow management involves leadership, commitment, communication, and the creation of a learning environment. These factors may ultimately determine whether a state is successful in its effort to provide fair and timely disposition of its cases.

Leadership

Visible support from both local judicial leadership and the Supreme Court is essential for success. Those in leadership positions should be able to articulate a vision of how case management will improve the system, explain the anticipated benefits, and show an ongoing commitment to the effort. Leaders should be advocates for the program and should work to build consensus and support from both within the court and from those individuals and organizations that do business with the court. Courts should seek to gain support from members of the bar and the justice community. Being a part of the leadership team also includes setting and enforcing expectations once the initial consultation has occurred.

Application of the Principle in North Carolina

Chief Justice Mark Martin has shown leadership through his creation of the Commission, which studies and provides recommendations to ensure that the Judicial Branch meets the needs of its citizens and their expectations for a functional court system.

On paper, North Carolina has established leadership responsibilities for the administration of the trial courts, for the management of cases, and for record keeping in the courts. In practice, those who could

exercise leadership in monitoring and enhancing caseflow management, as well as in scheduling cases to timely disposition, are not doing so.

The Supreme Court has taken some steps toward ensuring that the Judicial Branch meets the needs of its' citizens by adopting general rules of practice pursuant to its statutory authority to do so; which include the oversight of the following roles.¹⁸

The Senior Resident Superior Court Judge in each administrative Superior Court District (the most senior judge in years of service) is responsible for various administrative duties, including appointing magistrates and some other court officials, and managing the scheduling of civil, *but not criminal*, cases for trial.

The Chief District Court Judge in each District Court is appointed by the Chief Justice of the Supreme Court, rather than being determined by years of service. Among other duties, the Chief District Court Judge is responsible for creating the schedule of District Court sessions for the district, assigning District Court Judges to preside over those sessions and supervising the magistrates for each county in the district.

The AOC is responsible for developing the uniform rules, forms and methods for keeping the records of the courts, particularly those records maintained by the clerks of Superior Court.

The State Judicial Council was created by the General Assembly in 1999 to promote overall improvement in the Judicial Branch. Its duties include recommending guidelines for the assignment and management of cases and monitoring the effectiveness of the Judicial Branch in serving the public.

In 2003, the State Judicial Council exercised leadership in this area by endorsing the development of trial court case processing measures. Otherwise, based on interviews and in its research, the NCSC did not learn of any steps taken by the Judicial Council or any Chief Judges to communicate the importance of implementing caseflow management plans to enable the trial courts to resolve cases within given time standards.

While the AOC has provided direction on record keeping and, in particular, how to count and report cases, workload, and the age of cases, the AOC has not taken steps to ensure that all courts are following record keeping standards.

While the Supreme Court has adopted general rules of practice, the Supreme Court has not adopted rules that establish effective case management for state trial courts.

Communication

Good communication is essential for any effort to implement change in the organization. Chances of success are improved through frequent and sustained communication between judges and court staff, as well as consultation among judges, prosecutors, and defense counsel. Communication ensures that all participants have a solid understanding of what the change is, why it is needed, and what their respective roles are with regard to court filings, providing discovery, filing motions, negotiating fair disposition and preparing for trial.

¹⁸N.C. Gen. Stat § 7A-34. **Rules of practice and procedure in trial courts.**

The Supreme Court is hereby authorized to prescribe rules of practice and procedure for the superior and district courts supplementary to, and not inconsistent with, acts of the General Assembly.

Several stakeholders interviewed during this project described the benefits of communication between local justice system partners through regular meetings and consultations that helped to identify and resolve problems at the local level. These individuals cited examples of how efforts to work collectively at the local level have improved criminal case management. In most cases this is realized through regular meetings that include representatives of the bench, prosecution, defense, law enforcement, and clerk's office. One challenge in North Carolina is the absence of public defender offices in many of the rural areas, which can make it difficult to achieve this level of local collaboration.

Application of the Principle in North Carolina

The NCSC has identified two examples of good communication among participants in North Carolina's local criminal justice systems:

In Mecklenburg County, a monthly debrief to review performance goals is scheduled with the prosecutor, defense attorneys, and law enforcement. The court administrator's office plays a substantial role in coordinating criminal cases following indictment. More informal approaches, such as the bar lunch meetings conducted concurrent with each administrative session in District 30B (Hayward and Jackson Counties) also are employed.

In Wake County, the District Attorney and Chief Judge of the District Court started a workgroup made up of prosecutors, judges and defense attorneys to develop and monitor a plan to implement recommendations provided by the NCSC on DWI caseflow management. The plan's goal is a system that "sets DWIs only for meaningful initial settings, administrative settings and trial date."

Learning Environment

The successful implementation of caseflow management, whether in the local court setting or statewide, depends on judges, court staff, and outside participants understanding why and how the caseflow management program works and the benefits that can be achieved from the program.

Application of the Principle in North Carolina

Although the principles have been in practice for decades, a sustained effort to educate and update new judges, staff, and litigators is needed. NCSC did not learn of any programs on caseflow management being conducted as a regular part of training for justice system officials, court clerks, prosecutors and defense counsel. The development of caseflow management curricula should be considered.

Case Management Measures

As previously identified (see ABA Standard for Criminal Case Timely Resolution 12-3.2), "Each jurisdiction should establish goals for timely resolution of cases that address (1) the period from the commencement of the case to disposition and (2) the time periods between major events." These events could include arrest/citation to first appearance, first appearance to completion of the pretrial process, completion of pretrial process to trial or to non-trial disposition (plea/sentence or dismissal).

NCSC *CourTools*¹⁹ Caseflow Management Measures

The NCSC, concerned with trial court delay, has developed a set of ten balanced and realistic performance measures that are practical to implement and use. Understanding the steps involved in performance measurement can make the task easier and more likely to succeed. *CourTools* supports efforts made to improve court performance by helping clarify performance goals, developing a measurement plan, and documenting success.

Effective measurement is key to managing court resources efficiently, letting the public know what your court has achieved, and helping identify the benefits of improved court performance. The NCSC developed *CourTools* by integrating the major performance areas defined by the Trial Court Performance Standards with relevant concepts from other successful public and private sector performance measurement systems. This balanced set of court performance measures provides the judiciary with the tools to demonstrate effective stewardship of public resources. Being responsive and accountable is critical to maintaining the independence courts need to deliver fair and equal justice to the public.

Each of the ten *CourTools* measures follows a similar sequence, with steps supporting one another. These steps include a clear definition and statement of purpose, a measurement plan with instruments and data collection methods, and strategies for reporting results. Published in a visual format, *CourTools* uses illustrations, examples, and jargon-free language to make the measures clear and easy to understand.

CourTools measures these four aspects of trial court delay:

- **Clearance Rates:** The number of outgoing cases as a percentage of the number of incoming cases.
 - Clearance rates measure whether the court is keeping up with its incoming caseload. If cases are not disposed in a timely manner, a backlog of cases awaiting disposition will grow. This measure is a single number that can be compared within the court for any and all case types, on a monthly or yearly basis, or between one court and another. Knowledge of clearance rates by case type can help a court pinpoint emerging problems and determine where improvements can be made.
- **Time to Disposition:** The percentage of cases disposed or otherwise resolved within established time frames.
 - This measure, used in conjunction with Clearance Rates and Age of Pending Caseload (below), is a fundamental management tool that assesses the length of time it takes a court to process cases. It compares a court's performance with local, state, or national guidelines for timely case processing.
- **Age of Pending Caseload:** The age of the active cases pending before the court, measured as the number of days from filing until the time of measurement.
 - Having a complete and accurate inventory of active pending cases and tracking their progress is important because this pool of cases potentially requires court action. Examining the age of pending cases makes clear, for example, the cases drawing near or about to surpass the court's case processing time standards. This information helps focus attention on what is required to resolve cases within reasonable timeframes.
- **Trial Date Certainty:** The number of times cases disposed by trial are scheduled for trial.
 - A court's ability to hold trials on the first date they are scheduled to be heard (trial date certainty) is closely associated with timely case disposition. This measure provides a tool to evaluate the effectiveness of calendaring and continuance practices. For this measure,

¹⁹ <http://www.courttools.org/Trial-Court-Performance-Measures.aspx>. The complete *CourTools* measurement system is available from the NCSC website at www.courttools.org.

“trials” includes jury trials, bench trials (also known as non-jury or court trials), and adjudicatory hearings in juvenile cases.

Application of the Principle in North Carolina

Adoption of *CourTools*: Durham County, North Carolina’s 14th Judicial District, has adopted *CourTools* as a model for its performance accountability system.

Time Standards in North Carolina: Both the National Center for State Courts (Model Time Standards) and the North Carolina Supreme Court have established time standards for the trial courts. The following chart compares the average statewide time to disposition for FY 2014²⁰ with the current North Carolina standards and the Model Time Standards:

Case Type	Days to Disposition	Current North Carolina Standard	Model Time Standards ²¹
DISTRICT COURT			
<i>Felony</i>	104	<ul style="list-style-type: none"> • 100% within 90 days 	N/A
<i>Misdemeanor</i>	145	<i>Criminal Non-Motor Vehicle</i> <ul style="list-style-type: none"> • 75% within 60 days • 90% within 90 days • 98% within 120 days • 100% within 365 days <i>Criminal Motor Vehicle</i> <ul style="list-style-type: none"> • 75% within 60 days • 90% within 120 days • 100% within 180 days 	<i>Misdemeanor</i> <ul style="list-style-type: none"> • 75% within 60 days • 90% within 90 days • 98% within 180 days <i>Traffic and Ordinance</i> <ul style="list-style-type: none"> • 75% within 30 days • 90% within 60 days • 98% within 90 days
<i>Infraction</i>	67	<ul style="list-style-type: none"> • 75% within 60 days • 90% within 120 days • 100% within 180 days 	N/A
SUPERIOR COURT			
<i>Felony</i>	244	<ul style="list-style-type: none"> • 50% within 120 days • 75% within 180 days • 90% within 365 days • 100% within 545 days 	<ul style="list-style-type: none"> • 75% within 90 days • 90% within 180 days • 98% within 365 days
<i>Misdemeanor</i>	188	<ul style="list-style-type: none"> • 50% within 120 days • 75% within 180 days • 90% within 365 days • 100% within 545 days 	<ul style="list-style-type: none"> • 75% within 60 days • 90% within 90 days • 98% within 180 days

Table 1: Time to Disposition FY2014 Comparison

The 98 percent threshold in the new model time standards is an acknowledgment that even under the best of circumstances some cases will remain unresolved. As this chart illustrates, the model standards, particularly for general jurisdiction courts, are more stringent than the standards previously adopted by North Carolina. North Carolina has not adopted interim time standards.

²⁰ North Carolina Judicial Branch Statistics, Fiscal Year 2014-15. North Carolina Administrative Office of the Courts.

²¹ Model Time Standards for State Trial Courts. National Center for State Courts, 2011.

North Carolina's Court Performance Management System (CPMS)²²

In 2001, as recommended by the State Judicial Council, Chief Justice I. Beverly Lake, Jr., adopted a trial court performance standards system developed by the NCSC. This system is designed to help trial courts identify and set guidelines for their operations, measure their performance, and make improvements to better meet the needs and expectations of the public.

In 2003 the State Judicial Council endorsed the development of five specific trial court case processing measures. Since then the AOC has developed, tested and implemented a web-based system that provides court officials with up-to-date data for three of those measures:

- Case clearance (cases disposed as a percentage of cases filed).
- On-time processing (percentage of cases disposed within time guidelines, based on those adopted by the Supreme Court in 1996).
- Aging case index/backlog (percentage of cases older than times listed in the guidelines).

The CPMS gathers current data (within one month) from the AOC's civil and criminal automated systems and organizes this data allowing for a search and query of the information, for various case types, in any county or district. The CPMS includes both the three percentage-based measures above, plus extensive statistical data, such as the disposition rate for Superior Court criminal or civil cases in a certain county in the past 12 months, or the backlog of all District Courts within the state.

The CPMS "help" pages provide more detailed information about future plans to enhance the CPMS with expanded case types and additional performance measures and statistics, which will eventually eliminate the need for the printing and distribution of paper management reports. The anticipated next two performance measures (subject to enhancements to automated systems) are the number of times a case is put on a court calendar before being disposed, and a measure that will be designed to assess collection of restitution. The CPMS is also an important factor in the planning and development of court technology and information systems.

According to the North Carolina AOC report, four of the eighteen Superior Courts disposed of more than 80% of their cases within the time standard, and seven disposed of less than two-thirds of their cases within the time standard. Few District Courts disposed of less than 50% of their misdemeanors within the time standards.

Many of the stakeholders interviewed for this report were unaware of North Carolina's current overall time standards, and there was considerable divergence in opinion regarding their utility. Concerns included how the results might be interpreted by those outside the courts, as well as their overall usefulness in managing individual caseloads.

Post-Judgment Issues with Criminal Cases

Most of the emphasis in caseflow management has been on achieving reasonable times to disposition. Increasingly, courts are also looking at how the post-judgment phase can be better managed. Post-judgment issues with criminal cases include enforcement of sentence terms and orders of probation, as well as the appeals and post-conviction process. Few, if any, states have established post-judgment time standards in criminal cases.

²² <http://www1.aoc.state.nc.us/cpms/login.do>.

Application of the Principle in North Carolina

It was noted during interviews with North Carolina stakeholders that problems with court transcription resources are contributing to delay in the post-judgment period. This issue has arisen in other states where problems with the availability of qualified personnel to prepare transcripts or restrictions on third party transcription have created delay.

The Current Caseload in North Carolina's Trial Courts

As stated before, it is impossible to describe the current landscape in North Carolina because the courts are not using a single, consistent definition of a case. This makes it impossible to accurately provide the number of case filings, the number of cases resolved within time standards, the number of cases resolved by trial, by plea, or by dismissal; or to compare the North Carolina courts with each other or with courts in other states. It is crucial that the North Carolina Judiciary make sure that all courts in the state use a single definition of a case when entering information into the case management system or generating reports or workload or backlog. This is a crucial first step to examining and then improving caseload management in the trial courts.

The following information on caseload filing and disposition is provided to the Committee in this report because it is the best information available. NCSC cautions the Commission to not make any decisions based on this information other than a decision to take steps to ensure the future commissions will be able to review accurate and consistent data.

This report uses a number of measures to define the current landscape: case filings, case dispositions, clearance rates, time to disposition, age of pending cases, and trial date certainty.

North Carolina Trial Court Caseloads: 2014 – 2015²³

Case Filings:

Superior Court

120,835 criminal-non-traffic cases filed

8,131 criminal traffic cases filed

District Court

518,879 criminal-non-traffic cases filed

895,718 criminal traffic cases filed

596,127 infractions filed

Case Dispositions:

Superior Court: Criminal – non-traffic cases

2,644 were disposed by trial

77,188 were disposed by plea

1,419 were dismissed with leave to re-file

49,259 were dismissed without leave

986 were dismissed after deferred prosecution

14,794 – Other

²³ Annual Report of the North Carolina Judicial Branch, 2014-2015.
http://www.nccourts.org/Citizens/Publications/Documents/2014-15_North_Carolina_Judicial_Branch_Annual_Report.pdf

District Court – non-traffic cases
18,192 were disposed by trial
162,821 were disposed by plea
13,199 were dismissed with leave to re-file
264,360 were dismissed without leave
16,034 were dismissed after deferred prosecution
115,471 – Other

The number of dismissals is extraordinarily large compared to other states. NCSC assumes, but has not attempted to verify, that the reason for this variance is that a defendant may, in some districts, be charged with four offenses which are counted as four separate cases. A defendant then pleads guilty to one offense with an agreement that the other three offenses will be dismissed, and that court then reports one case disposed by plea and three dismissed. It is common in other states to count dispositions as the AOC defines a case: one disposition by plea.

This creates a problem because it is in the interest of promoting justice for the public to know how many defendants that are arrested and are detained pre-trial are subsequently cleared of all charges by the prosecutor or by the court, or who are “cleared” of some charges as long as they plead guilty to one charge.

Similarly, it is important to know how many cases go to trial and to compare that number with other courts in North Carolina and across the country. NCSC research has found a general downward trend in the percentage of cases which actually go to trial, with no more than one to five percent of criminal misdemeanor cases going to trial nationally.²⁴ This is the case in North Carolina as well, where only a small number of cases were actually disposed of by trial last year.

Clearance Rates

One of the indicators of court caseflow performance is represented by the following NCSC *CourTools* measure:

CourTool 2: Clearance Rates – The number of outgoing cases as a percentage of the number of incoming cases.

The case clearance measure relates to the court’s success at resolving as many cases as are filed. For example, if during the time period being measured, 100 cases were filed and 98 were disposed, the case clearance measure is 98% (98/100). This is an important tool for courts that are resolving cases timely and do not have backlogs, as this could signal that the court may be starting to accumulate a backlog.

The North Carolina clearance rate in FY2014 was greater than 100% for all case types. This in no way should be interpreted to mean that North Carolina is providing timely justice.

- Because not all courts in North Carolina define a case as a defendant, a clearance rate of greater than 100 % does not necessarily mean that the court is resolving all cases for as many defendants as are being charged.
- Because cases in North Carolina’s courts may currently be delayed, resolving as many or even more cases as those filed does not mean that they are being resolved timely. A 100% clearance rate can be used by a court and the criminal justice community to justify the status quo.

²⁴ See www.courtstatistics.org Court Statistics Project, National Center for State Courts.

Time to Disposition and Age of Pending Cases

Time to disposition is a *CourTool* measure that provides information on a court's ability to provide timely resolution of disputes:

CourTool 3: Time to Disposition – The percentage of cases disposed or otherwise resolved within established time frames.

If North Carolina consistently counted cases in accordance with the AOC's definition, the *CourTool* would enable comparison with other courts in the state and with state or national guidelines for timely case processing.

Many states have adopted recommended time guidelines similar to those established by the American Bar Association in 1992,²⁵ more recently updated as the Model Time Standards. The 98% threshold in the model time standards is an acknowledgment that even under the best of circumstances, some cases will remain unresolved. As the comparative table of time guidelines illustrates, the model standards, particularly for general jurisdiction courts, are more stringent than the standards previously adopted by North Carolina.

Another performance measure relating to case age is the age of active pending cases:

CourTool 4: Age of Active Pending Caseload – The age of pending active cases on which court action can be taken.

Pending cases are those that have been filed but not disposed. An accurate inventory of pending cases as well as information about their age and status helps the court manage pending matters by identifying overall trends and identifying specific cases which may be exceeding time guidelines so that action can be taken to resolve them. Typically, courts will produce reports that calculate the time, in days, from filing to the date of the report. Overall results can be reviewed, along with a detailed report listing open cases chronologically, beginning with the oldest pending case. Most states also report individual cases that are over time guidelines for judges to review and take action on those cases, if necessary.

Detailed information provided by the AOC regarding the age of both disposed and pending cases by prosecutorial district is provided in tables found in Appendix D. These tables detail the average age of cases which are pending and disposed over a two-year period by prosecutorial district. The following table summarizes the range of case age for both disposed and pending cases for the prior two years:

Fiscal Year	Range of Age of Disposed Cases	Range of Age of Pending Cases
2013	145 - 419	129 - 455
2014	126 - 496	149 - 374

Table 2: Range of Superior Felony Case Age (in days) by Prosecuting District - Last Two Years

The summary table illustrates the wide range of results between the North Carolina judicial districts. While it is helpful to know that in 2014 some cases took as long as 496 days to resolve, or that some cases were pending for as long as 374 days; this information alone is not helpful. Because the courts define and report cases differently, the summary table does not provide information on how many persons are awaiting disposition in each prosecutorial district. Additionally, North Carolina has set goals for

²⁵ American Bar Association, *Standards Relating to Trial Courts*, 1992 Edition.

disposition within 120, 180, 365 and 540 days. It would be more helpful to understand the nature of the backlog and to compare courts within the state for courts to accurately and consistently report the number of pending cases within each of those time intervals.

The reasons for district differences in the time to disposition may be the result of a variety of factors, including prosecutorial philosophy, availability of judicial resources, scheduling practices, continuance policies, etc. There does not appear to be any clear relationship between the workload of the court and age of pending or disposed cases based on the data available for fiscal years 2013 and 2014.

Trial Date Certainty

The fifth *CourTool* performance measure relating to caseflow management looks at the efficiency of trial scheduling practices:

CourTool 5: Trial Date Certainty – The number of cases resolved by trial or scheduled for trial.

A court's ability to hold trials on the date they are scheduled is another indicator of caseflow management effectiveness. The measure is calculated by identifying all cases disposed by trial during a given time period, and determining how many times the trial event has been set for each case. By identifying specific cases in which trials were continued the court can further investigate the reasons for delay and take steps to remedy them.

In the NCSC's experience working with numerous jurisdictions, there can be a variety of internal and external factors that cause trial certainty problems. Internal court factors include lack of judicial resources (often due to trial overscheduling), a shortage of jurors, and unavailability of special resources such as interpreters or court reporters. External factors are similar to those that cause delay in general, including lack of preparation by parties, witness availability, delays with exchange of discovery, etc. The unpredictability of trial scheduling causes many courts to schedule a large number of trials on a given day and time, knowing that most will resolve beforehand but with the expectation that a small number will proceed and therefore not leave judges with empty calendars.

One important way to promote trial date certainty is to be realistic in setting trial calendars. This can be accomplished by using data on outcomes of recent trial settings or status conferences to anticipate the percentage of cases set for trial that may be resolved and that must be continued (even under a firm policy limiting continuances), while still trying and disposing enough cases to meet both case clearance goals and time standards.²⁶ As noted previously, the overwhelming number of cases never go to trial, so efforts dedicated to trial readiness should also include techniques to improve the probability of a timely non-trial resolution.

With the practice of scheduling all hearings after the first appearance as trials (as NCSC learned occurs in Wake County District Court) it is no surprise that trial date certainty does not exist in North Carolina. Courts should set cases for trial only after it has been found in an administrative setting or at a status conference that discovery is complete, that all motions that need to be resolved pre-trial have been filed and decided, and that all witnesses are available.

²⁶ Steelman, David (2008) Caseflow Management. *Future Trends in State Courts*. National Center for State Courts.

Information Needed for North Carolina to Know Whether its Trial Courts Are Achieving Timely Resolution of Criminal Cases

Quality information is critical for knowing whether courts are achieving timely resolution of cases, whether any injustice is resulting from delay and whether changes need to be made to enhance the effectiveness of the court's caseflow management program.

As stated above, as a first step to having quality information, North Carolina must ensure that all courts use a single definition of a case when entering data into the case management system and when counting filings, pending cases and dispositions.

North Carolina needs to gather accurate information in order to determine the extent of delay in the trial courts. Current reports give a sense of the delay – median time and number of cases not disposed within time standard goals – but they do not provide information on whether some cases are so delayed that they cause injustice to the defendants or victims, nor do the reports give any indication on the causes of that delay.

- Courts *do* report median time to disposition, but the median time could be influenced by the number of cases resolved at the first appearance. Reports do not make it easy for the DA or the Court to determine how many cases are older than two or four times the time standard or longer.
- There are no reports on how many of the courts' cases involve pre-trial detained defendants, and in particular how many defendants are detained in the county jail for longer than the time standard.
- There are no reports on how many detained defendants have had all their charges dismissed, nor how long they were detained while awaiting the dropped charges.
- There are no reports on the sentence imposed on pre-trial detainees who are eventually convicted and whether that sentence is greater than the time served as a detainee.
- There are no reports on the number of detainees who plead guilty to charges that they did not commit solely because they could not financially or emotionally afford to remain in the county jail.
- There are no reports on the number or type of hearings set per case, the number or type of hearings held, the number of hearings continued, nor the reason for the continuance.
- There are no reports on the wait time between the time that the defendant, attorneys, witnesses and victims are told the case is scheduled for hearing and the time that the case is actually called for hearing.

Inventory of Pending Cases

Judges, prosecutors and court clerks need to know the inventory of pending cases. To schedule cases and to be able to report on the court's inventory, DAs and courts must be able to identify and report:

- The status and age of each individual case. Does the case need a status conference/administrative setting, a motion hearing, or a trial date?
- Court caseload and performance information such as clearance rates, the number of pending cases, the age of disposed cases, the number of cases older than the time disposition goal, the number of cases twice and three times as old as the time disposition goal, the number of hearings set per case, and the number of continuances in the case.

While automation is not a pre-requisite to caseflow management, the existence of an electronic case management system that includes the ability to track cases, events, and dispositions provides the most efficient way to monitor performance. Useful information for case management includes the following:

For each case:

- Its current status.
 - Is the case active, or has an order for arrest been issued?
- The detention status of the defendant.
- The last scheduled event and date.
- The next event and date.
- The number of times that the case has been scheduled for a hearing.
- The number of hearings actually held.
- The number of times a case has been continued, and the reasons behind the continuances.
- The age of the case at disposition.

For all cases at the court:

- The number and type of cases filed in a time period.
- The number, type and age of cases disposed of in a time period.
- The number, type and age of cases pending each next meaningful event.
- The number of cases continued prior to a scheduled trial date and on a scheduled trial date and the reasons for those continuances.

Both aggregate and case-specific information should be available for judges and court managers to assess overall program performance and to manage individual cases effectively. Judging from the information provided by the AOC for this report, some of this information appears to be available, though a great deal of this information is unavailable.

Interest by Stakeholders in Improving Caseflow Management

The issue of **prosecutorial control** over setting of calendars was prominent during the interviews. District attorneys believe the current system can work and note that the law provides safeguards and priority to older cases. With judges rotating through districts, they note that the district attorneys are the most consistent element of caseflow management. They also observed that good case management depends on the expectations of judges, regardless of who sets the calendar or preparation by all parties involved. The perceptions of defense counsel are quite different. They question whether the system is really a “level playing field” since the district attorney can potentially keep cases off the docket to put pressure on the defense. It was apparent from the conversations that the philosophy and approach of the district attorney may be a determining factor in successful caseflow management. Several participants noted that regular meetings and communication have helped facilitate better calendar control and coordination. In a limited number of courts, most prominently Mecklenburg County, the court administrator’s office plays a key role in managing the calendar. Calendar management by court support staff, such as court administrators, clerk’s office or judicial assistants, is more typical in other states.

In terms of **reasons for delays** noted during the interviews, practitioners (district attorneys and defense counsel) noted many of the same reasons. External factors such as difficulty in obtaining timely lab reports and incomplete investigative information top the list. Lack of preparation by opposing counsel was also cited. These factors, along with overscheduling of cases and schedule conflicts for attorneys are contributing to high rates of continuances. At least one district attorney who participated in the interviews has developed an internal system for tracking continuances and the reasons for delay. Another noted that his assistants regularly report the outcome of case events for better management. From the perspective of magistrates, missed court dates by defendants is another factor. They attribute this to defendant’s having

to call in for a court date, as well as problems that attorneys have in contacting their clients early in the court process.

Whatever the reason, there was general agreement among all the interviewees directly involved in case processing that **delay is a significant problem**. It was noted that more rural counties where judicial rotations are less frequent may experience greater delay, although some courts have allowed criminal matters to be set on a civil session day if needed, and in some courts district court judges have been authorized to take superior court pleas. Magistrates cited delays in blood kit processing for DUI offenders and the limited number of misdemeanor probation violation hearing dates in some courts (which results in defendants sitting in jail while waiting for a hearing) as significant issues. Magistrates suggested that the expanded use of video conferencing capabilities could reduce delay in certain situations.

There were mixed responses to the utility of **time guidelines and performance measures** among those interviewed. There is a perception among some that time guidelines may focus too much on processing cases efficiently at the expense of quality. Defense attorneys were more in favor of implementing time guidelines than their counterparts in prosecution. Some courts are regularly looking at case data to manage calendars and continuances, though they are likely the exception. There appears to be very little awareness of the existence of the North Carolina time guidelines, although individual courts have adopted time standards as part of a caseflow management plan. Court administrators were particularly critical of the lack of reporting tools for management.

Problems with **data quality** and lack of **case tracking tools** were noted by judges and administrative personnel. Court Services staff acknowledged that there are often inconsistencies in the recording of dispositions and entering counts, and that a standard for bills of indictment is needed to obtain more accurate figures. In terms of case management reports, Court Services staff noted that the number of continuances granted can be recorded and that filters are available in the current system for district attorneys to track case age. Clerks also noted that they are able to track continuances if necessary.

Overall, those interviewed acknowledged that delay is a significant problem. There is agreement that there are a number of systemic issues that need to be addressed, and that better local communication and collaboration is an effective strategy to improve criminal case management, along with better tools and more accurate data. There remains disagreement over the issue of prosecutorial control of calendars, and the utility of performance measures, specifically time guidelines.

Potential Benefits of Improved Criminal Case Management

Cost Savings

In the post-recession era, legislative bodies are particularly keen to reduce the cost of providing government services. Several recent analyses reviewed by the NCSC in the preparation of this report provided insight on areas where savings might be realized by other agencies through more efficient management of criminal dockets.

Effective caseflow management practices can reduce costs in several areas. Jurisdictions that have successfully implemented caseflow management practices have achieved cost savings by, for example:

- Reducing the cost of pretrial detention by reducing the length of time that defendants are jailed while they await resolution of their cases. As previously stated, to measure cost savings in North Carolina, the court must know and be able to report the number and age of pending cases with

detained defendants. An effective case management system using differentiated case tracking can establish reduced time standards for cases involving detainees and can expedite scheduling of their cases.

- Reducing the cost and safety risks of transporting detainees to court for unproductive hearings.
- Reducing taxpayer dollars spent on judges, prosecutors, public defenders, and court reporters and court personnel at unproductive events. As previously stated, an effective case management system will result in fewer case settings per case and fewer continuances.
- Reducing the number of failure to appear bench warrants and related cost to law enforcement due to shorter time between court events and greater event predictability.
- Reducing clerical time and costs spent making docket entries and sending notices to parties by reducing the number of scheduled hearings and eliminating unnecessary continuances.
- Saving witness costs, including those related to police overtime through reduced waiting times and continuances.
- More efficient coordination of individuals and tasks associated with complicated cases by completing early screening to allocate sufficient time and resources to resolve them.

In addition, effective caseflow management practices can save victims, defendants and their families the costs associated with taking off from work and traveling to the courthouse to attend a hearing, as well as the cost of defendants paying legal fees for private counsel.

While the research is dated, in the early 1980's the National Institute of Justice funded a study of the cost of continuances to prosecution and defense agencies and witnesses in felony and misdemeanor cases. The study included courts in North Carolina, Virginia, and Pennsylvania. Researchers found that continuances added 12 to 24 percent more work to each prosecution or public defense agency. In fiscal year 1983/84, this increase translated into additional labor costs ranging from \$78,000 to \$1.1 million at the time. Although the dollar amounts are likely to be quite different today, the finding that continuances are quite costly would not be different.²⁷

Public Trust and Confidence

The NCSC's Vice President for External Affairs, Jesse Rutledge, summarized some of the recent findings regarding public satisfaction with the courts nationally. He noted that previous surveys confirmed that citizens often believe that the legal system takes too long and costs too much overall. In the most recent assessment of satisfaction, focus group participants expressed their belief that there is collusion in the judicial process, particularly by attorneys, to defer or delay court decisions. Participants also expressed concerns that the financial interests of some parties work against the efficient administration of justice.²⁸

The 2015 joint Elon University and High Point University poll of citizen confidence in public institutions, completed for the Commission's Public Trust and Confidence Committee, sheds light on the public perception of the North Carolina courts and other institutions.²⁹ Public confidence in North Carolina is quite high regarding the local police or sheriff, with 81% of those surveyed expressing the opinion that they are "somewhat or very confident" in this local institution. North Carolina State Courts followed with nearly 66% of respondents stating they were "somewhat or very confident" in this state institution.

²⁷ Jacoby, Joan (1986). *Some Costs of Continuances, A Multi-Jurisdictional Study*. US Department of Justice.

²⁸ Rutledge, Jesse (2016). *The State of State Courts: Reviewing Public Opinion*. The Court Manager. Spring.

²⁹Elon University (2015). Elon University Poll. Accessed May 28, 2016 at: <http://www.elon.edu/web/elonpoll/111915.xhtml>.

Approximately 40% indicated that they believe people “usually” receive a fair outcome when they deal with the court, and a small percentage (3%) answered “always.”

Many respondents to the Elon/High Point poll perceive that wealthy individuals and white residents receive better treatment by the state courts than do black or Hispanic residents, low-income defendants, or those without a lawyer. Further, more than half of the respondents believe people without attorneys, low-income people, and those who don’t speak English receive somewhat or far worse treatment than others in the court system.

While the impact of delay on the public may be difficult to quantify and link directly to public opinion, individuals who appear in court as parties, witnesses, and victims are certainly impacted by delay. The NCSC has noted that one of the most frequent responses to public satisfaction surveys are concerns about starting court on time and complaints about the amount of time it takes to resolve cases. Many studies have concluded that these perceptions are important to the overall level of trust and confidence that the public places in courts as institutions.

An effective caseflow management program will result in timely resolution of criminal cases and will enable the DA and the courts to document that timely resolution. This, over time, will enhance public trust and confidence in the courts.

A Rubric for North Carolina to Engage in Statewide Caseflow Management Improvement

Accomplishing Effective Implementation – A Cultural Shift

For a number of reasons identified below, even when judges, DA’s and defense counsel agree that the status quo is not working and that change is needed to effectuate more fair and timely resolution of court cases, accomplishing change in the courts is often difficult.

NCSC research related to legal culture suggests that the organizational character of courts inhibits judges from reaching consensus on obtaining a more active role in the management of criminal cases. Lack of agreement on the judicial role in managing cases underlies the long-standing research problem of what explains substantial differences in criminal case processing times among courts. Explanations that seem obvious, such as workloads and resources, have not been found to consistently impact resolution.³⁰ Rather, it appears that the broader concept of court culture is a driving force.

Finally, achieving even minimal coordination among judges, prosecutors, law enforcement, and criminal defense attorneys is for some court leaders a substantial departure from the traditional way of doing business. This may be in part rooted in the adversarial nature of the system, in which the court remains neutral while prosecutors are committed to the protection of society and defense attorneys to the protection of their client’s constitutional rights. However, this view fails to recognize the mutual interest in the fair and timely resolution of criminal cases shared by all participants in the process. Collaboration between all concerned institutions and leaders is critical to successful case management.

³⁰ (Church et al., 1978; Goerd et al., 1989, 1991).

Key Steps

Numerous states have engaged in statewide efforts of improving caseflow management systems. The approaches have varied to some extent and have depended on the degree of court unification and the role of the administrative office in each state. Some states have already been through several iterations of caseflow planning, revising and updating plans concurrent with revisions to time guidelines. It is important to note that the improvement of caseflow management is an ongoing process in which continuous feedback is necessary to assess the effectiveness of new approaches and to account for inevitable changes in statutes and operational practices. Courts must compile, analyze and continually monitor case information, such as the data identified elsewhere in this report, before making necessary modifications to improve results. Notwithstanding the various approaches taken across the country, there are several key steps outlined below that are typically followed by states engaging in caseflow management improvement efforts.

Adopt or Modify Time Standards/Performance Measures

Whether to begin a statewide effort with the adoption of time and performance standards or delay adopting such standards until more is known about the existing state of caseflow management is a chicken and egg question. Many states have employed published performance measures as a first step and proceeded to develop information and programs to help courts meet the standards. Others have delayed creating or updating time standards pending the collection of background data to assess the current state of caseflow management.

The threshold question is whether information systems can provide sufficiently accurate and reliable information to enable courts and the AOC to determine with reasonable confidence the age and status of criminal cases. Since North Carolina already has published time standards, one approach might be to assess how courts currently stack up against the existing standards before deciding what direction to take with regards to a revised set of standards.

As stated earlier, the court must have confidence that data is reliable before it engages in a process to adopt, implement and monitor compliance with time standards. The Judicial Branch must first make sure that all districts consistently use a definition of a case established by the AOC. This will require leadership and oversight by the Chief Justice, a revived Judicial Council, the Senior Resident Superior Court Judges, and the Chief District Court Judges.

In terms of general performance measures, the NCSC's *CourTools* are a good starting point for developing quality performance measures. The measurement process and recommended instruments in *CourTools* are based on a self-administered format with instructions and suggested report forms. The AOC's Court Performance Management System has already implemented a web-based system that provides information on the following three of *CourTools*' ten performance measures:

- Case clearance rate.
- On-time processing (percent disposed within 1996 time guidelines).
- Aging case index (cases pending over time guidelines).

As noted in the next section, data is gathered in the AOC's criminal automated system and can be searched by case type, county, or district. Additional statistical data, such as the disposition rate for superior court criminal cases by county in the past 12 months, and district court backlogs are also available.

The measures found in the NCSC's *CourTools* suite are by no means exclusive. The Judicial Council (or other body) and the AOC could also adopt other measures that have been developed as part of the original Trial Court Performance Standards or develop in-house measures and standards to meet local needs. These could include measuring some of the cost-related factors mentioned in this report such as juror utilization and jail and prisoner transport costs. Appendix F provides an extensive listing of criminal caseflow benchmarks and indicators.

The AOC and a revived Judicial Council (or a new multi-disciplinary body) should review the data and information needs identified in this report and develop new measures to capture and analyze the effectiveness of scheduling practices in resolving cases within established time standards.

Collect Information on Current Practices and Conditions

It may be that some North Carolina districts are substantially better than others when it comes to timely resolution. Interviews with stakeholders (i.e. those in Mecklenburg and Wake County) in connection with this report revealed that judges, prosecutors, and defense attorneys are already involved in innovative and successful approaches to managing criminal cases that may be appropriate for wider application. Identifying and sharing best practices, including the circumstances under which they appear to be most effective, is an essential step in implementing a plan. For example, as part of its caseflow management improvement effort, the North Dakota Court Administrator's Office surveyed judges and district administrators regarding successful practices that are already in place and shared this information on a special project web site.

In addition to looking at best practices within the state, lessons also can be learned from other jurisdictions. From 2011 through 2014, the NCSC conducted over 20 training and technical assistance projects across the country funded by the Bureau of Justice Assistance (BJA). One project specifically targeted felony caseflow management, and the NCSC worked with courts to identify and resolve felony caseflow issues. The results of successful caseflow management practices and strategies documented during the project are summarized in Appendix E.

The Supreme Court and the AOC should consider requesting technical assistance from the NCSC or another court organization to help North Carolina develop and implement a caseflow management plan. State Justice Institute funds may be available to help reduce the cost to North Carolina's budget.

Identify Additional Information Needs

As discussed above, accurate and timely information is essential to both the management of individual cases and overall policy. The AOC's current information systems supporting record keeping, calendaring and financial management appear to have been developed incrementally and are falling short of user expectations and needs. The AOC is currently engaged in a "gap analysis" to assess current and future automation capabilities. Future opportunities to capture and utilize performance-related information should be included in this analysis.

Realizing that an overhaul of judicial branch information systems is a long-term project, for the time being efforts should focus on getting the best data possible from the current systems. This includes improving the consistency of data entry across jurisdictions by establishing clear definitions for "cases" and disposition types (i.e. dismissed by DA, dismissed by court, guilty or not guilty by bench or jury trial,

plea to the original charge or to an amended charge). This will enable courts to count case settings, hearing types, continuances and reasons for the continuances, and to capture and report on the age and detainee status of pending cases.

Plans are already underway to improve performance measure reporting. As noted on the AOC web site, the current version is scaled-down to introduce the system to court officials, and with their input, improvements will be implemented. Some of the enhancements under consideration include:³¹

- Counting criminal cases with the defendant (or incident) as the unit of measure, rather than each charge (there can be many related charges against the same defendants in different cases, and now these related cases are counted as several cases, instead of just one).
- Aging criminal cases in superior court from the time of original arrest or service of process rather than the time of transfer to superior court.
- Including workload measures for cases in post-disposition status, especially criminal “motions for appropriate relief” and probation violation proceedings, as post-conviction activity comprises a considerable workload for court officials.
- Expanding the display of statistical data (numbers of cases) and eventually eliminating the printing and distribution of paper “management” reports (data on manners of disposition is the principal type of statistical data not yet in the CPMS, but that data is currently in printed reports).
- Removing cases from pending status in appropriate circumstances, such as when a deferred prosecution is being given a chance to work. This will not allow these cases, which can become “old” for good reason, to inappropriately skew or increase overall aging data.
- Adding measures that have already been approved by the judicial branch, but for which automated systems must be enhanced; including the number of times a case is calendared before being tried, as well as the total amount of restitution recovered for victims compared to the amount ordered.
- Breaking down the existing case categories into more specific case types.

These improvements, along with capturing additional data identified in this report, will resolve many of the current issues with data reliability that impact performance measurement and expand into the area of post-judgment performance management.

Establish and Evaluate Pilot Projects

Pilot projects allow courts to test new policies and procedures before engaging in a major change effort. They allow policy makers to try various options, identify costs and benefits, and determine obstacles to implementation. Pilots can serve as a testing ground to evaluate efficiency and effectiveness, and can be applied on a broader basis if proven to be successful. An essential element of implementing change is obtaining support and consensus about both the need for improvement and the solutions that will be effective.

Pilot projects help in the early stages of reform by providing visible examples of how new methods of work can be effective and beneficial. In some cases, courts may need to be granted temporary authorization to implement procedures that are not currently specified by law. For example, in the mid-1990s the Michigan Supreme Court authorized the cross assignment of judges to temporarily create pilot projects to test the impact of court unification. The results of this effort eventually lead to legislation that allowed local consolidation plans.

³¹ Source: <http://www1.aoc.state.nc.us/cpms/pages/help/FuturePlans.jsp> Accessed June 11, 2016.

The IDS report³² on scheduling noted that there was considerable interest among survey respondents in pilot testing a new district court scheduling system. Given the close relationship of this study to caseflow management in general, there is likely similar interest in establishing pilot projects for caseflow management. In addition, the AOC has relied in the past on the pilot approach to roll out changes to technology and is therefore in a good position to manage this process.

Many of the individuals interviewed for this report emphasized that “one size doesn’t fit” all jurisdictions and accordingly, any effort to implement a statewide program should take this into account. This is where careful thought as to the selection of pilot projects and assessment of existing best practices is needed.

Review/Modify Existing Court Rules, Statutes, and Procedures

Improving case management often requires a re-assessment of existing court rules and statutes. Typically, recommendations for changes will follow an assessment of pilot projects or other means of identifying where existing language either impedes case management or where additional language would provide better clarity or authority. In addition, some changes may be called for in existing work flows and procedures. Often, efforts to improve case management will identify procedural bottlenecks or problems with forms that can be easily remedied. As the AOC considers the development or purchase of next generation case management software, opportunities may exist to improve the efficiency of case processing through functionality that allows better monitoring and management of case events.

Develop Caseflow Management Planning Templates and Resources

One tool that has been successful in many courts is a local caseflow management plan. A good example of a comprehensive plan is Mecklenburg County’s plan, which was developed by a careful analysis of caseflow management data and implemented through a series of stakeholder reviews.³³ Caseflow management plans are most effective when they are developed with input from the individuals and agencies impacted by the plan, such as prosecutors, the defense bar, law enforcement, and corrections officials.

While the court should take the lead in developing the plan, it should be done in a collaborative environment. Plans should also be periodically reviewed, particularly when significant changes in court rules or statutes that impact case processing occur or there are changes in organizational leadership. A benefit of this process, which should be an ongoing effort, is that in many jurisdictions this will be the first time that all criminal justice system actors have come together to focus on improving the judicial process.

Plans are often adopted as local administrative orders. To achieve greater consistency across the state, the North Carolina Supreme Court should ask the AOC to create plan templates for courts to follow. A template may specify elements that should be contained in every plan, while allowing flexibility for each court to develop language that meets local needs. The following are examples of elements found in criminal caseflow plans across the country:

- Case assignment and scheduling.

³² Office of Indigent Defense Services (2009). District Court Scheduling Survey Report. Durham, NC.

³³ <http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/1168.pdf>.

- Continuance policies.
- Status or scheduling conferences.
- Motions practices.
- Discovery.
- Diversion.
- Probation violations.
- Time standards.
- Meetings and consultations.

A number of plans from other states are available from the NCSC.

Finalize Reporting and Information Requirements

Any changes or enhancements to reports and other information should be tested before being finalized. In many cases, an unintended consequence of paying greater attention to case reports is the discovery of problems with data quality. The problems most frequently encountered in electronic case management systems are due to clerical errors, such as incorrect date or event entry and failure to close out cases. These kinds of problems typically cause inaccurate case age and disposition counts. Audits and other checks should be performed by the clerk or court to identify errors that impact the reliability of reports.

Decisions regarding who should receive reports, and how often, will need to be made. Caseflow management reports generally fall into one of two broad categories, aggregate and other reports. Aggregate reports provide information on overall trends and conditions, such as clearance rate, time to disposition, and pending inventories statewide and by district. Other reports are designed for the management of individual cases, such as listings of pending cases and cases over time guidelines. Again, the future case management system should be designed with caseflow management information and reporting needs in mind.

Additionally, thought should be given to how performance reports will be monitored and whether any follow up will be conducted to assist jurisdictions where potential problems are indicated. This could be the function of the Senior Resident Judges, the Chief Judges, the AOC and the District Attorney's Office.

Provide Training and Technical Assistance

To ensure consistent adoption of new policies and approaches, education and technical assistance can improve the sustainability of a statewide effort. The AOC Court Services division currently provides assistance to courts around the state, primarily trouble-shooting and training on current applications. With additional qualified staff resources, this office could perform several functions as part of a statewide roll out, including monitoring pilot projects, offering technical assistance, providing resources, and collection and follow-up of performance reports.

There are a number of resources and tools available to help individual courts assess current caseflow management effectiveness, which are available from the Bureau of Justice Assistance and NCSC:

- *Conducting a Felony Caseflow Management Review – A Guide*
https://www.bja.gov/Publications/AU_FelonyCaseflow.pdf
- *How to Conduct a Caseflow Management Review*
<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/5>

- *Caseflow Management Maturity Matrix and Questionnaire*
<http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/2127>
- *Improving Caseflow Management: A Brief Guide*
<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>

In addition, the NCSC has over twenty presentations and technical assistance reports created as a result of a three-year BJA funded project to improve felony caseflow management. Appendix G includes two examples of training program agendas from the project. One of those programs in Cuyahoga County, Ohio, included a broad range of local criminal justice professionals, such as prosecutors, defense counsel, judges and court clerks. The second program in Williamsburg, Virginia, focused on judges and court administrative staff and was designed to help participants develop a caseflow management action plan for their jurisdictions.

Feedback and technical assistance efforts in other states are often tied to regular caseflow management reports provided to the courts and monitored by the administrative office of courts. Trial court services divisions and/or regional administrative offices in many states provide direct technical assistance to courts in this area. The North Carolina AOC would need to assess whether this is a function that could be within the scope of Court Services' responsibilities. Additionally, as the primary training provider for the judiciary, the University of North Carolina School of Government may be engaged to incorporate caseflow management topics in training agendas for the judiciary.

Sustained Support through Leadership and Collaboration

It has been argued that successful reforms are 90% leadership and 10% management. Research and practical experience with caseflow management efforts, both at the state and local levels, is most successful when there is clear and sustained support from leadership. This includes a high-level endorsement by the Supreme Court as well as leadership and collaboration between prosecutors, local judges, and the defense bar.

Key Participants

Direction from judiciary leadership and participation by stakeholder representatives is essential throughout a project of this nature. North Carolina's unique combination of prosecutorial, judicial, and public defense services under one roof should facilitate overall coordination. The following major tasks are associated with a state-wide implementation along with key participants, based on NCSC's experience in other jurisdictions:

Project Oversight

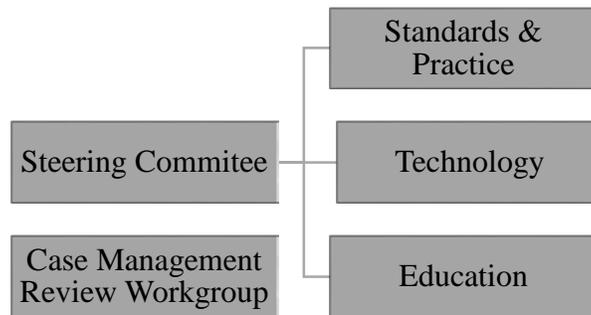
The Supreme Court should assign responsibility to the Judicial Council (or create a new steering committee or similar body) charged with the responsibility of overall project strategy and direction. The committee should be composed of high-level representatives from judicial branch agencies or organizations and the criminal justice community. For example:

- Supreme Court Justice or designee
- Director of the Administrative Office of the Courts or designee
- Trial Court Administrator

- Superior Court Judge
- District Court Judge
- Clerk of Court
- Prosecutor
- Public Defender
- Criminal defense bar
- Law enforcement officials

The committee may establish various working groups to address specific issues such as rule and statutory revisions, technology, communication and education. Participants in working groups will depend on the subject matter, and typically will include individuals with specific expertise or experience. Working groups will be involved in developing specific recommendations and action steps for approval by the steering committee.

As an example, the following is the organizational structure of an effort currently underway in the state of North Dakota to revise the current time guidelines and implement best practices in caseflow management. In this case, the project steering committee has appointed a primary workgroup to manage three topical sub-groups which are responsible for most of the work. The workgroup is responsible for managing project communications and has set up a website for this purpose. North Dakota's effort does not include pilot projects, although courts throughout the state have been asked for their input regarding best practices.



Project Management

An individual or office should be designated to act as project manager for the effort and should report directly to the steering committee. This position will work closely with the working groups, monitor pilot sites, manage the project budget, and provide general administrative support throughout the project. Typically, a staff person or unit from the administrative office of courts, such as a court services division, is designated for this purpose.

Evaluation

If a pilot project approach is taken, it is particularly important to have resources available for ongoing monitoring and evaluation. This is a function that could be managed by AOC staff along with the assistance of the University of North Carolina School of Government or similar external organization with research and evaluation experience. AOC technical staff will also need to be closely engaged with the evaluation of the pilot project.

Education and Training

The sustainability of this effort will be greatly enhanced by establishing a communication strategy throughout the project to educate the criminal justice community about the goals and intended outcomes. This also includes the development of caseflow management training resources for inclusion in programs for judges, clerks, prosecutors and defense counsel.

Suggested Timeline

The following is a *hypothetical* timeline for implementation of a statewide plan utilizing a pilot project approach to identify best practices over a two-year period:

ACTIVITY	Year 1				Year 2			
Adopt or modify time standards/performance measures	■							
Collect information on current practices and conditions	■							
Identify additional information needs	■	■						
Establish and evaluate pilot projects	■	■	■	■	■	■		
Review/modify existing court rules, statutes, and procedures				■	■	■		
Develop caseflow management planning templates and resources					■	■		
Finalize reporting and information requirements					■	■		
Provide training and technical assistance (ongoing)		■	■	■	■	■	■	■
Revise time standards (as needed)								■

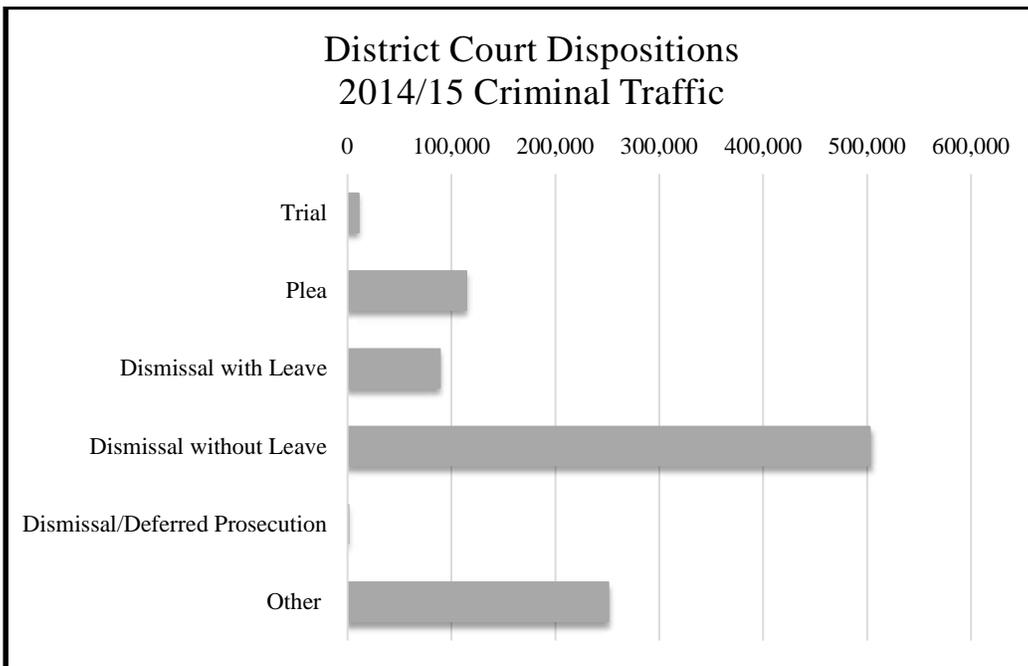
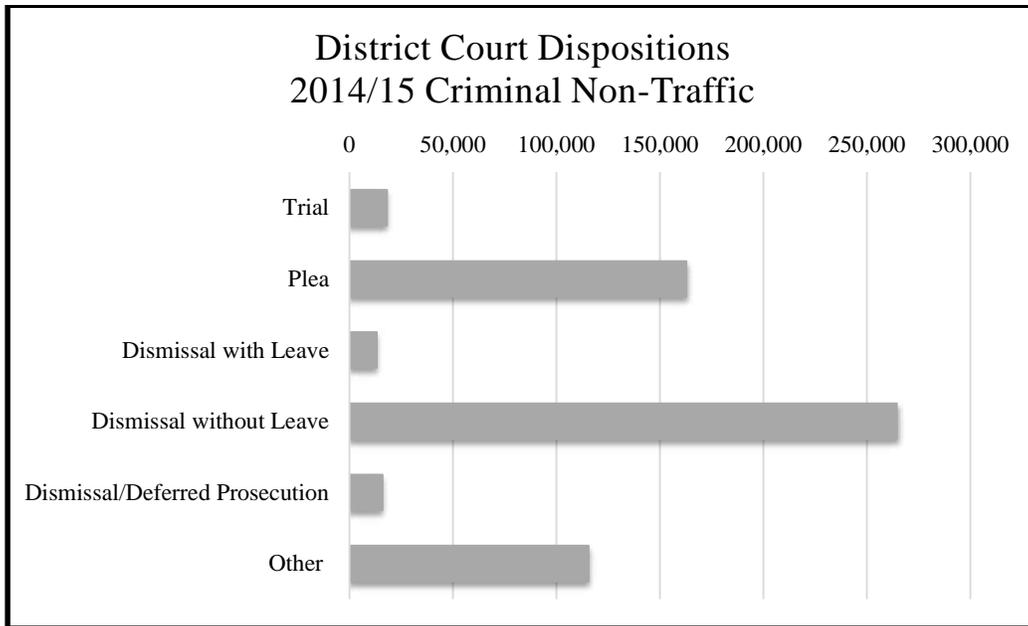
This timeline assumes the creation of pilot projects early in the effort and that changes to rules, statutes and procedures will be identified as a result of the lessons learned in the pilots. As the pilots wind down and receive a final evaluation after a year in operation, specific resource and informational needs can be finalized. This schedule includes an ongoing communication effort during the course of the project, along with the development of education and training materials that will become a standard part of the training curricula.

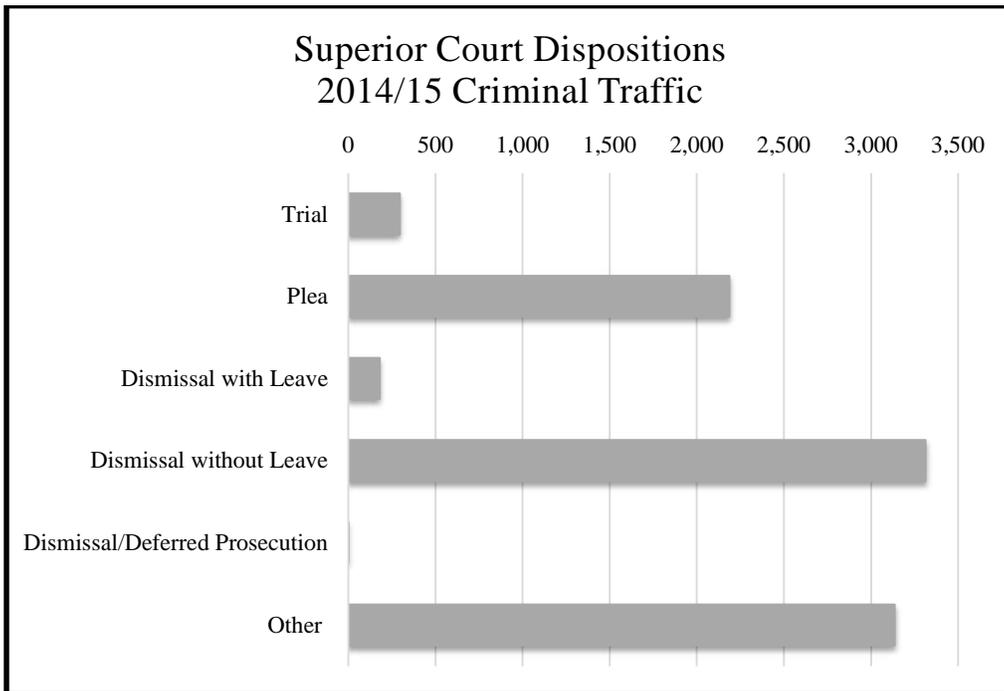
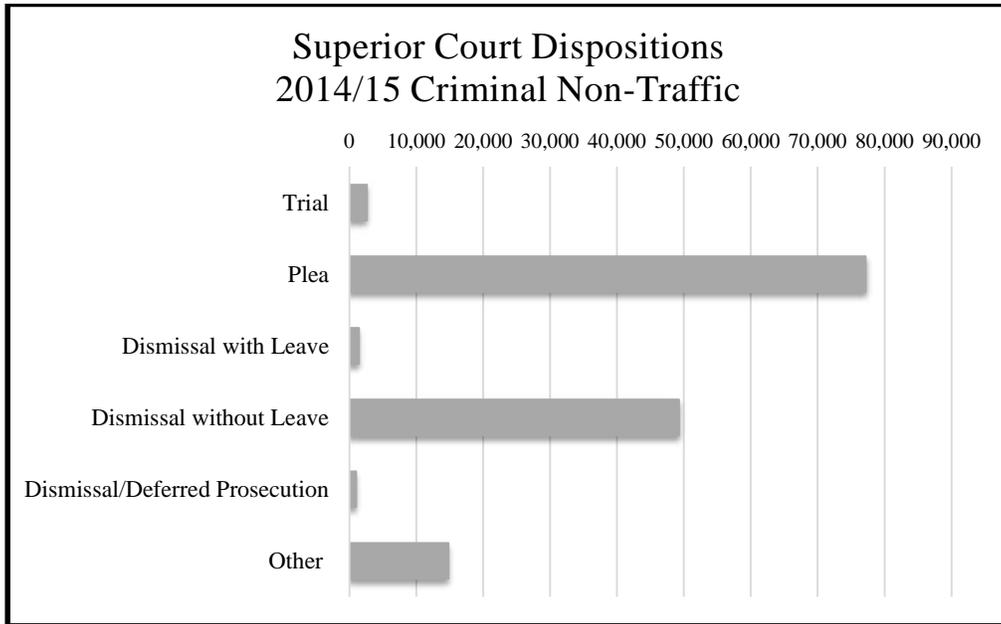
The actual timeline for deployment of a major caseflow management initiative will depend on a number of factors, including whether pilot projects are established before major changes are implemented, the time required to secure enabling legislation or changes to court rules, and the availability of additional staff resources to support the effort.

Appendices

Appendix A – Criminal Dispositions by Type

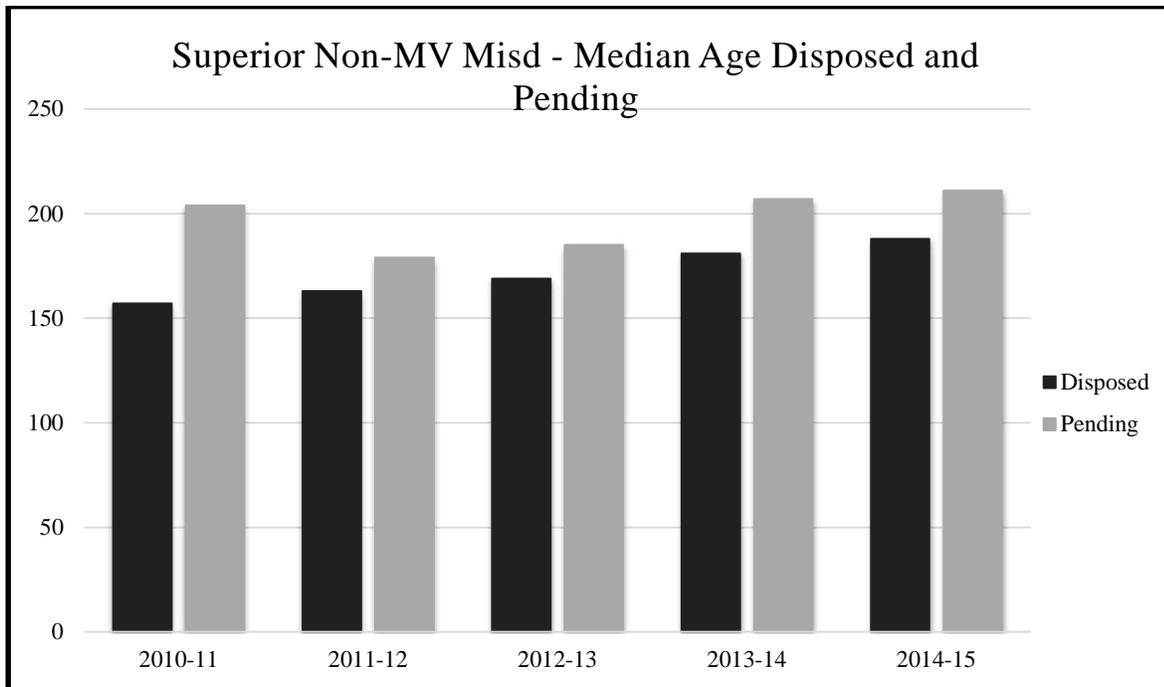
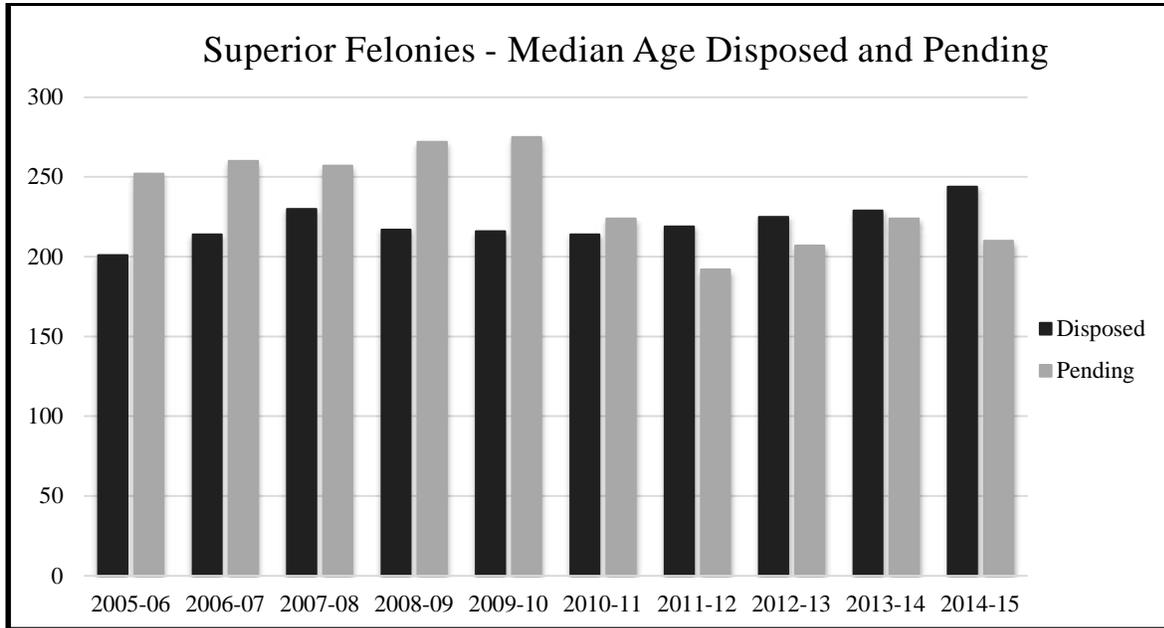
(Source: North Carolina Judicial Branch 2014-15 Statistical and Operational Report)

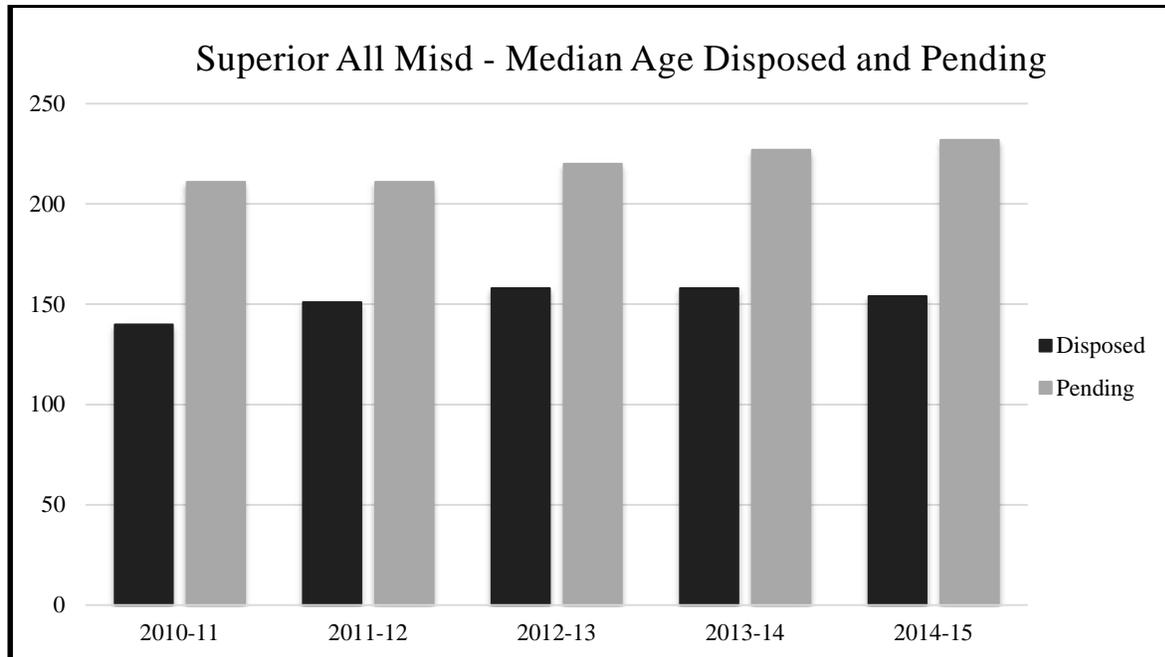
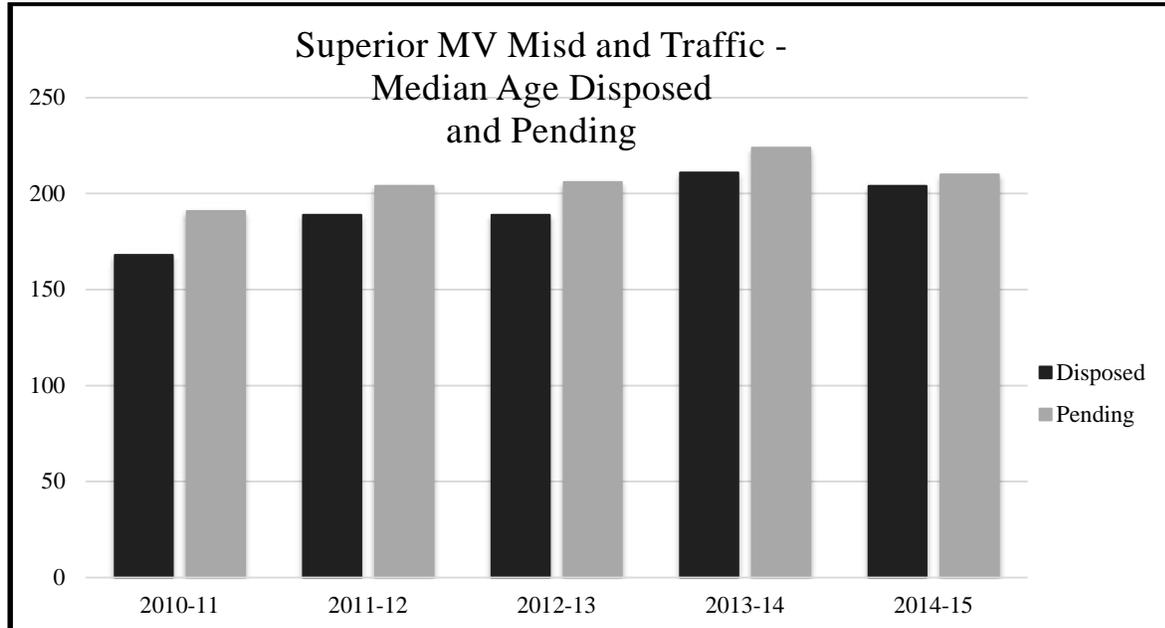




Appendix B – Disposed and Pending Case Age

Provided by the North Carolina Administrative Office of Courts

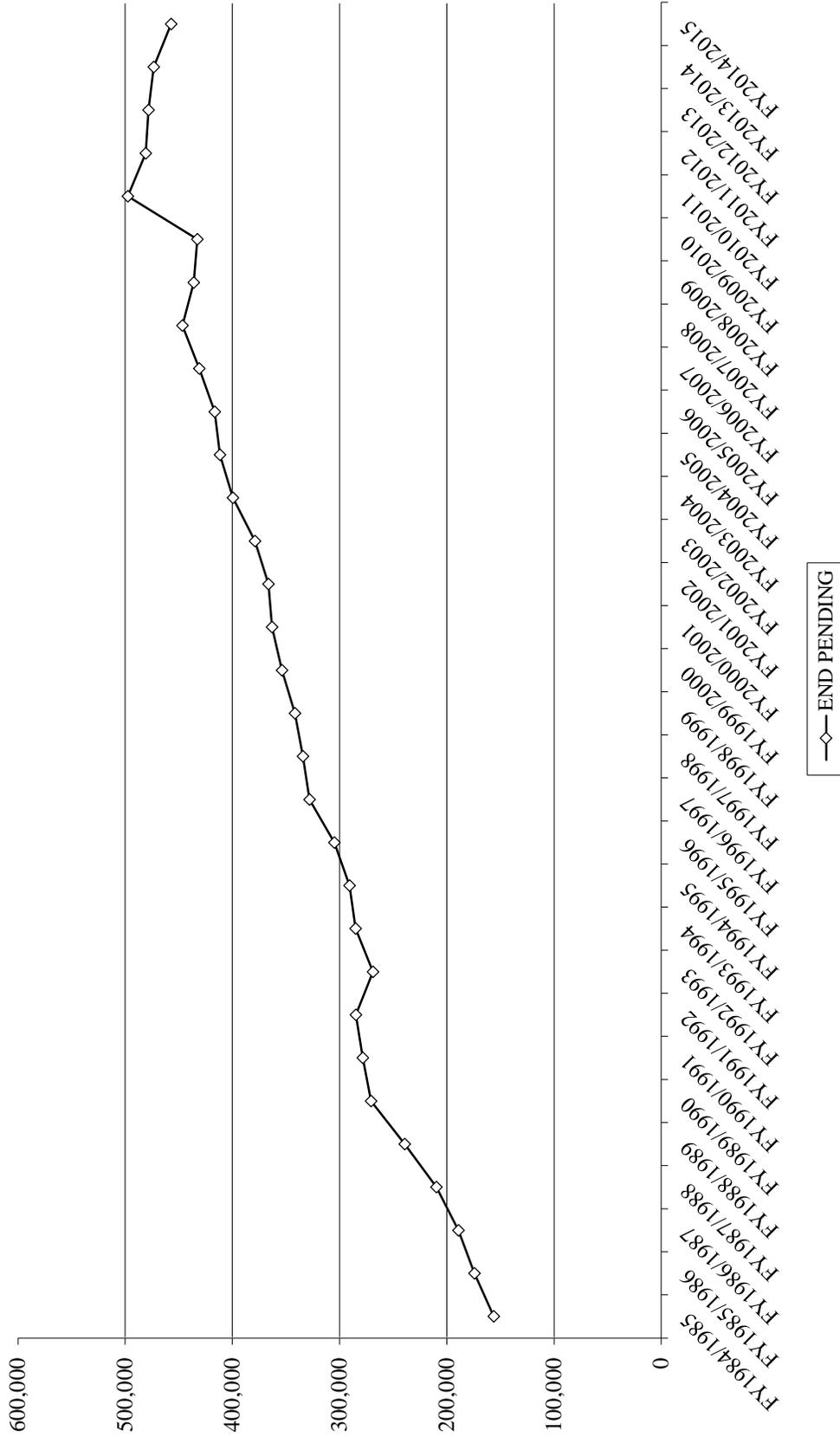




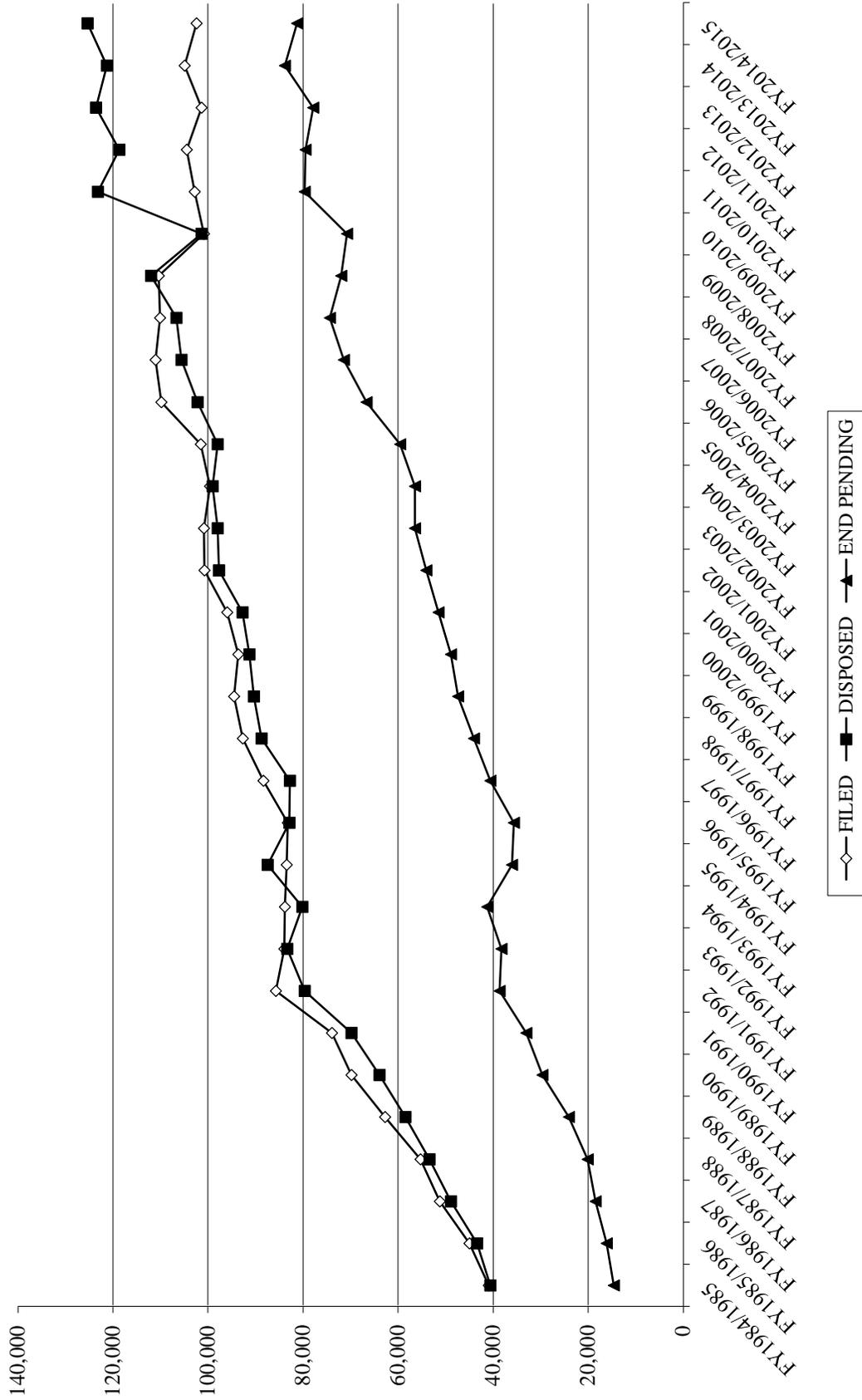
Appendix C – Criminal Filing Trends 1984-2014

(Source: North Carolina Administrative Office of Courts, derived from Court Statistics section of the Judicial Branch website)

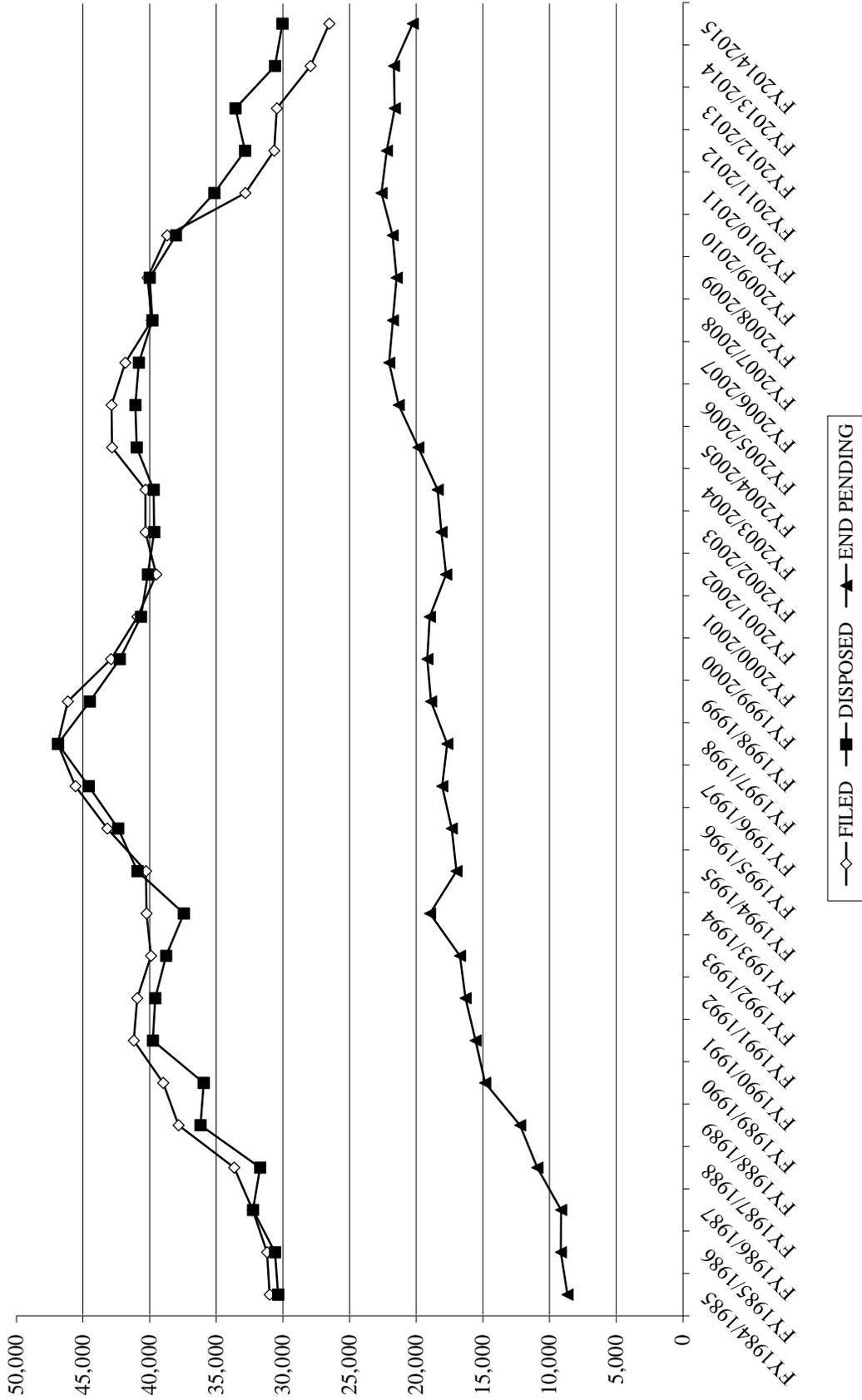
Statewide End Pending (CVS, CRS, CVD, CR-NMV only)



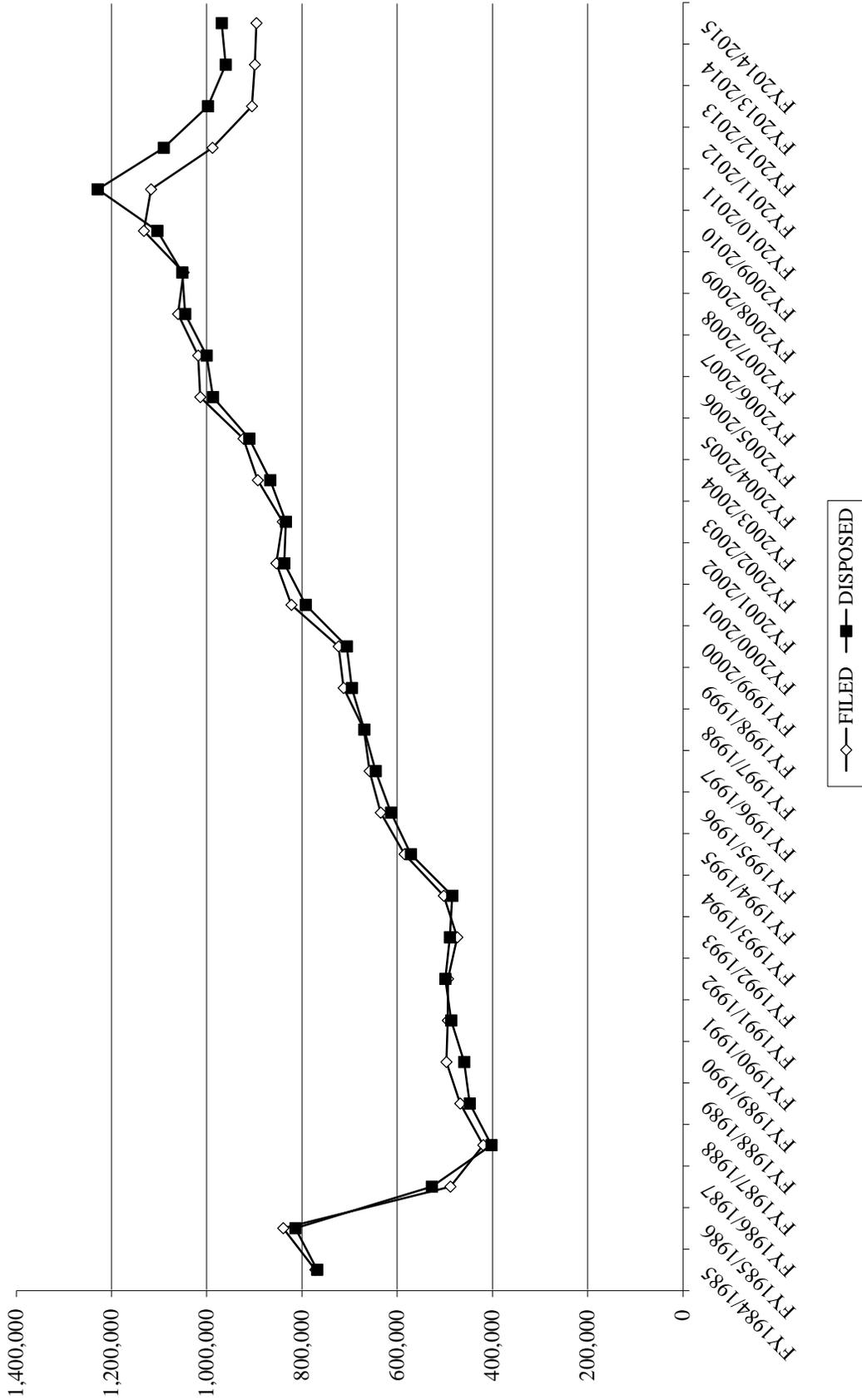
Statewide Superior Felony Cases



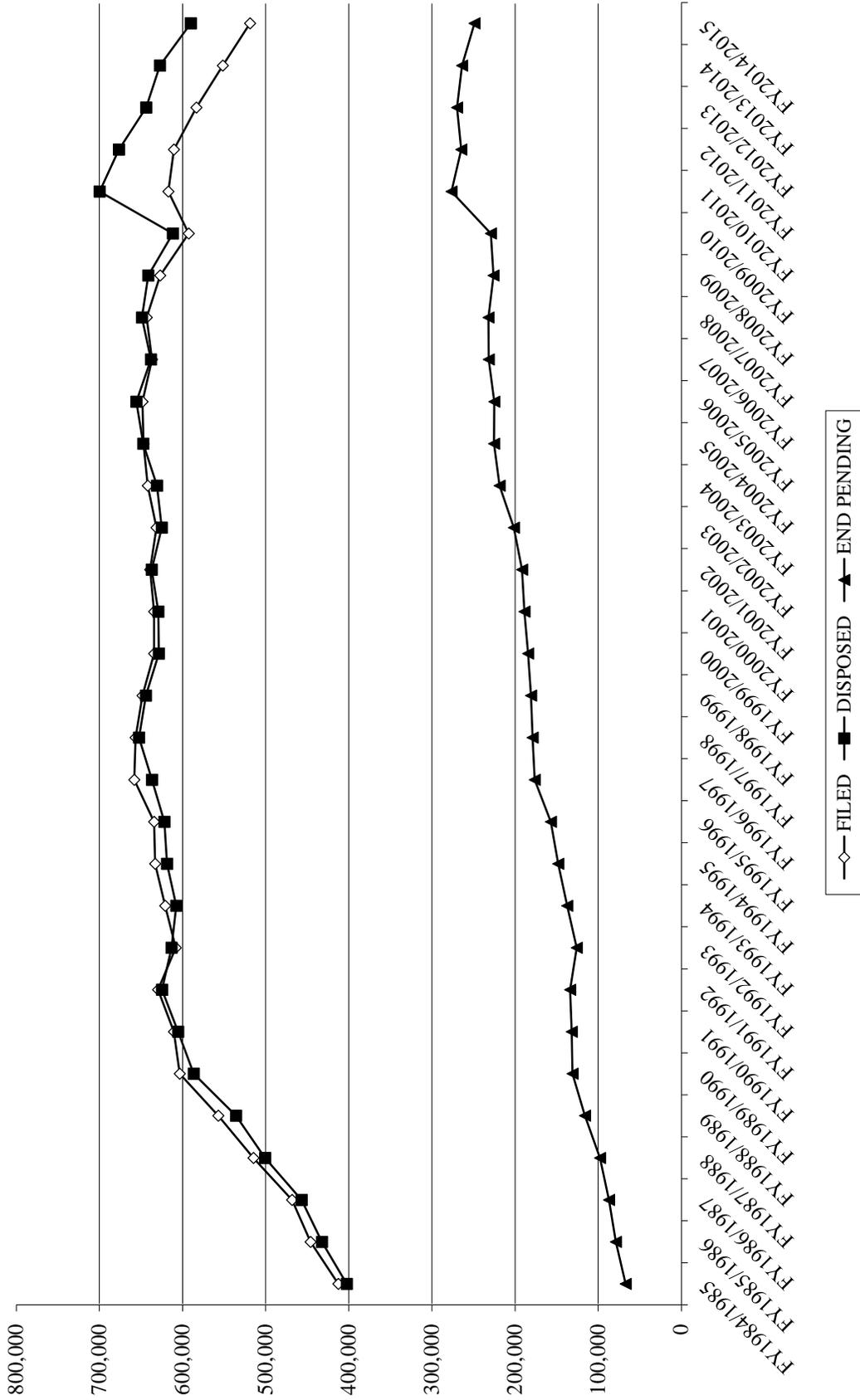
Statewide Superior Misdemeanor Cases



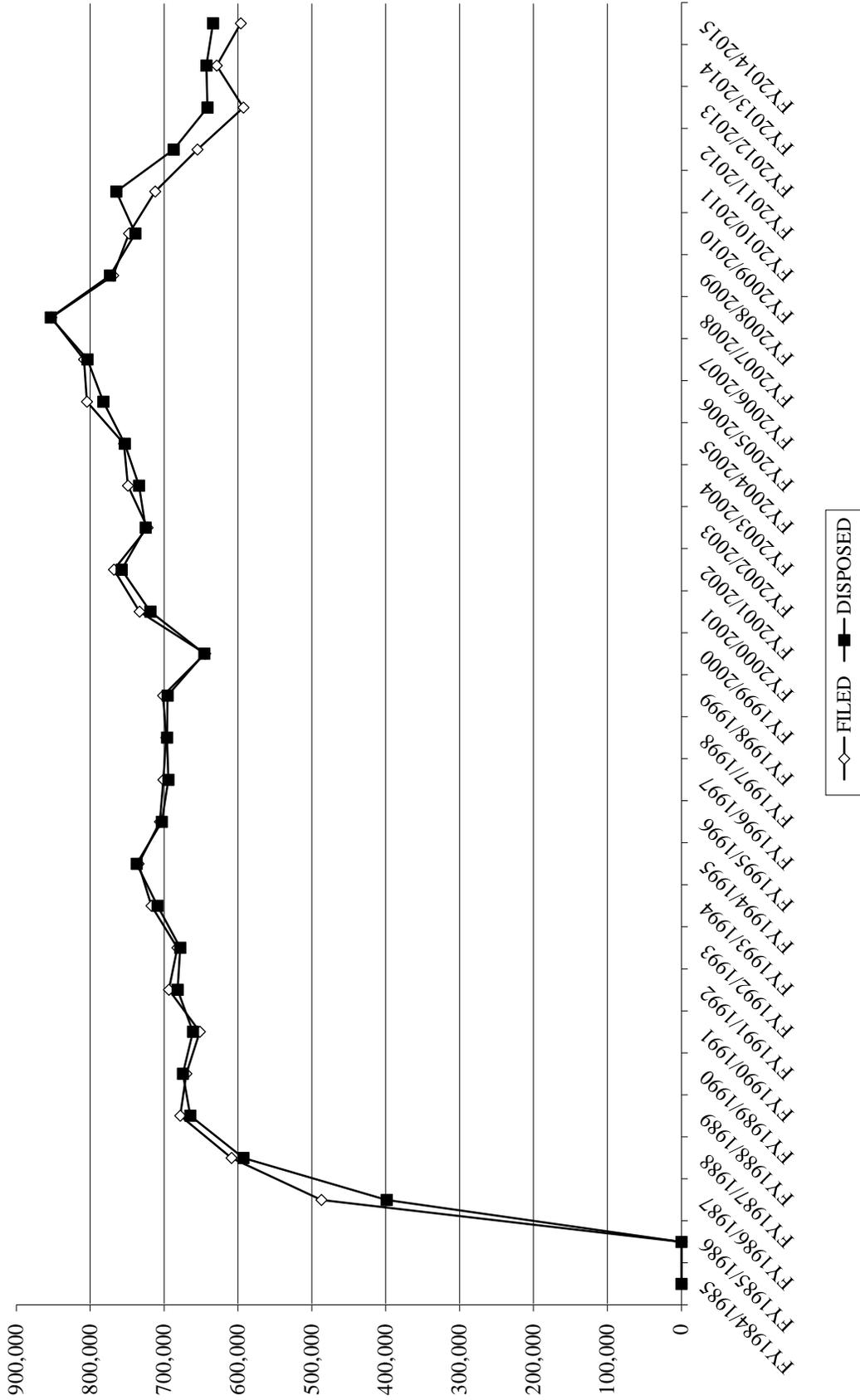
Statewide District Criminal Motor Vehicle Cases



Statewide District Criminal Non-Motor Vehicle



Statewide District Infractions Cases



Appendix D - Pending & Disposed Case Age Detail, Last Two Years

(Source: North Carolina Administrative Office of Courts)

Criminal Superior Felony Cases by Prosecutorial District

July 1, 2013 - June 30, 2014

Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/14)	Pending Median Age (days)
Statewide	Statewide	104,942	121,306	83,814	224
15B	Chatham, Orange	971	1,123	553	129
7	Edgecombe, Nash, Wilson	3,761	4,247	2,479	139
4	Duplin, Jones, Onslow, Sampson	3,321	3,954	1,869	140
23	Alleghany, Ashe, Wilkes, Yadkin	1,256	1,686	700	145
03A	Pitt	2,663	3,134	1,765	153
21	Forsyth	1,332	1,493	812	153
14	Durham	2,598	2,998	1,587	158
22B	Davidson, Davie	2,066	2,354	1,452	166
26	Mecklenburg	9,921	11,789	6,908	168
12	Cumberland	4,099	5,126	2,899	174
15A	Alamance	1,789	2,066	1,050	174
17B	Stokes, Surry	1,858	1,850	1,436	194
27A	Gaston	3,170	4,078	1,687	196
09A	Caswell, Person	1,727	1,380	1,594	202
16A	Hoke, Scotland	1,108	1,236	921	202
17A	Rockingham	1,036	1,171	754	202
18	Guilford	9,741	10,017	7,283	202
19D	Moore	1,140	1,362	817	202
11A	Harnett, Lee	1,246	1,297	1,082	209

Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2013 - June 30, 2014

Continued: Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/14)	Pending Median Age (days)
28	Buncombe	2,078	3,094	1,211	210
13	Bladen, Brunswick, Columbus	3,834	3,849	3,207	224
19A	Cabarrus	1,735	1,834	1,458	224
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	1,892	1,917	1,457	224
20B	Union	1,896	2,686	1,397	235
03B	Carteret, Craven, Pamlico	2,702	3,141	2,073	236
20A	Anson, Richmond, Stanly	2,124	3,017	1,617	236
24	Avery, Madison, Mitchell, Watauga, Yancey	1,256	1,529	1,062	238
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	1,790	2,017	1,962	241
8	Greene, Lenoir, Wayne	1,664	2,110	854	243
5	New Hanover, Pender	2,729	2,625	2,471	244
9	Franklin, Granville, Vance, Warren	2,496	2,595	2,387	244
10	Wake	4,453	5,298	3,120	244
11B	Johnston	869	1,081	544	257
29B	Henderson, Polk, Transylvania	1,174	941	1,064	270
19B	Montgomery, Randolph	1,826	2,003	2,300	273
2	Beaufort, Hyde, Martin, Tyrrell, Washington	1,722	2,149	1,921	279
25	Burke, Caldwell, Catawba	3,110	3,646	3,912	293
27B	Cleveland, Lincoln	3,070	3,778	3,335	293
29A	McDowell, Rutherford	1,171	1,435	1,112	311
22A	Alexander, Iredell	1,745	2,161	2,085	356
06A	Halifax	1,093	1,213	1,115	363
06B	Bertie, Hertford, Northampton	859	974	1,295	371
16B	Robeson	1,558	2,096	1,921	389
19C	Rowan	1,293	1,756	1,286	455

**Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2013 - June 30, 2014
 Sorted by Disposed Median Age - Fewest Days to Most Days Pending**

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/14)	Pending Median Age (days)	Disposed Median Age (days)
Statewide	Statewide	104,942	121,306	83,814	224	229
8	Greene, Lenoir, Wayne	1,664	2,110	854	243	145
15B	Chatham, Orange	971	1,123	553	129	158
4	Duplin, Jones, Onslow, Sampson	3,321	3,954	1,869	140	163
21	Forsyth	1,332	1,493	812	153	165
23	Alleghany, Ashe, Wilkes, Yadkin	1,256	1,686	700	145	169
15A	Alamance	1,789	2,066	1,050	174	173
14	Durham	2,598	2,998	1,587	158	176
27A	Gaston	3,170	4,078	1,687	196	176
17B	Stokes, Surry	1,858	1,850	1,436	194	178
10	Wake	4,453	5,298	3,120	244	182
5	New Hanover, Pender	2,729	2,625	2,471	244	196
17A	Rockingham	1,036	1,171	754	202	197
18	Guilford	9,741	10,017	7,283	202	197

**Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2013 - June 30, 2014**

Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	Ending Pending (as of 6/30/14)	Pending Median Age (days)	Pending Median Age (days)
11B	Johnston	869	1,081	544	257	198
28	Buncombe	2,078	3,094	1,211	210	203
03A	Pitt	2,663	3,134	1,765	153	205
29B	Henderson, Polk, Transylvania	1,174	941	1,064	270	207
11A	Harnett, Lee	1,246	1,297	1,082	209	209
22B	Davidson, Davie	2,066	2,354	1,452	166	212
26	Mecklenburg	9,921	11,789	6,908	168	213
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	1,892	1,917	1,457	224	213
03B	Carteret, Craven, Pamlico	2,702	3,141	2,073	236	215
7	Edgecombe, Nash, Wilson	3,761	4,247	2,479	139	217
9	Franklin, Granville, Vance, Warren	2,496	2,595	2,387	244	217
06A	Halifax	1,093	1,213	1,115	363	225
16A	Hoke, Scotland	1,108	1,236	921	202	230
24	Avery, Madison, Mitchell, Watauga, Yancey	1,256	1,529	1,062	238	231
29A	McDowell, Rutherford	1,171	1,435	1,112	311	231
12	Cumberland	4,099	5,126	2,899	174	244
27B	Cleveland, Lincoln	3,070	3,778	3,335	293	258
19D	Moore	1,140	1,362	817	202	260
19C	Rowan	1,293	1,756	1,286	455	268
19A	Cabarrus	1,735	1,834	1,458	224	269
13	Bladen, Brunswick, Columbus	3,834	3,849	3,207	224	273

20B	Union	1,896	2,686	1,397	235	279
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**Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2013 - June 30, 2014**

Continued: Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/14)	Pending Median Age (days)	Pending Median Age (days)
20A	Anson, Richmond, Stanly	2,124	3,017	1,617	236	280
22A	Alexander, Iredell	1,745	2,161	2,085	356	331
25	Burke, Caldwell, Catawba	3,110	3,646	3,912	293	345
09A	Caswell, Person	1,727	1,380	1,594	202	350
2	Beaufort, Hyde, Martin, Tyrrell, Washington	1,722	2,149	1,921	279	352
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	1,790	2,017	1,962	241	361
19B	Montgomery, Randolph	1,826	2,003	2,300	273	375
06B	Bertie, Hertford, Northampton	859	974	1,295	371	398
16B	Robeson	1,558	2,096	1,921	389	419

Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2014 - June 30, 2015

Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/15)	Pending Median Age (days)	Disposed Median Age (days)
Statewide	Statewide	102,443	125,357	81,274	210	244
04	Duplin, Jones, Onslow, Sampson	3,935	4,506	2,159	76	149
23	Allegany, Ashe, Wilkes, Yadkin	1,486	1,846	634	113	131
28	Buncombe	2,496	2,569	1,752	119	197
03A	Pitt	2,773	3,749	1,541	126	175
12	Cumberland	4,008	5,039	2,729	139	217
07	Edgecombe, Nash, Wilson	3,914	5,078	2,216	140	197
17A	Rockingham	1,213	1,356	870	140	233
08	Greene, Lenoir, Wayne	1,876	2,097	1,121	144	171
27A	Gaston	3,128	3,840	1,721	148	169
05	New Hanover, Pender	2,962	3,459	2,317	154	218
10	Wake	4,362	5,415	2,737	154	195
11B	Johnston	911	1,136	442	160	169
03B	Carteret, Craven, Pamlico	2,912	4,007	1,687	161	229
26	Mecklenburg	9,968	10,616	7,318	169	211
20A	Stanly	743	954	611	175	320
15B	Chatham, Orange	917	1,204	510	181	197
14	Durham	2,419	2,877	1,671	183	202
20B	Union	1,859	2,423	1,350	201	265
09A	Caswell, Person	2,051	2,207	1,736	203	279
21	Forsyth	1,488	1,629	870	210	126
22B	Davidson, Davie	1,683	2,432	1,311	210	279
29A	McDowell, Rutherford	1,200	1,504	1,111	216	317

25	Burke, Caldwell, Catawba	3,440	4,432	3,651	223	366
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Criminal Superior Felony Cases by Prosecutorial District

July 1, 2014 - June 30, 2015

Continued: Sorted by Pending Median Age - Fewest Days to Most Days Pending

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/15)	Pending Median Age (days)	Disposed Median Age (days)
29B	Henderson, Polk, Transylvania	1,115	1,283	1,075	229	337
11A	Harnett, Lee	1,356	1,443	1,214	230	280
16C	Anson, Richmond	1,238	1,622	851	232	269
09	Franklin, Granville, Vance, Warren	2,830	3,495	2,184	235	250
18	Guilford	7,676	9,740	6,236	236	245
13	Bladen, Brunswick, Columbus	3,212	3,816	3,268	238	286
15A	Alamance	1,527	2,123	877	245	178
16A	Hoke, Scotland	835	1,352	672	245	245
27B	Cleveland, Lincoln	3,306	3,401	3,848	271	321
22A	Alexander, Iredell	1,958	2,438	2,054	272	426
01	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2,034	2,369	2,078	273	336
19A	Cabarrus	1,478	2,167	1,164	273	269
02	Beaufort, Hyde, Martin, Tyrrell, Washington	1,583	2,165	1,746	286	402
19B	Montgomery, Randolph	1,705	2,041	2,343	291	434
19D	Moore	1,108	1,160	907	294	254
17B	Stokes, Surry	1,397	1,688	1,337	299	211
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	1,312	1,877	1,209	315	262
24	Avery, Madison, Mitchell, Watauga, Yancey	882	1,261	898	341	299
19C	Rowan	1,290	1,433	1,305	356	266
16B	Robeson	1,372	1,890	1,934	419	496
06	Halifax, Bertie, Hertford, Northampton	1,485	2,218	2,009	433	374

Criminal Superior Felony Cases by Prosecutorial District

July 1, 2014 - June 30, 2015

Sorted by Disposed Median Age - Fewest Days to Most Days Disposed

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/15)	Pending Median Age (days)	Disposed Median Age (days)
Statewide	Statewide	102,443	125,357	81,274	210	244
21	Forsyth	1,488	1,629	870	210	126
23	Alleghany, Ashe, Wilkes, Yadkin	1,486	1,846	634	113	131
4	Duplin, Jones, Onslow, Sampson	3,935	4,506	2,159	76	149
11B	Johnston	911	1,136	442	160	169
27A	Gaston	3,128	3,840	1,721	148	169
8	Greene, Lenoir, Wayne	1,876	2,097	1,121	144	171
03A	Pitt	2,773	3,749	1,541	126	175
15A	Alamance	1,527	2,123	877	245	178
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7	Edgecombe, Nash, Wilson	3,914	5,078	2,216	140	197
15B	Chatham, Orange	917	1,204	510	181	197
28	Buncombe	2,496	2,569	1,752	119	197
14	Durham	2,419	2,877	1,671	183	202
17B	Stokes, Surry	1,397	1,688	1,337	299	211
26	Mecklenburg	9,968	10,616	7,318	169	211
12	Cumberland	4,008	5,039	2,729	139	217
5	New Hanover, Pender	2,962	3,459	2,317	154	218
03B	Carteret, Craven, Pamlico	2,912	4,007	1,687	161	229
17A	Rockingham	1,213	1,356	870	140	233
16A	Hoke, Scotland	835	1,352	672	245	245

Criminal Superior Felony Cases by Prosecutorial District
 July 1, 2014 - June 30, 2015

Continued: Sorted by Disposed Median Age - Fewest Days to Most Days Disposed

Prosecutorial District	Counties in District	Filed	Disposed	End Pending (as of 6/30/15)	Pending Median Age (days)	Disposed Median Age (days)
18	Guilford	7,676	9,740	6,236	236	245
9	Franklin, Granville, Vance, Warren	2,830	3,495	2,184	235	250
19D	Moore	1,108	1,160	907	294	254
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	1,312	1,877	1,209	315	262
20B	Union	1,859	2,423	1,350	201	265
19C	Rowan	1,290	1,433	1,305	356	266
16C	Anson, Richmond	1,238	1,622	851	232	269
19A	Cabarrus	1,478	2,167	1,164	273	269
09A	Caswell, Person	2,051	2,207	1,736	203	279
22B	Davidson, Davie	1,683	2,432	1,311	210	279
11A	Harnett, Lee	1,356	1,443	1,214	230	280
13	Bladen, Brunswick, Columbus	3,212	3,816	3,268	238	286
24	Avery, Madison, Mitchell, Watauga, Yancey	882	1,261	898	341	299
29A	McDowell, Rutherford	1,200	1,504	1,111	216	317
20A	Stanly	743	954	611	175	320
27B	Cleveland, Lincoln	3,306	3,401	3,848	271	321
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2,034	2,369	2,078	273	336
29B	Henderson, Polk, Transylvania	1,115	1,283	1,075	229	337
25	Burke, Caldwell, Catawba	3,440	4,432	3,651	223	366
6	Halifax, Bertie, Hertford, Northampton	1,485	2,218	2,009	433	374
2	Beaufort, Hyde, Martin, Tyrrell, Washington	1,583	2,165	1,746	286	402
22A	Alexander, Iredell	1,958	2,438	2,054	272	426
19B	Montgomery, Randolph	1,705	2,041	2,343	291	434

16B	Robeson	1,372	1,890	1,934	419	496
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Appendix E – Caseflow Improvement Strategies³⁴

Principle	Strategies
<i>Early Intervention and Triage</i>	Prompt arrest reports and evidence to prosecutor
	Improve defense counsel access to in-custody defendants
	Improve disclosure and discovery exchange
	Structured early judicial intervention
	Improve operation of initial arraignment docket
	Reform approach to preliminary hearings
	Develop specialized calendars to process selected cases expeditiously
	Expand early intervention to all felonies
	Expand differentiated case management (DCM) program
	Use risk/needs assessment instruments to aid pretrial release decisions
<i>Meaningful Events</i>	Create culture of having prepared lawyers at every court event
	Improve communication among all parties
	Address delays in crime lab evidence processing
	Improve criminal settlement conference process
	Greater control of failures to appear
	Improve management of plea negotiations
	Improve management of continuances
	Adopt written continuance policy
<i>Trial-Date Certainty</i>	Strict court enforcement of timetables and expectations, with sanctions if appropriate
	Resolve more cases before trial list
	Improve attorney estimates of trial date readiness
	Establish firm trial dates
<i>Post-Judgment Court Events</i>	Make operational improvements in trial setting and assignment
	Greater efficiency in handling probation violations
<i>Exercise of Court Leadership of Entire Criminal Justice Community</i>	Adopt and publish formal case management plan
	Improve court coordination with system partners
<i>Internal Court Relations and Practices Among Judges</i>	Build greater consistency among judges’ adjudication and courtroom practices
	Consider consistency and best practices in calendaring judicial work weeks
	Report caseflow timelines and measures by division to promote competition among judges in meeting goals
	Consider establishing local guidelines for voir dire to allow for improved consistency and compliance with rules

³⁴ Steelman, David (2014). *Rethinking Felony Caseflow Management*. National Center for State Courts.

Principle	Strategies
	Standardize use of court forms by judiciary
<i>Education and Training</i>	Include training sessions on caseflow management during judicial conference or at least once annually
<i>Court Organization</i>	Consider holding problem solving (drug court and DUI court) on civil days or certain criminal days
	Consider extension of chief judge term beyond two years so that priorities of court can be addressed
	Create pretrial services unit for felony cases
	Consider options to promote more early resolution of felony charges in limited-jurisdiction courts
	Explore possibility of hybrid-team assignment system
	Establish probation violation and bench warrant calendars
	Consider direct felony filing in general jurisdiction court
	Consider scheduling cases at staggered times, including at least a morning and afternoon docket, to reduce waiting times
<i>Human Resources</i>	Have circuit court judges make better use of their judicial assistants
	Encourage more active participation of calendaring hearings by judicial staff
	Improve indigent representation
	Improve court Interpreter system
<i>Information Resources</i>	Obtain a monthly report from the Sheriff about the pretrial detainee population
	Develop means to exclude warrant time from case aging
	Develop accurate, timely, and useful caseflow management data
	Develop plan for review of case age and reduction of backlogs
	Gather and analyze data on cases washing out before initial pretrial conference
	Consolidate proceedings to reduce redundancy
	Review algorithm for case assignment (allotment) to assure balance among all divisions
	Gather and regularly review failure-to-appear (FTA) and open warrant information
	Streamline management of multi-defendant cases
Reduce conflicts among courtrooms on availability of attorneys	
<i>Technology</i>	Consider options for electronic exchange of disclosure materials
	Improve delivery of information and reporting to Bond Court
	Expand use of audio-video appearances

Appendix F – Indicators and Benchmarks³⁵

Indicator	Definition	Benchmark
<i>Effectiveness</i>		
<i>CourTools</i> Measure 5, Trial Date Certainty	The likelihood that a case will be tried on or near the first scheduled trial date, as measured by the number of times cases listed for trial must be scheduled and rescheduled for trial before they go to trial or are disposed by other means.	Average number of trial dates per trial list case: <ul style="list-style-type: none"> • Acceptable: an average of 2.0 or fewer settings per case • Preferred: an average of 1.5 or fewer settings per case
Compliance with Court Orders, including <i>CourTools</i> Measure 7, Collection of Monetary Penalties	Payments collected and distributed within established timelines, expressed as a percentage of total monetary penalties ordered in specific cases.	Benchmarks set by court for following goals: ³⁶ <ul style="list-style-type: none"> • To hold defendants accountable for their actions • To improve the enforcement of court judgments • To reduce judicial and clerical efforts required to collect court-ordered financial obligations • To ensure prompt disbursement of court collections to receiving agencies and individuals • To achieve timely case processing
<i>Procedural Satisfaction</i>		
<i>CourTools</i> Measure 1, Access and Fairness	Ratings of court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect.	<ul style="list-style-type: none"> • A survey on access and fairness is conducted at least once each year. • The survey results are discussed in a meeting of all judges each year, and any result less favorable than the prior year is a topic for appropriate remedial action.
<i>Efficiency</i>		
<i>CourTools</i> Measure 2, Clearance Rate	The number of outgoing cases as a percentage of the number of incoming cases.	100% clearance rate each year
<i>CourTools</i> Measure 3, Time to Disposition <ul style="list-style-type: none"> • Date of filing of complaint with court to date of sentencing 	The percentage of cases disposed or otherwise resolved within established time frames.	Model Time Standards for State Trial Courts (NCSC, 2011): <ul style="list-style-type: none"> • 75% within 90 days, 90% within 180 days, 98% within 365 days
<i>CourTools</i> Measure 4, Age of Pending Caseload <ul style="list-style-type: none"> • Age of all active pending cases • Percent of active pending cases that are “backlogged” 	The age of the active cases pending before the court, measured as the number of days from filing until the time of measurement. Cases that are “backlogged” are those that have been pending longer than the time standard for felony cases.	Model Time Standards for State Trial Courts (NCSC, 2011): <ul style="list-style-type: none"> • No more than 25% beyond 90 days, 10% beyond 180 days, 2% beyond 365 days

³⁵ Steelman, David (2014). *Rethinking Felony Caseflow Management*. National Center for State Courts.

³⁶ See Michigan State Court Administrative Office, *Trial Court Collections Standards & Guidelines* (July 2007).

<p>Elapsed time between major case processing events:</p> <ul style="list-style-type: none"> • Date of arrest to date of first appearance • Date of filing of criminal complaint to date of arraignment on indictment or information • Date of filing of complaint to date of disposition by plea or trial 	<p>The percentage of cases meeting time standards for the elapsed time between key intermediate case events. (This indicator complements <i>CourTools</i> Measures 3 and 4.)</p>	<p>Model Time Standards for State Trial Courts (NCSC, 2011):</p> <ul style="list-style-type: none"> • In 100 % of cases, the time elapsed from arrest to initial court appearance should be within that set by state law appearance. • In 98% of cases, the arraignment on the indictment or information should be held within 60 days [filing to arraignment]. • In 98% of cases, trials should be initiated or a plea accepted within 330 days [complaint to plea or trial].
Productivity		
<p><i>CourTools</i> Measure 10, Cost per Case</p>	<p>The average cost of processing a single case, by case type.</p>	<ul style="list-style-type: none"> • Statewide average • Average for courts of like size in state
<p>Judicial and staff case weights by major case type</p>	<p>The average amount of time that judges and staff spend to handle each case of a particular type, from case initiation/filing through all post-judgment activity.</p>	<ul style="list-style-type: none"> • Statewide average • Average for courts of like size in state
<p>Meaningful court events</p>	<p>The expectation is created and maintained that case events will be held as scheduled and will contribute substantially to progress toward resolution. Courts that choose to monitor continuances routinely make a record of (a) the type of event continued; (b) which party made the request; and (c) the reason the request was granted.</p>	<ul style="list-style-type: none"> • The official purpose of any event (e.g., motion hearing, pretrial conference) is achieved more often than not, or else substantial progress is made toward case resolution, as through a plea agreement. • After arraignment on an indictment or information, more cases are settled by plea or other nontrial means before they are listed for trial than after being listed for trial. • The average number of settings for each kind of court event before trial is less than 1.5 per case. • The most common reasons for the grant of continuances are regularly identified by the court and discussed by court, prosecution and defense leaders to reduce the frequency of their occurrence.

Appendix G – Sample Training Program Agenda

(From NCSC/BJA Training and Technical Assistance Project)

Improving Felony Case Progress in Cuyahoga County, Ohio

June 13, 2013

SEMINAR AGENDA

Time	Topic	Faculty
8:00-8:30 AM	Arrival and Check-In	Host Staff
8:30- 9:15 AM	Welcome, Introductions <ul style="list-style-type: none">• Welcome by Neutral Court or Local Government Official• Seminar Purpose and Objectives• Initial Discussion of Participant Expectations	TBD NCSC Faculty All + Faculty
9:15 -10:30 AM	Basic Principles and Truths of Felony Case Management <ul style="list-style-type: none">• Essential Elements of Caseflow Management• Brief Group Discussion of Current Cuyahoga County Status• Dynamics of Changing Local Legal Culture	Steelman All + Faculty
10:30 –10:45 AM	<i>Break</i>	
10:45 –12:00 PM	Early Case Disposition and Beyond in Cuyahoga County <ul style="list-style-type: none">• Early Case Disposition in New Hampshire and New Jersey• Strengths and Weaknesses of Early Disposition in Cuyahoga County	Reis, Costello
12:00 – 1:30 PM	What’s in It for Me? For Other Stakeholders? <ul style="list-style-type: none">• Instructions for Small Group Discussions• Working Lunch and Small Group Discussions	Steelman All
1:30 – 2:30 PM	Reports of Small Groups	All + Faculty
2:30 – 2:45 PM	<i>Break</i>	
2:45 – 3:30 PM	Getting to “Yes”: Collaboration among Stakeholders <ul style="list-style-type: none">• Instructions for Small Group Discussions• Small Group Discussions: What can stakeholders in my position do (a) for ourselves, and (b) for other stakeholders to improve felony caseflow management in Cuyahoga County?	Steelman All
3:30 – 4:15 PM	Reports of Small Groups	All + Faculty
4:15 – 4:30 PM	Summing Up: Group Discussion of Possible Next Steps	All + Faculty
4:30 PM	Concluding Remarks and Adjournment	Seminar Host

Improving Felony Caseflow
February 7-8, 2013
National Center for State Courts Headquarters
Williamsburg, Virginia

WORKSHOP AGENDA

DAY 1 – Thursday, February 7, 2013

Time	Topic	Facilitators
8:00-8:30 AM	Arrival and Check-In: Conference Room	Judicial Education Staff
8:30- 9:15 AM	Welcome, Introductions <ul style="list-style-type: none">• Mary McQueen, NCSC President• Workshop Purpose and Objectives• Participant Introductions and Expectations	Griller; Steelman Faculty
9:15 – 10:00 AM	Unnecessary Delay: The Enemy of Justice	Griller
10:00 –10:45 AM	Participant Survey Results: Plenary Discussion ³⁷	Steelman; Webster
10:45 -11:00 AM	<i>Break</i>	
11:00 –12:15 PM	Basic Principles and Truths of Felony Case Management <ul style="list-style-type: none">• Time to Disposition Data: 1990's vs. Today• Costs of Delay and Substantive Savings• Eight Steps of Major Change	Griller Steelman Griller
12:15 - 12:30 PM	Instructions for Problem Scenario Discussions	Griller
12:30 – 2:30 PM	Working Lunch and Small Group Discussions: Problem Scenarios	All
2:30 – 2:45 PM	<i>Break</i>	
2:45 – 3:45 PM	Socratic Panel: Can Caseflow Management Promote Better Lawyering? <ul style="list-style-type: none">• Efficiency and Quality: Are They Mutually Exclusive• Judge Shopping – What's a Lawyer to Do?• Continuances – What are Workable Policies and Practices• How Do You Build Trust Between Adversaries?• Prepared Lawyers Settle Cases – How Do Courts Help Prompt Preparation?	TBD
3:45 – 4:15 PM	Plenary Discussion: Techniques in Developing an Action Plan	Steelman; Webster
4:15 – 4:30 PM	Debrief; Get Ready for Tomorrow's Program; Adjournment	Faculty

³⁷ Prior to attending the workshop, each participant was requested to complete a questionnaire answering 100 questions about felony case processing in their jurisdiction. During this session, we will discuss both overall and specific results.

DAY 2 – Friday, February 8, 2013

Time	Topic	Facilitators
8:00 – 8:30 AM	Arrival – Conference Room	Judicial Education Staff
8:30 – 8:45 AM	Briefing on Action Plan Assignment	Steelman; Griller
8:45 – 10:15 AM	Develop Action Plans by Jurisdiction (facilitated by faculty)	All + Faculty
10:15 – 10:30 AM	Break	
10:30 – 12 Noon	Presentation and Discussion of Action Plans	All + Faculty
12 Noon	Adjournment & Evaluation	

Appendix H - Meeting Participants

(in chronological order of interviews)

District Attorneys

- **Seth Edwards**, District 2.
- **Scott Thomas**, District 3B.
- **William (Billy) West**, District 12.

Magistrates

- **Hillary Brannon**, magistrate in Guilford County.
- **Keith Hempstead**, magistrate in Durham County.
- **Sherry Crowder**, chief magistrate in Union county.

Public Defender

- **Bert Kemp**, Pitt County Public Defender.

Appellate Judges

- **Justice Sam (Jimmy) Ervin**, Supreme Court.
- **Chief Judge Linda McGee**, Chief Judge, Court of Appeals.
- **Judge Donna Stroud**, Court of Appeals.

Court Services

- **Cynthia Easterling**, Director of Court Services, AOC.
- **Christi Stark**, Court Services.

AOC Leadership

- **Judge Marion Warren**, AOC Director.

Trial Court Administrators

- **Todd Nuccio**, Trial Court Administrator, Mecklenburg County.
- **Kathy Shuart**, Trial Court Administrator, Durham County.

District Court Judges

- **Judge Lisa Menefee**, Chief District Court Judge, Forsyth County (21st District).
- **Judge Jacquelyn (Jackie) Lee**, Chief District Court Judge, Harnett, Johnston, and Lee Counties (District 11).

Clerks of Superior Court

- **Jan Kennedy**, Clerk of Superior Court in New Hanover County.
- **Todd Tilley**, Clerk of Superior Court in Perquimans County.

Defense Attorneys

- **Kearns Davis** (NCCALJ member), Brooks, Pierce, McLendon, Humphrey & Leonard LLP.
- **Darrin Jordan** (NCCALJ member), Whitley & Jordan.

AOC Research and Planning

- **Brad Fowler**, head of AOC Research and Planning.
- **Danielle Seale**, senior research associate.

Superior Court Judges

- **Judge Anna Mills Wagoner** (NCCALJ member), Senior Resident Superior Court Judge, District 19C (Rowan County).
- **Judge Allen Cobb**, Senior Resident Superior Court Judge, 5th District (New Hanover and Pender Counties).

APPENDIX C

PRETRIAL JUSTICE
Criminal Investigation and Adjudication Committee
October 2016

PRETRIAL JUSTICE REFORM FOR NORTH CAROLINA

NCCALJ COMMITTEE ON CRIMINAL INVESTIGATION & ADJUDICATION REPORT

OCTOBER 2016

The Committee unanimously recommends that the Chief Justice appoint a Pretrial Justice Study Team (Study Team) to carry out a Pilot Project to implement and assess legal- and evidence-based pretrial justice practices. As used here, the term legal- and evidence-based pretrial justice practices refers to practices that comport with the law and that are driven by research. Such practices have been endorsed by many justice system stakeholder groups, including the Conference of Chief Justices; the Conference of State Court Administrators; the International Association of Chiefs of Police; the National Sheriffs' Association; the Association of Prosecuting Attorneys; the National Legal Aid and Defenders Association; the National Association of Criminal Defense Lawyers; the National Association of Counties; and the American Bar Association. Their use has been shown to produce excellent results. With one exception, legal and evidence-based pretrial justice practices are not in place in North Carolina. Although one North Carolina jurisdiction—Mecklenburg County—has implemented some of these practices, all such practices are not in place in that jurisdiction and to date rigorous evaluation of their implementation has not been done. The Committee recommends implementing and evaluating the full range of legal- and evidence-based pretrial justice practices identified below in North Carolina through a Pilot Project in five to seven counties.

Background

After identifying pretrial justice reform as a top priority for its work, in February 2016, the Committee received an overview of how pretrial release currently works in North Carolina; heard from John Clark, senior manager, Technical Assistance, Pretrial Justice Institute (PJI) and a team of PJI experts about current research and developments in pretrial risk assessment and risk management; received a briefing on Mecklenburg County's experience with pretrial justice reform; and heard a briefing on the Commonwealth of Virginia's experience with the same. In the Spring of 2016, the Committee issued a Request for Expert Assistance on Pretrial Release Reform. Subsequently the Commission, through the National Center for State Courts, contracted with PJI to provide the requested assistance. Additionally, the Committee received and considered an 88-page response from the North Carolina Bail Agents Association, and heard from that Association's President and members at its October 2016 meeting.

Pilot Project

The recommended Pilot Project should include, at a minimum, the following legal- and evidence-based pretrial justice practices. All of these practices are discussed in more detail in the PJI report, from which much of this content is directly drawn.ⁱ

- The use of an empirically-derived pretrial risk assessment tool by the magistrate and all subsequent decisionmakers. Implementing an empirically-derived pretrial risk assessment tool is the keystone to a 21st century, legal and evidence-based pretrial release system. First, research demonstrates that such tools are highly effective in sorting defendants into categories showing their probabilities of success on pretrial release in terms of public safety

and court appearance. Second, such tools can track any disparate impacts that might result through their use on racial and ethnic groups; if disparities arise, they can be easily identified, which is the first step in addressing them. Third, using an empirically-derived pretrial risk assessment tool allows a jurisdiction to make valid comparisons between different types of release or specific conditions of release. Fourth, knowing the risk levels of defendants who are in jail helps a jurisdiction assess whether it is using its expensive jail resources for those who need to be there because of their risks. Fifth, knowing the risk levels of defendants coming through the system can help officials plan for, and justify to taxpayers, the resources needed to address the risks. Recognizing these benefits, at least seven states – Colorado, Delaware, Hawaii, Kentucky, New Jersey, Virginia, and West Virginia – have passed laws requiring the use of statewide empirically-derived pretrial risk assessment tools. The Committee recommends use of the Arnold Foundation’s PSA-Court tool, in part because it already has been successfully implemented in Mecklenburg County, North Carolina.

- The development of a decision matrix to help magistrates and judges make pretrial release decisions. Once the risk assessment is completed on a defendant, the next step is to determine how to use that information to make a release/detention decision. Research is providing guidance on how to do that, matching identified risk levels with appropriate risk management strategies. For example, defendants who are found to be low risk have very high rates of success on pretrial release. Research has shown that these already high rates cannot be improved by imposing restrictive conditions of release on low risk defendants. Also, it must be recognized that although the charge may provide little information on a defendant’s risk to public safety or to fail to appear in court, the impact of new criminal activity or failing to appear on the more serious charge is perceived to be much greater. Therefore, many jurisdictions using empirically-derived pretrial risk assessment tools have developed matrices that combine the risk level with charge types, for example, non-violent misdemeanor, violent misdemeanor, non-violent felony, and violent felony. The resulting intersection of the risk level and charge type produces a suggested release/detention decision. The decision itself remains within the discretion of the judge or magistrate after considering the risk assessment, the matrix, and any other relevant factors.
- The implementation of risk management strategies aimed at matching risk levels with the most appropriate level of support or supervision. Put another way: any conditions set on a defendant’s pretrial release should be related to the risk identified for that individual defendant.
- A constitutionally valid preventative detention procedure to ensure that wealthy defendants who present an unacceptable risk cannot secure release simply by paying a money bond.
- Encouraging use of criminal process that does not require arrest for low-risk defendants.
- Early involvement by the prosecutor and defense counsel in the setting of conditions of pretrial release.
- Procedures for timely review, in every case, by a judge or a magistrate’s pretrial release determination for in-custody defendants.
- Evaluation of a variety of conditions of pretrial release (including but not limited to: secured bonds, unsecured bonds, pretrial services, electronic monitoring, and court date reminder systems) for defendants based on their assessed risk.
- Training for all Pilot Project participants.
- Robust, uniform empirical evaluation of all components of the Pilot Project that takes into consideration the three goals of the pretrial release decision-making process: to provide

reasonable assurance of the safety of the community; to provide reasonable assurance of appearance in court; and to maximize pretrial release.

- Recommendations by the Study Team regarding whether or not any of the components of the Pilot Project should be implemented more broadly or statewide.

The Committee recommends that the Study Team be chaired by a North Carolina judicial official and be supported by technical assistance from a well-regarded and nationally known entity in the field of pretrial justice reform as well as full-time administrative staff. In its first phase, the Study Team should identify, for the Director of the North Carolina Administrative Office of the Courts, any changes to statutes or court rules that are required to carry out the Pilot Study.

Committee Members

Committee members included:

Augustus A. Adams, N.C. Crime Victims Compensation Committee
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ⁱ See attached. UPGRADING NORTH CAROLINA'S BAIL SYSTEM: A BALANCED APPROACH TO PRETRIAL JUSTICE USING LEGAL AND EVIDENCE-BASED PRACTICES, Pretrial Justice Institute, 2016. The PJI report is also available online at <http://nccalj.org/wp-content/uploads/2016/10/Upgrading-NCs-Bail-System-PJI-2016-003.pdf>.

UPGRADING NORTH CAROLINA'S BAIL SYSTEM: A BALANCED APPROACH TO PRETRIAL JUSTICE USING LEGAL AND EVIDENCE-BASED PRACTICES



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PREFACE

The North Carolina Commission on the Administration of Law and Justice contracted, through the National Center for State Courts with the Pretrial Justice Institute (PJI) to produce a report containing evidence-based recommendations to improve North Carolina’s pretrial justice system.

The Pretrial Justice Institute is a market-driven organization that advances safe, fair and effective pretrial justice that honors and protects all people. We do this by monitoring the state of policy and practice across the states, convening communities of practice to reach common goals, communicating about the law and research to diverse groups of people, demonstrating that moving from resource- to risk-based decision-making is possible, and operating with business discipline.

Below are several terms that appear in this report, and definitions for how those terms are used.

Bail: Based on legal and historical research as well as accepted notions underlying pretrial social science research, “bail” is defined as a process of conditional pretrial release.¹ Technically, bail is not money. States should not be faulted for blurring the concepts of money (a condition of release) and bail (release) because for roughly 1,500 years, paying money (or giving up property before that) was the only condition used in England and America to provide reasonable assurance of court appearance. Nevertheless, recognizing that bail is not money helps states move forward in their efforts to improve pretrial justice without unnecessary confusion.

North Carolina defines bail as money, (G.S. 15A-531(4); G.S. 58-71-1(2)), but this definition does not appear to pose the major problems we see in other states, such as constitutional “right to bail” provisions. When trying to articulate the right that North Carolina defendants enjoy, however, at least some local pretrial release policies contain quotes from U.S. Supreme court opinions equating the “right to bail” with the “right to release” before trial and the “right to freedom before conviction.” Making sense of these and other statements made about bail throughout its history requires an understanding that bail means release.

At its core, pretrial justice is simply an attempt to release and detain the right defendants, using legal and evidence-based practices to create rational, fair, and transparent pretrial processes. Except when necessary to make some point, this report will mostly avoid using the word “bail” in favor of the term “release.” When the term bail is used, however, such as describing “money-based bail practices” or making various references to the bail literature, the reader should recognize that the authors define “bail” as a process of conditional pretrial release.

¹ Timothy R. Schnacke, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*, National Institute of Corrections, (2014), [hereinafter *Fundamentals*].

Empirically-derived risk assessment: A core element of evidence-based pretrial justice practices is the use of an objective risk assessment tool that has been constructed and tested on the basis of research demonstrating the tool’s success in sorting defendants into categories showing their probabilities of appearance in court and of completing the pretrial period without any arrests for new criminal activity. This paper uses the term “empirically-derived risk assessment” to describe such tools.

Legal and evidence-based practices: Legal and evidence-based practices are “interventions and practices that are consistent with the pretrial legal foundation, applicable laws, and methods research has proven to be effective in decreasing failures to appear in court and danger to the community during the pretrial stage. The term is intended to reinforce the uniqueness of the field of pretrial services and ensure that criminal justice professionals remain mindful that program practices are often driven by law and when driven by research, they must be consistent with the pretrial legal foundation and the underlying legal principles.”²

Secured bond: As used in this report, a secured bond is one that requires a financial condition be met before a defendant can be released from custody. That condition can be met by payment of the bond amount by the defendant or others (e.g., family or friends) or by guarantee of payment by a licensed commercial bail bonding company.

Unsecured bond: An unsecured bond is one in which the defendant pays no money to the court in order to be released, but is liable for the full amount of the bond upon his or her failure to appear in court.

² Marie VanNostrand, Legal and Evidence-Based Practices: Applications of Legal Principles, Laws and Research to the Field of Pretrial Services, Nat’l Inst. of Corr. (2007), at 12.

EXECUTIVE SUMMARY

This report focuses on helping North Carolina officials work toward a balanced approach to achieving the three goals of the pretrial release decision-making process: to provide reasonable assurance of the safety of the community; to provide reasonable assurance of appearance in court; and to maximize pretrial release. It does so by focusing on legal and evidence-based practices—ones that fully comport with the law and that are driven by research. The use of such practices has been fully endorsed by all the key justice system stakeholder groups, including: the Conference of Chief Justices; the Conference of State Court Administrators; the International Association of Chiefs of Police; the National Sheriffs' Association; the Association of Prosecuting Attorneys; the National Legal Aid and Defenders Association; the National Association of Criminal Defense Lawyers; the National Association of Counties; and the American Bar Association. And the use of such practices has been shown to produce excellent results.

Except for very promising work being done in Mecklenburg County, legal and evidence-based pretrial justice practices are not in place in North Carolina. Magistrates and judges in the state place significant emphasis on an antiquated tool—bond guidelines—which several federal courts around the country have recently called unconstitutional. Courts also rely heavily on a release option—the secured bond—that was established in the 19th Century to address a problem that was unique to that time; the ability of a criminal defendant to flee into the vast wilderness of America's growing frontier and simply disappear, never to face prosecution. And only 40 of the state's 100 counties are served by pretrial services programs that can provide supervision of defendants released by the court with conditions of pretrial release. Many of these programs have very limited supervision capacity.

The model for legal and evidence-based pretrial release practices in North Carolina includes the use of an empirically-derived pretrial risk assessment tool, the development of a decision matrix that would help magistrates and judges make pretrial release decisions, the implementation of risk management strategies aimed at matching risk levels with the most appropriate level of support or supervision, the expanded use of citation releases by law enforcement, the very early involvement of the prosecutor and defense, and the initiation of automatic bond reviews for in-custody misdemeanor defendants.

Implementing such a model of legal and evidence-based practices in North Carolina would be greatly facilitated by changes in the state's laws. Current North Carolina law does not expressly provide for a right to actual pretrial release—it is crafted only in terms of setting or not setting conditions—nor does it articulate a procedure for preventive detention of high risk defendants. A right merely to have conditions set, coupled with the statutory provisions discussing those conditions as well as no decent process for risk-based detention, naturally moves North Carolina magistrates and judges toward using secured money conditions to address risk for both court appearance and public safety, and toward attempting to use unattainable money conditions to detain defendants posing extremely high pretrial risk. In addition, although the statute speaks of pretrial risk, it makes determinations of who is entitled to having release

conditions set based primarily on charge as a proxy for risk, and subtly points judicial officials toward using the money condition to address risk. The better practice would be to set forth a right to release for all except extremely high-risk defendants (or defendants who are not as risky but who also face extremely serious charges, or both), provide for a lawful and transparent detention provision based on risk to allow pretrial detention with no conditions, and then create mechanisms so that persons released pretrial are released immediately.

Based on this review of pretrial justice in North Carolina, the following actions are recommended.

Short-Term Recommendations:

- Judicial officials should immediately begin issuing unsecured bonds for pretrial release instead of secured bonds.
- State officials should appoint a Legal and Evidence-Based Practices Implementation Team to oversee the implementation of the recommendations of this report.
- The Implementation Team should develop a vision statement for a state-wide, data-driven pretrial justice system in North Carolina.
- The Implementation Team should develop an Implementation Plan based upon the vision statement, with a focus on initially implementing the plan in 5 to 7 pilot counties.
- The Implementation Team should incorporate the following elements in its plan:
 - The use of an empirically-derived pretrial risk assessment tool by every magistrate in every criminal case at the initial appearance
 - The use of a release/detention matrix that factors risk level and charge type
 - The development of differentiated risk management procedures that match the identified risk to the appropriate supervision level
 - The expanded use of citations by law enforcement
 - Early involvement of prosecutor and defense counsel
 - The institution of automatic bond review procedures for misdemeanor defendants
 - Uniform data reporting standards.
- The Implementation Team should draft language for bills or proposed court rules that incorporate the changes in law needed to implement the plan in the pilot counties.
 - The Implementation Team should develop a preventive detention framework for defendants who present unacceptably high risk
 - The Implementation Team should develop a release framework for defendants who are not detained
 - The Implementation Team should draft other legislation and/or court rules needed to implement the recommendations in this report

Mid-Term Recommendations:

- The Implementation Team should fully implement the plan in the pilot counties.

- The Implementation Team should ensure that all staff with a role in implementing the plan are fully informed of its purpose and rationale and trained for successful implementation.
- The Implementation Team should establish a data dashboard to monitor outcomes and regularly review the data and make appropriate adjustments to the plan.

Long-Term Recommendations:

- The Implementation Team should begin implementing the plan in the remaining counties of the state.
- The Implementation Team should develop a plan for sustaining changes that have been made and holding accountable those who make the changes.
- North Carolina officials should consider what role, if any, secured bonds should continue to play in the state's pretrial system, and draft appropriate proposals for statutory or court rule amendments.

As the Commission recognizes, implementing these recommendations will not be easy, but the benefits that will flow from doing so will be worth the effort. A well-functioning legal and evidence-based pretrial release process benefits justice system officials who can better see, and thus have greater control over, the process and the extent to which it is achieving the three goals of the pretrial release decision. It also benefits defendants going through the system, reducing instances of racial disparities, giving all defendants a sense of procedural justice, and upholding their Constitutional rights. It benefits victims, giving them perceptions of safety and predictability, and improving their chances of experiencing reparations for harm done to them. Finally, it benefits taxpayers, who have a better understanding of how their taxes are being spent and what outcomes they are getting.

I. ACHIEVING A BALANCED APPROACH TO PRETRIAL RELEASE THROUGH LEGAL AND EVIDENCE-BASED PRACTICES

There are three goals of the pretrial release decision: (1) to provide reasonable assurance of the safety of the public; (2) to provide reasonable assurance of the appearance of defendants in court; and (3) to provide due process for those accused of a crime, with “[t]he law favor[ing] the release of defendants pending adjudication of charges.”³ When jurisdictions focus on one or two of these goals at the expense of a balanced approach considering all three, the inevitable result is a dysfunctional system where many defendants who could be safely released remain in jail and many others who pose unacceptably high risks are released.

It is becoming increasingly clear that an option developed in the 19th Century – the secured bond – is inherently incapable of achieving the balanced approach that effective 21st Century public policy demands. When first introduced, the assumption that a secured bond provided a financial incentive for a defendant to appear in court gave justice system officials some hope in addressing at least one of the three goals of pretrial release. And since the capability to empirically test this assumption did not exist, this assumption became an article of faith, and it remains so today in many jurisdictions. In accepting this assumption, courts developed tools, such as those currently used in many North Carolina local pretrial release policies, that assume that the maximum sentence that defendants face defines their level of risk, and that a dollar amount that falls within a suggested range is the best way to address those risks.

Justice system officials across the country have relied on the secured bond option so often and for so long, not because there was evidence that it was effective, but because familiarity has bred acceptance – and because the commercial bail bonds industry that has benefited financially from its continued use has fought against any proposals or actions to implement new, evidence-based practices.⁴

Information showing how ill-suited secured bonds are in achieving the goals of the pretrial release decision can no longer be ignored. Science has provided new, evidence-based tools that show how to achieve the balanced approach, and do so in a way that aligns with the requirements of the law. States around the country, including, now, North Carolina, are looking at the science with the aim of creating a balanced system of pretrial justice that is supported by research and that honors the spirit and the letter of the law.

³ *American Bar Association Standards for Criminal Justice (3rd Ed.) Pretrial Release* (2007) Std. 10-1.1, at 1.

⁴ See, for example: https://www.themarshallproject.org/2016/06/29/a-professional-bounty-hunter-who-likes-the-bail-system-just-the-way-it-is?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20160630-530#.N7zxLibBb.

The law requires a balanced approach

The law favors the release of defendants pending trial. As summed up by U.S. Supreme Court Justice Robert Jackson in a 1951 case:

The practice of admission to bail, as it has evolved in Anglo-American law, is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. On the contrary, the spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty. Without this conditional privilege, even those wrongly accused are punished by a period of imprisonment while awaiting trial and are handicapped in consulting counsel, searching for evidence and witnesses, and preparing a defense.⁵

But the law also recognizes that some defendants pose unmanageable risks to public safety and non-appearance, and can, if strict procedural steps are followed, be held without bond.⁶

An examination of the history of bail and pretrial release reveals that for centuries, dating back to Medieval England, bail was an “in or out” proposition. Defendants who were bailable under the law were to be released, and those who were non-bailable were to be detained. This system carried over from England to this country during the colonial period and after independence. It was in the mid-1800’s, when defendants found it easy to flee and disappear into parts of the growing country that the idea of secured bonds came about. By 1900, the secured bond system had given rise to the for-profit bail bonding industry. Almost immediately afterwards, and numerous times since, analysts drew attention to the dysfunctions of the pretrial release system that relied on secured bonds.⁷ As one researcher noted almost 90 years ago: “In too many instances, the present system neither guarantees security to society nor safeguards the rights of the accused. It is lax with those with whom it should be stringent and stringent with those with whom it could safely be less severe.”⁸

The legal issues raised by the use of secured bonds are now receiving attention by the federal courts. In the past two years, number of cases have been filed in federal courts challenging the use of secured bonds on the grounds that requiring indigent defendants to post financial bonds as a pre-condition to release violates their 14th Amendment equal protection rights. The civil rights law firm Equal Justice Under Law (EJUL) has amassed almost a dozen victories in class action challenges to money bail systems in several states, including Alabama, Georgia, Kansas, Louisiana, Missouri, and Mississippi.⁹ These suits have forced the courts in those jurisdictions to drastically reform their bail-setting practices.

⁵ *Stack v. Boyle*, 342 U.S. 1, 7 (1951); see also *United States v. Salerno*, 481 U.S. 739, 755 (1987) (“In our society, liberty is the norm and detention prior to trial or without trial is the carefully limited exception.”)

⁶ *Salerno*, 481 U.S. at 755.

⁷ *Fundamentals*, *supra* note 1, at 35-48.

⁸ Arthur L. Beeley, *The Bail System in Chicago*, (1927, reprinted 1966).

⁹ For information on these suits, go to the EJUL website at: <http://www.equaljusticeunderlaw.org>.

The empirical evidence supports a balanced approach

The research has clearly identified several negative consequences of using an unbalanced approach to pretrial release. The first of these consequences is the large number of bailable defendants who remain in jail for either a portion or the entirety of the pretrial period because they cannot meet the condition of their release – posting a secured bond. According to the Bureau of Justice Statistics, approximately 460,000 persons were being held in jails throughout the United States on June 30, 2014 awaiting disposition of their charges, representing 63% of all jail inmates.¹⁰ While not all of these defendants are bailable, most are. 89% of detained felony defendants in a national survey remained in custody throughout the pretrial period on secured bonds that were never posted.¹¹ As shown in Section II of this report, there are large numbers of persons sitting in North Carolina jails because of inability to meet their release condition – posting a secured bond.

A second consequence of using an unbalanced approach is the impact of short-term incarceration – the few days it may take a person who does have the financial resources to post a secured bond to come up with the money to do so. One study found that, when *controlling for other factors*, defendants who had scored as low risk on the empirically-derived pretrial risk assessment tool and who were held in jail for just 2-3 days after arrest were 39% more likely to be arrested on a new charge while the first case was pending than those who were released on the first day, and 22% more likely to fail to appear. Low risk defendants who were held 4-7 days were 50% more likely to be arrested, and 22% more likely to fail to appear; those held -14 days were 56% more likely to have a new charge and 41% more likely to have a failure to appear. The same patterns held for medium risk defendants who were in jail for short periods.¹² While the study did not explore why short-term incarceration leads to these findings, they may simply reflect the disruption caused to people’s lives by being in jail for just a few days.

In short, being held in jail for just a few days while making financial arrangements for a secured bond negatively impacts all three goals of the pretrial release decision: it delays release, it leads to higher rates of new criminal activity, and it leads to higher rates of failure to appear in court.

There are also major consequences for low and moderate risk defendants who remain incarcerated throughout the pretrial period, unable to post secured bonds. The same study also found that, again *controlling for other factors*, low risk defendants who were held in jail throughout the pretrial period due to their inability to post their bonds were 28% more likely to recidivate within 24 months after adjudication than low risk defendants who were released pretrial. Medium risk defendants detained

¹⁰ Todd D. Minton and Zhen Zeng, *Jail Inmates at Midyear 2014*, Bureau of Justice Statistics (2015).

¹¹ Brian A. Reaves, *Felony Defendants in Large Urban Counties, 2009 – Statistical Tables*, Bureau of Justice Statistics (2013), at 17.

¹² Christopher Lowenkamp, Marie VanNostrand, and Alex Holsinger, *The Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation (2013), [hereinafter *Hidden Costs*].

throughout the pretrial period were 30% more likely to recidivate within the following two years.¹³

Such results might be palatable if secured money bonds were found to be more effective in terms of public safety and court appearance. The for-profit bail bonding industry routinely cites studies purporting to show that that is the case, relying on data collected by the Bureau of Justice Statistics (BJS). Despite repeated claims to the contrary by the commercial bail bonding industry, the BJS data survey was not designed to make assessments of the effectiveness of one type of bond over any other type.¹⁴ As a result of these claims by the bail bonding industry, BJS took the highly unusual step of issuing a Data Advisory, warning that its “data are insufficient to explain causal associations between the patterns reported, such as the efficacy of one type of pretrial release over another.”¹⁵

One study, however, overcomes the methodological flaws of research cited by the bonding industry, by controlling for risk levels and allowing for valid comparisons. That study found that, across all risk levels, there were no statistically significant differences in outcomes (i.e. court appearance and public safety rates) between defendants released without having to post financial bonds and those released after posting such a bond. The study also looked at the jail bed usage of defendants on the two types of bonds. Defendants who did not have to post financial bonds before being released spent far less time in jail than defendants who had to post. This is not surprising, since defendants with secured bonds must find the money to satisfy the bond or make arrangements with a bail bonding company in order to obtain release. Also, 39% of defendants with secured bonds were never able to raise the money and spent the entire pretrial period in jail. In summary, the study found that unsecured bonds, which do not require defendants to post money before being released, offer the same public safety and court appearance benefits as secured bonds, but do so with substantially less use of jail bed space.¹⁶ Unlike any of the studies cited by the for-profit bail bonding industry, this study looked at all three goals of the pretrial release decision – safety, appearance, and release.

It is not surprising that secured money bonds have no impact on public safety rates. Secured bonds allow defendants who have access to money to purchase their pretrial release, regardless of the risk they may pose to public safety. Ironically, under

¹³ Id.

¹⁴ Kristen Bechtel, John Clark, Michael R. Jones, and David Levin, *Dispelling the Myths: What Policy Makers Need to Know About Pretrial Research*, Pretrial Justice Institute (2012).

¹⁵ Bureau of Justice Statistics, *Data Advisory: State Court Processing Statistics Data Limitations* (2010), at 1. The State Court Processing Statistics Project collected data on the processing of felony cases in 40 on the nation’s 75 largest counties. Among the data elements collected were: was the defendant released during the pretrial period; if so, what type of release; and what was the failure to appear rate and rate of new criminal activity by type of release. The project’s methodology was not designed to make sure that the release type groups were similar when looking at failure to appear and new criminal activity rates by release type, which is why the Bureau of Justice Statistics issued the Advisory to make clear that any such comparisons were invalid.

¹⁶ Michael R. Jones, *Unsecured Bonds: The “As Effective” and “Most Efficient” Pretrial Release Option* (2013), [hereinafter *Unsecured Bonds*]. This study was conducted from data on 1,970 defendants from 10 different counties in Colorado in 2011.

this system, magistrates and judges actually may make it easier for defendants deemed to pose unacceptable public safety risks to get out, when, to address those risks, they set high secured bond amounts. While the intent of the judicial officer may be that the defendant will not be able to post the bond, the economic reality is that the higher the bond amount, the higher the profit margin for the bonding company that does business with a high-danger-risk defendant. For example, a commercial bail bonding company might make \$1,500 from a \$10,000 bond, but the company can earn \$15,000 from a \$100,000 bond, giving the company a greater incentive to write a higher bond.¹⁷

And since the bonding company is only liable for bond forfeiture if the defendant fails to appear in court – not if the defendant is arrested for new criminal activity while on pretrial release – bonding out high-danger-risk, high-bond defendants is a no-risk venture for the company. It is not surprising that research shows that about half of high-danger risk defendants get out of jail pending trial.¹⁸

An unbalanced approach adversely impacts defendants, particularly those of color, and taxpayers

Research has consistently shown that, all else being equal, defendants who are detained throughout the pretrial period receive much harsher outcomes than those who obtain release.¹⁹ A recent study quantified just how harsh these outcomes are for those found by an empirically-derived risk assessment tool to be low and moderate risk. The study found that low risk defendants who were detained throughout the pretrial period were five times more likely to get a jail sentence and four times more likely to get a prison sentence than their low risk counterparts who were released pretrial. Medium risk defendants who were detained pretrial were four times more likely to get a jail sentence and three times more likely to get a prison sentence. Both low and medium risk defendants who were detained pretrial also received much longer jail and prison sentences than their counterparts who spent the pretrial period in the community.²⁰

Disparities unleashed by secured money bonds fall most heavily on racial minorities. Studies have consistently shown that African American defendants have higher secured bond amounts and are detained on secured bonds at higher rates than white defendants, a factor contributing to the disproportionate confinement of persons of color.²¹

¹⁷ *Rational and Transparent Bail Decision Making: Moving From a Cash-Based to a Risk-Based Process*, Pretrial Justice Institute (2012), at 8-9, [hereinafter *Rational and Transparent*].

¹⁸ Laura and John Arnold Foundation, *Developing a National Model for Pretrial Risk Assessment: Research Summary* (2013).

¹⁹ *Rational and Transparent*, *supra* note 17, at 2.

²⁰ Christopher Lowenkamp, Marie VanNostrand, and Alex Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Laura and John Arnold Foundation (2013).

²¹ Traci Schlesinger, *Racial and Ethnic Disparity in Pretrial Criminal Processing*, 22 JUST Q., 170, 187 (2005); Stephen Demuth, *Racial and Ethnic Differences in Pretrial Release and Decisions and Outcomes: A Comparison of Hispanic, Black and White Felony Arrestees*, 41 CRIMINOLOGY 873, 880-81 (2003).

Requiring defendants to post financial bonds as a pre-condition to being released pretrial has obvious implications for those of low economic means – even when they are able to pay the bondsman’s fees, usually about 15% of the full value of the bond. The money may have come out of family funds for groceries or the next month’s rent. And, of course, those who are unable to make a bond payment may fall into deeper economic despair through the loss of jobs and housing while in pretrial confinement.

North Carolina citizens seem to understand how the state’s justice system impacts those with little money, and those of certain racial and ethnic groups. A 2015 survey of state residents showed that 64% of respondents believe that low-income people are likely to receive unfair treatment from the courts. Forty-seven percent felt that African Americans were treated more harshly, including 67% of African American respondents who felt that way, and 46% of respondents felt that Hispanics received worse treatment.²²

Detaining persons pretrial also greatly impacts taxpayers, with no return benefit. It has been estimated that budgets for the operation of county jails rose from \$5.7 billion in 1983 to \$22.2 billion in 2011. These figures do not, however, take into consideration the costs that come out of other county budget lines, such as employee pension benefits and contracted health care to jail inmates, leaving the total costs to taxpayers unknown. “Because the costs provided are too often incomplete, policymakers and the public are seldom aware of the full extent of their community’s financial commitment to the operations of the local jail. Given the outsize role that jails play in the country’s criminal justice system – incarcerating millions of people annually – it is striking that the national price tag for jails remains unknown and that taxpayers who foot most of the bill remain unaware of what their dollars are buying.”²³ And given the significant growth in jail spending, it is not surprising that 40% of jails in a national survey state that reducing jail costs is one of their most serious issues.²⁴

In short, the current system produces no discernable benefits for anyone, except for one group – the for-profit bail bonding industry. It is not surprising, then, that the industry fights every effort to introduce legal and evidence-based pretrial justice practices.

A national movement for legal and evidence-based pretrial justice is underway

Ignoring the protests of the commercial bail bonding industry, over the past four years, there have been significant and unprecedented calls from key and diverse justice system stakeholders for implementing legal and evidence-based pretrial justice practices aimed at making sure that only those who pose unmanageable risks are detained pretrial.

²² *Elon University Poll, State Courts, October 29-November 2, 2015* (2015), at 4.

²³ Christian Henrichson, Joshua Rinaldi, and Ruth Delaney, *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*, Vera Inst. Justice, 5 (2015).

²⁴ Natalie R. Ortiz, *County Jails at a Crossroads: An Examination of the Jail Population and Pretrial Release*, Nat’l Assn. of Counties, (2015), at 8.

For example, in 2012, after a year of study, the Conference of State Court Administrators issued a Policy Paper concluding that “[m]any of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but do lack the financial means to be released. Conversely, some with financial means are released despite a risk of flight or threat to public safety, ...” The Policy Paper went on to say that “[e]vidence-based assessment of the risk a defendant will fail to appear or will endanger others if released can increase successful pretrial release without financial conditions that many defendants are unable to meet. Imposing conditions on a defendant that are appropriate for that individual following a valid pretrial assessment substantially reduces pretrial detention without impairing the judicial process or threatening public safety.”²⁵

Endorsing this Policy Paper, the Conference of Chief Justices issued a resolution that “urge(d) that court leaders promote, collaborate, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions and advocate for the presumptive use of non-financial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crime.”²⁶

Several other national associations also have issued policy statements or resolutions calling for bail reform. These include: the International Association of Chiefs of Police, the National Sheriffs’ Association, the American Jail Association, the Association of Prosecuting Attorneys, the National Legal Aid and Defenders Association, the National Association of Criminal Defense Lawyers, the American Probation and Parole Association, and the National Association of Counties.²⁷

These organizations, along with the National Judicial College, the National Center for State Courts, the American Bar Association, the National Association of Court Management, the National Criminal Justice Association, the Global Board of Church and Society of the United Methodist Church, the National Conference of State Legislatures, the Council of State Governments, the National Organization for Victim Assistance, along with dozens of other groups and individuals, are members of a Pretrial Justice Working Group, convened by the PJI and the Bureau of Justice Assistance of the U.S. Department of Justice to pursue legal and evidence-based enhancements to pretrial justice.²⁸

²⁵ *Evidence-Based Pretrial Release* Policy Paper available on the National Center for State Court’s website at:

<http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/Evidence%20Based%20Pre-Trial%20Release%20-Final.ashx>.

²⁶ Resolution available at the National Center for State Court’s website at:

<http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/01302013-pretrial-release-Endorsing-COSCA-Paper-EvidenceBased-Pretrial-Release.ashx>.

²⁷ Statements available at <http://www.pretrial.org/get-involved/pretrial-national-coalition/>.

²⁸ Information on Working Group progress available at:

<http://www.pretrial.org/download/infostop/Implementing%20the%20Recommendations%20of%20the%20National%20Symposium%20on%20Pretrial%20Justice-%20The%202013%20Progress%20Report.pdf>.

North Carolina is not alone in exploring bail reform. Legislatures in four states – Colorado, Kentucky, New Jersey and Alaska – recently re-wrote their bail laws to bring them in line with legal and evidence-based pretrial justice practices.²⁹ Several other states, including Arizona, Indiana, Maine, Maryland, Nevada, New Mexico, Texas, and Utah, have commissions or task forces examining statutory or court rule changes needed to incorporate legal and evidence-based practices.³⁰

²⁹ Colorado House Bill 13-1236 (2013), Kentucky House Bill 463 (2011), New Jersey Senate Bill 946 (2014), Alaska Senate Bill 91 (2016).

³⁰ In Arizona, the Chief Justice has appointed a Task Force on Fair Justice for All, tasked with identifying what changes are needed to assure that people are “not jailed pending the disposition of charges merely because they are poor.” See:

<http://www.ncsc.org/~media/Microsites/Files/PJCC/Pretrial%20Justice%20Brief%203%20-%20AZ%20final.ashx>. In Indiana, the Chief Justice appointed a Committee to Study Pretrial Release to advise the court on the use of an empirically-derived pretrial risk assessment tool for the state, and on alternatives to secured bonds. See:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=13&ved=oahUKEwio3ban2I7OAhWESyYKHbUMCDQ4ChAWCCgwAg&url=http%3A%2F%2Fwww.ncsc.org%2F~%2Fmedia%2FMicrosites%2FFiles%2FPJCC%2FPretrial%2520Justice%2520Brief%25206%2520-%2520IN%252012-30-2015.ashx&usg=AFQjCNEcAouXXDmNV6xWki_k91_zJc6KrA&bvm=bv.127984354.d.eWE. In Maine, the governor, chief justice, president of the senate and speaker of the house, have established a Task Force on Pretrial Justice Reform charged with producing recommendations for legislative action that will “reduce the financial and human costs of pretrial incarceration” without compromising public safety or the integrity of the criminal justice system. The directive establishing the task force is available at:

http://www.courts.maine.gov/maine_courts/committees/2015%20PJR.pdf. In Maryland, the governor appointed a Commission to Reform Maryland’s Pretrial Release System; the Commission issued a report calling for statewide pretrial risk assessment using empirically-derived risk assessments. The Commission report is available at:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=oahUKEwiOm7upo47OAhvVG2yYKHdXYAk4QFggpMAI&url=http%3A%2F%2Fgocep.maryland.gov%2Fpretrial%2Fdocuments%2F2014-pretrial-commission-final-report.pdf&usg=AFQjCNHRPiZKczlN7kKA2ItgW_sMU19sLw&bvm=bv.127984354.d.eWE. In Nevada, the Supreme Court appointed a Committee to Study Evidence-Based Pretrial Release with the purpose of identifying an empirically-derived pretrial risk assessment tool for that state. Information about that committee is available at: <http://nvcourts.gov/AOC/Templates/documents.aspx?folderID=19312>. In New Mexico, the Supreme Court appointed an Ad Hoc Pretrial Release Committee to make recommendations for rule changes that would incorporate legal and evidence-based pretrial release practices. See:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=oahUKEwiggrXQ107OAhVNySYKHaHBAP4QFggzMAM&url=https%3A%2F%2Fsupremecourt.nmcourts.gov%2Fuploads%2FFileLinks%2F68d7e94c91244c3582e80b8272c30db1%2F2015_55.pdf&usg=AFQjCNHYXvihSggAhjTD7AW61_kc--eHgg. In Texas, the Chief Justice has appointed a Criminal Justice Committee under the Texas Judicial Council to explore ways of enhancing pretrial justice in that state. See:

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=oahUKEWjWr63loY7OAhXEOiYKHSXjA4MQFggkMAE&url=http%3A%2F%2Fwww.txcourts.gov%2Ftjc%2Fnews%2Fjudicial-council-creates-criminal-justice-committee.aspx&usg=AFQjCNFDRc6uwig2-qgCDRveQj6nSLepoAA>. In Utah, a committee of the Utah Judicial Council, the rule-making body for the judiciary, has recommended court rule changes that would include a clear statement of the presumption of release, free of financial conditions; use of a risk assessment for every defendant booked into a jail in the state; the availability across the state of supervision for moderate- and higher-risk defendants; and uniform, statewide data collection on relevant pretrial process and outcome measures. *Report to the Utah Judicial Council on Pretrial Release and Supervision Practices*, Utah State Courts, November 2015.

Legal and evidence-based practices produce excellent results

Interest is growing in legal and evidence-based practices because they work. The District of Columbia provides one example of what can happen when a jurisdiction implements such practices. In DC, the pretrial services program, using an empirically-derived risk assessment tool, either recommends non-financial release – with or without conditions, depending on the assessed risk level – or that a hearing be held to determine whether the defendant should be held without bond. The program never recommends a monetary bond. The program also supervises conditions of release imposed by the court and sends court date reminder notices to all released defendants. The outcomes are impressive – 80% of defendants are released on non-monetary bonds and 15% are held without bond. The remaining 5% are held on other charges. Of those released, during FY 2012, 89% made all of their court appearances and 88% were not rearrested on new charges while their cases are pending. Only 1% was rearrested for a violent offense. Moreover, 88% of defendants remained on release at the conclusion of their cases without a revocation for non-compliance with release conditions.³¹ These results were achieved without the use of secured money bonds.

Kentucky provides another example. In 2011, Kentucky began implementing the latest in legal and evidence-based practices, including reducing reliance on monetary bonds and basing recommendations on the results of an empirically-derived pretrial risk assessment tool. In the first two years after introducing these practices, the non-financial pretrial release rate went from 50% to 66%, with no negative impact on court appearance and public safety rates. In fact, the court appearance rate inched up from 89% to 91% and the public safety rate from 91% to 92%.³² In 2013, Kentucky's statewide pretrial services program began using an empirically-derived risk assessment tool developed and tested by the Laura and John Arnold Foundation, the Public Safety Assessment–Court (PSA–Court). This tool was constructed after a study of over a million cases from jurisdictions all across the country. It is designed to be universal; that is, it can perform well in every jurisdiction in the country. A study conducted after the first six months of use in Kentucky showed that pretrial release rates rose to 70% of all defendants, and the increased release rate was accompanied by a 15% reduction in new criminal activity of defendants on pretrial release.³³

In North Carolina, Mecklenburg County has been using the Arnold Foundation's PSA–Court tool since 2014. Mecklenburg County's pretrial services program, which administers this tool, also has developed a release matrix that combines a risk score and charge severity to arrive at a recommendation by the program regarding release.³⁴ An analysis of how PSA–Court was performing in Mecklenburg County after the first three months showed that it was successfully sorting defendants into risk categories for both

³¹ *Pretrial Services Agency for the District of Columbia: FY 2012 Organizational Assessment*, Dist. of Col. Pretrial Services Agency (2012), at 10.

³² *Pretrial Reform in Kentucky*, Administrative Office of the Courts, Kentucky Courts of Justice (2013).

³³ *Results from the First Six Months of the Public Safety Assessment – Court in Kentucky*, Laura and John Arnold Foundation (2014).

³⁴ See *infra* p. 23 (discussing such matrices in general).

new criminal activity and failure to appear. For both of these outcomes, failure rates were lowest for those defendants scored by the tool as low risk, rising in step as the risk levels rose. The data also showed that pretrial release rates were highest for the lowest risk group, and declined in step with the rises in risk, meaning that judicial officials were using the results of the risk assessment tool to help make decisions. These actions resulted in a 93% public safety rate and a 98% court appearance rate in 2015,³⁵ with no increase in reported crime.

³⁵ Data provided by Jessica Ireland, Mecklenburg County Pretrial Services, 7/19/16. See also: <http://charmeck.org/mecklenburg/county/news/Pages/Mecklenburg-County-Recognized-as-Model-for-Pretrial-Reform.aspx>.

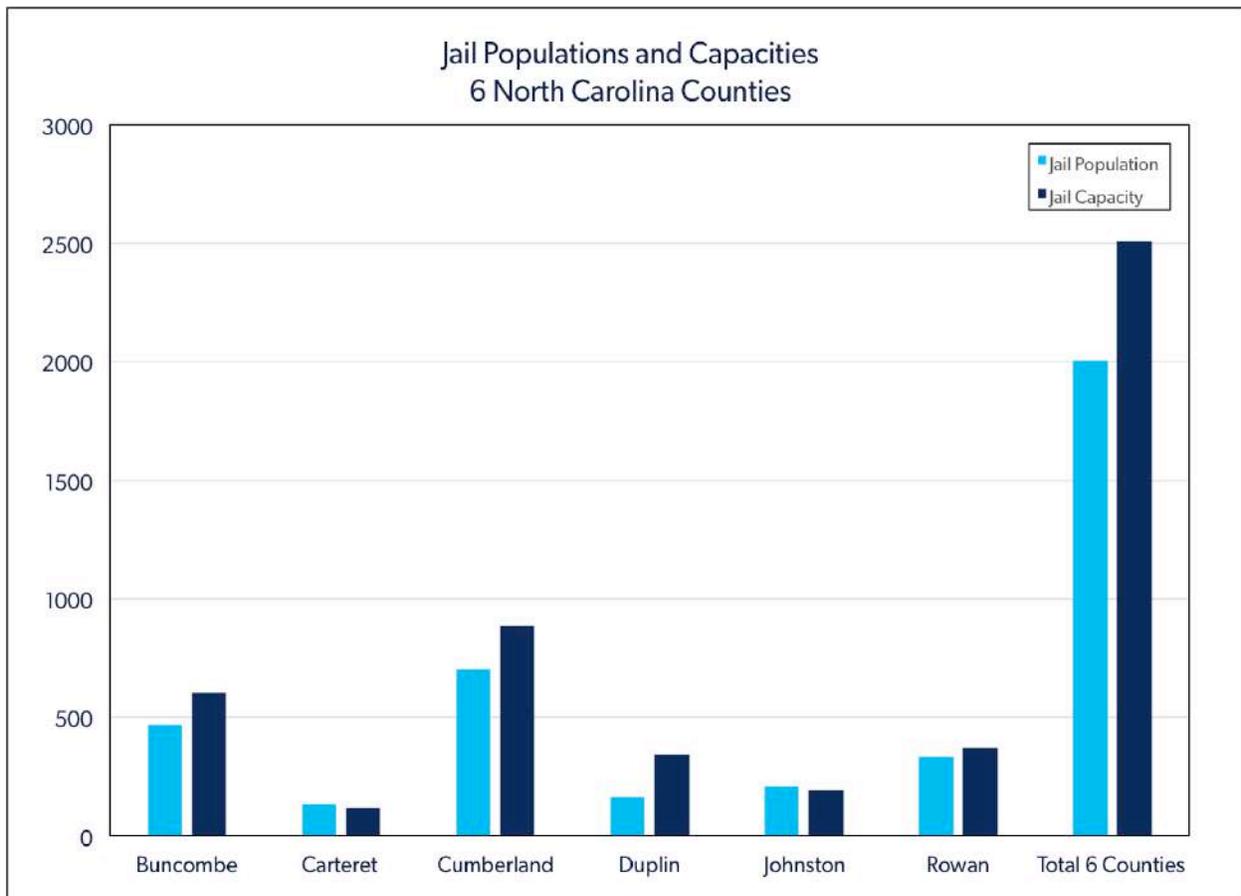
II. PRETRIAL JUSTICE IN NORTH CAROLINA: CURRENT PRACTICES

This section discusses the state of pretrial release in North Carolina with a review of available data and a discussion of the pretrial release process.

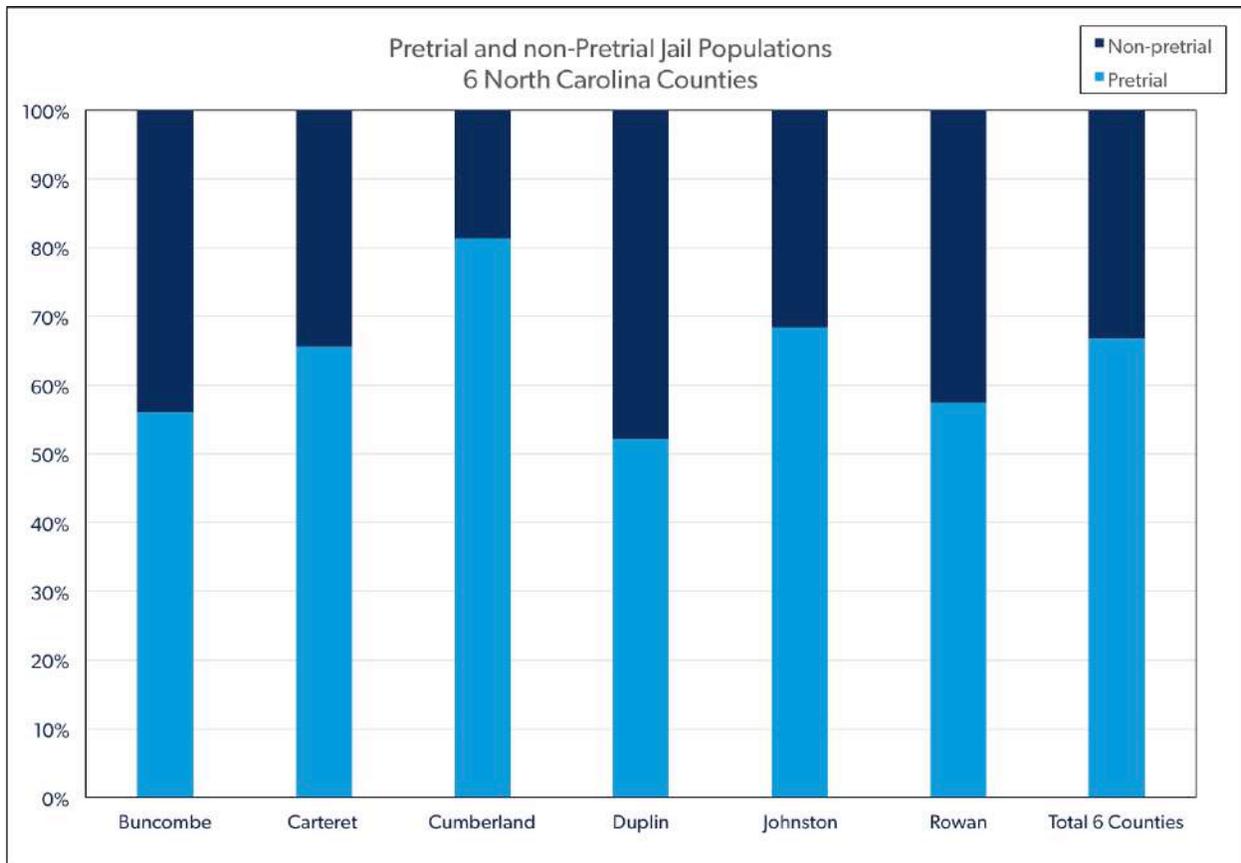
Analysis of Jail Data

Commission staff submitted for analysis jail data for six North Carolina counties. The six counties represent 10.3% of North Carolina’s population and are a diverse demographic and geographic mix. They include Buncombe, Cumberland, Johnston and Rowan Counties, all part of larger metropolitan statistical areas, along with less densely populated and rural Carteret and Duplin Counties. The data comprised a “snapshot” of the jail populations in each of the six counties on a recent date.

Overall, on the date that the snapshots were taken, the jails were at 80% capacity (Column Graph 1), ranging from 48% in Duplin County to over-capacity at 111% in Carteret County.



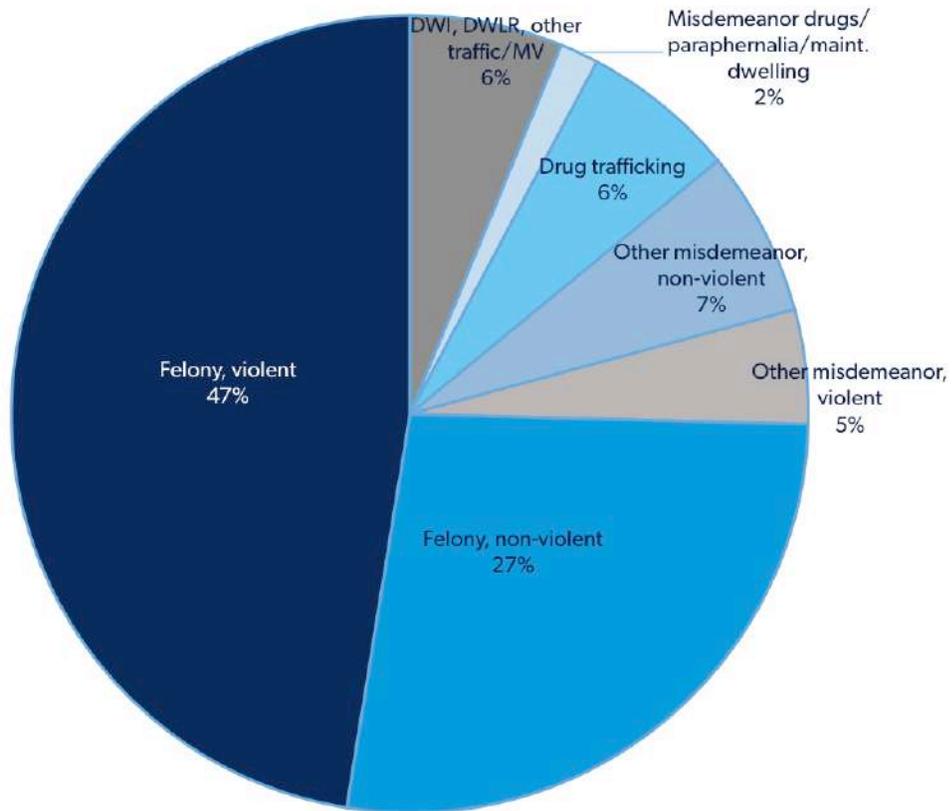
Across the six counties, on the dates of the snapshots, 67% of inmates were pretrial, ranging from a low of 52% in Duplin County to a high of 81% in Cumberland County (column graph below).



Virtually all pretrial detainees (1,268 out of 1,338 or 95%) were detained on cash or secured bond. The remaining 5% (70 detainees) who were being held without bond fell into three offense categories: violent misdemeanors, non-violent felonies, and violent felonies. Most of these (64) belonged to the violent felony category, with many of these being first degree homicide cases.

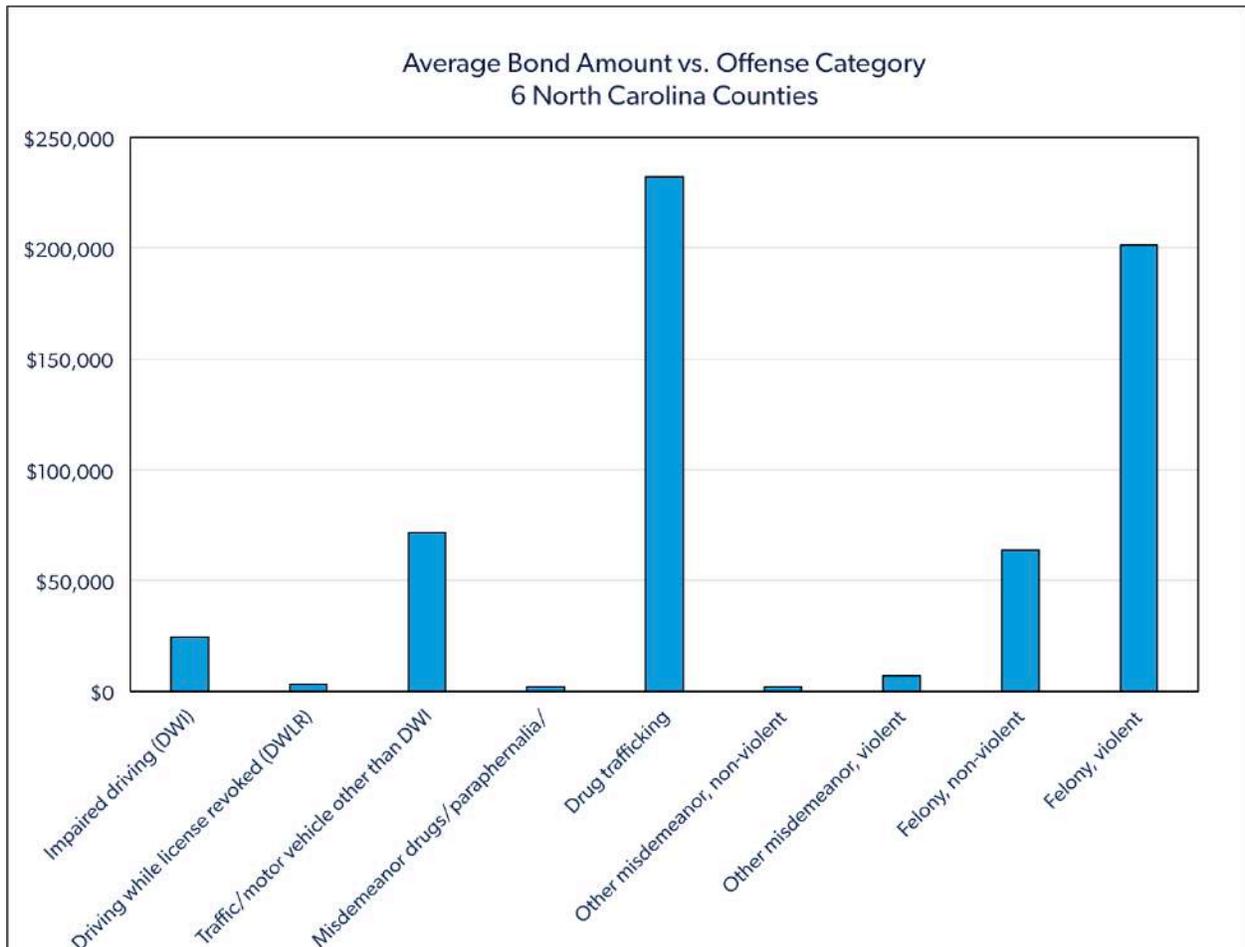
The top charge for a majority (75%) of pretrial detainees was either a violent (47.5%) or non-violent (27.1%) felony (pie chart below). As discussed in Section IV, by just knowing the top charge, and not the risk levels, of detained defendants, it is not possible to assess whether holding these defendants is a good use of jail space.

Pretrial Detainees by Offense Type 6 North Carolina Counties

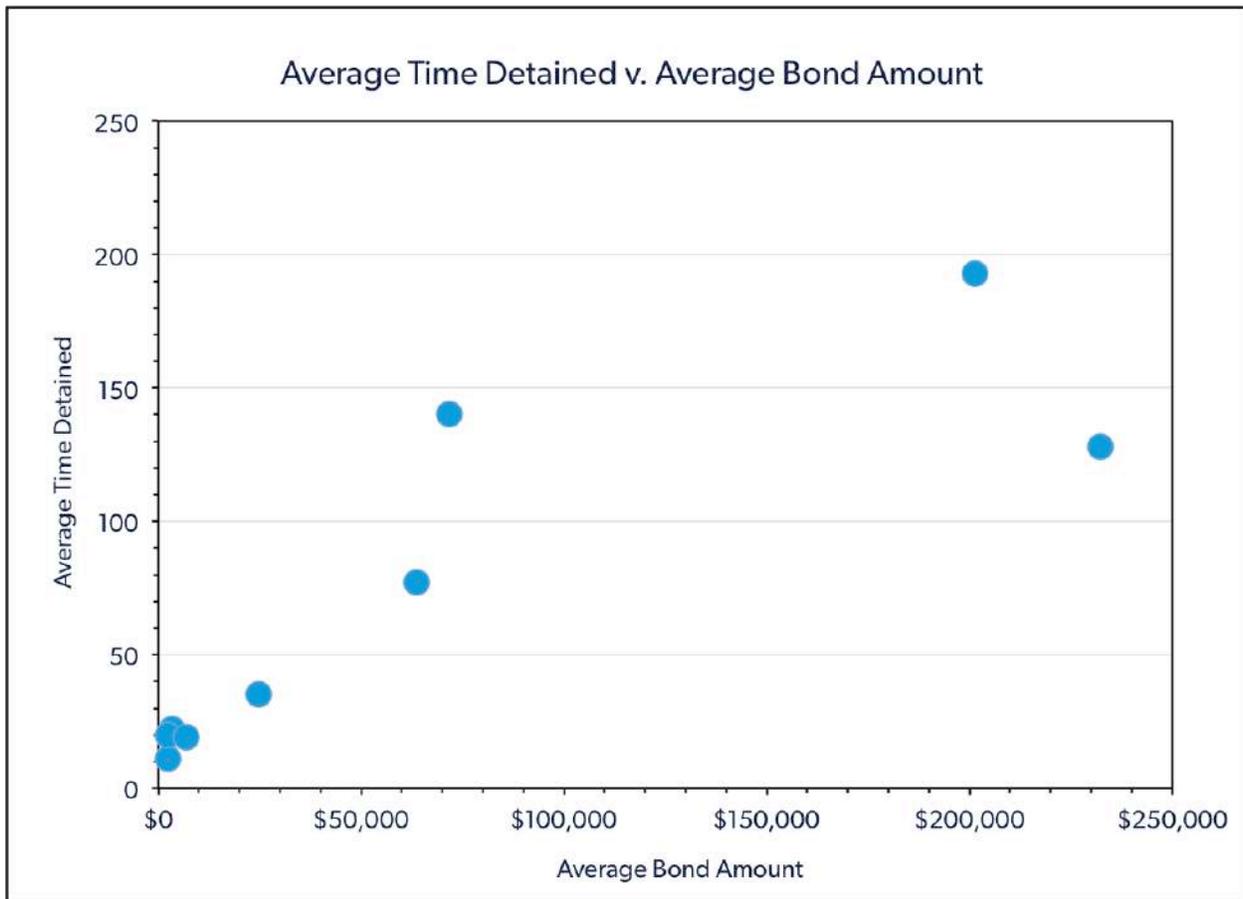


Information regarding the average, high and low bond amount for each of 9 offense categories was provided. In general, the more serious the offense, the higher the bond amount (Table below). However, the ranges were large for all offense categories. For example, bond amounts for individuals charged with a non-violent felony ranged from \$100 to \$2,000,000, violent felonies \$1,000 to \$3,000,000, and drug trafficking \$8,000 to \$2,000,000. The highest average bond amounts (graph below) were for drug trafficking (\$232,131) and violent felonies (\$201,261).

Offense Category	Lowest cash or secured bond amount	Highest cash or secured bond amount	Average cash or secured bond amount
Impaired driving (DWI), any type	\$1,000	\$200,000	\$24,610
Driving while license revoked (DWLR), any type	\$500	\$10,000	\$3,286
Traffic/motor vehicle other than DWI or DWLR	\$500	\$800,000	\$71,827
Misdemeanor drugs/paraphernalia/maint. dwelling	\$200	\$20,000	\$2,248
Drug trafficking	\$8,000	\$2,000,000	\$232,131
Other misdemeanor, non-violent	\$200	\$25,000	\$2,288
Other misdemeanor, violent	\$100	\$75,000	\$6,997
Felony, non-violent	\$100	\$2,000,000	\$63,688
Felony, violent	\$1,000	\$3,000,000	\$201,261

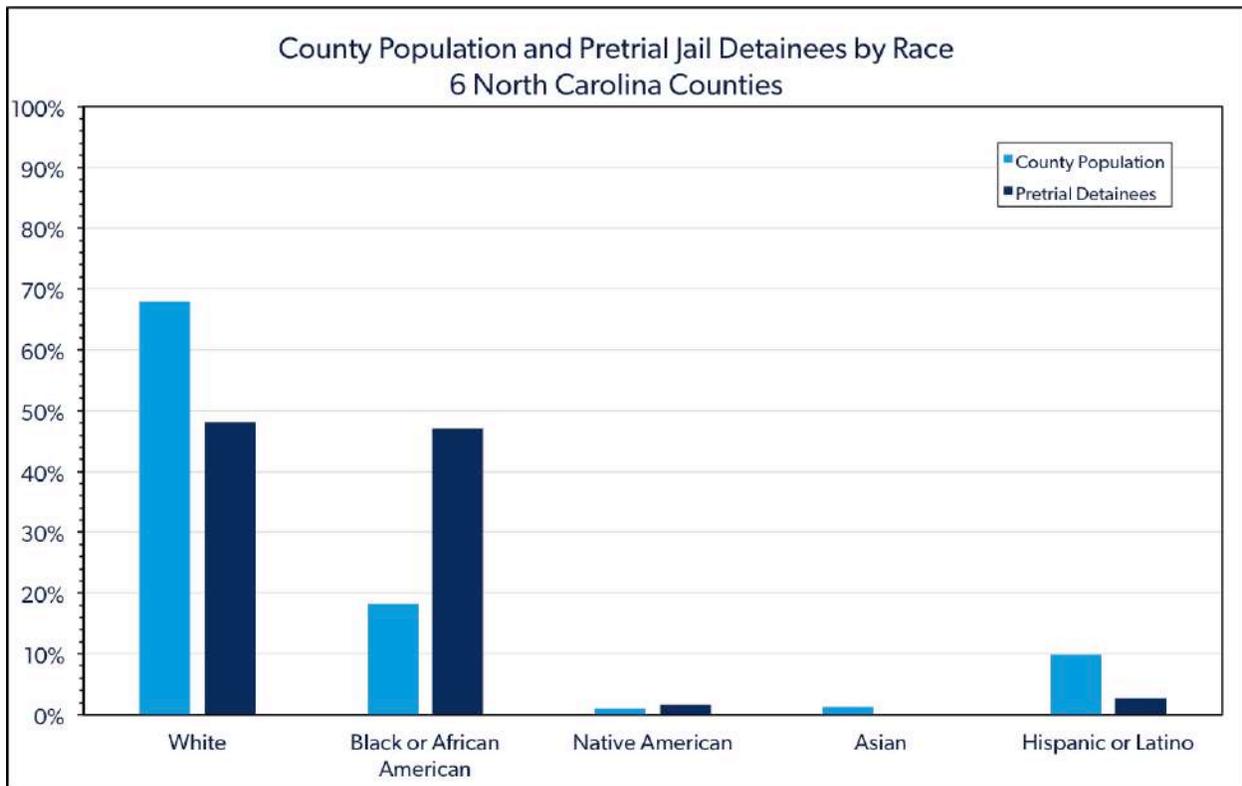


The next chart looks at average days detained. The snapshots that were taken to collect these data show who was in jail on the date of the snapshot for each of the six counties. As such, the data can only show how long defendants were in custody in pretrial status on the date of the snapshot. It cannot show their total length of stay – which would be a more meaningful measure.³⁶ With that caveat in mind, as the chart below shows, the average number of days detained is directly correlated to the average amount of the bond, that is, individuals stay longer in jail as bond amounts increase. These data must be viewed with the recognition that, as noted earlier, a snapshot of a jail population on a given date can only say how long each person had been in custody as of that date. It cannot provide the total length of stay, which is a much more meaningful figure to know.



African Americans were disproportionately represented in the pretrial population (chart below); although they make up only 18.2% of the population sample, they comprise 47.1% of pretrial detainees. As mentioned above in the discussion of the offense type, it is difficult to know how to put these data into context without knowing the risk level of defendants. This is discussed more in the next section.

³⁶ To determine total length of stay requires conducting a snapshot of all persons released from jail during a given time period. Time constraints prevented Commission staff from obtaining this information.



Analysis of Process

Persons arrested in North Carolina are brought “without unnecessary delay” before a magistrate for an initial appearance.³⁷ At this hearing, with limited exceptions,³⁸ defendants are entitled to have a pretrial release condition set. In determining those conditions, magistrates must impose the least of the following: written promise to appear; release to the custody of a designated person or organization; unsecured bond; secured bond; and house arrest with electronic monitoring, which must be used with a secured bond.³⁹

While the analysis of the jail data suggests that there are large numbers of defendants in North Carolina jails on release conditions that they cannot meet, data are not available for this report to show the extent to which each of the options that are available to the magistrate and judge (i.e., written promise to appear, unsecured bond, secured bond) are used, nor on the ultimate pretrial release rate, rate of new criminal

³⁷ G.S. 15A-501(2), -511(a)(1).

³⁸ Exceptions include capital cases, certain drug trafficking cases, certain fugitives, certain firearm offenses, certain gang-related offenses, parole violations, and certain probation violations. See Jessica Smith, *Criminal Proceedings Before North Carolina Magistrates* (UNC 2014) [hereinafter *Criminal Proceedings*], at pp. 27-34. Also, magistrates cannot set a bond in certain domestic violence cases at the initial appearance. *Id.* at p. 35. Those defendants must appear before a judge to have conditions set in 48 hours. *Id.* If a judge does not set conditions in 48 hours, the magistrate has the authority to do so. *Id.*

³⁹ G.S. 15A-534(a).

activity while on pretrial release, and rate of non-appearance in court. As a result, it is not possible to assess the extent to which the three goals of the pretrial release process – release, public safety, and court appearance – are being met in North Carolina.

It is, however, possible to look at the pretrial release practices that are used in the state, and compare them to legal and evidence-based practices. There are several areas of concern regarding the present process.

First, each judicial district has its own local pretrial release policy, and these policies mirror what is in the statute. However, many of these policies also include bond guidelines, which match the charge classification or the maximum penalty the defendant would face if convicted with a dollar secured bond amount or a range of amounts. Such policies make two assumptions, both of which legal and evidence-based practices show are false: (1) that the charge classification or maximum penalty defines the risks to public safety and court appearance that the defendant poses and (2) that money is the best way to address those risks. The pretrial risk assessment research shows that multiple factors, when considered together, provide the best models for predicting probability of success on pretrial release.⁴⁰ And, as noted earlier, research shows that, when controlling for risk levels, defendants who are not required to post a secured bond as a condition of pretrial release have the same public safety and court appearance rates as those who do, but without consuming the expensive jail bed resources used by many of those with secured bonds.⁴¹

Second, an empirically-derived pretrial risk assessment tool is used currently in only one of the state's 100 counties – Mecklenburg County. As discussed in the next section, the use of an empirically-derived risk assessment is a critical component of legal and evidence-based pretrial justice practices.

Third, only about 40 counties in the state are served by pretrial services entities, which supervise defendants on pretrial release.⁴² Even in those counties where pretrial services exist, the statute specifies that the senior resident superior court judge may order that defendants can be released to the supervision of the program if both the defendant and the pretrial services program agree.⁴³ This approach undermines legal and evidence-based practices. If the empirically-derived pretrial risk assessment tool suggests that a particular defendant should be supervised on pretrial release, the judicial official should have the authority to order such supervision. Neither the defendant nor the pretrial services program should have the ability to, in effect, veto the judicial official's desired action. A potentially dangerous defendant should never be given the option of choosing whether to be supervised in the community or to buy his way out of jail with no supervision.

⁴⁰ See, for example, the Virginia Pretrial Risk Assessment Instrument in Appendix A.

⁴¹ *Unsecured Bonds*, *supra* note 16.

⁴² According to a 2007 report, at that time there were 33 pretrial services programs operating within North Carolina, serving 40 of the state's 100 counties. *Pretrial Services Programs in North Carolina: A Process and Impact Assessment*, N.C. Governor's Crime Commission (2007), at 2.

⁴³ G.S. 15A-535(b).

Fourth, the law requires a formal process for bond review for felony defendants who remain incarcerated on a secured bond, but no such process is required for detained misdemeanor defendants. As a result, many misdemeanor defendants remain in jail for periods exceeding the sentence they could receive if convicted, and many plead guilty just so that they can be released. A new study of misdemeanor defendants from Harris County, Texas shows the serious consequences that can flow when holding misdemeanor defendants on secured bonds.⁴⁴ The study, which was conducted by the Rand Corporation and the University of Pennsylvania and which controlled for a wide range of other factors, found that, compared to their released counterparts, detained misdemeanor defendants were 25% more likely to plead guilty, and 43% more likely to be sentenced to jail, with jail sentences more than double of released defendants with a jail sentence. Researchers also found that, again controlling for other factors, detained misdemeanor defendants experienced a 30% increase in felony arrests within 18 months after completion of the case, and a 20% increase in misdemeanors, replicating the findings of research described earlier on the criminogenic effects of pretrial detention.⁴⁵ Based on these findings, researchers estimated that if Harris County had released on personal bond just those misdemeanor detainees who were held on bonds of \$500 or less “the county would have released 40,000 additional defendants pretrial, and these individuals would have avoided approximately 5,900 criminal convictions, many of which would have come through erroneous guilty pleas. Incarceration days in the county jail – severely overcrowded as of April 2016 – would have been reduced by at least 400,000. Over the next 18 months post release, these defendants would have committed 1,600 fewer felonies and 2,400 fewer misdemeanors.... Thus, with better pretrial detention policy, Harris County could save millions of dollars per year, increase public safety, and likely reduce wrongful convictions.”⁴⁶

⁴⁴ Paul Heaton, Sandra G. Mayson, Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention* (July 14, 2016). Available at SSRN: <http://ssrn.com/abstract=2809840> or <http://dx.doi.org/10.2139/ssrn.2809840>.

⁴⁵ *Hidden Costs*, *supra* note 12.

⁴⁶ *Supra* note 44, at 45-46.

III. LEGAL AND EVIDENCE-BASED PRETRIAL JUSTICE PRACTICES: MODELS FOR NORTH CAROLINA

This section describes the elements of a legal and evidence-based pretrial release system, and discusses how the implementation of these elements in North Carolina can bring the state’s pretrial justice practices into the 21st Century.

Risk assessment

For a number of reasons, having an empirically-derived pretrial risk assessment tool is the keystone to a 21st century, legal and evidence-based pretrial release system. First, research demonstrates that such tools are highly effective in sorting defendants into categories showing their probabilities of success on pretrial release in terms of public safety and court appearance. The table below shows the results of the Colorado Pretrial Assessment Tool (CPAT) in Denver, Colorado.⁴⁷ As the table shows, for both safety and appearance, the success rates fall as the risk levels rise. Using the CPAT when making a pretrial release decision, a judicial officer in Denver knows a defendant scoring as a Risk Level 1 has a 96% probability of completing the pretrial period without being charged with new criminal activity while on pretrial release, and a 95% probability of making all court appearances. There is nothing in the risk assessment approach currently used by most North Carolina counties – the bond guidelines – that can produce such quantitative information.

Risk Assessment Outcomes, Denver, Colorado

Risk Level	Safety Rate	Appearance Rate
1	96%	95%
2	93%	86%
3	86%	84%
4	80%	77%

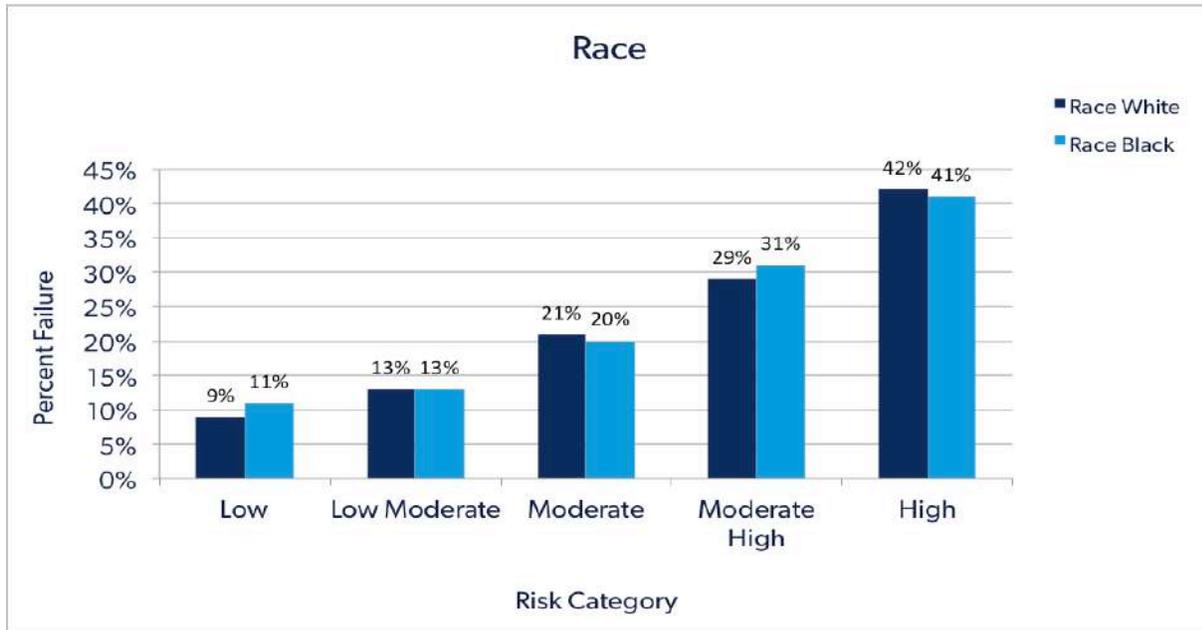
Source: *The Colorado Pretrial Risk Assessment Tool (CPAT)*, Pretrial Justice Institute and JFA Institute (2012)

Second, such tools can track any disparate impacts that might result through their use on racial and ethnic groups. If disparities do arise, they can be easily identified, which is the first step in addressing them. The chart below shows a breakdown by race and risk level of the Arnold Foundation’s PSA-Court risk assessment tool, the same tool being used currently in Mecklenburg County. In developing this tool, researchers ran statistical tests designed to identify disparities. As the chart shows, there has been very little variation in risk levels among African American versus white defendants using the PSA-Court tool.⁴⁸ The tool currently used in most North Carolina counties – the bond guidelines – provide no similar opportunity to test for any built-in biases of the tool, or to monitor for disparate outcomes. And, as noted above, data from North Carolina jails show that there are a large number of African Americans, disproportionate to their

⁴⁷ *The Colorado Pretrial Risk Assessment Tool (CPAT)*, Pretrial Justice Institute and JFA Institute (2012).

⁴⁸ *Results of the First Six Months of the Public Safety Assessment – Court in Kentucky*, Laura and John Arnold Foundation (2014), at 4.

population in the community, who are in jail pretrial.⁴⁹ With an empirically-derived pretrial risk assessment tool – one that has been tested for disparities – North Carolina officials would be able to contextualize the race data presented earlier and begin to address any identified issues.



Source: *Results of the First Six Months of the Public Safety Assessment – Court in Kentucky*, Laura and John Arnold Foundation (2014).

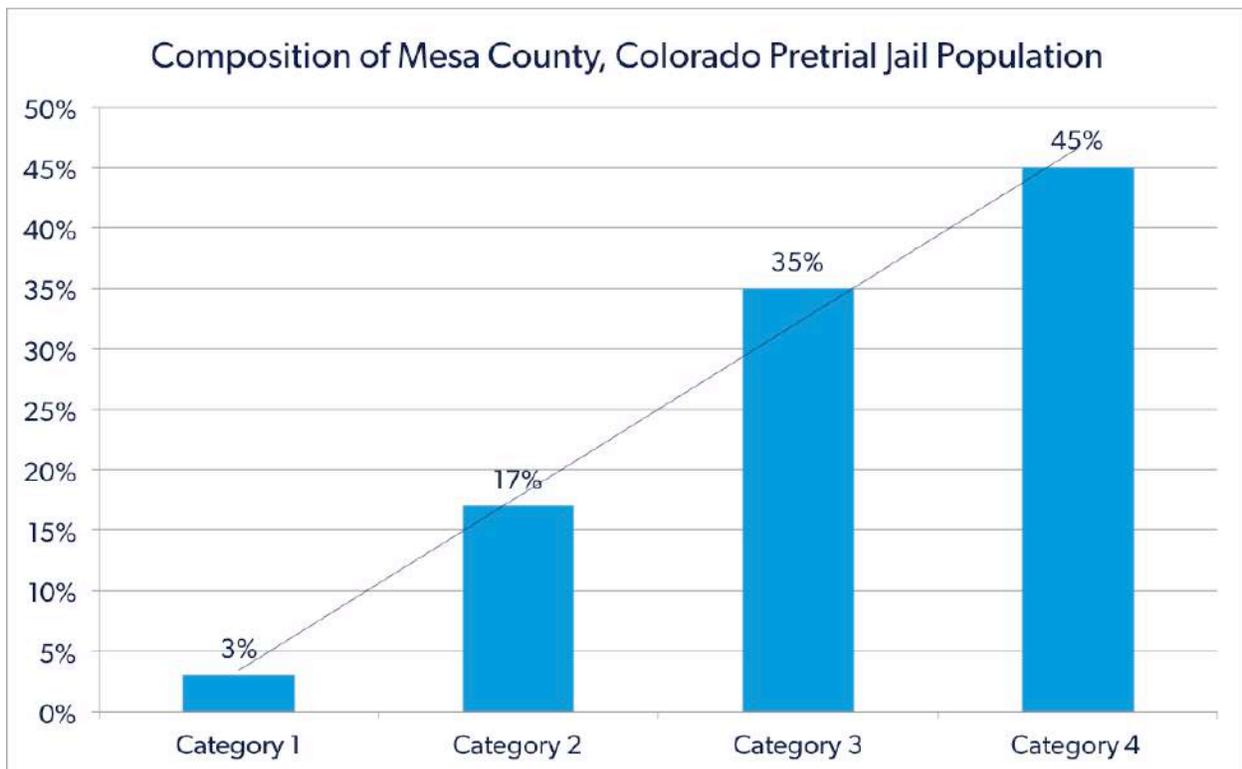
Third, having an empirically-derived pretrial risk assessment tool allows a jurisdiction to make valid comparisons between different types of release, or specific conditions of release. For example, as noted earlier, the for-profit bail bonding industry touts studies showing that defendants released through commercial bonds have higher appearance rates than defendants released through other means. But without knowing the risk levels of defendants it is not possible to know whether defendants in one group are comparable, in terms of risk, to defendants in another group. Such comparisons cannot presently be made in most North Carolina jurisdictions, but they can be made in jurisdictions that have implemented empirically-derived pretrial risk assessment.

Fourth, knowing the risk levels of defendants who are in jail helps a jurisdiction assess whether it is using its expensive jail resources for those who need to be there because of their risks. The data presented in Section II from the six North Carolina counties shows the charges of those who were in jail during the day the snapshot was taken, but since their risk level was unknown, it is very difficult to assess whether this was a good use of jail space.⁵⁰ When Mesa County, Colorado officials first implemented the Colorado risk assessment tool, they leaped at the opportunity to look at the risk

⁴⁹ *Supra* pp. 15-16.

⁵⁰ Once Mecklenburg County began using an empirically-derived pretrial risk assessment tool, it was possible to see how jail space was being used in that jurisdiction. See: <http://nccalj.org/wp-content/uploads/2016/02/Final-Presentation-raleigh-1.pdf>, Slides 11 & 12.

levels of the pretrial defendants they were holding, and they found that there were high percentages of low risk defendants in jail. County officials have been using the risk assessment levels to track progress in addressing that situation. As the chart below shows, officials can now report to their community how they are using the jail for the pretrial population – 80% of the pretrial detainees are scored in the two highest risk categories. Before implementing the risk assessment tool, county officials were in the same position as North Carolina officials – they could only point to data showing that there were large numbers of persons in jail pretrial on low level offenses or low bonds – without any knowledge of their risk levels.



Source: Data provided by Mesa County, Colorado.

Fifth, knowing the risk levels of defendants coming through the system can help officials plan for, and justify to taxpayers, the resources needed to address the risks. Numerous pretrial risk assessment studies have demonstrated that the overwhelming majority of defendants fall into low or medium risk categories, meaning that they should require minimal resources for monitoring in the community. Knowing risk levels can help budget officers better project funding needs.⁵¹

⁵¹ An analysis of costs in the federal system found that detaining a defendant pretrial costed an average of \$19,000 per defendant, while the costs for supervising a defendant in the community ranged from \$3,100 to \$4,600 per defendant. The analysis took into consideration the costs of supervision, any treatment, and any costs associated with law enforcement returning defendants who had failed to appear for court. Marie VanNostrand and Gina Keebler, *Pretrial Risk Assessment in the Federal Court*, 73 FED. PROB., (2009), at 6.

Recognizing these benefits, at least seven states – Colorado, Delaware, Hawaii, Kentucky, New Jersey, Virginia, and West Virginia – have passed laws requiring the use of statewide empirically-derived pretrial risk assessment tools.⁵²

The Arnold Foundation’s PSA-Court tool offers several benefits for use in North Carolina. First, it is presently being used in Mecklenburg County, so there is in-state experience with the tool, giving judges, prosecutors and defenders from around the state the opportunity to speak with their counterparts in Mecklenburg County about their experience working with the tool.

Second, the PSA–Court tool has been validated using data from 1.5 million cases from over 300 local, state and federal jurisdictions all across the country, meaning that it is the most universal pretrial risk assessment tool in existence. Currently 29 jurisdictions, including three states – Arizona, Kentucky and New Jersey – use the tool.⁵³ This should give North Carolina officials confidence that it will perform well in North Carolina.

Third, the risk assessment can be completed using information typically available at the time of the initial appearance before the magistrate.⁵⁴ It does not require an interview with the defendant by a pretrial services program or other entity. This is important given that most North Carolina counties, even those that have pretrial services programs, do not presently have the capacity to interview defendants prior to the initial appearance before the magistrate.

As a result, this report recommends that officials explore implementing Arnold’s PSA-Court tool in jurisdictions throughout North Carolina.⁵⁵ Since the tool is not yet publicly available and a timeline for its availability is uncertain, as a backup this report recommends that North Carolina use the Virginia Pretrial Risk Assessment instrument (VPRAI). The VPRAI was first developed in Virginia in 2003 after a study of data from seven diverse jurisdictions throughout the state.⁵⁶ It was re-validated in 2009 from nine diverse Virginia jurisdictions.⁵⁷ A copy of the Virginia Pretrial Risk Assessment instrument is in Appendix A.

⁵² Colo. Rev. Stat. §16-4-106, 4(c); 11 Del. C. §2104(d), §2105; Haw. Rev. Stat. §353-10; Ky. Rev. Ann. §431.066; 446.010(35); N. J. Stat. Ann. §2A:162-16; §2A-162-17; Va. Code Ann. §19.2-152.3; W. Va. Code Ann. §62-11F-1 et seq.

⁵³ See:

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwig1YDn5I7OAhUFOyYKHaxYB4cQFgglMAE&url=http%3A%2F%2Fwww.arnoldfoundation.org%2Finitiative%2Fcriminal-justice%2Fcrime-prevention%2Fpublic-safety-assessment%2F&usq=AFQjCNE6Iwbltg8uh1AFDgmYPbfcgja>.

⁵⁴ In Mecklenburg County, however, the tool has been implemented only for use by the district court judge.

⁵⁵ See Section V, Recommendations. The factors included in this tool are listed in Appendix E.

⁵⁶ Marie VanNostrand, *Assessing Risk Among Pretrial Defendants in Virginia: The Virginia Pretrial Risk Assessment Instrument*, Virginia Department of Criminal Justice Services, 2003.

⁵⁷ Marie VanNostrand and Kenneth Rose, *Pretrial Risk Assessment in Virginia*, Virginia Department of Criminal Justice Services, 2009.

Release/Detention Matrix

Once the risk assessment is completed on a defendant, the next step is to determine how to use that information to make a release/detention decision. Research is providing guidance on how to do that, matching identified risk levels with appropriate risk management strategies. For example, defendants who are found to be low risk have very high rates of success on pretrial release. Research has shown that these already high rates cannot be improved by imposing restrictive conditions of release on low risk defendants.⁵⁸ The research shows that the only result to expect when imposing restrictive conditions of release on low risk defendants is an increase in technical violations.⁵⁹ Instead, the most appropriate response is to release these low risk defendants on personal bonds with no specific conditions, and no supervision other than to receive a reminder notice of their court dates.⁶⁰

Other studies have found that high risk defendants who are released with supervision have higher rates of success on pretrial release than similarly-situated unsupervised defendants. For example, one study found that, when controlling for other factors, high risk defendants who were released with supervision were 33% less likely to fail to appear in court than their unsupervised counterparts.⁶¹

A reality that any jurisdiction faces is that, even though the charge or type of charge may provide little information on a defendant's risk to public safety or to fail to appear in court, the impact of new criminal activity or failing to appear on the more serious charge is perceived to be much greater. Therefore, many jurisdictions that use empirically-derived pretrial risk assessment tools have developed matrices that combine the risk level with charge types, for example, non-violent misdemeanor, violent misdemeanor, non-violent felony, and violent felony. The resulting intersection of the risk level and charge type produces a suggested release/detention decision. The decision itself remains within the discretion of the judge or magistrate after considering the risk assessment, the matrix, and any other relevant factors.

A copy of the matrix used in Virginia, based on the VPRAI, is in Appendix B. If North Carolina adopts the VPRAI, this matrix, called the Pretrial Praxis, should be used in concert with the VPRAI.

Risk Management

Any conditions set on a defendant's pretrial release should be related to the risk identified for that individual defendant and should be the least restrictive necessary to reasonably assure the safety of the public and appearance in court.⁶² The research on

⁵⁸ *Pretrial Risk Assessment in Federal Court*, *supra* note 46.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Christopher Lowenkamp and Marie VanNostrand, *Exploring the Impact of Supervision on Pretrial Outcomes*. (New York: Laura and John Arnold Foundation, 2013.)

⁶² *American Bar Association Standards for Criminal Justice (3rd Ed.) Pretrial Release* (2007) Std. 10-5.2 (a) at 106-107.

risk management is not as advanced as it is on risk assessment. With the current state of research, it is not possible to identify which conditions of release work best for all defendants. But there is some research to guide policy makers.

As noted above, research has shown that putting conditions of non-financial release on low risk defendants actually increases their likelihood of failure on pretrial release. Rather, the most appropriate response is to release these low risk defendants on personal recognizance with no specific conditions.⁶³

Several studies have shown that simply reminding defendants of their upcoming court dates can have a dramatic impact on reducing the likelihood of failure to appear. One study found that calling and speaking with defendants to remind them about their court dates cut the failure to appear rate from 21% to 8%.⁶⁴ Another study tested the impact of a pilot court date reminder project that using an automated telephone dialing system to contact defendants. The study found that the project led to a 31% drop in the failure to appear rate and an annual cost saving of \$1.55 million.⁶⁵

Two studies that have considered the defendant's risk level, as determined by an empirically-derived risk assessment tool, have found that supervision results in lower rates of failure to appear and new criminal activity when compared to their risk-level counterparts who received no supervision.⁶⁶

The Virginia Pretrial Praxis⁶⁷ takes all of this research into consideration, incorporating different options for managing any identified risks. These include release on personal recognizance or unsecured bonds with no conditions of release other than to receive a court date reminder, followed by release on gradually increasing levels of supervision based on identified risks.⁶⁸

Citations

The American Bar Association's Standards for Criminal Justice (Pretrial Release) state that "[i]t should be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective

⁶³ *Pretrial Risk Assessment in Federal Court*, *supra* note 54.

⁶⁴ Jefferson County, *Colorado Court Date Notification Program: FTA Pilot Project Summary* (2005).

⁶⁵ Matt O'Keefe, *Court Appearance Notification System: 2007 Analysis Highlights* (2007). See also: Michael N. Herian and Brian H. Bernstein, *Reducing Failure to Appear in Nebraska: A Field Study*, THE NEBRASKA LAWYER (2010); and Wendy White, *Court Hearing Call Notification Project*, Coconino County Criminal Justice Coordinating Council (2006).

⁶⁶ John S. Goldkamp and Michael D. White, *Restoring Accountability in Pretrial Release: The Philadelphia Pretrial Release Supervision Experiments*, JOURNAL OF EXPERIMENTAL CRIMINOLOGY, 2(2) (2006), at 143-181; Christopher Lowenkamp Marie VanNostrand, *Exploring the Impact of Supervision on Pretrial Outcomes*. Laura and John Arnold Foundation (2013).

⁶⁷ See Appendix B.

⁶⁸ See Appendix C.

enforcement of the law. This policy should be implemented by statutes of statewide applicability.”⁶⁹

At least one state has changed its laws recently, expanding the use of citation releases. In 2012, Maryland enacted legislation mandating that law enforcement officers issue a citation in lieu of custodial arrest when the officer has grounds to make a warrantless arrest for persons facing misdemeanor or ordinance offenses that carry a maximum penalty of 90 days or less, and for possession of marijuana. The law allows the law enforcement officer to fingerprint and photograph the individual before the citation release. In the year after the law went into effect, there was an 80% increase in the number of citations issued in the state and nearly 20,000 fewer initial appearances in court. “From a cost perspective, the further expansion of criminal citations has the potential to save money by reducing arrests and booking costs.”⁷⁰

Prosecutor involvement at the initial hearing

Ideally, prosecutors should review criminal charges immediately after arrest, prior to the initial bail hearing before a judicial officer, to weed out those cases not likely to advance. Many cases are dropped after review by prosecutors – one study found that 25% of all felony cases are ultimately dropped.⁷¹ Experienced prosecutors, those who have extensive trial experience and who know what is needed to get a conviction, are best equipped to do a review of cases before the initial appearance than less experienced prosecutors. The District of Columbia prosecutor’s office has been doing this for many years. In 2012, of the 27,000 cases brought to the office by law enforcement, 8,000 were declined before the initial appearance before a judicial officer – thus stopping at the front door of the courts about 30% of all new arrests, cases that would have needlessly bogged down the system.⁷²

In addition to screening cases early, prosecutors should be present at the initial appearance of the defendant before the magistrate. At the hearing, the prosecutor should make appropriate representations on behalf of the state on the issue of pretrial release. As the National District Attorneys Association standards state, at that hearing “[p]rosecutors should recommend bail decisions that facilitate pretrial release rather than detention.”⁷³

In North Carolina, prosecutors are not routinely present at the initial appearance before the magistrate.

Defense representation

⁶⁹ *American Bar Association Standards for Criminal Justice (3rd Ed.) Pretrial Release* (2007) Std. 10-2.1, at 63.

⁷⁰ *Commission to Reform Maryland’s Pretrial System: Final Report* (2014), at 27-28.

⁷¹ Reaves, *supra* note 11, at 24

⁷² *The United States Attorneys Office for the District of Columbia: 2012 Annual Report* (2013) at 31.

⁷³ *National Prosecution Standards: 3rd Edition*, National District Attorneys Association, 2009, Std 4-1.1.

The U.S. Supreme Court has said that “a criminal defendant’s initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of the adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.”⁷⁴ The Court stopped short of saying that an attorney must be present at the hearing, only that the right to counsel attaches at that time.

The American Council of Chief Defenders, however, calls on all public defender offices to “dedicate sufficient resources to the bail hearing and/or first appearance, where the pretrial release terms are set.” At that hearing, public defenders should “obtain and use crucial risk assessment information for making relevant and persuasive arguments regarding appropriate release conditions for their clients.”⁷⁵ Research has shown that indigent defendants who are represented by counsel at the bail hearing are released non-financially at about 2½ times the rate of those who were unrepresented.⁷⁶

Defense attorneys do not presently represent indigent defendants at the initial appearance before the magistrate in North Carolina. In many North Carolina jurisdictions, the defendant first receives counsel at the first appearance in District Court.

Bond review of defendants unable to post bond

As noted in Section II, current North Carolina law requires a first appearance (which includes a review of pretrial conditions) before a district court judge for in-custody defendants charged with a felony. However, no such hearing is required for in-custody defendants charged with misdemeanors. This can, and often does, result in misdemeanor defendants remaining in pretrial confinement for periods longer than they might serve as a sentence if convicted. This “gap” in the law seems to be unique to North Carolina. In other states, a defendant who remains in custody after an initial hearing before a magistrate will appear before a judge the next court business day for a bond review hearing, regardless of the charge level.

Data/performance measures

Collecting data on the impact and outcomes of evidence-based practices is crucial for 21st Century pretrial justice. Jurisdictions should be able to report on data on all criminal cases relating the three goals of the bail decision:

- Public safety rate (defendants not arrested for new criminal activity while on pretrial release) for all released defendants, broken down risk level and by release type.

⁷⁴ *Rothgery v. Gillespie*, 554 U.S. 191 (2008), at 20.

⁷⁵ American Council of Chief Defenders, *Policy Statement on Fair and Effective Pretrial Justice Practices* (2011), at 14.

⁷⁶ Douglas L. Colbert, Ray Paternoster and Shawn Bushway, *Do Attorneys Really Matter? The empirical and Legal Case for the Right of Counsel at Bail*, *CARDOZO LAW REVIEW*, 23 (2002) at 1719-1793.

- Court appearance rate for all released defendants (percentage of defendants who did not fail to appear for all scheduled hearings, resulting in the issuance of a warrant or order for arrest), broken down by risk level and by release type.
- Pretrial release rate, broken down by risk level, release type, and time between arrest and release.

Other important measures include:

- Number of defendants released by citation, broken down by charge and by police department and/or sheriff's office.
- Percent of defendants for whom an actuarial risk assessment was scored prior to the release-or-detain decision by the magistrate, broken down by county or judicial district.
- Percent of cases reviewed by an experienced prosecutor prior to the initial appearance before a magistrate, broken down by county or judicial district.
- Percent of initial appearances before the magistrate in which the prosecution and defense participate, broken down by county or judicial district.
- Percent of cases in which the magistrate's decision matches that suggestion of the pretrial matrix, broken down by county and by magistrate.
- Percent of detained defendants who were detained as a result of a detention hearing, broken down by county or judicial district.
- Percent of detained defendants who were held on a secured bond, broken down by risk level and by county or other appropriate jurisdiction.
- Length of stay in jail for detained defendants who were held on a secured bond, broken down by risk level, bond amount, and county or other appropriate jurisdiction.

IV. PRETRIAL JUSTICE IN NORTH CAROLINA: THE LEGAL STRUCTURE

Prerequisites to Understanding the Legal Analysis

Understanding any legal analysis designed to guide decision makers toward implementing legal and evidence-based practices requires first knowing three broad concepts. First, every jurisdiction in America already has many essential elements of a pretrial system, even if that system does not function optimally. For example, each jurisdiction does a version of risk assessment. In some jurisdictions, however, risk assessment is done simply by glancing at a defendant's top charge. Other jurisdictions use empirically-derived risk assessment instruments, validated to their populations, which help predict the chances of a defendant's pretrial misbehavior. Likewise, all jurisdictions do some sort of risk management, from merely hoping that a defendant will come back to court and stay out of trouble during the pretrial phase to using dedicated professional pretrial services agencies designed to further the lawful purposes of release and detention. In the same way, every state has a legal structure to effectuate pretrial release and detention that works at some level. Nevertheless, sometimes that structure can actually hinder what we know today are "best-practices" in pretrial release and detention. Understanding this allows us to acknowledge that "bail reform" is not necessarily a daunting task; indeed, it often means merely improving existing systems, even if those improvements are comprehensive.

Second, we are learning that a great deal of education is necessary to fully understand what those improvements should be. Pretrial release and detention is deceptively complex, and yet suffers from decades of neglect in our colleges, universities, and law schools. It is simply not enough to take on a topic like pretrial release and detention with the traditional and existing knowledge of criminal justice stakeholders. Some specialized education must take place. Fortunately, to help jurisdictions obtain the knowledge necessary to advance pretrial justice, there are numerous documents and programs available today through the Pretrial Justice Institute and other leading organizations that can provide education, advice, and assistance. Even though decision-makers in particular jurisdictions may believe that they lack data and information, in this generation of bail reform we have virtually every answer to the significant questions that have nagged America over the past 100 years – answers that can lead to substantial progress toward pretrial justice. Due to time and space limitations given for this report, it will be up to North Carolina criminal justice leaders to read beyond this report to fully learn the additional material that points to those answers.⁷⁷

⁷⁷ North Carolina stakeholders should begin by reading *Fundamentals of Bail*, *supra* note 1, and Timothy R. Schnacke, *Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*, Nat'l Inst. Corr. (2014), and references cited therein. By doing so, stakeholders will learn that broad reports (such as this one) concerning the state of pretrial release and detention in any particular state can often only provide the impetus for continued conversations over legal and evidence-based practices based on research, which, in turn, is being published at an increasingly rapid pace.

Third, the knowledge gained from deep bail education often illustrates that certain assumptions underlying a state's existing release and detention laws, policies, and practices are flawed, and that the solutions to perceived issues at bail are counterintuitive in our current culture. For example, for over 100 years, courts in America have assumed that defendants pose higher pretrial risks when facing higher charges, and our laws and practices are set up to effectuate release based on that assumption. However, the pretrial research is demonstrating that certain misdemeanor defendants often pose higher risk than felony defendants and that many felony defendants pose little risk at all. Likewise, jurisdictions often assume that money helps to keep citizens safe, but the research, the history, and the law all tell us that this is not so. Understanding the somewhat counterintuitive nature of certain pretrial justice change efforts helps us to understand and possibly change the current culture surrounding pretrial release and detention.

The History of Bail and the Fundamental Legal Principles

Understanding any legal analysis also requires having at least some familiarity with the history of bail (release) and no bail (detention) – considered to be a “fundamental” or “core” element that jurisdictions must understand to make improvements in pretrial justice. Generally speaking, the history of bail shows that in roughly 1900, America moved from a system of pretrial release using personal sureties administering unsecured bonds to a system relying on commercial sureties administering mostly secured bonds. Justice system professionals and researchers in America very quickly learned that the infusion of profit, indemnification, and security into bail led to continued and, indeed, increased unnecessary detention of bailable defendants,⁷⁸ but not before states had already adopted the “charge-and-secured money” legal systems we still see today.

At the time, many courts in America believed that using commercial sureties and secured bonds would help get most defendants out of jail pretrial, but it only made things worse. Today, after two generations of bail reform in America designed to fix the problems with the charge-and-secured money release system, we find ourselves in yet another generation of reform hoping to fix it once again because secured money bonds continue to interfere with rational release and detention.

Moreover, understanding any legal analysis requires knowing how the fundamental legal principles underlying American pretrial release and detention have been molded by history and have, in many ways and until very recently, failed in fixing the problems brought on by the changes in 1900. Knowing the law for bail and no bail means knowing that the law has been largely ignored for decades, allowing states to craft legal schemes that are now being successfully challenged in the courts. Generally speaking, many state bail laws are simply unlawful when measured against the larger American legal principles, such as procedural due process and equal protection, and this

⁷⁸ See, e.g., Roscoe Pound & Felix Frankfurter (Eds.), *Criminal Justice in Cleveland* (Cleveland Found. 1922); Arthur L. Beeley, *The Bail System in Chicago*, at 160 (Univ. of Chicago Press, 1927).

alone is causing many states to make substantial changes to those laws to allow for legal and evidence-based practices in pretrial release and detention.⁷⁹

Current North Carolina Legal Structure

Unlike many states, North Carolina has a detailed recitation of existing laws, and that recitation has served as a useful tool for the instant report.⁸⁰ This analysis seeks to go beyond that recitation to assess whether the legal structure helps or hinders best pretrial practices. Due to time limits, this overview of the North Carolina legal structure must be viewed only as the beginning of a conversation about holding up the state's laws to the broader legal principles, the history of bail, the pretrial research, and the national standards on best practices to assess every element affecting pretrial justice. Pretrial reform often involves making improvements to *all* decisions and practices from the initial police stop to sentencing. Reviewing those decisions and practices, looking at the associated legal and evidence-based literature for each, holding them up to some model and to existing laws while comparing those laws to other sources, and making recommendations for possible changes, while fruitful, would be laborious and lead to an overwhelmingly lengthy document. Accordingly, this report will examine in detail only the most crucial issues facing North Carolina at this time, which mostly deal with the judicial official's decision to release or detain a defendant pretrial.⁸¹

Nevertheless, the people of North Carolina should see the benefits of looking at other decision points or practices in the process. For example, a crucial element in pretrial justice is diversion, and while the author saw references to a variety of local diversion programs, such as "jail diversion," mental health courts, and public and private diversion for certain first offenders in North Carolina, other state's statutes provide many more opportunities for structured pretrial diversion, and base those programs on their own literatures concerning best practices. Likewise, even though there did not appear to be anything legally hindering defense counsel providing assistance at initial appearances, this does not appear to be the practice in North Carolina even though at the initial appearance defendants are facing significant deprivations of liberty.⁸² By briefly reviewing the North Carolina laws, the author also saw potential issues concerning: (1) police issuing citations versus arresting persons and courts issuing summonses versus warrants for arrests (laws can be amended to encourage or even require the use of citations and summonses so that arrest is only

⁷⁹ As only one example, the Ninth Circuit Court of Appeals recently struck down as unconstitutional an Arizona "no bail" provision enacted in its constitution. See *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (2014). Until very recently, people have mistakenly inferred the lawfulness of certain bail practices due simply to the lack of opinions expressly declaring them to be unlawful.

⁸⁰ See *Criminal Proceedings*, *supra* note 37.

⁸¹ A more detailed legal analysis would also look deeply into North Carolina case law, which was not done for purposes of this report.

⁸² Defense counsel at the initial appearance has spun off into its own reform effort, with multiple groups working on the issue simultaneously. Reasons for including defense counsel at initial appearance include empirical evidence in addition to fairness. See *Early Appointment of Counsel: The Law, Implementation, and Benefits* (Sixth Amend. Ctr./PJI 2014); *Do Attorneys Really Matter?*, *supra* note 70.

reserved as a last resort):⁸³ (2) practices such as requiring fingerprinting and DNA testing that might lead to unnecessary arrests; (3) the potentially inefficient practice surrounding the use of appearance bonds for infractions; (4) certain laws that allow for delays in holding the initial appearance (such as tasks required of officers arresting defendants on implied consent offenses) or that hinder the immediate release of low and medium defendants present at that appearance (the pretrial research, which follows the law, would point to dealing with the vast majority of defendants rapidly, and especially low and medium risk defendants because keeping those defendants unnecessarily detained can actually lead to more crime and failures to appear for court); (5) speedy trial for detained defendants; (6) potential problems with implementing risk assessment into a legal scheme already containing various untested risk factors that judicial officials “must” consider;⁸⁴ and (7) collecting data and performance measures (data collection is crucial to understanding the efficacy of any pretrial system, and many states are now enacting requirements for such things into their laws).

Moreover, when considering changes to the release and detention decision, most jurisdictions recognize that empirically-derived risk assessment and evidence-based risk management are crucial elements, if not prerequisites, to those changes. Only by knowing defendants’ risk can courts follow the law and the evidence by immediately releasing the majority of pretrial defendants under varying levels of research-supported supervision to both protect the public and bring people back to court, while providing for extreme public safety risk management through the ability to detain certain defendants in a fair and transparent procedure. The laws must allow for these elements, and if they do not, they must be changed.

The largest issue facing North Carolina, however, deals with the laws surrounding the judicial official’s decision to release or detain a defendant pretrial. North Carolina currently has a legal scheme with elements based firmly in a charge-and-secured money bond system and with somewhat faulty assumptions about both money and charge.

To assess North Carolina’s laws for how it deals with the release and detention decision, this section examines the following: (1) how the North Carolina laws operate broadly as compared to other states, focusing primarily on its statutory release/detention eligibility framework; (2) certain assumptions that seem to buttress

⁸³ Current North Carolina law appears to allow an officer to issue a citation for a misdemeanor or infraction, but there is no preference or mandatory language. G.S. § 15A-302. The law concerning summonses apparently allows the issuance of a summons for felonies in addition to misdemeanors and infractions (also with no preference), but because the AOC criminal summons form has been drafted not to charge a felony, persons have apparently been advised not to issue one for felonies. *See id.* §15A-303(a); *Criminal Proceedings, supra* note 37, at 4. Other jurisdictions have shown that requiring the arrest of felony defendants is not always necessary, and the trend across America appears to be the use of mechanisms that gradually ratchet up criminal process and that incorporate every means possible to compel court appearance before resorting to arrest. To the extent that warrants (or OFA’s in North Carolina) use financial conditions of release on their face, that practice should be made part of any discussion to reduce or eliminate secured financial conditions generally. To the extent that North Carolina can discuss the appropriate use of arrests for violations of release conditions, it should do so also. Finally, to the extent that North Carolina can adopt the evidence-based practice of court date notification in all of its courts, it should do so.

⁸⁴ *See* G.S. § 15A-534(c).

existing laws and that might make change difficult; (3) provisions setting out the detention process; (4) provisions setting out the release process; and (5) issues gleaned from a reading of various local pretrial release policies.

North Carolina Laws: The Right to Release and Authority to Preventively Detain High Risk Defendants Generally

Current North Carolina law does not expressly provide for a right to actual pretrial release or articulate a procedure for preventive detention of high risk defendants. As discussed below, both omissions create barriers to pretrial reform.

North Carolina eliminated the right to bail provision in its constitution of 1868.⁸⁵ North Carolina is thus like eight other states and the federal system, all of which operate without a constitutional right to bail, which means that certain changes to the system of release and detention will not be hindered by constitutional right to bail hurdles.⁸⁶ From a legal standpoint, states with no constitutional right to bail can more easily implement both release and detention provisions that follow legal and evidence-based practices than states with such a constitutional right.

This is not to say that North Carolina does not have a right to release pretrial, and, indeed, there are good arguments for why a state could never completely eliminate any right to pretrial release. But in North Carolina, it appears that the right is somewhat confused. Unlike in other states' laws, there is no explicit delineation of precisely who should actually be released or detained. Although Section 15A-533 is entitled, "Right to pretrial release in capital and noncapital cases,"⁸⁷ the body of the statute is crafted only in terms of setting or not setting conditions. Various local pretrial release policies quote cases articulating a right to pretrial release,⁸⁸ and even interpreting § 15A-533 to provide for a "right to release,"⁸⁹ but while the statute's title speaks of a right to release, the statute both generally and specifically points only to a "right to have one's conditions set," which is far from actual release.⁹⁰

⁸⁵ The previous constitution stated: "All prisoners shall beailable by sufficient sureties, unless for capital offenses, when the proof is evident, or the presumption great." N.C. Const. art. 39 (1776).

⁸⁶ Of course, as in other states, North Carolina has other constitutional provisions that are relevant to bail, and that will form the boundaries over potential reforms. For example, some states have issues with constitutional victim's rights provisions when those provisions require a victim's presence at initial appearance, thus causing delay. The relevant North Carolina provision articulates a "right as prescribed by law [for victims] to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective." N.C. Const. art 1, § 37(1)(g). Because this provision speaks of the "accused," it has clear implications for pretrial release; nevertheless, the right appears to hinge on how it is "prescribed by law," and in the time allotted for this analysis, the author was unable to find any statutory provision that might delay or hinder the release or detention decision.

⁸⁷ G.S. § 15A-533.

⁸⁸ See, e.g., *In the Matter of Promulgating Local Rules Relating to Bail and Pretrial Release for Judicial District 8A*, at 5-6 (quoting *Stack v. Boyle*, 342 U.S. 1 (1951)).

⁸⁹ See, e.g., *Policies Relating to Bail and Pre-Trial Release Second Judicial District*, at 2.

⁹⁰ G.S. §§ 15A-533(b) (stating that "[a] defendant charged with a noncapital offense must have conditions or pretrial release determined"). The relevant treatise also speaks only of a right to have conditions set,

Moreover, the statute has no discernable process for detention of the sort approved in the U.S. Supreme Court’s opinion in *United States v. Salerno*,⁹¹ which guides states in crafting such provisions. Existing North Carolina law creates rebuttable presumptions that “no conditions or combination of conditions” will provide reasonable assurance of public safety and court appearance for defendants charged with certain offenses with certain preconditions,⁹² but those provisions only testify to the notion that other cases, even without the presumptions, are potentially cases in which “no condition or combination of conditions” would suffice; obviously, presumptions toward a certain result in some cases means that there should be a broader set of cases allowing the presumptive subset to exist, yet the statute has no provisions to deal with them. There are simply no statutory provisions setting forth exactly what to do in a typical case where a defendant is deemed extremely high risk and unmanageable outside of secure detention and falls outside of the rebuttable presumption cases.

As discussed below, a right merely to have conditions set, coupled with the statutory provisions discussing those conditions as well as no decent process for risk-based detention, naturally moves North Carolina judicial officials toward using secured money conditions to address risk for both court appearance and public safety, and toward attempting to use unattainable money conditions to detain defendants posing extremely high pretrial risk. By contrast, “model” release and detention schemes would expressly articulate who is releasable, who potentially is not, and provide mechanisms to make sure that the in-or-out decision is made purposefully, transparently, and fairly, and with nothing (such as money) interfering with the decision.⁹³

In addition to not being entirely clear on what right North Carolina defendants actually enjoy as well as not providing for a due-process laden detention process, North Carolina law overall illustrates the same issues facing virtually every other state in America: the legal scheme is based on a charge and secured-money model, and this core issue can hinder attempts to improve the system without statutory changes. Specifically, although the statute speaks of pretrial risk (something other state statutes often do not do), it makes determinations of who is entitled to having release conditions set based primarily on charge as a proxy for risk, and subtly points judicial officials toward using

and provides as exceptions those cases in which defendants don’t enjoy a right to have conditions set. *Criminal Proceedings*, *supra* note 74, at 27.

⁹¹ To pass constitutional muster, a preventive detention provision would have to comply with the requirements discussed in *United States v. Salerno*, 481 U.S. 739 (1987) (finding the Bail Reform Act of 1984 constitutional against facial due process and excessive bail claims).

⁹² *See, e.g.*, G.S. § 15A-533(d) (rebuttable presumption for persons accused of drug trafficking). These provisions are also fairly limited, requiring judicial officers in most cases to find facts concerning the offense as well as certain preconditions such as already being on pretrial release at the time of the current offense along with some delineated previous conviction. *See generally Criminal Proceedings*, *supra* note 74, at 27-30.

⁹³ There are few exemplary statutes that currently do this. However, the D.C. bail statute, D.C. Code Ann. §§ 23-1301-09, 1321-33, which reflects principles articulated in the American Bar Association Standards on Pretrial Release, has been used by many jurisdictions as a model to begin conversations about statutory reform.

the money condition to address risk.⁹⁴ The better practice would be to set forth a right to release for all except extremely high risk defendants (or defendants who are not as risky but who also face extremely serious charges, or both), provide for a lawful and transparent detention provision based on risk to allow pretrial detention with no conditions, and then create mechanisms so that persons released pretrial are released immediately. Rebuttable presumptions, though perhaps not made entirely unnecessary by the move toward infusing risk into charge-based systems, can be crafted to use both risk and charge in ways that support the law and the research.

North Carolina Law: Underlying Assumptions

Many jurisdictions have learned that overcoming flawed assumptions concerning pretrial release and detention is necessary before making improvements to the process. In addition to the flawed assumption that the right to bail is merely a right to have one's conditions set, or the equally flawed assumption that higher charge necessarily equals higher risk, there are two additional significant assumptions that should be addressed. These assumptions are not unique to North Carolina; indeed, they are seen across the country and illustrate a much more pressing problem with bail reform in America, which is that many pretrial improvements involve thinking about release and detention in an entirely different way. This means that bail reform involves “adaptive change,” which involves overcoming faulty assumptions driving the way we think about any particular topic.⁹⁵

One assumption found throughout the North Carolina laws appears to be that money at bail affects public safety. It is found either explicitly, as in G.S. §15A-534(d2)(1), which requires judicial officials to impose a secured bond or house arrest (which includes a secured bond) “[i]f the judicial official determines that the defendant poses a danger to the public,” or implicitly, as in G.S. § 15A-534(d3), which allows a judicial official to double the amount of money condition for defendants who commit crimes while on pretrial release, presumably to better protect the public from future crimes. Money does not protect the public, however, unless it is used unlawfully to detain an otherwise releasable defendant.⁹⁶

⁹⁴ For example, although the statute includes an express presumption for non-secured releases, G.S. § 15A-534 (b), later provisions do not mandate and also place significant limitations on pretrial services supervision, which might lead judicial officials to set more secured bonds. Likewise, various provisions throughout the statute equating secured money amounts with public safety might nudge any particular judicial official toward setting a secured bond since a finding of “a danger of injury to any person” is one reason for overcoming the presumption of non-secured release. The fact that the statute requires judicial officials to set conditions for high risk defendants falling outside of the “no conditions” exceptions, also necessarily moves those officials toward using secured money bonds to at least respond to extremely high risk.

⁹⁵ Bail reform has only recently begun to understand that the improvements involved require system changes as well as changes in people's beliefs and core understandings of certain concepts. For information on how adaptive change can be addressed at bail, go to <http://transformingcorrections.com/about/>.

⁹⁶ Using money to detain defendants pretrial would obviously implicate a state's right to bail or release provision, but the practice can also lead to claims concerning both substantive and procedural due process, equal protection, and excessive bail.

In many states, using money to protect the public is expressly unlawful, but even in a state like North Carolina, it is irrational and thus implicitly unlawful. North Carolina G.S. § 15A-544.3 makes failure to appear for court the only event that can lead to forfeiture of money on a bail bond. Thus, when a defendant commits a new crime while on pretrial release, the money is not forfeited. Accordingly, it is irrational to set money to motivate defendant behavior concerning criminal activity because the money cannot lawfully act as a motivator. Setting a condition of release that cannot lawfully do what one intends it to do is irrational, and thus likely unlawful based on any legal theory that requires courts to use rationality or reason in its actions.⁹⁷ Likewise, no research has ever shown money to protect the public. In fact, the research on secured money bail shows that setting secured bonds leading to the detention of low and medium risk defendants actually causes them to become *higher* risk for both new criminal activity and failure to appear for court.⁹⁸ Setting a condition of release that leads to the *opposite* of what a court intends is even more irrational than setting one that simply doesn't work.

Finally, no matter how high the amount, any particular extremely dangerous defendant might still be able to pay it, leading to the potential for some horrific yet avoidable crime during the pretrial period. This public safety problem is exacerbated by North Carolina law, which appears to limit a judicial officer's ability to set a "cash only" bond.⁹⁹ Because commercial sureties cannot lose money due to new criminal activity, in many states those sureties help extremely high risk defendants obtain easy release by using no-money-down and payment plan options.

Another assumption found in North Carolina law (including the local pretrial release policies) that potentially hinders the adoption of legal and evidence-based practices appears to be an assumption that release to pretrial services agency supervision should be reserved only for low level crimes or low risk defendants.¹⁰⁰ In fact, the use of pretrial services functions are part of a high functioning pretrial system, and such agencies are often best when overseeing defendants posing high risk or charged with more serious crimes.

⁹⁷ For example, even using its lowest level of scrutiny, due process analysis requires the means of government action to be rationally related to some legitimate end. There should be no doubt that all government action must be rational and non-arbitrary.

⁹⁸ See, e.g., *Hidden Costs*, *supra* note 12.

⁹⁹ See *Criminal Proceedings*, *supra* note 37, at 39.

¹⁰⁰ See G.S. § 15A-535(b) (allowing, but not requiring pretrial services programs, requiring defendant consent before they are used, and allowing them only in lieu of release under condition options (1), (2), or (3) of G.S. §15A-434(a). Apparently, very few North Carolina judicial districts have pretrial services agency programs, and at least one that does puts a wide variety of further restrictions on using them, including a long list of exclusionary criteria and excluded offenses that most people would describe as "serious." See *Bail Policy for Twenty Sixth Judicial District* at 5, 23-33. Together, these factors suggest an assumption that pretrial services supervision is only inappropriate for certain low level crimes or low risk defendants. This assumption is often tied to the first concerning money and public safety; jurisdictions that believe money is the best way to manage pretrial risk often believe that pretrial services supervision should be reserved only for those cases in which money is unnecessary.

North Carolina Law: Preventive Detention of High Risk Defendants

As noted above, North Carolina law does not expressly establish a procedure for the preventive detention of high risk defendants. Moreover, the rebuttable presumption provisions allowing for “no conditions” are, in most cases, quite narrow, and there appears to be some confusion as to whether persons other than those statutorily separated out for no conditions can be detained, even if, in their particular cases, no conditions or combination of conditions would suffice to provide reasonable assurance of public safety or court appearance. Combined with the assumption that money protects the public and the various statutory provisions subtly leading judicial officials to use money to respond to risk, the lack of a risk-based detention process likely means that many – if not most – defendants who are perceived to be high risk are being detained purposefully through the unwise and potentially unlawful¹⁰¹ process of using unattainable secured money bonds. Indeed, an Internet search reveals numerous North Carolina cases of defendants being held bonds in amounts of millions or even tens of millions of dollars, at least suggesting judicial intent to detain. Moreover, one local pretrial release policy reported a “modification” of recommended bond amounts because, “Those who pose the greatest threat [to the community] must not be allowed to roam free while keeping in mind the presumption of innocence.”¹⁰² This statement clearly indicates the use of money to detain.

While it is unclear whether individual judicial districts would, or even could, create a lawful and transparent detention process like the one reviewed by the U.S. Supreme Court in *United States v. Salerno*,¹⁰³ such a process could be fairly easily created in the North Carolina statutes. Because detaining someone pretrial involves jailing someone for something the person may or may not do in the future, the Supreme Court has cautioned that pretrial detention provisions must be carefully limited and fair by incorporating numerous procedural due process elements.¹⁰⁴ Detention through the use of money – a practice apparently used widely throughout North Carolina – simply does not measure up to that standard.

The closest North Carolina law comes to providing the required due process fairness elements to its detention procedure is through the fairly limited findings necessary for its rebuttable presumption cases, and the mandate in G.S. § 15A-434 (b) that judicial officials record in writing the reasons for imposing a secured bond, but only to the extent required by local pretrial release policies. Thus, while G.S. § 15A-535(a) requires the creation of such local policies, it merely allows districts to decide whether to include a further requirement that judicial officials make written records.¹⁰⁵ None of the

¹⁰¹ As mentioned previously, using the release process to detain defendants by using money potentially violates both substantive and procedural due process, equal protection notions, and the prohibition against excessive bail.

¹⁰² *In the Matter of Promulgating Local Rules Relating to Bail, Judicial District 8A*, at 1.

¹⁰³ 481 U.S. 739 (1987).

¹⁰⁴ *See id.* at 747-52.

¹⁰⁵ *See* G.S. § 15A-535(a) (directing that policies “*may* include . . . a requirement that each judicial official who imposes condition (4) or (5) in G.S. 15A-434(a) must record the reasons for doing so in writing.” (emphasis added)).

local pretrial release policies reviewed by this author contain detention provisions remotely similar to the provisions favorably reviewed in *Salerno*, which were described by the Court as a “full blown adversary hearing.”¹⁰⁶ Moreover, at least one local pretrial release policy requires judicial officials to provide reasons only for secured amounts falling above those provided in the schedule of recommended amounts.¹⁰⁷ Others provide check-box forms for the required reasons.¹⁰⁸ Still others appear to have no record requirement at all.

North Carolina Law: The Release Process

Looking at the release processes broadly, North Carolina’s law is like most other states’ bail laws, in that it is charge-based, overly reliant upon financial conditions, does not include provisions for empirical risk assessment, has limits upon pretrial services agency supervision, and tends naturally to point to the use of mostly secured money bonds administered by commercial sureties. The North Carolina statute does not have the feel of a statute cobbled together over the decades; indeed, it appears to have much more direction and cohesive intent than most other state’s bail laws. Nevertheless, it also appears to have grown over time simply to respond to the various crimes separated out for different pretrial treatment.¹⁰⁹ Like most states, there are some good provisions, such as an express presumption for release on recognizance or unsecured bond,¹¹⁰ but there are also some bad ones, such as those requiring money to address public safety and permitting “bond doubling.”¹¹¹

As previously noted, believing that the legal right that defendants enjoy pretrial is a right merely to have “conditions set” can lead to significant hindrances when secured money remains one of those conditions. Quite broadly, secured money conditions cause the two most significant problems we see in the field of pretrial justice: (1) the unnecessary and often unlawful detention of low and medium risk defendants for failure to pay the security necessary for release; and (2) the unwise release of extremely high risk defendants who have the money necessary to obtain release. People often equate the first problem as one representing a lack of fairness, but North Carolina should realize that detaining low and medium risk persons unnecessarily for even short periods of time also causes increases in new criminal activity and failures to appear for court both short- and long-term. Thus, the more that the North Carolina release process can be improved to quickly assess and release all eligible defendants, but especially low and medium risk defendants, the more public safety will be enhanced.

The statute currently attempts to do this through its presumption of release under either a written promise to appear or an unsecured bond,¹¹² but because there

¹⁰⁶ *Salerno*, 481 U.S. at 750.

¹⁰⁷ See, e.g., *Bail Policies for the Judicial District Twenty-Nine-B*, at 3.

¹⁰⁸ See, e.g., *In the Matter of Promulgating Local Rules Relating to Bail and Pretrial Release for Judicial District 30A*, at 17-18.

¹⁰⁹ See, e.g., G.S. 15A-534(d2) (special procedure for probationer charged with a felony).

¹¹⁰ G.S. § 15A-534(b).

¹¹¹ See, e.g., G.S. 15A-534(d1) (requiring bond doubling after failure to appear).

¹¹² G.S. § 15A-534(b).

exist no provisions concerning the use of empirically-derived risk assessment instruments, North Carolina judicial officials must attempt to assess risk mostly clinically – that is, based on their experience, with untested and unweighted statutory factors and with a series of possibly faulty assumptions about the pretrial process.¹¹³ Accordingly, the presumption of release on a written promise or unsecured bond¹¹⁴ can be easily and possibly incorrectly overcome with little evidence.

Empirically-derived risk assessment is considered to be a prerequisite to effective reform because knowing pretrial risk is the first step toward placing the right defendants in the right places during the pretrial phase of a criminal case. A second prerequisite is risk management. In many jurisdictions, risk management is done most effectively through the use of pretrial services agencies, which assess defendants for pretrial risk, make recommendations to courts, and then supervise defendants using minimal to intensive supervision techniques. In North Carolina, the statute mentions such programs,¹¹⁵ but places severe limitations on their use by requiring both the pretrial entity to accept defendants into the program and the defendants to consent to be placed under supervision. The far better practice using both of these prerequisites is for judicial officials to base their release and detention decisions on empirically-derived risk assessment, and then to order released defendants to pretrial supervision, which might range from a simple phone call reminder to more intensive supervision, depending on the risk.

The primary bail-setting provision in North Carolina involves judicial officials setting at least one of five main conditions, from a written promise to appear to house arrest with a secured bond,¹¹⁶ but, again, the lack of empirical risk assessment and the proper use of pretrial services agency supervision likely pushes judicial officials toward the more restrictive of these conditions to address mostly subjective notions of pretrial risk.

Making sure that the release or detention decision is structured properly and done right in the first instance can virtually eliminate any acute need for review of *unattainable* conditions. Nevertheless, there is often still some need for a failsafe to make sure the decision is effectuated, and it is absolutely crucial in any system that has not yet made improvements reducing the need for later review. In North Carolina, magistrates may modify a pretrial release order at any time prior to the first appearance

¹¹³ See § *id.*, § 15A-534(c). These types of factors were included in most state statutes in the wake of the United States Supreme Court’s opinion in *Stack v. Boyle*, 342 U.S. 1 (1951), as a way to avoid arbitrary bail setting by incorporating individualizing elements. Nevertheless, without statistically-derived risk assessment, judicial officials are likely to look at a statutory factor such as the “nature and circumstances of the offense charged,” G.S. § 15A-534(c), incorrectly assume that a higher charge would lead to a higher risk of pretrial misbehavior, and thus be moved toward using more restrictive conditions, such as secured bonds.

¹¹⁴ The presumption also includes release on option number three, release to the custody of a designated person or organization, but if a judicial official chooses this option, defendants are allowed to choose to post a secured bond instead. See G.S. § 15A-534(a).

¹¹⁵ G.S. § 15A-534(b).

¹¹⁶ *Id.* §§15A-534(a)(1)-(5).

before a judge,¹¹⁷ but it appears that there is no formal process for subsequent mandatory review of bonds for misdemeanor defendants who are not released in the first instance.¹¹⁸ This appears to be a significant gap in the North Carolina statute that must be fixed regardless of any additional improvements.

North Carolina Law: The Role of Local Pretrial Release Policies

North Carolina G.S. § 15A-535(a) requires senior resident superior court judges to create and issue local pretrial release policies to help in “determining whether, and upon what conditions, a defendant may be released before trial.” This statutory language indicates that policies might be drafted to potentially supplement various elements missing from the statute, including important elements as a process to detain extremely high risk defendants. Overall, however, the various local pretrial release policies reviewed for this report illustrate mostly varying re-statements of the current statutory requirements along with the inclusion of money-based bail schedules. The policies vary widely in length, in age, in amounts included in the schedules, and, unfortunately, even in articulation of what should be uniform statements of the purposes of pretrial release and detention. Some local pretrial release policies would be rated as very good when held up to legal and evidence-based practices, but others most certainly would not. One frequent problem observed throughout the policies is an articulation of assumptions or rationales based primarily on experience rather than research or the law, and thus policies seeking only to follow the law and the pretrial research would likely look significantly different than the policies this author reviewed. Indeed, even elements within the various policies incorporated without any rationale (indicating, perhaps, universal acceptance), such as monetary bail bond schedules, would likely be eliminated after a review of the law and the evidence.

While there may be a place in pretrial justice for local determination of various details surrounding release and detention, the mechanism incorporated in North Carolina to do so could be improved. This notion should not be read merely to suggest the need for uniformity among the various bail schedules because the use of a traditional money bail schedule is simply not a legal or evidence-based practice. Instead, it should be read to indicate recognition that some local control could be built into a statewide pretrial justice system, but only after statewide issues are fully understood and addressed. Only after a thorough study of bail and no bail in North Carolina can the state likely assess which elements must be addressed in the statute and which can be left to individual judicial districts.¹¹⁹

¹¹⁷ *Id.* § 15A-534(e).

¹¹⁸ *See id.* §15A-601(a) (limiting the first appearance provisions to felony defendants); § 15A-614 (requiring release eligibility review for felony defendants).

¹¹⁹ As one example, a state might allow local flexibility in determining the “cut-offs” on a particular risk instrument, but only after that state determines broadly who should be released and detained pretrial, decides to use an empirical risk instrument, determines which instrument to use, and then decides that cut-off flexibility within a given range is even desirable.

Legal Framework Needed to Implement Legal and Evidence-Based Practices in North Carolina

Incorporating legal and evidence-based practices into a state's pretrial release laws typically requires substantial revision to those laws. Knowledge of legal and evidence-based practices often leads to a series of discreet changes, which quickly add up to large-scale revisions. Moreover, simply trying to incorporate a single element of bail reform – such as, for example, risk assessment – can lead to the need to address multiple statutory sections using charge as its primary proxy for risk. Thus, even targeted reforms can require significant statutory changes. Rather than attempting to re-write North Carolina's pretrial statutes, this report recommends broad statutory changes that will need to be fine-tuned by the people of North Carolina. For example, while this report recommends creating a preventive detention provision based on risk, it leaves to North Carolina the determination of who, exactly, should be detained and how best to make that happen.¹²⁰

North Carolina officials likely wish to know both what they can accomplish with little or no changes to the law as well as what changes are absolutely necessary to create a legal and evidence-based system of release and detention. To determine this, we look primarily at the two crucial elements of legal and evidence-based pretrial practices: (1) risk assessment; and (2) risk management surrounding both release and detention, including the elimination of a secured money bond's potential to interfere with either release or detention.

Risk Assessment: Without any statutory alteration, local pretrial release policies could incorporate empirically-derived risk assessment into their decision-making framework.¹²¹ This change would serve to better inform judicial officials as to which defendants should be released and which should be detained pretrial. However, it would also likely further highlight deficiencies in the current statutory release and detention scheme based, in large part, on criminal charge and secured-money bail (especially to purposefully detain high risk defendants).

Incorporating empirically-derived assessment could also be done without altering the current statutory risk factors that are neither tested nor weighted for prediction of pretrial risk.¹²² However, it can cause confusion to have two sets of factors to assess risk. Moreover, having two sources for risk assessment can lead to an unacceptable number of unnecessary overrides to the empirical instrument, and can also lead to decisions that are actually less accurate than when based on the empirical set alone.

¹²⁰ General recommendations can, however, be quite useful as a starting point. In Colorado, for example, the State Crime Commission released three broad recommendations concerning pretrial release (increase the use of evidence-based practices including empirical risk assessment, increase the use of pretrial services agencies, and reduce the use of money), and those three recommendations led to a comprehensive, line-by-line overhaul of the bail statute.

¹²¹ Indeed, this has apparently already been done to some extent in Judicial District 26, which has adopted the Arnold Foundation's PSA-Court tool.

¹²² See G.S. § 15A-534(c).

For these reasons, in addition to empirical risk assessment's importance as a prerequisite to pretrial improvements, North Carolina should consider ways to encourage (if not mandate) and optimize, through its laws, the use of empirically-derived risk assessment instruments statewide.

Risk Management – Release: Without statutory amendment, judicial officials could also initially release virtually all (in the aggregate) low and medium risk defendants (as well as some high risk defendants deemed safe enough to manage outside of secure detention) on a written promise to appear or an unsecured bond, which would eliminate the tendency for secured bonds to interfere with the release of defendants deemed suitable for supervision in the community. Like risk assessment, however, there are strong reasons (including various assumptions surrounding the efficacy of money) for North Carolina to enact proactive statutory changes to dramatically reduce, if not eliminate, the use of secured money at bail.

Moreover, a key element of risk management for released defendants is pretrial supervision using differential supervision techniques based on the risk principle for both public safety and court appearance. However, the statute currently places restrictions on that supervision by not mandating such programs and by not making such supervision mandatory when the judicial official believes it necessary.¹²³ Thus, even if judicial districts created their own pretrial release programs, the various limitations might make it likely that few defendants would participate. Accordingly, while judicial districts might make progress on their own, statutory guidance and/or mandates are likely necessary.

Risk Management – Detention: Judicial officials must also have the ability to detain pretrial extremely high risk defendants through a due process-laden procedure complying with the principles articulated in *United States v. Salerno*.¹²⁴ Because North Carolina law does not currently allow this (instead, it requires conditions of release to be set for all defendants except for those not entitled to conditions pursuant to statute based primarily on charge), the law must be changed.

Pretrial detention using unattainable money amounts is likely unlawful under multiple legal theories. Accordingly, even if a judicial district incorporates significant procedural due process protections before setting an unattainable money bond, that bond might still be challenged under other theories, such as substantive due process, excessive bail, or equal protection grounds.¹²⁵ As noted previously, money at bail can also pose significant public safety problems, and when money is used to detain, its use tends also to bleed into cases with defendants posing lower risk, leading to additional issues of fairness. Moreover, even states having robust preventive detention provisions

¹²³ See G.S. § 15A-534(b).

¹²⁴ 481 U.S. 739 (1987).

¹²⁵ For example, recent federal lawsuits challenging the use of unattainable financial conditions on equal protection grounds have led to settlements practically eliminating the use of secured financial conditions. Any jurisdiction looking into pretrial justice must always consider the possibility that secured money bonds as a condition of release might one day be simply removed as a lawful alternative.

often see those provisions ignored when secured money is left in the process.¹²⁶ The only way to leave money in the system and yet make sure that it does nothing to hinder either release or detention of defendants pretrial is to incorporate a mandate that the amount not lead to detention,¹²⁷ which, in turn, highlights the importance of creating a proper risk-based detention provision to begin with.

Accordingly, there is much that can be done without legislation, but it would require massively coordinated efforts by all judicial districts (and judicial officials within those districts) and an almost inconceivable change in current judicial and public culture. For example, under current law, judicial districts could incorporate risk instruments into their decision-making frameworks, create pretrial services programs to perform evidence-based risk management functions, systematically release all low and medium risk defendants on written promises to appear or unsecured bonds, convince those defendants to agree to pretrial services agency supervision, and use unattainable secured bonds, albeit likely unlawfully, to detain defendants with unmanageable risk and who fall outside of the categories of cases eligible for “no conditions.” Such a system would resemble a “model” pretrial release and detention system, but having such a system arise organically across North Carolina is highly unlikely to happen. And even if it did, the option of using money to detain might be challenged and curtailed or eliminated, forcing North Carolina to once again revisit its laws concerning release and detention. The better option is for North Carolina to instead consider comprehensive changes to its laws now, prior to potentially being forced.

¹²⁶ For example, numerous officials from Wisconsin have report privately that their preventive detention provision is not used primarily because it is cumbersome compared to using secured money bail. In Colorado, judges routinely avoid using a much less robust provision and rely, instead, on secured money bonds to detain high risk defendants.

¹²⁷ The relevant American Bar Association Pretrial Release Standard states: “The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay.” *American Bar Association Standards for Criminal Justice (3rd Ed.) Pretrial Release* (2007) Std. 10-5.3 (a) at 110. The federal and the District of Columbia statutes each have provisions prohibiting judges from ordering financial conditions that result in the pretrial detention of the defendant. *See* 18 U.S.C. § 3142 (c)(2); D.C. Stat. § 23-1321(c)(3).

V. RECOMMENDATIONS

North Carolina should implement the following recommendations for achieving a 21st Century legal and evidence-based pretrial release system that will allow for the simultaneous movement toward all three goals of the pretrial release decision – public safety, court appearance, and release for bailable defendants.¹²⁸ The recommendations are presented as short-term (to be accomplished in the next 18 months), mid-term (to be accomplished within three years), and long-term (to be accomplished within the next five years.)

Short-Term Recommendations

Judicial officials should immediately begin issuing unsecured bonds for pretrial release instead of secured bonds.

Current law allows for a number of pretrial release options, including the issuance of unsecured bonds—those that require payment only upon a defendant’s failure to appear in court. As noted in this report, judicial officials have relied on secured bonds more out of habit than evidence.¹²⁹ But as noted earlier, research has demonstrated that unsecured bonds are equally as effective at assuring public safety and appearance as secured bonds.¹³⁰ Unsecured bonds offer the additional benefit of resulting in substantially less pretrial detention than secured bonds.¹³¹ Given that research, plus the North Carolina statute requiring that judicial officials select the least restrictive release option,¹³² there is no reason why unsecured bonds could not immediately begin replacing secured bonds. The expanded use of unsecured bonds will go a long way to eliminating poverty-based incarceration in the state.

Appoint a Legal and Evidence-Based Practices Implementation Team to oversee the implementation of the recommendations of this report.

The purpose of the Implementation Team would be to collaboratively identify and guide a data-driven approach to pretrial justice that works for North Carolina, incorporating the law and the best empirical research to best achieve the three goals of the pretrial release decision. Team members should be well-respected leaders of their stakeholder groups, capable getting buy-in from their colleagues, and fully committed to implementing legal and evidence-based pretrial release practices in the state. The Team should be comprised of representatives of the judiciary, court administration, prosecution, defense, law enforcement, jail administrators, victims, state legislators, and county elected officials.

¹²⁸ See Section I (discussing the importance of a balanced approach to pretrial justice).

¹²⁹ *Supra*, p. 1.

¹³⁰ *Supra*, note 16.

¹³¹ *Id.*

¹³² G.S. 15A-534(b).

The Implementation Team should be authorized to appoint sub-committees, and members to those subcommittees, to help implement these recommendations.

The Implementation Team should develop a vision statement for a state-wide, data-driven pretrial justice system in North Carolina.

Guided by the information and recommendations in this report, the Implementation Team should create a vision statement that describes a legal and evidence-based pretrial justice system for North Carolina that encompasses the three goals of the pretrial release decision. (See Appendix D for examples of vision statements of jurisdictions working to implement legal and evidence-based pretrial justice practices.)

The Implementation Team should develop an Implementation Plan based upon the vision statement with a focus on initially implementing the plan in 5 to 7 pilot counties.

Achieving the vision in a timely manner will require an implementation plan that will serve as a roadmap and timeline for putting vision components into practice. In keeping with recognized implementation science and strategy, it is recommended that the Implementation Team focus on implementing this plan in 5 to 7 of the state's counties (i.e., a mix of urban, suburban and rural). This will allow for "pilot" testing of the tools and policies and procedures, so that wrinkles in implementation can be ironed out before a statewide roll-out of the plan.

The Implementation Team should incorporate the following elements in its plan:

The use of an empirically-derived pretrial risk assessment tool by every magistrate in every criminal case at the initial appearance.

Given the benefits of the Arnold Foundation's PSA-Court tool, as described earlier,¹³³ this tool should be the first choice for North Carolina. As noted earlier, the tool is not publicly available yet, but the Implementation Team should work with the Arnold Foundation to try to approximate a time when it might be available to the state. If the tool will not be available when the team is otherwise ready to begin implementing this plan in the pilot counties, then the Virginia Pretrial Risk Assessment Instrument (VPRAI) should offer a workable alternative.¹³⁴ The VPRAI was empirically tested in multiple jurisdictions in a state that borders North Carolina, which should provide some confidence that it would perform well in North Carolina. Whatever tool is selected should be subjected to a validation study.

¹³³ *Supra*, p. 22.

¹³⁴ The Committee received information about the VPRAI at its February 12, 2016 Committee meeting from Kenneth Rose, Pretrial Coordinator, VA Department of Criminal Justice Studies. Information presented by Mr. Rose is posted on the NCCALJ's website (<http://nccalj.org/wp-content/uploads/2016/02/Commission-Presentation-1.pdf>).

The use of a release/detention matrix that factors risk level and charge type.

The Implementation Team should seek consensus on a matrix that would provide guidance to magistrates and judges in pretrial release decision-making.¹³⁵

The development of differentiated risk management procedures that match the identified risk to the appropriate supervision level.

As noted in the report, about 60% of North Carolina counties are not served by pretrial services programs.¹³⁶ Even in many of those counties that have such programs, supervision capacity is limited. With 100 counties in the state, many that are rural, implementing legal and evidence-based pretrial risk management practices in every part of the state is a challenge that the Implementation Team must address. There are two different approaches that the Team should explore.

The first approach would be establishing a statewide pretrial services program, with the capacity to supervise defendants released by the court with conditions in every part of the state. Kentucky has had statewide pretrial services since the 1970s, and New Jersey is in the process of implementing statewide pretrial services. A statewide pretrial services would offer several benefits: (1) it would assure supervision services are provided uniformly throughout the state; (2) it would assure standardized supervision practices; and (3) it would require a standardized data system for recording supervision activities and outcomes.

The second approach would be for the counties to run but the states to fully or substantially fund pretrial services programs in the state. This approach is used in Virginia, where the Virginia Department of Criminal Justice Services provides funding for 29 pretrial services programs that serve 97 of Virginia's 133 localities.¹³⁷ This arrangement is authorized by statute.¹³⁸

Regardless of the approach used, the Implementation Team should remember that supervision services should be reserved only for those defendants who need them, given their risk levels. As noted earlier, supervising low risk defendants has no beneficial impact on increasing their already high rates of success.¹³⁹

One intervention that all defendants, regardless of their risk level, should receive is a court date reminder. The research, cited earlier, has made clear that the simple act of reminding defendants of their upcoming court dates has a significant impact on improving court appearance rates.¹⁴⁰ The technology is available, and is becoming

¹³⁵ See *supra* p. 23 (discussing the use of such matrices).

¹³⁶ *Supra*, p. 17.

¹³⁷ *Comprehensive Community Corrections Act and Pretrial Services Act Annual Report, July 1, 2013 – June 30, 2014*, Virginia Department of Criminal Justice Services (2014), at 1.

¹³⁸ Va. Code Ann. § 19.2-152.2.

¹³⁹ *Pretrial Risk Assessment in Federal Court*, *supra* note 54.

¹⁴⁰ *Supra* notes 62 and 63.

increasingly affordable, to establish automated systems that can call or text such reminder notices.

The expanded use of citations by law enforcement

As discussed above, expanding the use of citations in lieu of arrest in appropriate cases is an important strategy for achieving a balanced approach to pretrial justice, and it already has been successfully implemented in at least one state.¹⁴¹ North Carolina law already allows law enforcement to issue a citation for any misdemeanor or infraction.¹⁴² The Implementation Team should work with law enforcement agencies throughout the state to identify the opportunities for expanding the use of citations, and to see if the obstacles that exist to doing so can be addressed.

Early involvement of prosecutor and defense counsel

Given the benefits, described in Section III, of having a prosecutor screen cases before the initial pretrial release decision and for both prosecution and defense to be present at that hearing, the Implementation Team should identify how to make this happen. The State of Delaware, which, like North Carolina, has a 24/7 magistrate system, already is seeking to do this. Officials have set up special procedures for persons charged with certain felony offenses in that state's largest jurisdiction – Wilmington. Instead of having Magistrate Court 24/7 for those defendants, one court session is held at 8am and another at 8pm. This makes it easier for prosecution and defense to be present and making appropriate representations to the magistrate on the issue of pretrial release. Officials will take what they learn from this pilot effort to see if they can overcome the challenges presented by staffing initial appearances with prosecutors and defenders for indigent defendants.

The institution of automatic bond review procedures for misdemeanor defendants.

As discussed above, some in-custody defendants do not receive timely review of their release conditions.¹⁴³ Misdemeanor defendants who are in custody on secured bonds set by the magistrate should have an automatic review of that decision at the next regular session of district court. The Implementation Team should assess whether making this happen will require a statutory change, a change in court rules, a policy directive, or some other action.

Uniform data reporting standards

Collecting the data elements listed in Section IV and required for an effective pretrial justice system would involve every state law enforcement agency, and jail and the court system. To achieve the purposes of data collection for implementing this plan, it would be ideal if there was a uniform data system among all law enforcement agencies

¹⁴¹ *Supra* pp. 24-25.

¹⁴² G.S. 15A-302(a).

¹⁴³ *Supra* p. 26.

and a uniform system among all jails. This may or may not be a practical option. Another approach may be to develop data reporting standards that the appropriate entities would follow. For example, every law enforcement agency would report to a central entity every month how many citations were issued, and for what charges. Every jail would report monthly on the percent of the total population that is held on secured bonds, and the length of stay of those persons, by their risk level.¹⁴⁴ The Implementation Team should work with the state's law enforcement agencies and jails to assess the best ways to implement such data reporting standards.

The Implementation Team should draft language for bills or proposed court rules that incorporate the changes in law needed to implement the plan in the pilot counties.

The Implementation Team should develop a preventive detention framework for defendants who present unacceptably high risk.

As noted above, North Carolina does not have a preventive detention statute that allows for the detention of defendants who present unacceptably high risk.¹⁴⁵ As a result, very risky defendants with resources can buy their way out jail, even when very high bonds are set. The Implementation Team should draft proposed legislation and court rules to establish a preventive detention provision similar to the provision reviewed by the U.S. Supreme Court in *United States v. Salerno*¹⁴⁶ (albeit incorporating risk).

The Implementation Team should develop a release framework for defendants who are not detained.

For releasable defendants, the Implementation Team should draft and North Carolina should enact legislation and court rules to give North Carolina judicial officials broad discretion to use legal and evidence-based practices to: (1) effectuate release quickly; (2) successfully manage defendants in the community through conditions and supervision techniques shown by research to be effective at achieving the purposes of pretrial release and; and (3) respond to pretrial failure that does not lead to detention. If money is to be left in such a system, the state should enact a provision mandating that no condition of release lead to the detention of an otherwise releasable defendant. The law should expressly articulate the use of "least restrictive" conditions, and encourage courts to monitor defendants to increase or decrease the use of conditions to respond to changes in risk. Moreover, the law should be changed to provide that no otherwise releasable defendant may be detained for failure to meet a release condition.

The Implementation Team should draft other legislation and/or court rules needed to implement the recommendations in this report.

The Implementation Team should draft and the state should enact provisions mandating the use of the chosen empirically-derived risk assessment instrument, the adoption of a decision-making framework (possibly statewide) designed to guide release

¹⁴⁴ See *supra* pp. 26-27 (listing other data needs).

¹⁴⁵ See *supra* pp. 36-37 (discussing this).

¹⁴⁶ See *supra* note 89.

and detention decision-making, and the creation of pretrial services programs to use differential supervision methods on all defendants for both public safety and court appearance.¹⁴⁷ It should eliminate the use of traditional money bail bond schedules based on charge. It should enact provisions for the speedy review of pretrial conditions in all cases. It should amend or repeal those provisions in North Carolina law not compatible with these recommendations. And finally, it should actively oppose any future legislation that runs counter to these recommendations.

Mid-Term Recommendations

The Implementation Team should fully implement the plan in the pilot counties.

While some aspects of the plan may be implemented during the short-term period, the Implementation Team should make every effort to implement the full plan in the pilot sites during this period.

The Implementation Team should ensure that all staff with a role in implementing the plan are fully informed of its purpose and rationale and trained for successful implementation.

One of the most important keys to successful implementation of any plan is fidelity by those responsible for carrying out the plan day-to-day. If the plan is not executed as intended, the intended results will not be achieved.

Training should be included as a key part in the implementation plan. At a minimum, information and training sessions should be directed to bail-setting judicial officials, law enforcement officers, assistant district attorneys, assistant public defenders, and pretrial services staff or others who have a role in pretrial supervision.

The Implementation Team should establish a data dashboard to monitor outcomes and regularly review the data and make appropriate adjustments to the plan

The team should assess what changes need to be made to the data infrastructure in place in county jails and the courts to be able to gather the data elements listed in Section III of this report.

Long-Term Recommendations

The Implementation Team should begin implementing the plan in the remaining counties of the state.

¹⁴⁷ Although it is perhaps ideal, pretrial services functions do not necessarily have to be performed by government entities. For example, in Colorado, two entities – one for-profit and one nonprofit – help jurisdictions with release using methods that are similar, if not identical to, public pretrial agency functions. It bears repeating, however, that legal and evidence based pretrial supervision does not include supervision through a commercial surety using a financially-based contract.

Based on the experiences of the pilot projects, the Team should start implementing the plan throughout the state.

The Implementation Team should develop a plan for sustaining changes that have been made and holding accountable those that make the changes.

Sustaining change can be very difficult, particularly as those who pushed for the changes move on. North Carolina leaders and stakeholders should be mindful of this and develop a plan for sustaining reforms. This involves ensuring that statutes and court rules codify these policies. It also involves robust reporting systems and transparency for the public about the risk profile of North Carolina's arrestee population, how risk assessments are used, and how risk-based supervision strategies are being employed and the results they are producing regarding public safety and appearance in court.

North Carolina officials should consider what role, if any, secured bonds should continue to play in the state's pretrial system, and draft appropriate proposals for statutory or court rule amendments.

As North Carolina's plan for a legal and evidence-based approach to pretrial justice unfolds, it should become increasingly clear that the continued use of secured bonds is incompatible with that approach, and it will be much easier to make the case for completely replacing secured bonds with recognizance or unsecured-bond releases.

APPENDIX A. VIRGINIA PRETRIAL RISK ASSESSMENT INSTRUMENT

Risk Factor	Criteria	Assigned Points
Charge Type	If most serious charge for the current offense is a felony	1
Pending Charge(s)	If the defendant has one or more charges pending in court at the time of the arrest	1
Criminal History	If the defendant has one or more misdemeanor or felony convictions	1
Failure to Appear	If the defendant has two or more failure to appears	2
Violent Convictions	If the defendant has two or more violent convictions	1
Current Residence	If the defendant has lived at the current residence for less than one year prior to the arrest	1
Employed/Child Caregiver	If the defendant has not been employed continuously for the previous two years and was not the primary caregiver for a child at the time of arrest	1
History of Drug Abuse	If the defendant has a history of drug abuse	1

Risk Level	Risk Score
Low	0,1 points
Below Average	2 points
Average	3 points
Above Average	4 points
High	5 – 9 points

APPENDIX B. VIRGINIA PRETRIAL PRAXIS

Risk Level/ Charge Category	Traffic: Non- DUI	Non- violent misd.	Theft/ Fraud	Traffic: DUI	Drug	Failure To Appear	Firearm	Violent
<i>Low Risk</i>								
PR or UA Bond	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pretrial Supervision	No	No	No	No	No	Yes	Yes	Yes
Supervision Level	N/A	N/A	N/A	N/A	N/A	I	II	II
<i>Below Average Risk</i>								
PR or UA Bond	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pretrial Supervision	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Supervision Level	N/A	N/A	I	I	I	II	II	II
<i>Average Risk</i>								
PR or UA Bond	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Pretrial Supervision	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Supervision Level	I	I	II	II	II	III	N/A	N/A
<i>Above Average Risk</i>								
PR or UA Bond	Yes	Yes	Yes	Yes	Yes	No	No	No
Pretrial Supervision	Yes	Yes	Yes	Yes	Yes	No	No	No
Supervision Level	I	I	II	III	III	N/A	N/A	N/A
<i>High Risk</i>								
PR or UA Bond	Yes	Yes	Yes	No	No	No	No	No
Pretrial Supervision	Yes	Yes	Yes	No	No	No	No	No
Supervision Level	II	II	III	N/A	N/A	N/A	N/A	N/A

PR or UA Bond – Yes = Recommended for Personal Recognizance or Unsecured Appearance Bond, No = Not Recommended

Pretrial Supervision – Yes = Recommended for Pretrial Supervision, No = Not Recommended

Supervision Level – [I, II and III] = Recommended Level of Supervision, N/A = Supervision not recommended (level not applicable)

APPENDIX C. VIRGINIA DIFFERENTIAL PRETRIAL SUPERVISION

Condition	Level I	Level II	Level III
Court date reminder for every court date	√	√	√
Criminal history check before court date	√	√	√
Face-to-face contact once a month	√		
Face-to-face contact every other week		√	
Face-to-face contact every week			√
Alternative contact once a month (telephone, email, text, as approved locally)	√		
Alternative contact every other week (telephone, email, text, as approved locally)		√	
Special condition compliance verification	√	√	√

APPENDIX D. EXAMPLES OF VISION STATEMENTS

Vision Statement of the Delaware Smart Pretrial Policy Team

We envision a fair pretrial system that relies on individualized decisions based on risk and the effective use of resources to honor individual rights, protect public safety and promote the administration of justice.

Ten things we know to be true...

1. We can work well together.
2. Delaware's small size is an asset.
3. Reliable data driven decisions lead to a more objective and reliable system.
4. Meaningful options for supervision will make a better pretrial system.
5. We want to live in a safe community.
6. We must move forward with a risk-based system.
7. More information for bail decisions is better than less.
8. Lack of community-based mental health and substance abuse services contribute to our pretrial detentioner population.
9. Innovation does not have to come at a cost.
10. Sustainability requires commitment.

In our ideal system we would...

Work together,
Protect an individual's right to liberty,
Protect the safety of our community,
Use resources efficiently,
Make risk informed choices,
Utilize meaningful evidence based supervision options for our pretrial system, and
Recognize the impact that pretrial decisions have on individuals, the community, and the judicial process.

Vision Statement of the Denver, Colorado Smart Pretrial Policy Team

Pretrial decisions are equitable, fiscally responsible, and data informed; they recognize the presumption of release and reasonably ensure appearance in court with a commitment to public safety.

Guiding Principles

- 1) Release and detain decisions for all defendants should be risk based, individualized, and consider the safety and needs of the community. Release decisions shall be informed by an empirical pretrial risk assessment.
- 2) Pretrial processes shall maintain the presumption of release, equality, justice, and due process.
- 3) Pretrial risk can be lessened for some risk levels with the use of appropriate pretrial supervision conditions.

- 4) Pretrial system decisions should be research based and evaluated based on continuing data outcome evaluation.
- 5) The collaboration of the stakeholders in the pretrial justice process is essential to establish system best practices.

Vision Statement of the Yakima County, Washington Smart Pretrial Policy Team

The vision of Yakima County is to operate a pretrial system that is safe, fair, and effective and which maximizes public safety, court appearance, and appropriate use of release, supervision, and detention.

APPENDIX E. FACTORS INCLUDED IN THE ARNOLD FOUNDATION PSA COURT RISK ASSESSMENT TOOL

- Whether the current offense is violent
- Whether the person had a pending charge at the time of the current offense
- Whether the person has a prior misdemeanor conviction
- Whether the person has a prior felony conviction
- Whether the person has prior convictions for violent crimes
- The person's age at the time of arrest
- How many times the person failed to appear at a pretrial hearing in the last two years
- Whether the person failed to appear at a pretrial hearing more than two years ago
- Whether the person has previously been sentenced to incarceration.

APPENDIX D

IMPROVING INDIGENT DEFENSE SERVICES

Criminal Investigation and Adjudication Committee

October 2016

IMPROVING INDIGENT DEFENSE IN NORTH CAROLINA

NCCALJ COMMITTEE ON CRIMINAL INVESTIGATION & ADJUDICATION REPORT

OCTOBER 2016

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Executive Summary

As the United States Supreme Court recently declared: “No one doubts the fundamental character of a criminal defendant’s Sixth Amendment right to the ‘Assistance of Counsel.’”¹ This right is so critical that the high Court has deemed its wrongful deprivation to constitute “structural” error, affecting the very “framework within which the trial proceeds.”² For indigent defendants, this fundamental right to effective assistance of counsel must be provided at state expense.³ When the system fails to provide this right, it denies indigent defendants justice. That denial has very real consequences for defendants, including excessive pretrial detention, increased pressure on innocent persons to plead guilty, wrongful convictions, and excessive sentences.⁴

There are, however, other costs associated with the State’s failure to provide effective assistance, including costs to victims, families, communities, taxpayers and the criminal justice system as a whole.⁵ Costs to the criminal justice system include trial delays and an increased number of appeals and post-conviction challenges, all of which must be funded by North Carolina taxpayers, as are costly retrials when those challenges are successful.⁶ As has been noted: “Justice works best when all players within the system are competent and have access to adequate resources. When the system includes well-trained public defenders, cases move faster (helping the court manage growing caseloads), and the system tends to generate and implement innovative programs.”⁷

Trial delay is not merely a theoretical danger; it is an actual one. District Attorneys forcefully asserted to the Committee that an erosion of the quality of North Carolina’s indigent defense bar was impairing their ability to deliver justice in the state’s criminal courts.⁸

In comments to the Committee, Justice Rhoda Billings emphasized that wrongful convictions deny justice to victims and put North Carolina’s citizens in danger by allowing the real criminal to remain

¹ *Luis v. United States*, 578 U.S. ___, 136 S. Ct. 1083, 1088 (2016). The Sixth Amendment provides, in relevant part: “In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense.” U.S. CONST. amend. VI.

² *Luis*, 578 U.S. at ___, 136 S. Ct. at 1089 (quotation omitted).

³ *Id.*

⁴ Comments of the Honorable Rhoda Billings, Committee Meeting Nov. 23, 2015 [hereinafter Billings Comments]; *see also* THE CONSTITUTION PROJECT, JUSTICE DENIED: AMERICA’S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 6 (2009) [hereinafter JUSTICE DENIED] (noting that wrongful convictions have occurred as a result of inadequate representation by defense counsel), <http://www.constitutionproject.org/wp-content/uploads/2012/10/139.pdf>.

⁵ JUSTICE POLICY INSTITUTE, SYSTEM OVERLOAD: THE COSTS OF UNDER-RESOURCING PUBLIC DEFENSE 2 (2011) [hereinafter SYSTEM OVERLOAD],

http://www.justicepolicy.org/uploads/justicepolicy/documents/system_overload_final.pdf.

⁶ JUSTICE DENIED, *supra* note 4, at 2 (noting the cost of retrials); Comments of District Attorney Lorrin Freeman, Committee Meeting Nov. 23, 2015 (ineffective assistance leads to costly retrials); Comments of Former Attorney General Eric Holder, Brennan Legacy Awards Dinner, Nov. 16, 2009 [hereinafter Holder] (“Even assuming these defendants were guilty of the crimes for which they were originally convicted, the public still must bear the cost of appeals and retrials because the system didn’t get it right the first time.”),

<https://www.brennancenter.org/analysis/attorney-general-eric-holder-indigent-defense-reform>.

⁷ Tony Fabelo, *What Policymakers Need to Know to Improve Public Defense Systems*, US BUREAU OF JUSTICE ASSISTANCE EXECUTIVE SESSION ON PUBLIC DEFENSE, Dec., 2001, at 2 [hereinafter *What Policymakers Need to Know*] (a strong public defense system “facilitates a smoother operating justice system”),

<https://www.ncjrs.gov/pdffiles1/bja/190725.pdf>.

⁸ Comments of District Attorney Andrew Murray, Committee Meeting Nov. 23, 2015 (underfunding of IDS impairs the prosecutors’ ability to be efficient and effective); Comments of District Attorney Lorrin Freeman, Committee Meeting Nov. 23, 2015 (when lawyers are overloaded, prosecutors cannot move forward with their cases); Comments of District Attorney Michael Waters, Committee Meeting Nov. 23, 2015.

at large, free to perpetrate crime on others.⁹ Additionally, families of wrongfully convicted defendants suffer, not just from the loss of a family member who may be incarcerated, but from the dramatic collateral consequences that follow as a result of any criminal conviction, including barriers to obtaining employment, joining the military, or receiving financial aid to pursue higher education.¹⁰ These collateral consequences impair the person's ability to support both himself and his family, often necessitating public assistance and thus additional taxpayer support.

In addition to paying for the cost of an inefficient justice system, taxpayers pick up the tab for ineffective assistance in other ways. When inadequate lawyering results in excessive pretrial detentions and sentences and in incarceration for convictions that are later reversed, the costs of such detentions are paid by North Carolina's citizens.¹¹

Finally — and perhaps most importantly — another cost of failing to provide an effective indigent defense system is a loss of public confidence in the court system's ability to administer justice.¹² Inadequate indigent defense services compromise the integrity of the justice system,¹³ by calling its fairness into question.¹⁴ Because people in the lowest income groups are most likely to require indigent defense services, failures in the indigent defense system are felt most acutely by these individuals.¹⁵ As Justice Billings noted to the Committee: Americans strongly believe that the amount of money a person has should not affect the amount of justice he or she receives; any perception of fairness vanishes if our citizens believe that a poor person is placed at a significant disadvantage in the justice system.¹⁶ In fact, evidence indicates that a majority of citizens *already* believe that poor people are at such a disadvantage: A recent survey of North Carolinians shows that 64% of respondents believe that low-income people fare worse than others in our state court system.¹⁷

Sixteen years ago the North Carolina General Assembly created the state's existing indigent defense system. While stakeholders agree that North Carolina has benefited greatly from the creation of the Office of Indigent Defense Services (IDS) and the Commission on Indigent Defense Services (IDS Commission),¹⁸ the potential that IDS and the IDS Commission hold for providing uniform quality,

⁹ Billings Comments, *supra* note 4; *see also* JUSTICE DENIED, *supra* note 4, at 6; Holder, *supra* note 6 (“And for those cases in which the defendants were not guilty, then obviously the price tag is much higher -- both in the ultimate nightmare scenario of sending an innocent person to jail, and in terms of letting the person who actually committed the crime remain free.”).

¹⁰ *See generally* Collateral Consequences Assessment Tool (UNC School of Government), <http://ccat.sog.unc.edu/> (centralized database of collateral consequences).

¹¹ Billings Comments, *supra* note 4 (so noting with respect to pretrial incarceration of low-risk defendants); *see also* JUSTICE DENIED, *supra* note 4, at 2 (noting that increased jail expenses result from a failure to provide effective assistance); Holder, *supra* note 6 (“An analysis conducted by the State Appellate Defender Office in Michigan found that the state's failure to invest resources at the trial court level has contributed to the costly imprisonment of defendants whose convictions were later reversed.”).

¹² JUSTICE DENIED, *supra* note 4, at 2; Billings Comments, *supra* note 4; SYSTEM OVERLOAD *supra* note 5, at 23.

¹³ SYSTEM OVERLOAD, *supra* note 5, at 23; *What Policymakers Need to Know*, *supra* note 7, at 2 (“A strong public defense system promotes the legitimacy of the justice system—legitimacy necessary to maintain public support.”).

¹⁴ *See* Gideon v. Wainwright, 372 U.S. 335, 344 (1963) (“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”).

¹⁵ *What Policymakers Need to Know*, *supra* note 7, at 2.

¹⁶ Billings Comments, *supra* note 4.

¹⁷ Elon University Poll, conducted at the request of the NC Commission on the Administration of Law & Justice, at 26 (2015) (on file with Commission staff).

¹⁸ DAVID BROWN & MONICA YELVERTON, TRIAL JUDGES' PERCEPTIONS OF NORTH CAROLINA'S OFFICE OF INDIGENT DEFENSE SERVICES: A REPORT ON SURVEY RESULTS (UNC School of Government 2016) [hereinafter TRIAL JUDGES']

cost-effective representation statewide has yet to be fully achieved. North Carolina is not alone in this respect. Just last year, Tim Lynch, Director of the CATO Institute Project on Criminal Justice, noted that “indigent defense in America today is in a state of crisis” and that “[f]or the indigent, the right to counsel too often has been illusory.”¹⁹ Similarly, a recent Heritage Foundation program noted that fulfilling the promise of providing indigent defense services remains a “continuing challenge.”²⁰ Nor is North Carolina alone in its desire to improve indigent defense. In a statement accompanying a major grant to the National Association of Criminal Defense Lawyers (NACDL), Charles G. Koch, chairman and CEO of Koch Industries, expressed support for “NACDL’s efforts to make the Sixth Amendment’s guarantee of an individual’s right to counsel a reality for all Americans, especially those who are the most disadvantaged in our society.”²¹ Support for these efforts crosses traditional ideological lines.²² As noted in a 2012 report on indigent defense reform by the American Bar Association and the NACDL, conservatives and liberals “share the belief that people should be protected by counsel when liberty is taken away.”²³

This report aims to help North Carolina strengthen the protections it offers to indigent people when their liberty is at stake. It begins with a brief background. It then defines the critical characteristics of an effective indigent defense system and makes recommendations regarding how to best achieve those characteristics in North Carolina. Key recommendations include:

- Establishing single district and regional public defender offices throughout the state.
- Providing oversight, supervision and support to all counsel providing indigent defense services.
- Implementing uniform indigency standards.

PERCEPTIONS OF IDS] (based on responses of 135 judges surveyed, judges had a generally positive view of IDS’s performance), https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/20160060_Judges_Perceptions_Brown.pdf; Comments of Jeff Cutler, Attorney, Committee Meeting Nov. 23, 2015 (IDS has been very successful in providing good quality legal services); Comments of Chief Public Defender James Williams, Committee Meeting Nov. 23, 2015 (IDS has improved the quality of legal services and has done it relatively cost-effectively); Comments of Desmond McCallum, Attorney, Committee Meeting Nov. 23, 2015 (IDS has been effective in ensuring that poor people can get the same type of lawyer afforded to wealthy individuals); Comments of District Attorney Seth Edwards, Committee Meeting Nov. 23, 2015 (noting success of a new public defender office and IDS’s strength in training staff).

With respect to improvements in cost-effectiveness in the delivery of indigent defense services, the Commission reports that “overall IDS demand (spending and current-year obligations) since IDS was created has averaged 4.3%, which is significantly below the average annual increase (more than 11%) during the seven years prior to IDS’ creation.” REPORT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES 1 (Submitted to the N.C. General Assembly Mar. 1, 2016) [hereinafter IDS REPORT], <http://www.ncids.org/Reports%20&%20Data/Prior%20GA%20Reports/LegislatureReport2016.pdf>. The Commission reports that although indigent defense per disposition expenditures fluctuate from year to year, “overall per disposition costs during fiscal year 2014-15 were only \$9.67 more than per disposition costs the year before IDS was established (fiscal year 2000-01).” *Id.* It further reports that while there have been modest increases in average per case costs for some case types over the past 15 years, the overall increases in demand on the fund are primarily due to an expanding indigent caseload. *Id.*

¹⁹ Tim Lynch, *2015 Can be the Year of Criminal Justice Reform*, CATO INSTITUTE, <http://www.cato.org/publications/commentary/2015-can-be-year-criminal-justice-reform> (last visited May 24, 2016).

²⁰ The Heritage Foundation, *Gideon at 50: Fundamental Right, Ongoing Challenge* (Mar 12, 2013), <http://www.heritage.org/events/2013/03/gideon> (this Heritage Foundation panel discussion was co-hosted with the National Association of Criminal Defense Lawyers).

²¹ Jacob Gershman, *Koch Industries Funds Legal Defense for the Poor*, THE WALL STREET JOURNAL LAW BLOG (Oct. 22, 2014), <http://blogs.wsj.com/law/2014/10/22/koch-industries-funds-legal-defense-for-the-poor/>.

²² *Id.*

²³ *Id.*

- Implementing uniform training, qualification, and performance standards and workload formulas for all counsel providing indigent services.
- Providing reasonable compensation for all counsel providing indigent defense services.
- Developing a long-term plan for the delivery of indigent defense services in the state.
- Ensuring that the indigent defense function is directly accountable to the legislature but independent of the conflicts created by judicial control.
- Reducing the cost of indigent defense services to make resources available for needed reforms.

The NCCALJ²⁴ Criminal Investigation and Adjudication Committee (Committee)²⁵ recognizes that these recommendations cannot be implemented all at once. It hopes however that they will serve as a long-term blueprint for changes to the state's indigent defense system. In the short term, the Committee hopes that these recommendations will serve as important touchstones for evaluating the merits of new legislative proposals, and that legislation advancing the blueprint, as drawn here, will be adopted and that legislation at odds with it will be averted. It is important to note that many of the Committee's recommendations are interdependent. For example, this report recommends both establishing single district and regional public defender offices statewide and that IDS provide oversight, supervision and support to all counsel providing indigent defense services. The vehicle for implementing the latter recommendation is the offices created by the former.

The Committee's work was limited by both time and resources. As a result, while civil proceedings for which indigent defense services are required are mentioned in this report, its focus is on criminal cases. The Committee suggests that further study be done to make recommendations for improving indigent defense representation in non-criminal cases.

This report begins with background information regarding IDS and the IDS Commission. It then defines the characteristics of an effective indigent defense system. Finally, it makes recommendations to bring North Carolina's indigent defense system in line with those characteristics so that it can best achieve its mission: ensuring fair proceedings by providing effective representation in a cost-effective manner.

Background

Creation of IDS & IDS Commission

In August 2000, the North Carolina General Assembly passed the Indigent Defense Services Act,²⁶ creating the Office of Indigent Defense Services (IDS) and the IDS Commission and charging them with overseeing the provision of legal representation to indigent persons entitled to counsel at state expense. On July 1, 2001, IDS formally assumed its responsibilities under the Act.²⁷

The impetus for the Indigent Defense Services Act included findings from a 1998 legislative study commission that indigent defense in North Carolina suffered – with regards to both cost-effectiveness and quality – from a lack of a centralized agency to provide coordinated planning, oversight, and management. Among other things, the study commission found that the indigent

²⁴ For information about the North Carolina Commission on the Administration of Law & Justice (NCCALJ), visit the Commission's website: <http://nccalj.org/>.

²⁵ See *infra* pp. 50-51 (listing all Committee members).

²⁶ S.L. 2000-144. The stated purpose of the Act was to enhance the oversight, quality, independence, and cost-effectiveness of indigent defense services; establish uniform policies and procedures for the delivery of those services; and generate reliable statistical information about services provided and funds expended. *Id.*

²⁷ IDS REPORT, *supra* note 18, at 1.

defense function should be independent of judicial control; that an independent centralized agency would be more accountable to the legislature and taxpayers; and that the quality of indigent defense services was unequal across the state, and was at times poor.²⁸

IDS Commission

The IDS Commission oversees IDS as well as the Offices of the Juvenile Defender, Appellate Defender, and Capital Defender. The Commission's 13 members are appointed by the Chief Justice, Governor, Senate, House, State Bar, Bar Association, Public Defenders Association, Advocates for Justice, Association of Black Lawyers, Association of Women Lawyers, and the Commission itself.²⁹

The IDS Commission has substantial authority, including the power to appoint the IDS Executive Director, Appellate Defender, Capital Defender, and Juvenile Defender and to set standards of representation and rates of compensation.³⁰ In 2011, authority to appoint Chief Public Defenders was transferred from local senior resident superior court judges to the IDS Commission;³¹ in 2013, that appointing authority was returned to the local senior resident superior court judges.³²

²⁸ INDIGENT DEFENSE STUDY COMMISSION, REPORT AND RECOMMENDATIONS (Submitted to the N.C. General Assembly May 1, 2000) [hereinafter LEGISLATIVE STUDY COMMISSION REPORT], http://www.ncids.org/home/ids_study_commission_report.pdf.

²⁹ G.S. 7A-498.4. Commissioners serve a 4-year term, with an optional one-time reappointment. *Id.* Commissioners must have significant experience in the defense of cases subject to the IDS Act, or have a demonstrated commitment to quality representation in indigent cases. G.S. 7A-498.4(d).

³⁰ G.S. 7A-498.5.

³¹ S.L. 2011-145, sec. 15.16(b) (amending G.S. 7A-498.7(b); requires the local bar to nominate two to three candidates, from which the IDS Commission will make its selection).

³² S.L. 2013-360, sec. 18A.5(a).

The authority to appoint the Public Defender has been vested in different persons and in a combination of persons over time. When the State's first two Public Defender offices were created in 1970, the Governor was given authority to appoint the Public Defender. S.L. 1969-1013. In 1973, a third office was created in District 28 (Buncombe County); while the Governor retained appointment authority with respect to the first two offices, the senior resident superior court judge was given appointment authority for the new office. S.L. 1973-799, sec. 2. From 1975 to 1981, additional offices were created, with the Governor designated as appointing authority. S.L. 1975-956, sec. 14; S.L. 1979-1284, sec. 2; S.L. 1981-1282, sec. 73. Then, in 1985, appointment authority was transferred to the senior resident superior court judge for all offices. S.L. 1985-698, sec. 22.1. In 1987, two new offices were created in Districts 16A (Scotland and Hoke Counties) and 16B (Robeson County). S.L. 1987-1056, sec. 8. The senior resident superior court judge was given appointment authority in District 16A; however, appointment authority for District 16B was vested with "the resident superior court judge of superior court district 16B other than the senior resident superior court judge." *Id.* at sec. 10. This arrangement continued until the Senior Resident Superior Court Judge in District 16B, Joe Freeman Britt, left the bench in 1997, at which time appointment authority in the district was given to the senior resident superior court judge. S.L. 1997-175. Meanwhile, when a new office was created in District 14 (Durham County), appointment authority went to the senior resident superior court judge. S.L. 1989-1066, sec. 127(b). Thus, by the time IDS and the IDS Commission were created, appointment authority for all Chief Public Defenders resided with the senior resident superior court judge. Although the report of the legislative study commission that led to the Indigent Services Act recommended that the IDS Commission be vested with authority to appoint Chief Public Defenders, LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 2, when the IDS Commission was created, appointing authority was left with the senior resident judges. The IDS Commission was first vested with that authority in 2011; specifically, the IDS Commission was authorized to select the Chief Public Defender from a list of two or three attorneys nominated by the local bar. S.L. 2011-145, sec. 15.16(b). Then, effective August 1, 2013, responsibility for appointing Chief Public Defenders was transferred back to the local senior resident superior court judges. S.L. 2013-360, sec. 18A.5(a).

IDS

As initially created in 2001, IDS was an independent agency within the Judicial Department. However, the 2015 Appropriations Act provides that IDS is a sub-agency of the North Carolina Administrative Office of the Courts (NCAOC).³³ That Act also provides that the IDS budget is part of the NCAOC budget, that the NCAOC shall conduct an annual audit of the IDS budget, and that the NCAOC director has the authority to modify the IDS budget without approval of the IDS Commission.³⁴

The IDS office includes the executive director and administrative staff.³⁵ It is responsible for administration and implementation of policy as directed by the Commission. The executive director has direct oversight of the Office of the Special Counsel, and fiscal authority over the 16 public defender offices.³⁶ The IDS office also has statutory reporting requirements.³⁷

The NCAOC provides general administrative support to IDS,³⁸ in the form of purchasing and personnel functions and technology and telecommunications support.³⁹

³³ S.L. 2015-241, sec. 18A.17(b).

³⁴ *Id.*

³⁵ IDS REPORT, *supra* note 18. IDS' administrative offices accounted for less than 2% of IDS' overall budget in fiscal year 2014-15. *Id.* at 4.

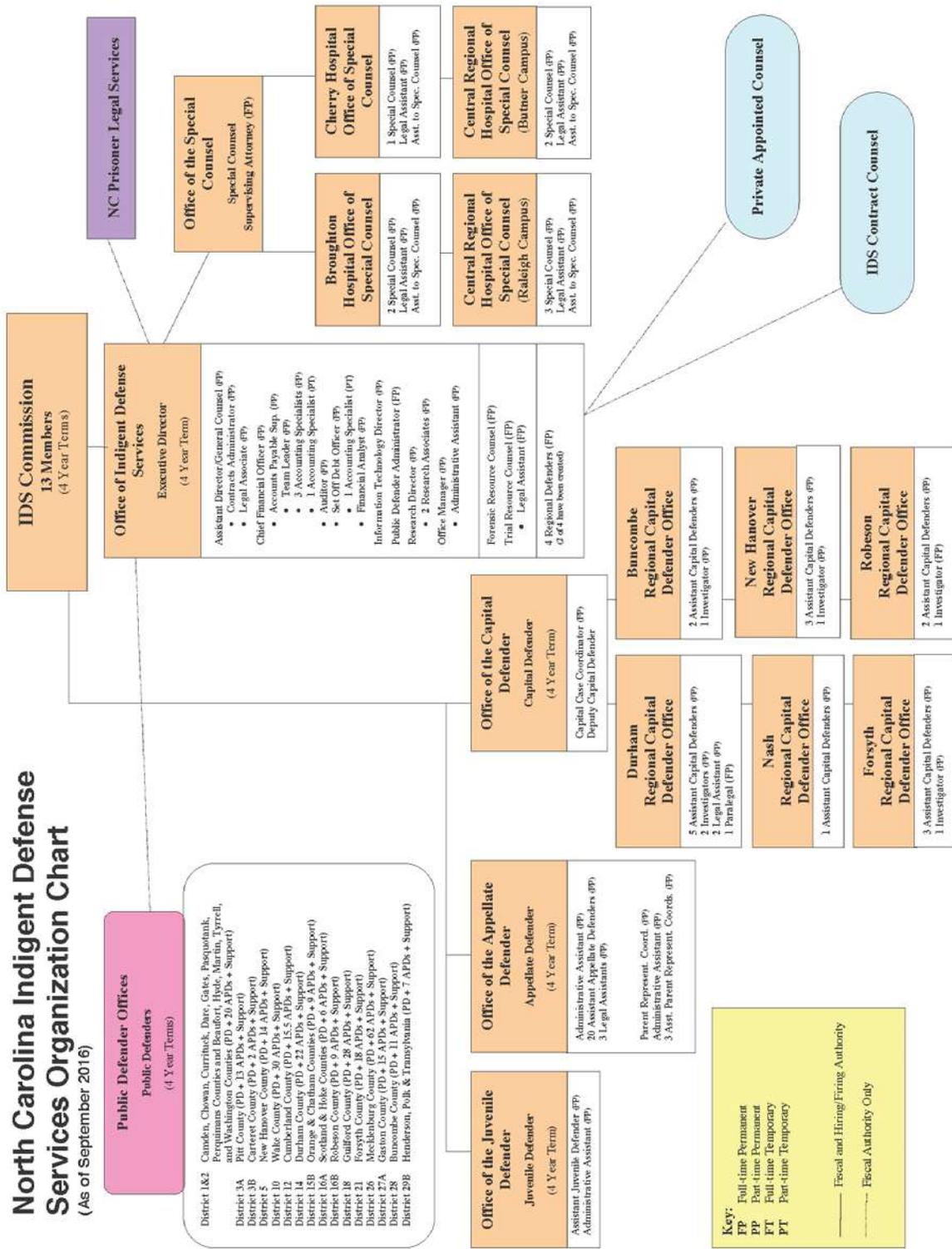
³⁶ Public defender offices are located in the following areas: District 1& 2: Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans Counties and Beaufort, Hyde, Martin, Tyrrell, and Washington Counties; District 3A: Pitt County; District 3B: Carteret County; District 5: New Hanover County; District 10: Wake County; District 12: Cumberland County; District 14: Durham County; District 15B: Orange & Chatham Counties; District 16A: Scotland & Hoke Counties; District 16B: Robeson County; District 18: Guilford County; District 21: Forsyth County; District 26: Mecklenburg County; District 27A: Gaston County; District 28: Buncombe County; District 29B: Henderson, Polk & Transylvania. IDS REPORT, *supra* note 18.

³⁷ IDS must report annually to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety and to the Chairs of the House of Representatives Subcommittee on Justice and Public Safety and the Senate Appropriations Committee on Justice and Public Safety on: the volume and cost of cases handled in each district by assigned counsel or public defenders; actions taken to improve the cost-effectiveness and quality of indigent defense services, including the capital case program; plans for changes in rules, standards, or regulations in the upcoming year; and any recommended changes in law or funding procedures that would assist IDS in improving the management of indigent defense services funds, including recommendations concerning the feasibility and desirability of establishing regional public defender offices. G.S. 7A-498.9. Also, IDS must report annually on contracts with local governments for additional assistant public defender positions. G.S. 7A-346.2(a).

³⁸ G.S. 7A-498.2(c).

³⁹ IDS REPORT, *supra* note 18, at 11.

Fig. 1. Organizational Chart



Source: Email from Whitney B. Fairbanks, Assistant Director/General Counsel, NC IDS to Committee Reporter (Sept. 31, 2016) (on file with Reporter)

Case Types & Caseloads

IDS provides counsel in the categories of cases shown in Fig. 2 below.

Fig. 2. IDS Case Types

- Capital cases at the trial level
- Non-capital at the trial level, misdemeanors and felonies
- Juvenile delinquency
- Civil commitments
- Competency/Guardianship
- Adult protective services
- Juvenile abortion waivers
- Minors petitioning to marry
- Abuse, neglect, dependency cases
- Termination of parental rights cases
- Civil and criminal contempt
- Treatment courts
- Direct appeals
- Post-conviction proceedings, capital, and non-capital

Source: Email from Danielle Carman, former Assistant Director/General Counsel, NC IDS to Committee Reporter (Mar. 31, 2016) (on file with Reporter).

In fiscal year 2014-15, IDS handled 320,489 cases.⁴⁰ Based on NCAOC data, IDS handled 53.7% of all non-traffic criminal filings in North Carolina in that year.⁴¹ However, IDS handled a greater percentage of non-traffic superior court criminal dispositions (71%) than non-traffic district court criminal dispositions (49.4%).⁴²

IDS has responsibility for a wider range of cases than do North Carolina’s prosecutors. In North Carolina, prosecutors handle only trial level criminal cases and some post-conviction matters. Unlike IDS, the prosecution is not responsible for criminal appeals; advocacy for the State in criminal appeals is handled by the Attorney General’s office. And unlike IDS, the prosecution is not involved in any civil cases.

Funding & Budget

Indigent defense services primarily are funded through State appropriations from the General Fund and budgeted recoupment revenues.⁴³ Budget appropriations for the fiscal biennium ending June 30, 2017 are shown in Figure 3 below. Recoupment revenue is shown in Figure 4 below. In addition to state funds, IDS pursues grant funding to support special projects.⁴⁴ Also, two counties —

⁴⁰ IDS REPORT, *supra* note 18, at Appendix C.

⁴¹ *Id.* at 33.

⁴² Email from Danielle Carman, former Assistant Director/General Counsel NC IDS to Committee Reporter (Mar. 31, 2016) (on file with Reporter).

⁴³ If an indigent defendant is convicted, attorney fees and the \$60 appointment fee are due back to the state, either through probation or collection of a civil judgment. *See* NC OFFICE OF INDIGENT DEFENSE SERVICES, INDIGENCY SCREENING AND RECOUPMENT (Mar. 2016), http://www.ncids.org/News%20&%20Updates/Screening_Recoupment.pdf. “Recoupment” refers to the collection of these funds.

⁴⁴ IDS REPORT, *supra* note 18, at 28-29 (listing grants received).

Mecklenburg and Durham — provide additional support for indigent defense under an agreement with IDS.⁴⁵

Fig. 3. IDS Budget Appropriations

Fiscal Year	Base Budget	Recurring Adjustments ⁴⁶	Nonrecurring Adjustments	Total Appropriation
FY 2015-2016	\$112,087,174	\$3,485,302	\$430,421	\$116,002,897
FY 2016-2017	\$112,097,118	\$6,717,688	\$4,256,503	\$123,071,309

Source: S.L. 2015-241; Email from Thomas K. Maher, Executive Director, NC IDS to Committee Reporter, Sept. 30, 2016 (explaining adjustments made in the short session) (on file with Reporter).

Fig. 4. IDS Recoupment Revenue

Fiscal Year	Recoupment Revenue (millions)
FY 2012	\$13.2
FY 2013	\$13
FY 2014	12.9
FY 2015	\$10.02

Sources: REPORT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES 24 (Submitted to the N.C. General Assembly Mar. 1, 2013); REPORT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES 26 (Submitted to the N.C. General Assembly Mar. 10, 2014); REPORT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES 28 (Submitted to the N.C. General Assembly Feb. 1, 2015); REPORT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES 33 (Submitted to the N.C. General Assembly Mar. 1, 2016).

Characteristics of an Effective Indigent Defense System

Agreement as to the characteristics of an effective indigent defense system is a necessary prerequisite to any recommendations regarding North Carolina's indigent defense system. Without agreement as to what the system *should provide*, there is no baseline against which to assess its components. The characteristics presented here derive from this overall goal for North Carolina's indigent defense system:

The goal of North Carolina's indigent defense system is to ensure fair proceedings by providing effective representation in a cost-effective manner.

⁴⁵ *Id.* at 42; Email from Thomas K. Maher, Executive Director, NC IDS to Committee Reporter, Oct. 3, 2016 (on file with Reporter).

⁴⁶ A significant portion of the recurring adjustments to the IDS budget were allocated to address a dramatic reduction in recoupment revenue due to changes in the NC tax code. *See* Figure 4 (showing reduction in recoupment revenue); Email from Danielle Carman, former Assistant Director/General Counsel NC IDS to Committee Reporter, June 10, 2016 (on file with Reporter) (explaining the need for recurring adjustments). As IDS has explained:

[T]he 2013 state tax reforms were accompanied by changes in the withholding tables that are resulting in 40% to 50% fewer people receiving state income tax refunds. One-third of IDS' previous recoupment revenues came from intercepted state tax refunds, and revenues have declined significantly as a result of the tax changes.

Id.

Meaningful Access to Counsel

Types of Cases

The United States and North Carolina Constitutions require the State to provide indigent defense services for felony cases and misdemeanor cases if an active or suspended sentence is imposed and in specified other proceedings.⁴⁷ North Carolina’s lawmakers, however, have long recognized that there are good reasons to provide indigent defense services in additional case types above the constitutional floor,⁴⁸ such as promoting efficient case management and ensuring fairness and confidence in the court system. In addition to constitutionally required services, an effective indigent defense program provides services in proceedings arising from or connected with a criminal action in which the defendant may be deprived of liberty or otherwise subjected to serious deprivations⁴⁹ or resulting in significant collateral consequences.⁵⁰

Determination of Indigency

The system must promptly and meaningfully screen clients for eligibility⁵¹ and decision makers must have clear and easily implemented written uniform standards for assessing indigency.⁵² For example, one guideline might state that a defendant who is incarcerated or receiving food stamps is presumed to be indigent.⁵³ Use of presumptions streamlines the process and reduces the cost of indigency screening.⁵⁴ For those not presumed to be indigent, indigency should be determined based on standards that compare “the individual’s available income and resources to the actual price of retaining a private attorney.”⁵⁵ “Non-liquid assets, income needed for living expenses, and

⁴⁷ *Gideon v. Wainwright*, 372 U.S. 335 (1963) (felony defendants); *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (all criminal charges resulting in imprisonment); *Alabama v. Shelton*, 535 U.S. 654 (2002) (suspended sentences); *In Re Gault*, 387 U.S. 1 (1967) (juvenile delinquency proceedings); *Douglas v. California*, 372 U.S. 353 (1963) (first appeal granted as a matter of right).

⁴⁸ *See, e.g.*, G.S. 7A-451(a)(3) (defendant has a right to counsel on a post-conviction motion for appropriate relief).

⁴⁹ AMERICAN BAR ASSOCIATION, ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES, Standard 5-5.2 & Commentary (3d ed. 1992) [hereinafter ABA STANDARDS].

⁵⁰ *See* John D. King, *Beyond “Life and Liberty”: The Evolving Right to Counsel*, 48 HARV. CIV. RIGHTS-CIV. LIBERTIES L. REV. 1 (2013) (arguing that defendants facing severe collateral consequences require the assistance of counsel).

⁵¹ AMERICAN BAR ASSOCIATION, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 3 (2002) [hereinafter ABA TEN PRINCIPLES] (Principle 3 provides: “Clients are screened for eligibility . . .”); JUSTICE DENIED, *supra* note 4, at 197-98 (noting that it is “highly desirable that screening be undertaken pursuant to uniform written standards used throughout the jurisdiction” and that the statewide Commission “is in a position to adopt uniform eligibility standards for the state”); BRENNAN CENTER FOR JUSTICE, ELIGIBLE FOR JUSTICE: GUIDELINES FOR APPOINTING DEFENSE COUNSEL 6 (2008) [hereinafter ELIGIBLE FOR JUSTICE] (“Screening is a good idea in almost every jurisdiction.”), <https://www.brennancenter.org/sites/default/files/legacy/publications/Eligibility.Report.pdf>.

⁵² ELIGIBLE FOR JUSTICE, *supra* note 51, at 2, 5-6 (standards should be uniform and in writing); ABA STANDARDS, *supra* note 49, Commentary to Standard 5-7.1 (“to assure fair eligibility determination and equal treatment for defendants . . ., it is essential that there be detailed written guidelines” for determining indigency). Several states currently have uniform, statewide screening criteria, including Massachusetts, New Hampshire and Oregon. ELIGIBLE FOR JUSTICE, *supra* note 51, at 7.

⁵³ ELIGIBLE FOR JUSTICE, *supra* note 51, at 21-22. The ability of the defendant to post bond should not be used as a basis for determining indigency because it requires the accused to choose between receiving legal representation and the opportunity to be at liberty pending trial. *Id.* at 5, 17-18; ABA STANDARDS, *supra* note 49, Commentary to Standard 5-7.1.

⁵⁴ ELIGIBLE FOR JUSTICE, *supra* note 51, at 21-22 (listing standards that can be used to create such a presumption).

⁵⁵ *Id.* at 2.

income and assets of family and friends should not be considered available for purposes of this determination.”⁵⁶ The standard should not determine individuals ineligible based on strict income or asset cut-offs.⁵⁷

Although uniform standards are the goal, geographic variations in the cost of living and the price of obtaining a lawyer may require local adjustments.⁵⁸

Uniform eligibility standards provide several benefits. First, they help the state predict future costs of indigent defense services.⁵⁹ Second, they help ensure that state funds are used only for persons who are in fact indigent.⁶⁰ Third, they “raise the quality of defense services by concentrating communities’ limited resources where they are truly needed.”⁶¹ Fourth, uniform standards promote fairness by ensuring that similarly situated persons are treated similarly.⁶² And finally, uniform standards promote due process by guarding against arbitrary eligibility determinations.⁶³

Eligibility determinations should not be done by individuals affiliated with the indigent defense services program or any entity that has a conflict of interest in the indigency determination.⁶⁴ Consistent with this principle, a number of people can serve as screeners, such as the magistrate, court personnel, or a judge other than the presiding judge.⁶⁵

Eligibility standards should be regularly updated to account for, among other factors, inflation and increases in the cost of living.⁶⁶ To ensure appropriate use of taxpayer funds, the system must regularly verify, through auditing or other techniques, that the screening tool ensures that services are being provided only to indigent persons.

Timely Appointment of Counsel

Timely appointment of counsel is a key component of an effective indigent defense delivery system.⁶⁷ Timely appointment is necessary for several reasons, one of which is to advocate on the client’s behalf with respect to pretrial release.⁶⁸ Relatedly, early appointment of counsel may

⁵⁶ *Id.* at 2, 5, 14-17.

⁵⁷ *Id.* at 12.

⁵⁸ *Id.* at 7 (“Although statewide uniformity of screening criteria and procedures is desirable, local variations in the cost of retaining private counsel and in the cost of living may require that particular jurisdictions depart from statewide standards . . .”).

⁵⁹ JUSTICE DENIED, *supra* note 4, at 198 (so stating); ELIGIBLE FOR JUSTICE, *supra* note 51, at 7.

⁶⁰ ELIGIBLE FOR JUSTICE, *supra* note 51, at 2.

⁶¹ *Id.*

⁶² *Id.* at 6.

⁶³ *Id.*

⁶⁴ *Id.* at 2, 5, 8 (“[C]ommunities should protect screening from conflicts of interest. Prosecutors, defense attorneys, and presiding judges all have interests—for example, in controlling their workloads by resolving cases—which conflict with their need to be objective when deciding who should receive free counsel. Decisions about eligibility should be made by those who are not involved with the merits of individuals’ cases.”); JUSTICE DENIED, *supra* note 4, at 198 (asserting that screening should be done by court or other personnel; citing concerns regarding conflict of interest, confidentiality rules, and harm to the attorney-client relationship).

⁶⁵ ELIGIBLE FOR JUSTICE, *supra* note 51, at 8 (listing other appropriate screeners).

⁶⁶ *Id.* at 7.

⁶⁷ ABA TEN PRINCIPLES, *supra* note 51, Principle 3 (“defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel”).

⁶⁸ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-6.1 (“Where the accused is incarcerated, defense counsel must begin immediately to marshal facts in support of the defendant’s pretrial release from

reduce the number of instances where defendants plead guilty simply to obtain release from pretrial detention.⁶⁹ Early appointment of counsel also is necessary so the defense can obtain and preserve critical evidence that may otherwise dissipate;⁷⁰ advocate for charges to be dismissed, reduced, or diverted;⁷¹ and allow the defendant to more effectively aid in his or her defense.⁷² Thus, counsel should be provided as soon as possible after arrest, charge, detention, or a request for counsel by the client.⁷³

Access to Counsel

Whether in custody or released, indigent defendants must have meaningful access to counsel. Among other things, counsel must be available to interview the defendant prior to court appearances, discuss plea options, identify relevant evidence and key witnesses, and prepare the defendant for hearings and trial. Access also requires that counsel have an office in or near the jurisdiction⁷⁴ or be able to demonstrate that counsel will be available to the court and to the defendant.

custody.”); JUSTICE DENIED, *supra* note 4, at 8 (lack of a timely appointment causes defendants to remain in custody far longer than they would otherwise); *id.* at 86; Billings Comments, *supra* note 4 (noting the recurring problem of people charged with nonviolent offenses languishing in jail because they do not have an advocate who can argue for pretrial release or for a speedy trial); Holder, *supra* note 6 (“In . . . parts of the country, . . . defendants may sit in jail cells for weeks, even months, waiting for a lawyer.”); *see generally* Nadine Frederique et al., *What is the State of Empirical Research on Indigent Defense Nationwide? A Brief Overview and Suggestions for Future Research*, 78 ALBANY L. REV. 1317, 1322 (2015) [hereinafter *Empirical Research on Indigent Defense*] (discussing studies showing that involvement of counsel has positive impacts on pretrial release determinations). The importance of securing early pretrial release cannot be overstated. For example, one recent study found that, controlling for all other factors, “when held 2-3 days, low-risk defendants were almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours.” Laura and John Arnold Foundation, *Pretrial Criminal Justice Research* (LJAF Research Summary) Nov. 2013, at 4, http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf.

⁶⁹ JUSTICE DENIED, *supra* note 4, at 86.

⁷⁰ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-6.1 (“Often there are witnesses who must be interviewed promptly by the defense lest their memories of critical events fade or the witnesses become difficult to locate.”); JUSTICE DENIED, *supra* note 4, at 86 (late appointment of counsel affects the ability to prepare a defense: “Unless counsel represents the accused soon after arrest, witnesses may be lost, memories of witnesses may fade, and physical evidence useful to the defense may disappear.”).

⁷¹ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-6.1 (“Counsel’s early presence in the case can also sometimes serve to convince the prosecutor to dismiss unfounded charges, to charge the accused with less serious offenses, or to divert the case entirely from the criminal courts.”). The Committee notes that early resolution of cases reduces system costs overall.

⁷² Billings Comments, *supra* note 4 (noting that if a defendant is not allowed pretrial release, his or her ability to aid in the defense is greatly inhibited).

⁷³ ABA STANDARDS, *supra* note 49, Standard 5-6.1 (“as soon as feasible”); *see also* JUSTICE DENIED, *supra* note 4, at 13 (expressly recommending that “defense lawyers should be provided as soon as feasible after accused persons are arrested, detained, or request counsel”); Billings Comments, *supra* note 4 (right to counsel must begin with the initiation of criminal process and noting that the report of the National Right to Counsel Committee so recommended). Some standards suggest that counsel typically should be provided within 24 hours of such events. ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 3.

⁷⁴ Exceptions to the general rule may be appropriate in some proceedings, such as appellate litigation and capital and other serious cases requiring specialized expertise that may not be available locally.

Counsel is Qualified

The system must provide qualified counsel uniformly throughout the state.⁷⁵ In order to meet this obligation, the system must provide appropriate supervision, oversight and support to counsel, as detailed below.

Supervision & Oversight

National standards recognize that supervision and oversight of counsel is essential to ensure that the system is providing effective representation.⁷⁶ Such supervision and oversight should be done by system-employed supervisors.⁷⁷

Initial Selection of Counsel

In an effective indigent defense system, counsel’s “ability, training, and experience match the complexity of the case.”⁷⁸ To provide this guarantee, the system must have uniform statewide standards specifying the prerequisite skills and experience counsel must possess to handle each type of case for which indigent services are provided.⁷⁹ These standards should specify, at a minimum, training requirements (what topics; how much; acceptable providers; how recent, etc.) and required litigation experience (types of cases; how many; how recent, etc.). “A meaningful assessment of attorney qualifications, however, should go beyond objective quantitative measures.”⁸⁰ Appointment standards should be regularly reviewed and modified, as needed, based on developments in the law, science, technology and other disciplines relevant to criminal defense practice.

If there is an insufficient number of qualified counsel to handle caseloads in any geographic area or for any particular type of case, the system should devote resources and develop programs for counsel to gain the necessary skills and experience.

⁷⁵ As has been noted:

No system of public defense representation for indigent persons can be successful unless the lawyers who provide the representation are capable of rendering quality representation. Regardless of whether assigned counsel, contract attorneys, or public defenders provide the defense services, states should require that the attorneys be well-qualified to do so.

JUSTICE DENIED, *supra* note 4, at 191.

⁷⁶ ABA TEN PRINCIPLES, *supra* note 51, Principle 10 (“[d]efense counsel is supervised and systematically reviewed for quality and efficiency”); *see also* JUSTICE DENIED, *supra* note 4, at 12 (expressly recommending that the statewide board or commission “should ensure that all attorneys who provide defense representation are effectively supervised and remove those defense attorneys who fail to provide quality services”); *id.* at 91 (it is “essential” that counsel “be appropriately . . . supervised”); SYSTEM OVERLOAD, *supra* note 5, at 10; ROBERT C. BORUCHOWITZ ET AL., MINOR CRIMES, MASSIVE WASTE: THE TERRIBLE TOLL OF AMERICA’S BROKEN MISDEMEANOR COURTS 40-41 (2009) [hereinafter MINOR CRIMES, MASSIVE WASTE] (“Supervision of misdemeanor defenders is sorely lacking and, often, performance reviews are non-existent”; recommending that such lawyers be actively supervised).

⁷⁷ JUSTICE DENIED, *supra* note 4, at 192.

⁷⁸ ABA TEN PRINCIPLES, *supra* note 51, Principle 6.

⁷⁹ JUSTICE DENIED, *supra* note 4, at 191 (recommending that the Commission establish and enforce qualification standards and specifying: “A tiered system of qualifications for appointment to different levels of cases, depending on the training and experience of the lawyers, will help to ensure that the defender has the requisite knowledge and skills to deliver high quality legal services, whether the charge is juvenile delinquency, a simple misdemeanor, or a complex felony.”).

⁸⁰ *Id.* (so stating and noting that “States should also implement other more substantive screening tools, including audits of prior performance, in-court observations, inspection of motions and other written work, and peer assessments”).

To ensure that counsel's ability, training, and experience match the complexity of the case assigned, supervision is required with respect to selection of counsel for each case. Supervision also is required to avoid conflicts, both at initial appointment and as the case develops.⁸¹ And it is required to ensure that counsel has appropriate resources to handle the case, such as office space, office support, access to research tools, etc.⁸²

Ongoing Evaluation of Counsel

The fact that counsel is determined at the outset to have the necessary ability, skills, and experience to handle the case is insufficient to ensure that he or she is delivering effective representation.⁸³ The system should have uniform performance standards for all types of cases.⁸⁴ Evaluation against those standards should involve observations of counsel's in-court performance and client and witness interviews; reviewing counsel's legal filings; and soliciting input from judges, prosecutors, clients and peers.⁸⁵ Evaluation should involve an opportunity for the supervisor to give counsel feedback and develop a remediation plan for any deficiencies.

Ability to Reward & Sanction

In order to incentivize excellence, supervisors must be able to reward good performance. Additionally, system-employed supervisors must have authority to remove or disqualify counsel who provide deficient performance, pursuant to established criteria.⁸⁶ Because peers may be reluctant to remove or disqualify a colleague, this authority should not reside with volunteer local bar committees. To preserve counsel's independence,⁸⁷ authority to remove or disqualify counsel from performing indigent defense services should not lie with the judge, except in cases where removal is required by law or pursuant to the court's inherent authority to discipline counsel.

Monitoring Workload

To ensure that counsel has sufficient time to spend on each case, system supervisors should monitor and adjust workloads for all counsel providing indigent defense services. Monitoring and adjustment should be made pursuant to uniform, statewide workload formulas, as discussed below.⁸⁸

⁸¹ For a discussion of the types of conflicts to be avoided, see OFFICE OF INDIGENT DEFENSE SERVICES, REPORT ON PUBLIC DEFENDER CONFLICTS FOR FISCAL YEAR 2014-15 (2015).

⁸² See *infra* pp. 17-19 (discussing necessary resources).

⁸³ JUSTICE DENIED, *supra* note 4, at 192 ("It is not sufficient, however, just to make sure that attorneys who provide defense services are qualified when they begin to provide representation.").

⁸⁴ *Id.* at 12 (expressly recommending that board or commission "should establish and enforce qualification and performance standards"); *id.* at 91 ("it is essential that . . . lawyers adhere to performance standards"); see also *Empirical Research on Indigent Defense*, *supra* note 68, at 1323-24 (2004 study concluded that indigent defense standards improved quality).

⁸⁵ ABA TEN PRINCIPLES, *supra* note 51, Principle 10 ("Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards."); *id.* Commentary to Principle 10 ("The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency").

⁸⁶ ABA STANDARDS, *supra* note 49, Standard 5-2.3 ("[t]he roster of lawyers should periodically be revised to remove those who have not provided quality legal representation"; "Specific criteria for removal should be adopted in conjunction with qualification standards."); JUSTICE DENIED, *supra* note 4, at 12 (expressly recommending that the statewide commission "should ensure that all attorneys who provide defense representation are effectively supervised and remove those defense attorneys who fail to provide quality services"); *id.* at 191-92.

⁸⁷ See *infra* p. 21.

⁸⁸ See *infra* p. 18.

Resources

Even the most qualified and dedicated counsel cannot provide effective assistance if counsel lacks necessary resources,⁸⁹ as outlined below.

Time

Having appropriate time to handle a case is essential to providing a quality defense.⁹⁰ Counsel cannot provide effective representation when caseloads are excessive and counsel lacks time to perform critical tasks, including interviewing clients and witnesses; conducting legal research; writing and responding to motions; accessing and preparing experts, and preparing to advocate on the client's behalf at hearings, trial and sentencing.⁹¹ The costs of ineffective assistance to defendants, victims, the court system and the citizens of North Carolina are detailed above.⁹² Additionally, problems with excessive caseloads can compound: "Eventually, working under such conditions on a daily basis undermines attorney morale and leads to turnover, which in turn, contributes to excessive caseloads for the remaining defenders and increases the likelihood that a new, inexperienced attorney will be assigned to handle at least part of the caseload."⁹³ Thus, national standards emphasize the need for defense counsel to have manageable case and workloads.⁹⁴

Workload Formulas

To ensure that counsel has sufficient time to handle indigent cases and is prepared when the case is called for hearing or trial, the system should have workload formulas in place for all indigent defense providers.⁹⁵ The workload formulas should be more sophisticated than simple caseload limits,⁹⁶ taking into consideration factors such as case complexity, administrative responsibilities⁹⁷ and counsel's skill and experience. Workload formulas should balance quality and efficiency.⁹⁸

⁸⁹ Billings Comments, *supra* note 4 (when an attorney is overburdened with cases and does not have adequate resources (e.g., for investigators), even the most competent attorney cannot be effective).

⁹⁰ *Id.*; ABA TEN PRINCIPLES, *supra* note 51, Principle 5 ("Defense counsel's workload is controlled to permit the rendering of quality representation."); SYSTEM OVERLOAD, *supra* note 5, at 10, 13.

⁹¹ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-5.3 ("One of the most significant impediments to the furnishing of quality defense services for the poor is the presence of excessive workloads."); JUSTICE DENIED, *supra* note 4, at 65; *see also id.* at 7; Billings Comments, *supra* note 4 (when an attorney is overburdened with cases even the most competent attorney cannot be effective).

⁹² *See supra* pp. 3-5.

⁹³ JUSTICE DENIED, *supra* note 4, at 65; *see also id.* at 69 (citing a survey finding a statistically significant correlation between excessive caseloads and use of less experienced lawyers to handle serious felony cases).

⁹⁴ ABA TEN PRINCIPLES, *supra* note 51, Principle 5.

⁹⁵ JUSTICE DENIED, *supra* note 4, at 12 (expressly recommending that the board or commission "should establish and enforce workload limits for defense attorneys"); *id.* at 68 ("High caseloads often force attorneys to continue cases."); *id.* at 194 ("The issue of workload is important not only to public defenders but also to assigned counsel and to private attorneys who provide services pursuant to contracts. In the case of private attorneys, this should include oversight of the extent of their practice in order to ensure that they have adequate time to devote to their indigent cases.").

⁹⁶ There is, however, some evidence that even caseload caps improve the quality of representation. Geoff Burkhart, *How to Improve Your Public Defense Office*, CRIMINAL JUSTICE, Spring 2016, at 56, 57 (noting that a study by the Center for Court Innovation found that New York City's caseload caps resulted in "highly positive" results).

⁹⁷ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-5.3 (simple caseload limits are insufficient); JUSTICE DENIED, *supra* note 4, at 12 (expressly recommending that workload limits should take into account other responsibilities in addition to client representation); *id.* at 192-93.

⁹⁸ *See* ABA TEN PRINCIPLES, *supra* note 51, Principle 5 ("Defense counsel's workload is controlled to permit the rendering of quality representation.").

Additionally, procedures must be in place to ensure that defense counsel has adequate time to provide quality representation at the time of appointment and throughout representation.⁹⁹

Access to Investigators, Experts & Other Support

Counsel must have access to necessary experts, such as mental health and forensic experts¹⁰⁰ and investigators and interpreters.¹⁰¹ Access must be timely so that counsel can prepare for pretrial hearings, such as bail and competency hearings. Counsel must have access to specialized legal resources, such as forensic resources and immigration counsel. Counsel must have necessary office support, such as a suitable location to work, a private location for client and witness meetings, computer and internet access, telephone services, and access to pattern jury instructions and online legal research tools.¹⁰² While the system should endeavor to provide such access when possible, counsel without such resources should not be allowed to provide indigent defense services.

Compensation

Reasonable compensation is required to ensure that the State can sustainably provide effective indigent defense services.¹⁰³ When compensation falls below reasonable levels, lawyers who can be reasonably compensated elsewhere flee the system. An insufficient number of competent lawyers threatens the system's ability to guarantee effective assistance of counsel, both because of the quality of counsel available and because of higher caseloads for quality counsel still performing indigent work.¹⁰⁴ All of the other costs of failing to provide effective assistance also attach, such as wrongful convictions and case delays.¹⁰⁵

⁹⁹ JUSTICE DENIED, *supra* note 4, at 65 (noting that NLADA guidelines so require and that withdrawal should be sought when counsel has insufficient time to provide quality representation).

¹⁰⁰ Experts often are necessary to present an effective defense, test physical evidence, or provide an opinion independent of the prosecution's state-supplied expert. JUSTICE DENIED, *supra* note 4, at 93-94. For an indigent defendant's legal right to such assistance, see *Ake v. Oklahoma*, 470 U.S. 68 (1985) (right to mental health expert) and JUSTICE DENIED, *supra* note 4, at 25 & n.36.

¹⁰¹ ABA STANDARDS, *supra* note 49, Standard 5.14 ("The legal representation plan should provide for investigatory, expert, and other services necessary to quality legal representation."); JUSTICE DENIED, *supra* note 4, at 13, 93-95 ("The outcome of a criminal case can hinge on retaining an appropriate expert or conducting a thorough fact investigation. In the case of non-English speaking clients, qualified interpreters are critical for attorney-client communication."); SYSTEM OVERLOAD, *supra* note 5, at 10, 13; Billings Comments, *supra* note 4.

Investigators are needed to interview witnesses and collect physical evidence. JUSTICE DENIED, *supra* note 4, at 93. The Committee notes that access to investigators may reduce the cost of indigent defense services. ABA STANDARDS, *supra* note 49, Commentary to Standard 5-1.4 ("If the defense attorney must personally conduct factual investigations, the financial cost to the justice system is likely to be greater because the defender's time is generally more valuable than the investigator's.").

¹⁰² ABA STANDARDS, *supra* note 49, Commentary to Standard 5-1.4 (importance of, among other things, secretarial support, computers, telephones, and copying and mailing facilities); *id.*, Commentary to Standard 5-4.3 (it is "essential" that facilities be provided in which clients can be interviewed in privacy and that counsel have necessary office equipment and legal research tools); *see also* JUSTICE DENIED, *supra* note 4, at 8 (lawyers must have access to technology and data).

¹⁰³ JUSTICE DENIED, *supra* note 4, at 12 (expressly recommending that fair compensation should be provided); *id.* at 195 (noting that the ABA urges "reasonable" compensation).

¹⁰⁴ IDS REPORT, *supra* note 18, at 15.

¹⁰⁵ *See supra* pp. 3-5 (discussing these costs).

Training

Having access to training is essential to providing a quality defense.¹⁰⁶ Training is necessary not just for new lawyers, but for experienced lawyers,¹⁰⁷ so that they can keep abreast of changes in the law, science, technology, and other related disciplines.¹⁰⁸ It is also essential for support staff, such as investigators.¹⁰⁹

Feedback on Performance & Remediation Services

As noted above, evaluation of counsel's performance should involve an opportunity for the evaluator to give counsel feedback and to support counsel by developing a remediation plan to address any deficiencies.¹¹⁰

**System Is Actively Managed
Collect & Use Data in Decision-Making**

Lack of data is an obstacle to improving public defense systems.¹¹¹ Good data informs decision making and leads to better results. In an effective public defense system, data is gathered, maintained consistently over time, and plays a key role in decision making. Data needs in indigent defense are wide and varied and include, among other things:

- Measuring the quality of representation provided through various delivery methods
- Measuring the cost and cost effectiveness of various delivery mechanisms
- Assessing implications on performance of changes in procedures or standards
- Measuring cost implications of procedural or system changes
- Measuring workloads
- Measuring the effectiveness of training and other support systems
- Predicting future funding needs

Long-Term Planning

The system should have a long-term plan for providing indigent defense services that articulates discrete, measurable objectives. The plan should be evidence-based, in that it accounts for among other things: anticipated demographic changes, including geographic in- and out-migration;

¹⁰⁶ ABA STANDARDS, *supra* note 49, Standard 5-1.5 (“The legal representation plan should provide for the effective training, professional development and continuing education of all counsel and staff involved in providing defense services.”); *id.* Commentary to Standard 5-1.5 (“Adequate and frequent training programs are a key component in the provision of quality representation by defense attorneys.”); ABA TEN PRINCIPLES, *supra* note 51, Principle 9 (“Defense counsel is provided with and required to attend continuing legal education.”); JUSTICE DENIED, *supra* note 4, at 91 (it is “essential” that counsel “be appropriately trained”); SYSTEM OVERLOAD, *supra* note 5, at 10, 15; MINOR CRIMES, MASSIVE WASTE, *supra* note 76, at 39-40 (“Appropriate training is critical to practice, regardless of level”; recommending that defense counsel be required to attend training on trial skills, substantive and procedural laws and collateral consequences before being allowed to represent misdemeanor defendants).

¹⁰⁷ ABA STANDARDS, *supra* note 49, Standard 5-1.5 (“The legal representation plan should provide for . . . continuing education of all counsel and staff”); *id.* Commentary to Standard 5-1.5 (“programs should be established for both beginning and advanced practitioners”).

¹⁰⁸ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 9 (training should be “comprehensive”).

¹⁰⁹ ABA STANDARDS, *supra* note 49, Standard 5-1.5 (“The legal representation plan should provide for the effective training . . . of all counsel and staff”).

¹¹⁰ See *supra* p. 16.

¹¹¹ *What Policymakers Need to Know*, *supra* note 7, at 1.

predicted changes in crime rates; expectations regarding availability of counsel in geographic areas; and expected technology changes.

This type of long-term planning allows the system and the State to better predict resources needed for indigent defense services. It also allows for an evaluation of the overall system. Additionally, long-term planning permits the system to undertake systemic reform that requires longer lead and implementation time. And finally, when the system's long-term plan is endorsed by lawmakers, it allows the system to focus on accepted long-term objectives, rather than devoting resources to respond to short-term changes in sentiment.

Managed for Efficiency

As noted, the goal of North Carolina's indigent defense system is to ensure fair proceedings by providing effective representation in a cost-effective manner.¹¹² The system must be gathering and using data to make evidence-based decisions about cost-effective ways of delivering services. This should involve evaluation of existing and alternative systems. The system should stay abreast of developments in other jurisdictions and new ideas that may yield efficiencies. When appropriate, pilot studies should be used to test new systems.

Reporting & Accountability

To ensure transparency and confidence, the system should report regularly to the funding authority, courts, the bar, and the public, providing evidence-based assessments of system performance against discrete, measurable objectives.¹¹³ The system should be audited regularly to ensure appropriate use of funds. The system should be directly accountable to the funding authority.

System Affords Appropriate Independence from the Judiciary

Independence is a key component of an effective indigent defense system.¹¹⁴ At the micro level independence refers to the ability of counsel to zealously advocate for the client, unimpeded by conflicts of interest, or control by the prosecutor or judge, except with respect to legal rulings and the trial court's inherent authority to discipline lawyers. To preserve independence at the micro level, direct supervisory authority over counsel should lie with system-employed supervisors. Although it is sometimes asserted that judges can provide the necessary supervision, allowing judges to supervise lawyers providing indigent defense services creates "[s]everal serious problems," including putting "constraints on zealous representation which do not exist for prosecutors or lawyers representing non-indigent clients."¹¹⁵ Additionally, "[i]n general, judges lack

¹¹² See *supra* p. 12.

¹¹³ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-1.2 ("[T]hose responsible for the administration of defense services programs . . . should render periodic reports on operations, and these reports should be made available to the funding source, to the courts, to the bar, and to the public. Regular reports help to maintain public confidence in the integrity of the services provided . . .").

¹¹⁴ JUSTICE DENIED, *supra* note 4, at 7 (lack of independence is an impediment to a successful indigent defense program); *id.* at 80-84.

¹¹⁵ LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 7; see also ABA STANDARDS, *supra* note 49, Standard 5-1.3 (lawyers providing indigent services "should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice"); JUSTICE DENIED, *supra* note 4, at 7 (when there is a lack of independence from the judiciary, "[l]awyers deemed to be too aggressive may be excluded from appointments, or favoritism may be shown to certain lawyers, who are appointed to a disproportionate share of the cases"); Holder, *supra* note 6 (a statewide survey of Nebraska judges raised concerns about judges who refused to reappoint lawyers who requested too many trials).

the time and information to exercise uniform or coordinated management, or monitor or control the quality of representation.”¹¹⁶ This sentiment was echoed by stakeholders who spoke to the Committee,¹¹⁷ and is consistent with national guidelines.¹¹⁸

At the macro level, independence refers to the independence of the statewide indigent defense system. Assuring an appropriate level of system independence has long been understood to be a critical component of an effective indigent defense system.¹¹⁹ Independence allows the system to set priorities statewide based on its overall goal of ensuring fair proceedings by providing effective representation in a cost-effective manner, as opposed to other court system goals that may undermine that objective, such as increasing case clearance rates. Additionally, an independent system serves as an important counterweight to pressures by individual actors in the court system, such as a district attorney who pressures a lawyer to resolve cases in a certain manner or a judge who unreasonably reduces a lawyer’s fees. Thus, the Report of the National Right to Counsel Committee “urge[d] that the state’s commission be an independent agency of state government and that its placement within any branch of government be for administrative purposes only.”¹²⁰

System Involved in Policy Discussions

As a critical stakeholder in the system with valuable information and experience, the indigent system and indigent defense providers should be involved in policy decisions that affect the delivery of indigent defense services.¹²¹

¹¹⁶ LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 7.

¹¹⁷ Comments of Superior Court Judge Anna Mills Wagoner, Committee Meeting Nov. 23, 2015 (noting difficulties because of Superior Court Judge rotation).

¹¹⁸ See ABA TEN PRINCIPLES, *supra* note 51, Principle 1 (“The public defense function, including the selection, funding, and payment of defense counsel, is independent.”); see *id.* Commentary to Principle 1 (“The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.”).

Issues of independence also can arise with respect to selection of Chief Public Defenders. The report of the study commission that led to the creation of IDS noted that “serious problems arise by placing authorities over appointment of public defenders . . . with judges;” it thus recommended that appointment authority be vested with the IDS Commission. LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 7. Additionally, a 2007 performance audit of IDS by the North Carolina State Auditor noted that because chief public defenders were appointed by the senior resident Superior Court judge of the district those lawyers suffered from a lack of independence from the judiciary. OFFICE OF THE STATE AUDITOR OF NORTH CAROLINA, PERFORMANCE AUDIT—OFFICE OF INDIGENT DEFENSE SERVICES 6-7 (2007). That report stated: “Since it is reasonable to assume that each public defender has an interest in being reappointed to the next four-year term and would like to remain in the judge’s favor during the interim, neither the public defender, his or her staff, nor the private counsel they appoint can be considered free from judicial influence.” *Id.* at 7. Likewise, national standards emphasize the need for the indigent defense function to be independent of the judiciary and recommend that “[s]election of the chief defender . . . by judges should be prohibited.” ABA STANDARDS, *supra* note 49, Standard 5-4.1; *id.* Commentary to Standard 5-4.1 (“What is not deemed satisfactory is for the chief defender to be chosen by judges, because that method fails to guarantee that the program will remain free of judicial supervision. Even with the best of motives by both judges and defenders, the appearance of justice is tarnished when the judiciary selects the chief defender . . .” (quotation omitted)). North Carolina’s shifting approach on this issue is detailed in footnote 32 above.

¹¹⁹ ABA TEN PRINCIPLES, *supra* note 51, Principle 1 (“The public defense function, including the selection, funding, and payment of defense counsel, is independent”); LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 1 (recommending such independence for North Carolina’s system: “defense function must be independent of judicial or other control over policy and budgetary decisions”).

¹²⁰ JUSTICE DENIED, *supra* note 4, at 10.

¹²¹ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 8 (“Public defense should participate as an equal partner in improving the justice system.”); SYSTEM OVERLOAD, *supra* note 5, at 33.

Recommendations

The Committee offers these recommendations for improving North Carolina’s indigent defense system, all of which flow from the characteristics set forth above and are designed to achieve the system’s overall goal: ensuring fair proceedings by providing effective representation in a cost-effective manner.

Organizational Structure & Management

Ensure Accountability to General Assembly & Independence from Judiciary

Retain Existing Commission Structure

The report of the legislative study commission that led to the Indigent Services Act recommended the establishment of an independent commission to oversee IDS.¹²² That recommendation was accepted and the IDS Commission was created. A Commission structure is the majority approach in the country,¹²³ is recognized as the preferred structure for an indigent defense system,¹²⁴ ensures critical independence and accountability,¹²⁵ and should be maintained.¹²⁶

Members of the Commission should be appointed by a diverse group of officials and organizations, with no single person or organization authorized to appoint a majority of Commissioners.¹²⁷ All members of the Commission should be committed to the delivery of quality indigent defense services, and a majority should have prior experience in providing indigent defense representation.¹²⁸ Under current law, a private defense lawyer may serve on the Commission but a full-time Public Defender or employee of the public defender’s officer may not so serve.¹²⁹ Because Public Defenders and their employees can add important perspectives and experience, this restriction should be removed.

The Commission should have a responsibility to hire the Executive Director of IDS and remove him or her for cause.¹³⁰

¹²² LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 8.

¹²³ Comments of Professor John Rubin, Committee Meeting, Nov. 23, 2015; JUSTICE DENIED, *supra* note 4, at 10 (noting that of the 27 states that have organized their defense services either entirely or substantially on a statewide basis, 19 have a state commission with supervisory authority over the state’s defense program; in the remaining 23 states, there is either a state commission with partial authority over indigent defense (9 states), a state appellate commission or agency (6 states), or no state commission of any kind (8 states)).

¹²⁴ JUSTICE DENIED, *supra* note 4, at 185-86 (“The system most frequently recommended . . . [is] an independent Board or Commission vested with responsibility for indigent defense.”).

¹²⁵ See *supra* pp. 21-22 (defining these as characteristics of an effective indigent defense delivery system).

¹²⁶ Geoff Burkhart, *How to Improve Your Public Defense Office*, CRIMINAL JUSTICE, Spring 2016, at 56, 57 (advocating for a strong well-structured commission to “safeguard independence, increase funding, and decrease caseloads, helping to ensure ethical and constitutional defense provision”).

¹²⁷ JUSTICE DENIED, *supra* note 4, at 186-87.

¹²⁸ *Id.* at 185, 187.

¹²⁹ G.S. 7A-498.4(d) (“No active public defenders, active employees of public defenders, or other active employees of the Office of Indigent Defense Services may be appointed to or serve on the Commission, except that notwithstanding this subsection, G.S. 14-234, or any other provision of law, Commission members may include part-time public defenders employed by the Office of Indigent Defense Services and may include persons, or employees of persons or organizations, who provide legal services subject to this Article as contractors or appointed attorneys.”).

¹³⁰ JUSTICE DENIED, *supra* note 4, at 189. Currently, the statute provides that the Commission may remove the Director by a vote of two-thirds of all of the Commission members, G.S. 7A-498.6(a), without specifying that cause is required.

Financial Matters

Budget

The report of the study commission that led to the creation of IDS found that the indigent defense function must be “free of the influences and priorities the NCAOC must set for core court functions, prosecutorial operations, and other programs under the NCAOC” and recommended that the NCAOC should “not have control over policy or budgetary decisions.”¹³¹ National commissions have come out similarly on this issue. The Report of the National Right to Counsel Committee concluded, in part:

If a state’s indigent defense system is financed primarily by the state, it is especially important that its budget remain separate from those of other agencies, including the courts, so that resources directed towards indigent defense are not seen as having a negative impact on other worthwhile spending. For example, if the agency is housed in the judicial branch and is part of the judiciary’s budget, the judiciary may be less likely to advocate for increased indigent defense funding if it means less money will be available for judges, court personnel, and facilities.¹³²

IDS was created as an independent agency within the Judicial Department. As noted above, however, in 2015 the General Assembly made IDS a sub-agency of the judicial branch and gave the NCAOC authority to modify the IDS budget without approval of the IDS Commission.¹³³

Although current NCAOC leadership has indicated that it does not intend to exercise this new budgetary authority, leadership and policies can change. Thus, to preserve appropriate independence from the judiciary, the Committee believes that the pre-2015 standard is preferable with respect to IDS’s status and budgetary authority.

Compensation Methods for Private Assigned Counsel (PAC)

Consistent with the recommendations below regarding PAC compensation methods,¹³⁴ IDS should have flexibility to determine the most appropriate methods of compensating PAC to achieve the overall system goal of ensuring fairness by providing effective indigent defense services in the most cost-effective manner.¹³⁵

Resource Flexibility

The report of the study commission that led to the creation of IDS noted that one deficiency of the then-existing system was that “[c]rucial decisions that could be made flexibly for the most effective ways to provide services are instead fixed in legislation.”¹³⁶ To some extent this deficiency still exists. For example, in 2011, the General Assembly mandated that IDS implement a contract payment system for PAC statewide. The Committee recommends that IDS be afforded flexibility in managing its resources, subject to required reporting and accountability directly to the General Assembly.

That same report recommended that IDS have authority to “determine and implement the best approaches to provide representation in each area of the state among public defender offices, private counsel systems, and/or contracts.”¹³⁷ The Committee concurs and recommends that IDS

¹³¹ LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 1-2.

¹³² JUSTICE DENIED, *supra* note 4, at 160.

¹³³ *See supra* p. 8.

¹³⁴ *See infra* pp. 39-46.

¹³⁵ *See supra* p. 12 (setting out this goal); *supra* pp. 21-22 (discussing the need for independence).

¹³⁶ LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 1.

¹³⁷ *Id.* at 2.

have broad authority to implement the best approaches to providing representation, including the creation of new Public Defender offices. It further notes that historically the General Assembly has given IDS authority to create a certain number of new attorney and support staff positions within existing defender programs,¹³⁸ and supports continuation of this flexibility.

Direct Accountability to the General Assembly

Consistent with the recommendations of the legislative study commission that led to the creation of IDS, the Committee believes that IDS should be directly accountable to the General Assembly.¹³⁹

System Is Actively Managed

Development of Indigency Standards

The legislative study commission report that led to the creation of IDS noted that “[n]o statewide uniform standards exist for determination of indigency.”¹⁴⁰ Thus, G.S. 7A-498.5(c)(8) was enacted, directing the IDS Commission to develop standards governing the provision of services under the IDS Act, including “[s]tandards for determining indigency.” Notwithstanding this provision, no such standards currently exist. Instead, defendants submit affidavits of indigency¹⁴¹ and each judge makes his or her own determination as to whether or not individuals qualify as indigent. Although IDS has suggested that “it will be very challenging to develop indigency standards that would be both meaningful and flexible enough to take into account the wide variety of financial situations facing defendants and respondents,”¹⁴² the Committee believes that in spite of this difficulty developing such standards will benefit the system. It thus recommends that the Commission develop easily implemented uniform standards for indigency. To promote efficiency, it further recommends that those standards employ presumptions of indigency to avoid a full screening in every case.¹⁴³

Based on evidence suggesting that indigency verification may not be cost-effective,¹⁴⁴ the Committee declines to recommend such a procedure for all cases. The Committee notes that it is a Class I felony to make a false material statement about one’s indigency¹⁴⁵ and that attorneys have a statutory obligation to inform the court if they believe an assigned client has the resources to hire

¹³⁸ IDS REPORT, *supra* note 18, at 14.

¹³⁹ LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 8.

¹⁴⁰ *Id.* at 1. G.S. 7A-450(a) defines an indigent person as one “who is financially unable to secure legal representation and to provide all other necessary expenses of representation.”

¹⁴¹ The affidavit of indigency is NCAOC-CR-226, available here <http://www.nccourts.org/Forms/Documents/687.pdf>.

¹⁴² IDS REPORT, *supra* note 18, at 7.

¹⁴³ *See supra* p. 13 (discussing the value of presumptions of indigency). At a minimum, the guidelines should specify that a juvenile is presumed indigent.

¹⁴⁴ As reported by IDS,

[T]he North Carolina court system employed indigency screening staff in the 1990s and found that they were not cost effective. In addition, a 2007 study of indigency verification in Nebraska found that the process detected inaccurate information in approximately 5% of applications for court appointed counsel. However, only 4% of the 5% that included misstatements (or only 1 in every 500 applications) led to the appointment of counsel in cases in which counsel otherwise would not have been provided. A more significant percentage of the inaccurate applications overstated the applicants’ financial resources. If the same holds true in North Carolina, it is highly unlikely that additional screening or verification of financial information in affidavits of indigency would pay for itself.

IDS REPORT, *supra* note 18, at 7.

¹⁴⁵ G.S. 7A-456.

an attorney.¹⁴⁶ However, to ensure appropriate use of taxpayer funds, IDS should regularly verify, through auditing or other techniques, that the screening tool ensures that indigent defense services are being provided only to persons who are in fact indigent.

Development of Workload Formulas

As noted above, an effective indigent defense system employs workload formulas to ensure that counsel has sufficient time to spend on indigent cases and that cases are tried on time.¹⁴⁷ Additionally, workload formulas can help assess system capacity and future needs.

Except for caseload limits for private counsel handling potentially capital cases,¹⁴⁸ and some case limitations that apply to attorneys handling contracts,¹⁴⁹ IDS does not have workload formulas for counsel providing indigent defense services.¹⁵⁰ The Committee recommends that IDS develop and use workload formulas for public defenders and PAC. The workload formulas should balance quality and efficiency. Consistent with national standards, IDS should contractually limit PAC's participation in private cases that would exceed the workload formulas given existing indigent assignments.¹⁵¹ Workload formulas should be regularly updated based on changes in case processing, technology, and other developments.

Although the Committee defers to IDS on the creation of the appropriate workload formulas, within these broad requirements, it notes that a number of systems have set caseload limits to help maintain quality representation.¹⁵² Reference to these standards may facilitate creation of standards for North Carolina. In no event, however, should national caseload standards be exceeded.¹⁵³ North Carolina's workload formulas should adjust caseloads by complexity,

¹⁴⁶ G.S. 7A-450(d).

¹⁴⁷ See *supra* p. 18.

¹⁴⁸ Cap on the Number of Potentially Capital Cases Per Private Appointed Counsel, IDS Policy, [http://www.ncids.org/Rules & Procedures/Policies By Case Type/CapCases/Cap_OpenCases.pdf](http://www.ncids.org/Rules%20&%20Procedures/Policies%20By%20Case%20Type/CapCases/Cap_OpenCases.pdf).

¹⁴⁹ Lawyers doing full-time contract work are prohibited from engaging in the private practice of law without the advance approval of the IDS Director. See Standard Contract Terms and Conditions § 8 (NC IDS), <http://bit.ly/23utrgP>.

¹⁵⁰ "Workload" as used here is distinguishable from the more narrow term "caseload." See generally ABA STANDARDS, *supra* note 49, Commentary to Standard 5-5.3. Caseload refers to the number of cases assigned to an attorney at a given time. *Id.* Workload by contrast is the total of all work performed by counsel; it includes the number of cases assigned but also includes other administrative or supervisory work, and adjusts caseload for complexity. *Id.*

¹⁵¹ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 5 ("Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels." (emphasis added)).

¹⁵² SYSTEM OVERLOAD, *supra* note 5, at 11-12 (discussing caseload limits in place in Seattle, Washington DC, among others).

¹⁵³ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 5 ("National caseload standards should in no event be exceeded . . ."). Like others, the Committee expresses caution with respect to the national maximum caseload numbers suggested by the National Advisory Commission on Criminal Justice Standards and Goals in 1973. As has been noted, those standards are decades old and were never empirically based. JUSTICE DENIED, *supra* note 4, at 66 (asserting that those standards "should be viewed with considerable caution" because of their age, lack of empirical support, and the fact that since they were developed the practice of criminal and juvenile law has become "far more complicated and time-consuming"; those 1973 standards set caseload limits at: 150 felonies; 400 misdemeanors; 200 juvenile cases; 200 mental health cases; or 25 appeals). For one set of more recent standards, see DOTTIE CARMICHAEL ET AL., GUIDELINES FOR INDIGENT DEFENSE CASELOADS: A REPORT TO THE TEXAS INDIGENT DEFENSE COMMISSION (2015) ("for the delivery of reasonably competent and effective representation attorneys should carry an annual full-time equivalent caseload of no more than" 236 Class B Misdemeanors; 216 Class A Misdemeanors; 175 State Jail Felonies; 144 Third Degree Felonies; 105

incorporate counsel's administrative responsibilities to the system,¹⁵⁴ and account for variations in local practice that may affect efficiency.¹⁵⁵

Robust Local Supervision

As noted above, an effective indigent defense system requires rigorous supervision and oversight of its indigent defense service providers.¹⁵⁶ To ensure appropriate independence, counsel should be supervised by local system-employed supervisors.¹⁵⁷ In public defender offices, the structure and personnel exist to provide such supervision and oversight to assistant public defenders and staff. However, such supervision and oversight is not carried out uniformly in all public defender offices. To address that, IDS should develop uniform standards regarding supervision and oversight, consistent with the characteristics of an effective indigent defense delivery system as stated above.¹⁵⁸

The appropriate structure and personnel do not exist to provide the necessary supervision and oversight of PAC. Currently, these attorneys are supervised, if at all, by volunteer local bar committees, or for those doing contract work, by IDS's regional defenders. Volunteer bar committees are unable to provide the requisite level of supervision. First, they lack the infrastructure and capacity to do so. Second, perhaps because bar committee members may find it difficult to sanction a peer in the local community, such sanctions rarely occur, indicating a lack of rigor in this peer review system. While IDS's regional defenders provide important oversight for contract attorneys,¹⁵⁹ only two such positions exist, responsible for oversight of 218 contract lawyers.¹⁶⁰ This workload precludes the type of rigorous review required for an effective indigent defense system.

In light of this and consistent with national standards,¹⁶¹ the Committee recommends the use of local PAC supervisors housed within single district, regional or conflict public defender offices¹⁶² and afforded the required time and resources to provide the necessary oversight and supervision pursuant to uniform policies adopted by IDS. Consistent with national standards, the local

Second Degree Felonies; 77 First Degree Felonies), http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2015/ls_sclaid_summit_04_texas_study_full_report.authcheckdam.pdf.

¹⁵⁴ See *supra* p. 18 (discussing factors that should be incorporated into a workload formula).

¹⁵⁵ For example, a lawyer who works in an urban area on only one type of case (e.g., adult felony) in one courthouse where court meets daily can be more efficient than a lawyer in a rural area responsible for a more varied caseload in multiple courthouses that do not hold court daily.

¹⁵⁶ See *supra* pp. 15-17.

¹⁵⁷ See *supra* p. 15.

¹⁵⁸ See *supra* pp. 15-17 (setting out the required oversight and supervision needed for an effective system).

¹⁵⁹ Comments of Michael Waters, Committee Meeting Nov. 23, 2015 (noting the support offered by IDS's current regional defenders).

¹⁶⁰ REPORT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES TO THE CHAIRS OF THE HOUSE APPROPRIATIONS COMMITTEE ON JUSTICE AND PUBLIC SAFETY, THE SENATE APPROPRIATIONS COMMITTEE ON JUSTICE AND PUBLIC SAFETY, AND THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY: REQUESTS FOR PROPOSALS AND CONTRACTS FOR LEGAL SERVICES 2 (2015), http://www.ncids.org/RFP/RepData/GA_Report_2015.pdf [hereinafter REPORT ON REQUESTS FOR PROPOSALS AND CONTRACTS FOR LEGAL SERVICES].

¹⁶¹ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 2 ("The appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide." (footnote omitted)).

¹⁶² See *infra* pp. 34-35 (recommending the creation of such offices).

supervisors should be lawyers with experience in North Carolina criminal law.¹⁶³ The local supervisors would replace the current supervisory role of volunteer local bar committees and would ensure implementation of uniform workload, training, and performance standards as well as provide required support to PAC.¹⁶⁴

Uniform Training Standards

As noted above, training is a key component of an effective indigent defense system.¹⁶⁵ Currently, IDS has no uniform training requirements for new defense counsel or continuing education requirements for experienced lawyers. To the extent training requirements exist,¹⁶⁶ they vary by jurisdiction, as set forth in the jurisdiction's appointment plan.¹⁶⁷ Some local plans were waived in when IDS was created and have not been updated since; given the age of these plans it is not possible to believe that their training requirements are currently appropriate, given changes in law, science, and technology. In jurisdictions without a public defender office it is not clear how or if training requirements are enforced by the local bar committee. Public defenders receive more regular training through an IDS/UNC School of Government partnership,¹⁶⁸ but training opportunities still vary, with some offices offering robust in-house training and others offering none.

To ensure that counsel has the necessary ability and skills to handle indigent cases, IDS should develop uniform training requirements for all defense counsel, setting out training prerequisites for particular cases (type of training, hours, how recent), continuing education requirements, and acceptable training providers. The Committee further recommends that these standards be enforced by local supervisors.

If at any time the system lacks qualified lawyers in a particular jurisdiction or for any particular type of case, IDS should develop programs for counsel to gain the necessary skills and experience, such as a second chair program or collaboration with law school clinical programs.

Uniform Qualification Standards

As noted above, in an effective indigent defense system, counsel's ability, training, and experience match the complexity of the case; to provide this guarantee, the system must have uniform standards specifying the prerequisite skills and experience counsel must possess to handle each type of case for which indigent services are provided.¹⁶⁹ North Carolina has no such uniform

¹⁶³ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 2.

¹⁶⁴ See *infra* pp. 28-30 (uniform standards).

¹⁶⁵ See *supra* p. 19 (so noting); see generally MINOR CRIMES, MASSIVE WASTE, *supra* note 76 at 40-41 ("Supervision of misdemeanor defenders is sorely lacking and, often, performance reviews are non-existent."; recommending that such lawyers be actively supervised).

¹⁶⁶ Some appointment plans fail to state any training requirements for handling serious cases. See, e.g., Vance County Appointment Plan (specifying no training requirements to serve on the list to handle Class F through I felonies), [http://www.ncids.org/IndigentApptPlans/Non-PD Appt Plans/Vance County.pdf](http://www.ncids.org/IndigentApptPlans/Non-PD%20Appt%20Plans/Vance%20County.pdf); District 1 Appointment Plan (specifying no training requirements to serve on the list for Class A through E felonies), [http://www.ncids.org/IndigentApptPlans/PD Appointment Plans/1st judicial district.pdf](http://www.ncids.org/IndigentApptPlans/PD%20Appointment%20Plans/1st%20judicial%20district.pdf).

¹⁶⁷ For example, compare the Vance County Appointment Plan cited above in footnote 166 (specifying no training requirements to serve on the list to handle Class F through I felonies) with the District 1 Appointment Plan cited above in the same footnote (specifying that trial experience requirement for the same category of cases may be satisfied by showing that counsel has "attended at least six (6) hours of continuing legal education in the area of criminal jury trials").

¹⁶⁸ For information about the training offerings pursuant to that partnership, see UNC School of Government, *Indigent Defense Education*, SOG.UNC.EDU, <https://www.sog.unc.edu/resources/microsites/indigent-defense-education> (last visited May 27, 2016).

¹⁶⁹ See *supra* pp. 15-16.

standards in place.¹⁷⁰ The Committee recommends that, in addition to establishing and enforcing through local supervisors uniform training requirements as discussed immediately above, IDS develop and enforce in the same manner standards specifying required litigation experience (types of cases; how many; how recent, etc.) for each IDS case type.¹⁷¹ The Committee further recommends that these standards be regularly reviewed and modified, as needed, based on developments in the law, science, technology and other disciplines relevant to criminal defense practice.

Uniform Performance Standards

The IDS Commission is required by law to establish “[s]tandards for the performance of public defenders and appointed counsel.”¹⁷² To date, the IDS Commission has developed and published performance guidelines for attorneys representing:

- indigent defendants in non-capital criminal cases at the trial level¹⁷³
- juveniles in delinquency proceedings,¹⁷⁴
- indigent parent respondents in abuse, neglect, and dependency cases,¹⁷⁵ and
- indigent parents in termination of parental rights cases.¹⁷⁶

The policy pertaining to non-capital criminal cases was adopted twelve years ago; the others were adopted nine years ago.¹⁷⁷

IDS reports that because of the close supervision afforded in the offices of the Capital Defender, Appellate Defender and the Center for Death Penalty Litigation and because it screens the qualifications of lawyers who handle capital and appellate cases, it has not devoted resources to developing performance standards for potentially capital, appellate, or post-conviction capital cases.¹⁷⁸ IDS reports that it has not devoted resources to developing best practices in post-conviction non-capital cases because of the small number of such cases that the system handles outside of North Carolina Prisoner Legal Services.

Notwithstanding this, to ensure consistent quality throughout the state, IDS should establish uniform standards for performance of counsel for all cases in which it provides services.¹⁷⁹ These standards are necessary both to support counsel (e.g., in training and as resources for new counsel)

¹⁷⁰ See, e.g., *supra* pp. 28-29 (discussing the lack of uniform training standards).

¹⁷¹ See *supra* p. 10 (listing IDS case types).

¹⁷² G.S. 7A-498.5(c)(4).

¹⁷³ NORTH CAROLINA COMMISSION ON INDIGENT DEFENSE SERVICES, PERFORMANCE GUIDELINES FOR INDIGENT DEFENSE REPRESENTATION IN NON-CAPITAL CRIMINAL CASES AT THE TRIAL LEVEL (Adopted Nov. 12, 2004), <http://www.ncids.org/Rules & Procedures/Performance Guidelines/Trial Level Final Performance Guidelines.pdf>.

¹⁷⁴ NORTH CAROLINA COMMISSION ON INDIGENT DEFENSE SERVICES, PERFORMANCE GUIDELINES FOR APPOINTED COUNSEL IN JUVENILE DELINQUENCY PROCEEDINGS AT THE TRIAL LEVEL (Adopted Dec. 14, 2007), <http://www.ncids.org/Rules & Procedures/Performance Guidelines/Juv Del perf guides 1-08.pdf>.

¹⁷⁵ NORTH CAROLINA COMMISSION ON INDIGENT DEFENSE SERVICES, PERFORMANCE GUIDELINES FOR ATTORNEYS REPRESENTING INDIGENT PARENT RESPONDENTS IN ABUSE, NEGLIGENCE, DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS AT THE TRIAL LEVEL (Adopted Dec. 14, 2007), <http://www.ncids.org/Rules & Procedures/Performance Guidelines/Parent Atty guides 1-08.pdf>.

¹⁷⁶ *Id.*

¹⁷⁷ See *supra* notes 173-76.

¹⁷⁸ IDS has however adopted Best Practice Guidelines in Potentially Capital Cases at the Trial Level in a Time of Severe Budgetary Constraints (Adopted June 27, 2011), <http://www.ncids.org/Rules & Procedures/Performance Guidelines/BestPracticeGuidelines.pdf>.

¹⁷⁹ See *supra* p. 10 (listing case types); see MINOR CRIMES, MASSIVE WASTE, *supra* note 76 at 41-42 (“Jurisdictions should adopt practice standards applicable to all attorneys representing indigent defendants.”).

and so that local supervisors can adequately assess their work. Additionally, IDS should develop a regular schedule for review of its performance standards; at a minimum, standards should be reviewed every seven years.

Data Collected & Maintained; Evidence-Based Decisions

As recommended throughout this report, IDS should move towards uniform measures and standards. IDS's long-term planning and short-term decisions should be based on objective data as evaluated against these measures and standards.¹⁸⁰

Long Term Plan for Indigent Defense Services

North Carolina currently does not have a long-term plan for the delivery of indigent defense services. The Commission heard evidence about expected changes in North Carolina's demographics.¹⁸¹ North Carolina needs a long-term plan for providing indigent defense services that accounts for these demographic and other changes.¹⁸² Such a plan may forecast shifting resources from areas where population is expected to decrease to those expected to increase. Having such a plan will aid not only IDS and the IDS Commission but also legislators as they plan for needed resources. Additionally, because such a plan will include discrete, measurable objectives,¹⁸³ it will allow for evaluation of the system.

Access to Counsel Types of Cases

As noted above, an effective indigent defense program provides services in criminal cases and in proceedings arising from or connected with a criminal action against the defendant and in which the defendant may be deprived of liberty or subjected to serious deprivations or collateral consequences.¹⁸⁴ In light of this, indigent defense services should be expanded to defendants filing petitions for removal from the sex offender registry,¹⁸⁵ based on the severity of the consequences that attach when such a petition is denied.¹⁸⁶

¹⁸⁰ The Committee notes that IDS currently has a Systems Evaluation Project underway. Details of that project are provided in the IDS Commission's 2016 Report to the General Assembly. See IDS REPORT, *supra* note 18, at 40-42.

¹⁸¹ Jon Williams, North Carolina Court Operations: An Overview, Part Two (presentation at Commission meeting Sept. 30, 2015), http://nccalj.org/wp-content/uploads/2015/09/NCCALJ_Court_Operations_Presentation-Part-Two.pdf [hereinafter Williams].

¹⁸² See *supra* p. 20 (sketching out the broad parameters of a long-term plan for indigent defense services).

¹⁸³ *Id.*

¹⁸⁴ See *supra* p. 12.

¹⁸⁵ See generally, James M. Markham, *Petitions to Terminate Sex Offender Registration*, in NC SUPERIOR COURT JUDGES' BENCHBOOK (Jessica Smith, Editor), <http://benchbook.sog.unc.edu/criminal/petitions-terminate-sex-offender-registration>.

¹⁸⁶ The Indigent Defense Subcommittee also raised the issue of extending indigent defense services to all misdemeanor prosecutions against 16- and 17-year-olds because of the severe collateral consequences that attach to young persons upon conviction. However, because of the Committee's separate recommendation to raise the juvenile age, see JUVENILE REINVESTMENT, NCCALJ CRIMINAL INVESTIGATION & ADJUDICATION COMMITTEE REPORT, this issue is not addressed here. If the Committee's raise the age recommendation is not implemented, counsel should be provided in all misdemeanor prosecutions against juveniles.

Time for Appointment

As noted above, timely appointment of counsel is a key component of an effective indigent defense system.¹⁸⁷ Many public defender offices assign staff to regularly review jail populations to ensure that appointments are timely made for in-custody defendants. In areas without a public defender office, no system or infrastructure exists to conduct such a review. As explained below, the Committee recommends that all areas of the state be served by either a single-district or regional public defender office.¹⁸⁸ Creation of such offices will provide the infrastructure for such reviews. IDS should, by policy or rule, require frequent review of jail populations by assigned staff in single-district and regional public defender offices to ensure timely appointment of counsel.¹⁸⁹ Additionally, to ensure that all in-custody indigent defendants receive counsel as soon as possible after detention, the Committee further recommends that the first appearance statute be amended to require a first appearance for all in-custody defendants within 48 hours or the next day that district court is open.¹⁹⁰

Waiver of Counsel

Current law allows certain magistrates to accept waivers of counsel.¹⁹¹ Although the Committee believes that magistrates can make initial indigency determinations using a uniform indigency screening tool,¹⁹² it believes that only a judge should be authorized to take a waiver of constitutional rights¹⁹³ and that current law should be amended accordingly.

¹⁸⁷ See *supra* p. 14.

¹⁸⁸ See *infra* pp. 33-34.

¹⁸⁹ Under G.S. 7A-453, a custodian must inform authorities when that person has custody of someone who is without counsel for more than 48 hours. In public defender districts, notification is made to the public defender office. *Id.*; Rules of the Commission on Indigent Defense Services, Rule 1.3(b). In areas without such an office, notification is made to the clerk of superior court. G.S. 7A-453. In the latter situation, it is not clear whether such notifications are uniformly occurring or what happens after such notification is made.

State law requires a first appearance to be held within 96 hours after a felony defendant is taken into custody. G.S. 15A-601. A counsel determination is made at that proceeding. G.S. 15A-603. A first appearance is not, however, required for in-custody misdemeanor defendants.

Recent research shows that controlling for other factors, even a short pretrial detention can have negative consequences for a defendant. See *supra* note 68.

For all of these reasons, the Committee recommends frequent review of jail rosters as explained in the text above.

¹⁹⁰ Under existing law, a first appearance need only be held for in-custody felony defendants; it must be held within 96 hours after the defendant is taken into custody or at the first regular session of district court, whichever is earlier. G.S. 15A-601. Because the statute does not afford a first appearance for in-custody misdemeanor defendants, these individuals sometimes remain in pretrial detention, without any court hearing, until their first court date, which then must be continued because they do not have counsel. In some instances, a misdemeanor defendant will spend more time in pretrial detention than could be imposed as a sentence if he or she is found guilty. Additionally, as noted above, recent research shows that controlling for other factors, even short pretrial detentions can have negative consequences for a defendant. See *supra* note 68.

¹⁹¹ G.S. 7A-146(11) (chief district court judge may designate certain magistrates to accept waivers of counsel in all cases except potentially capital cases).

¹⁹² ELIGIBLE FOR JUSTICE, *supra* note 51, at 8 (noting that a magistrate is one of several court personnel who appropriately can serve as an indigency screener); see *supra* pp. 25-26 (recommending uniform indigency standards).

¹⁹³ The procedure of taking a constitutionally valid waiver of counsel is exacting, see Jessica Smith, *Counsel Issues*, in NC SUPERIOR COURT JUDGES' BENCHBOOK (Jessica Smith, Editor), <http://benchbook.sog.unc.edu/criminal/counsel-issues>, and failure to take a proper waiver of counsel results in reversal. See JESSICA SMITH, CRIMINAL CASE COMPENDIUM, <https://www.sog.unc.edu/resources/legal->

Ability to Meet and Communicate with Counsel

As noted above, indigent defendants must have timely access to counsel.¹⁹⁴ This is a particular problem with in-custody defendants. IDS reported to the Committee that some jail rules and policies create barriers to counsel's confidential access to in-custody defendants, including strict visitation hours, guards who will not afford privacy for client meetings, and long wait times for visitation. IDS should document these difficulties and advocate for rule and policy changes to facilitate counsel's access to in-custody defendants.

Because geographic distances can make it difficult for lawyers and clients to meet face to face,¹⁹⁵ the Committee recommends that PAC assignments take into account, whenever possible, this access issue.

Delivery Systems Preference for Public Defender Offices

For the following reasons, the Committee believes that the best delivery system for indigent defense services in North Carolina is a public defender office:

- A public defender office provides personnel and infrastructure to offer the oversight, supervision, and support of counsel (both within the office and PAC) required for an effective indigent defense delivery system.¹⁹⁶
- Strong stakeholder support for services delivered by public defender offices.¹⁹⁷
- Empirical research showing that, on average, public defenders provide better services than PAC.¹⁹⁸

[summaries/criminal-case-compendium](#) (listing published North Carolina cases since 2008 that have held waivers to be invalid).

¹⁹⁴ See *supra* p. 14.

¹⁹⁵ See Comments of Superior Court Judge Henry W. Hight, Jr., Committee Meeting Nov. 23, 2015 (noting that when lawyers do not have offices nearby, many indigent defendants, because of transportation issues, have difficulty seeing their lawyers).

¹⁹⁶ See *supra* pp. 15-19 (discussing that oversight, supervision, and support are key characteristics of an effective system).

¹⁹⁷ See, e.g., Comments of District Court Judge Athena F. Brooks, Committee Meeting Nov. 23, 2015 (when a public defender office is monitoring the appointed list, quality is improved); Comments of District Attorney Seth Edwards, Committee Meeting Nov. 23, 2015 (comparing the quality of representation provided by public defenders versus PAC and noting that the public defender office enforces a requirement that counsel meet with the defendant within a specific number of hours whereas PAC sometimes come to court never having met with their clients; noting that the new public defender office in the district has raised the quality of counsel and "has done a great job").

¹⁹⁸ See Radha Iyengar, *An Analysis of the Performance of Federal Indigent Defense Counsel*, (National Bureau of Economic Research, Working Paper No. 13187, 2007) (compares federal public defenders and appointed counsel and finds that defendants represented by appointed counsel are more likely to be found guilty and to receive longer prison sentences than those represented by a public defender), <http://www.nber.org/papers/w13187.pdf>; JAMES M. ANDERSON & PAUL HEATON, MEASURING THE EFFECT OF DEFENSE COUNSEL ON HOMICIDE CASE OUTCOMES (2012) (compares outcomes in Philadelphia murder cases and finds that assigning cases to the public defender over private counsel reduced the conviction rate by 19%, the probability that the defendant received a life sentence by 62%, and the overall expected sentence length by 24%); TONY FABELO ET AL., COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER, IMPROVING INDIGENT DEFENSE: EVALUATION OF THE HARRIS COUNTY PUBLIC DEFENDER (2013) (finds significant advantages to full-time public defenders, including overwhelming statistical evidence of better outcomes), <http://tidc.texas.gov/media/23579/jchcpdfinalreport.pdf>.

- National standards, which express a preference for public defender offices.¹⁹⁹
- Efficiencies that can be obtained by using providers who devote all of their efforts to indigent cases.²⁰⁰
- The fact that a public defender office is typically in the best position to supply counsel to indigent persons in a timely manner.²⁰¹

Recognizing that resources are not unlimited, the Committee recommends that where caseload is sufficiently high or where quality indigent defense services are unavailable, a single district public defender office, where economically feasible, is the preferred delivery system for indigent defense services. In assessing economic feasibility, reasonable PAC compensation rates should be used. Using the current unsustainably low rates²⁰² in such an analysis is unlikely to ever make creation of a new single district public defender office appear cost effective or cost neutral.

Regional Public Defender Offices When Single District Office Is Not Feasible

To ensure a level playing field, a public defender office should exist in every jurisdiction that has a prosecutor's office. Having such parity should be the long-term goal of the system. Until that long-term goal can be achieved and to effectuate the Committee's preference for public defender offices while doing so in a cost-effective manner, the Committee recommends, consistent with national standards,²⁰³ that where an individual district's caseload does not warrant creation of a public defender office or it is not cost effective to do so, a regional public defender office should be created to serve a multi-district or multi-county area. The Committee notes that IDS already has successfully implemented one such regional defender office in Districts 1 and 2.²⁰⁴ The personnel

Early data from IDS's outcomes research confirms these national results, showing that for key performance indicators (KPIs), North Carolina public defenders outperform PAC. For example, with respect to KPI I (Non-conviction), public defenders achieved 3-year client favorable outcomes 48.9% of the time in high exposure cases; the comparable figure for PAC was 41.6%; for low exposure cases those percentages were 72.4% and 64.0% respectively. *See* Margaret Gressens, *Indigent Defense Milestone: A Comparison of Delivery Systems in North Carolina* (May 2016) (PowerPoint presentation on file with Committee Reporter). For KPI V (convicted of highest charge), public defenders had lower client unfavorable outcomes than did PAC, as measured by 3-year averages for both high exposure and low exposure cases, again suggesting better performance. *Id.* Public defenders also had lower client unfavorable results with respect to KPI VI (Alternative to incarceration convictions ended in supervised probation) than PAC with respect to high exposure cases; with respect to low exposure cases the two groups had comparable results. *Id.* For KPI III (Felony cases ending in a conviction that end in misdemeanor conviction) public defenders outperformed PAC in client favorable results. *Id.* Although PAC outperformed public defenders with respect to KPI VIII (failure to appear) (client unfavorable outcome), *id.*, further research is needed to validate these results; for example, research should test whether public defender clients experience higher failure to appear rates as compared to PAC because public defenders are more effective in securing pretrial release for their clients). A similar question must be resolved with respect to KPI VIIa (Percentage of convictions that were time served) where PAC outperformed public defenders. *Id.*

¹⁹⁹ ABA TEN PRINCIPLES, *supra* note 51, Principle 2; ABA STANDARDS, *supra* note 49, Standard 5-1.2; *id.*, Commentary to Standard 5-1.2 ("The primary component in every jurisdiction should be a public defender office, where conditions permit.").

²⁰⁰ ABA STANDARDS, *supra* note 49, Commentary to Standard 5.1-2 (noting that by devoting all of their expertise to criminal cases, public defenders develop "unusual expertise in handling various kinds of criminal cases").

²⁰¹ *Id.*

²⁰² *See infra* pp. 39-41 (discussing the need for reasonable compensation of PAC).

²⁰³ ABA STANDARDS, *supra* note 49, Standard 5-1.2(a) ("Multi-jurisdictional organizations may be appropriate in rural areas.").

²⁰⁴ *See supra* note 36 (listing counties in Districts 1 and 2).

and infrastructure that such an office would provide would allow for the oversight, supervision, and support necessary to an effective indigent defense delivery system.²⁰⁵

Conflict Defender Offices Where Caseloads Warrant

For the same reasons that the Committee favors single district and regional public defender offices as the primary vehicles for delivery of indigent defense services, the Committee recommends the creation of conflict defender offices where sufficient volume exists to sustain such an office. Currently only a small number of districts have sufficient volume to support such an office. However, given expected demographic changes, additional offices may be justified over time.²⁰⁶

The Committee notes that G.S. 7A-498.7(f1) provides that, whenever practical, public defender offices should seek to assign conflict cases to another office in the region, rather than to PAC. However, as IDS has explained, “with the possible exception of very serious felony cases and excluding the Gaston County conflict attorney who is housed in the Mecklenburg County office, it is rare for an assignment to a neighboring office to be practical because of the additional time it would take assistant public defenders to travel to a neighboring county and because of the disruption to their regular in-county caseloads.”²⁰⁷ Establishing conflict defender offices within the jurisdiction would eliminate this logistical problem.

Pilot Use of Part-Time Public Defenders

State law currently prohibits practicing lawyers to serve as part-time public defenders.²⁰⁸ Allowing part-time defenders to serve in regular, regional, or conflict public defender offices offers benefits to the system, including:

- Administrative flexibility and cost effectiveness in offices where caseloads warrant additional staff less than a full-time employee.
- Administrative flexibility in terms of being able to split one full-time position into two part-time positions and thus cover a larger geographic territory.

Although the Committee notes that part-time defenders will pose challenges, these challenges can be managed with oversight and supervision, including strict adherence to workload formulas.²⁰⁹ It further notes that although some national standards advise against the use of part-time defenders, others endorse their use.²¹⁰ Thus, the Committee recommends that state law be amended to allow for the use of part-time defenders, when and where IDS determines them to be appropriate. In no instance however should a lawyer be hired as a part-time defender if he or she maintains a significant private practice in areas outside of those assigned by the indigent defense system.²¹¹ IDS

²⁰⁵ See *supra* pp. 15-19 (discussing that oversight, supervision, and support are key characteristics of an effective system).

²⁰⁶ Williams, *supra* note 181.

²⁰⁷ IDS REPORT, *supra* note 18, at 12.

²⁰⁸ G.S. 84-2 (public defender prohibited from engaging in the private practice of law; criminalizing the practice).

²⁰⁹ See *supra* pp. 26-27 (recommending the creation of such formulas).

²¹⁰ Compare ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 2 (stating, in principles adopted in 2002, that “private bar participation may include part-time defenders”), with ABA STANDARDS, *supra* note 49, Commentary to & Standard 5-4.2 (explaining, in these 1992 standards, that “[w]here part-time law practice is permitted, defenders are tempted to increase their total income by devoting their energies to private practice at the expense of their nonpaying clients”). See also JUSTICE DENIED, *supra* note 4, at 12 (“Public defenders should be employed full-time whenever practicable”).

²¹¹ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-4.2 (with respect to the use of part-time defenders, explaining that “the expertise required of defense counsel is less likely to be developed if an

should develop rules and/or policies providing clear, and uniform standards for the scope and performance of duties of part-time defenders, limits on private practice, and the avoidance of conflicts of interest.²¹²

Formal Assigned Counsel System for PAC

Even if North Carolina had single district and regional public defender offices covering the entire state, conflict and overload cases will require continued active participation by the private bar.²¹³ Currently, almost 2,600 PAC handle indigent defense cases.²¹⁴ In part because of the large number of PAC doing indigent work, the system is unable to adequately supervise and support these lawyers.²¹⁵ This problem is not new. In fact, the lack of “statewide uniform standards . . . for . . . appointment, qualifications . . . or performance of counsel” was cited as a reason supporting the creation of IDS.²¹⁶ These deficiencies continue to exist. In districts with a public defender office, IDS and the Commission have “worked with the chief public defenders to develop plans for the appointment of counsel in non-capital criminal and non-criminal cases . . . , which provide for more significant oversight by the public defenders over the quality and efficiency of local indigent representation and contain qualification and performance standards for attorneys on the district indigent lists.”²¹⁷ In districts without a public defender office, IDS and the Commission have developed a model indigent appointment plan that includes qualification standards for the various indigent lists, provides for oversight by a local indigent committee, and includes some basic reporting requirements to the IDS Office.²¹⁸ Although districts are required to adopt appointment plans, they have some discretion regarding the content of their plans.²¹⁹ IDS reports that as it implements contracts pursuant to legislative mandates, local appointment plans are being supplemented or superseded by contractor appointment instructions that IDS issues in consultation with local court system actors.²²⁰

The Committee finds that the existing method of supervising PAC is deficient in the following respects:

attorney maintains a private practice involving civil cases”). *See generally supra* p. 10 (listing the civil cases for which indigent defense services are provided). Although the authority cited here focuses on lawyers who maintain a civil practice beyond that served by the indigent defense system, similar concerns arise where the lawyer’s private criminal practice is outside of the area handled in his or her indigent cases.

²¹² ABA STANDARDS, *supra* note 49, Commentary to Standard 5-4.2.

²¹³ JUSTICE DENIED, *supra* note 4, at 53. In fiscal year 2014-15, public defender offices assigned out 13,379 case-specific conflict cases and 7,684 workload conflict cases. OFFICE OF INDIGENT DEFENSE SERVICES, REPORT ON PUBLIC DEFENDER CONFLICTS FOR FISCAL YEAR 2014-15, at 4 (2015).

²¹⁴ IDS REPORT, *supra* note 18, at 16.

²¹⁵ *See* TRIAL JUDGES’ PERCEPTIONS OF IDS, *supra* note 18 (survey responses showed that judges had concerns about the appointment process for PAC counsel and about the management, and supervision of PAC); *id.* at 16 (noting that some judges suggested that there was a need for more IDS monitoring of PAC); Comments of Chief Public Defender James Williams, Committee Meeting Nov. 23, 2015 (regional public defenders are required to supervise PAC); Comments of District Attorney Seth Edwards, Committee Meeting Nov. 23, 2015 (local committee provided little or no real oversight of PAC).

²¹⁶ LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 1.

²¹⁷ IDS REPORT, *supra* note 18, at 5.

²¹⁸ *Id.*

²¹⁹ Memorandum from Malcolm Ray Hunter, Jr., IDS Director to Bar Presidents, Appointed Attorneys, Superior Court Judges, District Court Judges, Clerks of Court, Regarding Model Indigent Appointment Plan for Non-Public Defender Districts (April 2008), http://www.ncids.org/IndigentApptPlans/Non-PD%20Appt%20Plans/Memo_ModelAppointmentPlan.pdf.

²²⁰ IDS REPORT, *supra* note 18, at 5.

- Because appointment plans vary by jurisdiction, there is no uniform statewide standard with respect to the ability, training, and experience required for indigent cases.²²¹
- Some appointment plans fail to state minimum training requirements²²² or litigation experience or fail to state those requirements with the necessary specificity.²²³
- No uniform requirement is in place for the regular review and updating of appointment plans.²²⁴ According to IDS, some appointment plans have not been updated since the 1980s.
- No infrastructure or systems exist to address a shortage of qualified PAC to handle caseloads in particular areas or for particular types of cases.²²⁵
- No infrastructure or systems exist to verify that PAC meets the minimum standards required to handle the particular case (e.g., training and experience).²²⁶
- No infrastructure or systems exist to help PAC identify and report conflicts when a case is initially assigned and as it progresses.²²⁷
- The plans do not require and no infrastructure or systems exist to ensure that counsel has appropriate resources to handle the case, such as office space, office support, access to research tools, etc.²²⁸
- The plans do not require and no infrastructure or systems exist for ongoing evaluation of PAC's performance, including observations of PAC's in-court performance and client and witness interviews; reviewing PAC's legal filings; and soliciting input from judges, prosecutors, clients and peers.²²⁹
- The plans do not require and no infrastructure or systems exist for the evaluator to give PAC feedback and develop a remediation plan for any deficiencies.²³⁰
- Vesting supervisory authority over PAC with volunteer local bar committees does not provide the required rigor of review.²³¹

²²¹ See *supra* pp. 15-16 (noting that in an effective indigent defense system, counsel's ability, training, and experience matches the complexity of the case and that to provide this guarantee, the system must have uniform statewide standards identifying the prerequisite skills and experience counsel must possess to handle each type of case for which indigent defense services are provided).

²²² See *e.g.*, District 1 Appointment Plan, *supra* note 166, at 11 (stating no training requirements for counsel to handle Class A through E felony cases).

²²³ See *supra* pp. 15-16 (noting that standards should specify, at a minimum, training requirements and required litigation experience); see, *e.g.*, District 1 Appointment Plan, *supra* note 166, at 11 (stating that to handle Class A through E felonies, counsel "must have tried as lead counsel or individually at least three jury trials to verdict" but not specifying what type of trial experience is necessary (case type) or how recent such experience must be).

²²⁴ See *supra* p. 16 (noting that in an effective system, appointment standards should be reviewed on a regular basis and modified, as needed, based on developments in the law, science, technology, and other disciplines relevant to criminal defense practice).

²²⁵ See *supra* p. 16 (noting that when this occurs, the system should devote resources and develop programs for counsel to gain the necessary skills and experience).

²²⁶ See *supra* p. 16 (noting that to ensure that counsel's ability, training, and experience match the complexity of the case assigned, supervision is required with respect to selection of counsel).

²²⁷ See *supra* p. 16 (noting that supervision is required to avoid conflicts, both at initial appointment and as the case develops).

²²⁸ See *supra* pp. 18-19 (noting that in an effective indigent defense system such resources are required).

²²⁹ See *supra* p. 16 (noting that in an effective indigent defense system such an evaluation is provided).

²³⁰ See *supra* p. 16 (noting that in an effective indigent defense system such activities would occur).

²³¹ See *supra* p. 17 (noting that volunteer attorneys may be reluctant to sanction a colleague and suggesting that sanctioning authority should be vested with local supervisors); LEGISLATIVE STUDY COMMISSION REPORT, *supra* note 28, at 7 ("Some local district bar committees do a poor job managing the local lists of attorneys that can be appointed to provide representation, particularly with regard to monitoring and when necessary sanctioning the performance of local attorneys.").

- The plans do not provide for and no infrastructure or systems exist to develop, monitor and enforce workload requirements.²³²
- With the exception of services provided by IDS's Forensic Resource Counsel,²³³ few if any resources are provided to help PAC access necessary expertise and support, such as investigators and experts or access to individuals with specialized expertise in certain subject areas.²³⁴
- No infrastructure or systems exist to provide timely, high quality, relevant, skills based training to *all* PAC.²³⁵

In light of this and consistent with national standards,²³⁶ PAC should be employed through a formal assigned counsel system where a local supervisor housed within the single district, regional or conflict public defender office provides the requisite supervision, oversight and support pursuant to uniform performance and workload standards developed by IDS.

Budget & Funding Issues

Consistent with other states' experiences,²³⁷ stakeholders across North Carolina acknowledge that the State's indigent defense system is woefully underfunded.²³⁸ In this section, the Committee makes recommendations regarding budget and funding issues.

Continue State Funding of Indigent Defense

North Carolina should retain its current state-funded indigent defense program. State funding is the majority approach in the country.²³⁹ Additionally, and as numerous studies have shown, a state funded model avoids the inevitable inequities that develop with locally-funded programs²⁴⁰ and thus promotes uniformity in the delivery of justice in the state's criminal courts. Funding should come from the General Fund or other stable revenue source; to ensure that the State honors its constitutional obligation to provide counsel to indigent persons, funding from unpredictable revenue sources should be avoided.²⁴¹

²³² See *supra* p. 18 (noting the importance of such requirements for an effective indigent defense delivery system).

²³³ IDS REPORT, *supra* note 18, at 31 (describing the role of Forensic Resource Counsel).

²³⁴ See *supra* pp. 18-19 (noting the importance of this support function).

²³⁵ See *supra* p. 19 (noting that training is a key feature of an effective indigent defense system).

²³⁶ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 2 ("private bar participation may include . . . a controlled assigned counsel plan"); ABA STANDARDS, *supra* note 49, Standard 5-1.2(b) (participation of the private bar "should be through a coordinated assigned-counsel system").

²³⁷ See, e.g., Sarah Breitenbach, *Right to an Attorney? Not Always in Some States*, THE PEW CHARITABLE TRUSTS, (April 11, 2016), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/04/11/right-to-an-attorney-not-always-in-some-states> ("There is a lack of funding for public defense in every state . . ."); JUSTICE DENIED, *supra* note 4, at 59-60 (citing states experiencing funding emergencies in indigent defense); *id.* at 64 (noting that throughout the country, "compensation of assigned counsel is often far from adequate").

²³⁸ Comments of District Attorney Andrew Murray, Committee Meeting Nov. 23, 2015; Comments of District Attorney Lorrin Freeman, Committee Meeting Nov. 23, 2015 (IDS is "woefully underfunded"); TRIAL JUDGES' PERCEPTIONS OF IDS, *supra* note 18, at 16 (survey respondent stated that "court appointed attorneys are woefully underpaid").

²³⁹ JUSTICE DENIED, *supra* note 4, at 53.

²⁴⁰ *Id.* at 54-55.

²⁴¹ *Id.* at 57 (noting that "[s]pecial funds and other revenue sources are unpredictable and more apt to fall short of indigent defense needs").

Funding to Meet Obligations on Annual Basis

As shown in Figure 5 below, IDS repeatedly has been unable to pay its obligations on an annual basis. IDS has accurately predicted its funding needs; end-of-year deficits have resulted from appropriations at levels lower than predicted demand.²⁴²

Figure 5. IDS Debt at Fiscal Year End

Fiscal Year	Year End Debt
2009-10	\$664,752
2010-11	\$9.9 million
2011-12	\$9.9 million
2012-13	\$7.9 million
2013-14	\$3.1 million
2014-15	\$6.1 million

Source: IDS REPORT, supra note 19, at 30; Email from Danielle Carman to Committee Reporter (Mar. 31, 2016) (on file with Reporter).

Recurring budget shortfalls result in payment delays and hardship for PAC, most of whom are solo practitioners in small law firms.²⁴³ The Committee concurs with IDS' assertion that regularly allowing it to run short of funds and stop payments to PAC leads to a deterioration in the quality of lawyers willing to do assigned work.²⁴⁴ Consistent with national standards,²⁴⁵ the Committee recommends that IDS be funded adequately so that it can consistently meet its obligations on an annual basis.²⁴⁶

Compensation of Providers

Compensation Should Be Reasonable

Counsel providing indigent defense services should receive reasonable compensation.²⁴⁷ Doing so ensures that the State can sustainably provide effective indigent defense services.²⁴⁸ Stakeholders agree that compensation for assistant public defenders, like that of assistant district attorneys and other judicial branch employees, is insufficient.²⁴⁹ With respect to compensation for PAC,

²⁴² Thomas Maher, *Indigent Defense in North Carolina*, (Nov. 23, 2016) (PowerPoint presentation on file with the Committee Reporter).

²⁴³ IDS REPORT, *supra* note 18, at 18.

²⁴⁴ *Id.*

²⁴⁵ ABA STANDARDS, *supra* note 49, Standard 5-2.4 ("Assigned counsel should receive prompt compensation . . .").

²⁴⁶ JUSTICE DENIED, *supra* note 4, at 183 ("For this Constitutional requirement to be implemented effectively, adequate funding of defense services is indispensable.").

²⁴⁷ ABA STANDARDS, *supra* note 49, Standard 5-2.4 (compensation should be "reasonable"); ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 8 ("[a]ssigned counsel should be paid a reasonable fee").

²⁴⁸ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-2.4 (noting a variety of reasons why reasonable compensation is appropriate); JUSTICE DENIED, *supra* note 4, at 63 ("Across the country, because of inadequate compensation, public defense programs find it difficult to attract and retain experienced attorneys."); SYSTEM OVERLOAD, *supra* note 5, at 11 ("Low rates of compensation for public defenders can make it difficult to attract and keep attorneys, resulting in higher turnover and less experienced defenders. Low pay can also decrease the participation of private attorneys as assigned or contracted counsel." (footnotes omitted)).

²⁴⁹ See, e.g., Comments of District Attorney Lorrin Freeman, Committee Meeting Nov. 23, 20015; Comments of District Attorney Andrew Murray, Committee Meeting Nov. 23, 2015; Comments of District Attorney Mike Waters, Committee Meeting Nov. 23, 2015.

prosecutors, defense counsel, and judicial stakeholders agree that all current compensation systems (hourly, flat fee, and contract) are unsustainable in terms of ensuring that competent lawyers are available to do indigent defense work²⁵⁰ and as a result, qualified lawyers are declining such work.²⁵¹

In fact, evidence indicates that private lawyers plan to decline or already have declined to do indigent work because of low pay.²⁵² An insufficient number of competent lawyers threatens the system in several ways:

²⁵⁰ TRIAL JUDGES’ PERCEPTIONS OF IDS, *supra* note 18, at 18-19 (by a two-to-one margin, judges responded that they had seen impacts on the quality of representation due to reduction in PAC hourly rates, with the vast majority of judges indicating that the quality of representation had suffered).

²⁵¹ *See, e.g.*, IDS REPORT, *supra* note 18, at 2; Comments of Superior Court Judge Henry W. Hight, Jr., Committee Meeting Nov. 23, 2015 (noting that lawyers are leaving indigent work because it no longer is financially feasible); Comments of District Attorney Michael Waters, Committee Meeting Nov. 23, 2015 (because of low payment rates, many PAC no longer handle misdemeanor or high level felony cases; this has eroded quality); Comments of District Attorney Lorrin Freeman, Committee Meeting Nov. 23, 2015 (at current rates the contract system is not sustainable; a number of people have dropped out of the contract system because of low pay; expressing grave concerns about the quality of lawyers who will continue to do contract work); TRIAL JUDGES’ PERCEPTIONS OF IDS, *supra* note 18 (noting that in a follow-up question, 59 of 66 survey respondents indicated that the quality of representation had suffered primarily due to fewer experienced attorneys being willing to take indigent cases, as a result of a reduction in PAC hourly rates); *id.* at 16-17 (survey respondent indicated that “fees are such that more experienced attorneys will not accept the cases”; several judges urged IDS to lobby the legislature to approve rate increases).

Original PAC rates, original PAC rates adjusted for inflation and current PAC rates are as follows:

Case Type	Original PAC Rates (set in 2002)	Original PAC Rates Adjusted for Inflation to 2015 *	Current PAC Rates (set in May 2011)	Current PAC Rate as % of CPI Adjusted
Potentially Capital Cases	\$85	\$111.99	\$85 (\$75 after a non-capital declaration)	75.9% (67.0%)
High-Level Felonies (Class A-D)	\$65	\$85.64	\$70	81.7%
All Other Superior Court Cases	\$65	\$85.64	\$60	70.0%
All Other District Court Cases	\$65	\$85.64	\$55	64.2%

* Based on CPI Inflation Calculator.

IDS REPORT, *supra* note 18, at 17.

The history of changes in PAC rates is as follows:

Case Type	Original IDS Rates (2002)	Aug. 2006 Rates	Feb. 2008 Rates	Jan. 2011 Rates	May 2011 Rates
Potentially Capital Cases	\$85	\$95	\$95	\$95 (\$85 after a non-capital declaration)	\$85 (\$75 after a non-capital declaration)
High-Level Felonies (Class A-D)	\$65	\$65	\$75	\$75	\$70
All Other Superior Court Cases	\$65	\$65	\$75	\$75	\$60
All Other District Court Cases	\$65	\$65	\$75	\$75	\$55

REPORT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES 13 (Submitted to the N.C. General Assembly Feb. 1, 2015), <http://www.ncids.org/Reports%20&%20Data/Prior%20GA%20Reports/LegislatureReport2015.pdf>.

²⁵² In a January 2015 survey, 41.8% of PAC said that rate cuts were the primary cause of changes in their state court practice since May 2011. IDS REPORT, *supra* note 18, at 17. When asked if they will stop accepting indigent cases in the next two years if the rates remain at current levels, 41.7% said they either definitely will or there is a strong possibility that they will, and 39.5% said they are considering that change. *Id.*; *see also* Comments of Desmond McCallum, Attorney, Committee Meeting Nov. 23, 2015 (noting that he can no longer afford to handle misdemeanors at current rates and that he has seen a number of lawyers in his jurisdiction leave because of low compensation); Comments of Chief Public Defender James Williams, Committee Meeting

- The State may be unable to fulfill its constitutional obligation to provide defendants with effective assistance of counsel.
- The State may experience higher caseloads as a result of ineffective assistance of counsel claims asserted on appeal and in post-conviction motions.
- The State may experience trial delays as a result of overburdened or unprepared lawyers.
- The State may wrongfully convict defendants, with negative consequences for those persons, their families, victims, taxpayers, and the justice system.²⁵³

In light of this, the Committee recommends that IDS develop a clear, objective method for determining reasonable compensation of PAC and a long-term plan for obtaining and implementing reasonable compensation statewide.

Compensation Should Ensure Parity with Prosecution Function

The importance of parity in funding with the prosecution has been articulated in national standards, by the Department of Justice, the United States Supreme Court and other experts.²⁵⁴ The Committee recommends that compensation for indigent defense providers should be commensurate with that provided to prosecutors.²⁵⁵

Compensation Methods Should Not Create Negative Incentives or Disincentives

Contracts

Since 2003 IDS has been exploring the use of contracts to pay for indigent defense services provided by PAC.²⁵⁶ In fiscal year 2014-15, IDS had individually negotiated contracts with 44 different attorneys in a range of counties and covering a variety of case types, including adult criminal; juvenile delinquency; abuse, neglect and dependency; termination of parental rights; civil commitment; guardianship; Industrial Commission contempt; and treatment court proceedings.²⁵⁷ Additionally, IDS contracts with over 200 attorneys through its separate Request for Proposal contract system.²⁵⁸ IDS supports the use of contracts, noting that “carefully planned and tailored contracts can result in greater efficiencies and savings while improving the quality of services being delivered.”²⁵⁹

Nov. 23, 2015 (noting that two of the most experienced lawyers in his district ceased handling serious cases because of low contract rates); *supra* note 251.

²⁵³ See *supra* pp. 3-5 (discussing the costs to defendants, victims, taxpayers and the court system when the State is unable to provide effective assistance of counsel for indigent persons).

²⁵⁴ ABA TEN PRINCIPLES, *supra* note 51, Principle 8; ABA STANDARDS, *supra* note 49, Standard 5-4.1; JUSTICE DENIED, *supra* note 4, at 12; SYSTEM OVERLOAD, *supra* note 5, at 8; *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

²⁵⁵ Unlike the experience in other states, see JUSTICE DENIED, *supra* note 4, at 63 (noting that “throughout the country, public defender salaries are often significantly below those of prosecutors”), current data suggest that rough parity—at least in terms of assistant public defender and assistant district attorney pay—currently exists. See Summary of average APD and ADA Pay, Provided to Committee Reporter by Susan Brooks, IDS Public Defender Administrator, April 4, 2016 (on file with Committee Reporter).

A full analysis of parity would go beyond a comparison of salary and would examine all resources (e.g., support staff such as investigators and outside funding) supporting the defense and prosecution functions and compared to workload. See *supra* p. 10 (discussing the differences between indigent defense and prosecution case types).

²⁵⁶ IDS REPORT, *supra* note 18, at 19.

²⁵⁷ *Id.*

²⁵⁸ REPORT ON REQUESTS FOR PROPOSALS AND CONTRACTS FOR LEGAL SERVICES, *supra* note 160, at 2.

²⁵⁹ IDS REPORT, *supra* note 18, at 19. IDS notes that excluding certain contracts that were reported under a different system, all of the individually negotiated contracts combined saved 8% during fiscal year 2014-15 compared to fees paid to PAC under an hourly individual appointment method. *Id.*

In light of this and consistent with national standards,²⁶⁰ the Committee supports IDS’s strategic use of contracts when²⁶¹ and where appropriate.²⁶² However, to ensure effective representation contracts should:

- Not be awarded primarily on the basis of cost; quality must be a consideration²⁶³
- Set minimum attorney qualifications, including training requirements²⁶⁴
- Separately fund expert, investigative and other litigation support services²⁶⁵
- Specify performance standards²⁶⁶
- Provide independent oversight and monitoring²⁶⁷
- Provide workload caps²⁶⁸
- Provide limitations on the practice of law outside of the contract²⁶⁹
- Provide an overflow or funding mechanism for excess, unusual or complex cases²⁷⁰
- Contain management and tracking requirements²⁷¹

²⁶⁰ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 2 (“private bar participation may include . . . contracts for services”); ABA STANDARDS, *supra* note 49, Standard 5-1.2(b) (participation of the private bar may include contracts for services); *id.*, Standard 5-3.1 (“Contracts for services of defense counsel may be a component of the legal representation plan.”).

²⁶¹ Stakeholders say that contracts work well for some cases but not others. Comments of Jeff Cutler, Committee Meeting Nov. 23, 2015 (contracts work well for misdemeanors and felony pleas in district court but not for serious felony trials where more time is required to handle the case); Comments of District Attorney Lorrin Freeman (contracts work well for misdemeanors felony pleas in district court but not for complex cases requiring more time).

²⁶² Stakeholders report that contracts work best in areas with high case volume; they emphasized difficulties contracts pose in low volume areas, including exacerbating court date conflicts because a small number of lawyers are handling a bulk of the indigent docket. Comments of Superior Court Judge Henry W. Hight, Jr., Committee Meeting Nov. 23, 2015 (because a small number of lawyers are handling a large portion of the docket, court conflicts result); Comments of Jeff Cutler, Committee Meeting Nov. 23, 2015 (contracts work well in Wake County but not in rural areas); Comments of District Attorney Michael Waters, Committee Meeting Nov. 23, 2015 (court conflicts are common because the contract system has reduced the number of lawyers available to do the work).

²⁶³ ABA STANDARDS, *supra* note 49, Standard 5-3.1; *id.* Commentary to Standard 5-3.1 (“The key with all components of an effective defense services program is not merely cost but also the provision of quality legal representation. While it should be obvious that no contract for defense services should be awarded on the basis of cost alone, the apparent economies in the use of contracts make the admonition necessary . . .”).

²⁶⁴ UNITED STATES DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, CONTRACTING FOR INDIGENT DEFENSE SERVICES 16 (April 2000) [hereinafter CONTRACTING FOR INDIGENT SERVICES], <https://www.ncjrs.gov/pdffiles1/bja/181160.pdf>; *see also* ABA STANDARDS, *supra* note 49, Standard 5-3.3(a) (“Contracts should include provisions which ensure quality of legal representation . . .”).

²⁶⁵ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 8; ABA STANDARDS, *supra* note 49, Standard 5-3.3(b)(x); CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 16.

²⁶⁶ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 8; CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 16; *see also* ABA STANDARDS, *supra* note 49, Standard 5-3.3(a) (“Contracts should include provisions which ensure quality legal representation . . .”).

²⁶⁷ CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 16; ABA STANDARDS, *supra* note 49, Standard 5-3.3(b)(xi).

²⁶⁸ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 8; ABA STANDARDS, *supra* note 49, Standard 5-3.3(b)(v); CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 16.

²⁶⁹ CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 16; ABA STANDARDS, *supra* note 49, Standard 5-3.3(b)(viii).

²⁷⁰ ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 8.

²⁷¹ CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 16; ABA STANDARDS, *supra* note 49, Standard 5-3.3(b)(xiv).

- Provide a mechanism for oversight and evaluation²⁷²
- Specify grounds for terminating the contract²⁷³
- Provide for the completion of cases if the contract is terminated, breached, or not renewed²⁷⁴

IDS should avoid the following characteristics, associated with a deficient contract system:

- Rewarding low rather than realistic bids²⁷⁵
- Placing cost containment before quality²⁷⁶
- Creating incentives to plead cases out early rather than go to trial,²⁷⁷ when a plea is not in the client’s best interest
- Resulting in lawyers with fewer qualifications and less training doing a greater percentage of the work²⁷⁸
- Offering limited training, supervision, or continuing education to counsel²⁷⁹
- Providing unrealistic caseload limits or no limits at all²⁸⁰
- Failing to provide resources for investigative or expert services²⁸¹
- Resulting in case dumping that shifts cost burdens back to the institutional defender²⁸²
- Failing to provide for independent monitoring or evaluation of performance outside of costs per case²⁸³
- Failing to include a case tracking or case management system and failing to incorporate a strategy for case weighting²⁸⁴

Importantly, contracts should never be a separate, “stand-alone” delivery system; contracts always must be administered under a formal assigned counsel system that allows for appropriate oversight, supervision, and support.²⁸⁵

²⁷² CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 16.

²⁷³ ABA STANDARDS, *supra* note 49, Standard 5-3.3(b)(xv).

²⁷⁴ CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 16. IDS reports that it considered all of these characteristics in creating its existing contract system. Telephone conversation between Danielle Carman, former Assistant Director/General Counsel, NC IDS, Thomas Maher, Executive Director, NC IDS and Committee Reporter, June 9, 2016. *See generally* REPORT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES TO THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS: REQUESTS FOR PROPOSALS AND CONTRACTS FOR LEGAL SERVICES (2011) (noting considerations), http://www.ncids.org/RFP/RepData/GA_Report.pdf.

²⁷⁵ CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 13; SYSTEM OVERLOAD, *supra* note 5, at 9.

²⁷⁶ CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 13; ABA TEN PRINCIPLES, *supra* note 51, Commentary to Principle 8 (“[c]ontracts with private attorneys for public defense services should never be let primarily on the basis of cost”).

²⁷⁷ CONTRACTING FOR INDIGENT SERVICES, *supra* note 264, at 13.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-1.2 (noting that the ABA does not endorse the use of contracts as a stand-alone system; use of contracts must be part of a larger, coordinated assigned counsel system and “[t]he structure should guarantee adequate independence, oversight and quality control for the use of contracts”). *See generally supra* pp. 35-38 (recommending a formal assigned counsel system).

Flat Fee

A flat fee system offers payment per case or per session. North Carolina has experience with flat fee compensation. Specifically, when IDS was created, it approved two preexisting flat per case fee systems for district court cases in Cabarrus and Rowan counties.²⁸⁶ Additionally, in 2016, the General Assembly directed the NCAOC and IDS to implement a flat fee pilot project in one or more counties in at least six judicial districts.²⁸⁷

As compared to contracts, flat fee arrangements involve lower administrative costs, allow for greater participation by the private bar, give greater flexibility for private lawyers who may not want to take a large number of indigent cases as part of a contract and provide certainty to the client regarding the potential amount of attorney fees that he or she may be ordered to pay. However, national standards discourage the use of flat fees,²⁸⁸ explaining: “The possible effect of such rates is to discourage lawyers from doing more than what is minimally necessary to qualify for the flat payment.”²⁸⁹ This disincentive to providing an effective defense is particularly acute when the flat fee arrangement does not allow for additional payment in exceptional cases.²⁹⁰ More importantly, a 2011 study by IDS found that “case outcomes, both in terms of determination of guilt and disposition or sentence, for PAC DWI and misdemeanor cases under the hourly rate system were significantly more favorable than outcomes under the flat fee systems in Cabarrus and Rowan [Counties].”²⁹¹ A more recent IDS study confirmed those results.²⁹²

In light of concerns about flat fee arrangements and existing evidence showing that outcomes for North Carolina cases compensated under a flat fee method are less favorable than for those compensated on an hourly basis, the Committee recommends that any decisions about continued use or expansion of flat fee payment systems should be evidence-based, relying on fiscal and outcomes data generated from the new flat fee pilot program.

²⁸⁶ NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES, DISTRICT COURT DWI AND MISDEMEANOR FLAT FEES AND CASE OUTCOMES 1 (2011) [hereinafter FLAT FEES & CASE OUTCOMES], http://www.ncids.org/systems_evaluation_project/caseoutcome/research/districtcourt.pdf.

²⁸⁷ S.L. 2016-94, sec. 19A.4.

²⁸⁸ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-2.4 (“Since a primary objective of the payment system should be to encourage vigorous defense representation, flat payment rates should be discouraged.”).

²⁸⁹ *Id.* (going on to note that decisions striking down statutory fee maximums “constitute a strong trend away from the payment of flat fees”); *see also* SYSTEM OVERLOAD, *supra* note 5, at 9 (noting that if the purpose of a flat fee arrangement is solely to reduce costs, the arrangement will negatively impact indigent defense services by creating a disincentive to devote the necessary time to the case); MINOR CRIMES, MASSIVE WASTE, *supra* note 76, at 30 (noting that with a flat fee arrangement, the lawyer is motivated to dispose of the case as quickly as possible to maximize profit, creating a conflict of interest between attorney and client; recommending that jurisdictions discontinue the use of flat fee systems); Stephen J. Schulhofer, *Client Choice for Indigent Criminal Defendants: Theory and Implementation*, 12 OHIO STATE J. OF CRIM. LAW 505, 511 (2015) (“If attorney compensation is low, defense counsel may forego useful investigations and may avoid trial even when there are good chances for acquittal.”).

²⁹⁰ ABA STANDARDS, *supra* note 49, Commentary to Standard 5-2.4 (noting the importance of providing extra payments to counsel when representation is provided in unusually protracted or complicated cases).

²⁹¹ FLAT FEES & CASE OUTCOMES, *supra* note 286, at 3-6.

²⁹² Margaret Gressens, *Indigent Defense Milestone: A Comparison of Delivery Systems in North Carolina* (May 2016) (PowerPoint Presentation on file with Committee Reporter). Just one of the findings of that study was that for high exposure cases, public defender offices achieved a 48.9% 3-year average of client favorable outcomes; for the same group of cases over the same period, flat fee arrangements yielded 21.8% client favorable outcomes. *See supra* note 198 (discussing IDS’s outcomes research and data for key performance indicators).

Hourly Fees

A benefit to an hourly fee compensation method²⁹³ is that payment is directly tied to case complexity. Thus, this compensation method does not create a disincentive for counsel to spend an appropriate amount of time on the case.

One potential problem with an hourly fee compensation method is that it creates an incentive to “overwork” a case to increase hours and thus compensation.²⁹⁴ In North Carolina, however, there seems to be no evidence of widespread overbilling under the hourly fee method. In fact, the average hours claimed by PAC for adult criminal cases in fiscal year 2012 was only 4.56 hours.²⁹⁵ Average hours claimed by PAC ranged from a low of 3.31 hours for district court misdemeanor non-traffic cases to a high of 7.59 hours for superior court Class I felony cases.²⁹⁶ Nevertheless, to ensure appropriate use of taxpayer funds and confidence in the indigent defense program, IDS should develop a system to flag high fee submissions by PAC in individual cases and a system for appropriate auditing.

Numerous stakeholders expressed concern that current depressed compensation rates are negatively impacting the criminal justice system and are unsustainable long term.²⁹⁷ As noted above, the Committee recommends that IDS develop a clear, objective method for determining reasonable compensation of PAC and a long term plan to obtain and implement reasonable compensation statewide.

Voucher & Client Choice Systems

Under a voucher system, the indigent defendant is given a voucher for a specified sum and is instructed to hire his or her own counsel. This payment method is not currently in place in North Carolina. Nor did research reveal any other state or jurisdiction that has employed such a system. Although a pilot program in Comal County Texas (population 116,524) sometimes is cited as an example of a voucher system, the Comal pilot is not a true voucher program. Rather, clients chose lawyers from an approved list of lawyers and in felony cases the judge sets the compensation rate within a specified range; as such, the Comal pilot may be better described as a client choice model.²⁹⁸ Some suggest that by providing client choice, voucher systems will improve outcomes for defendants and the system.²⁹⁹ The Committee, however, identified difficulties presented by a voucher system including:

- what to do with a case when the client-selected lawyer later is dismissed or removed;
- how to provide resources to pretrial detainees so that they can make informed choices regarding counsel and can contact counsel to discuss representation;

²⁹³ For current hourly PAC compensation rates, see note 251.

²⁹⁴ See Schulhofer, *supra* note 289, at 511 (“if compensation is very generous, defense counsel may pursue unproductive investigations or hold out hopes for acquittal at trial when a guilty plea would better serve the client’s interest”).

²⁹⁵ See NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES, FY12 PRIVATE APPOINTED COUNSEL AVERAGE HOURS STUDY 1 (2013) (breaking down hours claimed by case type), http://www.ncids.org/Reports & Data/Latest Releases/FY12_PACHoursStudy.pdf.

²⁹⁶ *Id.*

²⁹⁷ See *supra* pp. 39-40.

²⁹⁸ See Schulhofer, *supra* note 289, at 545-46 (judges must approve assigned counsel vouchers; in felony cases judges have wide discretion to select the compensation rate they consider appropriate within an authorized range; separately describing misdemeanor vouchers).

²⁹⁹ See *id.* (arguing for client choice); Stephen J. Schulhofer & David D. Friedman, *Reforming Indigent Defense: How Free Market Principles Can Help to Fix a Broken System* (CATO Institute Policy Analysis, Sept. 1, 2010), <http://object.cato.org/sites/cato.org/files/pubs/pdf/pa666.pdf>.

- what to do when the client is unable to find a lawyer who will accept the voucher;³⁰⁰
- how to address the negative incentives that are inherent in any flat fee arrangement, such as a voucher system;³⁰¹ and
- what to do when voucher recipients flock to a popular lawyer, resulting in case conflicts and delays.

Perhaps most importantly, however, the Committee has identified a lack of supervision and support of PAC to be a key deficiency with the state’s existing indigent program and has recommended system changes to address this deficiency, such as uniform qualification standards for PAC.³⁰² By placing no limits on who can serve as counsel, a voucher system undercuts core recommendations in this Report.

For these reasons, the Committee recommends against implementing a true voucher system in North Carolina. However, it recognizes that client choice—allowing defendants the option of choosing counsel from an approved list—may promote the lawyer-client relationship. It thus recommends that IDS evaluate the outcome of the Texas pilot program to determine whether to pilot the use of a client choice model in North Carolina.

Debt Forgiveness

Programs that allow for forgiveness of law school student loan debt in exchange for working for a specified period of time in a public defender office may be a valuable tool to attract qualified new law school graduates to indigent defense practice.³⁰³ The Committee recommends that IDS and the NCAOC pursue such programs with North Carolina’s law schools and through the North Carolina Legal Education Assistance Foundation,³⁰⁴ to attract candidates to public defense positions, positions in the prosecutor’s office, and to other public service positions within the judicial branch.

Strategies to Reduce Indigent Defense Expenses

A number of the Committee’s recommendations will require additional resources. To reduce the taxpayer funds required to implement these recommendations, the Committee recommends the following strategies to reduce indigent defense expenses to create capacity to implement recommended reforms.

Reclassify Minor Crimes

Unlike prosecutors, who can exercise discretion with respect to which cases and defendants they wish to prosecute, IDS does not have discretion to refuse to provide indigent defense services once charges have been initiated. IDS must provide qualified counsel for every indigent person who has a right to representation. As noted, both the United States and North Carolina Constitutions require the State to provide indigent defense services for misdemeanor cases whenever an active or

³⁰⁰ A defendant cannot be required to proceed pro se unless the defendant (1) knowingly, voluntarily and intelligently waives the right to counsel, *Iowa v. Tovar*, 541 U.S. 77, 88 (2004); or (2) forfeits the right to counsel. See Jessica Smith, *Counsel Issues*, in NC SUPERIOR COURT JUDGES’ BENCHBOOK (Jessica Smith, Editor), <http://benchbook.sog.unc.edu/criminal/counsel-issues>. North Carolina applies a presumption against forfeiture, *id.*, and a finding of forfeiture must rest on a factual record of the defendant’s intent to disrupt the criminal justice process. *Id.*

³⁰¹ See *supra* pp. 44-45.

³⁰² See *supra* pp. 27-31 (recommendations regarding oversight and support).

³⁰³ JUSTICE DENIED, *supra* note 4, at 12 (expressly recommending that “[l]aw student loan forgiveness programs should be established for both prosecutors and public defenders”); *id.* at 195-96 (same).

³⁰⁴ The Foundation website is here: <http://ncleaf.org/>.

suspended sentence is imposed.³⁰⁵ Thus, one way to reduce indigent defense caseloads—and indigent defense costs—is to repeal minor, non-violent misdemeanors or reclassify them as civil infractions for which defendants are subjected only to fines.³⁰⁶ If the potential for incarceration is eliminated with reclassification, counsel is not required under the constitution.³⁰⁷ Reclassification of minor offenses is recommended in the Report of the National Right to Counsel Committee as a tool to reduce pressures on indigent defense systems³⁰⁸ and has been implemented in some jurisdictions.³⁰⁹ Although commonly associated with liberals, supporters of reclassification come from across the political spectrum and include former Texas Governor and 2012 Republican presidential candidate Rick Perry, evangelical minister Pat Robertson, and the Cato Institute.³¹⁰

In March 2011, IDS released a study designed to identify misdemeanor offenses that could be reclassified as infractions without negatively impacting public safety and to estimate potential cost savings to the state’s indigent defense system if these offenses were reclassified as infractions.³¹¹ That study found, in part, that the state’s court system has a high volume of minor misdemeanor cases, especially misdemeanor traffic cases.³¹² Specifically, in 2009, 55.2% of the 1.498 million cases disposed of by the state’s court system were cases where the highest charge was either a Class 2 or 3 misdemeanor.³¹³ Focusing on thirty-one specific misdemeanor offenses, the study found that:

- 12 of the offenses resulted in dismissal without leave at least 75% of the time;
- 21 resulted in dismissal without leave at least 50% of the time; and
- for all but 2 offenses, active time was imposed in less than 1% of cases.³¹⁴

After reviewing cost savings associated with reclassifying the identified offenses, the study concludes: “The data shows that the North Carolina court system is handling a high volume of low level misdemeanor cases and suggests that the North Carolina court system could save significant money and relieve over-burdened courts by reclassifying many minor misdemeanor offenses as infractions.”³¹⁵ Specifically, it concluded that the state could save approximately \$2.25 million just

³⁰⁵ See *supra* p. 12 (discussing the scope of the right to counsel).

³⁰⁶ THE SPANGENBERG PROJECT, THE CENTER FOR JUSTICE, LAW AND SOCIETY AT GEORGE MASON UNIVERSITY, AN UPDATE ON STATE EFFORTS IN MISDEMEANOR RECLASSIFICATION, PENALTY REDUCTION AND ALTERNATIVE SENTENCING, at i (2010) [hereinafter THE SPANGENBERG PROJECT REPORT] (so noting); see also Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 VAND. L. REV. 1055, 1073 (2015) [hereinafter *Misdemeanor Decriminalization*] (“[a]larmed by the crisis in indigent defense,” commentators have “zeroed in” on the cost saving that decriminalization provides).

³⁰⁷ JUSTICE DENIED, *supra* note 4, at 198.

³⁰⁸ *Id.* at 13, 72-73 (discussing how indigent defense providers in several states are burdened with excessive caseloads of minor, petty offenses).

³⁰⁹ THE SPANGENBERG PROJECT REPORT, *supra* note 306, at 4-6 (noting that as of 2010 both Alaska and Massachusetts had done so; noting other then-pending legislation); *Misdemeanor Decriminalization*, *supra* note 306 at 1070-71 (noting more recent legislation, including marijuana decriminalization).

³¹⁰ *Misdemeanor Decriminalization*, *supra* note 306, at 1069.

³¹¹ See NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES, FY11 RECLASSIFICATION IMPACT STUDY 3 (2011), <http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/FY11ReclassificationImpactStudy.pdf> [hereinafter RECLASSIFICATION IMPACT STUDY].

³¹² *Id.* at 5.

³¹³ *Id.* North Carolina’s high percentage of the criminal docket attributed to misdemeanors is in line with other states. *Misdemeanor Decriminalization*, *supra* note 306, at 1057.

³¹⁴ RECLASSIFICATION IMPACT STUDY, *supra* note 311, at 6.

³¹⁵ *Id.* at 8.

in counsel fees if all thirty-one studied offenses were reclassified as infractions.³¹⁶ Of course, overall savings to the court system would be much greater.

In light of this, repeal and/or reclassification are promising tools to reduce indigent defense costs without sacrificing public safety.³¹⁷ The Committee thus recommends that the North Carolina Sentencing and Policy Advisory Commission³¹⁸ be charged with the responsibility of identifying—on a regular basis—criminal offenses that should be considered for repeal or reclassification as fine-only infractions, because, for example, charges are routinely dismissed or rarely result in an active sentence.³¹⁹

Capital Cases

Spending on potentially capital cases constitutes approximately 12.75% of IDS’s budget.³²⁰ Capital cases³²¹ are expensive for a number of reasons, including that proceeded capital cases require two

³¹⁶ *Id.*

³¹⁷ THE SPANGENBERG PROJECT REPORT, *supra* note 306, at i.

³¹⁸ The North Carolina Sentencing and Policy Advisory Commission was created by the General Assembly to make recommendations to the General Assembly for the modification of sentencing laws and policies, and for the addition, deletion, or expansion of sentencing options as necessary to achieve policy goals. *See* The North Carolina Court System, *Sentencing and Policy Advisory Commission*, NCCOURTS.ORG, <http://www.nccourts.org/courts/crs/councils/spac/> (last visited June 2, 2016).

³¹⁹ The Sentencing and Policy Advisory Commission already provides a detailed annual analysis of convictions and sentences imposed by class of crime. *See, e.g.*, NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, STRUCTURED SENTENCING STATISTICAL REPORT FOR FELONIES AND MISDEMEANORS: FISCAL YEAR 2014/15 (2016), http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/statisticalrpt_fy14-15.pdf.

The Committee notes that in 2013, the General Assembly reclassified certain misdemeanors as infractions. *See* Robert L. Farb, *2013 Legislation Affecting Criminal Law and Procedure* 25-26 (rev. Nov. 2013), <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/2013CriminalLegislation%20Revised%20Nov%202013.pdf> (discussing these changes). Thus, the General Assembly has recent experience with the type of reclassification discussed here. That same 2013 legislation also reclassified certain Class 1 and 2 misdemeanors as Class 3 misdemeanor offenses. *Id.* The Committee notes that when low-level crimes are reclassified as fine-only Class 3 misdemeanors, the crimes remain criminal offenses but because the possibility of incarceration is removed, so too is the right to counsel. Such an approach is sometimes thought of as a “win-win,” in that it relieves the defendant of the threat of incarceration while saving the state millions of dollar in defense and other justice system costs. *Misdemeanor Decriminalization*, *supra* note 306, at 1058-59 (noting that some so characterize such reforms but asserting that collateral and other consequences that attach to fine-only misdemeanors suggest otherwise). However, fine-only misdemeanors are still crimes and as such still trigger a panoply of burdens, including arrest, fines, criminal records and, importantly, all of the collateral consequences that attach to any criminal conviction, *id.*, including barriers to obtaining employment, joining the military, or receiving financial aid to pursue higher education. *See supra* note 10 (North Carolina’s Collateral Consequences Assessment Tool). As noted above, an effective indigent defense program provides services in proceedings arising from or connected with a criminal action resulting in significant collateral consequences. *See supra* p. 12. Because significant collateral consequences attach to *any* criminal conviction, including fine-only misdemeanors, an approach that reclassifies minor misdemeanors as fine-only crimes violates a core characteristic of an effective indigent defense program and thus is not preferred. *Misdemeanor Decriminalization*, *supra* note 306, at 1058-59 (noting the collateral consequences that attach to fine-only misdemeanors and observing: “These burdens, moreover, can be imposed on offenders quickly, informally, and without counsel, so that the standard procedural safeguards against wrongful conviction and overpunishment are lessened, if not eliminated altogether.”); THE SPANGENBERG PROJECT REPORT, *supra* note 306, at 11-12 (discussing the dangers of uncounseled misdemeanor convictions); MINOR CRIMES, MASSIVE WASTE, *supra* note 76.

³²⁰ Email from Danielle M. Carman, Assistant Director/General Counsel NC IDS to Committee Reporter (May 16, 2016) (on file with Reporter) (the figure excludes the local public defender offices’ share of potentially capital cases at the trial level and the Office of the Appellate Defender’s share of capital appeals).

³²¹ The term “potentially capital cases” includes cases charged as first-degree murder or undesignated degree of murder. NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES, FY15 CAPITAL TRIAL CASE STUDY: POTENTIALLY

lawyers to be appointed to assist with the defense; the hourly rate for potentially capital cases is higher than the rate for non-capital cases; potentially capital cases require more hours to both prepare and litigate; and most potentially capital cases require additional support services, such as private investigators, mitigation specialists, experts and attorney support services (e.g., paralegals).

Figure 6 below shows the results of a recent IDS study that examined the average indigent defense costs associated with different types of homicide cases between 2007 and 2015.

Fig. 6. Average PAC & Expert Costs for Homicide Prosecutions

	Proceeded Capital Murder³²²	Potentially Capital Murder³²³	Proceeded Non-Capital Murder³²⁴	Second-Degree Murder	Voluntary Manslaughter
Average Cost	\$93,231	\$34,666	\$21,022	\$2,338	\$1,023

Source: NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES, FY15 CAPITAL TRIAL CASE STUDY: POTENTIALLY CAPITAL CASE COSTS AT THE TRIAL LEVEL (2015)

That same study also found that although most alleged intentional homicides are charged as first-degree or undesignated murder, more than 83% of these cases are eventually disposed as second-degree murder or less.³²⁵ Specifically, of all potentially capital cases disposed between 2007 and 2015:

- 83.6% ended in a conviction of second degree-murder or less.
- 11.7% ended in a voluntary dismissal, no true bill, or no probable cause finding.
- 45.7% ended in a conviction of less than second-degree murder.³²⁶

For proceeded capital cases:

- 58.1% ended in a conviction of second-degree murder or less.
- 20.1% ended in a conviction of less than second-degree murder.
- 2.2% ended in a death verdict.³²⁷

That report posits that “North Carolina is spending unnecessary taxpayer dollars by charging cases as first-degree or undesignated murder and prosecuting them as potentially capital cases when most are disposed at a much lower level.”³²⁸ The Committee finds this data compelling and recommends, consistent with a study required by the 2016 Appropriations Act,³²⁹ that IDS work

CAPITAL CASE COSTS AT THE TRIAL LEVEL 7 (2015), <http://www.aoc.state.nc.us/www/ids/Reports & Data/Latest Releases/FY15CapitalCaseStudy.pdf> [hereinafter CAPITAL CASE COSTS] “Proceeded capital” refers to a subset of potentially capital cases at the trial level in which two appointed attorneys worked on the case simultaneously at any given point in time. *Id.*

³²² See *supra* note 321 (defining this term).

³²³ See *id.* (defining this term).

³²⁴ “Proceeded non-capital” refers to a subset of potentially capital cases at the trial level in which no more than one appointed attorney worked on the case at any given point in time. See CAPITAL CASE COSTS, *supra* note 321, at 7.

³²⁵ *Id.* at 2.

³²⁶ *Id.* at 4.

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ S.L. 2016-94, Sec. 19A.3.

with the NC Conference of District Attorneys to identify ways for earlier identification of charges that truly warrant prosecution as capital cases.

Maintain Open File Discovery

North Carolina was a leader in adopting open file discovery.³³⁰ Open file discovery should be maintained for a number of reasons, one being that it reduces indigent defense costs.³³¹

Committee & Subcommittee Members

To facilitate its work, the Committee formed an Indigent Defense Subcommittee to prepare draft recommendations for Committee review. Members of the Indigent Defense Subcommittee included:

Athena Brooks, District Court Judge and President N.C. Conference of District Court Judges
James Coleman, Jr., Professor, Duke University School of Law and Committee member
Darrin D. Jordan, Lawyer, IDS Commissioner and Committee member
Thomas K. Maher, Executive Director, IDS
LeAnn Melton, Public Defender
John Rubin, Albert Coates Professor of Public Law and Government, School of Government, UNC Chapel Hill
Anna Mills Wagoner, Senior Resident Superior Court Judge and Committee member
Michael Waters, District Attorney

Members of the Committee included:

William A. Webb, U.S. Magistrate Judge (ret.) and Committee Chair
Augustus A. Adams, N.C. Crime Victims Compensation Committee member
Asa Buck III, Sheriff and Chairman, N.C. Sheriffs' Association
Randy Byrd, President N.C. Police Benevolent Association
James E. Coleman, Jr., Professor, Duke University School of Law
Kearns Davis, Lawyer and President, N.C. Bar Association
Paul A. Holcombe III, District Court Judge
Darrin D. Jordan, Lawyer and IDS Commissioner
Robert C. Kemp III, Public Defender and Immediate Past-President, N.C. Defenders Association
Sharon S. McLaurin, Magistrate
R. Andrew Murray Jr., District Attorney and Immediate Past-President, N.C. District Attorneys Conference
Diann Seigle, Executive Director, Carolina Dispute Settlement Services
Anna Mills Wagoner, Senior Resident Superior Court Judge

This report was prepared for the Committee by Committee Reporter Jessica Smith, W.R. Kenan, Jr. Distinguished Professor, School of Government, UNC Chapel Hill.

³³⁰ Hon. Alex Kozinski, *Preface to Criminal Law 2.0*, 44 GEO. L.J. ANN. REV. CRIM. PROC., iii, xxvi-xxvii (2015) (advocating for open file discovery and noting that NC adopted its open file discovery rule by statute in 2004).

³³¹ JUSTICE DENIED, *supra* note 4, at 77 ("Open-file discovery not only promotes the prompt disposition of cases; it can also significantly reduce indigent defense workloads and costs."); *id.* at 207 (same).

APPENDIX E

eCOURTS STRATEGIC TECHNOLOGY PLAN

September 29, 2016

BerryDunn Report

State of North Carolina Administrative Office of the Courts



e-Courts Strategic Technology Plan

September 29, 2016

Prepared for:

North Carolina Administrative Office of the Courts
901 Corporate Center Drive
Raleigh, NC 27607-5045

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Executive Summary

The North Carolina Judicial Branch has been a unified court system for over 50 years and is among 26 legally defined unified court systems in the United States. The North Carolina Administrative Office of the Courts (NCAOC) was established to provide administrative services in this unified system, including court programs and management services; information technology (IT) support; human resources; financial, legal, and legislative services; research and planning services; court services; and purchasing services. Elements of the Judicial Department Act of 1965, which established the unified court system, include:

- Consolidation of a multiplicity of lower courts into a two-tier trial court system
- Centralization of judicial administration for the State's courts
- Centralized rule-making authority
- State funding of the court system
- State-level budgeting of State funds for court expenses

Overview of the Current Environment

The IT environment in the Judicial Branch in North Carolina has evolved over the course of more than 30 years. Throughout this time, steady progress has been made in providing judicial and law enforcement professionals with a comprehensive suite of applications and tools to use in the performance of their duties. Most of these systems were developed by NCAOC staff using technologies considered to be “modern” at the time they were developed. The design of these systems was influenced by many factors, including, but not limited to:

- Funding pressures
- Court-specific practices and policies
- Policy and statute changes
- Requirements of specific user populations, such as judges, district attorneys (DAs), clerks, public defenders, magistrates, and law enforcement
- The dynamic information needs of Judicial Branch and legislative leadership
- The dynamic and evolving nature of available technology

North Carolina can boast an inventory of modern, sector-leading applications. However, the technology used to develop them applications spans more than three decades. In recent years, the NCAOC Technology Services Division (TSD) has interconnected many of the applications with sophisticated and complex application program interfaces (APIs), web services, and message queues. These methods have greatly increased the usability of the application portfolio, but have also created an intricate environment to support and maintain.

Many of these technologies have aged to the point that the skills required to maintain them have become scarce. During the last decade, there has been a substantial movement toward integration of the various system components across judicial and law enforcement functions, as well as toward the need to provide seamless access to the information that is housed within those systems.

Drivers for the Development of an e-Courts Strategic Technology Plan

Pursuant to S.L. 2015-241, the NCAOC set out to develop an e-Courts Strategic Technology Plan. Section 18A.21.(a) of S.L. 2015-241 is defined below.

SECTION 18A.21.(a) *The Administrative Office of the Courts shall establish a strategic plan for the design and implementation of its e-Courts information technology initiative by February 1, 2016. The e-Courts initiative, when fully implemented, will provide for the automation of all court processes, including the electronic filing, retrieval, and processing of documents. The strategic plan shall:*

- (1) Clearly articulate the requirements for the e-Courts system, including well-defined milestones, costs parameters, and performance measures*
- (2) Prioritize the funding needs for implementation of the various elements of the system, after consultation with the e-Courts advisory committee established by subsection (c) of this section*
- (3) Identify any potential issues that may arise in the development of the system and plans for mitigating those issues*
- (4) Address the potential for incorporating any currently existing resources into the e-Courts system*

Additionally, the North Carolina Commission on the Administration of Law & Justice (NCCALJ) was already established as an independent, multidisciplinary commission to undertake a comprehensive evaluation of the North Carolina judicial system and make recommendations for strengthening its courts within the existing administrative framework. The NCCALJ includes five committees designed to focus on five areas of inquiry:

- Civil Justice
- Criminal Investigation and Adjudication
- Legal Professionalism
- Public Trust and Confidence
- Technology

The NCCALJ Technology Committee governed the development and approval of the e-Courts Strategic Technology Plan and served as the e-Courts Advisory Committee. The other four committees provided interim progress reports to the Technology Committee. Many of these reports included technology requirements supporting the committees' charters. These technology requirements were considered during the development of the e-Courts Strategic Technology Plan.

The North Carolina Judicial Branch has expressed a growing need for "anywhere, anytime" access to information. Whether within the courtroom, chambers, office, police car, or home, judicial and law enforcement officials and the public have expressed the desire to interact with court processes and data seamlessly, interactively, and remotely. This desire is a fairly recent divergence from traditional interactions with courts in the stakeholders' geography and is aligned with modern expectations to interact with government and private services providers electronically. Historically, local judicial officials interacted with citizens on a face-to-face basis, with information and data (mostly paper-based) being the sole province of those officials; legacy applications reflect these traditional practices.

Advances in technology, together with the desire to reduce costs and improve access to court services by the public, provide the opportunity to reimagine how court officials and citizens interact with each other. The Judicial Branch desires to drastically reduce manual processes and reliance on paper documents. The federal government and many state court systems have successfully undergone similar technology transformations. These advancements in technology have led to increased efficiencies and collaboration among court officials and the legal profession.

In an effort to support this vision, and in order to support a more cohesive, unified court system, the NCAOC retained BerryDunn in January 2016 to assist in an assessment of the current IT environment and to produce a multiyear strategic plan for e-Courts in North Carolina (e-Courts Strategic Technology Planning Project). The resulting plan is the cornerstone for the evolution of technology in support of North Carolina’s e-Courts vision.

Overview of Strategic Initiatives Included in this Report

Table ii summarizes the initiatives developed collaboratively by the Judicial Branch and BerryDunn; a detailed description of each initiative is provided in Section 3.0 and Appendix A.

Table ii: Prioritized Strategic Technology Initiatives

Strategic Initiative		Implementation Complexity	Anticipated Benefits
A	Management & Governance	 Moderate	★ ★ ★ High
B	Baseline Metrics	 Low	★ ★ ★ High
C	Reporting & Analytics	 Moderate	★ ★ ★ High
D	Enterprise Information Management System (EIMS)	 Moderate	★ ★ ★ High
E	e-Filing	 Low	★ ★ ★ High
F	Integrated Case Management System (ICMS)	 High	★ ★ ★ High
G	Financial Management System (FMS)	 Moderate	★ ★ Moderate
H	Electronic Public Access	 Moderate	★ ★ ★ High
I	Judicial Workbench	 Low	★ ★ Moderate

Budget Estimates and Timeline

Table iii summarizes the budget estimates for the recommended initiatives presented in this e-Courts Strategic Technology Plan.

Table iii: Initiative Budget and Timeline Matrix

Initiative Budget and Timeline Matrix (\$)										
Strategic Initiative	Year 0 FY2017	Year 1 FY2018	Year 2 FY2019	Year 3 FY2020	Year 4 FY2021	Year 5 FY2022	Year 6 FY2023	Base Total	Budget Target	Total with Risk Adjustment
Initiatives Starting in Year Zero										
A	Management & Governance	\$438,264	\$918,926	\$870,202	\$870,681	\$865,749	\$223,149	\$4,410,120	\$4,919,621	\$5,429,123
B	Baseline Metrics	\$70,540	\$43,647	\$29,098	\$29,098	\$14,549	\$14,549	\$216,030	234,612	\$253,194
C	Reporting & Analytics	\$411,708	\$1,025,902	\$697,750	\$334,048	\$250,492	\$97,200	\$2,914,300	\$3,218,786	\$3,523,272
D	EIMS	\$2,312,180	\$6,613,359	\$6,951,675	\$5,573,191	\$1,968,436	\$1,357,956	\$25,724,654	\$28,163,407	\$30,602,161
E	e-filing	\$793,500	\$2,210,996	\$2,165,354	\$1,563,169	\$1,135,042	\$360,892	\$8,589,845	\$9,381,414	\$10,172,983
F(a)	ICMS (build)	\$300,141	\$3,704,495	\$9,872,789	\$11,787,013	\$12,446,525	\$6,274,836	\$46,438,366	\$52,098,002	\$57,757,639
F(b)	ICMS (buy)	\$239,241	\$296,955	\$6,450,347	\$9,889,899	\$11,510,353	\$8,130,298	\$38,756,926	\$43,233,506	\$47,710,086
G	FMS	\$40,800	\$644,150	\$911,150	\$0	\$0	\$0	\$1,596,100	\$1,714,312	\$1,832,524
H	Electronic Public Access	\$30,030	\$462,877	\$26,899	\$450,627	\$413,377	\$225,477	\$1,752,710	\$1,925,171	\$2,097,632
Initiatives Starting in Year One										
I	Judicial Workbench	\$0	\$135,222	\$84,018	\$63,974	\$39,493	\$18,605	\$351,755	\$388,029	\$424,303
Total Including F(a) ICMS-Build	Capital	\$4,397,163	\$15,138,055	\$21,608,935	\$17,687,733	\$10,704,523	\$4,929,496	\$75,092,270	\$83,213,780	\$91,335,290
	Operational	\$0	\$0	\$0	\$2,984,068	\$6,429,140	\$3,643,168	\$16,901,611	\$18,733,073	\$20,564,536
Total Including F(b) ICMS-Buy	Capital	\$4,336,263	\$12,352,033	\$18,186,493	\$15,790,618	\$10,379,911	\$5,492,807	\$66,542,973	\$73,485,230	\$80,427,488
	Operational	\$0	\$0	\$0	\$2,984,068	\$5,817,579	\$4,935,319	\$17,769,468	\$19,664,625	\$21,559,783

Success Factors

The e-Courts Strategic Technology Plan is designed to significantly impact the operations of the Judicial Branch and its services. One of the critical success factors for the implementation of the Plan is continued active executive engagement for the initiatives described in the Plan and a disciplined approach to identifying, approving, and managing major technology initiatives. This will help to ensure that projects outside the scope of this Plan are thoroughly evaluated before adjusting the existing priorities of the initiatives described herein.

Another critical success factor entails committing appropriate resources toward the completion of initiatives. Resources may include, but are not limited to, funding, contractors, and Judicial Branch staff. In many cases, the use of external resources (e.g., contractors) is required. Factors determining the use of external resources may include availability of TSD, NCAOC, and Judicial Branch staff; urgency of initiative completion (relative to availability of TSD, NCAOC, and Judicial Branch staff); and the need for long-term knowledge of a specific technology.

New e-Courts technologies create significant opportunities to change how the Judicial Branch manages daily operations. The Judicial Branch must plan for significant business process changes that streamline operations and focus on using technology to improve customer service. In planning for the implementation of recommendations from this Plan, the Judicial Branch should consider the following:

- Active executive and management involvement and sponsorship will be critical to the successful adoption and continued support of the Plan.
- Implementing a successful e-Courts Strategic Technology Plan will require significant planning, increased capital investment, and human resources.
- A rigorous communication plan should be established to communicate project goals and objectives to stakeholders prior to, during, and after the implementation of the initiatives .
- Current business processes should be evaluated and redesigned where necessary to take advantage of new technologies.
- Many changes will be non-technical, cultural shifts—e.g., process changes—that should be facilitated by structured change management and policy and procedure adjustments.
- Departments must work cooperatively and collaboratively to facilitate effective change that is in the best interest of the Judicial Branch.
- Technical support staff will be critical to the success of the e-Courts Strategic Technology Plan's implementation.
- Internal stakeholders must be ready, willing, and able to use new technology to facilitate effective change.

1.0 Introduction

1.1 Project Background and Approach

The NCAOC has established an e-Courts vision that includes virtual courthouses; electronic filing, retrieval, and processing of documents; convenient access to services and information for the public; integration of financial and case data; judicial decision support; and caseload administration tools. This vision is encapsulated in the expression:

“The right information, at the right time, right where you are.”

In support of this vision, the NCAOC will create an environment in which court technology is advanced, making it easier for the public and stakeholders to access court services, while minimizing the need to physically travel to a courthouse.

The approved Project Charter for the e-Courts Strategic Technology Planning Project provides a set of objectives to be achieved as a result of an e-Courts Strategic Technology Plan. These objectives are provided in Table 1.1 and support the need to remain current in advances in technology, to reduce costs, to improve access to the court services, and to eliminate wasteful, manual processes.

Table 1.1: NCAOC Project Objectives and Anticipated Value

No.	NCAOC Project Objectives
1	Improve access to justice for North Carolinians
2	Improve efficiencies for public safety and law enforcement partners
3	Capture data that supports metrics the Judicial Branch may use to gauge performance
4	Reduce reliance on paper and the other constraints that a paper-based system imposes
5	Increase the quality of data collected and maintained, and improve its usefulness
6	Promote the use of the electronic flow of funds over physical methods, both with regard to collections and disbursements
No.	Anticipated Value
1	Improve faith and confidence by the public in judiciary operations
2	Improve the ability to dialog effectively and confidently with the legislature and the public
3	Increase buy-in and support from Judicial Branch stakeholders regarding initiatives that are presented as enablers of process improvement
4	Ensure security of non-public data

This e-Courts Strategic Technology Plan supports these objectives and the e-Courts vision and promotes a more cohesive, unified court system. This Plan is the cornerstone for the evolution of technology in support of North Carolina’s e-Courts vision.

To develop the e-Courts Strategic Plan, BerryDunn utilized a proven bottom-up strategic planning methodology, which began by identifying bottlenecks and barriers inhibiting the maturity of the Judicial Branch's court technology. This approach involved in-person interviews with over 240 Judicial Branch staff in small, large, rural, and urban locations throughout the state. To extend the breadth of this outreach, BerryDunn also conducted a web-based survey in which over 2,800 Judicial Branch staff and external stakeholders participated. These outreach activities provided BerryDunn with an understanding of how current technology enables business functions, while also identifying areas in which the lack of technology is a barrier to the advancement of business functions. As a result of these preliminary information gathering activities, a technology maturity model was developed, including desired performance metrics upon which the NCAOC expects to evaluate its progress.

The BerryDunn team then identified eight peer states that recently underwent a similar technology transformation: Utah, Iowa, Missouri, Oregon, Nebraska, Colorado, Wisconsin, and Georgia. Peer states were selected based on meeting most or all of the following criteria:

- Use of a statewide Case Management System (CMS) implementation method
- Progressive interfaces with other justice systems within the state
- Broad-based and of similar jurisdictional structure to North Carolina (technically "unified" or not)
- Similar demographics and population to North Carolina
- Implemented performance metrics and maintained statistics available for review
- Evolution to an e-Court environment is underway and far enough along that the state can share lessons-learned and reflect on the process as a whole

BerryDunn conducted interviews with each of the states via email and telephone, and supplemented our research by reviewing published reports and National Center for State Courts (NCSC) court technology findings. BerryDunn's research included considering best practices set forth by the NCSC, the Project Management Institute (PMI), and the Integrated Justice Information Systems (IJIS) Institute.

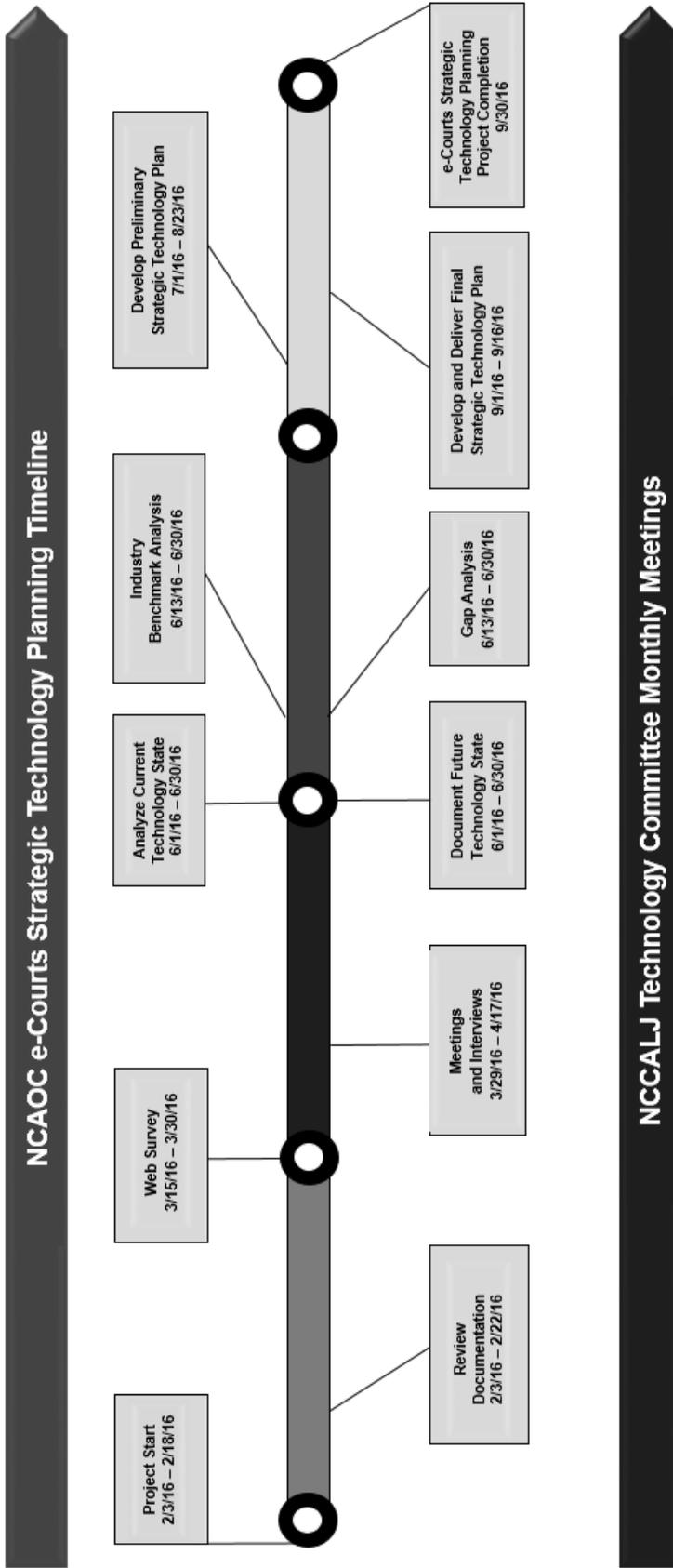
As a result of the market research and the gap analysis, the BerryDunn team developed a preliminary list of e-Courts Strategic Technology Initiatives. BerryDunn then collaborated with a subcommittee of the NCCALJ Technology Committee and the Judicial Branch to refine and prioritize the technology initiatives during an on-site work session. Once a series of technology initiatives were identified and prioritized, BerryDunn developed a budget for each, and overlaid the execution of the initiative onto a timeline matrix depicting each initiative's financial implications over a multi-year planning horizon.

Project closure activities included the transfer of knowledge and artifacts gathered during the execution of the e-Courts Strategic Technology Planning project to NCAOC personnel. This information is critical for the implementation and ongoing evolution of the resulting e-Courts Strategic Technology Plan, supported by the proposed Management and Governance approach.

This e-Courts Strategic Technology Plan includes the prioritized list of initiatives, along with the budget and timeline implications. It serves as a roadmap for the Judicial Branch's overall technology objectives, and provides a repeatable methodology in order to verify progress, address new issues, and make updates as necessary.

Figure 1.1 on the following page shows the key tasks and timeline in completing this e-Courts Strategic Technology Planning project.

Figure 1.1: NCAOC e-Courts Strategic Technology Planning Timeline



Detailed information regarding activities resulting in the e-Courts Strategic Technology Plan can be found in the Supplemental Materials.

1.2 Format of the Report

This report is comprised of two components. The **e-Courts Strategic Technology Plan** contains the following sections:

Executive Summary. This section provides a summary of the projects and initiatives described in further detail later in the report.

Section 1 – Introduction. This section describes the background of the project leading up to the e-Courts Strategic Technology Plan, the format of the Plan, and the work performed in the development of the Plan.

Section 2 – Gap Analysis Results. This section describes the gaps between the “as-is” and desired “to-be” e-Courts environment.

Section 3 – Strategic Technology Initiatives. This section provides a high-level description of each initiative.

Section 4 – Implementing the e-Courts Strategic Technology Plan. This section describes the budget and timeline for the e-Courts Strategic Technology Plan Initiatives, funding considerations, and the approach to ongoing maintenance and governance of the Plan.

Appendix A – Detailed Strategic Technology Initiatives. This appendix provides a detailed description of the Strategic Technology Initiatives presented in Section 3, including tasks required to implement the recommendations, rationale for its strategic priority rankings, impacts on stakeholders, anticipated benefits, best practice considerations, and assumptions.

Appendix B – Detailed Initiative Budget and Timeline Matrix. This appendix provides budget details for each initiative, including capital expenditures and operational costs.

Appendix C – Glossary of Terms and Acronyms. This appendix contains a glossary of the terms and acronyms that were included in this document.

The **Supplemental Materials** is a set of appendices that includes supplemental materials used to support the generation of the e-Courts Strategic Technology Plan.

2.0 Gap Analysis

This section describes a Maturity Model for e-Courts technology and how this aligns with the Judicial Branch's current ("as-is") and desired ("to-be") environment, as well as how the Judicial Branch's current environment relates to the peer states that were interviewed. In addition, this section illustrates the gaps between the current state of the Judicial Branch's technology environment and the Judicial Branch's future vision and objectives. Gaps are organized into three categories:

1. Management and Governance
2. Business Environment
3. Technology

The purpose of identifying the gaps in these three areas is to understand the Judicial Branch's current state, the issues facing the court system, and how they impact the overall functionality of the Judicial Branch.

A gap is identified by comparing the resources and assets in the current environment with the desired "to-be" environment and industry best practices. A gap results when the existing technology provides no or partial functionality in the current environment to meet current and anticipated future needs.

2.1 Peer State Analysis and e-Courts Maturity Model

As a result of the peer state reviews, the BerryDunn team determined North Carolina's current state as compared with the desired future e-Courts state, and peer states. In general, the largest gaps between North Carolina and peer states relative to the three domain areas and e-Courts elements are found in the following areas:

- Operational and mature initiative **governance** models
- Centralized **ICMS**

In these areas, the peer states seem to be further advanced than North Carolina. However, there were two areas in which the gap between the NCAOC and the peer states is not as wide. These include:

- Use of a modern, fully functional **FMS**
- **Reporting and analytics**

The NCAOC and the peer states were significantly similar (i.e., little or no gap identified) in the following areas:

- **Document management** (and the use of the fully integrated document management system as a component of the e-Courts strategy)
- Availability of a "**Judicial Workbench**"
- **Electronic public access** to court services
- Judicial Branch-wide use of **e-filing**

Based on analysis of the peer states, who are generally considered to be ahead of the curve regarding technology transformation, the NCAOC seems to be remaining current regarding functionality, but falling behind when it comes to the technology used to support the functionality. Of particular concern is the technology used to support case management functionality, where the NCAOC seems to be further behind the peer states.

Table 2.1 (on the following page) displays the current state of the NCAOC technology-related e-Courts elements, depicted in peach; desired future e-Courts state, depicted in green; and comparison peer states, indicated by ovals. White indicates a transitional maturity level between North Carolina's current state and desired future state.

Table 2.1: NCAOC e-Courts Current State, Future State, and Peer State Comparison

eCourts Tools Maturity Model			
eCourts Element	Maturity Stage		
	Paper	Basic	Intermediate
e-filing	Paper documents, handwritten or typed and printed	Paper documents scanned, uploaded to court and then printed	Integrated document viewing Some paper sorting/ filtering Pre-populated forms
Document Management	Paper documents and folders in filing cabinets Casework limited to physical proximity of the files	Scan and distribute documents through electronic means	Documents submitted and stored electronically Basic indexing
Financial Management	Paper invoices, receipts, and checks Paper ledger Spreadsheets	Credit card capabilities Basic accounting, cashiering, and bookkeeping Financial transactions that are not integrated into the case	Real-time access to financial history of payments and balances
Case Management	Paper statistical reports Dictated by attorneys and litigants	Limited reports are generated	Court sets future dates and monitors continuance and delays Real-time access to case management info
Reporting & Analytics	Admin Reports Highly manual Data is driven from multiple disparate sources	Centralized reporting mechanisms with delay and batch reporting	Real-time queues Future queues Case load reports Staff has real-time access to data required
Public Access	Paper case files Docket lists Courthouse driven	Online access, with basic court info Kiosks in the courthouse Paper requests for public documents	Online forms to print and file Online listing of scheduling and printed lists
Judicial Workbench	Day planner Case files Manual wet-ink signatures Library of legal resources	Word processing for document creation Electronic calendar Simple viewing tool for electronically scanned files	Integrated electronic multi-document viewing Prepopulated forms Sorting/filtering configurable views
			Advanced
			Electronic Annotations eSignatures
			Retrieval of advanced metadata stored electronically Indexed and retrievable Electronic interpretation and presentation
			Mobile online payments Seamless integration of financial interactions Real-time reports Direct deposits / automated payments
			Ticklers and alerts Support for multiple case types Configurable business rules and workflow
			Real-time access to information Court-wide stats Trend and predictive analysis Identified set of metrics
			Real-time updates and notices Online access to publically available documents
			100% electronic case file Secure document annotation Integrated electronic signatures Document rights management Real-time electronic case updates

2.2 Gap Analysis Categories

Category 1: Management and Governance

The gaps identified relative to the Management and Governance domain specifically related to the value of having a fully operational and mature governance model in place to support the identification, consideration, prioritization, and approval of initiatives, followed by a disciplined portfolio management methodology to track the portfolio of enterprise initiatives.

Peer states cited the importance of management and governance as the primary critical success factor for prioritizing initiatives that best support the overall mission of the courts, including court improvements expected from the implementation of technology.

BerryDunn identified the following gaps in the Management and Governance domain area:

- **The North Carolina Judicial Branch has defined, but not yet made operational, a governance framework** – Industry organizations (e.g., PMI and NCSC) and peer states indicate that a formal management and governance model is the most critical success factor and will allow for the allocation of funds and personnel to prioritized initiatives. The Judicial Branch does not currently have such a framework in operation.
- **Business rules are not defined nor applied consistently from county to county** – Though county courts are part of the unified court system, they operate autonomously and define elements and conditions of their own business and court processes and procedures. These process variations were acknowledged by court clerks and others interviewed, as well as by private practice attorneys and district attorneys (DAs), during focus group sessions. Additionally, prompted by the lack of modern technology, many county courts have developed local point solutions, which has spawned a set of unsupported “micro applications” to bridge the gaps between the current technology and the requirements of the business. These point solutions result in decreased process and technology uniformity across the courts within North Carolina.
- **The NCAOC does not own or manage the court facilities (this is a county-level responsibility)** – Although the NCAOC provides the majority of technology to the courts throughout the state, the counties are currently accountable for implementing technologies that are related to specific court facilities. The projects undertaken by the individual courts to implement local technology are driven by financial resources and priorities within the counties themselves and, as a result, are not uniform from county to county. These technologies include, but are not limited to, courtroom exhibit management technology, audio/video equipment, and electronic calendar displays in public areas of the courthouse. Because these projects are not centralized NCAOC initiatives, economies of scale (e.g., leveraging centralized volume purchasing power, centralized management of common technologies) may not be realized.
- **The NCAOC is not establishing the standards of all judicial education programs, nor administering the education and training for all judges and staff** – This may result in business processes that are inconsistent from court to court. Industry organizations and peer

states indicate that increased common business processes across the state result in standardization in how participants interact with the courts and normalization of data that is captured and utilized during the disposition of cases. This increases the ability to report on metrics for the purposes of defining court performance.

- **The NCAOC is currently functioning consistent with best practices in project management and program management but not portfolio management, as described by PMI standards** – The NCAOC has a strong Project Management Office (PMO), leveraging industry best practices in the areas of project and program management. The primary gap between the current practices and best practices is the implementation of a formal and rigorous portfolio management process to support the approved enterprise-level initiatives.

Review of the peer states and current best practices promulgated by the NCSC, PMI, and IJIS suggests that solutions exist to close all of these gaps, which would enable the NCAOC to effectively implement its e-Courts vision. It will require the NCAOC to operationalize its endorsed governance initiative across all phases of the strategic planning process. This includes implementing a streamlined approval process that can efficiently advance the initial tasks included in the nine initiatives described in this report. The approval and governance process must be implemented as soon as possible so that initiative working groups can be formed, resources allocated and committed, and sponsorship and support from all participating stakeholders strengthened.

While high-level tasks key to implementing the specified service or technology were defined for each initiative, the Management and Governance initiative must be consistently applied across all aspects of the e-Courts initiatives to:

- Maintain a coordinated and timely schedule and process
- Limit scope creep
- Enable periodic performance review
- Assess progress against defined objectives and deliverables
- Ensure resource commitment to completing specific tasks
- Ensure coordination across initiatives
- Identify integration and collaboration processes and needs
- Enable fiscal and operational continuity

The most frequently cited lessons learned from courts endeavoring a statewide e-Courts vision are the need for strong endorsement of overall portfolio management, governance, and stakeholder commitment to assigned tasks, deliverables, and scheduled activities. Due to the NCAOC's multiple jurisdictional and administrative management priorities, consistent and regular restatement of objectives and renewal of buy-in by key stakeholders is essential to maintaining forward progress. This includes ensuring that benefits continue to support to the longer-term vision and continue to engage individual stakeholders in achieving success over the length of each initiative. Often the terms "Quick Wins" or "Phased Deliverables" are used to ensure that stakeholders see value and some immediate return on the investment of their time in the short term.

Category 2: Business Environment

The gaps identified relative to Judicial Branch's Business Environment are largely centered around the use of performance metrics to gauge court performance. These may be related to measuring a court's performance improvement as a result of technology change, business process change, or both. The NCSC defines a set of performance metrics, known as "CourTools," which includes 10 performance measures for trial courts and six performance measures for appellate courts. It also provides guidance for "specialty courts and cases," such as drug courts, mental health courts, and elder abuse cases. Some states have adopted these CourTools measures in their totality; however, most peer states indicated that they selected a subset of these measures, while also using other measures that were not specifically identified within the CourTools model. Most peer states indicated that the use of performance measures did not drive decisions regarding the prioritization and funding of technology initiatives. Instead, they indicated that, once new technology was implemented, the availability of metrics to measure court performance was an important and useful byproduct of the implementation of the new technology and its impact on court performance.

The BerryDunn team found no substantive gap between how the Judicial Branch is currently using available performance metrics and how other states are using them. The Judicial Branch is currently using a subset of available CourTools metrics to determine court performance in these areas. They are also capturing metrics that are not specifically aligned with the CourTools model, but are generally available by mining data in the current data repositories that are used by current systems and applications. However, for states that recently implemented modern technology solutions, the availability of performance metrics to determine court improvements increased, enabling them to better use these metrics to determine areas of improvement.

The following gaps were identified in the Business Environment domain area:

- **While the NCAOC is seeking to implement standard metrics, including CourTools metrics, the current statistical reporting is inadequate to effectively measure business processes and performance** – Metrics provided to and reviewed by BerryDunn did not present elapsed time for tasks within a larger workflow. Having these metrics would allow the NCAOC to determine where bottlenecks occur and where the judicious application of technology or process change might prove beneficial.
- **Limited use of performance metrics makes it difficult to determine if there is a quantifiable improvement resulting from any change in technology** – Industry best practices support defining performance metrics, conducting an initial baseline analysis of court performance against these metrics, and performing ongoing analysis of the advancement of court performance. Peer states report that, although the approval of technology initiatives is largely not driven by the need for metrics, once the approved technology has been operationalized, the availability of data to support the defined metrics is important for measuring court improvements.

Category 3: Technology

The Technology Gap Analysis is broken into the following e-Courts areas:

- e-Filing
- Document Management
- Financial Management
- Case Management
- Reporting and Analytics
- Electronic Public Access
- Judicial Workbench

e-Filing

The NCAOC has undertaken a pilot of e-filing capabilities, currently supporting a small percentage of the total number of cases and case types that may be filed electronically. Other forms of “electronic filing” are currently in place (e.g., eCitations), but are not fully automated and require clerks to print many of the citations that are filed with the Judicial Branch electronically. To support a paperless environment and the Judicial Branch’s e-Courts vision, e-filing must support all relevant case types. Peer states report that full adoption of e-filing may require policy or statute changes to ensure that all filings are conducted electronically, with waivers in place to support those that may not have access to computers. Some peer states have such statutes in place and are achieving nearly 100% compliance. Other peer states are still early in the implementation of e-filing technology, waiting until core supporting technology is in place before fully deploying e-filing. Supporting technology includes, but is not limited to, a fully integrated CMS and fully functioning EIMS. The current process is time-consuming and involves an excessive use of paper for certain case types that are not set up for e-filing. Court clerks must maintain both manual and e-filed documents, resulting in duplicative business processes for case management.

Document Management

The NCAOC supports the storage and retrieval of some forms of electronic document currently; however, the initiative to implement a fully functioning EIMS is in its infancy. An EIMS solution has been identified and acquired, and there are efforts underway to determine its configuration and utilization. The gap between the NCAOC and some peer states in this area is negligible; however, the implementation of an EIMS is a predecessor to fully enabling e-filing capabilities. In the current process, searching and archiving is limited because storage flows through a shared network linked to the CMS. Additionally, traveling judges and justices continue to be burdened and slowed down because they are tethered to paper files.

Financial Management

The NCAOC currently supports an FMS that has evolved over several years. However, the technology is nearing obsolescence, making it difficult to find personnel to support it. This system is not fully integrated with the case management functionality, requiring duplicate data entry and increasing the potential for errors. Peer states report that they are utilizing more modern technologies to support the financial needs of the courts and administration. As such, they are slightly more

advanced than the Judicial Branch. As a whole, though, they have still not advanced to the highest level of maturity for financial management. For example, limiting how many cases a clerk can have open at a time delays the amount of work they can accomplish. Additionally, the current process for credit card payments is cumbersome and error-prone, and sometimes charges are mistakenly processed twice, which results in reduced confidence in the system.

Case Management

Case management is the area in which the largest gaps exist between the North Carolina Judicial Branch and peer states. NCSC and the peer states indicated that a centralized case management system is a critical success factor to support business process consistency and improvement for all courts and case types within a unified court system. An ICMS is distinguished from a CMS in that it supports multiple case types through multiple levels of a court system; whereas a traditional CMS has historically targeted a single case type or court level. Additionally, the user community for an ICMS extends beyond clerks and administrative staff to include judges and justices. Many of the peer states report that they are implementing an ICMS model—some of which began with an ICMS vision, others of which started with a traditional CMS model and have been expanding the capabilities to support multiple case types, courts, and users.

The NCAOC supports a system of eight case management modules that provide limited CMS functionality. These modules have evolved over the past 30 years (some are more modern) and were designed to support specific case types. As currently implemented, the modules comprising case management functionality are used inconsistently, which results in redundancy in workflow, the potential for loss of information and/or files, and increased time spent to correct errors.

Reporting and Analytics

Currently, most reports must be requested from the NCAOC (specifically the TSD) for development. This process can be time-consuming, limiting the availability of reports in a timely manner. Most reports are executed in a batch (e.g., overnight) mode, and ad hoc queries and reporting are generally not available for users in the courts to execute. Peer states with modern CMS technology in place claim that reporting has become much more real time and accessible to those that require it. Modern ICMS technology enables the definition and utilization of common business practices across the organization, further supporting the use of common data element definitions. Because the data is stored in a common manner, reporting on performance metrics is much more accurate and useable to determine where the courts may require improvement.

Electronic Public Access

Most peer states and the Judicial Branch support some level of electronic access to the courts. This is typically enabled through a public website or portal, and can also be supported through the use of kiosks that are strategically placed throughout the state. There is no significant difference between the Judicial Branch's maturity and capabilities in this area and those of the peer states. However, many industry publications describe mature electronic access to the courts models, in which case participants, the public, and other stakeholders have access to appropriate information at any time, using technology that is not location dependent. Increasing the Judicial Branch's maturity in this area

will require an ICMS and a fully functional EIMS. It may also require statute or policy changes to enable access to files that currently must be accessed solely by visiting a courthouse.

Judicial Workbench

The NCAOC supports elements of a Judicial Workbench, including access to jury instructions technology and links to electronic versions of statutes, judicial briefs, and other related documents for use on the bench and during case preparation. The industry generally refers to the Judicial Workbench as an interactive view into case information that may be stored in various locations, such as an ICMS and EIMS. One working definition of the Judicial Workbench is provided in the context of “Judicial Tools” through the JTC, established by the Conference of State Court Administrators (COSCA), the National Association for Court Management (NACM), and the NCSC. Of the judges and justices interviewed, many of them were unaware of the value of a Judicial Workbench, including the ability to interact with cases in real time and actively manage their dockets.

3.0 e-Courts Strategic Technology Initiatives

3.1 Strategic Initiatives Development

A set of nine initiatives were identified as a result of the gap analysis phase. These initiatives are intended to advance the NCAOC technology environment towards a more evolved e-Courts maturity. Many of these initiatives are currently in some stage of implementation already. This section includes a proposed order of implementation based on best practices, initiative dependencies, and feedback from a subcommittee of the NCCALJ Technology Committee during a workshop conducted in July 2016. A summary of these initiatives is provided in the table below.

Table 3.1: Summary of Initiatives

Initiative	Summary of Initiatives
A	Management & Governance
B	Baseline Metrics
C	Reporting & Analytics
D	Enterprise Information Management System (EIMS)
E	e-Filing
F	Integrated Case Management System (ICMS)
G	Financial Management System (FMS)
H	Electronic Public Access
I	Judicial Workbench

The initiatives, rated in terms of the anticipated benefits and implementation complexity for each, and graphic of each is depicted as shown in Table 3.2.

Table 3.2: Implementation Complexity

Complexity Rating	
 High	<p>Highly Complex (“High”) characteristics include:</p> <ul style="list-style-type: none"> • Detailed planning and/or requirements determination • Development and execution of a robust and detailed schedule • High utilization of Judicial Branch staff and management resources • Significant business process reengineering • Disciplined change management and acceptance by operational staff • Strong and consistent governance to manage change and to reduce the risk of stakeholder rejection and scope creep
 Moderate	<p>Moderate Complexity (“Moderate”) characteristics fall between the High and Low complexity rankings.</p>

Complexity Rating	
	<p>Minimal Complexity (“Low”) characteristics include:</p> <ul style="list-style-type: none"> • Predefined and accepted requirements already in place • Straightforward with regard to scheduling • Limited impact on Judicial Branch resources • Limited change management to the current processes • Low risk of operational staff and stakeholder rejection

Additionally, the initiatives were assigned an indicator of the level of anticipated benefit, as depicted in Table 3.3.

Table 3.3: Anticipated Benefits Rating

Anticipated Benefits Rating	
	<p>Highly Beneficial (“High”) characteristics:</p> <ul style="list-style-type: none"> • Impact a large number of stakeholders • Provide significant value
	<p>Moderately Beneficial (“Moderate”) characteristics fall between the High and Low benefit rankings.</p>
	<p>Narrow Value (“Low”) characteristics:</p> <ul style="list-style-type: none"> • Impacts a small number of stakeholders • Provide limited value

3.2 Prioritized List of Strategic Technology Initiatives

This section contains a short description of the nine e-Courts Strategic Technology Initiatives in priority sequence, along with a graphic depicting the Anticipated Benefits Rating and the Complexity Rating. While listed in ascending order, some initiatives will overlap and run concurrently. For a complete description of the nine e-Courts Strategic Technology Initiatives, see Appendix A.

Initiative A – Fully Implement Management and Governance Process
<p><u>Initiative Description:</u></p> <p>Two separate technology committees have endorsed an IT governance model and charter. The charter sets forth a method by which decisions are made and by whom; however, it has not yet been fully operationalized and expanded. The governance model is the foundation of the e-Courts vision.</p> <p>BerryDunn recommends that the NCAOC operationalize the Governance Charter. The charter establishes a set of policies and procedures that dictate the process by which chief strategic decisions are made, and is less focused on tactical or smaller projects. The overarching governance model will serve as the method to achieve all of the remaining initiatives laid out in this Plan. The NCAOC should consider implementing a best-practice portfolio management framework (such as is recommended in PMI’s Project Management Book of Knowledge [PMBOK]) and apply it to all NCAOC initiatives. Additionally, the NCAOC should consider updating the current initiative or project submission and</p>

Initiative A – Fully Implement Management and Governance Process

prioritization process to address all project sizes (e.g., large multiyear projects, small ad hoc projects, projects that may arise within the fiscal year).

Ranking and Impact

Priority Ranking	Implementation Complexity	Anticipated Benefits
	 Moderate	 High

Initiative B – Identify Metrics and Conduct a Baseline Analysis

Initiative Description:

Disciplined tracking and reporting of performance metrics will help the Judicial Branch determine where personnel and funding are best applied in order to achieve its vision and improve performance against organizational goals.

The NCAOC has metrics it currently monitors and analyzes. Three of the measures are drawn from CourTools. We suggest the NCAOC determine the metrics on which it wants to base its effectiveness and efficiency. We recommend the NCAOC define the data elements it wishes to use and take steps to ensure they are standardized across the state. The NCAOC should also define the “to-be” business process descriptions when developing the metrics.

In addition, the stakeholders or audience for whom the measures are of interest should be considered, along with how that information or the results of that analysis are presented to them. The baseline analysis should occur as soon as possible, but it may need to wait until after Initiative C – Reporting and Analytics has commenced and the tools needed to analyze the data are in place.

Ranking and Impact

Priority Ranking	Implementation Complexity	Anticipated Benefits
	 Low	 High

Initiative C – Reporting & Analytics

Initiative Description:

Judicial Branch staff across the state with direct daily operational management duties do not have comprehensive ad hoc reporting and querying capabilities and are unable to drill down into core court business processes for data analysis and reporting. By expanding the reporting and analytics capabilities, parties performing queries and analyzing data will be able to identify areas within business processes that need change. They will also be able to review performance and the status of case workflow, and be better able to manage case activity.

In order to expand upon current reporting and analytics capabilities, the e-Courts Strategic Technology Plan needs to include a robust, feature-rich reporting and management analysis toolkit. The data source upon which the reporting and management analytics occurs could take the form of a “data lake,” data warehouse, or some other repository that consolidates disparate data sources. Sources of data could include the ICMS, FMS, EIMS, and others. This reporting and analytics capability could be acquired and implemented after a Request for Proposals (RFP) and procurement process, and the system selected will provide pre-formatted reports that allow for drill-down in data from query results. It will also allow for scheduling standard, periodic, or batch report runs.

Additionally, this functionality will be configurable; allow for standard and ad hoc reporting; include user-friendly query tools common in standard statistical or analytical software; have the ability to create and run ad hoc reports by any set of criteria; have the ability to save, copy, and manipulate reports and report data; and allow authorized users to redact or hide private or sensitive data as necessary. The CourTools integration standards and other performance measures to evaluate court metrics in a standardized manner is essential.

Ranking and Impact		
Priority Ranking	Implementation Complexity	Anticipated Benefits
	 Moderate	 High

Initiative D – Enterprise Information Management System (EIMS)

Initiative Description:

An EIMS is a secure electronic repository used to store, retrieve, archive, and associate a variety of documents with cases and court proceedings. The EIMS is integrated with other e-Courts applications to create a consolidated electronic court case record with data from the ICMS, the FMS, e-payment, and e-filing components.

The EIMS facilitates other applications’ ability to use data accumulated in association with a case. Using the EIMS’ workflow features, the court may electronically route documents and include individuals’ annotations. The EIMS would support document scanning, document processing, indexing, sorting, reporting, and tracking and search functions. Currently, these activities are performed manually on documents received by the court.

Including an EIMS in the NCAOC e-Courts applications suite provides internal and external stakeholders with access to documents appropriate for their role in court interactions. The EIMS enables information

Initiative D – Enterprise Information Management System (EIMS)

sharing, exchange, and document access to occur electronically. An EIMS replaces paper transactions, whether within the courtroom, chambers, the office, police car, or at home.

The NCAOC is in the early stage of implementing an EIMS to support future e-filing and related e-Courts initiatives. This initiative, as presented here, is intended to prioritize and formalize the implementation approach. The NCAOC should consider leveraging the current EIMS capabilities specific to creating portals for the “Actor Views.” The use of portals that are tailored specific to the actor/user to display the reports and dashboards generated from Initiative C – Reporting and Analytics gives the user the exact information in a manner that it can be best utilized.

The documents within the EIMS may originate from a variety of sources, including from the ICMS or another e-Courts application, or as e-filed by parties and external stakeholders. The EIMS may access images from a repository of converted hardcopy back-up files, documents submitted electronically as images (not e-filing), converted microfilm, and other media. Images/documents within the EIMS can be made accessible online for searches, through a portal, and to the court and external case parties as needed for case processing, without the need to produce a hardcopy when the file moves from one workflow stage to another.

Though the EIMS would provide paperless electronic filing capabilities, court order and legislative statutory changes may be required in instances where original record regulations and/or court policy requires maintenance of a hardcopy record, or when certain original documents require a “wet signature” and manual filing with the clerk’s office.

Ranking and Impact

Priority Ranking	Implementation Complexity	Anticipated Benefits
	 Moderate	 High

Initiative E – e-Filing

Initiative Description:

An e-filing system provides a means for anyone involved with the court system—the public, attorneys, and court officials—to submit documents and/or information to the court electronically. This includes forms submitted to the court from law enforcement, litigants, district attorneys, and pro se defendants, and includes search warrant requests, citations, criminal complaints, indictments, and dismissals, as well as civil, juvenile, and appellate complaints and responses. Some electronic filings will originate from fillable forms available on the web. The NCAOC should take into consideration the “actors” and their respective “views” through the e-filing system as it works through this initiative.

With e-filing, once the data is submitted via the fillable form, it may be evaluated and processed to respond to triggered events or initiate other tasks or events within the ICMS. As a component of the NCAOC e-Courts strategy, receipt of documents submitted through e-filing should trigger events within defined workflows. These would include notification, financial tracking, case event status, and other management-specific processes.

As was noted in Initiative D – EIMS, the Judicial Branch may eventually need to change rules and statutes to require that all submissions to the court come through e-filing, enabling the appropriate

Initiative E – e-Filing

component(s) of the NCAOC e-Courts system to incorporate the data included in the e-filed document and eliminating the need to reenter data in the ICMS, FMS, or other system modules.

Based on a set of requirements defined in 2007, the NCAOC has previously licensed an e-filing system and rolled out functionality to a subset of counties in a pilot project. Additionally, the NCAOC has developed electronic filing capabilities for both criminal and non-criminal violations, such as motor vehicle and seat-belt, traffic, hunting and fishing, underage drinking, and speeding violations. The NCAOC should define a fresh set of business requirements in regard to e-filing and consider issuing either a Request for Information (RFI) or RFP to identify possible e-filing solutions/vendors.

Ranking and Impact

Priority Ranking	Implementation Complexity	Anticipated Benefits
	 <p>Low</p>	 <p>High</p>

Initiative F – Integrated Case Management System (ICMS)

Initiative Description:

One of the most prevalent requests for a near-term initiative during the interviews was for the provision and implementation of a comprehensive (feature-rich) ICMS. The various participants in the interviews often referred to specific system components, such as a scheduling system, electronic notification, date and event-driven “ticklers,” reporting, and docketing. From a strategic technology planning perspective, all such features are considered functionality contained in a single solution—that being an ICMS.

The overall goals of the ICMS could be achieved through the implementation of a centralized, statewide, uniform platform that includes all functionality necessary to complete all tasks for clerks, judges, court administrators, and prosecutors necessary for case initiation, docketing, scheduling, processing, decision making, adjudication, and disposition. This includes incorporation and maintenance of all case-related documentation and electronic approval processes necessary to initiate and seamlessly process a case electronically from initiation through dismissal. Whether the NCAOC chooses to implement a new ICMS – either through acquisition of a commercial off-the-shelf (COTS) product or through in-house integration and upgrade of the existing standalone components – the resulting system should provide specific views and access based upon the roles and actors who will use the ICMS to complete specific actions for case-specific, case-type functions or roles. To achieve the goals, the ICMS should:

- Provide electronic processing functionality for all case types to record, track, and manage events and actions from case initiation through case disposition, utilizing thorough, flexible workflows that generate automated reminders (ticklers) and electronic notification to court staff and case participants/parties of case events, decisions, and court calendars.
- Enhance the concept of a fully, or near-fully, paperless case records and document management system.
- Integrate with an e-filing solution that enables electronic access, signature, and authorization capabilities for court-related events, warrants, and other court criminal and civil processes, dispositions, and judicial actions. This includes the ability to create, docket, electronically deliver, electronically sign, and print relevant court notices and case-related documents and notices.

Initiative F – Integrated Case Management System (ICMS)

- Collect the data necessary to enable ongoing management reporting, workload management, and performance measurement and analytics.
- Integrate the case and financial management features of the case and support existing interfaces to enable automated data exchange, financial and case disposition reporting, and search and query both internally and with other State and local agencies and justice partners.
- Provide comprehensive functionality to integrate documents, images, and exhibits maintained in the EIMS to the ICMS, including archiving and retrieval capabilities.

As FMS functionality is incorporated into most COTS ICMS solutions, BerryDunn recommends including the FMS requirements in the ICMS model if it is acquired by RFP. These requirements can be used to evaluate flexibility and scope of the COTS solutions proposed to meet both the ICMS and FMS, as well as address the NCAOC expectations for quality and performance improvement goals included in the performance reporting and analytics initiatives.

Ranking and Impact

Priority Ranking	Implementation Complexity	Anticipated Benefits
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Initiative G – Financial Management System (FMS)

Initiative Description:

During focus group sessions with court clerks, attendees routinely describe the FMS and the process of determining and collecting fees, fines, and costs as cumbersome, with a variety of shortcomings. The NCAOC should look at the ICMS solution that has commenced in Initiative F to make sure the capabilities sought do not already exist and need to be leveraged out of the ICMS solution. The NCAOC should also take into consideration the “actors” and their respective “views” through the FMS as it works through this initiative.

Capabilities of any standalone FMS deployed, or an FMS component within the ICMS, should include the ability to integrate with the ICMS across all courts and case types. In addition, it should have real-time presentation of fees, fines, and costs with any offsetting prior payments. It should also have the ability to make real-time adjustments at the cashier’s window when presented with authenticated documentation. Additionally, the FMS should have the ability to:

- Support multiple charge codes with varying costs based on location
- Support payment through multiple means, including credit card, debit card, cash, personal check, and cashiers/bank check
- Generate a statement of charges and payments for a case or range of cases, and print or email the statement(s)
- Produce a range of management reports
- Export and transmit transaction activity, in detail or in aggregate, to external systems or other financial systems maintained at NCAOC or elsewhere
- Maintain case-related transaction activity within the FMS and available for presentation through self-service kiosks, browser-enable workstations, smartphones, or other devices to support inquiry and payment online

Ranking and Impact

Initiative G – Financial Management System (FMS)		
Priority Ranking	Implementation Complexity	Anticipated Benefits
	 Moderate	 Moderate

Initiative H – Electronic Public Access

Initiative Description:

The Electronic Public Access capability provides the public with access to available Judicial Branch information (including that from ICMS) through self-service kiosks and personal devices (e.g., smart phones, tablets, and desktop and notebook computers). Web-based Electronic Public Access capabilities will provide the public the ability to conduct an online search of publicly available court records and documents, submit online payments, and complete online forms (eForms) related to case initiation, processing, and requests for services.

Currently, the NCAOC provides access to standard forms from the Judicial Branch website and the public may only obtain publicly available case documents in hardcopy format on-site at a court location. The e-Courts vision includes expanding the Electronic Public Access capabilities and the need to provide access to publicly available case documents from anywhere, at any time, as supported by State statute and Judicial Branch policy. As part of this initiative, the Judicial Branch should review its policies around the scope and restrictions of publically available documents. Leveraging the practices of other states, as well as the best practices recommended by the NCSC, should help guide the NCAOC when tailoring its policies to find a balance between the intended transparency of the Judicial Branch and the privacy rights of citizens.

The Electronic Public Access capabilities will interface with the EIMS, which will interface with the e-filing capabilities of the ICMS, to enable documents to be filed, retrieved, and work-flowed electronically, without a need for printing or creation of manual files. The result of the Electronic Public Access initiative will provide the public stakeholders with a readily accessible self-service capability and e-access to the right information, at the right time, right where they are.

Ranking and Impact		
Priority Ranking	Implementation Complexity	Anticipated Benefits
	 Moderate	 High

Initiative I – Judicial Workbench

Initiative Description:

The Judicial Workbench is a dashboard/portal application that provides the electronic tools to meet the specific case processing, judicial decision making, and management needs of trial court judges on the bench and in chambers. Utilizing a dashboard or workspace format, the Judicial Workbench provides a single point of entry into the day-to-day operational and managerial information needed by a judge. It

Initiative I – Judicial Workbench

provides access to the data included in the e-Courts ICMS, summary case and defendant history, and information from other justice agencies. The Judicial Workbench also brings together – under one umbrella system – traditional office applications, legal research capabilities, web portal access to external applications, and a powerful decision support capability to judges.

Judicial Workbench functionality will assist in meeting the overall e-Courts objective to provide internal and external stakeholders with the right information, at the right time, right where they are. A Judicial Workbench enables judges to access the right information needed to enable them to better manage their workload and to carry out their daily activities more effectively than in the current environment.

Ranking and Impact

Priority Ranking	Implementation Complexity	Anticipated Benefits
	 Low	 Moderate

4.0 Implementing the e-Courts Strategic Technology Plan

This section provides guidance on implementing the e-Courts Strategic Technology Plan, including a listing of the initiatives in priority sequence, the estimated cost of each initiative, the year in which the initiative is proposed to begin, and guidance for the ongoing governance of the Plan.

4.1 Budget and Timeline

Section 3.2 of the e-Courts Strategic Technology Plan provided descriptions for each initiative and what each entails, identified implementation complexity and timing for the initiative, and listed anticipated benefits of the initiative.

Table 4.1 summarizes the budget estimates for the recommended initiatives that have been presented in this plan. The timeline provides a framework for budgeting initiative costs and for planning implementation timeframes over a six-year horizon (including the current fiscal year as “Year 0”). The initiative costs are presented as estimates and will vary based on the budget of the Judicial Branch, competing technology initiatives, the availability of support resources, and the specific technical approach used to undertake an initiative. Table 4.2 depicts the estimated operational costs post implementation.

Each initiative in the table can be started and/or completed within a given fiscal year. Rather than attempting to determine exactly when a particular initiative would be undertaken, this table is intended to identify the fiscal year(s) in which an initiative should be initiated. A dash symbol indicates that there are no planned activities for the initiative during the respective fiscal year. For a detailed list of budget assumptions made for each of the nine initiatives, see Appendix A.

For each of the initiatives, the major assumptions used in preparing the budgetary estimates are described with Appendix A. All of the estimates assume that TSD will make available resources in addition to the Judicial Branch and consultant hours. Resources were priced based upon staff role estimates for specific role-based positions and tasks and segmented by:

- TSD Staff
- Judicial Branch subject matter experts (SMEs)/Non-TSD staff
- External consultants

For each staffing classification, blended rates and industry standard costs for major staff roles were developed. The major staff roles include, but are not limited to, Programmers, Web Developers, Senior Business Analysts, Planners, and Judicial Branch SMEs.

The NCAOC provided staffing data and case management data that was used for planning and cost estimations.ⁱ

Generally, implementation go-live resource cost estimates included tasks assigned to the NCAOC SME, non-TSD staff, TSD, and either contractor staff or vendor staff as relevant. Implementation costs also include the following assumptions:

-
- All software will be loaded and installed by the NCAOC and TSD according to current procedures.
 - Local on-site technical support for end users in the courts will be provided by the TSD as an overall expansion of the current support procedures.
 - Helpdesk volume estimates for end users and local court staff were based upon NCAOC-provided data.

The initiatives and associated assumptions are provided in Appendix A.

ⁱ NCAOC email groups list with FTE count (J. Williams 2-23-16 email to Berry Dunn), Trial Courts Report – North Carolina Judicial Branch 2014 – 2015 Statistical and Operations Report; General Fund Permanent Positions Reports

Table 4.1: Project and Initiative Budget and Timeline Matrix (\$)

Initiative Budget and Timeline Matrix (\$)										
Strategic Initiative	Year 0 FY2017	Year 1 FY2018	Year 2 FY2019	Year 3 FY2020	Year 4 FY2021	Year 5 FY2022	Year 6 FY2023	Base Total	Budget Target	Total with Risk Adjustment
Initiatives Starting in Year Zero										
A	Management & Governance	\$438,264	\$918,926	\$870,202	\$870,681	\$865,749	\$223,149	\$4,410,120	\$4,919,621	\$5,429,123
B	Baseline Metrics	\$70,540	\$43,647	\$29,098	\$29,098	\$14,549	\$14,549	\$216,030	\$234,612	\$253,194
C	Reporting & Analytics	\$411,708	\$1,025,902	\$697,750	\$334,048	\$250,492	\$97,200	\$2,914,300	\$3,218,786	\$3,523,272
D	EIMS	\$2,312,180	\$6,613,359	\$6,951,675	\$5,573,191	\$1,968,436	\$1,357,956	\$25,724,654	\$28,163,407	\$30,602,161
E	e-filing	\$793,500	\$2,210,996	\$2,165,354	\$1,563,169	\$1,135,042	\$360,892	\$8,589,845	\$9,381,414	\$10,172,983
F(a)	ICMS (build)	\$300,141	\$3,704,495	\$9,872,789	\$11,787,013	\$12,446,525	\$6,274,836	\$46,438,366	\$52,098,002	\$57,757,639
F(b)	ICMS (buy)	\$239,241	\$296,955	\$6,450,347	\$9,889,899	\$11,510,353	\$8,130,298	\$38,756,926	\$43,233,506	\$47,710,086
G	FMS	\$40,800	\$644,150	\$911,150	\$0	\$0	\$0	\$1,596,100	\$1,714,312	\$1,832,524
H	Electronic Public Access	\$30,030	\$462,877	\$26,899	\$450,627	\$413,377	\$225,477	\$1,752,710	\$1,925,171	\$2,097,632
Initiatives Starting in Year One										
I	Judicial Workbench	\$0	\$135,222	\$84,018	\$63,974	\$39,493	\$18,605	\$351,755	\$388,029	\$424,303
With Risk Adjustment										
Total Including F(a) ICMS-Build	Capital	\$4,397,163	\$15,138,055	\$21,608,935	\$17,687,733	\$10,704,523	\$4,929,496	\$75,092,270	\$83,213,780	\$91,335,290
Total Including F(b) ICMS-Buy	Operational	\$0	\$0	\$0	\$2,984,068	\$6,429,140	\$3,643,168	\$16,901,611	\$18,733,073	\$20,564,536
Total Including F(a) ICMS-Build	Capital	\$4,336,263	\$12,352,033	\$18,186,493	\$15,790,618	\$10,379,911	\$5,492,807	\$66,542,973	\$73,485,230	\$80,427,488
Total Including F(b) ICMS-Buy	Operational	\$0	\$0	\$0	\$2,984,068	\$5,817,579	\$4,935,319	\$17,769,468	\$19,664,625	\$21,559,783

Table 4.2: Project and Initiative Budget and Timeline Matrix (\$) Years 7-10

Initiative Budget and Timeline Matrix (\$) Post Implementation – Operational Costs		
Strategic Initiative		Years 7-10
A	Management & Governance	\$892,596
B	Baseline Metrics	\$46,144
C	Reporting & Analytics	\$388,800
D	EIMS	\$5,431,824
E	e-Filing	\$1,000,000- \$1,200,000
F(a)	ICMS (build)	\$4,800,000-\$12,400,000
F(b)	ICMS (buy)	\$6,800,000-\$15,200,000
G	FMS	Subsumed within Initiative F
H	Electronic Public Access	\$573,700
I	Judicial Workbench	\$41,776
Total		Years 7-10
Total Including F(a) ICMS-Build		\$13,374,840-\$20,974,840
Total Including F(b) ICMS-Buy		\$15,374,840-\$23,774,840

The following figures depict the six-year trend of the combined budget amounts for the Strategic Initiatives in each of the Plan years with either an ICMS-build or an ICMS-buy.

Figure 4.1: Spending Levels with an ICMS-Build

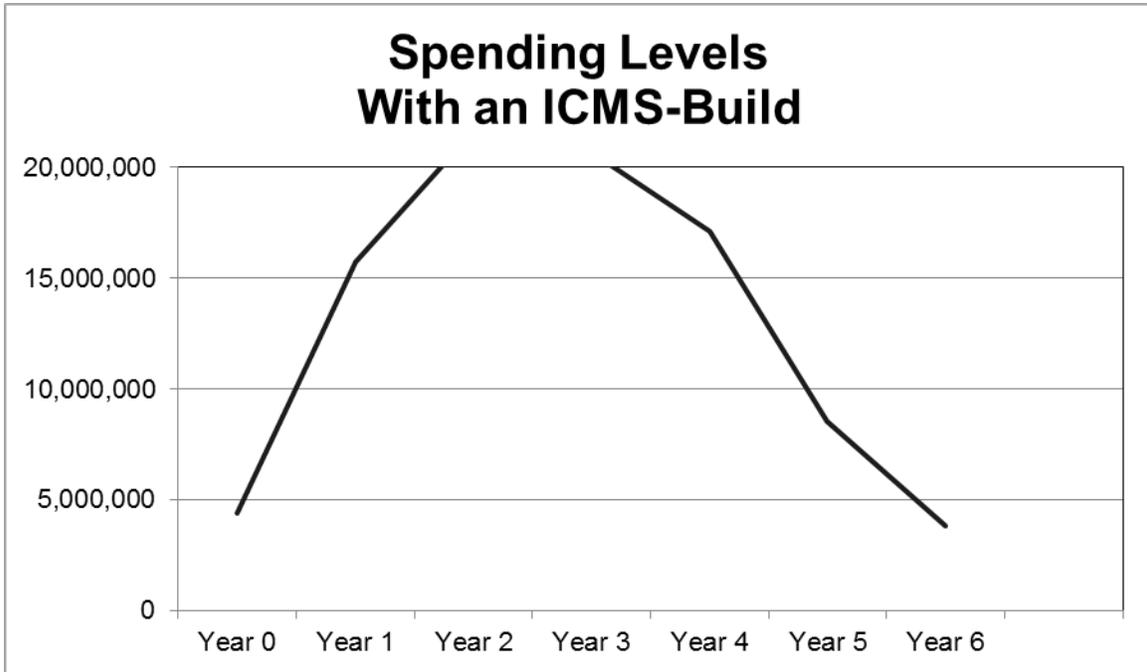
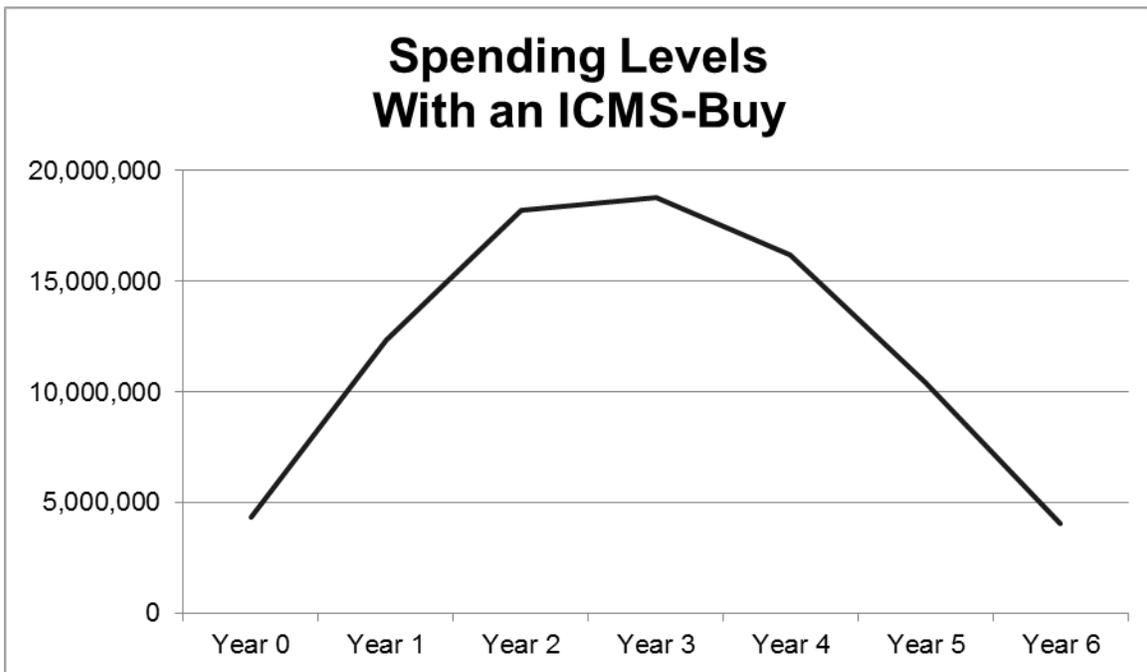


Figure 4.2: Spending Levels with an ICMS-Buy



The figures below depict the six-year trend of capital expenditures and ongoing operational costs for both the ICMS-build and ICMS-buy options.

Figure 4.3: Spending Levels of Capital Expenditures and Ongoing Operational Costs with an ICMS-Build

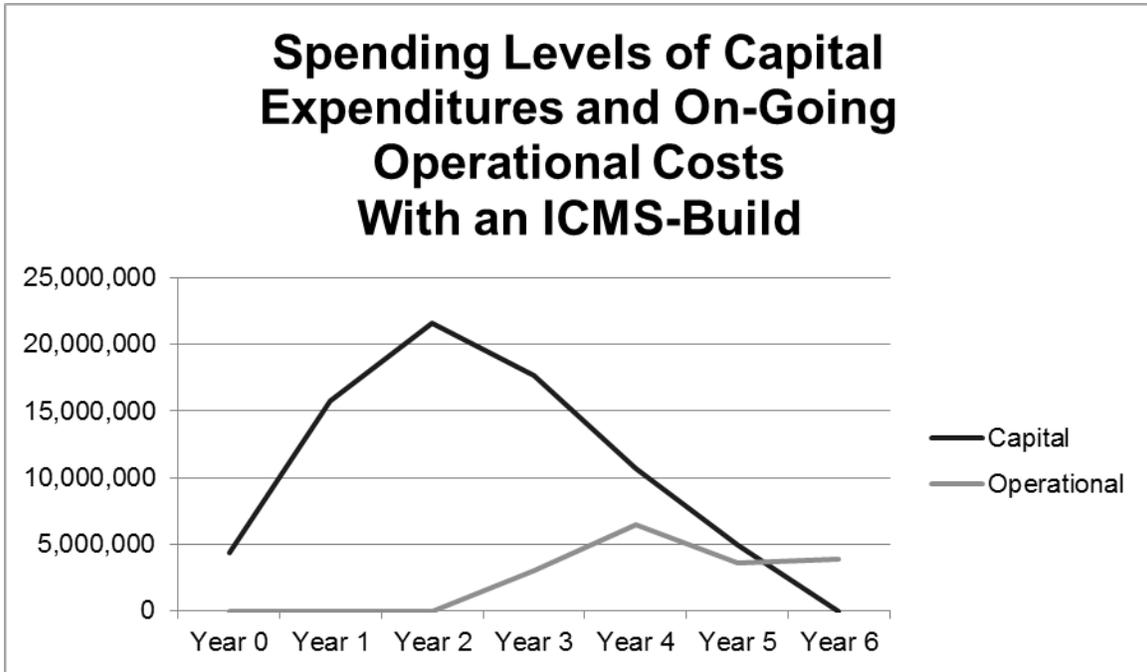
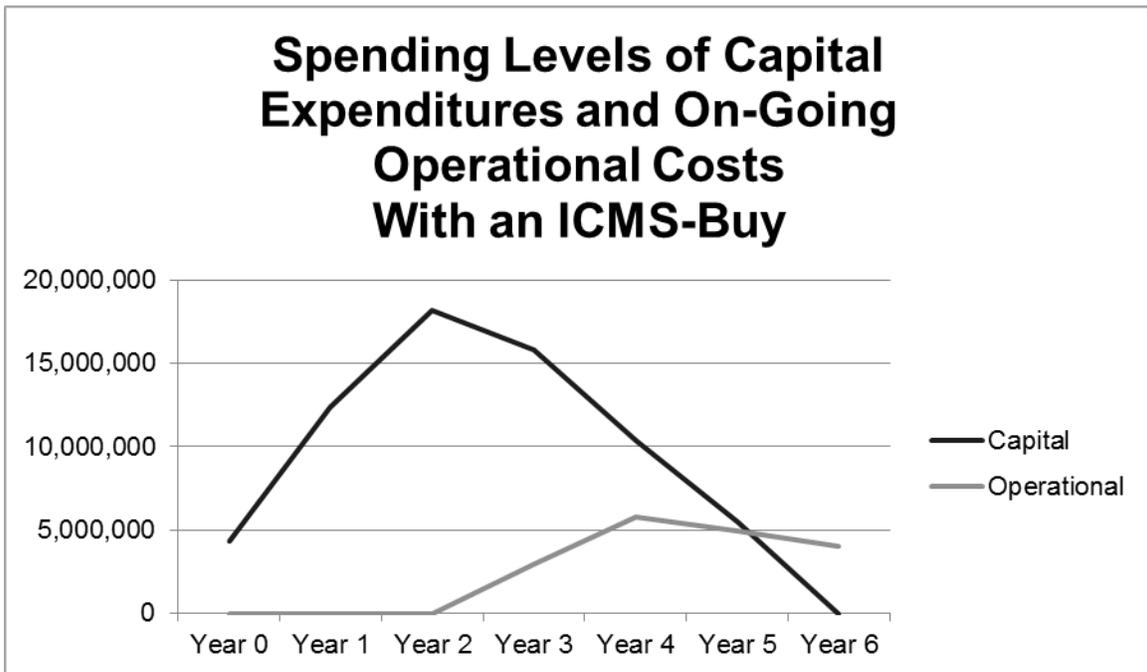


Figure 4.4: Spending Levels of Capital Expenditures and Ongoing Operational Costs with an ICMS-Buy



The first year of each initiative generally includes initiative planning work, which is typically not as funding-intensive as later years. Similar organizations undertaking strategic technology planning initiatives typically follow an approach to have the increased budget levels mostly be realized in the second, third, and fourth year of the plan to ensure adequate time to secure funding. The increase in budget levels in these years of the Plan represents the investment related to initiatives for new applications. In years six through 10, the costs shift from capital expenditures to ongoing operational costs.

In addition to new funding that may be needed to support the identified Strategic Initiatives, additional operational funding will need to be secured in cases where new applications or technologies are implemented as part of the plan.

4.2 Updating the Plan

BerryDunn recommends that the Judicial Branch review and update the e-Courts Strategic Technology Plan twice a year. It is anticipated that new initiatives will be identified throughout the year and they may impact the priority level of the initiatives proposed in this Plan. The review process should follow a ratified management and governance model and involve executive management from the Judicial Branch, as well as the TSD Chief Information Officer (CIO). The review meetings should address the following:

- The first update of the year should be to track the progress made against initiatives.
- The second update should focus on reassessing upcoming initiatives and reprioritizing the order of them for the upcoming fiscal year. The overall decision to reprioritize initiatives should be made by the Judicial Branch executive team. As part of this update, a Judicial Branch representative, along with the TSD CIO, should meet with department directors to obtain their input and communicate plans for the upcoming year.

4.3 Success Factors for the Plan

One of the critical success factors for the implementation of the e-Courts Strategic Technology Plan will be executive support for the initiatives in the plan. The Judicial Branch has committed to undertaking the initiatives in this Plan, and support will need to be provided to allocate the appropriate resources, as well as ensure that initiatives outside the scope of this Plan in current and future years are thoroughly evaluated before adjusting the existing priorities of the initiatives in the Plan.

In order to implement the initiatives in this plan, it will be critical for the Judicial Branch to implement the recommended portfolio management practices. Implementing the initiatives in this Plan will not only require Judicial Branch resources and appropriate staff, but also a structured methodology to increase the likelihood of success.

It is important that, over the next five years, the roles of the Judicial Branch and TSD continue to evolve and that they continually assess leading edge and proven technology tools to solve technology issues within the NCAOC.

THANK YOU

“NO MAN IS AN ISLAND ENTIRE OF ITSELF.”

MEDITATION XVII, Devotions upon Emergent Occasions

John Donne

The NCCALJ would not exist without the vision of Chief Justice Mark Martin. We are grateful for his leadership in convening the Commission.

Contributions to the work of the Commission extended beyond the 85 commissioners, reporters, and ex officio members. Throughout its tenure, the Commission received generous support from internal and external stakeholders who should be recognized for their meaningful participation in this effort.

The Commission’s work would not have been possible without the financial support of the Z. Smith Reynolds Foundation, the State Justice Institute, and the North Carolina Governor’s

Crime Commission. The combined funding of this public / private partnership sustained the effort and, together, provided over two-thirds of the NCCALJ’s budget.

The National Center for State Courts (NCSC) was a vital partner, and on numerous occasions provided Commission members, reporters, and staff with valuable insight into the national perspective on best practices, standards, and court reform models across each of the NCCALJ’s areas of focus.

The Commission benefited from the expertise and guidance of more than 100 presenters, panelists, and speakers from across North

Carolina and around the nation. Their experience and insights served as the foundation for the informed dialogue and decision-making of each of the five Committees. These individuals and their presentation materials can be found on the NCCALJ's website, www.nccalj.org.

Thank you to Lori Kroll and Sally Ann Gupta for their contributions to the deliberations of the Technology Committee.

Commission staff is deeply grateful to Professor Jim Drennan of the UNC School of Government for taking on the primary role of shaping the overarching framework of the Commission's work detailed in Part One of this report. Jim brought to this effort his decades of experience in the area of court reform in North Carolina, and the Commission benefited in numerous ways from his sage counsel and guidance.

Special thanks is due to Director Dr. Martin Kifer at the High Point University Survey Research Center and to Dr. Kenneth Fernandez and the staff at the Elon University Poll. The two North Carolina-based polling centers partnered to conduct the first survey in many years aimed at gauging the public's trust and confidence in the state's Judicial Branch. As is evident in the text of this report, the results of these surveys guided the work of the Commission and were invaluable in helping the five Committees determine where to focus their recommendations for improvement.

We are grateful for the invaluable commitment to our work that North Carolina Administrative Office of the Courts Director Judge Marion Warren and his organization demonstrated. The NCCALJ benefited tremendously from the skills and support of many people at the NCAOC. Among those people are:

1. Research and Planning Division — Brad Fowler, Danielle Seale, Kurt Stephenson, and Patrick Tamer;
2. Technology Services Division for attending and contributing to numerous Committee meetings and for setting up and maintaining the NCCALJ's email system;
3. Office of Governmental Affairs — Tom Murry — for shaping the legislative strategy for recommendations requiring General Assembly action;
4. Communications Office — Sharon Gladwell, Justin Furr, Jodie A. Lanning, and Samuel Tate — for providing ongoing media support, marketing / branding, publication design and layout, website design and maintenance, and an all-hands-on-deck approach to the Commission's many other needs; and
5. Print Shop, for assisting with numerous print jobs.

Finally, the Commission extends its sincere gratitude to the citizens of the Triad, Wilmington, Asheville, and Charlotte areas who participated in the public meetings in August 2016, and for the more than two hundred individuals and more than twenty-five organizations that provided online comments to the Commission in its public input process. The feedback from these individuals and organizations shaped the Commission's final recommendations.

Sincerely,

Will Robinson, Executive Director
Emily Portner, Research Associate
Roxana Zelada-Lewis, Office Manager
NCCALJ STAFF

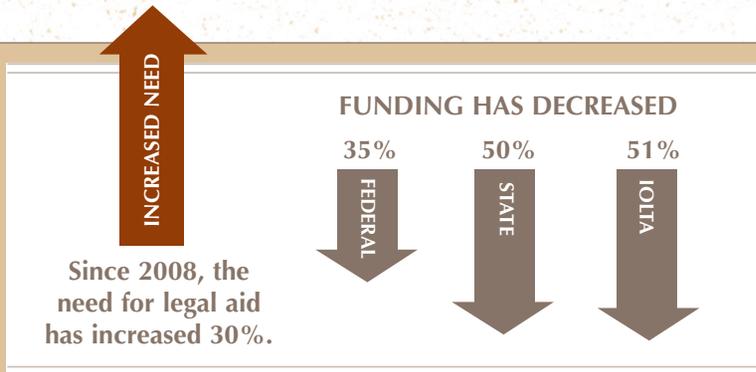
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NORTH CAROLINA
COMMISSION ON THE
ADMINISTRATION
OF LAW & JUSTICE



APPENDIX
ATTACHMENT 5



2.2 million North Carolinians, over 23% of the population, qualify for legal aid.



NC ATTORNEY TO CLIENT RATIOS	
1 PRIVATE ATTORNEY	562 PEOPLE
1 LEGAL AID ATTORNEY	13,170 PEOPLE

108% RETURN ON THE STATE'S INVESTMENT IN LEGAL AID SERVICES

\$1 = \$10
For every \$1 the state spends to provide legal services, nearly \$10 flows into our economy.

\$48 MILLION
Total positive economic impact of legal aid provided in 2012.

18K HOURS
In 2014, volunteer legal aid attorneys provided 18K HOURS of pro bono legal services WORTH > \$3.6M.

LEGAL AID helped North Carolinians access \$8.8M in child support and housing awards in 2012.

\$1M THE ANNUAL SAVINGS in North Carolina from preventing domestic violence through legal aid in avoided medical costs alone.

\$200K THE COMMISSION RAISED this amount for legal aid through our 2014 law firm campaign.

\$ Legal aid providers helped North Carolinians access \$9.2M IN NEW FEDERAL BENEFITS, including food stamps, SSI, disability, and federal tax refunds in 2012.

NCVETSLEGAL.ORG • 2014
> 1,200 users > 5K page views

OUR MISSION

The NC Equal Access to Justice Commission (NCEATJC) was established in November 2005 by order of the North Carolina Supreme Court. The mission of the Commission is to expand access to civil legal representation for people of low income and modest means across North Carolina.

www.ncequalaccesstojustice.org

2014 HIGHLIGHTS

NCEATJC released its economic benefits report, finding that the work of legal aid providers across the state generated \$48,775,276 in economic impact in 2012. The report details the direct and indirect economic benefits, as well as the cost savings attributed to the work of three North Carolina legal aid providers: Legal Aid of North Carolina, Legal Services of Southern Piedmont, and Pisgah Legal Services. The study finds that legal representation helped North Carolinians gain access to \$9.2 million in new federal benefits, as well as \$8.8 million in child support and housing awards. Indirect impact, including increases in employment, wages, and business outputs due to the new spending, totals nearly \$13.9 million. Domestic violence, eviction, and foreclosure prevention generate cost savings for the state of \$17.1 million.

NCEATJC coordinated the work of the NC Pro Bono Veterans Network, as well as launching NCVetsLegal.org. The NC Pro Bono Veterans Network provides a collaborative structure and regular sharing of information for those interested in expanding pro bono representation to veterans. NCEATJC developed NCVetsLegal.org as an online clearinghouse of veterans-related information. The site features legal information and resources specific to North Carolina for both veterans and practitioners, and it also serves as a portal for the recruitment and placement of pro bono attorneys. The website was made possible by a grant from the ABA.

NCEATJC coordinated the NC Access to Justice Campaign, Law Firm Division, which raised almost \$200,000 for legal aid providers.

NCEATJC conducted a survey of all North Carolina attorneys to better understand the current status of pro bono and how to support greater participation. Seventy-two percent of respondents indicated they complete pro bono, and the median number of hours was 32 per year.

NCEATJC serves as the communications hub for North Carolina's access to justice community, while coordinating ongoing legislative advocacy efforts.

COMMISSION PRIORITIES:

- Establish the right to counsel in civil matters affecting basic human needs.
- Increase legislative funding of civil legal services at the state and federal levels.
- Encourage/support pro bono attorney participation.
- Help pro se litigants navigate the court system successfully.
- Educate the public.
- Increase the role of the business community.
- Include people with limited English proficiency in the justice system.
- Increase loan repayment assistance.

FINANCIAL INFORMATION

2014 Support and Revenue

CLE Fee-NC State Bar	170,653
ABA Innovation Grant	20,000
Total Revenue	\$190,653

2014 Expenses

Administrative	135,050
Programming	41,612
Grants	25,000
Veterans Website	20,000
Total Expenses	\$221,662

2014 COMMISSION MEMBERS

The Honorable Sarah Parker, Chair	John B. McMillan
Reid Calwell Adams	The Honorable Michael R. Morgan
Representative Justin Burr	Nancy Black Norelli
Marion A. Cowell, Jr.	E. Fitzgerald Parnell
Joseph D. Crocker	The Honorable Jan H. Samet
Kearns Davis	Kenneth Schorr
Anita S. Earls	Richard M. Taylor, Jr.
George V. Hanna III	Kirk G. Warner
George R. Hausen, Jr.	Carol Allen White
Rebecca Henderson	Willis Williams
Thomas A. Kelley III	Jennifer M. Lechner, Executive Director
Melinda Lawrence	Mary L. Irvine, Access to Justice Coordinator
The Honorable Linda M. McGee	



Thank you to all of the Commission members who served in 2014. We would particularly like to thank Chief Justice Sarah Parker for her dedicated service from January 2006 to August 2014.

North Carolina Equal Access to Justice Commission

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APPENDIX
ATTACHMENT 6

Civil Justice Initiative

The Landscape of Civil Litigation in State Courts



Williamsburg, Virginia





Note: The Allegheny County Court of Common Pleas in Pittsburgh, Pennsylvania, was one of 152 courts in 10 counties that participated in the NCSC *Landscape of Civil Litigation in State Courts*. The study examined all civil cases disposed in those counties from July 1, 2012 through June 30, 2013. The resulting dataset included over 900,000 cases, approximately five percent of the total civil caseload in state courts nationally.

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We are also immensely grateful to the state courts that participated in the study. It is a gross understatement to say that state courts today are operating under enormous pressure to manage voluminous caseloads with significantly reduced resources. We recognize that it is no small task for those courts to allocate scarce resources to extract case-level data from their case management systems and, as important, to answer detailed questions about computer codes

and formatting that is necessary to make sense of the data. Their willingness to do so is a testament to their commitment to maintaining the American civil justice system as a forum for the speedy, inexpensive, and just resolution of civil claims.

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Much of the debate concerning the American justice system focuses on procedural issues that add complexity to civil litigation, resulting in additional cost and delay and undermining access to justice. Many commentators are alarmed by the increasing privatization of the civil justice system and particularly by the dramatic decline in the rates of civil bench and jury trials. In addition, substantially reduced budgetary resources since the economic recession of 2008-2009 have exacerbated problems in civil case processing in many state courts.

In response to these concerns, state and federal courts have implemented a variety of civil justice reform projects over the past decade. Some have focused on particular types or characteristics of civil cases such as business and complex litigation programs. Others have aimed at problematic stages of civil litigation, especially discovery. In 2013, the Conference of Chief Justices (CCJ) convened a Civil Justice Improvements Committee to assess the effectiveness of these efforts and to make recommendations concerning best practices for state courts. To inform the Committee's deliberations, the National Center for State Courts (NCSC) undertook a study entitled *The Landscape of Civil Litigation in State Courts* to document case characteristics and outcomes in civil cases disposed in state courts.

Differences among states concerning data definitions, data collection priorities, and organizational structures make it extremely difficult to provide national estimates of civil caseloads with sufficient granularity to answer the most pressing questions of state court

Many commentators are alarmed by the increasing privatization of the civil justice system and particularly by the dramatic decline in the rates of civil bench and jury trials.

policymakers. The sample of courts in the *Landscape* study was intentionally selected to mirror the variety of organizational structures in state courts. The resulting *Landscape* dataset consisted of all non-domestic civil cases disposed between July 1, 2012 and June 30, 2013 in 152 courts with civil jurisdiction in 10 urban counties. The 925,344 cases comprise approximately five percent (5%) of state civil caseloads nationally.

FINDINGS

The picture of civil caseloads that emerges from the *Landscape* study is very different than one might imagine from listening to current criticism about the American civil justice system. High-value tort and commercial contract disputes are the predominant focus of contemporary debates, but collectively they comprised only a small proportion of the *Landscape* caseload. In contrast, nearly two-thirds (64%) were contract cases, and more than half of those were debt collection (37%) and landlord/tenant cases (29%). An additional sixteen percent (16%) were small claims cases involving disputes valued at \$12,000 or less,

and nine percent (9%) were characterized as “other civil” cases involving agency appeals and domestic or criminal-related cases. Only seven percent (7%) were tort cases and one percent (1%) were real property cases.

To the extent that damage awards recorded in the final judgment are a reliable measure of the monetary value of civil cases, the cases in the dataset involved relatively modest sums. Despite widespread perceptions that civil litigation involves high-value commercial and tort cases, only 357 cases (0.2%) had judgments that exceeded \$500,000 and only 165 cases (less than 0.1%) had judgments that exceeded \$1 million. Instead, three-quarters (75%) of all judgments were less than \$5,200. These values varied somewhat based on case type; three-quarters of real property judgments, for example, were less than \$106,000 and three-quarters of torts were less than \$12,200. For most represented litigants, the costs of litigating a case through trial would greatly exceed the monetary value of the case. In some instances, the costs of even initiating the lawsuit or making an appearance as a defendant would exceed the value of the case.

Litigation costs that routinely exceed the case value explain the low rate of dispositions involving any form of formal adjudication. Only four percent (4%) of cases were disposed by bench or jury trial, summary judgment, or binding arbitration. The overwhelming majority (97%) of these were bench trials, almost half

of which (46%) took place in small claims or other civil cases. Three-quarters of judgments entered in contract cases following a bench trial were less than half of those in small claims cases (\$1,785 versus \$3,900). This contradicts assertions that most bench trials involve adjudication over complex, high-stakes cases.

Most cases were disposed through an administrative process. A judgment was entered in nearly half (46%) of the cases, most of which were likely default judgments. One-third of cases were dismissed, possibly following a settlement; ten percent (10%) were explicitly recorded as settlements.

Summary judgment is a much less favored disposition in state courts compared to federal courts. Only one percent (1%) were disposed by summary judgment, and most of these would have been default judgments in debt collection cases except the plaintiff pursued summary judgment to minimize the risk of post-disposition challenges.

A traditional hallmark of civil litigation is the presence of competent attorneys zealously representing both parties. One of the most striking findings in the dataset was the relatively large proportion of cases (76%) in which at least one party was self-represented, usually the defendant. Tort cases were the only ones in which a majority (64%) of cases had both parties represented by attorneys. Small claims dockets had an

At least one party was self-represented (usually the defendant)
in more than three-quarters of the cases.

The picture of civil litigation that emerges from the *Landscape* dataset confirms the longstanding criticism that the civil justice system takes too long and costs too much.

unexpectedly high proportion (76%) of plaintiffs who were represented by attorneys, which suggests that small claims courts, which were originally developed as a forum for self-represented litigants to obtain access to courts through simplified procedures, have become the forum of choice for attorney-represented plaintiffs in lower-value debt collection cases.

Approximately three-quarters of cases were disposed in just over one year (372 days), and half were disposed in just under four months (113 days). Nevertheless, small claims were the only case type that came close to complying with the *Model Time Standards for State Trial Courts (Standards)*. Tort cases were the worst case category in terms of compliance with the *Standards*. On average, tort cases took 16 months (486 days) to resolve and only 69 percent were disposed within 540 days of filing compared to 98 percent recommended by the *Standards*.

IMPLICATIONS FOR STATE COURTS

The picture of civil litigation that emerges from the *Landscape* dataset confirms the longstanding criticism that the civil justice system takes too long and costs too much. As a result, many litigants with meritorious claims and defenses are effectively denied access to justice in state courts because it is not economically feasible to litigate those cases. Most of the litigants who have the resources and legal sophistication to do so have already abandoned the civil justice system either preemptively through contract provisions (e.g., for consumer products and services, employment, and health care) or after filing a case in court through private ADR services. Ironically, private ADR is often provided by experienced trial lawyers and retired judges.

The vast majority of civil cases that remain in state courts are debt collection, landlord/tenant, foreclosure, and small claims cases. State courts are the preferred forum for plaintiffs in these cases for the simple reason that in most jurisdictions state courts hold a monopoly on procedures to enforce judgments. Securing a judgment from a court of competent jurisdiction is the mandatory first step to being able to initiate garnishment or asset seizure proceedings. The majority of defendants in these cases, however, are self-represented. Even if defendants might have the financial resources to hire a lawyer to defend them in

court, most would not because the cost of the lawyer exceeds the potential judgment. The idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion.

State court budgets experienced dramatic cuts during the economic recessions both in 2001–2003 and in 2008–2009, and there is no expectation among state court policymakers that state court budgets will return to pre-2008 recession levels. These budget cuts combined with constitutional and statutory provisions that prioritize criminal and domestic caseloads over civil caseloads have undermined courts' discretion to allocate resources to improved civil case management. As both the quantity and quality of adjudicatory services provided by state courts decline, it becomes questionable whether state legislators will be persuaded to augment budgets to support civil caseloads.

These trends have severe implications for the future of the civil justice system and for public trust and confidence in state courts. The cost and delays of civil litigation greatly outpace the monetary value of most cases filed in state courts, effectively denying access to justice for most litigants and undermining the legitimacy of the courts as a fair and effective forum to resolve disputes. Reductions in the proportion of civil

cases resolved through formal adjudication threaten to erode a publicly accessible body of law governing civil cases. Fewer common law precedents will leave future litigants with lessened standards for negotiating civil transactions or conforming their conduct in a responsible manner. The privatization of civil litigation likewise undermines the ability of the legislative and executive branches of government to respond effectively to developing societal circumstances that become apparent through claims filed in state courts. Because the civil justice system directly touches everyone in contemporary American society — through housing, food, education, employment, household services and products, personal finance, and commercial transactions — ineffective civil case management by state courts has an outsized effect on public trust and confidence compared to the criminal justice system. If state court policymakers are to return to the traditional role of state courts as the primary forum for dispute resolution, civil justice reform can no longer be delayed or even implemented incrementally through mere changes in rules of procedure. It is imperative that court leaders move with dispatch to improve civil case management with tools and methods that align with the realities of modern civil dockets to control costs, reduce delays, and ensure fairness for litigants.

Ineffective civil case management by state courts has an outsized effect on public trust and confidence.



Concerns about the slow pace, high costs, procedural complexity, and lack of predictable outcomes associated with civil litigation have been raised repeatedly for more than a century.¹ Many of the court reform efforts of the 20th century were intended to address these concerns even as courts struggled to manage rapidly expanding criminal, family, and juvenile caseloads. After the federal judiciary adopted uniform rules of civil procedure in 1934, the vast majority of state courts followed suit, enacting state rules of civil procedure that often mirrored the federal rules verbatim. In subsequent decades, courts experimented with a variety of procedural and administrative reforms to the civil justice system including simplified evidentiary requirements for small claims cases, front-loading discovery through automatic disclosure of witnesses and other key evidence supporting each party's claims and defenses, differentiated caseload management, increased judicial case management, and alternative dispute resolution (ADR) programs.

CHALLENGES CONFRONTING THE CIVIL JUSTICE SYSTEM

Despite the good intentions, it is clear that these efforts have either been an inadequate response to current problems or have been rendered obsolete by new challenges confronting the civil justice system. In some instances, reform efforts have even created new problems. A detailed description of the myriad issues confronting the contemporary civil justice system is beyond the scope of this report and, in any case, would merely duplicate a great deal of scholarly work. Nevertheless, a brief summary of the most common complaints and some applicable responses helps to illustrate the scope of the problem.

- **Pleadings.** The complaint and answer are the formal court documents that initiate a civil case and articulate the factual and legal basis for any claims or defenses. Increasingly, courts have moved from notice pleading, in which plaintiffs merely state the initiation of a lawsuit, to fact pleading, in which plaintiffs are required to state the factual basis for the claim. Under a fact pleading standard, defendants likewise must state the factual basis for any legal defenses they plan to raise. The rationale for fact pleading rather than notice pleading is twofold. First, because both parties have knowledge of the factual basis for their opponent's claims, they can prepare more promptly and efficiently for subsequent stages of the litigation process (e.g., discovery, settlement negotiations). Second, fact pleading is also intended to minimize frivolous litigation by requiring both parties to make a sufficient investigation of the facts before filing claims, thus preventing the expenditure of needless time, energy, and resources to defeat unsupported claims.² In 2009, the U.S. Supreme Court further heightened the fact pleading standard. In federal courts, plaintiffs must now allege sufficient facts to allow a trial judge to determine the plausibility of a claim.³ This raises Seventh Amendment concerns that judicial plausibility assessments based on the factual content in pleadings will displace the role traditionally played by juries in a full evidentiary trial.⁴

¹ Roscoe Pound is credited with first raising these concerns in an address to the American Bar Association in 1906. Roscoe Pound, Address at the American Bar Association Convention: The Causes of Popular Dissatisfaction with the Administration of Justice in A.B.A. Rep., pt. I, 395-417 (1906).

² The ease with which litigants may assert legally or factually unsupported claims is a constant concern in the civil justice system. Civil justice reform leaders initially hailed efforts to impose sanctions on frivolous filings. However, many scholars have regretted the institution of such reforms due to satellite litigation over whether, in fact, the claims and/or defenses were known to be unsupported when filed. Joint comment by Helen Hershkoff et al. on Proposed Amendment to Federal Rules of Civil Procedure, to Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, 7 (Feb. 25, 2014), available at <http://www.afj.org/wp-content/uploads/2014/02/Professors-Joint-Comment.pdf>. See also Lonny Hoffman, *The Case Against the Lawsuit Abuse Reduction Act of 2011*, 48 HOUSTON L. REV. 545 (2011).

³ See *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (holding Iqbal's factual pleadings insufficient to state a claim); *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007) (holding a complaint insufficient absent factual context to support plausibility for relief).

⁴ Kenneth S. Klein, *Ashcroft v. Iqbal Crashes Rule 8 Pleading Standards on to Unconstitutional Shores*, 88 NEB. L. REV. 261 (2009). Scholars have also examined Seventh Amendment consequences of heightened factual pleading requirements in securities fraud actions. Allan Horwich and Sean Siekkin, *Pleading Reform or Unconstitutional Encroachment: An Analysis of the Seventh Amendment Implications of the Private Securities Litigation Reform Act*, 35 SEC. REG. L. J. 4 (2007).

- **Service of process.** Traditional procedures for serving notice in civil lawsuits are functionally obsolete, especially in suits against individuals. Typical methods of serving process are riddled with inaccuracies and inadequacies. In some cases, private process service companies have undergone civil lawsuits and criminal prosecutions regarding service practices.⁵ One study of process service in New York's King and Queen Counties found that personal service was achieved in only six percent of civil debt collection cases.⁶ Service of process via newspaper publication and/or posting on the courthouse door seems quaint in light of technological advancements. The consequences of inadequate service are especially damaging for individuals who only learn of a case through court orders authorizing award enforcement by garnishment or asset seizure following a default judgment. Technological advancements have alleviated some of the issues surrounding inadequate service of process. Electronic service provides a method of serving process for especially difficult-to-reach parties. The cost-saving potential of electronic service is also incredibly high. However, electronic service is not without its limitations with potential controversies over receipt of service and sufficiency of notice.⁷
- **Discovery.** While opinions on excessive discovery may vary from the plaintiff to the defense bar, several national surveys report a consensus that the time devoted to discovery is the primary cause of delay in the litigation process.⁸ Most state court

rules and case law permit discovery for anything that might lead to admissible evidence. This results in an unfocused, and often disproportionate, approach to discovery in which lawyers fail to identify key issues and spend time and effort investigating tangential issues. This expansive nature of discovery and the resulting delays translate to increased litigation costs. In fact, there are frequent complaints that discovery costs often dwarf the value of the case.⁹ The traditional law firm business model (based on the billable hour) and the lack of disciplinary action in response to excessive discovery filings encourages lawyers to do more discovery rather than smart discovery.

- **Electronically Stored Information (ESI).** Evidence needed to support claims and defenses increasingly exists only in electronic format rather than live witness testimony, papers, or other tangible objects. The costs of ESI discovery include expenses associated with processing old data, reviewer complications based on qualitative differences between paper and electronic documents, and the production of documents.¹⁰ The expertise needed to organize, review and analyze electronic records is also very expensive, further increasing the costs of the discovery process. A lack of experience and knowledge on the part of judges and attorneys about how to assess and manage ESI discovery often leads to overly broad requests for production. The effects of over-production are especially felt in specialized areas of civil litigation such as business litiga-

⁵ See NEW YORK CITY BAR ASSOCIATION COMMITTEE ON NEW YORK CIVIL COURT COMMITTEE ON CONSUMER AFFAIRS, OUT OF SERVICE: A CALL TO FIX THE BROKEN SERVICE PROCESS INDUSTRY available at <http://www.nycbar.org/pdf/report/uploads/ProcessServiceReport4-10.pdf>; Bernice Yeung, "Bay Area Residents Sue Process Servers for Failing to Deliver Lawsuits" CALIFORNIA WATCH (May 24, 2012); Press Release, New York State Office of the Attorney General, The New York State Attorney General Andrew M. Cuomo Announces Guilty Plea of Process Server Company Owner Who Denied Thousands of New Yorkers Their Day in Court (Jan. 15, 2010) available at <http://www.ag.ny.gov/press-release/new-york-state-attorney-general-andrew-m-cuomo-announces-guilty-plea-process-server>.

⁶ MFY LEGAL SERVICES, JUSTICE DISSERVED: A PRELIMINARY ANALYSIS OF THE EXCEPTIONALLY LOW APPEARANCE RATE BY DEFENDANTS IN LAWSUITS FILED IN THE CIVIL COURT OF THE CITY OF NEW YORK 6 (2008) available at http://www.mfy.org/wp-content/uploads/reports/Justice_Disserved.pdf.

⁷ Ronald Hedges, Kenneth Rashbaum, and Adam Losey, *Electronic Service of Process at Home and Abroad: Allowing Domestic Electronic Service of Process in the Federal Courts*, 4. FED. CTS. L. REV. 55, 66, 72-73 (2011).

⁸ Based on responses of a national survey of the American College of Trial Lawyers, American Bar Association Litigation Section, and the National Employment Lawyers Association. Judicial responses to an accompanying survey also indicated that the time required to complete discovery was the source of the most significant delay in the litigation process. CORINA GERETY, EXCESS AND ACCESS: CONSENSUS ON THE AMERICAN CIVIL JUSTICE LANDSCAPE 11 (2011) [hereinafter EXCESS AND ACCESS].

⁹ See Paula L. Hannaford-Agor & Nicole L. Waters, *Estimating the Cost of Civil Litigation*, 20(1) CASELOAD HIGHLIGHTS 1, 2013 [hereinafter CASELOAD HIGHLIGHTS].

¹⁰ John Beisner, *Discovering a Better Way: The Need for Effective Civil Litigation Reform*, 60 DUKE L. J. 547, 564-567 (2010).

tion. As the amount of ESI grows, concerns about costs associated with developing an efficient and effective ESI discovery process are paramount.¹¹

- **Expert evidence.** Scientific or expert evidence is needed to support a growing proportion of claims in all types of civil cases with respect to both causation and damages. Procedures developed to govern the admissibility of expert evidence require judges, who are rarely subject matter experts, to make a twofold assessment: 1) the expert's qualifications to opine on a given issue and 2) whether the expert's opinion is sufficiently grounded in recognized science to be admissible in a court of law.¹² This process has raised Seventh Amendment concerns related to judges usurping the jury's role in making determinations about the weight of expert evidence.¹³
- **Mandatory alternative dispute resolution (ADR).** ADR encompasses a range of services including mediation, arbitration, and neutral case evaluation and is an integral part of virtually all civil litigation. It offers opportunities for litigants to settle their cases, usually in less time than a formal court hearing (trial) and often at less cost. Beginning in the early 1980s, many courts introduced procedural requirements that litigants engage in one or more forms of ADR, or at the very least consider doing so, especially in lower-value cases (e.g., less than \$50,000).¹⁴ ADR

programs are not without their critics.¹⁵ Some allege that mandatory ADR imposes an additional procedural hurdle on litigants and drives up the cost of litigation. Other complaints have focused on the qualifications of the professionals who conduct the ADR proceedings. The fees charged by ADR professionals also often exceed court fees.¹⁶ Because courts must ensure the quality of their mandatory arbitration programs, there are concerns that the maintenance costs for mandatory ADR programs will pass on unnecessary costs to all litigants.

- **Summary judgment.** Summary judgment rulings in federal and state courts have broad implications for the civil justice system.¹⁷ The resolution of a case at the early stages of litigation both halts the unnecessary continuation of litigation and contributes to the expansion of discovery. Rule changes and subsequent case law have facilitated summary judgment rulings in recent decades,¹⁸ creating controversy as jurisprudence and rules continue to develop.¹⁹ Variations in local rules and ruling propensities of local judges can also complicate summary judgment procedures and make the summary judgment stage a source of uncertainty for litigants.
- **Perceived unpredictability in trial outcomes, especially jury verdicts.** The proportion of civil cases disposed by trial has decreased dramati-

¹¹ EXCESS AND ACCESS, *supra* note 8, at 14.

¹² *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993), further defined the judicial gatekeeping role with respect to expert witness testimony.

¹³ See Allan Kanner and M. Ryan Casey, *Daubert and the Disappearing Jury Trial*, 69 U. PITT. L. REV. 281 (2007-2008) (discussing the impact of the *Daubert* ruling and subsequent seventh amendment concerns in the civil justice system). While it will not alleviate constitutional concerns, better training for trial judges making expert witness determinations can help ensure more knowledgeable determinations regarding the admissibility of expert witness testimony. See also *Forensic Sciences: Judges as Gatekeepers*, in JUDGES' J. (Summer 2015) (publishing articles by scientific experts to provide knowledge to judges and lawyers to assess the reliability of expert evidence).

¹⁴ Oregon has a mandatory ADR provision for cases under 50,000. OR. REV. STAT. § 36.400 (3) (2011). New Hampshire requires mediation in small claims cases in which the jurisdictional amount is in excess of \$5,000. N.H. Cir. Ct. R. Dist. Div. 4.29. Some jurisdictions classify certain summary jury trial programs as ADR programs. For examples of jurisdictions in which summary jury trials are classified as ADR programs, see PAULA HANNAFORD-AGOR et al., SHORT, SUMMARY, & EXPEDITED: THE EVOLUTION OF CIVIL JURY TRIALS (2012) [*hereinafter* SHORT, SUMMARY & EXPEDITED].

¹⁵ Michael Heise, *Why ADR Programs Aren't More Appealing: An Empirical Perspective* (Cornell Law Faculty Working Paper No. 51) available at http://scholarship.law.cornell.edu/clscops_papers/51/.

¹⁶ RAND CORP., ESCAPING THE COURTHOUSE, RB-9020 (1994) (available at http://www.rand.org/pubs/research_briefs/RB9020/index1.html).

¹⁷ See Brooke Coleman, *Summary Judgment: What We Think We Know Versus What We Ought to Know*, 43 LOY. U. CHI. L. J. 1 (2012) (describing various scholarship on summary judgment effects).

¹⁸ John Langbien, *The Disappearance of Civil Trial in the United States*, 122 YALE L.J. 522, 566-568 (2012).

¹⁹ For a succinct analysis of summary judgment in the federal courts, see WILLIAM SCHWARZER et al., THE ANALYSIS AND DECISION OF SUMMARY JUDGMENT MOTIONS: A MONOGRAPH ON RULE 56 OF THE FEDERAL RULES OF CIVIL PROCEDURE (1991).

ically over the past 40 years.²⁰ The reasons for the decline are numerous and, in some instances, quite subtle. They include increases in the availability of alternative dispute resolution (ADR) programs including contractually required binding arbitration in many consumer and employment contracts; the costs for discovery and pretrial stages of litigation, which have prompted some litigants to forego trials for a negotiated settlement; delays in scheduling trials due to the increased volume of civil cases without commensurate increases in court resources; and widespread public perceptions about the unpredictability of trial outcomes, especially in jury trials.²¹ Although empirical research confirms that jury trial verdicts are actually very predictable,²² the shift away from trial as the dominant mode of case disposition has likewise reduced the number of attorneys with jury trial experience. Consequently, attorneys are less qualified to assess the merits of their cases and to advise clients about taking cases to trial by jury.²³

- **Lack of court resources allocated to civil justice.** Constitutional guarantees of a speedy trial in criminal cases tend to relegate civil matters to the bottom of scheduling priorities.²⁴ This is exacerbated in tight budgetary cycles as courts may be operating under furloughs or reduced hours, further decreasing scheduling options for civil cases. Some courts have responded by creating specialized courts, especially for business or commercial litigation, to address the recent lack of court resources. Although these dockets and courts guarantee civil litigation its

own niche in court scheduling, sustaining the dockets may become challenging as there must be a sufficient case volume to justify the expenditures. Additionally, efforts to provide scheduling priorities within civil case categories might meet statutory requirements,²⁵ but the bulk of civil litigation is then left last in line for scheduling.

CIVIL JUSTICE IMPROVEMENT EFFORTS

The general complaint concerning these challenges is that collectively they contribute to unsustainable cost and delay in civil litigation, ultimately impeding access to justice. These problems have not been allowed to develop entirely unchecked, however. Across the country, court leaders have developed a variety of reform efforts to address issues in the civil justice system. For example, some states have designed and implemented programs targeting specific types of cases, especially related to business, commercial, or complex litigation. The California Judicial Council instituted a complex civil litigation pilot program in response to litigant concerns regarding the “time and expense needed to resolve complex cases, the consistency of decision making, and perceptions that the substantive law governing commercial transactions was becoming increasingly incoherent.”²⁶ Fulton County, Georgia implemented a Business Court that moves complex contract and tort cases through the litigation process in half the amount of time the general docket moves the same types of cases.²⁷ Other states have designed and implemented more tailored projects. In 2009, Colorado began developing pilot rules and procedures for the Colorado Civil Access Pilot Project (CAPP) applicable to business actions

²⁰ Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIR. LEGAL ST. 459 (2004) [hereinafter *The Vanishing Trial*].

²¹ The first issue of the *Journal of Empirical Legal Studies* published the papers presented at the ABA Vanishing Trial Symposium, which addressed these and other issues related to vanishing trials.

²² See generally NEIL VIDMAR & VALERIE P. HANS, AMERICAN JURIES: THE VERDICT (2007) (summarizing several decades of empirical research on juror decision-making in a variety of contexts and concluding that jury verdicts are largely rational and conform to the weight of the evidence presented at trial).

²³ Tracy W. McCormack & Christopher J. Bodnar, *Honesty is the Best Policy: It's Time to Disclose Lack of Jury Trial Experience*, 23 GEO. J. LEG. ETHICS 1 (Winter 2010).

²⁴ U.S. CONST. amend VI. State constitutions also contain provisions guaranteeing the right to a speedy trial. See e.g. MO. CONST. art. I, § 18(a).

²⁵ It should be noted that certain civil matters such as protective order hearings also have temporal scheduling requirements and supplant more generic civil matters in scheduling. For examples of these requirements see e.g., N. H. REV. STAT. ANN. § 173-B:3 (2014) (setting timeline for domestic violence protective order hearing); VA. CODE ANN. § 16.1-252 (2014) (setting timeline for removal hearings in child abuse and neglect matters).

²⁶ Nat'l Center for St. Cts., *Complex Litigation: Key Findings from the California Pilot Program*, 3(1) CIVIL ACTION 1 (2004).

²⁷ Sixty-five percent faster disposition time for complex contract cases and 56 percent faster disposition time for complex tort cases. FULTON COUNTY SUPERIOR COURT, BUSINESS COURT: 2014 ANNUAL REPORT 4 (2014).

in the Colorado district courts. The CAPP program focused on developing new procedures to streamline the pretrial discovery process and minimize expert witness costs.²⁸ The final pilot rules were implemented in 2012 and have been authorized for application to cases filed through December 31, 2014.²⁹

Similarly, New Jersey, Pennsylvania, and Texas have all undertaken efforts to coordinate the management of mass tort litigation through the promulgation of court rules. For example, the Supreme Court of New Jersey promulgated a rule enabling the unification of qualifying mass tort cases for central management purposes.³⁰ The rule grants the Administrative Director of the Courts the power to develop criteria and procedures for unifying the mass tort litigation, subject to approval by the Court. Complex litigation centers generally serve as the clearinghouse for such litigation. Similar coordination efforts in the form of dedicated trial calendars have also taken place for landlord/tenant and mortgage foreclosure cases.

Federal and state courts have also pursued procedural reforms on a broader scale. As discussed above, federal courts have heightened pleading standards. New Hampshire also altered their pleading standards (from notice pleading to fact pleading) in a two-county pilot program implemented in 2010. The pilot rules were subsequently adopted on a statewide basis effective March 1, 2013.³¹ Statewide rule

changes in Utah have altered the discovery process in a variety of ways including proportional discovery requirements and tiered discovery based on the amount in controversy.³² Discovery reforms have also taken place in the federal courts. The Seventh Circuit Electronic Discovery Pilot Program aims to reduce the rising costs of e-discovery through a myriad of reforms and is currently in phase three of its implementation.³³

Some federal agencies are also focusing on civil justice improvement in certain types of cases. For example, the Consumer Financial Protection Bureau (CFPB) recently issued proposed rules of procedure for debt collection cases filed in state courts to address complaints concerning venue, service of process, and disclosure of the factual basis for debt collection claims.³⁴ Research organizations such as the NCSC and the Institute for the Advancement of the American Legal System (IAALS) have also coordinated with pilot project jurisdictions to conduct comprehensive outcome and process evaluations of reform efforts. These implementation and evaluation reports are a crucial aspect of ensuring effective and efficient reforms of the civil justice system. This is especially the case as court leaders continue to take a proactive stance towards civil justice reform through efforts such as the Conference of Chief Justices (CCJ) Civil Justice Improvements Committee.³⁵

²⁸ State of Colorado Judicial Branch, A History and Overview of the Colorado Civil Access Pilot Project Applicable to Business Actions in District Court 3, *available at* http://www.courts.state.co.us/userfiles/file/Court_Probation/Educational_Resources/CAPP%20Overview%207-11-13.pdf. CORINA D. GERETY & LOGAN CORNETT, MOMENTUM FOR CHANGE: THE IMPACT OF THE COLORADO CIVIL ACCESS PILOT PROJECT (October 2014).

²⁹ *Id.* at 2.

³⁰ N. J. SUP. CT. R. 4:38A.

³¹ PAULA HANNAFORD-AGOR ET AL., NEW HAMPSHIRE: IMPACT OF THE PROPORTIONAL DISCOVERY/AUTOMATIC DISCLOSURE (PAD) PILOT RULES 2 (2013) [*hereinafter* NEW HAMPSHIRE PAD RULES REPORT].

³² PAULA HANNAFORD-AGOR & CYNTHIA LEE, UTAH: IMPACT OF THE REVISIONS TO RULE 26 ON DISCOVERY PRACTICE IN THE UTAH DISTRICT COURTS (April 2015) [*hereinafter* UTAH RULE 26 REPORT]. For a synopsis of amendments to Utah's Rules of Civil Procedure see IAALS, Utah Rules of Civil Procedure, <http://iaals.du.edu/library/publications/utah-changes-to-civil-disclosure-and-discovery-rules> (last visited April 14, 2014).

³³ For information on the Seventh Circuit Pilot Program see the program's website at <http://www.discoverypilot.com/>.

³⁴ Advance Notice of Proposed Rulemaking from Consumer Financial Protection Bureau, 78 Fed. Reg. 218 (proposed Nov. 12, 2013) (to be codified at 12 CFR Part 1006).

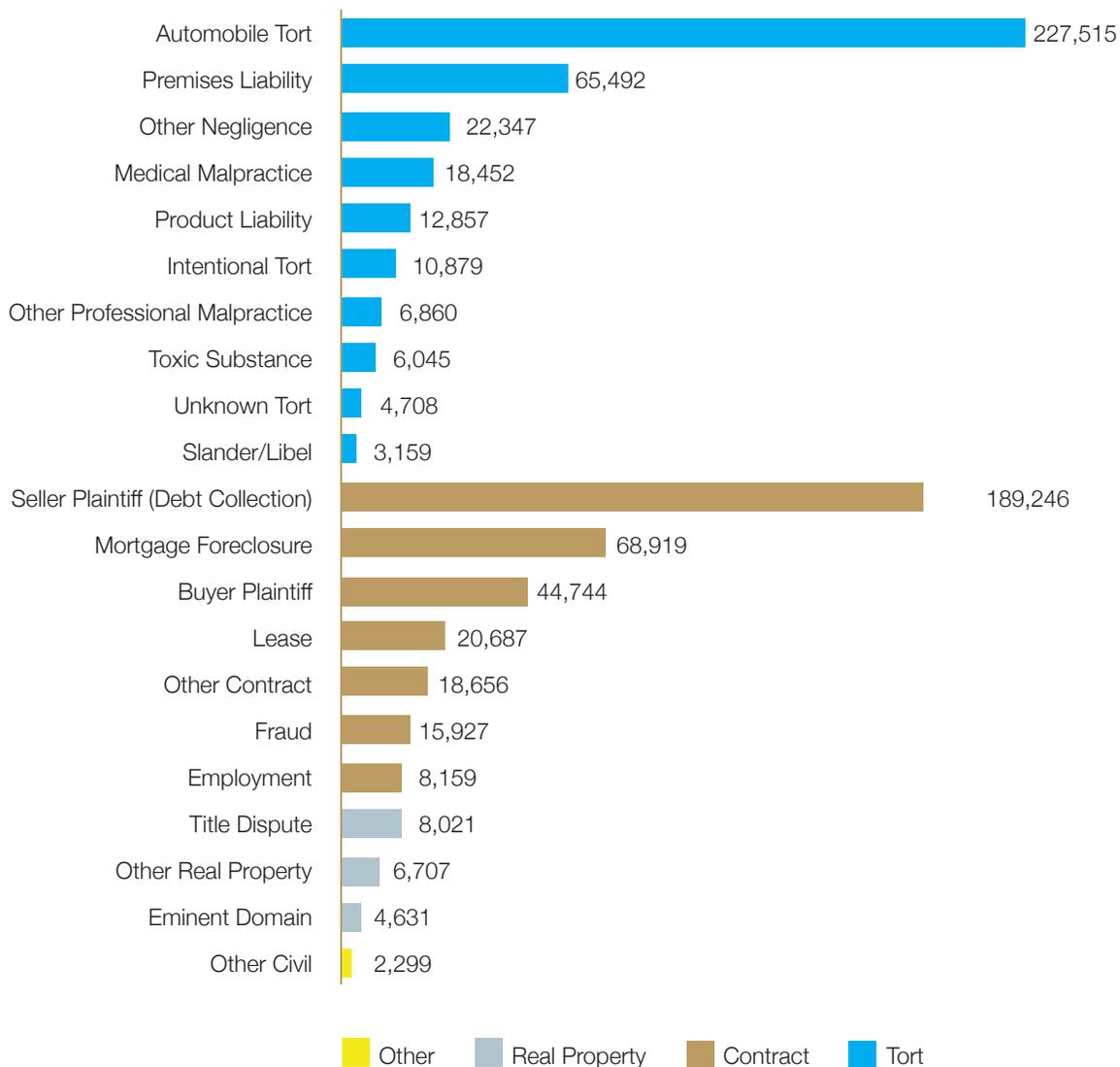
³⁵ In 2013, The Conference of Chief Justices created the Civil Justice Improvements Committee. The mission of the committee is to translate the lessons learned from state pilot projects, applicable research, and rule changes into guidelines and best practices for civil litigation. The committee's mandate also includes the development of caseload management reforms for the improvement of the state court civil justice system. Committee membership was finalized in the spring of 2014 and consists of judges, lawyers, academics, researchers, and court administrators with broad expertise related to civil litigation issues. The committee membership strikes a balance between the plaintiff and defense bars, trial and appellate judges, and court administrators with case management expertise. Both the National Center for State Courts (NCSC) and the Institute for the Advancement of the American Legal System (IAALS) provide research and logistical support to the committee. The Civil Justice Improvements Committee is conducting the bulk of its work through plenary meetings and subcommittees. This report is meant to provide an overview of the current landscape of civil litigation in state courts for the committee members.

An Incomplete Picture of the Civil Justice System

The vast majority of civil cases in the United States are filed in state courts rather than federal courts.³⁶ However, other than the actual number of filings, and sometimes number of dispositions, detailed information about civil caseloads in the United States such as caseload composition, case outcomes, and

filing-to-disposition time, is difficult to obtain. The most recent large-scale national study of civil caseloads is the 1992 *Civil Justice Survey of State Courts* (see Figure 1).³⁷ In that study, the NCSC collected detailed information about civil cases disposed in 1992 in the general jurisdiction courts of 45 large, urban counties

Figure 1: 1992 Civil Justice Survey of State Courts, Case Types



³⁶ In 2013, litigants filed approximately 16.9 million civil cases in state courts compared to 259,489 civil cases filed in U.S. District Courts. NCSC COURT STATISTICS PROJECT, EXAMINING THE WORK OF STATE COURTS, 2013 (2015) (this estimate includes probate and mental health filings in addition to general civil filings). Federal Judicial Caseload Statistics, Table C *available at* <http://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables?tn=C&pn=All&t=68&m%5Bvalue%5D%5Bmonth%5D=12&y%5Bvalue%5D%5Byear%5D=2014>.

³⁷ The *Civil Justice Survey of States Courts* was a periodic study of civil litigation funded by the U.S. Department of Justice, Bureau of Justice Statistics (BJS). The statistical frame of estimating characteristics of cases filed in state courts based on filings in a sample of the 75 most populous counties was a technique employed by BJS to estimate national trends for a number of ongoing data collection efforts. Subsequent iterations of the *Civil Justice Survey of State Courts* (1998, 2001, and 2005) have focused exclusively on case characteristics and outcomes for bench and jury trials rather than the full range of possible case outcomes.

and used that information to estimate civil caseloads and case outcomes for the 75 most populous counties in the country.³⁸ Of more than 750,000 civil cases disposed in the 75 most populous counties, it estimated that approximately half (49%) alleged tort claims, 48 percent alleged contract claims, and two percent were real property disputes. Automobile torts were the single largest subcategory of tort cases, accounting for nearly two-thirds (60%) of all tort cases. In contrast, product liability and medical malpractice cases, which generate some of the greatest criticisms of the civil justice system, reflected only four percent of total civil cases combined. More than half (52%) of the contract cases were debt collection (seller-plaintiff) cases, and mortgage foreclosures accounted for another 18 percent of total civil cases.³⁹

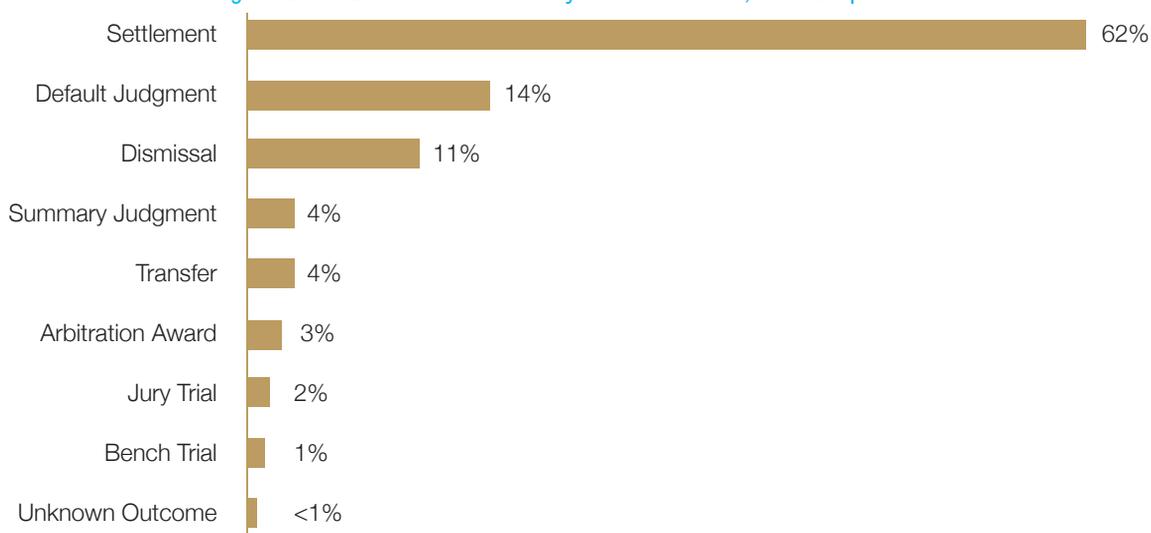
Settlement by the parties was the single most common outcome for a civil case (62%), compared to 14 percent default judgments, 10 percent dismissals for failure to prosecute, four percent transfers to

another court, four percent summary judgment, and only three percent judgments following a bench or jury trial (see Figure 2).

Subsequent iterations of the *Civil Justice Survey of State Courts* focused exclusively on bench and jury trials. Consequently, more recent descriptions of civil justice caseloads have relied on aggregate statistics reported to the NCSC as part of the Court Statistics Project as well as studies of specific issues in individual state or local courts. For a variety of reasons, these types of studies are often unable to provide definitive answers to the most commonly asked questions.

Part of the difficulty stems from the inability of many case management systems to collect and generate reports about civil caseloads. Most case management systems were initially developed to schedule and record case filings and events (e.g., hearings and trials) and report the progress of the case through the system in general terms. Although some of these

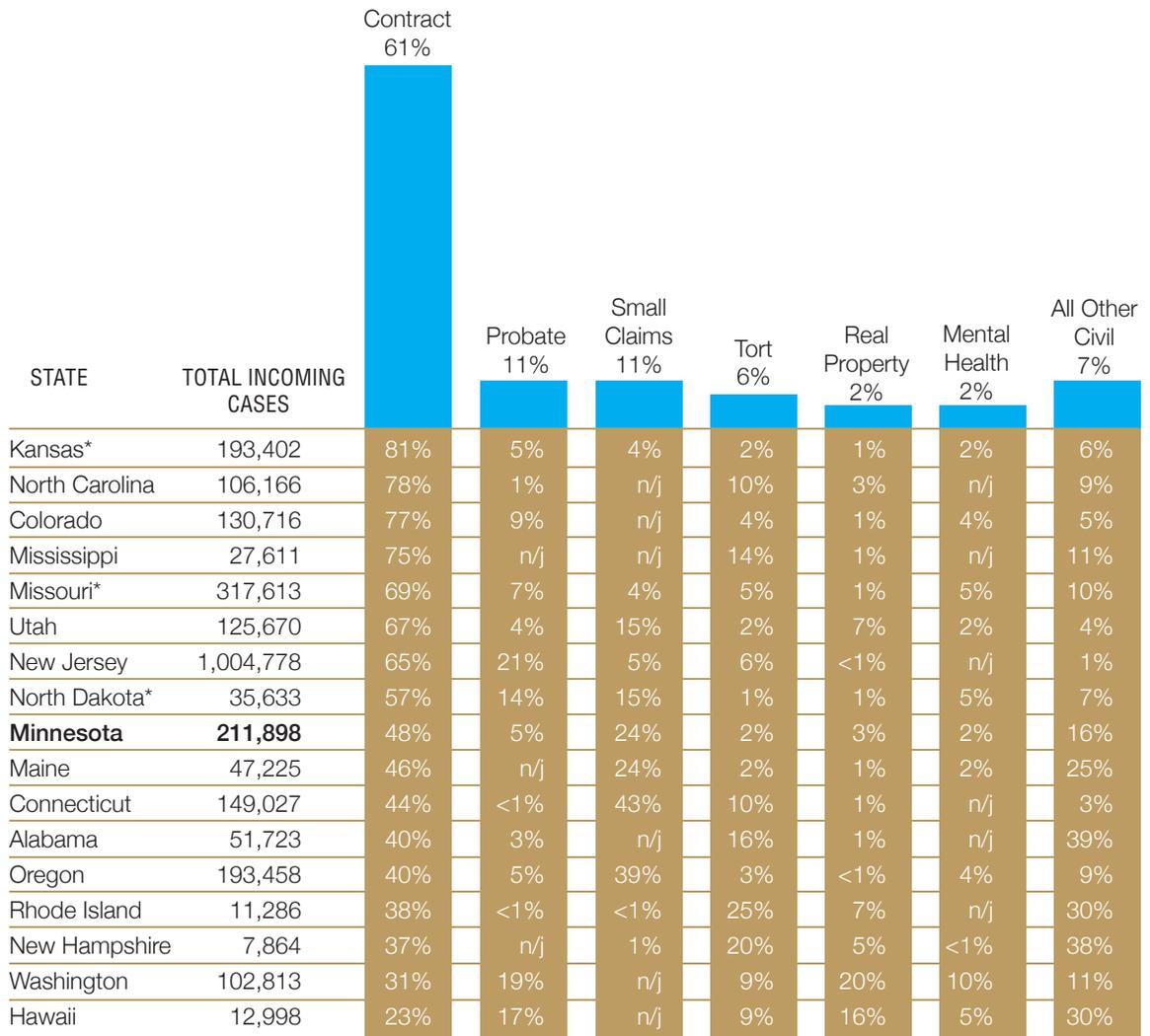
Figure 2: 1992 Civil Justice Survey of State Courts, Case Dispositions



³⁸ In the 1992 *Civil Justice Survey of State Courts*, the U.S. Department of Justice, Bureau of Justice Statistics employed a 2-stage stratified sample in which 45 of the 75 most populous counties were selected based on aggregate civil cases filed in 1990. For a detailed description of the sampling methodology, see CAROL J. DEFRANCIS ET AL., CIVIL JURY CASES AND VERDICTS IN LARGE COUNTIES 11 (July 1995). The *Civil Justice Survey of State Courts* restricted data collection to cases identified as general civil (e.g., tort, contract, and real property) in which monetary damages were sought. The data excluded cases involving equitable relief as well as probate/estate, mental health, domestic, other civil, and unknown case types.

³⁹ Thirty-one states permit mortgage holders to foreclose on property through an administrative procedure specified by statute without court involvement; 20 states require that foreclosures be conducted through the court. See REALTYTRAC, FORECLOSURE LAWS AND PROCEDURES BY STATE, <http://www.realtytrac.com/real-estate-guides/foreclosure-laws/>.

Figure 3: Incoming Civil Caseload Composition in 17 General Jurisdiction Courts, 2010



Note: States in bold have a single-tiered court system. "n/j" indicates no jurisdiction over that case type.

* These states process all civil cases in their general jurisdiction court.

"All Other Civil" cases include civil appeals, habeas corpus, non-domestic restraining orders, tax cases, writs, and other civil cases.

Source: R. LaFountain et al., Examining the Work of States Courts: An Analysis of 2010 State Court Caseloads (NCSC 2012).

systems capture detailed case-level information, very few are programmed to extract and report that information in a format conducive to a broader management-oriented and case propulsion perspective.

DATA DEFINITIONS

A related issue is the relative lack of uniformity in the use of case definitions and counting rules. In most courts, the term "general civil" encompasses tort, contract, and real property filings and differentiates those cases from probate/estate, domestic relations, and mental health cases. But in many courts, court

automation systems are not programmed to offer a more finely grained picture of civil caseloads. For example, Figure 3 documents civil filings from general jurisdiction courts in 17 state single-tier or general jurisdiction courts that were able to breakdown their caseloads to seven categories in 2010. The wide variation in percentages across courts and case types is largely due to differences in how those states define and count cases, differences in whether cases are filed in the general jurisdiction court or in limited jurisdiction courts (which are not reflected in the graph), and differences in state law and community characteristics that

affect the types of legal disputes that might be litigated in those states.

Similarly, courts differ with respect to how case events are counted. For example, when a civil case has been closed and is then reopened for some reason (e.g., a default judgment that is later challenged for lack of service in the original case), some courts will count the case as a new case. Other courts will count this as a reopened case and still others as the same case that was originally adjudicated. Although there is no requirement that state and local courts adopt uniform case definitions and counting rules, the NCSC Court Statistics Project has promulgated standardized data definitions and counting rules for more than three decades.⁴⁰ Courts are increasingly adopting the standards and integrating them into their case management systems to be able to compare their caseloads with those of other courts and to take advantage of more sophisticated case management tools available in newer case automation systems.

DATA COLLECTION PRIORITIES

Another factor contributing to the difficulty in obtaining a detailed national picture about the civil justice system is courts' philosophical focus on operational process rather than substantive outcomes in civil litigation. Whether an enforceable judgment had been entered in a case is generally considered operationally more important than which party prevailed in the case or what remedy the judgment actually ordered (e.g., money damages, specific performance, or injunctive relief). Those details are obviously important to the parties, and legislative and executive leaders might be interested for the purpose of informing public policy, but the primary objective of the judicial branch has always been to provide an objectively fair process for resolving disputes. Thus, focusing attention on substantive outcomes was often viewed as unseemly and potentially detrimental to public confidence in the objectivity and neutrality of the judicial branch. Documentation of case outcomes, where it existed at

all, was often captured in text files in case automation systems and was consequently extremely difficult to extract and manage in an aggregate format.

Clearance rates, which traditionally express the ratio of new filings to dispositions over a given period of time, served as the primary measure of court efficiency. Clearance rates do not, however, document the amount of time expended from filing to disposition. Beginning in the mid-1970s, concerns about court delay led many prominent court and bar organizations to promulgate time standards as aspirational deadlines for resolving cases.⁴¹ A major criticism of these standards was that they were often based on the amount of time that these organizations thought cases should take to resolve rather than the amount of time that cases actually took to resolve. For example, the national time standards promulgated by the Conference of State Court Administrators (COSCA) in 1983 specified that all civil cases resolved by jury trial should be disposed within 18 months of filing, and all non-jury civil cases should be tried, settled, or disposed within 12 months of filing. Based on the cases examined in the 1992 *Civil Justice Survey of State Courts*, however, less than half (49%) of non-jury cases met those standards and only 18 percent of jury trial cases did so. The discrepancy between the aspirational time standards and actual disposition time served as a considerable disincentive for courts to adopt those standards, much less to publish their performance based on the standards. Since then, researchers have developed and promulgated more empirically based standards including the *Model Time Standards for State Trial Courts*, which was a collaborative effort by the Conference of Chief Justices, the Conference of State Court Administrators, the American Bar Association, the National Association for Court Management, and the NCSC. The *Model Time Standards* now recommend that 75 percent of civil cases should be fully disposed within 180 days, 90 percent within 365 days, and 98 percent within 540 days.

⁴⁰ The *State Court Model Statistical Dictionary* (1980), developed jointly by the Conference of State Court Administrators and the National Center for State Courts, was the first effort to provide a uniform set of data definitions. The Dictionary was revised in 1984 and again in 1989. The Dictionary was replaced with the *State Court Guide to Statistical Reporting* (Guide) in 2003. The most recent version of the Guide was published in 2014.

⁴¹ For a summary of the evolution of various time standards for civil cases, see RICHARD VAN DUIZEND, MODEL TIME STANDARDS FOR STATE TRIAL COURTS 13-15 (2011) [*hereinafter* MODEL TIME STANDARDS].

ORGANIZATIONAL STRUCTURE

Perhaps the largest hurdle to learning about civil litigation in the state courts lies at the heart of courts as organizations. State court organizational structures are the culmination of each state's unique legal history and efforts to improve the administration of justice. Accordingly, state courts organizational structures can be as unique as the constituencies they serve. Data collection efforts must accommodate these varying structures without sacrificing data integrity and reporting. To consider how this may be done, it is imperative to fully consider the diversity of organizational structures across courts with civil jurisdiction.

Figure 4 illustrates how state courts allocate jurisdiction over civil filings among general jurisdiction and limited jurisdiction courts. The most common organizational structure (20 states) involves a single general jurisdiction court and a single limited jurisdiction court. The two courts may have exclusive jurisdiction over particular types of cases or cases involving certain amounts-in-controversy. Some states provide for over-lapping (concurrent) jurisdiction for a specified range of cases based on amount-in-controversy. Ten states and the District of Columbia have only a single-tier general jurisdiction court for general civil cases, although many of these permit local courts to organize their dockets and judicial assignments based on case type or amount-in-controversy.

The remaining states exhibit some combination of multiple general jurisdiction and limited jurisdiction courts. In most instances, these courts are situated within individual counties, municipalities, or judicial divisions encompassing multiple counties. However, a few states also maintain statewide general or limited jurisdiction courts over specific types of cases. Examples include Courts of Claims in Michigan, New York, and Ohio, which have jurisdiction over civil cases in which the state is a litigant; Water Courts in Colorado and Montana, which have jurisdiction over civil cases involving claims to water rights; and Worker's Compensation Courts in Montana and Nebraska, which have jurisdiction over administrative agency appeals.

Eleven states have a single general jurisdiction court with two or more limited jurisdiction courts. In Georgia, for example, the Superior Court is the general jurisdiction court for the state's 149 counties; the Superior Court is organized into 49 judicial circuits and has jurisdiction over tort, contract, and all real property cases as well as civil appeals from the State Courts (70 courts), the Civil Courts (in Bibb and Richmond Counties, only), and the Municipal Courts (383 courts). The State Court has concurrent jurisdiction with the Superior Court for tort and contract cases; the Civil Courts have jurisdiction over tort and contract cases up to \$25,000 in Bibb County and up to \$45,000 in Richmond County; the Municipal Courts have jurisdiction over small claims up to \$15,000 and, in Bibb and Richmond Counties, concurrent jurisdiction with the Civil Court over tort and contract cases.

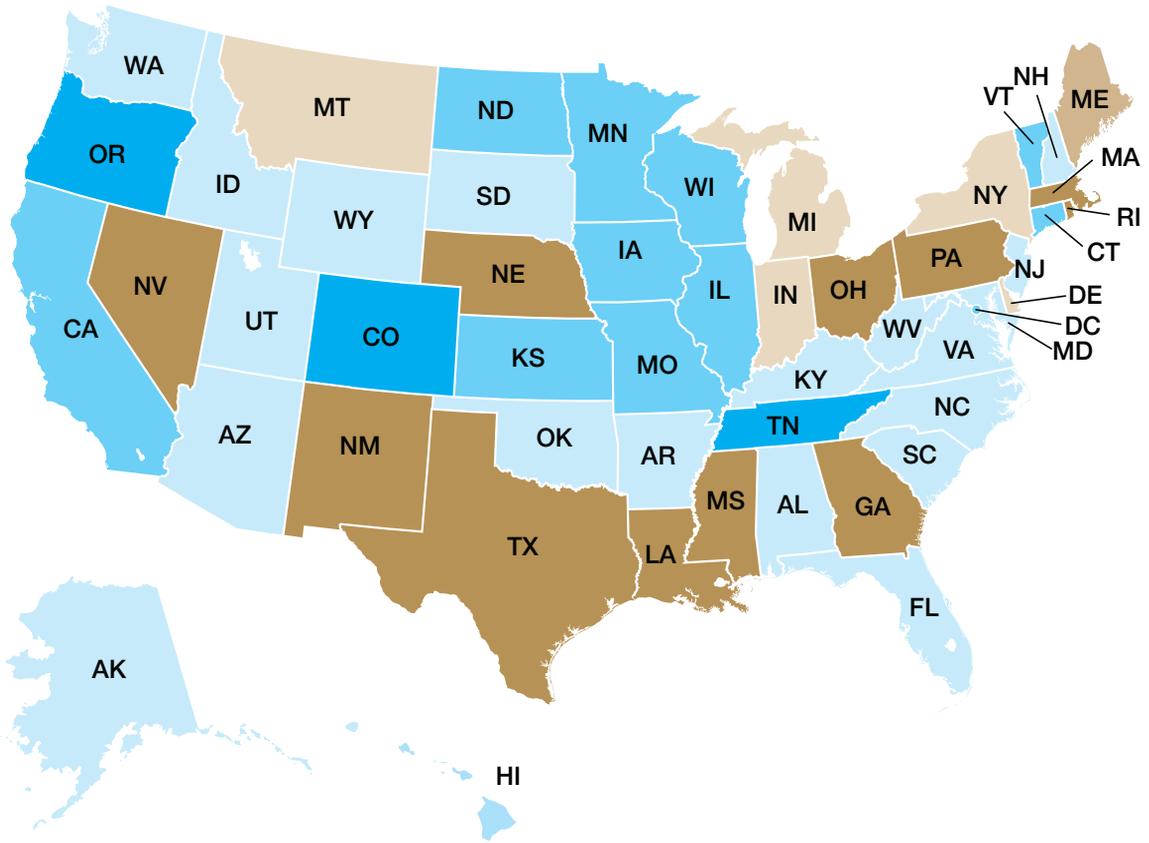
Eight states have multiple general jurisdiction courts with concurrent jurisdiction over general civil matters and one or more limited jurisdiction courts. Delaware, for example, has both a Court of Chancery, which has general jurisdiction over tort, contract, and real property cases seeking equitable relief, and a Superior Court, which has general jurisdiction over civil cases seeking money damages or other legal relief. In addition, Delaware has two limited jurisdiction courts: the Court of Common Pleas, which has jurisdiction over tort, contract, and real property cases up to \$50,000, and the Justice of the Peace Court, which has jurisdiction over tort, contract, and real property cases up to \$15,000.

Maine has two general jurisdiction courts — the District Court and the Superior Court — with concurrent jurisdiction over general civil matters. The primary difference in jurisdictional authority is that the District Court has exclusive jurisdiction over small claims cases (up to \$6,000) and cannot conduct jury trials in general civil cases.

Figure 5 illustrates the maximum amount-in-controversy thresholds for litigants to file in limited jurisdiction courts. The thresholds range from \$4,000 (Kentucky) to \$200,000 (Mississippi and Texas).⁴² In 18 states, the general jurisdiction and limited juris-

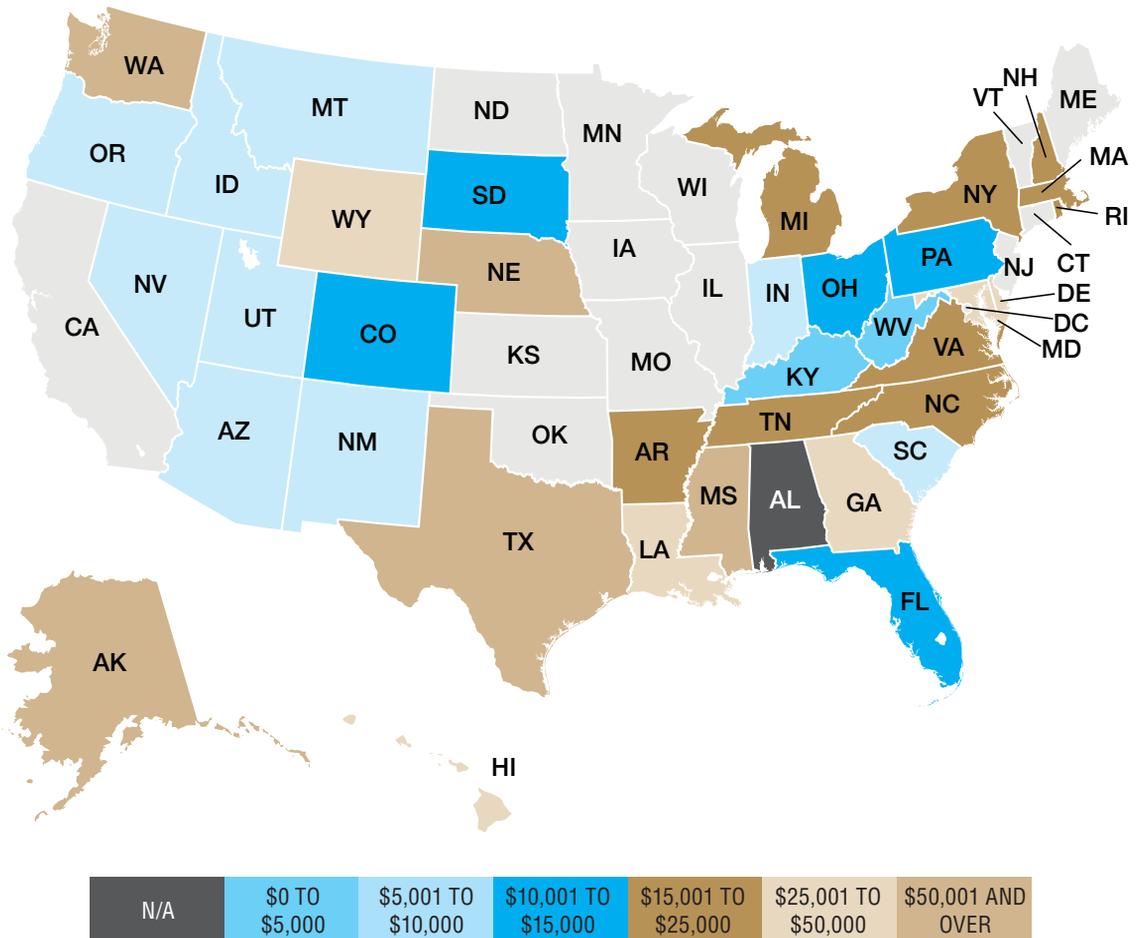
⁴² The County Court in Mississippi has jurisdiction over tort, contract, and real property cases seeking money damages or other legal relief up to \$200,000; the Chancery Court has jurisdiction over civil cases seeking equitable relief. County Courts in Texas have jurisdiction over tort, contract and real property cases up to \$200,000 and the Justice Courts have jurisdiction over tort, contract, and real property up to \$10,000.

Figure 4: Organization of State Court Jurisdiction over General Civil Cases



SINGLE TIER	1 GJC AND 1 LJC	2+ GJC AND 1 LJC	GJC AND 2+ LJC	2+ GJC AND 2+LJC	2+ GJC
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Figure 5: Maximum Amount-In-Controversy to File in Limited Jurisdiction Courts

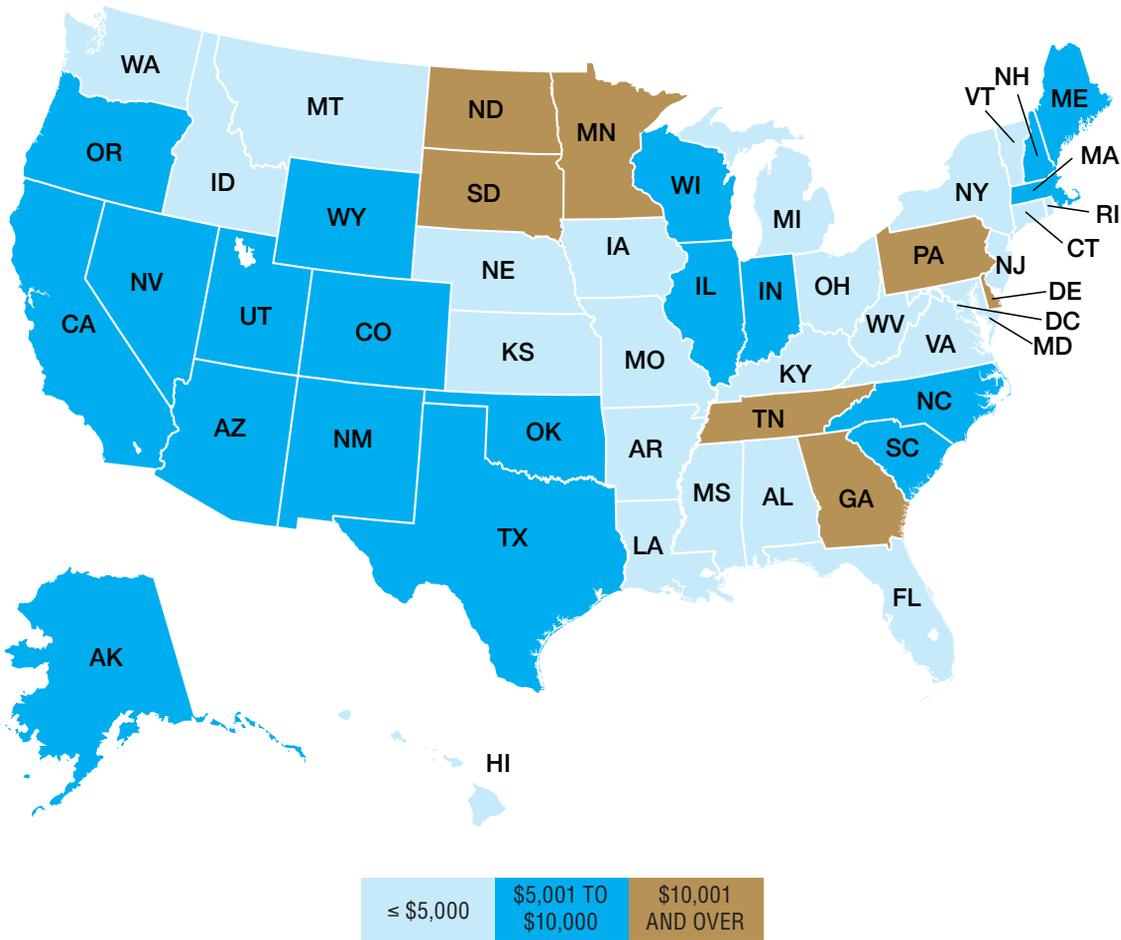


diction courts have concurrent jurisdiction up to the amount-in-controversy threshold for the limited jurisdiction court. That is, a litigant can opt to file a case up to the threshold in either the general jurisdiction or the limited jurisdiction court in those states. Ten states have concurrent jurisdiction for civil cases with the minimum threshold for filing in the general jurisdiction court ranging from as little as \$50 in Tennessee to as much as \$10,000 in Alabama. In the remaining nine states, the general jurisdiction and limited jurisdiction courts each have exclusive jurisdiction for their respective caseload thresholds ranging from \$4,001 in Kentucky to \$52,001 in Nebraska.

States also differ with respect to the types of cases encompassed by their civil caseloads. In addition to the more widely recognized categories of tort, contract, and real property disputes, a civil case may refer to any non-criminal case including family and non-crimi-

nal juvenile matters, probate/estate and guardianship matters, mental health cases, state regulatory and local ordinance violations, traffic infractions, small claims, and appeals from state and local executive agency decisions. State general jurisdiction courts are typically authorized to hear appeals of decisions from civil cases adjudicated in limited jurisdiction courts, often on a *de novo* basis. Although some states have created general jurisdiction courts specifically for family, juvenile, or probate and estate matters, in those states that maintain only a single general jurisdiction court (single-tier courts), local courts often segregate their civil dockets to manage family, juvenile, and probate/estate cases separately from general civil cases. Nevertheless, the resources allocated to courts with broad jurisdiction over civil cases are generally shared across all case types. Most states have eliminated the distinction between law and equity for the purposes of civil procedure, but some states — notably Delaware

Figure 6: Maximum Amount-In-Controversy for Small Claims Cases



and Mississippi — maintain separate courts for law and equity at either the general jurisdiction or limited jurisdiction court level.

Small claims cases are lower-value tort or contract disputes in which litigants may represent themselves without a lawyer.⁴³ Most small claim dockets also involve somewhat less stringent evidentiary and procedural rules. Figure 6 illustrates the amount-in-controversy maximums for small claims cases, which range from \$1,500 in Kentucky to up to \$25,000 in Tennessee. In many instances, the limited jurisdiction courts have exclusive jurisdiction over small claims cases; litigants opting to file their cases in the general jurisdiction court, or in limited jurisdiction courts rather than in the small claims docket, are expected to adhere to the established procedural and evidentiary

rules regardless of whether they are represented by counsel or self-represented.

All of these factors — the lack of common data definitions, differing organizational structures and subject matter jurisdiction for trial courts, and the traditional reluctance to collect and report performance measures — make it extraordinarily difficult to compile an accurate picture of civil litigation based on aggregate statistics published by state courts themselves. The only reliable method of doing so involves the extremely time-consuming and labor-intensive task of collecting case-level data from the trial courts themselves and mapping them onto a common template that facilitates both a reliable count of the cases themselves and an “apples-to-apples” comparison among courts.

⁴³ Small claims courts were originally developed for self-represented litigants, but states vary with respect to whether and under what conditions lawyers may appear on behalf of clients in small claims court.

Project Methodology

A perennial challenge in conducting multi-jurisdictional research using data extracted from case management systems (CMS) is to obtain data with both sufficient accuracy and granularity to be able to make reliable comparisons across jurisdictions. For several reasons, the NCSC decided to limit the potential courts from which to request data to courts with civil jurisdiction in counties that have participated in the *Civil Justice Survey of State Courts* series. First, those courts have participated in numerous NCSC research studies over the past three decades and thus are familiar with the NCSC and confident in the quality of the research conducted, which tends to improve participation rates. Likewise, NCSC staff are familiar with the CMS in those courts and confident in their ability to extract CMS data. The NCSC also had confidence that those courts would be able to produce data with sufficient case and disposition type granularity for the present study based on their previous participation in the *Civil Justice Survey of State Courts*.

To select the courts to participate in the *Landscape of Civil Litigation in State Courts*, the NCSC randomly selected 10 counties from the 45 counties that participated in all four iterations of the *Civil Justice Survey of State Courts*. The sampling design classified counties into two categories based on the organizational structure of courts with civil jurisdiction: (1) counties with a unified general jurisdiction court in which all civil cases are filed (single-tier courts); and (2) counties with one or more general jurisdiction courts and one or more limited jurisdiction courts (multi-tier courts). The intent of the sampling design was to ensure some representation of different organizational structures found in state courts. The counties that were selected are listed in Table 1. These included two counties with single-

tier courts, and eight counties with multi-tier courts. Within the 10 counties were 36 courts of general jurisdiction and 116 courts of limited jurisdiction.⁴⁴

The two single-tier courts have segmented dockets for civil cases within the unified court structure. The docket assignments for the Santa Clara County Superior Court are based on the amount in controversy: the limited civil docket includes all cases with claims valued less than \$25,000 and the unlimited civil docket includes all claims \$25,000 and over.⁴⁵ The Cook County Circuit Court employs different dockets for legal and equitable claims and for small claims.

Three counties have three separate tiers of trial courts with jurisdiction over civil cases.⁴⁶ Marion County, Indiana has two general jurisdiction trial courts — the Circuit Court and the Superior Court — that have concurrent jurisdiction over tort, contract, and real property cases. There is no monetary threshold for cases filed in these courts, but small claims cases up to \$6,000 can be filed in any of nine Marion County Small Claims Courts.⁴⁷ Harris County, Texas has one general jurisdiction trial court (the District Court), which has jurisdiction over civil cases involving claims greater than \$200 as well as exclusive jurisdiction for administrative agency appeals. The Harris County Civil Court of Law is a limited jurisdiction court with jurisdiction over civil cases involving claims up to \$200,000. The Civil Court of Law also has exclusive jurisdiction over eminent domain cases in Harris County and appeals from the Harris County Justice of the Peace Court (Justice Court).⁴⁸ Finally, the Harris County Justice Court has jurisdiction over tort, contract, real property, and small claims up to \$10,000. Cuyahoga County has a countywide general jurisdiction trial court (Court

⁴⁴ In the Texas judicial system, each District Court, Civil Court of Law, and Justice Court is comprised of a single judge elected to that office. In the Indiana judicial system, the Superior Court and the Circuit Court are courts of general jurisdiction that have concurrent jurisdiction over civil matters. In the Ohio judicial system, the Court of Claims is a statewide general jurisdiction court with jurisdiction over civil matters in which state agencies are named as litigants.

⁴⁵ The \$25,000 monetary threshold differentiating limited from unlimited civil cases is a remnant from the court structure in place prior to 2000, when the California judicial branch unified its trial courts into a single tier. With unification, the former municipal courts, which had jurisdiction over civil cases up to \$25,000, were incorporated into the county superior courts. Most courts maintained the \$25,000 threshold as a familiar mechanism for case assignments.

⁴⁶ The 1816 Indiana Constitution established the Circuit Court (IND. CONST. art. 7, §8) and the Marion County Superior Court was established by statute in 2004 (IND. CODE § 33-33-49). By agreement, the Superior Court exercises exclusive jurisdiction over criminal cases and the Superior and Circuit Courts have concurrent jurisdiction over civil cases. The Circuit Court has exclusive jurisdiction for insurance reorganizations/ liquidations, medical liens, and Marion County tax collection cases. The Circuit Court also supervises the Marion County Small Claims Courts.

⁴⁷ Each township in Marion County has a Small Claims Court. These courts have jurisdiction over civil cases in which the claim for damages does not exceed \$6,000. Generally, a small claims case may be filed in any township's Small Claims Court, however all landlord/tenant cases must be filed in the township where the property is located.

⁴⁸ In Texas, each trial court judge is recognized as an individual "court." Consequently, there are 25 district courts, 4 civil courts of law, and 16 justice courts in Harris County. Each trial court level is supported administratively by a clerk of court.

Table 1: Counties and Courts Selected for Landscape of Civil Litigation in State Courts

COUNTY	TYPE COURTS	# COURTS	COURT NAME	SUBJECT MATTER JURISDICTION
Maricopa County, Arizona	GJC	1	Superior Court	Tort, contract and real property claims involving monetary relief \$1,000 and over. Real property claims involving non-monetary relief.
	LJC	26	Justice Court	Tort, contract and real property claims involving monetary relief up to \$10,000. Exclusive small claims up to \$3,500.
Santa Clara County, California	Single Tier	1	Superior Court	All tort, contract and real property. Civil cases up to \$25,000 assigned to limited civil docket; civil cases \$25,000 and over assigned to unlimited civil docket. Small claims up to \$10,000. Appeals from small claims decisions assigned to limited civil docket.
Miami-Dade, Florida	GJC	1	Circuit Court	Tort, contract and real property claims \$15,001 and over. Appeals from County Court.
	LJC	1	County Court	Tort, contract and real property claims \$5,001 to \$15,000. Exclusive small claims up to \$5,000.
Oahu, Hawaii	GJC	1	Circuit Court	Tort, contract and real property \$5,000 and over. Exclusive mental health, probate/estate, and administrative agency appeals.
	LJC	1	District Court	Tort, contract and real property up to \$40,000. Exclusive small claims up to \$5,000.
Cook County, Illinois	Single Tier	1	Circuit Court	All tort, contract and real property. Claims involving monetary relief assigned to Law Division; claims involving non-monetary relief assigned to the Chancery Division. Small claims up to \$10,000.
Marion County, Indiana	GJC	1	Superior Court	Tort, contract and real property (concurrent with Circuit Court). Appeals from Small Claims Court.
	GJC	1	Circuit Court	Tort, contract and real property (concurrent with Superior Court). Exclusive jurisdiction for insurance reorganizations/liquidation and medical liens. Exclusive jurisdiction for Marion County tax collection. Supervision of Small Claims Court of Marion County.
	LJC	9	Small Claims Court	Small claims up to \$6,000.
Bergen County, New Jersey	GJC	1	Superior Court	All tort, contract, and real property. Claims involving monetary relief assigned to Law Division; claims involving non-monetary relief assigned to Chancery Division; Special Civil Part manages claims for monetary relief up to \$15,000 without jury trial and exclusive small claims up to \$3,000.
	LJC	1	Tax Court	Administrative agency appeals, tax cases.
Cuyahoga County, Ohio	GJC	1	Court of Common Pleas	Tort, contract and real property claims \$15,000 and over. Administrative agency appeals. Exclusive mental health/probate.
	GJC	1	Court of Claims	Exclusive claims filed against the State of Ohio and claims filed under the Victims of Crime Compensation Program.
	LJC	12	Municipal Court	Tort, contract, and real property up to \$15,000. Small claims up to \$3,000.
Allegheny County, Pennsylvania	GJC	1	Court of Common Pleas	Tort, contract and real property, probate/estate, and administrative agency appeals.
	LJC	46	Magisterial District Court	Small claims up to \$12,000.
Harris County, Texas	GJC	25	District Court	Tort, contract, and real property \$201 and over. Exclusive administrative agency appeals.
	LJC	4	Civil Court of Law	Tort, contract, and real property up to \$200,000. Appeals from Justice Courts. Exclusive jurisdiction over eminent domain cases in Harris County.
	LJC	16	Justice Court	Tort, contract, and real property up to \$10,000. Small claims up to \$10,000.

of Common Pleas) with jurisdiction over civil claims exceeding \$15,000 as well as appeals from administrative agencies and mental health/probate cases. Civil claims up to \$15,000 are filed in the 12 municipal courts in Cuyahoga County. In addition to these county-based courts, Ohio has a statewide Court of Claims, which has jurisdiction over civil claims in which the State is a defendant as well as claims filed in the Victims of Crime Compensation Program.

The remaining five counties in the sample each have a single general jurisdiction court and a single limited jurisdiction court. Bergen County Superior Court has exclusive jurisdiction for all general civil cases, but a separate limited jurisdiction Tax Court has jurisdiction over administrative agency appeals and tax cases. The monetary thresholds for the other four limited jurisdiction courts range from \$10,000 (Maricopa County Justice of the Peace Court) to \$40,000 (Oahu, Hawaii District Court). The general jurisdiction and limited jurisdiction courts in Miami-Dade maintain exclusive jurisdiction over their respective caseloads. The Miami-Dade County Court has jurisdiction over cases up to \$15,000 and the Circuit Court has jurisdiction over cases exceeding \$15,000. The general jurisdiction and limited jurisdiction courts in Allegheny and Maricopa Counties and Oahu have concurrent jurisdiction over some portion of their respective civil caseloads (\$0 to \$15,000 in Allegheny County, \$1,000 to \$10,000 in Maricopa, and \$5,000 to \$40,000 in Oahu).

All of the counties in the sample have small claims courts. The monetary thresholds for small claims range from \$3,500 (Maricopa County, Arizona) to \$12,000 (Allegheny County, Pennsylvania). With the exception of Bergen County, jurisdiction for small claims cases is exclusively in the limited jurisdiction courts in counties with multi-tier court structures.

In November 2013, NCSC contacted each of these courts in a letter that described the goals and objec-

tives of the *Landscape of Civil Litigation in State Courts* study and requested their participation by providing case-level data for all non-domestic civil cases disposed in those courts between July 1, 2012 and June 30, 2013.⁴⁹ The requested data elements included the docket number, case name, case type, filing and disposition dates, disposition type, the number of plaintiffs and defendants, the representation status of the parties, and the case outcome including award amounts. NCSC project staff obtained detailed case-level data from all of the contacted courts except the Superior Court of California, Santa Clara County; the Bedford, Cleveland Heights, and South Euclid Municipal Courts in Cuyahoga, Ohio; the Ohio Court of Claims⁵⁰; and the Decatur and Pike Township Small Claims Courts in Marion County, Indiana.⁵¹

Upon receipt of the case-level data, NCSC project staff formatted the individual datasets to conform to a common set of data definitions based on the NCSC *State Court Guide to Statistical Reporting*.⁵² The coding process also involved aggregating some records to obtain a single code or value per case for datasets that included multiple records per case (e.g., judgment amounts, representation status). The final dataset consisted of 925,344 cases including aggregated cases from courts unable to provide case-level data. The NCSC originally intended to apply case weights to estimate civil cases, characteristics, and outcomes nationally, but was unable to generate reliable estimates due to the small sample size and the complexity of the weighting procedure. Consequently, these findings report statistics only for the courts serving these 10 counties. The counties themselves, however, reflect the variation in national court organizational structures for civil cases. Collectively, their caseloads comprise approximately five percent of general civil caseloads nationally.

⁴⁹ The *State Court Guide to Statistical Reporting* includes the following case types as non-domestic civil cases: tort, contract, real property, guardianship, probate/estate, mental health, civil appeals, and miscellaneous civil (habeas corpus, writs, tax, and non-domestic restraining orders). NAT'L CTR STATE CTS., STATE COURT GUIDE TO STATISTICAL REPORTING (ver. 2.0) 3-8 (2014) [hereinafter STATE COURT GUIDE].

⁵⁰ The Ohio Court of Claims was unable to identify cases originating in Cuyahoga County. NCSC staff estimated the number of cases by multiplying the proportion of the Ohio population residing in Cuyahoga County by the total cases filed in the Ohio Court of Claims for one year.

⁵¹ The NCSC was ultimately able to obtain aggregate case information for these courts from the Administrative Office of the Courts in the respective states, which eliminated the need to select replacement counties.

⁵² The *State Court Guide* provides a standardized framework for state court caseload statistics, enabling meaningful comparisons among state courts. STATE COURT GUIDE *supra* note 49.

CASELOAD COMPOSITION

Table 2 shows both the total number of disposed civil cases provided to the NCSC by court structure type and the percentage breakdown of these cases by broad case type descriptions (contract, tort, real property, small claims, and other civil). Limited jurisdiction courts within multi-tier court structures disposed of 43 percent of the total civil caseload. The single-tier courts in the sample (Santa Clara and Cook Counties) account for slightly less than one-third (31%) of the total cases and the general jurisdiction courts in multi-tier court structures account for 26 percent of the total caseload.

Across all of the courts, slightly less than two-thirds (64%) of the cases are contract disputes with the remainder of the civil caseload consisting of small claims (16%), other civil (9%),⁵³ tort (7%), unknown case type (4%),⁵⁴ and real property (1%). One of the most striking features is that contract cases comprise at least half of the civil caseloads across all three types of court structures, although there are some notable

differences. For example, in addition to having the largest volume of cases overall, limited jurisdiction courts have the highest proportion of small claims cases (30%) and the lowest proportion of contract cases (50%). It is highly likely that many of those small claims cases are, in fact, lower-value debt collection cases (a subcategory of contract cases) that were filed as small claims cases to take advantage of simplified procedures. Tort cases have a much higher concentration in general jurisdiction courts of multi-tier court structures than in limited jurisdiction courts. This is likely due to claims for monetary damages exceeding the maximum thresholds for limited jurisdiction courts in personal injury cases.

Small claims cases constituted only six percent of the caseload in counties with single-tier courts, which is due mainly to the small proportion of small claims cases in Cook County.⁵⁵ In Santa Clara County, small claims accounted for 18 percent of the total civil caseload. Interestingly, the monetary limit on small claims cases is \$10,000 in both Santa Clara and Cook

Table 2: Caseload Composition, by Court Type

	TOTAL CIVIL CASES	PERCENTAGE OF					
		CONTRACT	TORT	REAL PROPERTY	SMALL CLAIMS	OTHER CIVIL	UNKNOWN
Single Tier Courts	287,131	80	10	1	6	4	0
General Jurisdiction Courts	221,150	69	13	2	1	15	0
Limited Jurisdiction Courts	417,063	50	3	0	30	10	7
Total	925,344	64	7	1	16	9	3

⁵³ "Other civil" includes appeals from administrative agencies and cases involving criminal or domestic-related matters (e.g., civil stalking petitions, grand jury matters, habeas petitions, and bond claims).

⁵⁴ Nearly all of the unknown cases (99%) were filed in six of the 12 municipal courts in Cuyahoga County. Because the other six courts indicated multiple case types, and their caseload composition varied across courts, NCSC staff were unwilling to infer case types for this analysis.

⁵⁵ Small claims data were not included with the Cook County dataset, but Illinois caseload and statistical reports indicate that small claims filings and dispositions account for approximately 5 percent of the civil caseload in the Cook County Superior Court. Caseload and Statistical Reports, CASELOAD SUMMARIES BY CIRCUIT, CIRCUIT COURTS OF ILLINOIS, CALENDAR YEAR 2012 at 17.

Counties, which is considerably higher than both the average limit for counties with multi-tiered court structures (\$5,938) and the actual limit in all but two of the eight counties. For some reason that may be unique to Cook County, rather than to single-tier courts generally, litigants opt to file lower-value contract cases as contract cases rather than as small claims cases.⁵⁶

Table 3, however, documents some striking variations across counties. For example, the proportion of contract cases in Marion County, Indiana is only eight percent compared to an overall caseload average of 64 percent while small claims comprise 82 percent of

the civil caseload compared to the 16 percent overall average. In Marion County, many creditors file debt collection actions in the Marion County Small Claims Courts, ostensibly due to perceptions that those courts are a more attractive venue for plaintiffs.⁵⁷ The proportion of contract cases in Cuyahoga County is also much lower (39%) than the overall average.⁵⁸

The counties participating in this study did not consistently describe case types with more detailed subcategories, but most broke down caseloads for case types of particular local interest. Those breakdowns provide additional information about civil caseloads.

Table 3: Caseload Composition, by County

COUNTY (STATE)	TOTAL CIVIL CASES	PERCENTAGE OF					
		CONTRACT	TORT	REAL PROPERTY	SMALL CLAIMS	OTHER CIVIL	UNKNOWN
Maricopa (AZ)	53,226	78	1	0	4	16	0
Santa Clara (CA)	27,503	64	9	2	18	7	0
Miami-Dade (FL)	156,096	64	8	1	25	2	0
Oahu (HI)	22,363	64	5	0	0	30	0
Cook (IL)	259,628	82	10	1	5	3	0
Marion (IN)	75,834	8	2	0	82	8	0
Bergen (NJ)	64,068	60	8	0	4	27	0
Cuyahoga (OH)	76,970	39	7	0	6	9	38
Allegheny (PA)	34,011	55	8	2	32	4	0
Harris (TX)	155,645	72	7	1	3	16	0
Total	925,344	64	7	1	16	9	3

⁵⁶ Illinois does not permit corporations to initiate small claims cases unless they are represented by an attorney, although a corporate representative may appear to defend a small claims case. IL SUP. CT. R. ART. II, R. 282(b). The cost of retaining an attorney may negate the cost advantage of filing in small claims court.

⁵⁷ The Marion County Small Claims Courts have been the focus of intense criticism for several years due to concerns about venue shopping, lack of due process for defendants in debt collection cases, and collusion between debt collection plaintiffs and Small Claims Court judges. See Marisa Kwialkowski, *Judges Call for an End to Marion County's Small Claims Court System*, IndyStar (July 12, 2014) (<http://www.indystar.com/story/news/2014/07/12/judges-call-end-marion-countys-small-claims-court-system/12585307/>). Debt collection procedures are also the basis for a class action lawsuit alleging violations of the Fair Debt Collection Practices Act. *Suesz v. Med-1 Solutions, LLC*, 734 F.3d 684 (7th Cir. 2013). A Small Claims Task Force appointed by the Supreme Court of Indiana and an evaluation by the NCSC have both recommended that the Marion County Small Claims Courts be incorporated into the Superior Court to provide appropriate oversight and due process protections for litigants. See JOHN DOERNER, MARION COUNTY, INDIANA, SMALL CLAIMS COURTS: FINAL REPORT (July 2014); INDIANA SMALL CLAIMS TASK FORCE, REPORT ON THE MARION COUNTY SMALL CLAIMS COURTS (May 1, 2012).

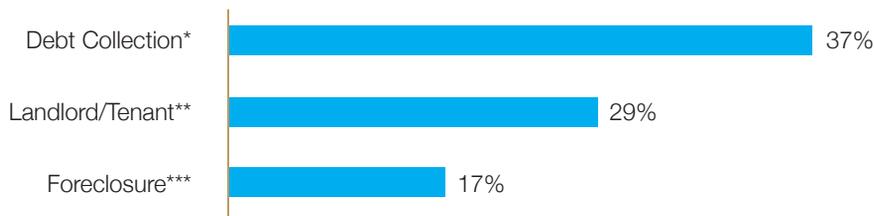
⁵⁸ It is likely that a large proportion of the unknown casetypes in the six municipal courts from Cuyahoga County that did not provide case-level data are actually contract cases.

Figures 7 and 8 illustrate the caseload composition for common subcategories of contract and tort caseloads. Contract caseloads consist primarily of debt collection (37%), landlord/tenant (29%), and foreclosure (17%), cases.⁵⁹ Tort caseloads consist primarily of automobile tort (40%) and other personal injury/property damages cases (20%).⁶⁰ Although medical malpractice and product liability cases often generate a great deal of attention and criticism, they comprise only five percent of tort caseloads (less than 1% of the total civil caseload).

CASE DISPOSITIONS

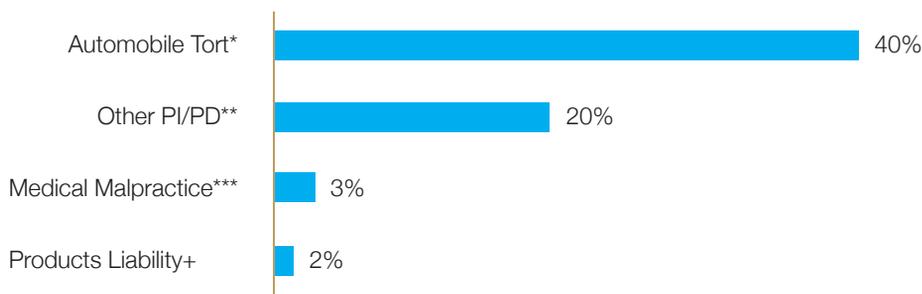
Documenting how civil cases are actually resolved is somewhat challenging due to varying disposition descriptions among case management systems. As discussed previously, courts traditionally record the procedural significance of the disposition in the case management system rather than the actual manner of disposition. Consequently, a case may be recorded as “dismissed” for a variety of reasons such as an administrative dismissal for failure to prosecute, upon motion

Figure 7: Subcategories of Contract Cases



* Not Reported by Santa Clara County
 ** Not reported by Marion County
 *** Not reported by Santa Clara and Cuyahoga Counties

Figure 8: Subcategories of Tort Cases



* Not reported by Marion County
 ** Not reported by Marion and Allegheny Counties
 ***Not Reported by Santa Clara and Marion Counties
 + Not reported by Maricopa, Santa Clara and Marion Counties

⁵⁹ Landlord/tenant cases include claims for both eviction and collection of past due rent payments.

⁶⁰ “Personal injury/property damage” reflects a characteristic of the type of damages rather than the legal claim upon which relief is requested. Consequently, that term is not recognized as a unique case type by the NCSC *State Court Guide*. Nevertheless, that term is used by many courts, including courts in eight of the 10 counties participating in the *Landscape* study. Although the term is over-inclusive, it likely includes premises liability and other negligence cases.

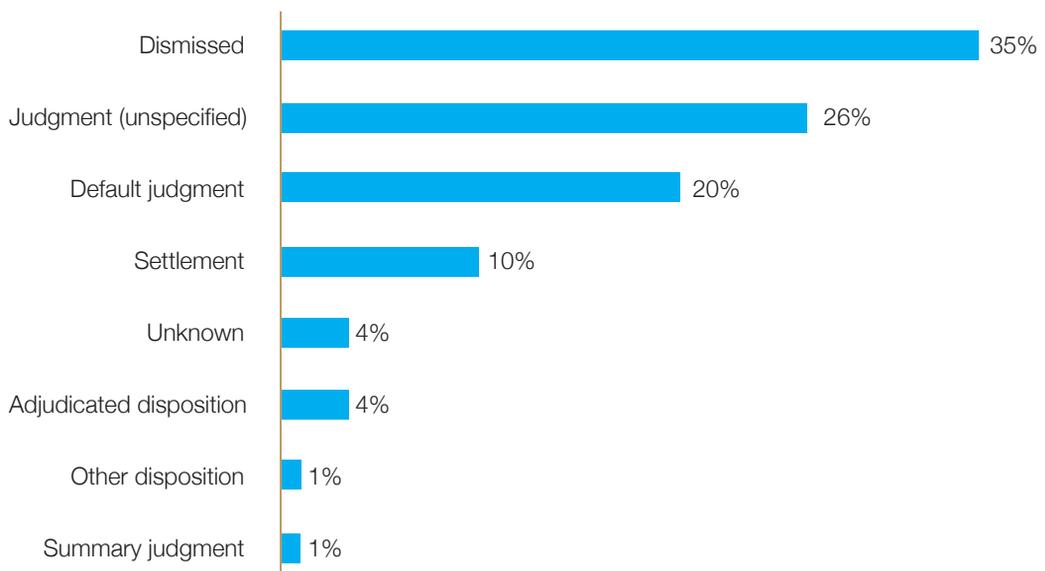
by a litigant for withdrawal or non-suit, or upon notice that the parties have settled the case. Similarly, a case disposed by “judgment” may indicate either a default judgment or an adjudication on the merits in a bench or jury trial. Some of the courts in the *Landscape* study employed more descriptive disposition codes that provide guidance about the manner of disposition. For example, a dismissal with prejudice often indicates that the parties have settled the case while a dismissal without prejudice generally indicates either withdrawal or an administrative dismissal. Cases adjudicated on the merits usually had some notation to that effect (e.g., judgment from jury trial, judgment from nonjury trial, arbitration judgment). Nevertheless, the lack of consistency across counties with respect to the data definitions and the lack of descriptiveness for disposition codes undermines the reliability of precise estimates, especially when compared to earlier studies such as the 1992 *Civil Justice Survey of State Courts*. For this study, the NCSC coded dispositions as follows:

- Dismissal: cases recorded as withdrawal, dismissed, or dismissed without prejudice;
- Judgment (unspecified): cases recorded as judgment;

- Default judgment: cases recorded as default judgment;
- Settlement: cases recorded as settlement, agreed judgment, stipulated judgment or dismissal with prejudice;
- Summary judgment: cases recorded as summary judgment;
- Adjudicated disposition: cases recorded as disposed by jury trial, directed verdict, bench trial, or arbitration;
- Other disposition: cases recorded as change of venue, removal, transferred or bankruptcy stay; and
- Unknown disposition: cases without a specified disposition.

Keeping these caveats in mind concerning the reliability of disposition rates, Figure 9 reflects the overall disposition breakdown based on this categorization. Dismissals were the single largest proportion of dispositions, accounting for more than one-third (35%) of the total caseload. Judgments (unspecified) and default judgments were the second and third largest

Figure 9: Case Dispositions (all cases)



categories, at 26 percent and 20 percent respectively. Settlements comprised only 10 percent of dispositions. Four percent of cases were adjudicated on the merits and only one percent were disposed by summary judgment. These disposition rates are a dramatic change from the 1992 Civil Justice Survey of State Courts.⁶¹ The dismissal rate is more than three times higher and the default rate is 42 percent higher in the *Landscape* study. The settlement rate, in contrast, is less than one-fifth of the 1992 study. Adjudicated dispositions also declined from six percent to four percent.

Some of these differences may reflect differences in how these studies were conducted. The 1992 survey examined civil cases disposed in the general jurisdiction courts of 45 large, urban counties. Although all of the counties selected for the *Landscape* study participated in the 1992 *Civil Justice Survey of State Courts*, the *Landscape* study also collected data

from the limited jurisdiction courts in those counties, which accounts for almost half (43%) of the total caseload.⁶² Table 4 suggests that some of the difference in disposition rates may be the result of differences in the respective caseloads of limited jurisdiction and general jurisdiction courts. Approximately one-third of the cases in the limited jurisdiction courts (32%) were disposed by default judgment, but only 18 percent of the general jurisdiction court cases were default judgments.⁶³ The default rate for single-tier courts was three percent, which is unrealistically low and it is likely that a substantial majority of the unspecified judgments for single-tier courts (51%) are actually default judgments.⁶⁴ Settlement rates in the single-tier and general jurisdiction courts (13% and 12%, respectively) are two times the settlement rate in the limited jurisdiction court (6%), but all are still much lower than the 62 percent settlement rate in the 1992 *Civil Justice Survey of State Courts*. It is likely that a substantial proportion of cases disposed by

Table 4: Percentage of Case Dispositions by Court Type

	SINGLE TIER	GENERAL JURISDICTION	LIMITED JURISDICTION	ALL COURTS
Dismissed	31	36	37	35
Judgment (unspecified)	50	15	16	26
Default judgment	3	18	32	20
Settlement	13	12	6	10
Adjudicated disposition	1	4	5	4
Unknown	0	13	2	4
Summary judgment	0	1	1	1
Other disposition	1	2	1	1

⁶¹ See Figure 2, *supra*, at p. 7.

⁶² In 2012, more than half of new civil cases were filed in limited jurisdiction courts. R. LAFOUNTAIN ET AL., EXAMINING THE WORK OF STATE COURTS: AN OVERVIEW OF 2012 STATE TRIAL COURT CASELOADS 8 (NCSC 2014).

⁶³ The default rate in the 1992 *Civil Justice Survey of State Courts* was 14 percent.

⁶⁴ The Cook County Circuit Court did not include default judgment as a disposition type at all.

dismissal are also settlements rather than withdrawals or administrative dismissals.⁶⁵ Surprisingly, adjudication rates are highest in the limited jurisdiction courts (5% compared to 4% in general jurisdiction courts and 1% in single-tier courts), but two-thirds (66%) of the adjudicated dispositions are bench trials in contract, other civil, and small claims cases in limited jurisdiction courts.

In addition to differences in courts included the samples, the coding methodology employed in the two studies differed. Data for the 1992 *Civil Justice Survey* was collected through personal inspection of individual case files rather than extraction from the case management systems. Consequently, the 1992 data are more accurate and precise than the *Landscape* data. It is particularly difficult to interpret the dismissal and unspecified judgment rates in the *Landscape* dataset. Generally, litigants will request that settled cases be dismissed with prejudice to preclude the plaintiff from refiling the case in the future. Cases with that designation were classified as settlements in the *Landscape* dataset, but some cases may have been coded by court staff only as dismissals in the case

management system, which would result in an inflated dismissal rate. Similarly, unspecified judgments may include a substantial proportion of cases that were actually default judgments.

Finally, the current study was undertaken shortly after this country's most significant economic recession since the Great Depression, during which state courts experienced a spike in civil case filings, especially in debt collection and mortgage foreclosure cases.⁶⁶ The disposition rates may reflect the unique economic and fiscal circumstances of state court caseloads during this period rather than more general trends. Table 5, which describes case dispositions by case type, documents substantially higher default judgment rates for contract and small claims cases (21% and 32%, respectively). Tort cases, in contrast, had substantially higher settlement and dismissal rates (32% and 39%, respectively). Real property, small claims, and other civil cases were the most likely to be adjudicated on the merits (6% for real property and other civil cases, 10% for small claims cases).

Table 5: Proportion of Case Dispositions by Case Type

	CONTRACT	TORT	REAL PROPERTY	SMALL CLAIMS	OTHER	ALL CASES
Dismissed	33	39	37	47	31	35
Judgment (unspecified)	31	11	23	10	25	26
Default judgment	21	4	13	32	7	20
Settlement	7	32	12	2	19	10
Unknown	3	8	5	0	11	4
Adjudicated disposition	3	3	6	7	6	4
Other disposition	1	3	2	1	1	1
Summary judgment	1	1	3	0	0	1

⁶⁵ Cases dismissed for failure to prosecute averaged five percent among the 17 courts in seven counties that separately identified these cases, but ranged as high as 14 percent in the general jurisdiction courts. Even if all of the dismissals in the general jurisdiction courts were settlements, it would only bring the settlement rate to 34 percent (approximately 55% of the 1992 settlement rate).

⁶⁶ LAFOUNTAIN, *supra* note 62, at 4.

Collectively, these factors suggest that the actual differences in disposition rates may be less dramatic than indicated by the differences between Figure 2 and Figure 9, but it is unlikely that they account for the entire difference. Compared to two decades ago, it seems likely that more civil cases are being disposed in a largely administrative capacity (dismissals or default judgments), resulting in lower overall settlement rates. With the exception of cases filed in limited jurisdiction courts, in which contract, other civil and small claims collectively comprise 40 percent of the total civil caseload, very little formal adjudication is taking place in state courts at all.

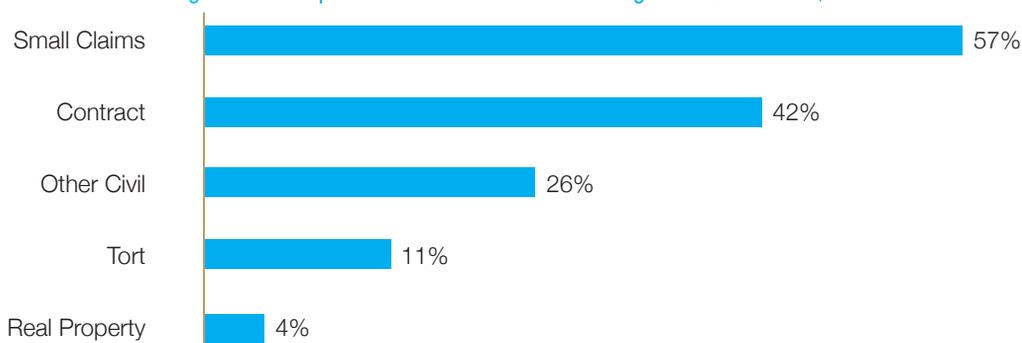
CASE OUTCOMES AND JUDGMENT AMOUNTS

The *Landscape* courts were not able to provide data documenting which party prevailed in cases that resulted in a judgment, so we are only able to infer case outcomes based on whether the judgment included a damage award. This is an imprecise measurement insofar that some judgments in which the plaintiff prevailed will include only equitable rather than monetary relief.⁶⁷

By the same token, a judgment in which the defendant prevailed on both the original claim as well as a counterclaim against the plaintiff will also reflect a monetary award.⁶⁸ Recall also from Tables 4 and 5 that only 46 percent of cases were disposed by judgment (26% judgment (unspecified), 20% default judgment), and that rate varied considerably by case type. Only 15 percent of tort cases were disposed by judgment compared to 65 percent of small claims, 56 percent of contract cases, 45 percent of real property cases, and 32 percent of other civil cases. Figure 10 provides the proportion of judgments greater than zero, which may be interpreted as a very rough proxy for the plaintiff win rate. Given the factors discussed above, however, these rates likely underestimate the actual rate at which plaintiffs prevailed, but it is not known by how much. The estimated rates are likely to be considerably more accurate for small claims and contract cases in which the proportion of cases disposed by judgment is higher.

For the most part, the monetary values at issue in state court civil cases are relatively modest, at least

Figure 10: Proportion of Cases in which Judgment Exceeded \$0



⁶⁷ A substantial proportion of real property cases, for example, involve disputed property boundaries. Judgments in such cases would determine the boundaries, but would not ordinarily award monetary damages unless the complaint alleged other claims (e.g., trespass). The *Civil Justice Survey of State Courts* series excluded cases involving equitable claims, so it is unknown what proportion of cases involve only claims seeking legal remedies.

⁶⁸ Eight percent of the trials in the 2005 *Civil Justice Survey of State Courts* involved cross claims or third-party claims. Of those cases, the defendant prevailed in 39 percent of the trials. 2005 *Civil Justice Survey of State Courts* (data on file with the authors).

in cases resulting in a formal judgment. Table 6 shows the average amount and the interquartile range⁶⁹ of the final award for cases resulting in a judgment greater than zero by court type, case type, and manner of disposition.⁷⁰ Overall, the average judgment award was less than \$10,000 and the interquartile range was just \$1,273 (25th percentile) to \$5,154 (75th percentile). Not surprisingly, these values were lowest in limited jurisdiction courts, ostensibly due to the lower monetary thresholds for those courts. General juris-

diction courts had the highest judgment awards, while judgment amounts for single-tier courts, which manage all civil cases for their respective jurisdictions, predictably fell in between. Although some cases resulted in extremely large judgments,⁷¹ they comprised only a small percentage of judgments greater than zero. For example, only 357 cases (0.2%) had judgments that exceeded \$500,000 and only 165 cases (less than 0.1%) had judgments that exceeded \$1 million.

Table 6: Judgment Amounts Exceeding \$0*

	INTERQUARTILE RANGE				
	N	MEAN	25TH	50TH	75TH
Overall	227,812	\$9,267	\$1,273	\$2,441	\$5,154
Court Type					
General Jurisdiction	19,237	\$24,117	\$2,270	\$5,592	\$14,273
Single Tier	64,894	\$18,023	\$1,685	\$3,029	\$6,291
Limited Jurisdiction	143,681	\$3,325	\$1,060	\$1,956	\$4,085
Case Type					
Real Property	102	\$157,651	\$2,181	\$12,789	\$105,822
Tort	3,554	\$64,761	\$2,999	\$6,000	\$12,169
Other	9,704	\$12,349	\$749	\$2,002	\$4,219
Contract	160,465	\$9,428	\$1,251	\$2,272	\$4,981
Small Claims	39,517	\$4,503	\$1,568	\$3,000	\$6,000
Disposition Type					
Summary judgment	1,187	\$133,411	\$3,200	\$6,174	\$15,198
Adjudicated disposition	11,341	\$15,088	\$675	\$1,120	\$2,000
Judgment (unspecified)	96,037	\$11,312	\$1,340	\$2,525	\$5,302
Default Judgment	107,524	\$5,876	\$1,312	\$2,442	\$5,305

* Categories sorted in descending order based on the mean judgment amount.

⁶⁹ The interquartile range is the value of judgment awards at the 25th, 50th, and 75th percentiles. Because the mean (average) is often skewed by extreme outliers, the interquartile range reflects a more accurate picture of the value of typical cases for each category.

⁷⁰ Monetary damages were reported for less than half (41%) of cases that resulted in a final judgment. These cases comprise 25 percent of the entire *Landscape* caseload.

⁷¹ The largest judgment recorded in the *Landscape* data was \$84.5 million awarded in a contract case disposed in the Circuit Court of Cook County, Illinois. The case involved a dispute between a pharmaceutical company and its insurer concerning losses suffered by the pharmaceutical company due to a drug recall. At issue was whether the pharmaceutical company was covered under its insurance policy, or whether that coverage was previously rescinded. The trial court judgment in favor of the pharmaceutical company was subsequently upheld by the Illinois Court of Appeals. *Certain Underwriters at Lloyds, London v. Abbott Laboratories*, 16 N.E.3d 747 (Ill. App. 2014).

With respect to case types, average judgments awarded in real property cases were the highest overall (\$157,651), followed by torts (\$64,761), other civil cases (\$12,349), contracts (\$9,428), and small claims (\$4,503). Although average judgments in real property cases were the highest of all of the case types, they comprised only a fraction (0.5%) of the total cases in which a judgment was entered; contracts and small claims cases comprised 82 percent of the caseload in which a judgment was entered, and 88 percent of the cases in which the judgment exceeded zero.

The monetary value of judgments is considerably lower than one would imagine from listening to debates about the contemporary justice system and largely confirms allegations that the costs of litigation routinely exceed the value of the case. In 2013, the NCSC developed a methodology — the Civil Litigation Cost Model (CLCM) — to estimate legal fees and expert witness fees in civil cases.⁷² Using the CLCM, the NCSC found that in most types of civil cases, the median cost per side to litigate a case from filing through trial ranged from approximately \$43,000 for automobile tort cases to \$122,000 for professional malpractice cases. Indeed, in many cases the cost of litigation likely outstrips the monetary value of the case shortly after initiating the lawsuit.⁷³ Debt collection cases were the only exception. In a study of Utah attorneys using the CLCM, the NCSC found that the median cost per side to litigate

a debt collection case through trial was \$2,698.⁷⁴ Given the median judgment amount, most plaintiffs would find it economically feasible to pursue these claims, but not most defendants. There is, moreover, a fairly wide gap between the actual costs involved in resolving civil disputes and litigant expectations about what those costs should be. In 1999, for example, the New Mexico Judicial Branch conducted a series of public opinion polls, focus groups, and litigant surveys to measure the gap between the costs that litigants believe are reasonable and the actual costs in civil cases.⁷⁵ Litigants reported that the estimate of a reasonable cost for resolving their case was \$3,682 on average, but actual costs were \$8,385.⁷⁶

BENCH AND JURY TRIALS

Courts reported a total of 32,124 trials as case dispositions in the *Landscape* dataset, 1,109 of which were jury trials (3%) and 31,015 were bench trials (97%).⁷⁷ Collectively, they comprised less than four percent of the entire *Landscape* dataset (0.1% jury trials, 3.4% bench trials). Jury trials were distributed about equally in the single-tier and general jurisdiction courts (49% and 45%, respectively) with only seven percent of jury trials taking place in limited jurisdiction courts. In contrast, limited jurisdiction and single-tier courts disproportionately conducted bench trials (45% and 42%, respectively) compared to only 13 percent in the

⁷² CASELOAD HIGHLIGHTS, *supra* note 9.

⁷³ The costs per side associated with case initiation ranged from approximately \$2,400 in automobile tort cases to \$7,300 in professional malpractice and employment cases. *Id.*

⁷⁴ See UTAH RULE 26 REPORT, *supra* note 32, at 46-48.

⁷⁵ John M. Greacen, *How Fair, Fast, and Cheap Should Courts Be?* 82 JUDICATURE 287 (May-June 1999).

⁷⁶ *Id.* at 289.

⁷⁷ The Miami-Dade Circuit and County Courts and the Marion County Superior and Circuit Courts were not able to identify cases disposed by bench or jury trial. Data from the Cook County Circuit Court did not indicate cases disposed by bench trial. The trial rates reflect only cases for courts that identified bench and jury trials.

general jurisdiction courts. As Figures 11 and 12 illustrate, over three times as many jury trials took place in tort trials (65%) as in other types of cases. Over half of all bench trials (51%) took place in contract cases, followed by other civil cases (27%), small claims (19%), tort (2%), and real property cases (1%).

Only 69 percent of the jury trials and 58 percent of the bench trials in the *Landscape* dataset included information about the final judgment amount. As noted previously, some of the bench trials may have involved equitable relief, which would explain the absence of a damage award. In other instances, judgment awards

Figure 11: Proportion of Jury Trials by Case Type

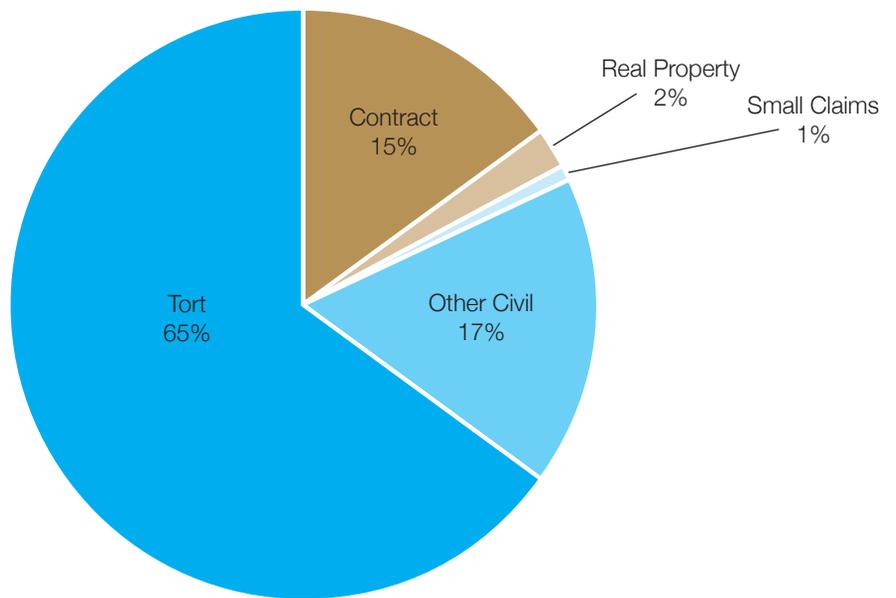
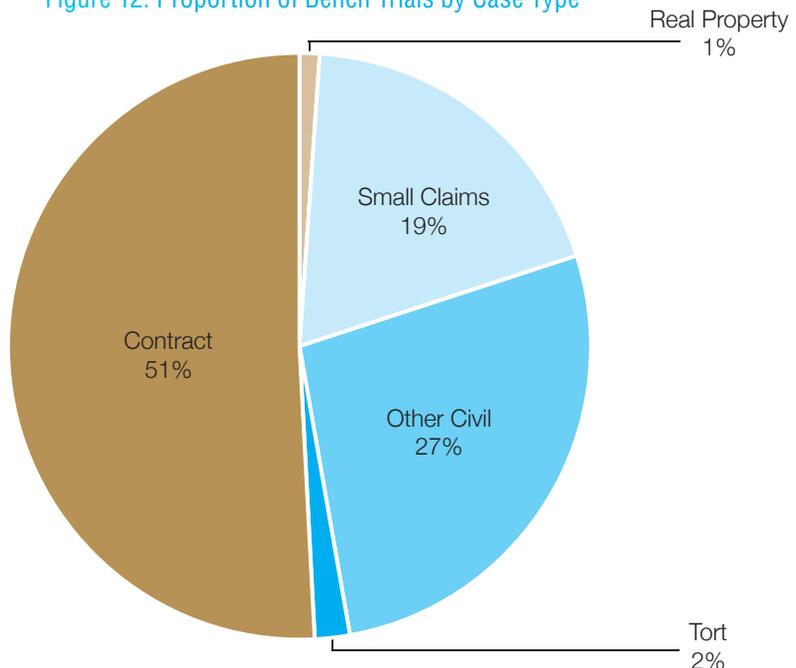


Figure 12: Proportion of Bench Trials by Case Type



were not included in the case-level data.⁷⁸ Tables 7 and 8 provide the average (mean) judgment award by case type for jury and bench trials in which the reported judgment was greater than zero. Those data highlight some important differences between bench and jury trials. First, the damage awards in jury trials

are 48 or more times greater than those in bench trials for all case types except small claims. This suggests that litigants engage in significant case selection strategies when deciding whether to try a case to a judge or jury. Tort cases, especially those involving more serious injuries and/or more egregious negligence on

Table 7: Jury Trials, Judgment Amounts Exceeding \$0*

	INTERQUARTILE RANGE				
	N	MEAN	25TH	50TH	75TH
Total	194	\$ 1,468,554	\$7,962	\$31,097	\$201,896
Case Type					
Real Property	6	\$947,589	\$175,522	\$370,199	\$2,764,839
Contract	43	\$226,635	\$10,012	\$48,806	\$257,600
Tort	134	\$2,003,776	\$8,845	\$30,000	\$151,961
Other	9	\$106,412	\$2,193	\$5,000	\$139,232
Small Claims	2	\$2,510	\$1,621	\$2,510	\$3,400

Table 8: Bench Trials, Judgment Amounts Exceeding \$0*

	INTERQUARTILE RANGE				
	N	MEAN	25TH	50TH	75TH
Total	11,481	\$6,408	\$679	\$1,131	\$2,028
Case Type					
Real Property	5	\$19,277	\$4,259	\$7,826	\$37,500
Tort	53	\$7,300	\$3,443	\$8,629	\$14,385
Small Claims	730	\$2,749	\$827	\$2,000	\$3,900
Other	1,498	\$2,638	\$200	\$1,339	\$3,664
Contract	9,195	\$7,300	\$700	\$1,098	\$1,785

* Categories sorted in descending order based on 75th percentile.

⁷⁸ Courts that provided judgment amount for cases disposed by trial included Cook County Circuit Court (jury trials only); Allegheny Court of Common Pleas; Bergen County Superior Court; Maricopa County Superior Court; the Euclid and Garfield Heights Municipal Courts in Cuyahoga County; Harris County Justice Court; and the Maricopa County Justice Court.

the part of the defendant that might warrant punitive damages are much more likely to be tried by a jury. Cases in which there is only limited potential for higher damage awards are more likely to be disposed by bench trial because the costs associated with a jury trial will exceed the potential award.

Second, the average jury and bench awards are heavily skewed by a very small number outlier cases. For example, compared to a mean jury award of \$2 million in tort cases, 50 percent of jury awards in tort cases were \$30,000 or less, and 75 percent of jury awards in tort cases were less than \$152,000. Jury awards exceeded \$500,000 in only 17 cases (3% of cases in which judgment exceeded zero), and exceeded \$1 million in only 13 cases (2%).⁷⁹ The average judgment awarded in bench trials (\$6,408) was three times more than the judgment awarded at the 75th percentile (\$2,028).

Another noteworthy consideration concerning bench and jury trials is number of trials involving self-represented litigants. In the 1992 *Civil Justice Survey of State Courts*, attorneys represented both parties in 97 percent of jury trials and 91 percent of bench trials. In the trials from the *Landscape* dataset, the proportion of trials in which both parties were represented decreased to 87 percent of jury trials and 24 percent of bench trials. Restricting the analysis to general jurisdiction courts (for better comparability with the 1992 *Civil Justice Survey*) does not measurably improve the picture. Except for tort trials, defendants had representation in less than 30 percent of bench trials. In tort cases, plaintiffs were represented in 69 percent and defendants were represented in 71 percent of bench trials, resulting in only 56 percent of bench trials with both sides represented. The costs associated with bringing a case to trial may be a factor in the relatively

high proportion of bench trials involving self-represented litigants in general jurisdiction courts.

TIME TO DISPOSITION

The average time from filing to disposition for cases in the *Landscape* dataset was 306 days (approximately 10 months); the interquartile range was 35 to 372 days (approximately 1 month to just over 1 year). Table 9 documents the average disposition time as well as the interquartile range for disposition. On average, tort cases took the longest time to resolve (486 days), followed by real property cases (428 days), other civil cases (323 days), contract claims (309 days), and small claims (175 days).

Some cases in the *Landscape* dataset had unusually long disposition times. A total of 1,252 cases (0.1%) were 10 years or older when they were finally disposed. Of the 521 cases that were 15 years or older, more than half were foreclosure cases filed in the Bergen County Superior Court. The second oldest case in the dataset, *People's Trust of New Jersey v. Garra*, filed in 1972 and administratively closed in 2013 (41 years), was one of these, although case records suggest that the case was actually resolved in 1998 (26 years). The oldest case was a guardianship case (coded as "Other Civil—Domestic Related"), filed in the Marion County Superior Court in 1950 (62 years).⁸⁰

Addressing court delay has been a major focus of court improvement efforts for several decades. The most recent national effort to manage civil caseloads in a timely manner was a component of the *Model Time Standards for State Trial Courts*. The *Model Time Standards* recommend that 75 percent of general civil cases be disposed within 180 days, 90 percent within 365 days, and 98 percent within 540 days.⁸¹

⁷⁹ The highest jury award in the *Landscape* dataset was \$80 million, awarded in a premises liability case involving an iron worker who became paralyzed from the neck down after falling headfirst from a steel beam while not using a safety harness. *Bayer v. Garbe Iron Works, Inc. et al.*, No. 07-L-009877 (Cook Cir. Ct., Dec. 17, 2012). The trial judge subsequently reduced the \$80 million verdict to \$64 million.

⁸⁰ The *State Court Guide* recommends that guardianship and other cases in which an initial entry of judgment is filed, but are then reviewed on a periodic basis by a judicial officer, be coded in the case management system as "set for review" rather than leaving the case as "pending" or "open" on the court docket to avoid distorting disposition time statistics. STATE COURT GUIDE, *supra* note 49, at 4.

⁸¹ MODEL TIME STANDARDS, *supra* note 41.

Table 9: Time to Disposition (days)*

	INTERQUARTILE RANGE				
	N	MEAN	25TH	50TH	75TH
Overall	820,893	306	35	113	372
Court Type					
General Jurisdiction	206,209	410	50	215	546
Single Tier	247,815	366	45	148	491
Limited Jurisdiction	366,869	206	23	72	219
Case Type					
Tort	60,460	486	165	340	640
Real Property	5,745	428	102	297	573
Other	79,077	323	26	160	401
Contract	553,271	309	28	107	371
Small Claims	110,274	175	39	70	169
Disposition Type					
Settlement	84,992	478	78	267	650
Summary judgment	5,812	441	185	321	574
Dismissal	293,466	391	49	195	544
Other disposition	7,819	323	57	149	374
Unknown disposition	16,740	316	64	147	373
Judgment (unspecified)	229,634	264	19	68	302
Adjudicated disposition	27,281	147	13	21	167
Default Judgment	155,149	132	36	70	159

* Categories sorted in descending order based on 75th percentile.

Generously speaking, it is clear from Table 10, which documents the proportion of cases disposed within these timeframes, that the *Model Time Standards* are still an aspirational goal rather than a current achievement. Overall, only the limited jurisdiction courts come close to meeting the *Model Time Standards*, with 71 percent of general civil cases disposed within 180 days, 84 percent within 365 days, and 89 percent within 540 days. General jurisdiction courts fared the worst with only 75 percent of cases disposed within 540 days.

Because contract cases comprise such a large proportion of civil caseloads, they will necessarily have an outsized effect on disposition times. Looking closely at the different subcategories of contracts, we find that debt collection cases (37% of contracts) are generally disposed quite quickly, with 91 percent closed within 180 days and 95 percent within 540 days. However, foreclosures (17% of contracts) are significant contributors to overall delay in contract

Table 10: Cases Disposed within Model Time Standard Guidelines*

	PERCENTAGE DISPOSED WITHIN			
	N	180 DAYS	365 DAYS	540 DAYS
Overall	820,893	59	75	82
Court Type				
Limited Jurisdiction	366,869	71	84	89
Single Tier	247,815	54	69	77
General Jurisdiction	206,209	45	64	75
Case Type				
Small Claims	110,274	76	88	92
Other Civil	79,077	53	73	81
Contract	553,271	61	75	81
<i>Debt Collection</i>	101,089	91	94	95
<i>Foreclosure</i>	240,115	14	36	51
<i>Landlord/Tenant</i>	90,495	68	87	92
Real Property	5,745	37	57	73
Tort	60,460	27	53	69
<i>AutoTort</i>	26,802	27	57	74
<i>PI/PD</i>	13,614	26	52	68
<i>Product Liability</i>	1,987	24	39	51
<i>Medical Malpractice</i>	1,332	21	36	46
Disposition Type				
Default Judgment	155,149	79	94	97
Adjudicated disposition	27,281	76	88	93
Judgment (unspecified)	229,634	67	78	84
Unknown disposition	16,740	56	75	83
Other disposition	7,819	55	75	82
Dismissal	293,466	48	66	75
Summary judgment	5,812	24	56	73
Settlement	84,992	40	59	70

* Note: Categories sorted in descending order based on cases disposed within 540 days.

cases.⁸² Only 14 percent were disposed within 180 days, and slightly more than half (51%) within 540 days. Landlord/tenant cases similarly did not meet the *Model Time Standards* guidelines, although they fared considerably better than mortgage foreclosures.

Although tort cases comprise only seven percent of the *Landscape* dataset, they were the worst case category in terms of compliance with the *Model Time Standards*. Only two-thirds (69%) were disposed within 540 days. Automobile torts performed somewhat better (74% disposed within 540 days) than other subcategories of torts. Less than half of the medical malpractice and product liability cases were disposed by 540 days, ostensibly due to their evidentiary and legal complexity. Perhaps the most surprising of the disposition time analysis is the fact that even small claims cases did not fully comply with the *Model Time Standards*, although they came closer than any other broad case type. Small claims slightly exceeded the *Model Time Standards* guidelines for cases disposed within 180 days (76%), but then lost ground for cases disposed within 365 days (88%) and 540 days (92%).

The manner of disposition may also explain some of the longer disposition times. Cases disposed by summary judgment and settlement, which necessarily would be characterized by longer discovery and pretrial litigation activity, were the least likely to have closed within 540 days (73% and 70%, respectively). In contrast, almost all (97%) of the cases disposed by default judgment closed within 540 days. Although some of the dismissals were undoubtedly administrative dismissals for failure to prosecute, the relatively

long timeframes to close these cases (75% disposed within 540 days) suggests that many of these may have been settlements. Nevertheless, closer supervision of these cases might have improved compliance with the *Model Time Standards*.

REPRESENTATION STATUS OF LITIGANTS

Most state court judges and court administrators can attest that the representation status of civil litigants has changed dramatically since the publication of the 1992 *Civil Justice Survey of State Courts*.⁸³ In that study, attorneys represented both plaintiffs and defendants in 95% of the cases disposed in general jurisdiction courts. This high level of attorney representation existed across case types; both parties were represented by attorneys in 98 percent of tort cases, 94 percent of contract cases, and 93 percent of real property cases. While plaintiffs remained overwhelmingly represented by counsel (92%) in the *Landscape* dataset, the average representation for defendants was 26 percent and the average percentage of cases in which both sides were represented by counsel was only 24 percent (see Table 11). As before, there are some striking variations across court types, case types, and disposition types.

Cases filed in general jurisdiction courts provide the most accurate comparison of the 1992 *Civil Justice Survey of State Courts* and the *Landscape* datasets. Although attorney representation for plaintiffs has declined only slightly (from 99% to 96%), attorney representation for defendants has decreased by more than half (97% to 46%), resulting in a commensu-

⁸² Mortgage foreclosures were a substantial factor in the spike in civil filings following the 2008-2009 economic recession. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012, Table 1194: Mortgage Originations and Delinquency and Foreclosure Rates: 1990-2010. Many state courts found themselves overwhelmed by the volume of foreclosure filings, including the Miami-Dade Circuit Court and the Maricopa County Superior Court. Subsequent complications related to mortgage servicing company record-keeping and internal foreclosure procedures may account for some of the delays apparent in these cases. Joe Adler, *OCC Offers Updates on Compliance with Foreclosure Settlement*, AMERICAN BANKER (April 30, 2014) available at http://www.americanbanker.com/issues/179_83/occ-offers-update-on-compliance-with-foreclosure-settlement-1067226-1.html, last visited on Aug. 24, 2015; Kate Berry, *Robo-Signing Redux: Servicers Still Fabricating Foreclosure Documents*, AMERICAN BANKER (Aug. 31, 2011) available at http://www.americanbanker.com/issues/176_170/robo-signing-foreclosure-mortgage-assignments-1041741-1.html?BCnopagination=1&clid=CMWK-MmXwscCFcEUHwod0X4LRw, last visited on Aug. 24, 2015.

⁸³ The 1992 *Civil Justice Survey of State Courts* measured representation status based on whether any party was represented by counsel at any time during the litigation. The NCSC *State Court Guide to Statistical Reporting* now recommends that representation status be measured based on whether a party was *self-represented* either at any time during the life of the case or, if the case management system does not capture that information, at disposition. COURT STATISTICS PROJECT, *supra* note 52, at 31-32. The *Landscape* study employed the *State Court Guide* methodology to measure representation status. As a result of the differing definitions, the 1992 *Civil Justice Survey of State Courts* statistics on representation status may inflate the proportion of litigants who were represented by counsel.

Table 11: Representation Status (Percentage of Cases)*

	ATTORNEY REPRESENTING			
	N**	PLAINTIFF	DEFENDANT	BOTH
Overall	649,811	92	26	24
Court Type				
General Jurisdiction	200,789	96	46	45
Limited Jurisdiction	201,194	86	22	17
Single Tier	247,828	91	19	11
Case Type				
Tort	60,358	96	67	64
Real Property	4,970	95	45	39
Other	38,010	78	36	25
Contract	453,115	95	23	20
Small Claims	98,176	76	13	13
Disposition Type				
Summary judgment	5,266	99	62	61
Other disposition	6,428	96	54	49
Unknown disposition	27,491	93	45	42
Settlement	64,435	92	40	37
Adjudicated disposition	6,106	64	38	37
Dismissal	231,730	92	33	31
Judgment (unspecified)	205,202	90	19	16
Default Judgment	108,150	91	7	5

* Categories sorted in descending order based on both parties represented by counsel.

** Number of cases in courts that reported representation status for both parties.

⁸⁴ Lawyers were permitted to represent clients in small claims cases in seven of the 10 counties that participated in the *Landscape* study: Cook County Circuit Court, Miami-Dade County Court, Oahu District Court, Harris County Justice Courts, Marion County Small Claims Court, Bergen County Superior Court, and the 12 municipal courts located in Cuyahoga County, Ohio.

rate decrease in cases with attorney representation for both sides (96% to 45%). Not surprisingly, limited jurisdiction courts had the lowest proportion of plaintiff representation (86%), but single-tier courts had the lowest proportion of both defendant representation (13%) and overall litigant representation (11%).

Tort cases had the highest proportion of attorney representation overall (64%) and were the only case category in which more than half of defendants were represented (67%). Attorney representation was lowest in small claims cases (both sides represented in 13% of cases), which was expected given that these calendars were originally developed as a forum for self-represented litigants to obtain access to courts through simplified procedures. What was surprising, however, was the higher than expected proportion of small claims cases in which plaintiffs were represented by counsel (76%). This suggests that small claims courts may have become the forum of choice for many debt collection cases.³⁴ If so, it raises troubling concerns

that small claims courts, which were originally developed as a forum in which primarily self-represented litigants could use a simplified process to resolve civil cases quickly and fairly, provide a much less evenly balanced playing field than was originally intended.

The *Landscape* data are insufficiently detailed to draw firm conclusions about the impact of attorney representation in any given case, but it is clear that it does affect case dispositions. For example, cases disposed by summary judgment had the highest proportions of attorney representation (61% with both sides represented), and likely reflects the fact that self-represented litigants would be less likely to file motions for summary judgment. Defendants in cases resolved by “other disposition” (e.g., bankruptcy stays, removal to federal court, and change of venue) were represented more than half the time (54%), again suggesting that lawyers would be more aware of and inclined to take advantage of these procedural options.

Conclusions and Implications for State Courts

The picture of contemporary litigation that emerges from the *Landscape* dataset is very different from the one suggested in debates about the contemporary civil justice system. State court caseloads are dominated by lower-value contract and small claims cases rather than high-value commercial and tort cases. Only one in four cases has attorneys representing both the plaintiff and the defendant. In addition, only a tiny proportion of cases are adjudicated on the merits, and almost all of those are bench trials in lower-value contract, small claims and other civil cases.

With rare exceptions, the monetary value of cases disposed in state courts is quite modest. Seventy-five percent (75%) of judgments greater than zero were less than \$5,200. Only judgments in real property cases exceeded \$100,000 more than 25 percent of the time. At the 75th percentile, judgments in small claims cases were actually greater than judgments in contract cases (\$6,000 compared to \$4,981). This is particularly striking given recent estimates of the costs of civil litigation. In the vast majority of cases, deciding to litigate a typical civil case in state courts is economically unsound unless the litigant is prepared to do so on a self-represented basis, which appears to be the case for most defendants.

The relatively high proportion of self-represented defendants in civil cases is also troubling. Much of the civil justice system is designed with the assumption that both parties will be represented by competent attorneys. The asymmetry of representation between plaintiffs and defendants across all of the case types — even in small claims courts — raises serious questions about the substantive fairness of outcomes in those cases.⁸⁵ Although there has been a sea change in state court policies with respect to the legitimacy of court-supported assistance to

self-represented litigants, it is still a very controversial topic in many states.⁸⁶ Moreover, most of that assistance takes the form of self-help forms and general instructions for filing cases and gathering documents in preparation for evidentiary hearings. As a general rule, state codes of judicial ethics prohibit judges from giving the appearance of providing assistance, much less actually giving assistance, to a self-represented litigant.⁸⁷ This has certain implications with respect to public trust and confidence in the courts. The idealized view is that courts provide a forum in which civil litigants can negotiate effectively to resolve disputes, but also one in which Justice (with a capital J) will be done if those negotiations fail. It is fair to question the extent to which self-represented defendants are able to bargain effectively with represented litigants given unequal resources and expertise.

The economic realities of contemporary civil litigation suggest one explanation for the dominance of contract and small claims cases, which comprise 80 percent of civil caseloads in the *Landscape* courts. For plaintiffs in these cases, state courts essentially function as a monopoly insofar that securing a judgment from a court of competent jurisdiction is the only legal mechanism for enforcing payment of the award through post-judgment garnishment or asset seizure proceedings. Even so, plaintiffs must generally wait months to secure the judgment before they can initiate enforcement proceedings. The majority of claims asserted in tort cases, in contrast, are likely to involve insurance coverage for the defendant, which provides greater incentives for litigants to settle claims and a mechanism for judgments and settlement agreements to be paid. Indeed, in the vast majority of incidents giving rise to tort claims, the existence of a robust and highly regulated insurance market largely precludes the need to file cases in court at all.⁸⁸

⁸⁵ In 2010, the Federal Trade Commission published a report describing common problems involving unfair, deceptive, and abusive debt collection practices. FEDERAL TRADE COMMISSION, PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION (July 2010). In response to consumer complaints, the Consumer Financial Protection Bureau recently published model rules and procedures for state courts designed to curb the most frequently alleged abusive practices. CONSUMER FINANCIAL PROTECTION BUREAU, PROPOSED RULES, 78 FED. REG. 67,848 (Nov. 12, 2013) (to be codified at 12 C.F.R. pt. 1006).

⁸⁶ DEBORAH SAUNDERS, ACCESS BRIEF: SELF-HELP SERVICES (NCSC 2012).

⁸⁷ Jona Goldschmidt, *Judicial Ethics and Assistance to Self-Represented Litigants*, 28 JUST. SYS. J. 324 (2007).

⁸⁸ As just one example, the Insurance Research Institute reports that of automobile insurance claims closed in 2012, only eight percent of claimants ultimately filed suit in court. INSURANCE RESEARCH INSTITUTE, COUNTRYWIDE PATTERNS IN TREATMENT, COST, AND COMPENSATION (2014).

DISTORTED PERCEPTIONS OF CIVIL LITIGATION IN STATE COURTS

This reality raises the question of why perceptions of civil litigation are so distorted. One possibility is that some findings from the *Landscape* study may be at least partly attributed to ongoing effects of the 2008-2009 economic recession. For example, the large proportion of debt collection and foreclosure cases may have inflated the proportion of contract cases relative to other case types. However, the majority of those cases were filed after July 1, 2011, well after the peak of civil filings from the recession. Moreover, civil case filing statistics indicate that the proportion of contract cases routinely fluctuates over time in response to economic conditions, and rarely dips below 50 percent of civil caseloads. The relative stability of caseload compositions over time tends to counter the possibility that the *Landscape* findings are a temporary anomaly.

A more likely explanation is the focus on high-value and complex litigation by the media (especially business reports), much of which is filed in federal rather than state courts. Lower-value debt collections, landlord/tenant cases, and automobile torts involving property damage and soft-tissue injuries are rarely newsworthy. Another explanation is that perceptions are largely driven by the experiences of lawyers, who are repeat players in the civil justice system and who are much more likely to be involved in high-value and complex cases. Likewise, judges tend to focus on their experience in cases that demand a great deal of judicial attention. A final explanation for the distorted perception of civil caseloads is the institutional complexity inherent in the variety of organizational structures

and jurisdictional authorities in state courts, which make it extremely difficult to document the size of civil caseloads, much less make accurate comparisons across states.

In spite of distorted perceptions, state courts do have serious problems managing civil cases. Of particular concern is the extent to which costs and delay impede access to justice. Procedural complexity is often cited as a contributing cause of cost and delay, but recent commentary suggests that uniform procedural rules that treat all cases exactly the same regardless of the complexity of the factual and legal issues underlying the dispute may be a more significant problem.⁸⁹ Most uniform rules place a great deal of discretion in the hands of lawyers to determine the extent to which each case should be litigated. The bar has largely resisted proposals to restrict that discretion on grounds that any individual case might need an exceptional amount of time or attention to resolve and therefore all cases should be managed as if they need that exceptional treatment. Courts that have imposed mandatory restrictions on lawyer discretion have tended to generate considerable pushback including the use of creative procedural techniques to exempt cases from their application.⁹⁰ Opt-in programs designed to streamline case management have often failed due to underuse.⁹¹ As the findings from the *Landscape* dataset make clear, however, very few cases need as much time or attention as the rules provide and, ironically, many of them likely take longer and cost more to resolve as a result.

Another contributor to cost and delay is the traditional practice of allowing the litigants, rather than the court, to control the pace of litigation. Proponents

⁸⁹ INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, INTERIM REPORT ON THE JOINT PROJECT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS TASK FORCE ON DISCOVERY AND CIVIL JUSTICE AND IAALS A-2-3.

⁹⁰ After the Utah Supreme Court implemented mandatory restrictions on the scope of discovery based on the amount in controversy in November 2011, attorneys appear to have inflated the purported amount-in-controversy to secure assignment to higher discovery tiers. UTAH RULE 26 REPORT, *supra* note 32, at 10-12. The NH PAD Pilot Rules required attorneys to meet and confer within 20 days of the filing of the Answer to establish deadlines for various discovery events, alternative dispute resolution (ADR) proceedings, dispositive motions, and a trial date, and submit a written stipulation to the court to be used as the case structuring order. Although compliance with the PAD Pilot Rules was quite high, it did not have the intended effect of reducing disposition time. Because the rules did not impose restrictions on the timeframe for completing discovery and pretrial procedures, attorneys simply stipulated to the timeframes to which they were already accustomed. NEW HAMPSHIRE PAD RULES REPORT, *supra* note 31, at 7-9.

⁹¹ Several states and local trial courts have developed opt-in programs designed to increase civil jury trial rates by offering expedited pretrial processing, but participation rates have varied considerably. See SHORT, SUMMARY & EXPEDITED, *supra* note 14.

of this tradition offer several justifications. First is a philosophical justification that although the civil justice system is a public forum, the cases themselves remain private disputes that should be wholly controlled by the parties. Proponents of party-driven pacing argue that the parties have more complete knowledge about the case and the attractiveness of any proposed resolution and are therefore in a better position to determine the pace at which the case should proceed and the extent to which additional investments in litigation are worthwhile. Second, until fairly recently, most litigants were represented by attorneys who were repeat-players in the civil justice system. As such, courts have generally been more attentive to bar demands for control over case management than litigant demands for speedy, just, and inexpensive resolution of disputes.

Finally, courts historically have not had sufficient resources to effectively manage civil caseloads. The sheer volume of civil cases filed in state courts greatly overwhelms the ability of judges to provide individual attention and oversight to every case. Instead, judges focus most of their attention on the “squeaky wheels,” (cases involving overly aggressive litigants clamoring for the court’s attention and using extensive motions practice to disagree on every conceivable issue). Judges have few incentives to pay attention to those cases that are just quietly “pending” on the civil docket. With rare exceptions, previous recommendations concerning caseload management have not been broadly adopted or institutionalized in state courts. Nor have courts developed case management automation to support effective caseload management.

While most automation systems can track case filings and calendar events, they lack the ability to monitor compliance with deadlines or other court orders.⁹² Case progress, therefore, depends on the litigants to inform the court that the case is in need of some judicial action (e.g., to resolve a discovery dispute, rule on a summary judgment motion, or schedule the case for trial). Furthermore, non-judicial staff serve primarily in clerical roles and rarely have either the training or the authority to undertake routine case management tasks on behalf of the judge. As a result, state courts struggle to comply with the Standards.

THE FUTURE OF THE CIVIL JUSTICE SYSTEM IN STATE COURTS?

Substantial evidence supports allegations that civil jury and bench trials have declined precipitously over the past several decades.⁹³ The most frequent explanation for this trend is that the cost and time involved in getting to trial make alternative methods of dispute resolution more attractive.⁹⁴ A substantial commercial industry providing ADR services (e.g., mediation, arbitration, private judging) not only actively competes with state and federal courts for business, it even relies largely on experienced trial lawyers and judges to provide those services. Not only are these methods more likely to be pursued in existing disputes, many routine consumer and commercial transactions (e.g., utility contracts, financial services agreements, health-care and insurance contracts, commercial mergers, and employment contracts) now specify that future disputes must be resolved by mediation or binding arbitration.⁹⁵ The rise of the Internet economy has also

⁹² The COSCA-NACM-NCSC Joint Technology Committee began developing Next-Gen technology standards for court automation in early 2015. JOINT TECHNOLOGY COMMITTEE, BUSINESS CASE FOR NEXT-GEN CMS STANDARDS DEVELOPMENT (June 10, 2014), <http://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/BusinessCaseforNextGenCMS%20StandardsDevelopmentDRAFT7214.ashx>. More effective judicial tools are also envisioned as part of the Next-Gen standards. JTC Resource Bulletin: Making the Case for Judicial Tools (Dec. 5, 2014), <http://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bulletins/Judicial%20Tools%201%20%20FINAL.ashx>.

⁹³ *The Vanishing Trial*, *supra* note 20.

⁹⁴ Thomas J. Stipanowich, ADR and the “*Vanishing Trial*”: *The Growth and Impact of Alternative Dispute Resolution*, 1 EMPIRICAL LEG. ST. 843 (2004); Stephen C. Yeazell, Getting What We Asked For, *Getting What We Paid For, and Not Liking What We Got: The Vanishing Civil Trial*, 1 J. EMPIRICAL LEG. ST. 943 (2004).

⁹⁵ CONSUMER FINANCIAL PROTECTION BUREAU, ARBITRATION STUDY: REPORT TO CONGRESS, PURSUANT TO DODD-FRANK WALL STREET AND CONSUMER PROTECTION ACT §1028(a), Section II, 6-26 (March 2015).

spurred the development of online dispute resolution forums for major Internet-based companies such as E-bay, PayPal, and Amazon.⁹⁶ A significant consequence of these trends is the growing lack of jury trial experience within the bar and increasingly the state court trial bench. This may further feed the decline in civil jury trials as lawyers and judges discourage their use due to unfamiliarity with trial practices.⁹⁷ In addition to declining trial rates, there is growing concern that many civil litigants are not filing claims in state courts at all.⁹⁸ Preemptive clauses for binding arbitration in consumer and commercial contracts divert claims away from state courts, but other factors including federal preemption of certain types of cases,⁹⁹ international treaties,¹⁰⁰ and legislative requirements that litigants exhaust administrative remedies in state or federal agencies before seeking court review¹⁰¹ have also proliferated in recent years.

Although not related to trends in civil caseloads and disposition rates, state court budgets declined precipitously during the economic recessions in 2002-2003 and again in 2008-2009. Although most state courts experienced some recovery after the 2003 recession, there is currently no expectation among state court policymakers that state court budgets will return to pre-2008 recession levels. Moreover, state and federal constitutional and statutory provisions place higher priority on criminal and domestic caseloads in state courts, further undermining timely and effective management of civil caseloads. For the past two decades, state courts leaders have resigned themselves to doing more with less, all the while watching civil litigants move with their feet to other forums to resolve disputes or forego civil justice entirely.

These trends have severe implications for the future of the civil justice system and for public trust and confidence in state courts. The cost and delays of civil litigation greatly outpace the monetary value of most cases filed in state courts, effectively denying access to justice for most litigants and undermining the legitimacy of the courts as a fair and effective forum to resolve disputes. Reductions in the proportion of civil cases resolved through formal adjudication threaten to erode a publicly accessible body of law governing civil cases. Fewer common law precedents will leave future litigants without clear standards for negotiating civil transactions or conforming their conduct in a responsible manner. The privatization of civil litigation likewise undermines the ability of the legislative and executive branches of government to respond effectively to developing societal circumstances that become apparent through claims filed in state courts. Because the civil justice system directly touches everyone in contemporary American society — through housing, food, education, employment, household services and products, personal finance, and commercial transactions — ineffective civil case management by state courts has an outsized effect on public trust and confidence compared to the criminal justice system. If state court policymakers are to preserve the traditional role of state courts as the primary forum for dispute resolution, civil justice reform can no longer be delayed or even implemented incrementally through changes in rules of civil procedure. Instead, it will require dramatic changes in court operations to provide considerably greater court oversight of caseload management to control costs, reduce delays, and improve litigants' experiences with the civil justice system.

⁹⁶ Online dispute resolution services have become so widely available that an academic journal — *The International Journal of Online Dispute Resolution* — has been launched to provide practitioners with information about current initiatives and developments. See <http://www.international-odr.com/>. Pablo Cortés, *Developing Online Dispute Resolution for Consumers in the EU: A Proposal for the Regulation of Accredited Providers*, 19 INT'L J. L. & INFORMATION TECH. 1 (2011).

⁹⁷ Paula Hannaford-Agor et al., *Trial Trends and Implications for the Civil Justice System*, 11 CASELOAD HIGHLIGHTS 6 (June 2005).

⁹⁸ The NCSC Court Statistics Project reports that civil filings have declined by 13.5% since the peak in filings in 2009. Although population adjusted filings vary periodically in response to economic conditions, there is no apparent decrease overall since 1987, the year that the NCSC began reporting these statistics.

⁹⁹ CLASS ACTION FAIRNESS ACT OF 2005, 28 USC §§ 1332(d), 1453, 1711-1715; David G. Owen, *Federal Preemption of Product Liability Claims*, 55 S.C. L. REV. 411 (2003).

¹⁰⁰ Joachim Pohl, *Dispute Settlement Provisions in International Investment Agreements: A Large Sample Survey*, OECD WORKING PAPERS ON INTERNATIONAL INVESTMENT (2012/02).

¹⁰¹ JACOB A. STEIN, ADMINISTRATIVE LAW §§ 49.01-03 (Exhaustion of Administrative Remedies) (2013).



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APPENDIX
ATTACHMENT 7

Leading Off: Filling Big Shoes

“When E. F. Hutton talks, people listen.”

Millennials would not be expected to remember this catch phrase; it may even be a stretch for Generation Y. But if you turned on a television set in the 1970s or '80s, you were likely to see traffic stop and pedestrians freeze in their tracks whenever advice from the E. F. Hutton brokerage firm was being shared.

In December, multiple generations of lawyers made their way into Dorsett Auditorium for the Professionalism Committee's annual CLE program. Prominent among the speakers that day was the outgoing executive director of the N.C. Chief Justice's Commission on Professionalism, Mel Wright.

Such a presentation should be routine for Wright, who is retiring this summer after 20 years as the commission's founding executive director, yet he remains meticulous in his preparation and appearance. The fact that he has presented professionalism programs in every North Carolina judicial district, in every county for that matter, is irrelevant.

Be they young or old, everyone who came to the N.C. Bar Center that day was going to get his best effort. It was another

chance to make another positive impression on behalf of the commission and the legal profession at large, and true to form, he nailed it.

His successor will be chosen from a field of applicants who either know or will soon learn that they have big shoes to fill. North Carolina is not only a large state, it's a wide state, as Wright and anyone else from Elizabeth City well knows.

“I think it is important for the bar that the director be willing to go from Manteo to Murphy with the message of professionalism,” Wright said. “Let judges and lawyers know that if there is anything the professionalism commission can do to help them that we will.

“I hope they will choose someone who has some experience but has demonstrated that they care about our profession, and that they will do their very best to enhance professionalism in whatever capacity or way that they can.”

The interview continues on page 19. His legacy of professionalism will endure for generations.

When Mel Wright talks, people listen. *NCL*

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NCBA members and guests cheer the NBA Charlotte Hornets before their game against the LA Clippers on Feb. 11 at an NCBA-sponsored Membership Event in Charlotte.
(Photo by Glennon Toone)



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To serve the public and the legal profession by promoting the administration of justice and encouraging the highest standards of integrity, competence, civility and well-being of all members of the profession.

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Members Sarah Miranda and Victoria Hardin offer legal answers to callers at the 4ALL call center at Hutchens Law Firm in Fayetteville. The Fayetteville site was one of seven across the state where NCBA members gathered for the 10th annual call-in event. (Photo by Amber Nimocks)

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About the cover

Presenting the Final Report of the North Carolina Commission on the Administration of Law and Justice are, left, N.C. Chief Justice Mark Martin; Catharine Biggs Arrowood, North Carolina Bar Association past-president and co-chair of the commission's Legal Professionalism Committee; and NCBA President Kearns Davis, a member of the Criminal Investigation and Adjudication Committee. (Photo by Russell Rawlings)

The President's Perspective

By Kearns Davis



Fred Lind, Chief Public Defender for Guilford County, recently shared a letter from a juror:

Last week I had the privilege of serving on a jury for a case defended by Mr. A. Brennan Aberle.

I was so impressed by his performance on this case I felt I had to put something on the record.

At the start Mr. Aberle promised a defense based on facts and reason, and he delivered on that promise. ...

I am often worried that justice is only for those who can afford it, but Mr. Aberle's effective defense of his client reassures me that the freedom of ALL residents of Guilford County is well-protected by your office. I don't believe a better defense could have been purchased at any price.

My Cousin Vinny (1992) is a legal film classic. But its caricature of a stammering, timid, poorly prepared public defender reinforced a stereotype that is widely shared but wildly wrong. As those who appear regularly in criminal court know, public defenders are experts. It is the public defender who spends every day in the same courthouse, working with judges and prosecutors and handling the cases that are staples for indigent clients. One United States district judge, who observes skilled, experienced counsel every day, describes the Federal Public Defender's office in his district as, "lawyer for lawyer, the best trial law firm in the State of North Carolina."

Gideon v. Wainwright, in 1967, established states' Sixth Amendment responsibility to provide counsel to indigent criminal defendants. Soon afterward, the North Carolina Senate directed the Courts Commission to study the implementation of a statewide public defender system.¹ A half century later, though, public defender offices serve just 31 of our 100 counties.²

Public defender offices are effective and productive. The North Carolina Commission on the Administration of Law and Justice, appointed by Chief Justice Mark Martin in 2015, conducted a thorough study of indigent defense in North Carolina.³ In its recent Final Report, the Commission cited empirical research findings that public defenders perform as well or even better on average than private appointed attorneys. By concentrating on particular types of criminal cases, the Commission found, public defenders develop expertise that promotes both quality and efficiency.⁴

Public defenders do not eliminate the need for private,

"To achieve justice, the system must be reliable, and reliability requires effective advocacy on both sides."

appointed practitioners. On the contrary, due to conflicts of interest and workloads, jurisdictions with public defenders "require continued active participation by the private bar."⁵ Indeed, public defenders make the private bar better. The devoted private lawyers who commit their time and energies to indigent defense, at very low rates, profit from the support, expertise, and collective experience of public defender offices.⁶

Other stakeholders, too—including judges and prosecutors—strongly support public defenders' work and role. Accordingly, the Commission concluded, "the best delivery system for indigent defense services in North Carolina is a public defender office." Its Final Report recommended a statewide system of district and regional public defenders.⁷

The state makes its weightiest decisions in the criminal courts. In pursuit of justice, the machinery of government turns from protecting liberty—our nation's founding purpose—to taking liberty away.

To achieve justice, the system must be reliable, and reliability requires effective advocacy on both sides. **Gideon's** promise is that everyone accused of a crime, the powerless as well as the powerful, will have an effective advocate. Fifty years of experience teaches that public defenders—the system's unsung heroes—are the best fulfillment of that promise. **.vcl**

Kearns Davis is the 122nd president of the North Carolina Bar Association. Follow him on Twitter @KearnsDavis.

(Endnotes)

1 N.C. Senate Resolution 654 (June 1967), cited in Report of the Courts Commission to the N.C. General Assembly of 1969, at 2, available at https://archive.org/details/reportofcourtsco19nort_0; see also Susan E. Brooks & Rachel Raimondi, "The Public Defender System in North Carolina—Its History and Future," *N.C. State Bar Journal* at 24 (Spring 2017) (citing Courts Commission Report).

2 Brooks & Raimondi at 26; N.C. Comm'n on the Admin. of Law & Justice, *Final Report* Part 2, App. D. at 9, available at <https://nccalj.org/final-report/> (hereinafter "NCCALJ Report").

3 I am grateful to Chief Justice Martin for the privilege of serving on the Commission.

4 NCCALJ Report at 31-32.

5 *Id.* at 34.

6 See generally *id.* at 26-36.

7 NCCALJ Report at 31-32.



Goings On

Here's a look at what NCBA members have been up to lately. Have a photo of an NCBA member event you'd like to share with us? Email it to gtoone@ncbar.org.



Left: NCBA members head to the Legislative Building to meet with lawmakers on NCBA Legislative Day 2017. (Photo by David Bohm) **Right:** Volunteers sort and package sweet potatoes as part of the Legal Feeding Frenzy kickoff event at the Food Bank of Central and Eastern N.C. on March 2. The annual campaign is sponsored by the Young Lawyers Division of the NCBA, the North Carolina Attorney General and the North Carolina Association of Feeding America Food Banks. This year's effort resulted in more than 309,000 pounds of food collected for hungry North Carolinians. (Photo by Glennon Toone)

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- **2017-18 Board Nominations Reported:** The Nominations Committee of the North Carolina Bar Association has compiled its slate of nominees for the NCBA Board of Governors for 2017-18.
- **Stay Secure, Stay Connected:** Update your website browser to stay secure and stay connected with the NCBA
- **Attorneys Help Hurricane Victims:** North Carolina attorneys provided free legal assistance to 300 victims of Hurricane Matthew

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Member in Focus: Deborah Sperati



Ask Deborah Sperati if she would rather run a craft brewery or practice law as a partner at Poyner Spruill, and she answers with a question: “Why choose when you can do both?”

As co-founder, legal counsel and chief cultural officer of Koi Pond Brewery in Rocky Mount, Sperati blends her passion for craft beer and her 18 years of experience as a civil and commercial litigator. A North Carolina native who grew up in Greenville, Sperati earned her law degree from UNC School of Law and has practiced for 18 years. At Poyner Spruill, she leads the Brewery, Winery and Distillery Practice Group, which offers her critical insight into the challenges facing the state’s growing group of beer, wine and spirits artisans. Here, she offers some insight on how she keeps these dual pursuits alive.

Q: How does your interest in breweries overlap with your practice of law?

A: The legal hurdles that breweries, wineries and distilleries face are a constantly evolving and imposing aspect of trying to start and run a business in these industries. I feel like I am in a unique position to understand it from both the legal side and the business owner side, so it is critical that I utilize my legal experience whether it be for Koi Pond or any of our friends in the industry.

Q: What is it about North Carolina beers that inspired you to co-found a brewery?

A: Breweries have a unique ability to showcase local products grown in our area, simultaneous with giving people a sense of the history and culture. Beers made here are beers with a sense of place, a place that I know, demonstrating artistry, ingenuity, optimism, and boundless creativity. I grew up on a farm in Greenville, N.C., and take great pride in eastern North Carolina. As we lose our traditional industries of tobacco and textiles, breweries

can repurpose our agricultural strengths by utilizing our farms to grow all the products we need to brew beer: barley, hops, plants for naturally occurring yeast and all the fruits, produce and herbs which may go into our flagship and specialty beers. Witnessing the success of new craft brewers in the region has been an inspiration. We can grow things here, and we will.

Q: Do you have a current Koi Pond beer favorite?

A: It depends on the day! We offer a lot of seasonal ales and with spring upon us, there are some great ones in the works like our Strawberry Lotus Saison that won gold at the N.C. Brewers Cup last year, and one of my favorites—our Cucumber Basil Summer Ale. I’m also a sucker for our stouts, particularly Rising Sun Mocha Java Stout and our Destination Stout made with almond and toasted coconut.

Q: How hands-on is your role in the brewing process?

A: I am not a brewer and our beer is better because I know that. Brewing is science, and art, and more science, and highly technical and mechanical know-how, and a thousand other things outside my skill set. I think we have the best team anywhere and I am constantly in awe of what they create, so my job is to make sure they can do their job.

Q: Do you have any quotes that inspire you?

A: We have a friend that is an artist and painted us a sign to hang in the brewery as a gift for our grand opening. It has a familiar quote that always inspires me to keep moving and trying new things: “Your life is your story. Write well. Edit often.”

Q: Was there a particular person or event in your life that inspired you to be an attorney?

A: I started saying I wanted to be an attorney somewhere around age 5. I always thought of practicing law as a way to chart your own path and impact the world around you, and most importantly, make your parents proud.

Q: Tell us about your family.

A: My husband Matthew Sperati is also an attorney and operates his own firm in Rocky Mount. We have two dogs, Amos and Olive, that keep us on our toes and are big fans of pet-friendly craft breweries.

Q: How has your membership in the North Carolina Bar Association helped you as an attorney?

A: The NCBA is the glue that holds us all together, reminds us why we got into the profession, keeps us moving forward, and facilitates giving back to our communities. *.ncz*

A WORTHY CAUSE

COMMISSION REPORT A BLUEPRINT FOR FUTURE OF JUSTICE SYSTEM

BY CHIEF JUSTICE MARK MARTIN



On March 15, 2017, in a ceremony at the Supreme Court of North Carolina, the North Carolina Commission on the Administration of Law and Justice (NCCALJ) presented its Final Report. This report is only the third effort of its kind in the history of the North Carolina judicial branch, following the work of the Bell Commission in the 1950s and '60s and the report of the Medlin Commission in the 1990s.

The NCCALJ initiative coincided with the 50th anniversary of several judicial branch milestones that arose from the Bell Commission's recommendations. The timing is appropriate because, I hope that, 50 years from now, future generations of North Carolinians will mark the NCCALJ's recommendations

as another set of significant achievements for our state's courts.

In February 2014, I announced a plan to strengthen our judicial system. Having served as a judge in the trial division and in our state's appellate courts for over two decades, I knew firsthand the systemic challenges facing our judicial branch. Almost two decades had passed since the last full review of our court system, and our state had changed significantly. The top priority of my administration-of-justice plan was to start a new commission, so, in September of 2015, I convened the NCCALJ. The commission was directed to undertake a comprehensive and independent review of North Carolina's court system and make recommendations for improving the administration of justice.

The NCCALJ's membership was drawn statewide from business, academia, the judicial branch, the legislative branch, the executive branch, the legal profession and the non-profit sector. Each of the commission's 65 members served on one of five committees: Civil Justice, chaired by Dean David F. Levi

of Duke Law School; Criminal Investigation and Adjudication, chaired by Judge William A. Webb, retired federal magistrate judge; Legal Professionalism, chaired by Catharine Biggs Arrowswood, former NCBA president and a law partner at Parker Poe; Public Trust and Confidence, chaired by J. Bradley Wilson, CEO of Blue Cross and Blue Shield of North Carolina; and Technology, chaired by Supreme Court Justice Barbara A. Jackson. Thirteen non-voting *ex officio* members also participated in the commission's work. Each committee was served by one or two reporters, and all of the committees were supported by three full-time commission staff members.

The commission met four times as a full body. Individual committees met many more times on their own, for a total of 62 meetings over a 15-month period. The National Center for State Courts, other experts and organizations that attended these meetings, and the NCCALJ's research associate ensured that committee discussions were well informed and data driven. Seeking as much public input as possible, the commission conducted four well-attended public hearings in the summer of 2016 and also solicited comments online from judicial branch stakeholders and members of the general public. In addition, the polling centers at Elon University and High Point University conducted a series of surveys on public trust and confidence on the NCCALJ's behalf in the fall of 2015. The results of these polls helped inform the commission's thinking.

The commission's work has been collaborative, innovative and thoughtful. Each committee identified and then deliberated about a diverse set of issues and, through healthy dialogue, arrived at empirically grounded, fact-based recommendations. The committees' efforts focused on how North Carolina's courts could best meet the public's expectations for a modern court system. The committee reports are unified by three fundamental principles of sound judicial administration—fairness, accessibility and efficiency. Those principles echo the Judicial Branch's constitutional mandate to administer justice

“without favor, denial, or delay.” N.C. Constitution, art. I, § 19.

We owe a debt of gratitude to the commissioners and reporters who collectively volunteered over 4,000 hours to the NCCALJ. Included among those were more than 20 practicing attorneys and all seven of the state's law school deans. I also appreciate the many lawyers who addressed the committees on various topics, and those who provided comments at one of the NCCALJ's public hearings or submitted comments online during the commission's public comments period. I am especially grateful to NCBA President (and NCCALJ commissioner) Kearns Davis and the leadership of the Bar Association for their enthusiastic support of the NCCALJ.

The NCCALJ's commitment to tireless collaboration and public input is perhaps best exemplified by the Criminal Investigation and Adjudication Committee's recommendation on juvenile reinvestment. The committee recommends raising the juvenile age—that is, the age at which a youth is prosecuted in adult criminal court instead of appearing in juvenile court—from 16-years-old to 18-years-old for nonviolent crimes. This recommendation enjoys support from a broad range of organizations, such as the N.C. Sheriffs' Association, the N.C. Chamber of Commerce's Legal Institute, and groups as diverse as the ACLU and the John Locke Foundation. The NCCALJ's public comments period last August evidenced a high level of support as well. A Civitas poll released this March again confirmed this public sentiment, showing 70 percent public support for raising the juvenile age. Legislation to implement the recommendation was recently introduced in the General Assembly with strong bipartisan support. I am hopeful that juvenile reinvestment will be enacted into law this session.

The majority of the NCCALJ's recommendations are within the judicial branch's authority to implement on its own. Almost all of the recommendations require involvement by the North Carolina Administrative Office of the Courts' (NCAOC) various offices and divisions, including Technology Services, Research

COMMISSION REPORT HIGHLIGHTS

- **Implementing a strategic technology plan for paperless courthouses, including e-filing**
- **Raising the juvenile age from 16 to 18 years old for crimes other than violent felonies and traffic offenses**
- **Reducing case delays and improving efficiency based on data analytics**
- **Assisting the growing number of self-represented litigants in new ways**
- **Taking steps to change how judges and justices are selected and retained**
- **Developing new tools to improve pretrial detention decision-making**
- **Improving the state's indigent defense system**
- **Surveying the public to better gauge its perception of the courts**
- **Training court officials to improve procedural fairness and eliminate the possibility of bias**
- **Creating an entity to confront changes in the market for legal services**
- **Restoring legal aid funding and loan repayment assistance for public interest lawyers**
- **Improving civic education in schools and through an active speakers bureau**

and Planning, Court Services, Court Programs and the Governmental Affairs Office, which can continue working on recommendations, such as juvenile reinvestment, that require legislative changes. Accordingly, the NCCALJ co-chairs have recommended that the NCAOC director take primary responsibility for carrying out the commission's work. The director has initiated key steps in this regard, including an important restructuring of NCAOC to position that organization to implement the commission's recommendations. In addition, NCAOC has already acted on several recommendations, including the creation of a judicial

fellows program that will provide research and support to trial court judges; a revamp of the NCcourts.org website to increase transparency and access to the court system; a speakers bureau that has enlisted civics education speakers who are available to speak in all 100 counties; and the creation of NCAOC's e-Courts division, which will be responsible for the five-to-seven-year process of implementing the Technology Committee's strategic technology plan.

I am confident that the NCCALJ's recommendations will create a framework for dramatic, systemic improvement in the

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Criminal Investigation and Adjudication Committee's Subcommittee on Indigent Defense

Judge Athena Brooks, Thomas Maher, LeAnn Melton, John Rubin and Michael Waters

Criminal Investigation and Adjudication Committee's Subcommittee on Juvenile Age

Michelle Hall, William Lassiter, LaToya Powell, James Woodall and Eric Zogry

administration of justice in North Carolina. The commission's work will help ensure that North Carolina's judicial branch meets the needs and expectations that the people of North Carolina have for fair, accessible, and efficiently managed courts.

Please join me in applauding the NCCALJ's work, reading the NCCALJ's final report, and engaging with its recommendations. And please join me in making a commitment to improving our justice system. The power to administer justice is a sacred public trust that must be guarded carefully by each

generation. In the words of President Theodore Roosevelt, let us be those who spend ourselves "in a worthy cause; who at the best know[] in the end the triumph of high achievement, and who at the worst, if [we] fail[], at least fail[] while daring greatly, so that [our] place shall never be with those cold and timid souls who neither know victory nor defeat." *NCL*

MARK MARTIN is Chief Justice of the Supreme Court of North Carolina. The NCCALJ's Final Report can be downloaded at www.nccalj.org/final-report/

TWITTER TOWN HALL



The NCBA and the North Carolina Commission on the Administration of Law and Justice (NCCALJ) co-hosted the N.C. Bar Center's first Twitter Town Hall on March 27 to discuss the release of the NCCALJ Final Report. The event generated over 100 hits for the #AskNCCALJ hashtag and trended throughout the Raleigh area. Participants included Justice Barbara Jackson, NCCALJ Technology Committee chair; Catharine Arrowood, NCCALJ Legal Professionalism Committee chair; Tom Murry, AOC chief legal counsel for governmental affairs; and Kim Crouch, NCBA director of governmental affairs. Glennon Toone, NCBA digital media coordinator, organized the event.

Academic Freedom In Interesting Times

By William Joseph Austin Jr.



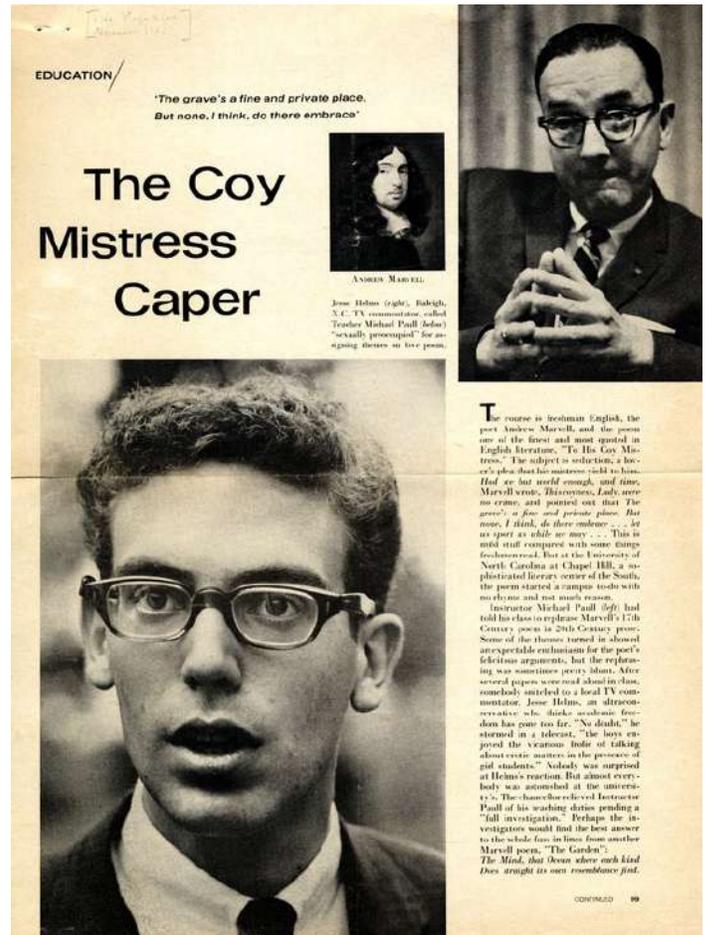
A 50th anniversary came and went this past fall without fanfare or commemoration. But for several weeks in October and November of 1966, Andrew Marvell's poem, "To His Coy Mistress," written circa 1650's, was a "national sensation."^[1] On Oct. 17, 1966, the television

station WRAL reported that a UNC English instructor had assigned his students to write a paper on seduction using this 17th-century poem.^[2] Subsequent investigation by a departmental committee determined in November that the instructor, Michael Paull, had not given the students that assignment, but asked them to use the poem to explain imagery and six figures of poetic speech.^[3]

In the meantime what was called the "Coy Mistress" case became the subject of television commentaries by then editorialist Jesse Helms in his *Viewpoint* series. Quoting from the transcript of one of them, he had this to say:

In the sometimes fuzzy, superficial world of misguided academic freedom and irresponsible freedom of the press, all the world is mostly a stage and a good many of the people are actors. Therefore, it is remotely possible, though not logically probable, that the young English professor at Chapel Hill—the one with such an apparent preoccupation with sex—may somehow manage to wear that crown of pious martyrdom so frantically placed upon his head last week by the "liberal" newspapers of the state.^[4]

The history of how a freshman English assignment was seized upon by the press and politicized is discussed in depth elsewhere.^[5] Yet the "Coy Mistress" case is often forgotten, perhaps eclipsed. This chapter in UNC history occurred in the wake of the 1966 "student revolt" against the Speaker Ban Law.^[6] Overturning the Speaker Ban Law was ultimately a victory for academic freedom in the classic *Sweezy v. New Hampshire* sense that educational institutions should be allowed to freely determine on educational grounds who may teach, what may be taught, and how it shall be taught.^[7] The "Coy Mistress" case, on the other hand, at least according to one scholar, involved the "politics of character assassination,"^[8] referring to the invective heaped on the English instructor and the effect it had



"The Coy Mistress Caper," *Life*, November 1966: 99-102. Records of the Department of English (#40081), University Archives, Wilson Library, University of North Carolina at Chapel Hill.

on his teaching career. It also involved a direct attack on the *Sweezy* freedom^[9] to let the university determine what may be taught and how. After all, "To His Coy Mistress" was then, and still is, recognized as a "Masterpiece," reviewed in the eponymous *Wall Street Journal* weekly feature.^[10]

However our purpose here is not to cast judgment, but to demonstrate, once again, what's past is prologue. Fifty years later, the fall semester of 2016 was marked by increased incidence of newsworthy speech and speech acts in school settings, albeit none as intense (so far) as the "Coy Mistress" case:

- In September a high school teacher resigned after her students said she asked them to compare speeches by Adolf Hitler with those made by then presidential candidate Donald Trump.
- In October, several members of a university marching band, emulating the racial protest of a professional football player, “took a knee” during the “Star Spangled Banner” at a college football game.

Collectively, these cases are suggestive of the panoply of First Amendment free speech issues that can arise in the school setting. For example, the controversy over the college sports course evokes **Sweezy** again. Then the actions of the members of the school marching band call to mind the First Amendment issues raised in the case of **Tinker v. Des Moines Independent Community School District**.^[12] There, students who protested the Vietnam War by wearing black armbands to school were punished. The issue then was whether the disciplinary action violated the



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MISTRESS CONTINUED

An improper topic

When asked about the Paull affair, Chancellor J. Carlisle Williams said, “I am sorry.” He transferred Paull from teaching to research duties on the recommendation of a faculty group. Because, he explained, the theme topic wasn’t proper for “girls who had been in school for only one month.”

Of course, the fun grew to unendurable proportions that finally erupted outside from Paull’s English section scurried to classes hitting their faces from photographers’ cameras.




for the new girls



As the chairman of the English department, Raymond Adams (left) was one of several members who recommended Paull be transferred— not because his group found the specific theme suggestive but Adams says vaguely, “because of the situation.” Meanwhile Paull’s students, led by Harold White (below), all signed a petition denouncing their teacher.




100 years behind the times



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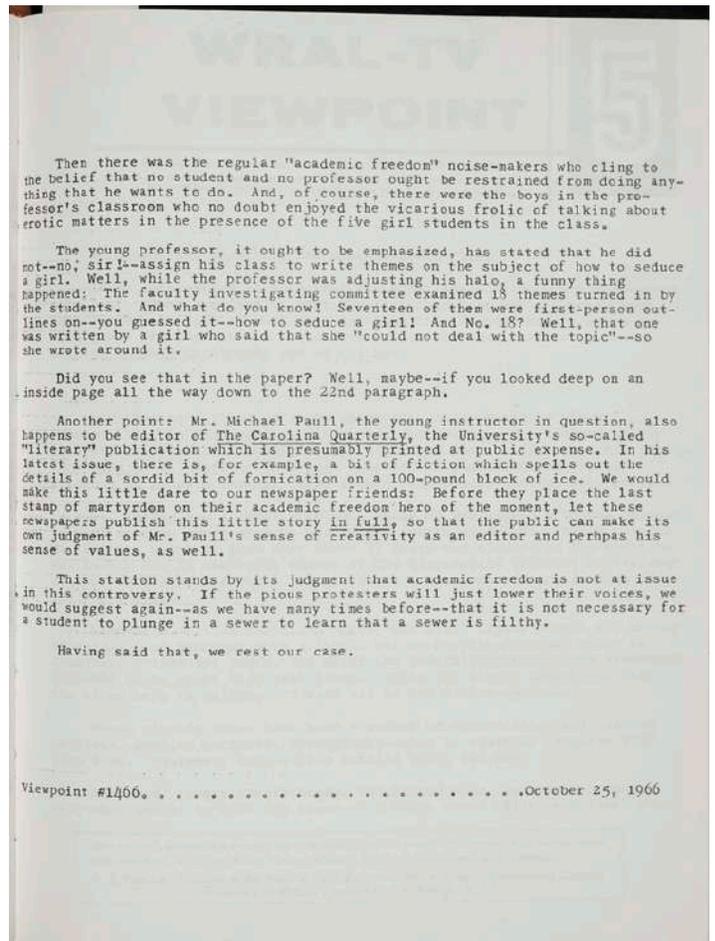
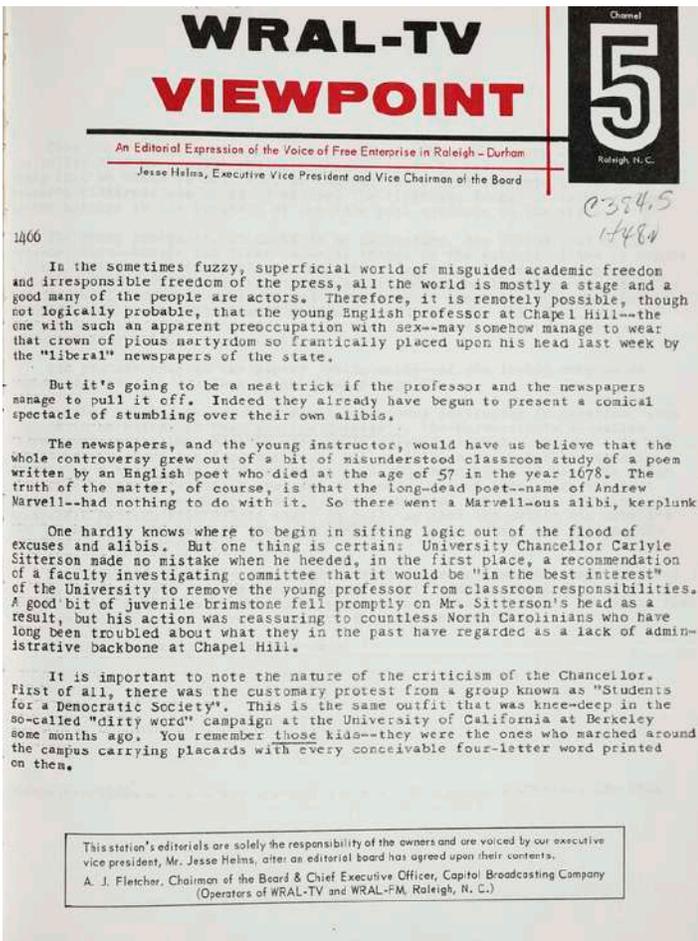
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Life magazine devoted several pages to coverage of ‘The Coy Mistress Caper’ in November 1966, including the full text of the Andrew Marvell poem, see page 17, that sparked the heated debate about academic freedom.

- In November an elementary school canceled a “wax museum” presentation in which third-graders had chosen to portray Adolf Hitler.
- It was reported that a university course on college sports, “Big-time College Sports and the Rights of Athletes, 1956 to the Present,” was the object of efforts to “do away with the course.”^[11]
- A high school teacher was suspended for 10 days for stepping on the American flag during a First Amendment lesson.

students’ right to the exercise of free speech that did not disrupt the school’s educational mission.^[13] The Supreme Court held that suppressing the students’ nondisruptive display of the black armbands violated their First Amendment rights.

The incidents involving teachers could implicate the Supreme Court’s analytical way of handling public employee free speech cases, sometimes called the **Pickering/Connick Test**, or the **Pickering Balancing Test**, which takes its name from one or both cases, **Connick v. Myers**^[14] and **Pickering v. Board of Ed.**^[15] in which the U.S. Supreme Court constructed this model. The



Jesse Helms outlines his case against UNC-Chapel Hill English instructor Michael Paull in this transcript of a commentary he delivered in October 1966. (Viewpoint #1466, 25 October 1966, Viewpoint, IRaleigh, N.C.: Capitol Broadcasting Co.). 1960-1976. North Carolina Collection, Wilson Library, University of North Carolina at Chapel Hill.)

Supreme Court defined the task as seeking a balance between the interest of public employees, including teachers, in commenting on matters of public concern and the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees.[16] The test recognizes that the public employee retains rights “as a citizen” of the United States; and also that the governmental employer does have a legitimate albeit constrained interest in regulating the speech of its employees.[17]

Also relevant is the Supreme Court’s decision in the case of **Garcetti v. Ceballos**,[18] another landmark decision concerning the First Amendment rights of public employees. In that case, a deputy district attorney complained of retali-

tion after he criticized a search warrant obtained by a deputy sheriff in a criminal case. The Supreme Court held that public employees who make statements pursuant to their official duties are not speaking as citizens for First Amendment purposes and are not insulated from employer discipline for their communications in the course of public employment.[19] In dissent, Justice Souter questioned whether the majority opinion meant to imperil First Amendment protection of academic freedom in public college and universities.[20] The majority, through the opinion written by Justice Kennedy, rejoined, “We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship

or teaching.”[21] Thus, **Garcetti** does not foreclose protection for “speech related to scholarship or teaching” in addition to the **Pickering/Connick** protection for the teacher’s right to speak out, as a citizen, on matters of public concern. There are implications for the education process, start to finish, from preK to postdoctoral.

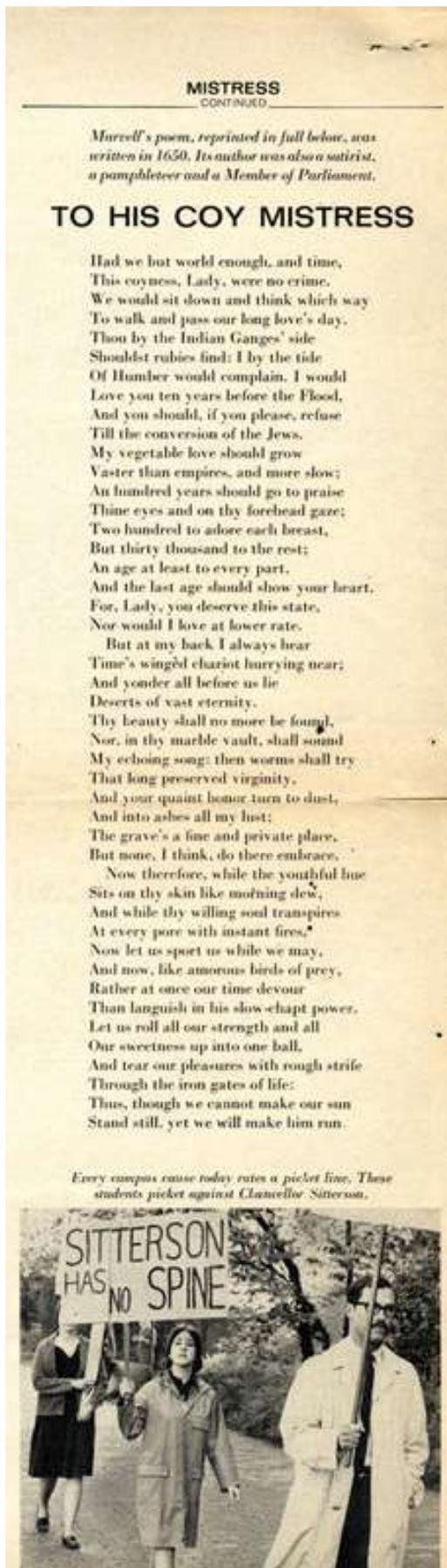
The **Garcetti** case could be applicable in the cases involving the high school teachers inasmuch as their actions occurred in the classroom and involved instructional activities. However, received wisdom is that K-12 teachers do not possess rights of academic freedom when it comes to teaching in a classroom.[22] Citing North Carolina general statutes,[23] respected commentators have agreed that it is the

local school board in North Carolina that has the sole authority and discretion for controlling curricular speech in the public school classroom.[24] One commentator has stated:

Although teachers, not board members, deliver the curriculum, teachers do not have a right to select content or instructional materials or methods unless they have been specifically assigned that authority by the state or local board of education. Court decisions have established that a teacher in North Carolina has no right under the First Amendment to challenge or fail to follow a school board's decision related to the curriculum, whether or not the teacher is convinced that he or she knows how best to help students learn and achieve.[25]

The Fourth Circuit has also held that the same principles apply to extracurricular activities in high school, such as putting on a controversial play in a statewide competition.[26] On the other hand, what if a school board required the high school history teacher to teach "alternative facts" such as Holocaust denial or the racial views of John C. Calhoun? The remedy due the teacher who is ordered to convey factual misinformation to students appears to be somewhat of an open question,[27] although the equities would seem to favor a paradigm shift in such a case in favor of the teacher.

A U.S. District Judge in the Eastern District of North Carolina has quoted, albeit in a footnote, the dictum in *Garcetti v Ceballos*,[28] "expression related to academic scholarship or classroom instruction" may not get treated the same as statements made by public employees in performance of their official duty.[29] However, it did not come into play in that case, which was one of a middle school special-education teacher. The court held that the teacher had failed to create a genuine issue of material fact under *Pickering-Connick* as to



whether her interest in speaking out about the consolidation of life skills classes outweighed the school board's interest in providing effective and efficient public service.[30] Also, what she had to say in the course of being interviewed by her principal about the alleged sexual assault of a student was held to have been made pursuant to her job duties as a teacher, therefore, as an employee, not as a private citizen.[31] Her speech was not about classroom instruction, therefore, squarely placed in the unprotected category established in *Garcetti*. The judge stated, "when a teacher is performing administrative duties, as opposed to instructional duties, the *Garcetti* rule fully applies." [32] Nevertheless, the judge's footnote may yet signal a foot in the door in a future teacher academic freedom case that does involve academic scholarship.

In 1966, the same year that gave us the "Coy Mistress" case, Robert F. Kennedy gave a speech in which he quoted what was said to be a Chinese curse, "May he (sic) live in interesting times." [33] Sen. Kennedy went on to say, "Like it or not, we live in interesting times. These are times of danger and uncertainty; but they are also the most creative of any time in the history of mankind." Like the decade of the '60s, the present time is interesting in much the same way. We are apt to see not only acts of protest but also creativity in our schools, colleges and universities, which will require invocation and perhaps expansion of the legal principles discussed in this article. *NCL*

This article originally appeared on the Education Law Section Blog: <http://ncbarblog.com/category/education-law-section/>

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(Endnotes)

[1] William Link, *Righteous Warrior: Jesse Helms and the Rise of Modern Conservatism* 90 (St. Martin's Press, 2008) (hereafter *Righteous Warrior*).

[2] *Id.* at 89.

[3] *Id.* 93-94.

[4] *Viewpoint #1466*, October 25, 1966, Capitol Broadcasting Co., Raleigh, N.C., from the North Carolina Collection, Wilson Library, UNCC Chapel Hill.

[5] See, e.g., *Righteous Warrior*, *supra*, at 8998; Bryan Thrift, *Conservative Bias* 131-136 (University Press of Florida, 2014); Online Exhibit, UNC Libraries, "A Right to Speak and to Hear: Academic Freedom and Freedom of Expression at UNC," https://exhibits.lib.unc.edu/exhibits/show/academic_freedom/classroom-filth/unc-filth (last accessed February 1, 2017).

[6] See *Righteous Warrior*, *supra*, at 89.

[7] See *Sweezy v. New Hampshire*, 354 U.S. 234, 255 (1957) ("essential freedoms" of the university).

[8] See *Righteous Warrior*, *supra*, at 89.

[9] See *Sweezy v. New Hampshire*, 354 U.S. 234, 255 (1957) ("essential freedoms" of the university).

[10] See Lehman, 'Carpe Diem' in 46 Immortal Lines," *The Wall Street Journal* Saturday/Sunday, July 12-13, 2014, C13.

[11] See Jane Stancill, *Sports Course Raises Eyebrows*, *The News & Observer*, November 12, 2016, at page 1A.

[12] See *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

[13] *Id.* at 393 U.S. at 506

[14] *Connick v. Myers*, 461 U.S. 138 (1983).

[15] *Pickering v. Board of Ed.*, 391 U.S. 563 (1968),

[16] See *Connick v. Myers*, 461 U.S. at 142; *Pickering*, 391 U.S. at 568.

[17] See *Connick v. Myers*, 461 U.S. at 140; *Pickering*, 391 U.S. at 568

[18] See *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

[19] *Id.* at 547 U.S. at 418.

[20] *Id.* at 547 U.S. at 438.

[21] *Id.* at 425.

[22] See Joan DelFattore, *Knowledge in the Making: Academic Freedom in America's Schools and Universities* 3 (Yale University Press, 2010) (hereafter *Knowledge in the Making*).

[23] See N.C. Gen. Stat. § 115C-98(b1).

[24] See Mesibov & Dunham, "School Board Control of Curricular Speech," *School Law Bulletin*, UNC School of Government (July, 2009).

[25] *Id.* (footnote omitted).

[26] See *Boring v. Buncombe County Bd. of Educ.*, 136 F.3d 364 (4th Cir. 1998) (en banc review).

[27] See *Knowledge in the Making*, *supra*, at 117.

[28] See *Garcetti v Ceballos*, 547 U.S. 410, 425 (2006).

[29] See *J.W. v. Johnston County Bd. of Educ.*, 2014 WL 4771613*8 fn. 4 (EDNC September 24, 2014).

[30] *Id.* at *11.

[31] *Id.* *8.

[32] *Id.* (citing *Adams v. Trustees of UNC Wilmington*, 640 F.3d 550, 563-4 (4th Cir. 2011)).

[33] See "May You Live in Interesting Times," *Quote Investigator*, posted December 18, 2015, <http://quoteinvestigator.com/2015/12/18/live/> (accessed February 14, 2017).



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Mel Wright makes his presentation at the annual Professionalism Committee CLE in December.

A Legacy of Professionalism: Mel Wright Set the Bar High

By Russell Rawlings

The North Carolina Chief Justice's Commission on Professionalism (CJCP) will reach the generally accepted age of adulthood—18 years—when its founding executive director, Mel Wright, retires in the summer of 2017.

But in this instance the parent, and not the child, will be leaving. When he departs, Wright will leave behind a legacy of professionalism that will endure for generations.

And he will be the first to tell you that it is not his legacy. The high standards of professionalism that permeate the legal profession in North Carolina were not his to begin with, nor will they vacate the premises when he and his wife, Jo, return to full-time occupancy of their Winston-Salem home.

It is a legacy that belongs to the lawyers of North Carolina.

"I believe that 99.9 percent of our lawyers and judges understand and appreciate the core values and elements of professionalism," Wright said, "and they do their best every day to serve their clients and the courts well.

Wright's mission, consequently, has been to do whatever he can to reach that one tenth of one percent who sometimes wander astray.

"I have said many times," Wright continues, "that I consider my job to be similar to a Salvation Army preacher or volunteer at Christmastime ringing the bell outside of the grocery store. I have been ringing the professionalism bell as often as I can in as many places as I can."

Wright thought he had missed his chance to ring that bell when he read about the creation of the CJCP in 1999.

"I was sitting in my office in Winston-Salem in August and I saw the announcement of the creation of the Commission on Professionalism," Wright said. "I had always been interested in professionalism and doing things the right way.

"I was in my mid 50s and I had practiced for 26 years, and I thought this might be something I would be interested in. Then I got to the end of the article and it said please submit your resume



Seated far right, Mel Wright shares his insights with multiple generations of attorneys.

by June 15, and it was August. The (*State Bar Journal*) was passed around the office, and I didn't always see it when it first came out."

Wright decided to inquire anyway, at which time he learned from the State Bar that the position had not been filled because the Chief Justice of the North Carolina Supreme Court, Burley Mitchell, was retiring. Incoming Chief Justice Henry Frye would ultimately chair the search committee that selected Wright.

Wright would also serve under Chief Justices I. Beverly Lake Jr., Sarah Parker and Mark Martin.

"Having been at the helm since its inception in 1999," Chief Justice Martin said, "Mel has made the commission an important and integral part of North Carolina's legal community. Few have done more to advance the value and understanding of professionalism and civility in North Carolina.

"On behalf of the entire judicial branch, I express my sincerest thanks to him for his many years of dedication and commitment to this most noble of causes."

At the time Wright began his tenure, he had spent the better part of his career as a litigator and partner with Wright, Parrish, Newton & Rabil. He had served as president of the Forsyth County Bar Association and, perhaps more importantly, had chaired its Ethics and Grievances Committee.

"At that time," Wright said, "there was growing interest nationally in professionalism. Bill King and Jerry Parnell had attended an ABA meeting where a presentation was made concerning professionalism commissions. They brought the idea of a Commission on Professionalism back to North Carolina. Chief Justice Mitchell thought it was a good idea and the North Carolina Chief Justice's Commission on Professionalism was born.

There was no template for Wright to follow, so he traveled to Florida and Georgia to get a firsthand look at their respective professionalism commissions.

"Those people could not have been more helpful," Wright said. "They offered me every document, every file, everything they could do to assist me, and were available by phone call at any time.

From the outset, Wright realized that above all else he was in the people business.

"One of the early programs was at Wake Forest," Wright said. "The auditorium was full of lawyers, and I remember telling a professionalism story involving the late Grady Barnhill, and how he and so many older lawyers mentored me and were supportive when I was a young lawyer."

Since then, Wright has been to every judicial district in North Carolina and every county. At virtually every meeting, he has stressed the importance of enhancing professionalism and celebrating the practice of law in the local District Bars. The Chief Justice's Commission on Professionalism and Lawyer's Mutual have jointly sponsored free District Bar CLE programs that feature the Chief Justice and allow local judges and lawyers to talk about professionalism.

Speakers typically represent a broad cross-section of the Bar, from Superior Court and District Court judges to prosecutors, criminal defense lawyers and civil litigators. Senior lawyers talk about professionalism as it was defined when they began practicing."

Wright's career timeline generally parallels the proliferation of attorney advertising, which came about as a result of **Bates v. State Bar of Arizona**, 433 U.S. 350 (1977). A native of Elizabeth

City and graduate of the University of North Carolina at Chapel Hill, Wright earned his law degree from Wake Forest University School of Law in 1973. Prior to law school he served in the U.S. Army, where he earned the Bronze Star for Meritorious Service and the Air Medal while serving in Vietnam.

“**Bates v. Arizona** did not come along until 1977,” Wright said, “so I lived through that transition period and saw the older members of the Bar resist advertising. They had not been allowed to advertise, and it was unethical by State Bar standards across the country.

“As a result of that, one of the things that has been the most effective program that our commission has utilized is what we call the Professionalism Support Initiative, or PSI. It is a confidential peer intervention program to try to keep unprofessional conduct from escalating to an ethical violation for the State Bar to ultimately have to deal with.”

An episode Wright dealt with as the local bar president helped prepare him for dealing with the advertising issue. The attorney in question had launched an advertising campaign that had proven too successful for his own good.

“A sole practitioner in our district started advertising,” Wright recalled. “He had two offices, one in Forsyth County and one in another county, and he hired an advertising firm that was terrific. They ran a series of ads for him in the newspaper.

“This was back when you could go into a restaurant for lunch and order the ‘blue plate’ special. His ads were for ‘blue light’ specials; in effect, if you got stopped by a blue light or a policeman you could call him and he would help you.”

The ads brought in so much business that the attorney had problems managing both of his offices.

“At the time the only thing the local bar knew to say to somebody who had a complaint about a lawyer was to call the State Bar and file a grievance,” Wright explained. “But if the conduct in question didn’t violate a rule the State Bar was obligated to find no probable cause. Complaints were being made but the State Bar was basically reviewing it and saying this is not a violation of a rule; it is unprofessional but it is not a rule violation.”

Wright convened a meeting of his executive committee to discuss the situation.

“And one of the people on the committee said, ‘Why don’t I go and talk to him?’ And we said, ‘Wow, you would be willing to do that?’ And the lawyer said ‘yeah; it can’t hurt.’

“He went and talked to him, and it was well received. The lawyer said he knew he hadn’t been returning phone calls and going to court on time and doing the professionalism things that we were

stressing, and that he would do better. And he did do better.”

Applying that lesson to his work with the professionalism commission, Wright has utilized the Professionalism Support Initiative in a similar manner.

“When someone is acting unprofessionally,” Wright said, “whether it is a lawyer or a judge, then we will call and invite the lawyer to go to lunch and talk about it. We have no power to make anybody meet with us and we have no authority to discipline anybody, but the idea is to go as members of the profession to basically say ‘we’ve had this complaint.’

“The complaints are not anonymous; you have to step up and say ‘I am complaining about this,’ because the first thing the person is going to ask me is who complained and what did they say?”

That, Wright added, is when things can get a little sticky.

“If it’s a judge who is acting improperly, the lawyer is going to say that he or she cannot complain because he would not be able to go back into that judge’s courtroom. That is when I would usually suggest that we use the Chief Judge or the Senior Resident Superior Court Judge, if they are aware of the problem.

“That way everybody is aware. It lets them register the complaint, and we go from there. I think those interventions are one of the best things we have done.”

When Wright makes that call and schedules the meeting, his desire is to start with a handshake and end with a handshake, as friends,

not as a disciplinarian.

“There have been occasions,” Wright said, “when I have gone to meet with somebody as a result of a complaint, and when I get there the person will say the problem is the person who filed the complaint. So we listen, and sometimes I agree with them, and I will go talk to the person on the other side.

“I remember one of those not too long ago when that kind of situation occurred. At the end of the second intervention, I said I think we need to all get together. So we all got together and talked about it, sort of a mediation process if you will. The two lawyers involved had been friends before this thing blew up, and before we left, they were hugging and crying.

“That was a good day.”

Whether his successor follows the roadmap that Wright is leaving behind or chooses to take the program in an entirely different direction, it is imperative that he or she establish in their mind what are the most important core values of professionalism and to focus on those, Wright concluded.

Wright’s final thought was that if we would treat everyone we meet with respect and demonstrate that every client’s case is one of the most important in the office, our profession will be fine. **NCL**

“... if we would treat everyone we meet with respect and demonstrate that every client’s case is one of the most important in the office, our profession will be fine.”

NCPA Award Like ‘An Oscar’ For Amanda Martin

By Russell Rawlings

The North Carolina Press Association recently honored Amanda Martin as the latest recipient of the William Lassiter First Amendment Award. The award is presented annually at the NCPA Winter Institute to a citizen who has demonstrated exemplary commitment to open government and First Amendment rights.

Martin could not be a more fitting recipient. Even back in high school, when she was drafting mock legislation on a reporter’s privilege, Martin has always been passionate about First Amendment causes.

“I got interested in those issues then,” Martin said, “and when I studied journalism at the University of Florida, I took a media law class and loved it. It has been an interest and passion of mine for decades.”

Martin, who was born in Raleigh, grew up in Florida because that’s where her father’s position with Monsanto had taken her family. She came back to the state to attend the University of North Carolina School of Law and, save for a brief stint in Atlanta, has called North Carolina home ever since.

“I had worked with John Bussian for about a year in Durham,” Martin recalled, “when an opening came up with Everett Gaskins. Bob and Heather Gourley were law school classmates of mine, and Bob was in the firm.

“I got a call from Hugh Stevens, who was doing the work for the press association that I now do, and he asked if I was interested in coming to work with him. That was 22 years ago.”

Martin joined the firm in 1995 and took on the title of associate general counsel. She became general counsel in 2002 when Stevens retired from his full-time duties with the press association and became counsel emeritus. He received the Lassiter Award in 2003.

“Hugh has been the best mentor any lawyer could have,” Martin said. “He simultaneously pushed me to do what I could do but stayed there as safety net when I needed it. I know I said something about him that evening when I received the award, but I am not crystal clear what I said.

“Essentially, I would not be sitting where I am today if not for the leadership and caretaking that Hugh Stevens has given me throughout my career.”

A past chair of the NCBA Constitutional Rights & Responsibilities Section, Martin continues to embrace the opportunities afforded her by working with the press association.

“It has been an amazing opportunity,” Martin said. “Because we represent the press association, we do two things. As corporate counsel, I go to their board meetings, but the bigger piece of this job is answering calls from reporters and doing training for reporters.



Carolyn Martin beams as she helps present the award to her daughter, Amanda Martin.

“For instance, on the Thursday afternoon of the winter institute, I facilitated a panel about police wearing body cameras. I have been across the state doing training in newsrooms, and I just love all of that. I have taught off and on at UNC and Campbell, teaching media law to undergraduates and law students. It is an extended version of the teaching that I do for reporters, and a delightful part of what I do.”

Martin was overwhelmed by her selection for the award.

“It was an amazing feeling,” Martin said, “made doubly so by having my mom, Carolyn Martin, there with me to help present the award. I told friends the next day that I felt like I had won an Oscar.

“There is no group whose confirmation could mean more to me than the North Carolina Press Association. It truly has been a joy to represent them for 22 years. Never in a million years did it occur to me that I would be receiving this award.

“I could not have been more surprised.” ***vcl***



Chief Judge Linda McGee has served on the N.C. Court of Appeals since 1995, and as chief judge since August 2014.

With Liberty Bell Honor, Linda McGee Joins Ranks Of Her Mentors

By Russell Rawlings

As fitting as it is that Chief Judge Linda McGee receives the Liberty Bell Award in this the 50th year of the N.C. Court of Appeals, her connections to one of the North Carolina Bar Association’s highest honors and the event at which it is presented run much deeper than that.

The award is presented annually on Law Day by the Young Lawyers Division to an individual “who has strengthened the American system of freedom under law.” Student winners of the various Law Week competitions are also being recognized, as McGee well knows because of her frequent involvement in the event.

McGee has long been a champion of civic education. She is a founder and former co-chair of the Lawyers in the Schools program and previous recipient of the Sweet 16 Award which recognizes legal professionals and educators for their contributions to the NCBA’s Law-Related Education initiative.

Furthermore, she now joins two of her mentors from her days in private practice in Boone as Liberty Bell recipients.

“That is particularly important to me,” McGee said, “that

two of my admired lawyers and mentors from Boone have also received this award, and I had the honor of sending in letters of recommendation for both of them.

“Wade Brown and Stacy Eggers Jr. have both received this award, so it is truly an honor to follow in their footsteps. Wade Brown was the kind of person in Boone, which was a relatively small place, who took everybody under his wings and introduced them to the bar, and was always there to help answer questions.

“And Stacy Eggers and his entire family have always been supportive of the bar. His daughter, Rebecca Eggers-Gryder, is a judge now, and the entire family has been stalwarts of the local bar.”

Beloved In the Community

A native of Marion, McGee is a graduate of the University of North Carolina at Chapel Hill and the UNC School of Law. She served as executive director of the N.C. Academy of Trial Lawyers (now Advocates for Justice) from 1973-78, after which

she practiced for 17 years in Boone with di Santi, Watson and McGee.

“On the 50th anniversary celebration of the North Carolina Court of Appeals, there is no one more deserving to receive the Liberty Bell Award given by the Young Lawyers Division of the North Carolina Bar Association this year,” wrote longtime law partner Tony di Santi in support of her nomination by the former chief judges of the Court of Appeals.

“Chief Judge Linda Mace McGee is a person who exemplifies one who has strengthened the American system of freedom under law and exemplifies the best of our profession, our community and our society.”

McGee, he added, is still considered an honorary emeritus member of the firm.

“As a small-town general practitioner, she exemplified the best of what it is to be a lawyer,” di Santi said. “She treated all of our clients with professionalism, integrity, care, comforting, counseling and service ... no matter the issue or the status of the individual who sought her counseling and advice.

“She was, and remains, a beloved individual in our community and our firm 22 years after her appointment by Gov. Hunt.”

McGee was appointed to the N.C. Court of Appeals in 1995 and elected to eight-year terms in 1996, 2004 and 2012. McGee has served as chief judge since August 2014.

“It is a special honor being recognized on Law Day,” McGee said. “I have had the pleasure of working with the YLD for their Law Day and moot court competition, getting to meet the young people and their families, and talking to them about the rule of law.

“Participating in that event has always been a particular pleasure for me. Working with young people and seeing the pride their families have has been a special opportunity. It is a joy to share a little bit of the flame you’ve had all along—the reason you go to law school—and doing a little bit to try to foster that flame in young people.”

Spotlight On the COA

As chief judge and chair of the Celebrate N.C. Courts initiative, McGee is keenly aware of ongoing anniversary events commemorating the Court of Appeals, and views this honor in part as recognition for the entire court.

“I think it not only recognizes some of the opportunities I have had,” McGee said, “but also clearly recognizes the good work of the North Carolina Court of Appeals and the 77 other judges who have served on the court during the last 50 years.

“It helps point out the fact that the role of our court is honored by the lawyers of the NCBA and its Young Lawyers Division, and by the bar in general.”

McGee previously served on the NCBA Board of Governors and received the Pro Bono Attorney of the Year Award in 1992. She has also been active in many other bar groups, including the N.C. Association of Women Attorneys, where she is a charter member and past recipient of its Gwyneth B. Davis Service Award and Outstanding Judge of the Year Award.

She has served on the boards of the N.C. Board of Law Examiners, Legal Services of North Carolina and IOLTA, and was an initial member of the Chief Justice’s Equal Access to Justice Commission, where she served through 2016.

Previous winners of the Liberty Bell Award are Judge Beth Keever, Judge Sammie Chess Jr., Maj. Gen. (retired) James B. Mal-

lory III, Patricia Timmons-Goodson, Earl Britt, Burley Mitchell, Harry C. Martin, Janice McKenzie Cole, Stacy C. Eggers Jr., E. Maurice Braswell, Herbert L. Richardson, William Joslin, Henry Frye, Robert R. Browning, Lacy Thornburg, James B. Hunt Jr., William C. Friday, Sam J. Ervin III, Terry Sanford, Herbert H. Taylor Jr., James Dickson Phillips Jr., Wade E. Brown, Hiram H. Ward, Kathrine Everett, L. Richardson Preyer, J. Frank Huskins, McNeill Smith, Franklin T. Dupree Jr., Thad Eure, Joseph Branch, Dr. Robert E. Lee, William B. Aycock, Susie Sharp and Sam Ervin Jr. *.ncj*

“Participating in [Law Day] has always been a particular pleasure for me. Working with young people and seeing the pride their families have has been a special opportunity. It is a joy to share a little bit of the flame you’ve had all along—the reason you go to law school—and doing a little bit to try to foster that flame in young people.”

- CHIEF JUDGE LINDA MCGEE -



Reaching speeds of up to 65 miles per hour, Navitat zipline adventures combine serious fun with serious business, making this excursion the perfect complement to the 2017 NCBA Annual Meeting in Asheville. (Photo © Navitat)

Have You Ever...? Here's Your Chance

Have you ever walked along a mountain trail with Asheville attorney John Mason, a distinguished veteran of the Vietnam War whose affinity for nature and conservation is rooted in his experiences as an Eagle Scout?

Here's your chance.

Have you ever visited a city (Asheville), brewery (Wicked Weed Brewing), inn (Omni Grove Park Inn), shop (ScreenDoor) and museum (Biltmore) all rated among The South's Best by Southern Living magazine?

Here's your chance.

Have you ever experienced a world-class zipline adventure, during which you reach speeds of 65 miles per hour while taking in exquisite long-range views of the Blue Ridge Mountains?

Here's your chance.

Have you ever floated down the refreshing waters of the French Broad River, leaving all your cares on the riverbank as your tube meanders through the verdant mountains of Western North Carolina?

Here's your chance.

Have you ever attended a "black tie and blue jeans" gala and partied like it's 1899—the year the NCBA was founded—to the

chart-climbing, critically acclaimed country-Americana sounds of Amanda Anne Platt & The Honeycutters?

Here's your chance.

Have you ever wondered what it was like to integrate the North Carolina Bar Association 50 years ago and, better yet, wondered how special it would be for Henry Frye to discuss those historic events with his granddaughter, fellow NCBA member Whitney Frye?

Here's your chance.

Have you ever walked the halls of the Omni Grove Park Inn and thought about how great it would be if your firm could use one of the conference rooms, rent free, for a private get-together or mini-retreat?

Here's your chance.

When the NCBA holds its 119th Annual Meeting on June 22-25, you will have a chance to do all of these things and so much more.

Register now at www.ncbar.org/members/annual-meeting/ or fill out your registration brochure and send it in. Either way, it will be more than worth your while to be in Asheville this summer.

Have you ever ...? Well here's your chance! **JVCL**

THE WISDOM OF *cap height* *bar* *counter* *ascender* *serif* *x height* *baseline* *descender*

Improving Legal Writing Through Better Typography

By Judge Richard Dietz, Drew Erteschik, Clark Tew and J.M. Durnovich

Introduction

We know what you're thinking: Why should I care about *fonts*? The authors of this article—an appellate judge and a few litigators—would like to answer this question in two parts.

The first part discusses the current font norms for North Carolina lawyers, and why the fonts favored by those norms are not optimal for legal writing.

The second part briefly describes how fonts within the Century family increase readability and retention—features that can give lawyers a competitive edge.

The Current Font Status Quo

This is Times New Roman, the font that most North Carolina lawyers use for their legal writing. Times New Roman was developed in the 1920s by a British newspaper, *The Times of London*. It was designed for a specific purpose: to allow speed-skimming the newspaper's articles.¹

The letters in Times New Roman are narrow, closely spaced, and designed to force readers' eyes across the page as quickly as possible. Another benefit of this closely spaced font was that it left ample space for advertisements.² It was not, however, designed for intensive reading—for example, reviewing lengthy briefs. The emphasis was on speed, not retention.

Today, for whatever reason, Times New Roman has become the standard, including for North Carolina lawyers. As one commentator has remarked, Times New Roman is “the font of least resistance.”³ It “is not a font choice so much as the *absence* of a font choice.”⁴ It is the beige of fonts.

This is Courier New, another font that many North Carolina lawyers use. Courier was developed by IBM in the 1950s, but it became the standard typewriter font in the 1960s.⁵

Courier's original purpose had even less to do with reading retention than Times New Roman. Instead, its purpose was to make it easier to edit documents typed on typewriters. With Courier font, the letters are all the same size—in typography terms, “non-

proportional.” With an “i” taking up the same space as a “w,” for example, it allowed a typewriter to use a white-out key that was the same size for every letter.⁶

In the 1950s, this function may have seemed modern and streamlined. Even after typewriters began to die out in the 1980s and 1990s, however, Courier stuck around. Perhaps it was because writers found it familiar. Eventually, it became the basic font for computer processing.⁷ From there, like Times New Roman, it gained popularity because of its ubiquity, not its attributes.

Recently, governments and private companies have started to reject Courier as an old, outdated, and “clunky” font.⁸ Like all non-proportional fonts, Courier is not an efficient use of each page because it takes up more space than necessary. It is also more difficult to read than newer, better-designed fonts.⁹ This is, in part, because “[w]hen every character is the same width, the eye loses valuable clues that help it distinguish one letter from another.”¹⁰

Ultimately, though, neither Times New Roman nor Courier was designed for legal writing. For their legal writing needs, lawyers can do much better.

Fonts in the Century Family = Better Readability and Retention

For good reason, fonts within the Century family have emerged as the favorite of many legal writers. Among its attractive features, Century Schoolbook is “highly readable, yet commands an air of authority with letters that take up more space than Times New Roman.”¹¹ It has even been called the “crème-de-la-crème of legal fonts.”¹²

The book “Typography for Lawyers,” for example, ranks Century Schoolbook on a short “A list” of fonts. Times New Roman and Courier, by contrast, made the “C list” of “questionable” fonts for lawyers.

While you may not immediately recognize the name Century Schoolbook, you’ve been reading legal opinions in this font since your first year of law school. The U.S. Supreme Court publishes its opinions in Century

Schoolbook. Likewise, Rule 33(1)(B) of the Supreme Court’s Rules states that the text of all major documents, including briefs, “shall be typeset in a Century family (e.g., Century Expanded, New Century Schoolbook, or Century Schoolbook) 12-point type.”

In addition, the U.S. Courts of Appeals for the 5th, 7th, and Federal Circuits have long used and endorsed Century-family fonts. The 7th Circuit has offered this explanation for its choice:

The briefs, opinions of the district courts, essential parts of the appendices, and other required reading add up to about 1,000 pages per argument session. Reading that much is a chore; remembering it is even harder. You can improve your chances by making your briefs typographically superior. It won’t make your arguments better, but it will ensure that judges grasp and retain your points with less struggle. That’s a valuable advantage, which you should seize.¹³

For that same reason, fonts within the Century family—especially Century Schoolbook—are used in situations where readability and retention matter most. As one non-exclusive example, pharmaceutical researchers recommend Century Schoolbook for prescription medicine labels—a place where suboptimal font choice could have serious consequences.¹⁴

Switching to fonts in the Century family may also produce cost savings. As NPR reported, when a major university recently switched its email system’s default font from Arial to Century, it saved thousands of dollars annually in printing costs.¹⁵

In recent years, the North Carolina Supreme Court and the North Carolina Court of Appeals stopped publishing their opinions in Courier New, and instead, began publishing their opinions in Century Schoolbook. More recently, on December 20, 2016, the North Carolina Supreme Court amended the North Carolina Rules of Appellate Procedure to expressly endorse Century Schoolbook as one of the preferred fonts for appellate briefs.¹⁶

The Supreme Court’s recent amendment embraces the uncontroversial idea that lawyers should use a font that serves two purposes: readability and retention. After all, briefs are not meant to be quickly skimmed over a morning cup of tea along with newspaper advertisements (*The London Times*’ Times New Roman). Nor are

they meant to meet the mechanical needs of a typewriter's white-out function (Courier New).

As the 7th Circuit explained, "*The Times of London* uses Times New Roman to serve an audience looking for a quick read. Lawyers don't want their audience to read fast and throw the document away; they want to maximize retention."¹⁷ North Carolina's appellate courts, by switching to Century Schoolbook for their opinions and endorsing it for appellate briefs, apparently agree.

In view of the Supreme Court's use of Century Schoolbook and its endorsement of that font in the appellate rules, perhaps more North Carolina lawyers will consider using a font in the Century family for their legal writing needs. The authors are hopeful that this article may be useful in inviting a dialogue on the topic.

Conclusion

While fonts may not be at the top of everyone's list of important items to tackle, we hope that this article was thought-provoking.

We welcome your comments on the information in this article. We would enjoy picking up this discussion with you by phone or by email—particularly if your email is written in Century Schoolbook. *NCL*

This article originally appeared in Per Curiam, the newsletter of the Appellate Law Section of the NCBA.

* * *

Richard Dietz is a judge on the North Carolina Court of Appeals. He was the first Court of Appeals judge to switch to Century Schoolbook for opinions.

Drew Erteschik is a partner in the Raleigh office of Poyner Spruill LLP. He is a board-certified appellate practice specialist who has embraced Century Schoolbook for all his writing needs.

Clark Tew is a litigator with Homesley & Wingo Law Group in Mooresville, concentrating his practice on employment and labor law. Despite his firm support for Century fonts, Clark hypocritically writes his personal documents in Iowan Old Style.

J.M. Durnovich is a litigator in the Charlotte office of Poyner Spruill LLP. His go-to font is Century Schoolbook.

(Endnotes)

- 1 See U.S. Court of Appeals for the 7th Circuit, *Practitioner's Handbook for Appeals* § 23, at 131-32.
- 2 See Tom Vanderbilt, *Courier, Dispatched*, SLATE (Feb. 20, 2004), http://www.slate.com/articles/business_and_tech/design/2004/02/courier_dispatched.html (last visited April 12, 2017).
- 3 See Matthew Butterick, *A Brief History of Times New Roman*, TYPOGRAPHY FOR LAWYERS, available at <http://typographyforlawyers.com/a-brief-history-of-times-new-roman.html> (last visited April 12, 2017).
- 4 *Id.*
- 5 See Vanderbilt, *Courier, Dispatched*.
- 6 See Matthew Butterick, TYPOGRAPHY FOR LAWYERS 81 (2010).
- 7 *See id.*
- 8 *See id.*
- 9 *See* 7th Cir. Practitioner's Handbook at 132.
- 10 *Id.*
- 11 Mark Wilson, *5 Non-Times New Roman Fonts Courts Use in Their Opinions*, GREEDY ASSOCIATES (Nov. 26, 2014), http://blogs.findlaw.com/greedy_associates/2014/11/5-non-times-new-roman-fonts-courts-use-in-their-opinions.html (last visited April 12, 2017).
- 12 *Id.*
- 13 7th Cir. Practitioner's Handbook at 131.
- 14 *See* Janan Smither and Curt Braun, *Readability of Prescription Drug Labels by Older and Younger Adults*, 1 J. CLIN. PSYCHOL. MED. SETTINGS 149-54 (1994).
- 15 *See Changing Font to Save Ink*, NPR (April 6, 2010), www.npr.org/templates/story/story.php?storyId=125639616 (last visited April 12, 2017).
- 16 N.C. R. App. P. 26(g)(1) (effective January 1, 2017); *see also* N.C. R. App. P., Appx. B.
- 17 7th Cir. Practitioner's Handbook at 131.

Enough With the Robot Lawyers Already

By Erik Mazzone

In the morning before I leave for work, I ask my Google App how long it is going to take me to drive to the office and what the weather will be.

In the evening when I return home, I ask Alexa (the virtual assistant that powers the Amazon Echo speaker) to continue reading aloud my current Kindle book so I can keep up the pace on my goal to read 52 books this year. Spoiler alert: As of the time of this writing, we're 12 weeks into 2017 and I've read four books. Sad trombone.

While I was hate-watching March Madness (the unofficial mascot of Boston College sports is *schadenfreude*), I ask Siri, "Hey Siri, how many times has Grayson Allen tripped people?"

Artificial intelligence. Machine learning. Robots.

I know two things about this stuff.

One: There is no more overheated topic in legal technology in 2017 that gets the legal geek squad sputtering in breathless anticipation of imminent transformative change than the trifecta of AI, machine learning and robots.

Two: They're a bit early, they're overly amped up, and they're not wrong.

Clucking our collective tongues at the chicken little prognosticators of a legal robot rebellion (will there be more than three laws? There had better be, or those robot lawyers are going to be boooooored...) is satisfyingly reassuring of the notion that tomorrow in law practice is probably going to be a lot like today. But outright dismissal of the arrival of AI in legal tech is a mistake.

Like Siri and Alexa inching their way into our lives (Amazon Echo was the best-selling product across all of Amazon this past holiday season), AI is also inching its way into legal tech. It's not quite ready to pop on a tie and grab a briefcase and freak everybody out in your District Court, but it's definitely having a moment.

It's not clear what that moment is, exactly, but it's having one.

A few weeks ago, The New York Times ran a clickbait article headlined, "Tech Roundup: Will Robots Replace Lawyers?" The day before, that same newspaper ran a second article titled, "Sorry, a Robot is Not About to Replace Your Lawyer." Yes, it's weird that the seemingly responsive article was published first. Cognitive dissonance, thy name is print journalism.

The whiplash between those two articles pretty well captures the feeling that *something* is happening with AI and legal tech, we're just not entirely sure what yet.

I think the smart money for lawyers here is to start paying attention to AI and to think of it as an opportunity rather than a threat. (Going deep into the old SWOT analysis grab bag for that reference.) Think of it as an improving set of tools to help erstwhile human lawyers do their jobs more efficiently.

Take a look at legal tech startups like ROSS Intelligence, a legal research service which uses AI to make a faster more intuitive research tool for lawyers. If you like to spend time on Twitter, follow ROSS founder, Andrew Arruda (@AndrewArruda) or Fastcase CEO Ed Walters (@EJWalters), two really smart guys



who produce a constant stream of thought-provoking stuff on where this technology is headed.

You'll find that companies like ROSS Intelligence are not just some Silicon Valley VC-funded fever dream—with a little poking around you'll notice they are racking up a client roster of law firms very quickly, including some you know right here in North Carolina. We're at the start of this curve in legal tech, but the starter's pistol has gone off.

This is the part of the continuum between denial and alarm, and that's a good place to be. Noting with some dread that there is not a single science fiction movie or book that ends with the robots happily serving humans forever (with the possible exception of the Jetsons, but who really knows what that Rosie the Robot Maid was thinking...), for now we are in a place where these AI tools can make lawyers lives and practices better.

Take advantage of the opportunity. If you're not sure how, just ask Alexa. *NCL*

Erik Mazzone is Senior Director of Member Experience at the North Carolina Bar Association. He is not a robot.



Building Connections to Enhance and Support the Impact of Your Legal Career (Strategic Plan: 2015–2020)

In 2015 the North Carolina Bar Association launched a new, five-year plan that identifies **five strategic priority pillars** to guide the Association and Foundation’s mission.



Lawyer's Practice

Priority:

Raise awareness and support for the Association’s mentorship and professional development programs through the promotion of the Center for Practice Management.

Major Initiative:

Implement a Center for Career Services



Profession

Priority:

Preserve and enhance a culture of professionalism, civility and collegiality among all segments of the legal community.

Major Initiative:

Develop a mentorship program to assist new attorneys in forming strong, career-long relationships with other lawyers in our state.



Courthouse

Priority:

The NCBA strives for a court system in which judges are highly competent and independent; litigants are treated equally, regardless of race, gender, economic status, location language skills or physical disability.

Major Initiative:

Advocate for funding increases and educate the public on the negative effects of funding cuts.



Community

Priority:

Increase leadership opportunities and positions in business, civic, charitable and governmental activities and educate the public on the leadership role of lawyers.

Major Initiative:

Create leadership academies and other outreach programs in collaboration with local bars throughout the state; promote Citizen Lawyer at local levels.



Bar Association

Priority:

Maintain and grow membership with special efforts to recruit new and retain current members.

Major Initiative:

Focus on value to members by enhancing benefits, minimizing geographic considerations and strengthening law school connections.

NORTH CAROLINA
BAR ASSOCIATION
 SEEKING LIBERTY & JUSTICE

Can Young Lawyers Learn Something From Older Lawyers About Managing Their Professional Reputations Online (and Vice Versa)?

By *Matthew A. “Matt” Cordell, YLD Chair*



When I have the opportunity to give advice to law students and young lawyers, one of the things I try to impress upon them is the importance of their reputations, including their “online reputations.”

Usually the comment is quickly met with a knowing nod. Everyone seems to know that their reputation is important.

However, having witnessed many lawyers of all ages impair their professional reputations online, I have begun to realize that many of us fail to recognize some aspects of maintaining our online reputations, and I have begun to be much more specific in my advice to younger lawyers.

Older lawyers, I have observed, often seem to understand some of the things that younger lawyers may miss, but older lawyers can have their own blind spots in this area. In this short piece, I would like to describe a few observations about lawyers’ online reputations and suggest that young lawyers and older lawyers can learn much from one another regarding this topic. (There are, of course, plenty of exceptions to my generational generalizations.)

For many of us, especially those of us who attended law school in North Carolina, our professional reputations began to develop during law school. I often remind law students that their law school classmates form their initial professional network. Their classmates are likely to become their partners, opposing counsel, judges and clients.

I suggest that they will want to be remembered as the friendly, reliable law student who was always prepared and who shared notes freely with deserving classmates; they will not want to be remembered as the John “Bluto” Blutarsky of their law school class (i.e., John Belushi’s character in the cult classic “Animal House”) or the sharp-elbowed “gunner.”

Some law students and young lawyers seem to be unaware that their social media posts can affect their professional

reputations. When the weekend’s party photos are just a click away, the line between one’s professional reputation and one’s personal life can become blurred, or disappear entirely.

Too many young lawyers allow themselves to be photographed or videotaped in unflattering circumstances without realizing that it may affect how others perceive them in a professional context (whether consciously or unconsciously). Older lawyers, by contrast, tend to be more perspicacious in their social media activity. Perhaps age brings wisdom in these matters.

I have also observed that young lawyers seem more attuned to their online presence when it comes to ratings and reviews. Young lawyers tend to be conscious of what is being said of them on online rating and review websites, and tend to be more proactive in engaging with these sites.

For example, young lawyers tend to be more likely to “claim” their Avvo profiles and ensure that the information presented there is accurate, because Avvo profiles tend to get remarkable priority in search engine results. Older lawyers seem more likely to dismiss sites like Avvo as meaningless (perhaps because Avvo’s ratings system is open to criticism).

Older lawyers also seem less likely to recognize how a clunky website or free email account (e.g., that old AOL account) can cause a client or prospective client to lose confidence in them.

The topic of online reputation management seems to be an area that is ripe for intergenerational learning. Older lawyers can share the wisdom that comes from experience and young lawyers can share their technological savvy. I hope this article will spark conversations here and there between older lawyers and their younger counterparts. We all have more to learn from one another, both online and offline. *ncz*

Matthew A. “Matt” Cordell serves as the chair of the Young Lawyers Division, which is composed of more than 6,400 young lawyers and law students. He works as in-house counsel to a large, global company where his practice focuses primarily on technology, privacy and data security law, and he recently moved to Greensboro from Raleigh. Follow him on Twitter @MattCordell.

N.C. LAP and BarCARES: Separate Programs, Similar Mission

By Zeb Barnhardt and Robynn Moraites

PROGRAM NAME:	N.C. LAP	BarCARES
ADMINISTERED BY:	N.C. State Bar	N.C. Bar Association
CONFIDENTIALITY:	Confidential	Confidential
ELIGIBILITY:	In-state lawyers and judges	Members of NCBA, participating local bars
WEBSITE:	www.nclap.org	www.ncbar.org/members/barcares/
PHONE NUMBER:	919.929.1227	1.800.640.0735

Numerous studies have documented the pressures faced by attorneys and the need many attorneys have for personal support and counseling. While previous studies seemed to highlight issues that surfaced as individuals practiced for several years, a more recent study by the American Bar Association noted that personal difficulties appear to be impacting even the most recent practitioners.

Both the North Carolina Bar Association and the North Carolina State Bar recognized the importance of helping fellow attorneys many years ago, establishing complementary programs to provide assistance.

Important Distinction

The N.C. Lawyer Assistance Program (N.C. LAP), a program of the N.C. State Bar, and the BarCARES program sponsored by the N.C. Bar Association (NCBA). There are numerous similarities between the programs. Both programs assist lawyers who need counseling or treatment for the full panoply of addictions and mental health issues. Both are confidential programs. Both are also free of charge. But they operate differently—each working as a superb complement to the other.

BarCARES

BarCARES provides referral for counseling services to lawyers who are either members of the NCBA or of local bar associations that have subscribed to the program. The program also serves district court judges, paralegals and members of the Eastern Bankruptcy Institute. Members in qualifying organizations are entitled to three free visits a year with a counselor in the BarCARES referral network.

In many districts a unique feature of BarCARES is that any of the three free annual visits may be used by a family member and are not limited to only the lawyer. Following the free visits offered within BarCARES, an attorney can generally continue work with the same counselor, if need be, using insurance benefits or other resources.

All BarCARES contacts are made through HRC Behavioral Health & Psychiatry, P.A., the organization that administers and arranges counseling provider services for the BarCARES program. BarCARES has a network of counselors and therapists across the state who specialize in treating a wide variety of mental health and addiction conditions, as well as working with normal stress and personal dilemmas that could interfere with lawyer performance and/or quality of life.

N.C. LAP

N.C. LAP provides services to all lawyers, judges (both federal and state) and law students in the state. While N.C. LAP has three full-time, licensed counselors on staff and provides some short-term or targeted direct counseling services, most of their work involves initial assessment, referral, longer-term support and case management.

First N.C. LAP provides an initial consult to determine what issues most need attention and assistance. N.C. LAP then refers lawyers to counseling services that are likely the best fit or makes treatment recommendations based on the unique needs of the lawyer. N.C. LAP may pull from its network of 200+ lawyer and judge volunteers across the state who have overcome similar issues and connect the lawyer with a peer support person or a lawyer discussion group.

For lawyers who are recovering from drug or alcohol problems, N.C. LAP supports them when they return from treatment for the first few years with mentor pairing, support groups and case management.

N.C. LAP also runs peer support and discussion groups across the state. These groups are not limited to lawyers recovering from alcohol or drug problems, and lawyers dealing with stress, depression and other issues also benefit.

Many lawyers who engage with N.C. LAP long-term eventually become volunteers. N.C. LAP provides on-going training for its volunteers and through its support groups and annual conferences, N.C. LAP volunteers and clients become a tight-knit community across the state.

Cooperation

BarCARES and N.C. LAP work cooperatively and cross-refer. For example, if a lawyer contacts N.C. LAP and is located in a BarCARES district, in the event long-term counseling is recommended (and it almost always is), N.C. LAP will match the lawyer with the most suitable counselor in the BarCARES network, so that the first three visits each year are free.

N.C. LAP counselors know which counselors in the BarCARES network specialize in career counseling, divorce, depression and the like; and N.C. LAP can pair client and therapist personalities and approaches—sometimes we need a comforting ear, sometimes we need a kick in the rear. Getting that match right is important.

Sometimes a lawyer has a unique issue that requires a specialized counselor. When N.C. LAP has requested that lawyers be paired with such specialists, BarCARES has agreed to bring those N.C. LAP-recommended counselors “in network” for the benefit of the lawyer. This has proved especially helpful in smaller, more rural districts.

Similarly, if a lawyer has been seeing a counselor in the BarCARES network, and the counselor thinks the lawyer would benefit from additional support like speaking to peers who have overcome similar issues or that the lawyer needs more compre-

hensive, engaged support than traditional therapy can provide, the BarCARES counselor will recommend that the lawyer contact N.C. LAP.

Lawyers who are cross-referred in this way sign releases allowing the BarCARES and N.C. LAP counselors to confer about what would be most helpful to the lawyer along the way. Lawyers who take advantage of these programs fare incredibly well and receive a network of support enjoyed by few.

Both programs are confidential and work together for the good of North Carolina’s legal community, a commitment of help and cooperation made by their respective organizations, counselors and volunteers. Each program can be contacted independently but the key is making contact with either BarCARES or N.C. LAP if you need help. Few states have such comprehensive resources available to their lawyers and judges. We should count ourselves lucky indeed. *NCL*

Zeb Barnhardt practiced for 30 years in corporate and securities law. He was a member of the founding Board of Directors of BarCARES of North Carolina; chaired a task force to bring BarCARES and the N.C. LAP together to focus on common goals; and now serves as president of LAP Foundation of North Carolina, Inc.

Robynn Moraites is the director of the North Carolina Lawyer Assistance Program.

The infographic features a central orange box with the text "Connecting with clients is *easier* with N.C. Lawyer Referral Service". To the right of this text is a small icon of a person's head with a hand to their chin, suggesting thought or listening. Below the orange box is a horizontal row of ten colorful icons representing diverse people. At the bottom of the infographic is a light blue box containing the text "JoinLRS.org" in a large, blue, sans-serif font. To the left of this text is a larger icon of a person's head with a hand to their chin. The entire infographic is enclosed in a blue border.

Durham Receives Bankruptcy Award

At Durham of Rayburn Cooper & Durham in Charlotte received the NCBA Bankruptcy Section's Lifetime Achievement Award at the 39th Annual Bankruptcy Institute in New Bern.

The award recognizes a bankruptcy practitioner who, for not less than 25 years, has contributed to the betterment of the North Carolina Bar Association Bankruptcy Section and the profession, and who has set an aspiring example for those who follow.

Durham served as chair of the Bankruptcy Section in 1990-91. He has been a Certified Specialist in Business and Consumer Bankruptcy Law since 1987, the first year the N.C. State Bar certified specialists in those fields.

He has practiced bankruptcy law for more than 40 years, appearing in the bankruptcy courts of North Carolina, South Carolina and Delaware. He has been a frequent speaker at seminars sponsored by the Bankruptcy Section, the Mecklenburg County Bar and the National Association of Bankruptcy Trustees.

A graduate of the University of North Carolina at Chapel Hill and the UNC School of Law, Durham now serves of counsel



with the Rayburn Cooper & Durham. He joined the firm in 1994 when it was known as Rayburn, Moon & Smith.

“To be fair,” Durham said, “I don’t deserve this award, but I am happy to get it and I don’t want to give it back. I ascribe it to longevity and smarter lawyers whom I have worked with all these years.

“You can win awards and not be smart if you surround yourself with smart people.”

In that vein, Durham mentioned Rick Mitchell, Rob Cox, Tom Moon, Hunter Wyche, Craig Whitley, and Rick Rayburn, Paul Baynard, Shelley Abel and Jack Miller from his firm, as well as Keith Johnson and Warren Tadlock.

Durham especially recognized the contributions of Julia Robinson, who has been his assistant for almost 36 years.

“If I have ever accomplished anything, it’s because of these people,” Durham continued, “and the judges. I have appeared before good judges who understand the individual aspect of business bankruptcies, which is what I do. They follow the law, but they understand the human element too.” *NCL*

Administrative Law Honors Morrison

Judge Fred Morrison Jr., senior administrative law judge in the N.C. Office of Administrative Hearings, is the initial recipient of an award created by the Administrative Law Section of the North Carolina Bar Association.

Morrison received the first Administrative Law Award for Excellence on Friday, March 31, at the section’s annual meeting and CLE at the N.C. Bar Center.

Judge Julian Mann, director and chief administrative law judge in the N.C. Office of Administrative Hearings, presented the award.

“I very much appreciate this award,” Morrison said. “It means a great deal to me because I have been involved with the Administrative Law Committee followed by the Section since 1987.”

The Administrative Law Award for Excellence was established to “honor an outstanding Administrative Law Section attorney as an exemplar of the excellence, dedication and passion for administrative and/or regulatory law” to an active, practicing member of the section.

Morrison has practiced law for more than 50 years and has served in the Office of Administrative Hearings for more



than three decades. He is also a former solicitor of the Thomasville Records Court, former legal counsel to Governors Bob Scott and James Holshouser, and was the first executive director of the North Carolina Inmate Grievance Commission.

He chaired the Administrative Law Section in 2003-04.

Prior to its elevation to section status in 1989, Morrison worked to promote attendance at the committee’s CLE on administrative litigation, held in October 1987 at the Raleigh Civic Center. Since then he has attended every CLE offered by the Administrative Law Section.

“This involvement with the section, its members, and bar association personnel has been an invaluable asset to me in performing my duties as an administrative law judge,” Morrison said. “Getting to know and associate with all involved in this area of the law has helped make me a better person, a more informed attorney, and a well-educated judge.

“I am grateful to everybody with whom I have crossed paths at the North Carolina Bar Association.”

Morrison grew up in eastern Tennessee. He is a graduate of Maryville College and Wake Forest University School of Law. *NCL*

Sawchak Earns Antitrust Recognition

The Antitrust & Complex Business Disputes Law Section presented its Distinguished Service Award to Matt Sawchak at the section's annual meeting and CLE on Feb. 17 at the N.C. Bar Center.

The award was presented by his former law partner, Paul Sun of Ellis & Winters in Raleigh. At the time he accepted the award, Sawchak had recently been named Solicitor General of North Carolina by Attorney General Josh Stein.

Sawchak served as chair of the Antitrust & Complex Business Disputes Law Section in 2000-01 and is also a past chair of the Appellate Rules Committee. He serves as a senior editor of the ABA Antitrust Section's Antitrust Law Journal.

He is also a member of the American Academy of Appellate Lawyers, the North Carolina Business Court's Rules Advisory Committee and Civil Rules Committee of the U.S. District Court for the Eastern District of North Carolina.

"Our Bar Association, and the Antitrust and Complex Disputes Section, have played a huge role in my development



as a lawyer," Sawchak said. "I developed a lot of my speaking and writing skills through programs for this section.

"I encourage everyone who wants to advance as a lawyer to go 'all in' with the NCBA."

Sawchak is a graduate of Harvard and the Duke University School of Law. He clerked for Justice Clarence Thomas when Thomas was serving on the U.S. Court of Appeals for the District of Columbia Circuit, and also clerked in the Office of the Solicitor General of the United States.

The Distinguished Service Award was established to recognize members of the North Carolina Bar Association Antitrust & Complex Business Disputes Law Section (or others under extraordinary situations) who: (1) have demonstrated the highest ethical standards; (2) have shown a high level of professional competence; and (3) have made significant contributions (a) to the Section, (b) to scholarship in the fields of antitrust or complex business disputes law, and/or (c) to advocacy on behalf of clients, consumers, or the public in the fields of antitrust or complex business disputes law. [NCL](#)

Section Recognizes Judge Whitney

The Government & Public Sector Section presented the Grainger Barrett Award for Excellence to Chief Judge Frank Whitney of the U.S. District Court for the Western District of North Carolina during the section's recent annual meeting at the N.C. Bar Center.

"It is indeed an honor to receive the award," stated Whitney, who served as chair of the section in 2014-15 and currently serves as a vice president on the NCBA Board of Governors. "Public sector attorneys serve their communities well while receiving little or no recognition for their work.

"This award, named for a distinguished lifelong public servant, really belongs to all those unsung public sector attorneys. I am humbled that the Section would select me for the award."

John Schifano, section chair, presented the award.

"In my humble opinion and that of the nominating committee," Schifano said, "(Judge Whitney) is an excellent exemplar of the quiet excellence of North Carolina's government and public sector attorneys."

Whitney is a native of Charlotte and 1982 graduate of Wake Forest University, where he was a member of the ROTC



program and Phi Beta Kappa Society. He earned a joint law degree and MBA from the University of North Carolina School of Law and UNC-Chapel Hill, respectively, in 1987.

After a year in private practice in Washington, D.C., Whitney clerked for Judge David B. Sentelle of the U.S. Court of Appeals for the District of Columbia Circuit. He then returned to private practice before serving as an assistant U.S. Attorney for the Western District of North Carolina from 1990-2001.

Whitney returned to private practice for one year in Charlotte before serving as the U.S. Attorney for the Eastern District of North Carolina from 2002-06. He has served on the Western District bench since 2006 and as chief judge since 2013.

Whitney's distinguished military career includes service in the U.S. Army Reserve since 1982 and deployment to Afghanistan and Iraq. He is believed to be the first federal judge to serve as a military judge presiding over courts-martial in a combat theater, and presided over the last court-martial in Iraq before completion of the U.S. troop withdrawal there. [NCL](#)

Johnson CLE Volunteer of the Year

Linda Funke Johnson received the CLE Volunteer of the Year Award at the winter meeting of the NCBA Board of Governors. Roberta King Latham, who chairs the CLE Committee, presented the award.

“What sets apart our CLE from other providers,” Latham said, “is the quality of offerings—the quality programming and the quality of publications—which is only possible through the dedication, commitment and passion of our volunteers.”

“(Linda) has shown amazing passion, commitment and dedication to not only the Foundation, but also our Association as a whole. This is really more of a life-time achievement award than an award for one’s work during one year.”

Johnson is a solo practitioner with Senter, Stephenson, Johnson, P.A. of Fuquay-Varina. Originally from Connecticut, she is a graduate of Fairfield University and Quinnipiac University School of Law. Johnson is licensed to practice in Connecticut, Hawaii and North Carolina.

“To say that Linda Johnson has been active in the Bar Association and Foundation is an understatement,” Latham added. “Not only is she a frequent CLE speaker, she is currently serving as a council member of the Estate Planning & Fiduciary Law Section.

“She is a long-time planner, speaker and contributor at the Estate Planning & Fiduciary Law Section’s Annual Meeting and has been instrumental in obtaining sponsors to fund the program.”

Johnson’s dedication to her section’s CLE programming and continuing legal education in general is an extension of her core belief and practice to give back.

“That is how my personality is,” Johnson said. “My involvement with CLE helps me give back, but it also keeps me sharp professionally. The Bar Association is very open to anyone who wants to jump in and help, and not only that, you also get to meet



Linda Funke Johnson, left, accepts CLE Volunteer of the Year Award from President Kearns Davis and CLE Committee Chair Roberta King Latham during the winter meeting of the NCBA Board of Governors.

a ton of great people.

“Receiving this award, especially as a solo practitioner in a small town, is a huge deal for me.”

Previous honors received by Johnson include the Mollie Pitcher Award for Outstanding Service to the Field Artillery Community, which she received from the U.S. Army, Schofield Barracks, in 1991 when her husband was stationed in Hawaii. **NCL**

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Just released video replays, first showing at the NCBA Annual Meeting in Asheville at the Omni Grove Park Inn, June 23-24. Register online at www.ncbar.org.

iPad for Litigators

June 23, 2-3 p.m.

Video Replay, CLE Credit: 1.0 Hour

Learn how you can use the iPad for note-taking, legal research, deposition preparation, case management, and trial preparation, as well as how to use the iPad for your next courtroom presentation. The speaker covers the basics of using an iPad in a litigation practice and showcases some of the best apps.

iPad for Transactional Lawyers

June 23, 3-4 p.m.

Video Replay, CLE Credit: 1.0 Hour

Learn how you can use the iPad for note-taking, legal research, document creation, case management, and client communication, as well as how to use the iPad in the paperless office. The speaker covers the basics of using an iPad in a transactional practice and showcases some of the best apps.

#LegalEthics: Using Twitter and LinkedIn Without Losing your Law License

June 23, 4-5 p.m.

Video Replay, CLE Credit: 1.0 Hour

This session is designed to help lawyers and law firms understand social media, and the professional ethics rules governing the use of Twitter and LinkedIn. The presentation includes specific examples of the use (and misuse) of current social media platforms.

Don't Click that Link!

Scams and Digital Security Basics

June 24, 2-3 p.m.

Video Replay, CLE Credit: 1.0 Hour

Email scams are getting so sophisticated that even normal people are falling victim. A huge segment of these scams are now targeting law firms as well. Spend an hour learning more about these scams and how you can protect your firm.

The (Not So) Grand Canyon: Managing Subordinate Lawyers and Staff Across the Generational Divide

June 24, 3-4 p.m.

Video Replay, CLE Credit: 1.0 Hour

As Boomers and Millennials make up the majority of the work force, lawyers of all ages can benefit from a better understanding of generational expectations and motivators. Earn CLE credit for learning challenges and techniques for supervising lawyers and non-lawyers across the generational divide as provided for in the State Bar rules governing law practice management courses.

What Am I Supposed to do with all this #*%^ Email?

Using software you already own to manage your calendar, docket, conflicts, tasks, client communication and digital client files.

June 24, 4-5 p.m.

Video Replay, CLE Credit: 1.0 Hour

You already own programs to create emails and documents, but did you know those same programs can be used to manage your law office? Learn how to use the software you already own to create calendars, dockets, ticklers systems, conflict screening, disaster plans, and to handle client communication and document management.

2017 Paralegal Division Annual Meeting CPE Video Replay

Video Replay, CPE Credit: 3.0 Hours

June 23, 1:15-4:30 p.m.

Learn from the best segments of the 2017 Paralegal Division Annual Meeting.

For more information and to register, please visit www.ncbar.org. For more upcoming NCBA CLE Video Replays, please visit tinyurl.com/NCBAFCLEVRs



Hill Carrow, CEO of the Triangle Sports Commission in Cary, was inducted into the inaugural class of the National Association of Sports Commissions Sports Tourism Hall of Fame. He has been a longtime promoter of sports tourism in North Carolina and the Triangle dating back to his founding of North Carolina Amateur Sports in 1980, his founding of the State Games of North Carolina in 1986, and his direction of the U.S. Olympic Festival across the region in 1987.



Professor Henry Gabriel Jr. of Elon University School of Law received the 2017 Leonard J. Theberge Award for Private International Law from the ABA Section of International Law at its spring meeting in Washington. The award honors people who have made distinguished, longstanding contributions to the development of private international law. Gabriel has spent the last two decades engaged in the development of uniform commercial laws, both domestically and globally, and has served on the Uniform Law Commission for 25 years.



C. Wells Hall III of Nelson Mullins Riley & Scarborough in Charlotte received the 2017 Janet Spragens Pro Bono Award from the ABA Section of Taxation. He served as section vice-chair for pro bono and outreach from 2013-16, during which time he championed programs to increase pro bono participation among section membership and access to tax assistance for low-income and underserved populations. Hall chaired the NCBA Tax Section from 1986-88.

Recognition

Recognition is a regular feature highlighting NCBA members' achievements. To submit notices, email to rrawlings@ncbar.org or by mail to Russell Rawlings, Director of Communications, North Carolina Bar Association, 8000 Weston Parkway, Cary, NC 27513. **Let us know what you and your colleagues have been up to, and maybe you'll see your faces here next issue!**



Saad Gul of Poyner Spruill in Raleigh has been named a 2017 Fellow at the Leadership Council on Legal Diversity. He is one of only three attorneys chosen for the program from North Carolina. The Leadership Council on Legal Diversity, founded in 2009, is made up of more than 265 corporate chief legal officers and law firm managing partners.



Valecia M. McDowell of Moore & Van Allen in Charlotte received the Julius L. Chambers Diversity Champion Award at the Mecklenburg Bar Foundation's Hon. James B. McMillan Fellowship Dinner. The award "celebrates persons in our community who have advanced the cause of diversity and equal opportunity." McDowell is a founding member of the firm's Diversity Committee and currently serves as its co-chair.



Richard Stevens, who serves of counsel with Smith Anderson in Raleigh, received the Distinguished Public Service Award at the N.C. Chamber's 75th Annual Meeting in Greensboro. He joined the firm in 2012 following five terms in the N.C. Senate, where he was co-chairman of the Senate Appropriations Committee and served as a budget leader under both Republican and Democratic majorities. Stevens served as county manager for Wake County from 1984-2000.



John R. Wester of Robison Bradshaw in Charlotte received the 2017 Charles S. Rhyne Award for Professional Achievement from the Duke Law Alumni Association. The award was established in 1994 to recognize graduates whose careers exemplify the highest standards of professionalism, personal integrity, and commitment to education or community service. Wester is a 1972 graduate of Duke University School of Law and a past president of the North Carolina Bar Association.

NCBA Past-President E. James “Jim” Moore 1927-2017



E. James “Jim” Moore of North Wilkesboro died Feb. 1 at the age of 90. He served as president of the North Carolina Bar Association in 1987-88.

A native of Winston-Salem, he grew up in North Wilkesboro and received his undergraduate (1949) and law degrees (1951) from Wake Forest University. Moore served in the United States Army in both World War II and the Korean War, achieving the rank of first lieutenant.

Moore began his legal career in Charlotte in 1952 as an associate with Lassiter, Moore & Van Allen. He returned to North Wilkesboro in 1953 to open a solo practice. Moore was a partner in Porter & Moore from 1955-60, after which he resumed and maintained a solo practice for the remainder of his career.

He served on the NCBA Board of Governors from 1981-84 and was also a member of the American Bar Association. Moore served as councilor of the N.C. State Bar from 1971-74 and was a member of the Disciplinary Hearing Commission from 1975-81.

Moore was a civic and community leader in North Wilkesboro and Wilkes County. He served as mayor of North Wilkesboro and as a judge for the Wilkes County Records Court, and was a member and president of the N.C. Association of Municipal Attorneys.

He was also a member of the North Wilkesboro Lions Club, where he served as president, and a board member and vice president of the Wilkes Chamber of Commerce.

“When I think of Jim Moore, two words come to mind—dignity and professionalism,” fellow attorney and NCBA member John Willardson told the Wilkes Journal-Patriot. “Jim was a great role model not only for attorneys, but for all of us. He was a dear friend and will be sorely missed.”

“Jim was recognized statewide as both a great lawyer and leader, as evidenced by his selection as president of the N.C. Bar Association.” *.ncz*

In Memoriam

In Memoriam is a regular feature devoted to recently deceased NCBA members. Listings include the age, residence, law school and graduation year. To submit notices, call 919.657.1558 or email rrawlings@ncbar.org. *As of April 15, 2017.*

J. Allen “Al” Adams

85 | Raleigh | UNC ’54

Wallace Ashley Jr.

88 | Smithfield | UNC ’53

William Ashe Bason

92 | Raleigh | UNC ’50

Paul Buckner Bell

94 | Charlotte | Wake ’48

Judge Edwin Maurice Braswell Sr.

94 | Fayetteville | UNC ’51

Porter B. Byrum

96 | Charlotte | Wake ’42

Judge Robert Leland Cecil

80 | High Point | Wake ’62

John Bernard Clayton

87 | Pinehurst | Boston College ’57

Robert Clarence “Bob” Cone

65 | Greensboro | UNC ’78

Russell W. DeMent Jr.

77 | Knightdale | Wake ’65

Robert Louis Fuerst

68 | Raleigh | UNC ’73

Edward “Ed” Roger Green Sr.

81 | Winston-Salem | Wake ’62

I. B. Hudson

87 | Raleigh | UNC ’56

Noland Randolph “Randy” Mattocks Jr.

72 | Bermuda Run | Wake ’69

William Henry McCullough

82 | Raleigh | UNC ’59

George John Miller

90 | Charlotte | UNC ’53

E. James “Jim” Moore

90 | N. Wilkesboro | Wake ’51

James R. Rogers III

75 | Raleigh | Wake ’66

Elizabeth Meachum Stanaland

58 | Greensboro | Florida ’85

Henry “Monroe” Whitesides Jr.

58 | Belmont | Campbell ’84

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Attorney Positions: North and South Carolina. Contact Carolina Legal Staffing, the premier placement firm in the Carolinas, for full-time, part-time and contract positions with law firms and legal departments: Ashley Smith — Charlotte; Julie Clark — Raleigh; Lisa King — South Carolina. Send an email to info@carolinalegal.com or visit www.carolinalegal.com.

Expert Witness. Premise Liability. Inadequate Security Claims. Police Negligence Claims. Plaintiff/Defense. Past cases: apartments, condominiums, retailers, malls, restaurants, bars, event security, police agencies, jail, college, others. 30 years experience. Security and Police background. Author, eight textbooks. Director, Security and Justice Institute. College Educator, Consultant. Phil Purpura, CPP. (843.665.0357) philpurpura@sc.rr.com.

Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, Colorado 80201.

Florida Ancillary Estates—Elaine Dawkins Humphreys, a Florida and North Carolina attorney, is available to open and administer ancillary estates in Florida in conjunction with your clients' N.C. estates that have Florida assets. Elaine Humphreys, Humphreys Law, P.A., West Palm Beach, FL; (561) 303-9021; ehumphreys@humphreyspa.com.

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APPENDIX
ATTACHMENT 8

Civil Justice Strategies Task Force Report & Recommendations



State Bar of California

2015

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Civil Justice Strategies Task Force Report and Recommendations

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This report is available at

For more information, contact:
[Civil Justice Strategies Task Force](#)

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Civil Justice Strategies Task Force Report and Recommendations

Civil Justice Strategies Task Force*

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President, State Bar of California
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State Bar Board of Trustees

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Irell & Manella

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Sonia Gonzales
Executive Director, California Bar Foundation

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Support Services

Modest Means

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Confinement - CIVIC

Ana Maria Garcia
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Carole Conn
Director, Lawyer Referral and Information
Service, Bar Association of San Francisco

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Associate Justice Fourth District Court of
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Marty Omoto
California Disability Community Action Network

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Associate Justice, Second District, Division Seven of the California Courts of Appeal

CA Commission on Access to Justice Liaison

Joanne E. Caruso

Vice President, Global Litigation for Jacobs Engineering Group

Staff

Kelli Evans, Senior Director, Access to Justice, State Bar of California

Francisco Gomez, CJSTF Coordinator, State Bar of California

Susan Phan, Assistant General Counsel, Office of General, State Bar of California

* **Titles and affiliations accurate as of the final hearing on November 13, 2014**



Chair, Civil Justice Strategies Task Force

Date: February 13, 2015

To: Members CJSTF, Witnesses, Staff and Public Attendees:

From: Luis J. Rodriguez, Chair, CJSTF

As Chair of the CJSTF, I want to express my appreciation for the hard work of everyone involved and thank all of you for your effort.

The challenge for any group, given this very large task and very short amount of time, is that we've had a lot of big, dreaming conversations and engaged quite a few radical ideas; hoping to be bold.

We've heard from some: "don't blow things up ... there are things that are working." We've heard from others that the only way to solve the access problem is to do things completely differently than in the past. These opposing perspectives have been part of the discussion as well as part of the challenge.

As we enter into a great transformation of the legal profession and see positive momentum in the equal access movement, we are also highly cognizant that our efforts are but one step towards the realization of societal justice.

It is the desire of the Civil Justice Strategic Task Force members that the California State Bar Board of Trustees embrace these recommendations. We believe that this report will serve as a road map that will empower the many to do the necessary work for the needy in our legal system

Regards,

Luis Rodriguez
Chair, CJSTF

Civil Justice Strategies Task Force Background

In November 2013, the State Bar Board of Trustees approved the creation and appointment of the Civil Justice Strategies Task Force as a special committee of the board.

The charge of the task force was to analyze the reasons for the existing “justice gap,” to evaluate the role of the legal profession in addressing the crisis, to seek the input of groups who have been working to expand access to justice to understand what efforts have worked and which have not been successful, to study creative solutions being considered in other states and other countries, and to develop an action plan with recommendations for steps that should be taken to fill the justice gap and achieve true access to justice in California.

Development of the action plan included a series of public meetings with presentations by experts to obtain input from key stakeholders, including those who have long struggled to address the justice gap, as well as others who may be able to suggest creative solutions. The task force was chaired by Luis Rodriguez (2013-14 State Bar President) and was comprised of members of the State Bar Board of Trustees, Solo, Small Firm and Large Firm representatives, Public Sector representatives, Modest Means representatives, Bar Associations, Lawyer Referral and Information Services, Public Members, Academics and liaisons from the California Supreme Court and the California Commission on Access to Justice.

Seven all-day public hearings were held by the task force to consider input and make recommendations to the Board of Trustees.

- Hearing I: Examining the Causes - March 26th (10:00 AM - 4:00 PM) (Los Angeles)
- Hearing II: Access to Justice Obstacles and Success - April 30 (10:30 AM - 3:30 PM) (San Francisco)
- Hearing III: Access to Justice Obstacles and Success - May 28 (10:30 AM - 3:30 PM) (Los Angeles)
- Hearing IV: New Solutions - June 18 (10:30 AM - 3:30 PM) (Los Angeles)
- Hearing V: Cost of Legal Education - August 26 (10:30 AM - 3:30 PM) (San Francisco)
- Hearings VI: Prepare Action plan - October 20 (10:30 AM - 3:30 PM) (Los Angeles)
- Hearing VII: Prepare Action plan - November 13 (10:30 AM - 3:30 PM) (Los Angeles)

Chair Luis Rodriguez created three subcommittees of the task force to help guide the work of the full task force and with the hope that the task force could arrive at a consensus about how to improve the access to justice problem and lay the groundwork for dramatic progress in the next few years.

The three subcommittees were: (1) the “Now Group” which was tasked with a review of the current access environment in order to identify what approaches are working now and what may be scalable or can be replicated; (2) the “New Group” which focused on innovations that currently are being considered or implemented in other jurisdictions; and (3) a “Law School Debt Group” that examined the intersection of law school debt and access to justice.

This report includes the following sections: an acknowledgement by Luis Rodriguez; a brief introduction of the problem the task force set out to address; lists of the topics and witnesses included in each hearing; a summary of key recommendations; excerpts from the testimony; and the individual reports from each of the Civil Justice Strategies Task Force’s subcommittees.

Introduction

*The United States has "the heaviest concentration of lawyers on earth...but no resource of talent and training...is more wastefully or unfairly distributed than legal skills. Ninety percent of our lawyers serve ten percent of our people. We are overlawyered and underrepresented."*¹

In recent years, access to legal representation and the courts has become increasingly limited. Despite the existence of a diverse, statewide network of non-profit legal services organizations, millions of low and moderate income Californians are unable to access affordable legal assistance when they need it. For many, the cost of legal representation makes seeking legal assistance impossible. For others still, unfamiliarity with our legal system, and language, geographic, or cultural barriers limit access to justice.

Unfortunately, there has never been adequate funding to provide legal assistance for the millions of Californians who need help. Even before the economic downturn, legal services organizations only had sufficient resources to meet about 20-30 percent of the legal needs of low-income Californians. In recent years, the funding has reached critically low levels. One of the largest sources of state funding, interest on lawyers' trust accounts ("IOLTA"), has dropped from over \$22 million in 2007-2008 to under \$5 million in 2013-2014. Not only did IOLTA revenue drop over 80% between 2008 and 2014, but other sources of funding including government grants and contracts, foundation funding and private giving, have all been negatively affected by the economic downturn.

Similarly, the primary federal source of funding for legal services, the Legal Services Corporation (LSC), also has faced historic declines. In 2014, LSC provided \$365 million nationally for civil legal assistance to low-income people – down from \$420 million four years ago. This marks a 30 percent decrease from 2007 to today.² Meanwhile, the number of persons financially eligible for LSC-funded legal aid– those with incomes at or below 125% of the federal poverty guideline (currently \$14,588 for an individual and \$29,813 for a family of four) has grown over this same period. Since LSC funding directly supports 11 of the largest legal service providers in California, and many others through sub-grants, these declines have had a severe negative impact on the ability to provide legal services to low-income Californians. Reduced funding has forced many legal services organizations to reduce staff and cut needed programs. According to LSC, nearly 50% of its grantees reduced staff and client intake services in 2013.

In California, thousands of individuals who seek help are turned away simply because legal aid providers do not have sufficient resources to assist all who qualify for their

¹ Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, p. 32 (May 2104) quoting former President Jimmy Carter (remarks at the 100th Anniversary Luncheon of the Los Angeles County bar Association , May 4, 1978, printed in 64 ABA J. 840, 842 (1978))

² James J. Sandman, President of the Legal Services Corporation, in his memorandum to Finance Committee (June 25, 2014), *Management's Recommendation for LSC's FY 2016 Budget Request*

services. Millions more moderate-income Californians are ineligible for free legal aid yet they cannot afford to pay for lawyers. This “Justice Gap” means that increasing numbers of individuals often have no choice but to represent themselves. While there are no comprehensive statistics on how many people represent themselves in court, according to an American Bar Association survey, 60% of state judges have reported increases in the number of civil litigants who are appearing without counsel.

Sixty-two percent of the surveyed judges stated that parties were hurt by not having a lawyer.³ While some legal problems are relatively simple and can be resolved appropriately without counsel, others are more complex and require legal advice and guidance. Still other legal matters demand full representation due to their complexity, the interests at stake, or other factors. A lack of adequate legal assistance can have dire consequences, including a loss of income, housing, or educational opportunities; family instability; damage to physical or mental health; or verbal or physical violence or threats of violence.⁴ In addition to risking severe and potentially irreparable harm to individuals and families, the increase in self-represented litigants affects the courts’ ability to handle and dispose of cases which, in turn, often adversely affects the timeliness of the handling of cases in which litigants are represented by counsel.

Over the past two decades, some significant efforts to expand access to justice in California have occurred, including identification of new funding sources for legal aid, expansion of self-help resources, and increased mobilization of pro bono attorneys. As Professor Deborah Rhode observes, despite these efforts, “...the situation has not improved. And at least part of the problem is of the profession's own making. Our nation does not lack for lawyers. Nor does it lack for ideas of how to make legal services more accessible. The challenge remaining is to learn more about what strategies work best, and to make them a public and a professional priority.”⁵

This challenge was at the heart of the formation and work of the Civil Justice Strategies Task Force. Over the course of nine months last year, the Task Force conducted hearings and heard from witnesses on a wide range of topics related to improving access to civil justice in California. While witnesses and Task Force members discussed many obstacles and challenges, they also discussed strategies and approaches for helping to narrow the Justice Gap in California. Based on the hearings, discussions, and related materials, the Task Force developed the recommendations discussed in this report. The Task Force recognizes that there is no single solution that will close the Justice Gap in California. As discussed in this report, however, the Task Force believes that there are a number of concrete steps that the State Bar, courts, lawyers, and other stakeholders can take to help ensure that every Californian can access legal help when they need it.

³ Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts

(Preliminary) ABA Coalition for Justice, Linda Klein, Chair (July 12, 2010)

⁴ See, e.g., Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study (CNSS), by Rebecca Sandefur and the American Bar Foundation (August 2014).

⁵ Rhode, Deborah, A Roadmap to Justice

**Civil Justice Strategies
Task Force
Report & Recommendations**

**APPENDIX A:
Panelists & Witnesses
at the Hearings on
Civil Justice Strategies**

March 2015



CIVIL JUSTICE STRATEGIES TASK FORCE HEARING

Wednesday, March 26, 2014

10:00 AM - 4:00 PM

The State Bar of California

845 South Figueroa Street

Board Room, 2nd Floor

Los Angeles, CA 90017-2515

Panelist and Witnesses

Civil Justice Strategies Task Force Introductions and Overview

Luis Rodriguez

2013-14 President of the State Bar of California and Chair of the State Bar's Civil Justice Strategies Task Force

A Brief History of the Legal Services Landscape

Justice Earl Johnson, Jr.

Visiting Scholar, University of Southern California Law School

Justice Laurie Zelon

Associate Justice, Second District, Division Seven of the California Courts of Appeal

Overview of State Bar Legal Services Funding

Kelli Evans

Senior Director, Administration of Justice, State Bar of California

The Obstacles to Greater Access

Gillian Hadfield

University of Southern California, Gould School of Law, Richard L. and Antoinette Schamoi Kirtland Professor of Law and Professor of Economics

CIVIL JUSTICE STRATEGIES TASK FORCE HEARING

Wednesday, April 30, 2014

10:30 am - 3:30 pm

The State Bar of California

180 Howard Street

Board Room, 4th Floor

San Francisco, CA 94105

Panelist and Witnesses

Access to Justice: A Roadmap to Reform

Deborah Rhode

Ernest W. McFarland Professor of Law, Stanford Law School

Legal Incubators

Honorable Goodwin Liu

Associate Justice, California Supreme Court

Reengaging the Private Bar through Limited Scope Representation

Sue Talia

Certified Family Law Specialist and Private Family Law Judge

Self – Help

Bonnie Hough

Managing Attorney, California Administrative Office of the Courts (AOC)

Modest Means Representation

Luz Herrera

Visiting Clinical Professor at the University of California, Irvine School of Law

So Cal Pro Bono Managers

Lani Woltmann

Pro Bono Director Disability Rights Law Center

Tai Glenn

Executive Director, f Levitt & Quinn Family Law Center.

Law School Clinics

Angelo Ancheta

*Executive Director, Katharine & George Alexander Community Law Center,
Santa Clara Law*

CIVIL JUSTICE STRATEGIES TASK FORCE

Wednesday, May 28, 2014
10:30 AM - 3:30 PM
The State Bar of California
845 South Figueroa Street
Board Room, 2nd Floor
Los Angeles, CA 90017-2515

Panelist and Witnesses

New York Innovations
Honorable Jonathan Lippman,
Chief Judge of the New York Court of Appeals

Limited Licensure
Steve Crossland
Former President, Washington State Bar & Chair, Limited Licensing Board

Private funding, Technology, and Access to Justice
Veyom Bahl
Program Officer, Robin Hood Foundation - funding NY Immigrant Justice Corp

Margaret Hagan
Student Fellow at the Stanford Center for Internet and Society

Colin Rule
CEO of Modria.com, an online dispute resolution service provider, and non-resident Fellow at the Center for Internet and Society at Stanford Law School

CIVIL JUSTICE STRATEGIES TASK FORCE

Wednesday, June 18, 2014
10:30 AM - 3:30 PM
The State Bar of California
845 South Figueroa Street
Board Room, 2nd Floor
Los Angeles, CA 90017-2515

Panelist and Witnesses

La Verne Flat-Rate Law School Tuition

Gilbert A. Holmes
Dean, La Verne School of Law

UCSC, UC Hastings Law Accelerated Law Degree Program (3 + 3)

Kelly Weisberg
Professor, University of California, Hastings College of Law

State Bar Task Force on Admissions Regulation Reform

Jon Streeter
Former State Bar President; Chair, Task Force on Admissions Regulation Reform

Access 3D

Justice Laurie Zelon
Associate Justice, Second District, Division Seven of the California Courts of Appeal

CIVIL JUSTICE STRATEGIES TASK FORCE

Tuesday, August 26, 2014
10:30 AM - 3:30 PM
The State Bar of California
180 Howard Street
Board Room, 4th Floor
San Francisco, CA 94105

Panelist and Witnesses

The Federal Picture – Data, Trends, Challenges and Possible Federal Reforms

Heather Jarvis
Student Loan Expert

Chris Chapman
President and Chief Executive Officer of the Access Group

What Does the Status Quo Look Like In Our State – California Finances, Law School Costs, Challenges and Possible Reforms?

Dean Linda Bisesi
Assistant Dean and Director of Financial Aid at the University of California Hastings College

Eleanor Lumsden
Associate Professor, Golden Gate University School of Law; Member, Civil Justice Strategies Task Force

The Impact of Debt on Students and New Lawyers

Emily Aldrich
2013-2014 State Bar California Young Lawyers Association Vice Chair; 2014-2015 CYLA Chair

Nathaniel Lucey
2011-2014 State Bar California Young Lawyers Association Board Member; 2014-2015 Special Advisor

Shavonte Keaton
President of the Black Law Students Association, Golden Gate University School of Law

Travis Thompson
President of the Business Law Association, Golden Gate University School of Law

Civil Justice Strategies Task Force Report and Recommendations

APPENDIX B: Summary of Recommendations

March 2015



CJSTF RECOMMENDATIONS

“Now Group” Draft Recommendations

1. **Funding:** recommend that the State Bar boost promotion of the Justice Gap Fund in order to increase donations to the fund by lawyers and law firms.
2. **Incubators/Modest Means:** recommend that the State Bar track the trajectory of incubator participants; and recommend that the State Bar help create a framework (e.g., mentors, toolkits, forms, etc.) to assist modest means practitioners.
3. **Unbundling:** recommend that the State Bar do more to promote and incentivize limited scope representation.
4. **Improved Coordination:** recommend greater coordination between the State Bar and Judicial Council, including in efforts to link the various stakeholders involved in providing affordable legal services.
5. **Civil Gideon:** recommend that the State Bar support efforts to secure universal representation starting with the following four areas: Land Lord / Tenant, Family, Domestic Violence, Immigration; and recommend that State Bar help to market what’s working in the pilot projects, publicly support them, and help to scale them.

“New Group” Draft Recommendations

1. **Limited License Legal Technicians (LLLT):** The State Bar should study the design of a pilot program, in one subject matter area, and, with input from the Supreme Court, address how the governance, oversight, and “licensing” would be handled. It is important to allow the time for the Court to have input at the early stages, rather than after design is complete.
2. **Alternative Business Structures (ABS):** The State Bar should monitor the ABS concept in other jurisdictions, with particular attention to the impact on pro bono and public impact litigation in jurisdictions that adopt these practices. Until this information is available to consider and understand, the Bar should not proceed with new rules or programs.
3. **Re-engineering:** recommendation for a pilot project, perhaps in landlord-tenant, using a joint working group of the bar, the courts, and perhaps relevant social scientists and tech people, to explore how the system could be redesigned to streamline the process, make it easier to use, and provide protection for the parties’ rights.
4. **Navigators:** A program should be designed to be piloted in one or more self-help centers, to provide volunteer assistance to self-represented litigants in attending hearings. Permission should be requested to have the navigator sit at counsel table

with the litigant, but not to address the court. Based on experience in other jurisdictions, the focus should be on this as a volunteer program, not as a for-profit method of assistance.

Law School Debt Draft Recommendations

1. **Info Clearinghouse:** The Bar should serve as a clearinghouse of information on student debt management and repayment programs and key student loan debt and repayment information.
2. **California Young Lawyers Association:** Working through CYLA, the Bar should develop mechanisms and new approaches to assist young lawyers in better understanding and proactively addressing the implications of their student debt obligations.
3. **Creating an Enhanced Understanding of Student Debt Data, Concerns and Implications:** The Bar should continue to put a spotlight on the issue of law school debt, promote an enhanced understanding of the link between student debt and broader community access to justice and public safety concerns, and assist others working to study, quantify and better define the implications of student loan indebtedness.
4. **Assess Relationship to Misconduct:** The Bar should work through its discipline arm to assess whether student debt is precipitating or contributing to lawyer misconduct.
5. **Work with Law Schools:** The Bar should use both its law school regulatory power as well as its established relationships with law school leaders to encourage enhanced counseling, strategies and disclosures in regard to student debt.
6. **Participate in National Dialogue:** The State Bar should consider ways to add its voice to the national dialogue seeking to develop and promote enhanced loan forgiveness and repayment approaches.
7. **Encourage New Law School Cost Models:** The State Bar should help encourage new and innovative models that seek to address law school cost concerns.

Implementation: The Board of Trustees should create a group to implement these recommendations

Civil Justice Strategies Task Force Report & Recommendations

APPENDIX C: Excerpts from Witnesses at Hearings

March 2015



Excerpts from Witnesses at Hearings

Luis Rodriguez, Chair CJSTF & 2013-14 State Bar President

If you can indulge me just a couple minutes, it's somewhat of a selfish reason as to why this is important. I've been a Public Defender for about 20 years, and on the criminal side, although it's not a perfect system, there is a constitutional guarantee to counsel. And in the two decades that I've been in that office, I've seen the benefits of our clients having a voice in those tough situations. The selfish part is this, is that many of our clients and their families are your clients in the civil side and their families as well, and the struggle that they face on a regular basis, not only them but 4 everybody else, we're looking at about four-fifths of the general population cannot afford an attorney in a civil action."

"The charge of the Task Force is as follows: It's to analyze the reasons for the existing justice gap, to evaluate the role of the legal profession in addressing the crises, to seek the input of groups who have been working to expand access to justice, to understand what efforts have worked and which have not been successful, to study creative solutions being considered in other states and in other countries, and to develop an action plan with recommendations for steps that should be taken to fill the justice gap and achieve true access to justice in California. Those are our responsibilities." **March 26, 2014 CJSTF Hearing**

Justice Earl Johnson, Jr., Visiting Scholar, University of Southern California Law School

"...the California legislature said.[If we could make them live up to what they said in their findings when they created the Sargent Shriver Counsel Project, take a look at what they had to say] "In many civil cases, lawyers are as essential as judges and courts to the proper functioning of the justice system. The state has just as great a responsibility to ensure adequate counsel is available to both parties in those cases as it does to supply judges, courthouses, and other forums for the trial of those cases." **March 26, 2014 CJSTF Hearing**

Justice Laurie Zelon, Associate Justice, Second District, Division Seven of the California Courts of Appeal

"And one of the problems that I hope we can think about together is the fact that our whole system of laws and courts was designed where the judge gets to sit and listen to trained advocates who have prepared the matter, who know the rules of evidence, and who know the law, present that case to the judge, and the judge can then hear the merits of the case, can get the testimony in that is relevant to the matter, and make a decision on the merits with some confidence that that judge knows what the legal principles applicable are. We don't have that system anymore. So everything we talk about has to be in light of the fact that our system might not have wanted to change but change has been thrust upon us"

"So we are somehow stuck. The poverty population, the needs of the public, the increasing complexity of the social welfare system and everything else in the country that faces them has outstripped our ability to continue to use the same processes that we have been using

in order to solve their problems. Which brings me to Einstein. Doing what we have been doing in the same way we have been doing it meets his definition of insanity to a "T," and I think that is why our President, Mr. Rodriguez, has brought us here. Because we need to look at some more fundamental and systemic changes in order to break through that barrier that we seem to be stuck at."

"Enhanced pro bono services, as I said, we have made strides in pro bono. As more and more lawyers are having trouble finding employment, we have this interesting anomaly of unemployed lawyers, clients who need services, and no match between them, and that's something that is not necessarily limited to pro bono but deals with something that I'm going to talk about next, which is enhanced law school programs and incubators.

If we could teach lawyers how to manage a practice effectively and give them techniques so that they could represent clients for less, then a lot of the people of modest means who are now priced out of the market might have a possibility of obtaining counsel at dollar amounts they could afford." **March 26, 2014 CJSTF Hearing**

Kelli Evans, Senior Director, Administration of Justice, State Bar of California

"My bottom line is notwithstanding all of these different pieces and pots and pools of money that we've put together in a patchwork to help support legal aid, it's just not sufficient. It hasn't been sufficient historically even when IOLTA was at much higher rates. It's certainly not sufficient now.

We don't anticipate the rates going up anytime soon, certainly not at the level -- you know, there would be something else happening with the economy if we saw the rates be at the level we need them to be to make a real dent.

So I think the charge and the challenge of the Task Force is crystal clear. We have to, I think, look beyond the dollars in coming up with creative, innovative ways of helping to narrow the justice gap." **March 26, 2014 CJSTF Hearing**

Gillian Hadfield, University of Southern California, Gould School of Law, Richard L. and Antoinette Schamoi Kirtland Professor of Law and Professor of Economics

"Now, what I'm going to say to you -- I think you've also heard -- this is not really just a poverty problem. I mean, I would say look at the 95 percent problem. We'd be lucky if we think that 5 percent of the population actually accessed reasonable amounts of legal services, but that's the usual definition there.

"We do know casually the amount of unrepresented -- lack of representation in courts -- again, maybe you live with this -- are very high. The New York study did look at this systematically, and their numbers are just off the charts; 98 percent of 15 people facing eviction, 98 percent of people in family matters, 58 percent of people facing foreclosure, of course, standing up against a real represented bank. Just off the charts"

“So here's just some calculations. So California has 12.5 million households, and if you take those, the ABA numbers because we don't have specific California legal needs numbers -- if you just took the 1995 ABA which is probably low, half of those households at any point in time are dealing with a legal problem, and if they are, they're probably dealing with two. So that's 12.5 million legal problems. I know I said no math, but I'm doing it for you. So that's a minimum. Suppose you wanted to give one hour of legal help to each of those households. Now, remember, these are only -- the kinds of problems that get asked on these surveys are what you might call erupted problems. These are not the legal advice needs. We don't ask did you sign a mortgage document recently, did you sign a rental agreement recently, have you now got a problem that's turned into a problem. So if you wanted to give one hour of help on 4 those erupted legal problems, that would cost \$3.1 billion at the average rate of a solo, small firm practitioner, which is in the area of 200 to \$250 an hour. So that's if you just wanted to extend that out into the population of lawyers who are regularly serving ordinary households.”

“...And if you wanted to do it with pro bono, it would be 70 hours per active lawyer in California. That's for one hour of help.” **March 26, 2014 CJSTF Hearing**

Professor Deborah Rhode, Ernest W. McFarland Professor of Law, Stanford Law School

“Ontario which has licensed the paralegals to represent individuals in minor court cases in administrative tribunal proceedings report solid levels of public satisfaction with the services received. And, in this country, one study of nonlawyer specialists who provided legal representation in bankruptcy and administrative agency proceedings found that they generally performed as well or better than attorneys. Extensive education is, in short, less critical than daily experience, and we need to recognize that much as such.” **April 30, 2014 CJSTF Hearing**

Associate Justice Goodwin Liu, California Supreme Court and Co-chair of the Access to Justice Commission of Modest Means Incubator Project

“I would like to read -- this is Business & Profession Code 6068 (h) [it] says, “It shall be the duty of an attorney... never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.” That's actually in the state law. And that's aspirational, of course, but I think it captures so much of why young people go to law school, why perhaps most of you were motivated to study the law, and, yet, that's not a reality for so many of our people. And, so, in addition to locating our effort in relation to other bigger structural things that you are all thinking about, I want to emphasize that the reason our project is called Modest Means Incubator Project is that we are not specifically talking about legal aid solutions.”

“I was remarking just the other day ... just reading the newspaper that 70 percent of the things that are covered in the newspaper are about law... I don't know if that's as true in other nations, but we are a very ... law fixed society. And so the nature of the needs that

we have -- I would just look at what we just went through with respect to mortgages and foreclosures -- is it reasonable to ask ordinary people to go through that without expert advice of some sort?" **April 30, 2014 CJSTF Hearing**

Sue Talia, Certified Family Law Specialist and Private Family Law Judge

"When we have lawyers who can't get work and thousands of people who need legal assistance there's something wrong systemically, and I commend this task force for looking at the issue from all angles and looking for systemic solutions. It is critical that we develop new deliver methods which enable lawyers to cost effectively to provide necessary services to civil litigants, and I think one of the most promising of these is limited scope representation." **April 30, 2014 CJSTF Hearing**

Bonnie Hough, Managing Attorney Administrative Office of the Courts

"[A] really important feature of the self-help center is they are a key point for triage. One of the things that they are trying to do is help people to understand what they can effectively do on their own and what things they need assistance with." **April 30, 2014 CJSTF Hearing**

Hon. Chief Judge Lippman, New York State

We know that at best we are meeting 20 to 25 percent of the needs of low-income people for legal services. And really these are services dealing with the necessities of life, the roof over somebody's head, their physical safety, the well-being of their families, their livelihoods. These are the essentials of life that people today, overwhelmingly; people without means are lacking representation.

"We see ... nonlawyers as housing counselors in foreclosure proceedings, and we're starting to use it in other areas. We, in New York, base to some degree on the work of Professor Hadfield at USC and the British model. They opened up a new world saying ... this is not the only way to do this.

What we now have is a group that we call "Navigators," who go with the litigant into the courtroom. They provide moral support for the litigant, they provide information. They will not argue in front of the judge, but if the judge asks them a question, they will certainly answer it." **May 28 2014 CJSTF Hearing**

Dean Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings

"We're kind of typical for a state school. . . . The average amount that a law student will pay in one year is over \$70,000 and if they were to borrow all of that, the cost is \$213,000 over a three-year period. So this does have a burdensome effect on students and it does cause them to give thought as to whether or not they want to incur the cost that is required in order to join the profession."

"I think you're beginning to see the complexity of the loan repayment -- of the loan portfolio and you might be able to imagine then, a student as they get ready to go into repayment

how confusing this could be. Where do they even find the information that they need to determine what their interest rate is and what it has been over time and if they have undergraduate debt and graduate debt, it is very complex. . . . You know, we want to help them. This is our passion. We've all been students. We want to help students and we want them to understand this and we are in a unique position as administrators to understand the mechanics of all this and how it works and be able to explain it to students, but it adds a burden on us to do this, so therein lies the catch for us.” August 26, 2014 CJSTF Hearing

Heather Jarvis, Student Loan Expert

“[T]he programs are so complicated, so convoluted, the system is difficult to navigate that I think the programs are far less useful and effective than they might be, but they do exist.”

“In my view, the objective assistance and information for student loan borrowers is completely inadequate. . . . I think schools are less focused on providing support for their graduates when it comes to selecting repayment options than they are in providing the financial aid to begin with. . . . It needs to be simplified considerably. . . . I think that schools can and should invest more in providing the resources that would be necessary to give more personalized advice to their graduates.” August 26, 2014 CJSTF Hearing

Civil Justice Strategies Task Force Report & Recommendations

APPENDIX D: Reports of the CJSTF Subcommittees

March 2015



“NOW” REPORT

The “Now” Group was tasked with a review of the current access environment in order to identify what approaches are working now and what may be scalable or can be replicated.

INTRODUCTION

For both low- and moderate-income persons, the concepts of access to justice and delivery of legal services should not be viewed as synonymous with access to an attorney, access to judicial process, or individual representation. For both groups, a broad range of strategies, services, providers, and forms should be available.⁶

A full 25 years ago, these were the words of the ABA Conference on Access to Justice. And despite the realization *then* that a complex mix of systems and providers are needed to meet the Justice Gap, it still persists.

The Civil Justice Strategies Task Force had no illusions it could solve this long-standing problem overnight. But the “Now” Group took on the examination of these issues to further kick the ball down the field to make some progress, and sought to look “broadly... [at] innovations in courts, the bar, legal aid, and community that make it easier for people to obtain access to justice institutions, and just results within those institutions.”⁷

The justice gap that exists for both poor and the middle class is widely documented. For example, a 2009 Justice Gap report issued by the Legal Services Corporation notes that roughly half of the people who seek help from LSC-funded legal aid providers are denied service.⁸

As stated in a 2009 Symposium “Access to Justice: It’s Not for Everyone,” the middle-class in the United States is often priced out of the legal system because their income level disqualifies them from being eligible for legal aid services, but they cannot actually afford to hire an attorney.⁹

Lan W. Houseman, Senior Fellow for Law and Social Policy, at CLASP states in his “Civil Legal Aid in the United States an Update For 2013,” (t)he trends in US civil legal aid over the last 12 years continued through 2013. We saw increases in state funding as well as from other funding sources. However, we saw decreases in both IOLTA funding in 2012 and there are likely more to come in 2013. There are more Access to Justice Commissions and increased attention to civil legal aid at the state level. The notion of a right to counsel in civil matters has gained renewed attention. Yet, the basic civil legal aid system has not closed the “justice gap.” Efforts to expand access through technology and self-help representation activities continued and have expanded, but the fundamental problem remains: there are not enough actual staff lawyers, paralegals, lay advocates, law students and private attorneys available to meet the huge needs of low-income persons for advice, brief service and full representation.”

⁶ American Bar Association Consortium on Legal service and the Public and Tulane law School, Civil Justice an Agenda for the 1990s, Report Of The American Bar Association National Conference On Access To Justice In The 1990s (June 1989), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/accessconf.authcheckdam.pdf> (last visited December 3, 2014).

⁷ Richard Zorza’s Access to Justice Blog, <http://accesstojustice.net> (last visited December 3, 2014).

⁸ Legal Services Corporation, Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans (2009), available at <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf> (last visited December 3, 2014).

⁹ Sande L. Buhai, “Access to Justice for Unrepresented Litigants: A Comparative Perspective,” 42 LOY L.A. L. REV. 979 (2009).

**Testimony Presented To, And Information Acquired By,
The Task Force to Learn About and Understand Existing Efforts**

A. The Task Force’s Information Gathering

1. Witnesses Interviewed and Materials Reviewed
2. For nearly a year, the Task Force met in public hearings to learn from a diverse group of state and national experts and reviewed and analyzed numerous reports and articles related to the major existing efforts to provide civil legal services to low and moderate income Californians.
3. The witnesses, who testified about current legal services for those of low and moderate incomes over the course of the Task Force hearings, are included in Appendix E.

B. “Now Group Recommendations

1. Funding: recommend that the State Bar boost promotion of the Justice Gap Fund in order to increase donations to the fund by lawyers and law firms.
2. Incubators/Modest Means: recommend that the State Bar track the trajectory of incubator participants; and recommend that the State Bar help create a framework (e.g., mentors, toolkits, forms, etc.) to assist modest means practitioners.
3. Unbundling: recommend that the State Bar do more to promote and incentivize limited scope representation.
4. Improved Coordination: recommend greater coordination between the State Bar and Judicial Council, including in efforts to link the various stakeholders involved in providing affordable legal services.
5. Civil Gideon: recommend that the State Bar support efforts to secure universal representation starting with the following four areas: Land Lord / Tenant, Family, Domestic Violence, Immigration; and recommend that State Bar help to market what’s working in the pilot projects, publicly support them, and help to scale them.

C. Inventory & Description of Existing Efforts

The Now subcommittee compiled an inventory of the major efforts currently underway in California to assist those who fall into the justice gap. This is not an exhaustive list, nor could it ever be, since the Task Force learned that there are

constant ongoing efforts to bring new and better ways of providing legal services all the time. We are proud to have been the recipients of this knowledge and hope that the work of the task force does some justice to the efforts of so many throughout our state.

Inventory & Description of Existing Efforts

1. LEGAL SERVICES FUNDING (CALIFORNIA)

The Legal Services Trust Fund Program of The State Bar of California makes grants to nonprofit organizations that provide free civil legal services to low-income Californians. Four primary sources provide funds for the program: Interest on Lawyer Trust Accounts (IOLTA); California Equal Access Fund (EAF); the Justice Gap Fund and State Bar Dues Voluntary Contribution for Legal Services. In addition to these funding sources, the Campaign for Justice works to raise awareness about the critical importance of legal services and to encourage increased support and funding.

- **IOLTA**

Legislatively created in 1981, the IOLTA program provides funding for almost 100 nonprofit legal aid organizations, including direct legal service providers and support centers. IOLTA revenue has totaled over \$360 million since inception, with high years over \$20 million but, due to low bank interest rates, recent years below \$5 million.

- **California Equal Access Fund (EAF)**

The State Budget Act allocates funds to the Equal Access Fund “to improve equal access and the fair administration of justice.” The Fund is given to the Judicial Council to be distributed through the State Bar’s Legal Services Trust Fund Program.

Since 2006, \$4.80 of each civil filing fee collected by local courts is added to the Equal Access Fund. Filing fee revenue has ranged from approx. \$5.3 million to \$6.75 million annually, bringing the Equal Access Fund distribution to roughly \$16 million annually.

Ten percent of the funds available for distribution support Partnership Grants to legal services programs “for joint projects of courts and legal services programs to make legal assistance available to pro per litigants.” In 2014 approximately \$1.5 million were distributed

Partnership Grants are awarded through a competitive process, as distinct from the administration of other State Bar Trust Fund Program grants. The Trust Fund Commission and Judicial Council have complete discretion and flexibility to distribute Partnership Grant funds in the way they deem most appropriate. Grant award

recommendations are approved by the Judicial Council.

- **Justice Gap Fund**

The Justice Gap Fund was created by the California Legislature in 2006. It allows the State Bar to collect voluntary contributions from its members and others to help fund legal aid organizations statewide.

The annual dues bill includes a voluntary check-off box and a suggested donation amount of \$100 contribution to the Justice Gap Fund. Distributions can be made year-round through the Campaign for Justice Website. Annually, only about 5% of lawyers make a contribution to the Justice Gap Fund.

The donations received through the Justice Gap Fund are combined with revenue from Interest on Lawyers' Trust Accounts (IOLTA) and distributed on a formulaic basis to all California legal aid organizations that qualify for grant funding.

- **State Bar Dues Voluntary Contribution to Legal Services**

In addition to the Justice Gap Fund, each year since 2011, the State Bar Dues Bill has included an additional line-item enabling attorneys to make a small contribution for legal services. In 2011, the amount was \$10; in 2012 and 2013, the contribution was increased to \$20; in 2014 it was \$30 and in 2015, the amount was increased to \$40. Over \$15 million for legal services has been raised through the State Bar Dues Bill.

- **Campaign for Justice**

The Campaign for Justice was created by a network of legal aid organizations, private lawyers, the Office of Legal Services of the State Bar of California and the Legal Aid Association of California, united in a mission to spread awareness about the importance of legal aid and of increasing the resources available to meet the needs of indigent Californians. The goal of the Campaign for Justice is to increase funding for the important network of legal aid organizations that give a voice and representation to Californians who need help accessing justice.

The Campaign for Justice consists of four key components: educating policymakers about the importance of legal assistance, encouraging banks to maximize interest and waive fees on IOLTA accounts, increasing individual contributions to the Justice Gap Fund and legal assistance organizations, and encouraging pro bono services that leverage legal aid resources. By expanding awareness of the importance of legal assistance, the Campaign for Justice seeks to increase local and statewide legal aid resources so Californians are not denied justice simply because they cannot afford an attorney.

2. LEGAL SERVICES CORPORATION

The Legal Services Corporation (LSC) is the single largest funder of civil legal aid in the country. LSC funds a total of 134 legal aid organizations, including 11 in California. LSC promotes equal access to justice by awarding grants to legal services providers through a competitive grants process; conducting compliance reviews and program visits to oversee program quality and compliance with statutory and regulatory requirements as well as restrictions that accompany LSC funding, and by providing training and technical assistance to programs.

In 2014 LSC provided \$365 million nationally for civil legal assistance to low-income people – down from \$420 million four years ago. The reduction in LSC funding has resulted in staffing and service cuts in legal services programs in California and across the country that depend upon LSC funding.

3. PRO BONO

Lawyers in the United States are recommended under American Bar Association (ABA) ethical rules to contribute at least fifty hours of pro bono service per year(s). Some state bar associations, however, may recommend fewer hours. Rule 6.1 of the New York Rules of Professional Conduct strongly encourages lawyers to provide at least 50 hours of pro bono service each year and quantifies the minimal financial contributions that lawyers should aspire to make to organizations providing legal services to the poor and underserved.

In 1989 (amended June 22, 2002), the State Bar of California's Board of Governors, adopted a Pro Bono Resolution urging attorneys to devote at least 50 hours per year to pro bono service; that law firms and governmental and corporate employers support the involvement of associates and partners in pro bono; that law schools encourage the participation of law students in pro bono activities; and that attorneys and law firms contribute financial support to not-for-profit organizations that provide free legal services.

The Chief Judge of New York has also instituted a requirement that applicants who plan to be admitted in 2015 and onward must complete fifty hours of pro bono service in order to qualify. All attorneys who register must report their voluntary pro bono hours and/or voluntary contributions.

In California, the Task Force on Admissions Regulation Reform (TFARR) has recommended a competency training requirement, fulfilled either at the pre- or post-admission stage, where 50 hours of legal services is specifically devoted to pro bono or modest means clients.

While providing pro bono service is a core value of the legal profession, pro bono, legal work currently accounts for a very small percentage of legal work performed in the country.

4. SELF-REPRESENTATION

A Self-Represented Litigant is a person (party) who advocates on his or her own behalf before a court, rather than being represented by an attorney. These litigants are also known as pro se or pro per litigants.

California's courts are facing an ever-increasing number of litigants who go to court without legal counsel, largely because they cannot afford representation. Self-represented litigants typically are unfamiliar with court procedures and forms as well as their rights and obligations, which leaves them disadvantaged in court and requires significant court resources.

- **Task Force on Self-Represented Litigants**

The Judicial Council established the Task Force on Self-Represented Litigants in 2001 to coordinate the statewide response to the needs of litigants who represent themselves in court. The task force drafted a statewide action plan to serve self-represented litigants that was based in large part on local courts' own plans to add programs and services for self-represented litigants.

- **Self-Help Centers**

Effective January 1, 2008, the Judicial Council adopted rule 10.960 of the California Rules of Court, which states that court-based, self-help centers are a core function of the California courts. Self-help centers are located in or near the courthouse. They are staffed by attorneys and other qualified personnel under their direction to provide information and education to self-represented litigants about the justice process. While courts in every county have self-help centers, services have been curtailed due to budget cuts.

- **Family Law Facilitators**

Many self-help centers are combined with the family law facilitator program in their court. Effective January 1, 1997, Family Code section 10002 established an Office of the Family Law Facilitator in each of the 58 counties. The Judicial Council administers the program, distributing funds to these court-based offices that are staffed by licensed attorneys.

- **Family Law Information Centers**

The Judicial Council administers three pilot project centers in the Superior Courts of Los Angeles, Sutter, and Fresno Counties. The centers are supervised by attorneys and assist low-income, self-represented litigants with forms, information, and resources concerning divorce, separation, parentage, child and spousal support, property division, and custody and visitation.

- **JusticeCorps**

The JusticeCorps program began in 2004 as an innovative partnership of the AOC, AmeriCorps, the Superior Court of Los Angeles County, various University of California (UC) and California State University (CSU) campuses, and community-based, legal aid service providers. Since 2004, the Superior Courts of Alameda and San Diego Counties, as well as the Counties of San Francisco, San Mateo, Santa Clara, Placer, Yolo, and Sacramento, have joined the JusticeCorps. Members are recruited from UC and CSU undergraduate programs. They undergo intensive training in family law, small claims, and housing law before being placed in legal self-help centers to provide legal information to self-represented litigants under the direction of an attorney.

- **Online Forms and Document Assembly Programs**

California has standardized statewide forms for nearly all matters involving self-represented litigants. All of the forms can be completed online and saved as a PDF.

- **Websites**

The Judicial Council provides a comprehensive “Online Self-Help Center” for court users who do not have attorneys and for others wishing to become better informed about the law and court procedures. The entire site has been translated into Spanish and provides over 4,000 pages of information in each language on topics including family law, landlord/tenant, small claims, guardianships, conservatorships, domestic violence, elder abuse, and a host of other topics. In addition to the court’s website, the Legal Aid Association of California (LAAC), with funding from the State Bar, operates LawHelpCA.org, a website that provides information about common legal issues and a directory of organizations that provide free or low-cost legal advice and representation.

5. RIGHT TO COUNSEL - CIVIL GIDEON

There is a national movement underway to guarantee a right to counsel in certain civil legal cases. Modeled after the U.S. Supreme Court case of Gideon v. Wainwright, which guaranteed a right to counsel in criminal cases, the effort is being pursued along multiple fronts.

In 2006, the American Bar Association unanimously adopted a resolution supporting the

right to counsel in basic human needs cases. In addition to being co-sponsored by 13 state and local bar associations, the Resolution's goals were subsequently adopted in an additional six states. The ABA followed up in 2010 with two documents: a Model Access Act (which provides implementation suggestions for states establishing new rights to counsel), and Basic Principles of a Right to Counsel in Civil Legal Proceedings.

Information about status of right to counsel in each state can be found at the National Coalition for Civil Right to counsel at <http://www.civilrighttocounsel.org/> .

California provides counsel in a limited number of civil contexts, for example, removal of a child from indigent parents or termination of custody (See NCCRC site for examples)

- **California - Sargent Shriver Civil Counsel Act (AB 590 - 2009 - Feuer)**

With the passage of the Sargent Shriver Civil Counsel Act (AB 590, Feuer) in 2009, seven pilot projects selected by the Judicial Council of California through a competitive RFP process provide representation to low-income Californians on critical legal issues affecting basic human needs. The pilot projects are operated by legal services nonprofit corporations working in collaboration with local courts.

Pilot projects started in fiscal year 2011–2012 and are initially authorized for a three-year period, subject to renewal. All pilots and funding will terminate after six years (in 2017) unless the Legislature extends the statutory authority.

On August 21, 2014, the Sargent Shriver Civil Counsel Act Implementation Committee recommended that the Judicial Council award \$7,738,000 million in grants to the following qualified legal service organizations and court partners for pilot projects:

1. Bar Association of San Francisco Voluntary Legal Services Program Superior Court of San Francisco County
Child Custody Pilot Project \$394,364
2. Greater Bakersfield Legal Assistance Superior Court of Kern County
Housing Pilot Project \$536,282
3. Legal Aid Society of San Diego
San Diego Voluntary Legal Services Program Superior Court of San Diego County
Housing and Child Custody Pilot Project \$2,359,265
4. Legal Aid Society of Santa Barbara County Superior Court of Santa Barbara County

Northern Santa Barbara County Housing and Probate
 Guardianship/Conservatorship
 Pilot Project\$761,714

5. Legal Services of Northern California Superior Court of Yolo County
 Housing Pilot Project\$302,385

6. Los Angeles Center for Law and Justice Superior Court of Los Angeles County
 Child Custody/Domestic Violence Project\$843,419

7. Neighborhood Legal Services of Los Angeles County Superior Court of Los
 Angeles County
 Housing Pilot Project\$2,540,571

- **San Francisco Justice and Diversity Center Civil Right to Counsel**

In 2012, a city ordinance signed by Mayor Ed Lee in early April has made San Francisco the first city in the nation to create a guaranteed right to civil counsel. The ordinance, passed in March by the Board of Supervisors, authorizes a one-year Right to Civil Counsel pilot program but restricts the city's financial commitment to paying one staff person to coordinate the city, clients, and pro bono lawyers. To be eligible for free counsel, a person would need to live within 200 percent of the federal poverty line and have a case touching on "a basic human need," such as housing, safety, or child custody.

- **Other Right to Counsel Efforts**

In other states, efforts are driven mostly by court decisions, private bars, legal service organizations, and court-created justice commissions. For example, in 2009, the Philadelphia Bar started civil Gideon pilot projects in mortgage foreclosure and child custody cases. In 2007 the Boston Bar conducted a similar project with regard to eviction cases.

In 2013, a special Maryland state task force began a one-year mission to evaluate the feasibility of providing a right to legal counsel for Marylanders who are involved in certain kinds of civil disputes. They will study whether low-income Marylanders should have the right to counsel at public expense in basic human needs civil cases, such as those involving shelter, sustenance, safety, health, or child custody. Established by the legislature and signed into law by the Governor in 2013, the task force was approved to run until Sept. 30, 2014, when it will report its findings and recommendations.

6. UNBUNDLING

“Unbundling,” sometimes referred to as “limited scope representation is a way to spread scarce legal talent, especially in the context of providing services to people who cannot afford to pay for full representation. For example, a lawyer may prepare a document for someone or represent people through one court appearance or settlement negotiation.

Attorneys may provide limited scope representation *pro bono* or charge a fee for services performed. When Limited scope representation is done on a fee paid basis, the attorney is paid a fee for the part of the case s/he handles. This can be done on a flat fee (fixed charge for drafting a motion, filing a divorce, or similar discrete task), or hourly, at a full rate or reduced rate. The process concentrates the attorney’s time and expertise where it will be most effective, and limits the cost to the client to those tasks where professional assistance is most critical.

Unbundled representation sometimes requires approval from the court because it could be seen as violating professional ethics for a lawyer to be involved in a case on such a limited basis. California permits lawyers to provide unbundled legal services. The Judicial Council has created forms for use in both general civil cases and in family law cases to inform the court of such representation.

7. INCUBATORS

Legal incubators are emerging as models that enable newly-admitted lawyers to acquire the range of skills necessary to launch successful practices. The alpha incubator was established at the City University of New York over a decade ago. Recent changes in the economy have led to the creation of similar models by both law schools and bar associations.

Incubator programs are examples of what law schools and other stakeholders can do to respond to trends in the profession, to community needs, and to legal education trends. Recent trends in the profession include a decrease in the number of paid lawyer positions. Like all other graduates, law graduates are facing the prospect of creating their own jobs, and incubator programs that respond by enabling students to successfully create their own jobs fill a need. Additionally, with the significant decrease in federally and locally sponsored free legal services, lawyers are needed in community-based practices to provide affordable and innovative services to fill the gap.

The California Access Commission has a current project in which it has provided seed grants to organizations to start or expand incubator programs focused on modest means representation.

8. ALTERNATIVE DISPUTE RESOLUTION (ADR)

Alternative dispute resolution (ADR) systems are becoming a mainstay of legal systems around the world, especially within systems of justice suffering from significant backlogs and delay. While arbitration used to be the bastion of most commercial law disputes, today mediation is more widely used in both public and private justice systems. The growth of mediation has prompted some to consider the possibility of the wider use of online dispute resolution (ODR) platforms. Because many ADR systems are in fact reducing case backlogs, the focus has been on the speed of resolution and not necessarily on procedural protections and providing justice

- **Online Dispute Resolution (ODR)**

In a manner similar to ADR at its inception, ODR providers often lack appropriate funding and procedural safeguards. One means to address the former by reducing cost is to automate portions of the system. In fact, some argue that significant cost saving could be realized – and justice may be better served – by removing human neutrals from the equation; in other words, to fully automate some types of justice. As ADR gains wider use, many commentators hypothesize the next generation of ADR will be an ODR platform, which will use an algorithm and possess no neutral human decision maker.

9. MODEST MEANS

Modest Means representation provides low-cost legal assistance to individuals who do not qualify for free legal services, but cannot afford the expertise of attorneys at the standard rate.

Some state and local bar associations work to identify and stimulate innovative programs designed to make legal services more readily available to people of average means. Their websites lists programs that they believe are creative initiatives in the delivery of legal services to people who do not qualify for subsidized legal services and yet lack the income to retain traditional legal representation.

Listings may include bar-sponsored programs, lawyer referral services, military-sponsored programs, non-profit initiatives, court-based projects and individual-sometimes entrepreneurial-endeavors.

The ABA maintains a list at the following link of [*innovative programs to help people of modest means obtain legal help*](#). In California, a number of lawyer referral services include attorney members who have agreed to accept modest means clients.

10. LAW SCHOOL CLINICS

Clinical legal education is an increasingly emphasized component of legal education. In particular, the Carnegie Report, “Educating Lawyers—Preparation for the Profession of

Law,” emphasized the educational value of law clinics. Students and schools increasingly favor clinical education due to the current enrollment and employment challenges for the nation’s law schools. In a recent survey of 156 law schools, there were a total of 1036 distinct live-client law clinics, with an average of 6.6 per law school. Nearly 80% of the respondent schools noted that demand for live-client clinics increased during the prior five years, 19% reported the demand remained constant during that time period, and less than 1% noted a decrease in demand.¹⁰

Nationwide, more than one thousand faculty teach and supervise clinic students in increasingly diverse fields. Clinic students at all ABA-accredited law schools in the 2009–2010 academic year provided over 1.38 million hours of free civil legal services and represented almost thirty thousand civil clients.¹¹

11. LIBRARIES

With increasing costs of providing legal reference resources and often limited library budgets, libraries are collaborating with courts to provide services to pro se litigants. Because libraries typically allow access to public computers and because library staff are already trained in assisting the public with research issues, they are a natural partner for providing self-help services.

One example of effective partnering in support of building up public libraries as access-to-justice gateways is Montana, in which the state law library has systematically reached out to public libraries and trained their staff in how to provide informational assistance.

Another example is Illinois, in which Illinois LegalAid Online has, with funding from the IOLTA (interest on lawyers’ trust accounts) program, placed “out of the box” self-help centers in over 20 public libraries. The program paid for a computer, and the library maintains access to it.

In New York, LawHelpNY, the legal aid Web site that collaborates closely with the court system in posting information, has conducted extensive training of public and law libraries, including the Queens Public Library, which has extensive outreach to patrons with limited proficiency in English.

12. LAW LIBRARIES

Law libraries are seeing a changing user base: in many, if not most, law libraries, the numbers of lawyers and court staff visiting law libraries is decreasing at the same time that an increasing number of members of the public and people without lawyers are approaching law libraries for help. As the number of people without lawyers coming to

¹⁰ Santacroce, David A., co-author. "Report on the 2010-11 CSALE Survey of Applied Legal Education.", co-author. R. R. Kuehn, co-author. Ann Arbor: Center for the Study of Applied Legal Education, (2012) (page 7).

¹¹ Santacroce & Kuehn, Supra Note 10 at 12 (page 20).

law libraries continues to increase, like courts, law libraries must adjust the delivery and availability of its services.

In order to carry out this mission, law libraries will need to move towards providing a broader range of services, including assisting individuals to diagnose their legal problems; generating and providing legal information appropriate to a wide range of constituencies with varied education and literacy levels; providing tools that assist litigants prepare and present their cases to the courts; and information and assistance designed to help with longer term legal planning.

There are examples of law libraries across the country that already have embraced this role, and have experimented and innovated to make a major contribution to access to justice. These changes have been made possible by broad changes taking place in courts, in technology, and in the conceptual understandings of the way that legal information is provided, particularly to those without lawyers.

13. VOLUNTEER LAWYER'S PROGRAMS

New York State Courts

The New York State Courts' Access to Justice Program is the statewide pro bono initiative intended to encourage and increase attorneys' free legal services for New Yorkers to provide legal assistance to New Yorkers of limited means who enter their courts without representation.

The New York State Courts Access to Justice Program provides pro bono legal services to litigants in the following areas:

- Consumer Debt
- Family Court matters
- Foreclosure
- Housing
- Uncontested Divorce

Attorneys who volunteer in these programs receive free training, with CLE credit, in exchange for 12 hours of service at the attorneys' convenience, in one of the Access to Justice Programs. The volunteers are supervised by court attorneys, or trained attorneys from organizations that work in partnership with the courts.

14. Immigration

- **San Francisco US Immigration Court “Attorney of the Day” (AOD) Program**

The "Attorney of the Day" program is unique to the San Francisco based US Immigration court. The Bar Association of San Francisco's Lawyer Referral Service has

administered this program for the court for over 25 years. It has recently garnered attention because of the "surge" dockets for unaccompanied minors and families with minors from Central America and Mexico. There are three immigration courts in CA: San Diego, Los Angeles and San Francisco. Although there has been interest from other states in the 9th circuit to develop an AOD program, it has not often been replicated.

Under the AOD program, the BASF maintains a panel of experienced immigration attorneys who have agreed to provide pro bono limited scope representation to respondents in removal proceedings (deportation) at their Master Calendar hearings (the initial hearing). BASF produces a calendar for the court of the attorneys who are available. While they usually schedule 2 attorneys per day for the court, currently with the surge dockets, they are scheduling up to another 8 attorneys per day, and given the expanded need, are looking to recruit more experienced attorneys for the AOD program.

This program fell naturally into a Lawyer Referral Service because they have experience standards that attorneys must meet in order to participate. BASF's pro bono application is on their website and they work closely with the immigration bench and administration to monitor quality and the reliability of the attorneys. BASF also works with the court and model practitioners to modify the pro bono application as needed.

- **Public Defender Immigration Representation Project:**

Alameda County

On January 21, 2014, the Alameda County Public Defender's Office made history by launching California's first public defender immigration representation project. This marks the first time that a county public defender's office in California has appeared on behalf of clients in immigration court. Public defender offices in New York City were the first in the nation to do so.

This new position is a direct response to the lack of procedural safeguards available to noncitizens in removal proceedings, including the lack of a right to appointed counsel for indigent noncitizens facing deportation. What happens in criminal court can have disproportionately punitive consequences in immigration court, and this new role recognizes that effective representation does not end at the courthouse doors. The Alameda County Office of the Public Defender sees this new role as an important shift toward a more holistic model of indigent defense, and invites other public defenders to follow in its footsteps.

San Francisco County

In July 2014, the San Francisco County Office of the Public Defender launched the second public defender immigration representation project in California. The San

Francisco Public Defender's office hired a full-time civil immigration attorney to help clients facing deportation or similar consequences.

The attorney will advise trial attorneys on the immigration consequences in cases involving criminal charges against non-citizens, conduct trainings and outreach, and represent some public defender clients in civil proceedings in immigration and federal court.

Federal legislation passed in 1996 expanded the range of criminal dispositions that can trigger deportation and mandatory detention. Meanwhile, current enforcement trends mean non-citizens with criminal convictions are more likely to be arrested during federal immigration sweeps.

On August 27, 2014, San Francisco officials announced that it would provide funding to help immigrants facing deportation to obtain an attorney. The city's \$100,000 will go to the nonprofit Lawyers' Committee for Civil Rights, which will use it to provide free legal representation for immigrants living in the country illegally.

The initiative is an expansion of the city's Right to Civil Counsel program that had focused on tenants facing evictions.

15. Lawyer Referral And Information Services (LRIS)

A lawyer referral service refers potential clients to attorneys. The lawyer referral service staff interviews individuals and, if they have a legal problem, will match them with a lawyer who is experienced in the appropriate area of law. The client then sees the lawyer for an initial consultation or speaks to the lawyer on the phone for free or for a low initial consultation fee.

In California, lawyer referral services must be certified by the State Bar and must conform to certain standards adopted by the California Supreme Court.

Some lawyer referral services are helping to bridge the justice gap with Reduced Fee or Modest Means Panels. Clients who call the referral line, meet the income guidelines and do not have a case that might be accepted on a contingent fee basis, are matched with attorneys who have agreed in advance not to charge more than a set amount per hour for their services. Reduced Fee or Modest Means Panels are designed to assist people whose income is too high for free civil legal aid, but who cannot afford to pay an attorney's standard rate.

“NEW” REPORT

The "New" Group focused on innovations that currently are being considered or implemented in other jurisdictions.

“New Group” What More Can We Do?

Introduction

Access to justice is a problem for many members of the public and there is a growing justice gap. The current means for the provision of legal services have not evolved sufficiently to address this gap and, as such, this failure has effectively opened the door to ancillary providers of legal services and nonlawyers to satisfy the unmet need for legal services through a multitude of means including the use of websites, online self-help tools, and data analytics.

Consequently, the "New Group" focused on innovations that currently are being considered or implemented in other jurisdictions including: Alternative Business Structures; technological innovations; legal process outsourcing (e.g., research, document drafting and review, e-discovery, etc.); limited license legal technicians; Court Navigators; court re-engineering; non-traditional "legal service" providers; and private funding of access to justice projects.

During its hearings, the task force heard from a diverse group of experts regarding innovations that are occurring in other jurisdictions, including: Professor Gillian Hadfield, University of Southern California, Gould School of Law; the Honorable Jonathan Lippmann, Chief Judge of the New York Court of Appeals; Steve Crossland, Former President, Washington State Bar & Chair of the Limited Licensing Board; Veyom Bahl, Program Officer, Robin Hood Foundation - funding NY Immigrant Justice Corp; Margaret Hagan, Fellow at the Stanford Center for Internet and Society; Colin Rule, CEO of Modria.com, an online dispute resolution service provider, and non-resident Fellow at the Center for Internet and Society at Stanford Law School; and Deborah Rhode, Ernest W. McFarland Professor of Law, Stanford Law School.

After learning about a range of innovations, the "New Group" focused its discussions in four areas:

(1) Limited License Legal Technicians; (2) efforts to re-engineer the court system; (3) alternative business structures; and (4) court navigator programs. Below are summaries of these issues followed by the "New Group" recommendations for California.

1. Washington State's Limited License Legal Technician Program

In 2011, the World Justice Program issued a Rule of Law Index which ranked the United States 21st out of 66 countries studied in providing access to civil justice and 20th out of 23 countries in its income group.¹² As the justice gap widens, some states have taken bold steps in initiating programs which may assist those in need of legal services, but who cannot afford a lawyer.

¹² Mark David Argast, Juan Carlos Botero and Alejandro Ponce, The World Justice Project Rule of Law Index, The World Justice Project1, 111 (2011)

On June 15, 2012, the Washington State Supreme Court voted 6-3 to allow non-lawyers to engage in limited forms of practice in the state of Washington.¹³ The non-lawyers have been termed, Limited License Legal Technicians (LLLT). After a quite lengthy and heated debate, the Washington Court was persuaded to adopt the rule based upon, among others, two primary concerns. In recognizing the need, the Court noted the complexity of the civil legal system, and recognized that it is unaffordable not only to low income people, but people of moderate income as well (defined as families with incomes between 200% and 400% of the poverty level).¹⁴ The Court further expanded that poor people with legal problems “seek but cannot obtain help from an overtaxed, underfunded civil legal aid system...With moderate income, people with legal problems find the “existing market rates for legal services...cost prohibitive.”¹⁵

In January 2013 the LLLT Board began the process of picking a practice area to which the LLLT Rule would be applied initially, with expansion to other practice areas in the future. The area of family law was initially chosen as it was understood to be one of the areas of highest unmet need.¹⁶ As Washington State Supreme Court Justice Barbara Madsen wrote, “No one has a crystal ball,” but potentially, “the public will have a source of relatively affordable technical help with uncomplicated legal matters.”¹⁷

When deciding to adopt the LLLT program, the Court took note of the public protection issue. The Court was aware that Washington State is not devoid of the fraudulent practices of many non-lawyer businesses, and stated that another focus was to keep in check “the unregulated activities of many untrained, unsupervised legal practitioners who daily do harm to ‘clients’ and to the public’s interest in having quality civil legal services provided by qualified practitioners.”¹⁸

Under Washington’s rule, LLLT’s may assist litigants in completing legal forms, review and explain pleadings, and further apprise clients of procedures and timeline. LLLT’s, however, cannot represent litigants in court proceedings, formal administrative proceedings, or formal dispute resolution processes. Moreover, they are prohibited from communicating with another person or lawyer on behalf of the client.

The educational requirements to become a LLLT in Washington State are quite rigid. Applicants must have a college degree in “paralegal/legal assistance studies” and a minimum of two years’ experience as a paralegal/legal assistant doing substantive law related work under the supervision of a lawyer or a post baccalaureate certificate

¹³ *Adoption of New APR28-Limited Practice Rule of Limited License Technicians*, Order No. 25700-A-1005, 1,1-1 (Wash, 2012) See, <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>

¹⁴ Washington Supreme Court Task Force on Civil Equal Justice Funding, Civil Legal Needs Study at 23 (Fig1), <http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>

¹⁵ APR 28 Decision, *supra* note 3, at 4

¹⁶ Crossland, Steve Restore Access to Justice Through Limited License Legal Technicians, GPSolo, Vol. 31 No. 3, Accessed December 6, 2104,

http://www.americanbar.org/publications/gp_solo/2014/may_june/restore_access_justice_through_limited_license_legal_technicians.html

¹⁷ *Adoption of New APR 28-Limited License Legal Technicians*, Order No. 25700-A-1005 (Wash, 2012)

¹⁸ *Id* at 9

program in paralegal/legal assistant studies and three years' experience as a paralegal/legal assistant doing substantive related work under the supervision of a lawyer. LLLT's are also held under the same standard of care as a Washington lawyer (See, Attachment 1, *Pathway to LLLT Admission*, admission procedure flowchart).

Consistent with Washington State's General Rule 24, (the Washington Supreme Court rule establishing the Practice of Law Board)¹⁹ the rule establishes a framework for the licensing and regulation of non-attorneys to engage in discrete activities that currently fall within the definition of the "practice of law." Such activities are subject to exclusive regulation and oversight by the Washington State Supreme Court. The rule establishes the regulatory framework to allow LLLT's the opportunity to practice. Hence, GR 25 establishes:

- certification requirements (age, education, experience, pro bono service, examination, etc.);²⁰
- specific types of activities in which a LLLT would be allowed to engage;²¹
- the circumstances under which the LLLT would be allowed to engage in authorized activities (office location, personal services required, contract for services with appropriate disclosures, prohibitions on serving individuals who require services beyond the scope of authority of the LLT to perform)²²
- a detailed list of prohibitions;²³ and
- continuing certification and financial responsibility requirements.²⁴

A study of the efficiency of Washington's LLLT program is scheduled to be completed by 2016. Although contracting a LLLT would not be the same as retaining counsel, it offers the potential of helping to close the justice gap. The California State Bar should consider designing a similar program.

2. Re-engineering The Court System

The subcommittee felt that there is a need to think about whether court processes are getting in the way of cases being decided on the merits. It was the subcommittee's belief that a multi-disciplinary approach should be considered in streamlining the court system. The concept of reengineering the legal process encompasses, in part, identifying problems with current court processes, rules, forms, and the possibility of determining which legal issues should be taken out of the courtroom and ultimately out of the courthouse.

For example, some task force members queried whether a psychologist or social worker might be better suited than a judge in determining child custody issues in a family law

¹⁹ http://www.courts.was.gov/courts_rulesd?fa-court_rules.display&group=ga&set=GRruleid=gagr25

²⁰ APR 28 Decision , supra note 3 (APR 28 (C))

²¹ APR28(D)

²² APR 23(E)

²³ APR 28 (F)

²⁴ APR 28 (G) AND (H)

matter. Another example of “delegalization” cited, was eBay’s online dispute resolution (ODR) process which offers two services to disgruntled/dissatisfied customers. The first is a free web-based forum which allows users to attempt to resolve their differences on their own, and/or, if necessary, the use of a professional mediator. The cost of a mediator is \$20 for each dispute. One of the presenters to the CJSTF was Colin Rule, who is the Chairman and COO of modria.com, an online dispute resolution service provider in Silicon Valley, and was from 2003 to 2011 the Director of Online Dispute Resolution at eBay and PayPal. Mr. Rule explained that online dispute resolution, as practiced by entities like eBay and Modria, use technology to efficiently and inexpensively resolve a high volume of disputes and that such processes could be explored for the justice system as well.

ODR, if employed by the courts, could be a means of alleviating pressure on the courts and reducing costs through automation of some aspects of the court process. This may be an appropriate issue for further strenuous review by either the Judicial Council or the recently created Commission on the Future of the Courts which “will examine ways to increase the efficiency of adjudicating cases in civil, criminal, traffic, juvenile and family law matters, as well as ways to enhance the underfunded court system’s fiscal stability.”²⁵

3. Alternative Business Structures

After a long review process, the UK implemented a new regulatory set-up for legal services in order to foster competition, innovation, and consumer protection, as well as so-called accountable regulatory enforcement (under the Legal Services Act 2007; hereafter “LSA 2007”). These reforms grew out of the Clementi Report (published in December 2004). It argued for alternative business structures (allowing non-lawyers to go into business with lawyers as well as non-lawyers ownership of law firms, including the possibility of public trading of shares in law firms; hereafter “ABSs”), an independent agency to deal with disciplinary complaints (rather than leaving it to self-regulation; currently the Legal Ombudsman and the Office for Legal Complaints), and greater freedom for legal service providers to compete (under the supervision of the Legal Services Board, operational since 2010).

The act is intended to liberalize and regulate the market for legal services in England and Wales, to encourage competition and provide a new consumer complaint mechanism. The LSA also allows alternative business structures (ABSs) with nonlawyers in professional, management or ownership roles. These legal disciplinary practices (LDPs) can have up to 25 percent nonlawyer managers.

The Solicitors Regulation Authority (“SRA”), the independent regulatory body of the Law Society, became a licensing ABS authority in 2007 and started accepting applications for ABS licenses in January 2012.

In the United States, the District of Columbia has permitted a form of non-lawyer

²⁵ *Chief Justice Creates Commission on the Future of the Courts*, press release, July 9, 2014

ownership or management of law firms for over 20 years.²⁶ Anecdotally, these firms believe that there is or will be client demand for the legal services that firms with non-lawyer partners are well-positioned to provide (e.g., family law firms with social workers and family planners on the client service team). In addition, ABS legal companies such as Legal Zoom and Rocket Lawyer have entered the UK market and are regulated there.

Although ABS' may provide financially manageable and perhaps legally sound document preparation services, we believe they are too untested to recommend adoption in California at this time and that there are other alternatives to improving our justice gap. Accordingly, the task force recommends that we continue to monitor the development of ABS' and whether they result in more affordable legal services while providing adequate protection to consumers. The California State Bar Board of Trustees has decided to regularly evaluate developments in this area, including whether emerging companies who provide law-related services should be subject to additional regulation and oversight.

4. New York State Navigator Program

In his 2014 State of the Judiciary address, New York Chief Judge Jonathan Lippmann acknowledged that there are many tasks only a lawyer is authorized to do, and further acknowledge that there is no substitute for legal representation, stating that a lawyer is trained to analyze the law, advise their clients, and represent them in a court of law. But he asked everyone to keep in mind that there is “a vast pool of poor people with legal problems who cannot afford a lawyer to represent them.”²⁷ Chief Lippman then suggested that the legal profession look to the medical model wherein patients are routinely assisted by health care professionals other than physicians and announced that “for the first time, the trained non-lawyers, called Navigators, [would] be permitted to accompany unrepresented litigants into the courtroom in specific locations in Brooklyn Housing Court and Bronx Civil Court.”

The Navigator program currently operates in the State of New York as a pilot program. Navigators are specially trained and supervised non-lawyers who provide pro bono assistance to unrepresented litigants in both housing and consumer cases. The program permits non-lawyer volunteers to assist litigants to complete legal paperwork and organize documents. They may also accompany litigants to court. Upon court direction, the Navigators may answer factual questions, such as which benefits a person has applied for and whether a certain building is regulated. Navigators are prohibited from giving legal advice; however, they may assist in settlement negotiations outside the courtroom.

Although New York's Navigators are limited in providing assistance in the areas of consumer credit actions and evictions, an expansion of their roles is the subject of a current on-going study. Navigators receive training in the documentation in which they

²⁶ Discussion Paper on Alternative Law Practice Structures, ABA Commission on Ethics 20/20, December 2, 2011, page 6.

²⁷ *Vision and Action in Our Modern Courts*, Jonathan Lippman, Chief Judge of New York, State of the Judiciary, 2014, page 7.

are assisting litigants, however, no formal legal training is provided.

RECOMMENDATIONS

The goal of the CJSTF “New Group” was to analyze various innovative programs being implemented or proposed by other jurisdictions to provide civil legal services to low and moderate-income individuals. In doing so, the task force reviewed programs in many jurisdictions and particularly in the states of Washington and New York. The task force reviewed their respective advantages and disadvantages, and further dissected and analyzed these programs to determine whether and how they might be adjusted to accommodate the growing number of unrepresented litigants in the state of California.

The recommendations proposed below will, by no means alone, close the justice gap. The task force believes, however, that, if adopted, these recommendations will provide additional legal assistance to individuals in need of assistance and will benefit the court system. As noted by Justice Jonathan Lippmann:

“. . . beyond having aspiring lawyers help those most in need of legal assistance, further new thinking is required to tackle the crisis in access to legal services for the poor. We must be creative and embrace new ideas about the very manner in which we deliver legal services to the poor as they seek to navigate our legal system.”²⁸

This subcommittee is hopeful that the proposed recommendations outlined herein, will be used as springboard to implement programs that will decrease court congestion, stress, and more importantly, provide a voice for those who would otherwise remain a space in our ever growing justice gap.

1. Limited License Legal Technicians (LLLT)

The State Bar should study the design of a pilot program, in one subject matter area, and, with input from the California Supreme Court and the Judicial Council at the early stages rather than after the design is completed. Because of the profound regulatory impact such a program may have, the State Bar should also address how the issues of governance, oversight and licensing would be handled.

Other considerations discussed were as follows.

- Narrow subject matter. Some of the subject matter areas suggested by the Task Force members were landlord-tenant, limited jurisdiction consumer cases, and family law (specifically, domestic violence cases).

²⁸ *Vision and Action in Our Modern Courts*, Jonathan Lippman, Chief Judge of the State of New York, The State of the Judiciary, 2014

- Regulation. If the State Bar is to be considered as a regulatory body, then its General Counsel must research whether there are potential anti-trust issues. Other entities mentioned as a possible regulatory agency for limited license technicians were the Department of Consumer Affairs and the California Supreme Court.
- Timeline. The Task Force believes it is necessary for the State Bar to establish a realistic time frame as to when a LLLT concept can be developed and implemented.
- Commission on the Future of the Courts. The State Bar should keep the Commission on the Future of the Courts abreast of the LLLT progress.
- LLLT Qualifications/Costs: The Washington State LLLT requirements are quite rigid and perhaps cost prohibitive. The state of Washington has approximately 30,000 lawyers on its rolls. In addition, the state has three primary cities-- Seattle, Yakima and Spokane. The Washington State Bar is working in conjunction with the four law schools in that state and their local community colleges and universities in establishing a curriculum. Attached, herein, is a document entitled, "**Pathway to LLLT Admission**". The minimum qualifications require an associate level degree and 3,000 hours of substantive law related experience (18 months). It was believed that the costs associated with acquiring an associate degree may ultimately be handed down to the consumer. The number of hours applied towards experience should be considered carefully. Regardless, should the State Bar adopt a similar program, it should take into consideration the immediate need for assistance at this time as well as the length of time it may take to get a successful program off the ground.
- Testing: The Task Force believes that LLLT's should complete an examination prior to licensing.

2. Alternative Business Structures

The State Bar should conduct an on-going review of ABS, with particular attention to the impact on pro-bono and public impact litigation as well as their regulatory structure in jurisdictions that adopt these practices. Until this information is available to consider and understand, the State Bar should not proceed with new rules or programs.

3. Systems Re-Engineering

Systems re-engineering can be interpreted as a broad or narrow concept. With that in mind, the task force recommends a pilot project perhaps in landlord-tenant law or low-level consumer cases. The task force recommends the use of a joint working group of members of the bar, the courts, court users, and perhaps relevant social scientist and tech people, to explore how our legal system can be redesigned to:

- *streamline the process,*
- *make the legal process easier to use, and*
- *provide protection for the litigant's rights.*

The Task Force further recommends that the State Bar work in concert with the Supreme Court and the newly formed Futures Commission which is currently reviewing the legal and structural challenges in maintaining the efficiency of California Courts.

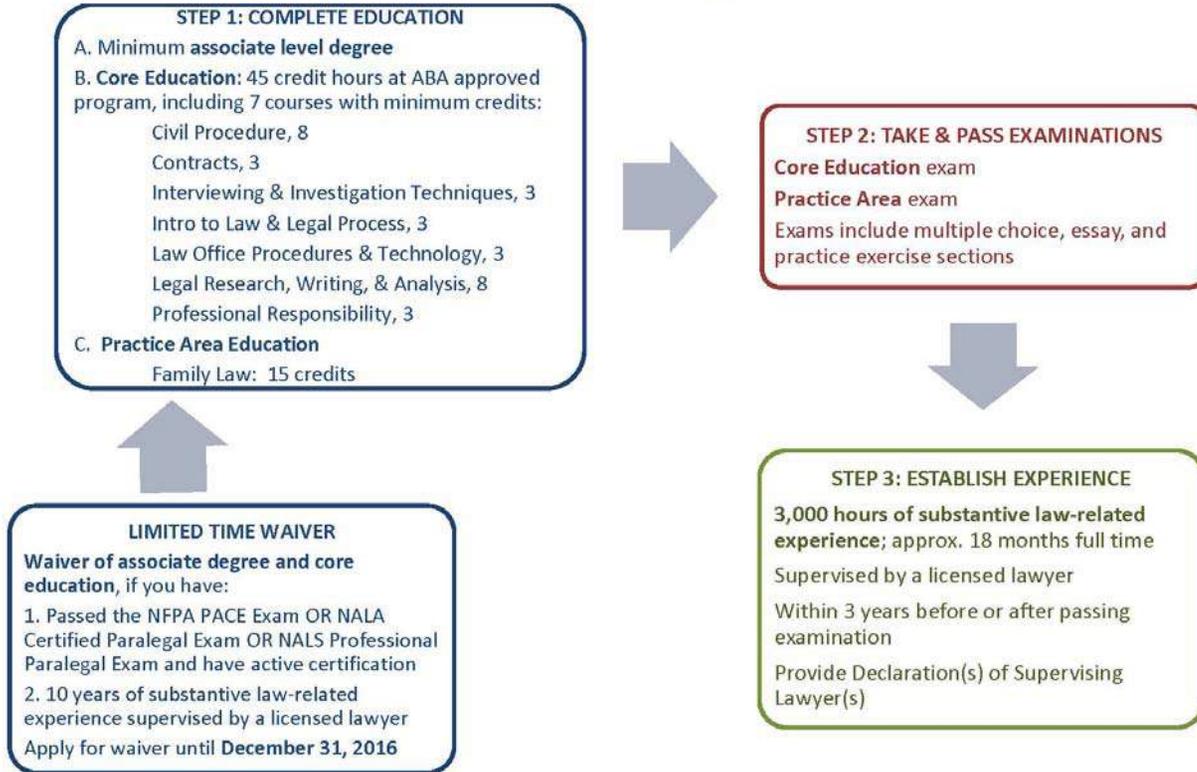
4. Navigators

A pilot program should be designed to operate in one or more self-help centers to provide volunteer assistance to self-represented litigants in attending hearings. Permission should be requested to have the navigator sit at counsel table with the litigant, but not to address the court unless otherwise asked by the court to assist. Based on experience in other jurisdictions, the focus should be on this as a volunteer program, not as a for-profit method of assistance.

- Training: A training model exists which can be implemented to educate Navigators on the California Family Law procedures and practice. The training model is that used by the Self-Help Centers.
- It is recommended that Navigators be knowledgeable in the preparation of court orders and other documents.
- It is recommended that Navigators be sensitive to cultural needs.
- It is recommended that the State Bar keep both the Supreme Court and the Futures Commission abreast of the design and development of this program.
- Volunteer sources: AmeriCorps, law students, community colleges and universities, and other private universities.



Pathway to LLLT Admission



LAW SCHOOL DEBT REPORT

The “Law School Debt Group” examined the intersection of law school debt and access to justice.

STUDENT DEBT CHAPTER

A. INTRODUCTION

1. The Disturbing Facts and Figures

In California today, the average student debt for law school graduates as they enter the profession is in excess of \$134,000²⁹ and the amount of money borrowed by law students has more than doubled over the past ten years.³⁰ These figures have been driven in no small part by the escalating cost of law schools at levels that have far outpaced inflation. The rise in the cost of a law degree is particularly concerning in a state such as ours, which has numerous public institutions of higher learning; the cost of public law school tuition have increased by a *factor of eight* over the past two decades.³¹ Law students who matriculate from private law schools fare no better. Nationally, private law schools have increased tuition by a factor of four in real (inflation-adjusted) dollars over the last 40 years.³²

While law school debt has been on the rise, we have not seen a commensurate increase in starting salaries for young lawyers. Over the past 15 years, median starting salaries for lawyers in solo and small firm practices, legal services, and the public sector have increased by fewer than 50%.³³ And as recent studies have made clear, even in the wake of an improving economy, far too many of our law school graduates face the prospect of no employment in the legal sector for months (or even years) after graduation.³⁴

This troubling scenario is not simply a concern faced by a few – 87% of our state’s law

²⁹ See *Which law school graduates have the most debt?*, U.S. NEWS & WORLD REPORT: 2015 BEST LAW SCHOOLS, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings> (last visited Oct. 9, 2014) (averaging debts of California law schools).

³⁰ Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings College of the Law, Law School Student Debt California Picture ((PowerPoint presentation at the State Bar’s Civil Justice Strategies Task Force Meeting, San Francisco, California (Aug. 26, 2014)).

³¹ Heather Jarvis, Student Loan Expert, Civil Justice Strategies Task Force August 26th Meeting (PowerPoint presentation at the State Bar’s Civil Justice Strategies Task Force Meeting, San Francisco, California (Aug. 26, 2014)).

³² See American Bar Association Young Lawyers Division, *Recommendation and Report to the Assembly of the Young Lawyers Division*, n.4 & accompanying text, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/march2014councilmeeting/2014_march_yld_report.authcheckdam.pdf [hereinafter *ABA YLD Report*].

³³ California Young Lawyers Association (CYLA), *The Impact of Debt on New Lawyers* ((PowerPoint presentation at the State Bar’s Civil Justice Strategies Task Force Meeting, San Francisco, California (Aug. 26, 2014)).

³⁴ Joshua Sebold, *Money Matters: Debt Drags Down Law Grads*, DAILY JOURNAL, June 16, 2014; Special Committee on the Impact of Law School Debt on the Delivery of Legal Services, Illinois State Bar Association, Final Report, Findings & Recommendations on the Impact of Law School Debt on the Delivery of Legal Services, n.3 (June 22, 2013), <http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%2003-8-13.pdf> [hereinafter *Illinois Report*].

school graduates leave their years of schooling facing significant student debt.³⁵ For lawyers who entered the profession in past decades, these figures are almost unimaginable. For our newest lawyers, this debt can factor into the professional choices they make and the career path they take. Some may opt to forego a career in lower paid positions that might allow them to serve low or modest means clients; others may feel pressure to minimize pro bono and “nonpaying” work; and still others may elect to leave the legal profession entirely in an effort to secure any employment that can enable them to cover their student debt.³⁶ Indeed, a recent ABA study found that nearly one-third of 2013 law school graduates had no full time bar-required or JD-preferred work and 11% of that graduating class was unemployed as of a year after graduation.³⁷

This state of affairs may be driving prospective talent away from even considering law school. A recent Wisconsin Task Force study determined that a disheartening 40% of law school graduates surveyed would not choose to attend law school, given what they now know, if they had the choice to make over again.³⁸ As these sentiments take hold, it is not surprising that law school enrollment figures have dropped over the past few years.³⁹

2. Broader Implications for Our Community

As troubling as the law school debt picture may be for our newest generation of lawyers, these concerns are not ones that should be viewed as a self-interested “young lawyer only” problem. Although hard data on the full impact of escalating student debt has yet to be compiled, there are sound reasons to view this issue as one that impacts our *entire community*. Those concerns have been well documented in a number of recent reports by esteemed groups that have studied these issues in other parts of the nation and were also thematically presented by individuals who shared their perspectives with our Task Force (as discussed more fully below). In particular, the impact of student debt on our broader community arises in three contexts: access to justice, public protection, and enhancing the diversity of the legal profession. Each of these issues is integral to the State Bar’s core mission and fundamentally impacts the public, whose interests our organization is committed to protect.

a. Access to Justice and Justice Gap Concerns

³⁵ See U.S. NEWS & WORLD REPORT, *supra* note 1.

³⁶ These sentiments were seen in the survey presented to the Task Force by the CYLA on Aug. 26, 2014 (on file with Civil Justice Strategies Task Force). These same concerns were memorialized in Task Force reports and hearings held in Illinois, Wisconsin and New York. See Challenges Facing New Lawyers Task Force, State Bar of Wisconsin, *Challenges Facing New Lawyers Task Force Report and Recommendations* 7 (November 2013), <http://taxprof.typepad.com/files/challenges-facing-new-lawYers-task-force-report.pdf> [hereinafter *Wisconsin Report*]; Committee on Legal Education and Admission to the Bar, Association of the Bar of the City of New York, *Law School Debt and the Practice of Law* n.23, <http://www.nycbar.org/pdf/report/lawSchoolDebt.pdf> [hereinafter *New York Report*]; See *Illinois Report*, *supra* note 6, at 1-2., as described herein.

³⁷ See Sebold, *supra* note 6.

³⁸ See *Wisconsin Report*, *supra* note 8.

³⁹ See *Illinois Report*, *supra* note 6, at 39.

Student debt restricts the ability of lawyers to pursue career options that would enable them to serve the needs of low and modest means clients and, as such, exacerbates access to justice and justice gap concerns. A recent Illinois Task Force report observed that the “law school debt crisis is having a serious and negative impact on the quality and availability of legal services that the legal profession provides.”⁴⁰ Moreover, the report observed that “significant student debt makes it difficult to obtain a loan” – financing that new attorneys seeking to open a solo practice may require.⁴¹ Another recent report similarly concluded:

[T]he burden of law school debt can distort the employment choices of young attorneys. Small firms, particularly those in rural areas face greater difficulty hiring and retaining competent attorneys. Fewer lawyers are able to sustain a career working in low-paying public interest jobs.⁴²

While recent changes in federal law have created law school debt relief programs that base loan repayment amounts on income levels and also seek to alleviate the loan repayment burden for lawyers who work in the legal services or public interest arena, some of these programs are not available to lawyers who opt to work as community lawyers and focus their practice on low or modest means clients. Nor is there equally advantageous debt forgiveness or support for lawyers who seek to practice as solo practitioners or as part of an incubator model. One relief program discharges student loan debt made or guaranteed against default by the U.S. government after 20 years, but the program only provides relief for certain types of loans—not private student loans.

b. Public Protection Concerns

The burden of law school debt can also trigger public protection concerns, an issue at the heart of the Bar’s mission.

Lawyers have the dubious distinction of having the highest student loan default rates among graduate students – with a lifetime cumulative default rate estimated at between 15 and 20 percent.⁴³ Some have expressed concerns that these defaults, and the fiscal pressures facing young lawyers, can create pressure to engage in risky professional behavior, especially for young lawyers.

As a recent ABA Young Lawyers Division Report (the “ABA YLD Report”) observed, “[l]awyers burdened by debt face greater pressures and temptations to violate ethics

⁴⁰ See *Illinois Report*, *supra* note 6.

⁴¹ See *Illinois Report*, *supra* note 6, at 21.

⁴² See *ABA YLD Report*, *supra* note 3, at 3.

⁴³ See *New York Report*, *supra* note 8, at 8.

rules.”⁴⁴ Similar concerns regarding the impact of law school debt on the quality of legal services were articulated by the Illinois State Bar Task Force Report: “attorneys with heavy debt loads may be more likely to commit ethics violations. The greatest pressures are on solo practitioners, who may take work beyond their competency, face financial pressures to prolong litigation, or terminate a representation inappropriately if a client has difficulty paying.”⁴⁵

c. Diversity of the Legal Profession

Finally, the issue of student debt necessarily impacts our community through the adverse impact these financial concerns can have on the diversity of our law schools, and in turn the diversity within our profession. As aptly noted in the ABA YLD Report:

[T]he high cost of a legal education creates additional barriers to entry for Blacks and Hispanics, who generally receive less support from their families to attend law school. The rapid rise in law school tuition is therefore one of the factors holding the legal profession back from embodying the full spectrum of diverse backgrounds in America.⁴⁶

For all of these reasons, the time is ripe to bring attention to the ever-increasing law school debt, examine the role that the State Bar can play in addressing these concerns, and look for ways to enhance information gathering and engagement by the Bar moving forward. Indeed, by putting a spotlight on this issue and seeking solutions that can alleviate existing concerns, our State Bar will be joining a mounting focus on this issue at a national level, as well as in other states. Our voice can help guide the thinking and solutions that are being crafted across the nation and ensure that the valuable perspectives -- and concerns -- of our state are part of this important dialogue. Undoubtedly, these actions will benefit not simply our newest generation of lawyers, but our entire community.

B. TESTIMONY PRESENTED TO, AND INFORMATION ACQUIRED BY, THE TASK FORCE

1. The Task Force’s Information Gathering

a. Witnesses Interviewed and Materials Reviewed

The Task Force interviewed a diverse group of state and national experts, and reviewed and analyzed numerous reports, articles, statutes, and proposed legislation related to law school debt and access to justice.

⁴⁴ See *ABA YLD Report*, *supra* note 3, at 3.

⁴⁵ See *Illinois Report*, *supra* note 6, at 2.

⁴⁶ See *ABA YLD Report*, *supra* note 3, at 3.

In addition to the witnesses who testified over the course of two Task Force hearings,⁴⁷ the individuals interviewed included: Barry Currier, ABA Managing Director of Accreditation & Legal Education; Justice Ann Jorgensen, Co-Chair Illinois State Bar Association Special Committee on the Impact of Law School Debt on the Delivery of Legal Services; Kathleen Smith, Senior Vice President of Access Group; Neil Thapar and Janelle Orsi, Sustainable Economies Law Center; and Daniel Thies, ABA Young Lawyers Division. (A list of the materials reviewed and analyzed by the Task Force is attached hereto as Appendix ___, Law School Debt Background & Research Materials.)

b. CYLA Information Gathering

The California Young Lawyers Association (CYLA) is the nation's largest association of young lawyers, comprised of over 40,000 members who have either been in practice for five years or less or are 36 years old or younger. The Civil Justice Strategies Task Force invited CYLA to present testimony and information gathered from its members about the effects of crippling law school debt on California's newest generation of lawyers. CYLA testified that the issue of law school debt, including whether young lawyers are being prevented from entering public service or performing pro bono work as a result of their indebtedness burden, is of great concern to its members.

CYLA performed a student debt survey, collecting a myriad of information from its 20 member Board, which is comprised of young lawyers from all over the State. The survey contained questions regarding whether the attorney graduated with law school debt and whether the individual presently had debt; the amount of that debt; whether the attorney received governmental assistance, or credit/loan forgiveness from his or her employer; whether debt prevented the attorney from a career in public interest law; whether the attorney actively engages in pro bono work; and any suggestions as to how the State Bar could assist future law school graduates. The results of this survey were telling. Among those surveyed, the average student loan debt was \$100,000. Only one attorney received governmental assistance (through the GI bill) and none of those surveyed had received credit/loan forgiveness from an employer. A staggering 42% of those surveyed confirmed that their law school debt prevented them from embarking on a career in public interest law.

At the Task Force's August hearing, CYLA representatives testified and recounted the perspectives of young lawyers they had heard from as part of their research. These statements underscore the impact debt has on career choices.

I wanted to be a public defender when I went to law school and completed several externships in government legal offices. I also did a lot of course work in juvenile law issues during law school, and would've considered the right legal aid job in that area of law. It's simply impractical for me to work in the public interest/service sector with the amount of debt I have.

⁴⁷ See Appendix B: Panelists & Witnesses at the Hearings on Civil Justice Strategies: June 18, 2014 hearing and August 26, 2014 hearing.

** ** *

I can barely afford my loan payments working at a medium sized firm that pays well. I would love to consider doing something in the public interest sector but my loans have prevented me from even considering this as an option.

c. State Bar Informal Survey

The State Bar similarly engaged in a process of polling its members. An informal multiple-choice poll on the topic of student debt was circulated as part of the California Bar Journal electronic newsletter on August 1, 2014. The poll asked readers: “What level of debt did you have when you finished law school?” Of the 702 responses recorded online by August 11th, 16.95% chose the category “Less than \$25,000”; 9.26% chose the category “\$25,000 to \$50,000”; 19.37% chose the category “\$50,000 to \$100,000”; 38.60% chose the category “More than \$100,000”; and 15.81% chose the category “None.” (Poll percentages changed slightly as more audience members weighed in during subsequent days.) Admittedly this poll, with self-selecting participation, was unscientific; it nonetheless provided another item of information that the Task Force was able to consider.

2. Common themes from our August Hearing

Certain themes emerged during testimony the Task Force heard at its hearing on August 26, 2014. While some of these accounts were anecdotal, the voices we gathered together included leading experts from around the nation. Moreover, the messages we heard from these individuals were consistent with findings made by other Task Forces that have studied this issue in different parts of the country (as discussed herein). The themes that arose during the testimony are summarized below.

a. Law school cost and the student debt problem have escalated in recent years and are a serious concern

Dean Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings:

“We're kind of typical for a state school. . . . The average amount that a law student will pay in one year is over \$70,000 and if they were to borrow all of that, the cost is \$213,000 over a three-year period. So this does have a burdensome effect on students and it does cause them to give thought as to whether or not they want to incur the cost that is required in order to join the profession.”

8/26/14 hearing transcript, p. 36-38.

Travis Thompson, President of the Business Law Association at Golden Gate University School of Law:

“I wouldn't be telling the truth if I didn't say I'm pretty scared right now.”
8/26/14 hearing transcript, p. 89.

Nathaniel Lucey, CYLA Special Advisor and former Board Member:

“[A]s you have this increase in debt over ten years, over a 50 percent increase in debt, wages for first-year attorneys have basically stagnated.”
8/26/14 hearing transcript, p. 75.

b. These issues have the potential to impact career choices

Nathaniel Lucey, CYLA Special Advisor and former Board Member:

“[T]he increased cost of law school is making public sector and public interest work not feasible for the average graduate.”
8/26/14 hearing transcript, p. 76.

Travis Thompson, President of the Business Law Association at Golden Gate University School of Law:

“I'm not looking seriously into the public interest sector or any type [of] government employment, simply just running the numbers, if you will; I wouldn't be able to afford it. I've centered my search on any type of corporate tax position that may be available in the local area.”
8/26/14 hearing transcript, p. 89-90.

Shavonte Keaton, President of the Black Law Students Association at Golden Gate University School of Law:

“[M]y dilemma throughout law school is balancing whether or not I wanted to go into public interest after law school, knowing that I'm going to come out of law school with \$200,000 in debt. . . . My whole dilemma through law school has been whether I'm going to still pursue a public interest career.”
8/26/14 hearing transcript, p. 92.

c. Navigating and managing student debt is intensely complicated

Heather Jarvis, Student Loan Expert:

“[T]he programs are so complicated, so convoluted, the system is difficult

to navigate that I think the programs are far less useful and effective than they might be, but they do exist.”
8/26/14 hearing transcript, p. 12.

Dean Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings:

“The portfolio can be quite complex and students often are not equipped to really understand the complexity of it.”
8/26/14 hearing transcript, p. 41.

“So I think you're beginning to see the complexity of the loan repayment – of the loan portfolio and you might be able to imagine then, a student as they get ready to go into repayment how confusing this could be.”
8/26/14 hearing transcript, p. 45.

Emily Aldrich, CYLA Chair:

“We're a savvy population. We're going into a very savvy career and yet this – they are very complicated, these programs, and it's very hard to kind of understand what you're getting into and then it goes to a loan provider and you're getting information from – mine is Great Lakes – and you don't know what's going on. I think education is key for new and young lawyers.”
8/26/14 hearing transcript, p. 84.

d. Information and assistance to law school students or young lawyers isn't always readily available

Heather Jarvis, Student Loan Expert:

“In my view, the objective assistance and information for student loan borrowers is completely inadequate. . . . I think schools are less focused on providing support for their graduates when it comes to selecting repayment options than they are in providing the financial aid to begin with. . . . It needs to be simplified considerably. . . . I think that schools can and should invest more in providing the resources that would be necessary to give more personalized advice to their graduates.”
8/26/14 hearing transcript, p. 18-19.

Dean Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings:

“I think you're beginning to see the complexity of the loan repayment -- of the loan portfolio and you might be able to imagine then, a student as they get ready to go into repayment how confusing this could be. Where do they even find the information that they need to determine what their interest rate is and what it has been over time and if they have

undergraduate debt and graduate debt, it is very complex. . . . You know, we want to help them. This is our passion. We've all been students. We want to help students and we want them to understand this and we are in a unique position as administrators to understand the mechanics of all this and how it works and be able to explain it to students, but it adds a burden on us to do this, so therein lies the catch for us.”

8/26/14 hearing transcript, p. 45.

“So my point in saying all of this is that there are nuances that can work against a student if you don't know that they're there....

This goes back to the counseling and you've asked about how important the counseling is.”

8/26/14 hearing transcript, p. 49.

Professor Eleanor Lumsden, Associate Professor of Law at Golden Gate University:

“There is mandatory entrance and exit counseling, but I will echo what everyone else has said, there is not enough counseling. There's not enough counseling, but, again, we're strapped.”

8/26/14 hearing transcript, p. 61-62.

e. We need to do more to develop the narrative, put a spotlight on this issue, and gather key data

Chris Chapman, President and Chief Executive Officer of Access Group:

“I think the first thing that needs to be done is you need to develop a narrative, a narrative that states the case for the activities that you wish to achieve. Nobody argues about access to justice. . . . You have to have the narrative. I believe the narrative is there. You just have to make it, both from a qualitative standpoint and a quantitative standpoint.”

8/26/14 hearing transcript, p. 34.

f. Existing loan forgiveness and repayment programs aren't fully adequate

Heather Jarvis, Student Loan Expert:

“[S]tudent loan borrowers [who have their loans forgiven] have the possibility of significant tax bills at the end of their repayment period.”

8/26/14 hearing transcript, p. 11.

“Public service loan forgiveness is available for those who work full time for pay in government positions at all levels of government, state, local, federal, tribal governments and it's available for people who work in 501(c)

(3) nonprofit organizations, plus a few narrowly defined organizations, but all of them being nonprofit, so there is no for profit structure in which someone would qualify for public service loan forgiveness.”
8/26/14 hearing transcript, p. 16.

Dean Linda Bisesi, Assistant Dean for Financial Aid at UC Hastings:

“[S]mall solo practitioners, family law, people that are not a 501(c) (3) or a government agency, but have low income are not provided any relief in the Public Service Loan Forgiveness Program. . . Somebody like this does not reap any benefits from the federal repayment assistance. And then there are some states that have the Public Interest Loan Forgiveness Programs, but California does not.”
8/26/14 hearing transcript, p. 51.

Professor Eleanor Lumsden, Associate Professor of Law at Golden Gate University:

“[V]ery few loan repayment assistance programs extend beyond work that consists of legal services work, public interest or government service.”
8/26/14 hearing transcript, p. 60.

C. RECOMMENDATIONS

One of the biggest challenges for the Task Force was to identify how the State Bar can impact what is an admittedly complex and far reaching problem. The recommendations below provide our best thinking in regard to proposed recommendations, but we also believe that further consideration as to the Bar’s most effective role in this area is appropriate. To that end, we encourage the Bar to view this work as the *start* rather than the *end* of a process. We hope that the Bar’s leadership will create a vehicle for implementation of these recommendations as well as ongoing consideration of ways to address the multitude of concerns associated with the crisis of overwhelming student loan debt.

1. The Bar should serve as a clearinghouse of information on student debt management and repayment programs

The Task Force heard in no uncertain terms about the complexities of student debt management as well as the knowledge gaps among law school students and young lawyers in regard to this issue. While some law schools are proactive in their efforts to educate students about student debt, there is no uniform set of standards in regard to either law school counseling or law school loan repayment programs.

The Bar can help fill this void by working with state and national experts and organizations (including Access Group) to improve the level of understanding among law students and new lawyers in regard to these complex issues. The Bar can also

serve as a clearinghouse of available information. While the Bar’s website has some useful information for “future lawyers” (see <http://admissions.calbar.ca.gov/>) – including a list of California law schools and requirements for admission to practice law – there is no information on key questions to ask in regard to student debt, financial literacy, and repayment programs. Nor are there links to other resources on these topics, or information on Bar Foundation grants and resources that can help law students or struggling graduates pay for or help defray the costs of tuition and/or bar review courses.

We recommend that the Bar reach out to others developing useful resources (including Access Group), provide a centralized place on the Bar website to enable lawyers to find and access key information and statistics (including material gathered during the Task Force’s tenure), offer a vehicle for prospective law students to assess differences among California law schools in regard to loan forgiveness programs, and create a platform for information sharing on an ongoing basis. This enhanced compilation of information could also include financial literacy worksheets for prospective or current law school students that can assist them in assessing the extent of debt they might reasonably consider taking on.

2. Working through CYLA, the Bar should develop mechanisms and new approaches to assist young lawyers to better understand and proactively address the implications of their student debt obligations

CYLA was an enthusiastic contributor to the work of the Task Force and has expressed its interest in remaining engaged in next steps. There is an invaluable ongoing contribution that CYLA can make by prioritizing this issue and developing a plan over the next two years to create educational programming, fact sheets, counseling and peer advisors, and other mechanisms for enhancing the understanding of new lawyers in regard to management of their student debt. CYLA should also consider ways to reach out to and work with undergraduate pre-law advisors, law schools and local bar associations to promote collaborative efforts that would advance enhanced information for, and education of, prospective and current law students about the importance of appropriate, informed and responsible borrowing

3. The Bar should continue to put a spotlight on the issue of law school debt, promote an enhanced understanding of the link between student debt and the broader community's access to justice and public safety concerns, and assist others working to study, quantify and better define the implications of student loan indebtedness

The work of this Task Force, and the hearing on law student debt held in August 2014, marked the first visible engagement by the State Bar in educating the community about the broader public concerns that are implicated when lawyers enter the legal profession burdened with over \$100,000 in student debt. It is our

hope that this hearing will not be the only opportunity for this issue to receive public attention and discourse. In particular, there are a host of ways that Bar leadership and staff can continue to promote a deeper understanding of this issue and its import – through articles and speaking opportunities, development of educational materials, adding pertinent information to the Bar website, and other Bar outreach techniques. Simply helping to promote and define a narrative that underscores the broader public concerns triggered by mounting law school debt are valuable efforts in an area that for too long has been viewed as a self-interested “lawyer only” concern.

There is also an effort afoot nationally by groups including the ABA and Access Group to study and gather data in regard to the broader implications of law student debt. The State Bar should consider ways to assist these organizations and bring California’s voice into the forefront as this fact finding process continues. The Bar, in turn, can benefit from the perspectives and new ideas generated during the ongoing national consideration of these issues.

4. The Bar should work through its discipline arm and endeavor to assess whether student debt is precipitating or contributing to lawyer misconduct

The potential for crushing student debt to result in defaults, financial problems, and/or ethical violations is an appropriate concern for the Bar and the public we are charged with protecting. Yet not enough is known in regard to the actual impact of student debt on discipline violations and attorney misconduct. Having a deeper understanding of this information, and establishing preventative measures and other responses that might address these concerns, would further the Bar’s core mission of public protection and enable the Bar to put in place efforts that might help avoid attorney misconduct before it occurs.

With these objectives in mind, the Bar should encourage its discipline arms – the Regulation and Discipline Committee as well as the Office of Chief Trial Counsel – to explore ways to assess whether discipline actions related to these concerns are arising and, if so, what preventative strategies might be in order.⁴⁸

5. The Bar should use both its law school regulatory power as well as its established relationships with law school leaders to encourage enhanced counseling, strategies and disclosures regarding student debt

The Bar has a strong relationship with the many law schools in our state – both through its regulatory role and as a result of its ongoing work with law schools on a host of issues and reforms. While some law schools have instituted impressive individualized loan debt counseling for students, there is no established set of

⁴⁸ Possible preventative strategies might include financial literacy support and training for those lawyers who are facing financial and economic stresses. Similar strategies that seek to address the root cause of disciplinary problems and thereby prevent future misconduct have been employed by the Lawyer Referral Assistance Program in the context of lawyers who find themselves in the disciplinary system due to substance abuse issues or other external pressures.

standards or best practices.

Working with key law school leaders, the Bar should endeavor to create and encourage schools to implement a set of best practices that would include:

- a. Individualized counseling for students, prospective students and recent graduates at all stages – including before, during, as they near completion of, and immediately upon graduation from, their law school tenure – on topics such as calculating total law school costs, loan consolidation and refinancing strategies, true (and hidden) loan costs, and other nuances of managing their debt;
- b. Financial literacy counseling and guidance as part of law school admissions and orientation processes;
- c. The creation of a loan “ombudsman” to serve as a point of contact for law students as well as alumni on this issue;
- d. Expansion of LRAP programs beyond public interest and public service attorneys to include attorneys in small or solo practices focused on addressing the needs of low and modest means clients; and
- e. Public disclosure and tracking requirements that help ensure complete and accurate information regarding (i) law school costs, (ii) student debt statistics and alumni default rates, and (iii) accurate post-graduation law-related employment figures and prospects.

6. The State Bar should consider ways to add its voice to the national dialogue seeking to develop new and enhanced loan forgiveness and repayment approaches

There are a host of national efforts to protect existing favorable student loan and income based repayment programs and also to promote new approaches in this arena. At the same time, the ABA is studying how to best address the increased cost of law school as well as mounting student debt. The Bar’s voice and perspectives can be an invaluable part of this national dialogue.

Issues where the Bar may wish to consider engagement include:

- Expanding favorable public service loan forgiveness and repayment programs beyond public interest and legal services attorneys to include community and solo practitioners who are focused on representation of low and modest means clients;
- Eliminating the higher interest rates associated with graduate student loans (the so-called graduate student loan “penalty”);
- Allowing for the repayment of loans with before tax monies;
- Addressing “hidden” loan costs;
- Eliminating the accrual of interest during law school;

- Creating an interest free loan deferral period after graduation so lawyer have a longer period to get on their feet, pass the bar and embark on their careers; and
- Basing federal loan availability on the law school's employment track record or other benchmarks that reflect the employability of the school's graduates.⁴⁹

In addition to these national policy discussions, the Bar should explore with the ABA possible ways to help provide financial literacy and student debt information to prospective law school students as part of the law school admissions process. The Bar should also encourage the CYLA to work with the national YLD to create a "future lawyers" clearinghouse with key student debt information and links to state bar websites that contain useful student debt, financial literacy and debt planning information.

7. The State Bar should help encourage new and innovative models that seek to address law school cost concerns

Rising law school costs are a significant concern in our state as well as nationally. The Task Force does not profess to have the answers to resolve these concerns. We did, however, hear about models that seek to consolidate the total number of years required to achieve a law school degree. Innovative models such as the 3+3 program – whereby colleges and law schools partner to allow undergraduates to receive credit toward law school graduation and thereby achieve both a Bachelors and Law degree in 6 (rather than the usual 7) years – are an intriguing vehicle for reducing law school costs. Also of interest to the Task Force is the New York "Legal Scholars" program whereby students are able to take the Bar at the end of their first semester of their 3L year and spend their final half year getting practical legal services job experience. We believe that these are models that should be closely studied by the Bar and its law school regulatory arm. The Bar should help encourage innovative thinking in this area and do what it can to highlight, encourage and, when appropriate, consider vehicles that might eliminate barriers to the development of new models.

8. The Board of Trustees should create a group to implement these recommendations

As noted above, there is a need for ongoing strategic thinking in regard to how the Bar – through its staff and leaders – can best impact change in regard to the concerning issue of student debt. With national discussions ensuing, the Bar can also be instrumental in tapping national experts and helping guide national perspectives on this vitally important topic. These national efforts may also identify new thinking and innovative approaches that would suggest additional strategies that the Bar might want to explore. The recommendations set forth above would benefit from the direction and oversight of a committed group of individuals who

⁴⁹ See ABA YLD Report, *supra* note 3, at 1.

could work with Bar staff, CYLA and law schools in charting and implementing next steps.

This issue is one of concern not simply to our profession, but more broadly to our community as a whole. While the Task Force was able to make great strides in its short tenure and identified some concrete areas for effective engagement by the Bar, more work remains to be done to have a meaningful and lasting impact on this landscape.



APPENDIX
ATTACHMENT 9

FILED

September 29, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM19-8002

ORDER IMPLEMENTING LEGAL PARAPROFESSIONAL PILOT PROJECT

The Implementation Committee for the Legal Paraprofessional Pilot Project was established in 2019 to evaluate the delivery of legal services in areas of unmet civil legal needs, particularly in the areas of family law, landlord-tenant disputes, or debtor-creditor disputes. The committee was directed to define the structure and rules to implement a pilot project for the delivery of civil legal services by legal paraprofessionals under the supervision of a licensed Minnesota attorney. *See In re Implementation Committee for Proposed Legal Paraprofessional Pilot Project*, No. ADM19-8002, Order at 2–3 (Minn. filed Mar. 8, 2019).

The Implementation Committee filed a report on March 2, 2020, recommending that a pilot project be established to evaluate the expanded use of legal paraprofessionals in providing legal services in two substantive legal areas: landlord-tenant disputes and family law disputes. We opened a public comment period; eleven comments were filed. We held a public hearing on August 11, 2020, at which the co-chair of the Implementation Committee, Judge John Rodenberg, spoke. Representatives of the Minnesota Paralegal Association, the National Federal Paralegal Association, and Mid-Minnesota Legal Aid, along with attorney Peter Swanson, also presented remarks.

We directed the Implementation Committee to develop a plan to implement a pilot project to evaluate the use of legal paraprofessionals, supervised by an attorney, in certain family law and landlord-tenant case types. The committee's report provides that plan. We have carefully considered the comments filed during the public comment period that express disagreement with a decision we have already made: to proceed forward with a pilot project. We appreciate the views and concerns expressed in these comments, but ultimately, we conclude that the point of a pilot project is to test the assumptions that underlie our decision: that the need for civil legal aid, particularly in the areas of family law and landlord-tenants disputes is great, and that legal paraprofessionals can contribute to the legal needs of Minnesota citizens in these areas.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

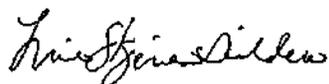
1. The attached amendments to the Supervised Practice Rules are promulgated. The effective date of the amendments shall be March 1, 2021.
2. The pilot project to evaluate use of legal paraprofessionals shall be administered by a Standing Committee, to which appointments will be made by December 1, 2020. Among other tasks, the Standing Committee shall oversee implementation of the pilot project, review applications for certification submitted by paraprofessionals, evaluate whether the pilot project satisfies the goal of improving access to legal services, and prepare an interim report and a final report on the pilot project.
3. The Standing Committee is directed to work with the State Court Administrator or his designee to establish procedures to monitor, evaluate and report on

the pilot project. On or before December 31, 2021, the committee shall file an interim status report on the pilot project with recommendations for any further rule amendments or other refinements to the pilot project. On or before January 17, 2023, the committee shall file a final status report on the pilot project that includes recommendations for continuation, abandonment, or modification of the pilot project, or for permanent codification of the rules for the pilot project.

4. Unless extended by further order of this court, the pilot project shall end and the Supervised Practice Rules that govern the pilot project shall expire on March 31, 2023.

Dated: September 29, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea".

Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE SUPERVISED PRACTICE RULES

[The text of Rule 12 is entirely new and therefore is shown without underlining]

Supervised Practice Rules

* * * *

Rule 12. Authorized Practice by Legal Paraprofessionals in Pilot Project

Rule 12.01 Scope of Work

An eligible legal paraprofessional may, under the supervision of a member of the bar, provide the following services:

- (a) Provide advice to and appear in court on behalf of tenants in housing disputes as defined in Minnesota Statutes Chapter 504B and Minnesota Statutes § 484.014. Eligible legal paraprofessionals may only provide such services in district courts that have established a Housing Court or a dedicated calendar for housing disputes, except that eligible legal paraprofessionals shall not appear in Housing Court in the Fourth Judicial District.
- (b) Provide advice to and appear in court on behalf of clients in family law cases, but such services shall be limited to advice and hearings related to child-support modifications, parenting-time disputes, and paternity matters. With the approval of the supervising attorney, legal paraprofessionals may also appear in court in family law cases for the following purposes: (1) default hearings, (2) pretrial hearings, and (3) informal family court proceedings. Legal paraprofessionals may also appear with a client in family law mediations where, in the judgment of the supervising lawyer, the issues are limited to less complex matters, which may include simple property divisions, parenting-time matters, and spousal-support determinations. Under no circumstances shall a legal paraprofessional provide advice or appear in court or at a mediation under this paragraph if the family law case involves allegations of domestic abuse or child abuse.
- (c) With authorization from the supervising attorney, prepare and file a limited set of documents identified in Appendix 1 to these rules without the supervising attorney's final review.

Communications between the client and the eligible legal paraprofessional shall be privileged under the same rules that govern the attorney-client privilege and work product doctrine.

For each case where a legal paraprofessional will appear in court on behalf of the client, the certificate of representation for the matter must identify both the supervising attorney and the legal paraprofessional. The legal paraprofessional may sign the certificate of representation, but must include with the filed certificate of representation a statement signed by the supervising attorney that authorizes the legal paraprofessional to appear in court. The signed authorization must identify the types of proceedings for which the legal paraprofessional is authorized to provide services and the starting and ending dates during which the paralegal is authorized to appear in court.

Rule 12.02 Eligible Legal Paraprofessionals

An eligible legal paraprofessional must meet the following requirements:

(a) **Education and Work Experience Requirements.** To participate in the pilot project, a legal paraprofessional must have the following education or work experience:

- (1) an Associate's or Bachelor's Degree in paralegal studies from an institutionally accredited school; or
- (2) a paralegal certificate from an institutionally accredited school in addition to an Associate's or Bachelor's degree in any subject from an institutionally accredited school; or
- (3) a law degree from an ABA accredited school; or
- (4) a high school diploma and 5 years of substantive paralegal experience.

(b) **Ethics and Continuing Legal Education Requirements.** To participate in the pilot project, a legal paraprofessional must satisfy the following ethics and continuing education requirements:

- (1) hold Minnesota Certified Paralegal credentials from the Minnesota Paralegal Association; or
- (2) provide proof that the legal paraprofessional has earned ten continuing legal education credits, including two credit hours in ethics, within the two years prior to seeking certification under Rule 12.04(a); or
- (3) provide proof that the legal paraprofessional has obtained a paralegal studies degree or certificate, or a juris doctorate within the two years prior to seeking certification under Rule 12.04(a). Such a program must include an ethics component.

(c) **Written Agreement with a Supervisory Attorney.** To participate in the pilot project, a legal paraprofessional must enter into a written agreement with a licensed Minnesota attorney who agrees to serve as the paralegal's supervisory attorney. The written agreement must set forth the scope and types of work the legal paraprofessional may undertake consistent with the scope of the pilot project and the steps the supervisory attorney will take to ensure that the paralegal is serving the client's interests.

(d) Roster of Approved Legal Paraprofessionals. To participate in the pilot project, a legal paraprofessional must remain in good standing on the roster of approved legal paraprofessionals established and maintained by the Standing Committee on the Legal Paraprofessional Pilot Project.

Rule 12.03 Supervisory Attorney

The attorney who supervises a legal paraprofessional authorized to participate in the pilot project shall:

- (a) be a member in good standing of the bar of this court;
- (b) assume personal professional responsibility for and supervision of the legal paraprofessional's work, including court appearances;
- (c) assist the legal paraprofessional to the extent necessary, and sign all pleadings;
- (d) carry malpractice insurance that will sufficiently cover the attorney's supervision of the legal paraprofessional and the work and actions of the supervised legal paraprofessional, or ensure that the legal paraprofessional has secured adequate malpractice insurance; and
- (e) execute a written agreement that establishes the terms of the supervised legal paraprofessional's work and the supervision conditions.

Rule 12.04 Standing Committee for Legal Paraprofessional Pilot Project.

The Standing Committee for the Legal Paraprofessional Pilot Project shall establish, in collaboration with the State Court Administrator, procedures as follows:

- (a) for certifying legal paraprofessionals as authorized to participate in the pilot project and establishing and maintaining a public roster of legal paraprofessionals eligible to participate in the pilot project;
- (b) for evaluating the results and outcome of the pilot project and making further recommendations to the Supreme Court; and
- (c) for submitting, reviewing, investigating, and resolving complaints made against legal paraprofessionals and supervising attorneys, including removing legal paraprofessionals from the roster and prohibiting supervising attorneys from participating in the pilot project if there is a good cause to do so. Rostered legal paraprofessionals and supervising attorneys shall cooperate with standing committee investigations and failure to cooperate may be the basis for removal from the pilot project.

Appendix 1 to Rule 12 of the Supervised Practice Rules

General Filing Documents

- Notice of Appearance
- Certificate of Representation
- Application to Serve by Alternate Means
- Affidavit of Default
- Affidavit of Service
- Substitution of Counsel
- Notice of Withdrawal
- Notice of Filing
- Affidavit for Proceeding In Forma Pauperis
- Proposed In Forma Pauperis Order
- Settlement Agreement
- Request for Continuance
- Motion to Request Correction of Clerical Mistakes

Landlord-Tenant Specific

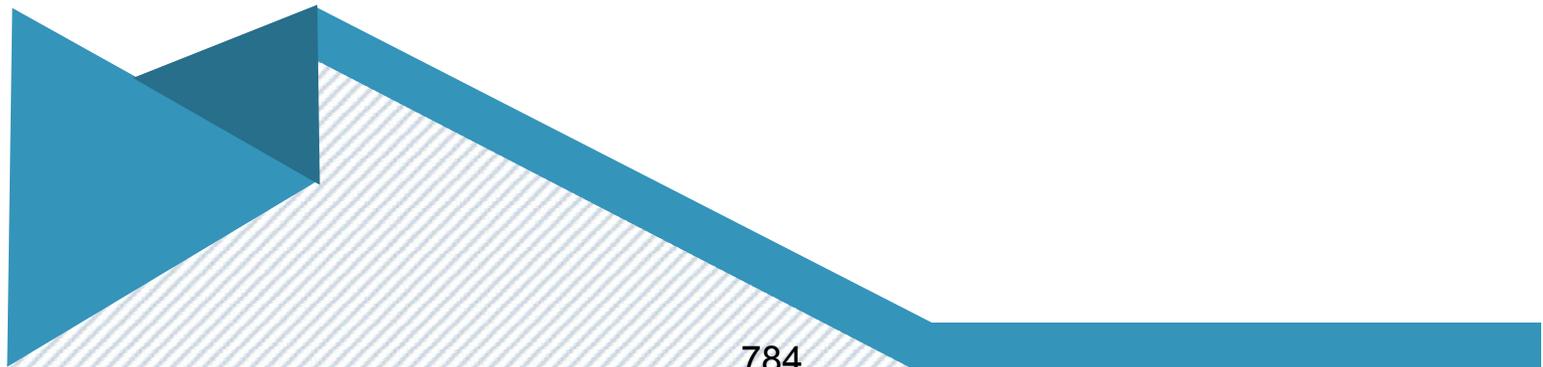
- Affidavit of Compliance and Proposed Order for Expungement
- Notice of Motion and Motion for Expungement of Eviction Record
- Petition for Emergency Relief Under Tenant Remedies Act
- Rent Escrow Affidavit
- Eviction Answer
- Eviction Action Proposed Findings of Fact, Conclusions of Law, Order and Judgment
- Answer and Motion for Dismissal or Summary Judgment (Eviction)
- Notice of Motion and Motion to Quash Writ of Recovery
- Petition for Possession of Property After Unlawful Lockout

Family Law Specific

- Confidential Information Form 11.1
- Confidential Information Form 11.2
- Felon name change notice
- Notice to Public Authority
- Notice of Default and Nonmilitary Status Affidavit of Non-Military Status
- Default Scheduling Request
- Notice of Intent to Proceed to Judgment
- Proposed Default Findings
- Initial Case Management Conference Data Sheet
- Scheduling Statement
- Parenting/Financial Disclosure Statement
- Discovery (Interrogatories, Request for Production of Documents, Request for Admissions)
- Summary Real Estate Disposition
- Judgment
- Certificate of Dissolution
- Delegation of Parental Authority
- Revocation of Delegation of Parental Authority
- Application for Minor Name Change
- Parenting/Financial Disclosure Statement
- Certificate of Settlement Efforts
- Notice of Motion and Motion to Modify Parenting Time
- Stipulation of the Parties
- Notice of Motion and Motion to Modify Child Support/Medical Support
- Notice of Motion and Motion (examples: Stop COLA, Reinstate Driver's License)
- Request for County to Serve Papers



APPENDIX
ATTACHMENT 10



REPORT AND RECOMMENDATIONS TO THE MINNESOTA SUPREME COURT

**IMPLEMENTATION COMMITTEE FOR PROPOSED LEGAL
PARAPROFESSIONAL PILOT PROJECT**

ADM19-8002

March 2, 2020

Hon. Paul C. Thissen, Co-Chair
Hon. John R. Rodenberg, Co-Chair

Sally Dahlquist, Inver Hills Community College
Tiffany Doherty-Schooler, Legal Aid Service of Northeastern Minnesota
Bridget Gernander, Legal Services Grant Manager and IOLTA Program Director
Tom Nelson, Minnesota State Bar Association
Christopher O. Petersen, Ameriprise Financial
Liz Reppe, State Law Librarian
Maren Schroeder, Minnesota Paralegal Association
Pam Wandzel, Fredrikson & Byron, P.A.

Kimberly Larson, Staff Attorney

I. INTRODUCTION

In March 2019, the Minnesota Supreme Court issued an Order establishing the Implementation Committee for Proposed Legal Paraprofessional Pilot Project. (See Appendix A) The Order gratefully acknowledged the prior work of the Alternative Legal Models Task Force (Task Force), convened by the Minnesota State Bar Association (MSBA). The Order authorized the Implementation Committee (Committee) to expand on one of the Task Force’s recommendations and to develop a pilot project that would permit legal paraprofessionals to provide legal advice to clients, and in some instances represent them in court, under the supervision of a licensed Minnesota attorney. The purpose of the Order is to provide greater access to justice for low- and modest-income litigants in civil cases, especially in circumstances where high rates of self-representation are common.

The Order charged the Committee with defining the “format, structure, rules, and implementation of a pilot project for the delivery of civil legal services by legal paraprofessionals.” This charge included the express objective of serving clients with unmet legal needs in housing, family law, or debtor-creditor disputes. A March 2019 news statement issued by the Minnesota Judicial Branch announced the establishment of the Committee and provided data illustrating the frequency of disproportionate representation in the three areas of civil law. (See Appendix B) The 2016-2018 data¹ showed that

- In debtor-creditor disputes 93% of debtors and 4% of creditors were unrepresented
- In housing disputes 97% of tenants and 49% of landlords were unrepresented
- In family law disputes 84% of respondents and 53% of petitioners were unrepresented

The Order required the Committee to report its recommendations to the Supreme Court by the end of February 2020.

The Committee met 11 times between April 2019 and February 2020, hearing from judges, court administration staff, attorneys, paralegals, and others with an interest in the pilot project. The Committee’s specific recommendations are organized into four categories:

- The scope of the Legal Paraprofessional Pilot Project
- The establishment of an oversight committee and related procedures

¹ The data were extracted from the Minnesota Court Information System (MNCIS), which tracks, among other things, whether a party is represented. MNCIS records indicate on which days, if any, an attorney represents a client during the life of a case. The State Court Administrator’s Office pulled this information for select case-types ancillary to the work of the Task Force. A litigant was considered to be unrepresented when, for at least 90% of the days in the life of a case, the MNCIS records showed no attorney representing that litigant.

- The development of a pilot project evaluation plan and tools
- The creation of a communication and marketing plan

At the heart of the Committee's recommendations is the recognition that the primary purpose of the Legal Paraprofessional Pilot Project is to provide greater access to justice and offer the best possible outcomes for litigants in Minnesota's courts. The recommendations are designed to guide the establishment of a pilot project that not only will provide a vehicle for legal paraprofessionals to deliver civil legal services, but also ensure that the services are effective and protect the litigant's interests.

II. SUMMARY OF IMPLEMENTATION COMMITTEE WORK

The Committee considered the experiences of other jurisdictions and their efforts to address similar issues in their states, learned about current efforts focused on the three areas of unmet civil legal need in Minnesota communities, and listened to the concerns and ideas of interested stakeholders. The Committee thoroughly deliberated the requirements of the Order and reviewed detailed filing data for Minnesota's district courts to understand the needs specific to litigants in the three areas of law. (See Appendix C) The Committee also discussed a variety of models for the pilot project, searching for options that would provide the most benefit to parties and create an economically sustainable approach for attorneys and legal paraprofessionals. The Committee discussed in depth the need to include in the pilot program both a market-based approach where entrepreneurial attorneys, with the assistance and cooperation of legal paraprofessionals, could provide services to low- and modest-income litigants in Minnesota while building a sustainable and profitable practice and non-market-based opportunities through enhancement of legal aid services programs.

A. Overview of Areas of Unmet Civil Legal Need

During its kickoff meeting, the Committee discussed the Order to acquire a united understanding of the scope of the Committee's work and of the pilot project. Representatives from the MSBA and the states of Utah and Washington shared information with the Committee at this first meeting. The overview provided by the MSBA representative covered the work of the Task Force. (See Appendix D) The goal of the Task Force was to develop a model for achieving effective access to justice for low- and modest-income Minnesotans. The Task Force sought to do this by focusing on the possibility of working with legal paraprofessionals in new and creative ways to address unmet legal needs, with a particular focus on rural Minnesota. The Task Force considered three different models:

1. A regulated, non-lawyer provider model. This model, after deliberation, was not presented to the MSBA Assembly as a viable option.

2. A “Limited License Legal Technician” model, sometimes referred to as LLLT. This model was also discussed but not presented to the Assembly.
3. An expanded or enhanced legal paraprofessional model, which contemplated a qualified, designated, and supervised legal paraprofessional role. Although this model was presented to the Assembly, it did not pass.

Although the Task Force’s recommendations were not implemented, the Committee benefitted greatly from the Task Force’s work and lessons learned. The Task Force work helped shape the Committee’s recommendations.

Representatives from legal paraprofessional programs in the states of Utah and Washington informed the Committee that the need for increased availability of legal representation in the areas of family law, housing law, and debtor-creditor disputes is not unique to Minnesota. Both representatives confirmed that the research and analysis of the issues in their states showed that, to alleviate representation disparities, legal paraprofessionals might be able to provide effective legal help with adequate supervision.²

The Committee focused the next several meetings on expanding its knowledge of the substantive legal areas identified by the Supreme Court that might benefit from the pilot project. The Committee gathered and reviewed information, including court case data from 2016-2018 on whether community needs were being met in landlord-tenant cases (housing law disputes), debtor-creditor cases, and family law cases. The Committee also learned about current practices in district courts and other legal programs that provide assistance to parties in those three areas. Representatives from the Second and Fourth Judicial Districts, legal aid offices, and other legal practitioners met with the Committee to discuss needs and existing programs and supports for housing law disputes. Dialogue with these representatives revealed that housing courts in the Second and Fourth Judicial Districts currently benefit from multiple pro bono and low bono services. The Committee was impressed with the degree of sophistication and coordination in those districts for serving the legal needs of low-income housing law litigants.

The Committee also spent significant time learning about paralegal education, training, and certification, including training on legal ethics. Representatives from the Minnesota Paralegal Association and ABA Standing Committees on Paralegals as well as from institutions that provide paralegal education in Minnesota provided the Committee with in-depth information on paralegal preparation and qualifications. The information formed the basis for many of the Committee’s recommendations. (See Appendix E)

² Utah program, <https://www.utcourts.gov/utc/limited-legal/>, Washington program, <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians>.

A district court judge from the Seventh Judicial District and the Deputy Director from Mid-Minnesota Legal Aid's St. Cloud office met with the Committee, as did MSBA Family Law Section representatives, to discuss needs and opportunities in the area of family law. The information presented to the Committee suggested that there is significant need for affordable legal representation in family law cases, especially in rural areas of the state and in regional centers like St. Cloud.

The Committee learned that consumer debt cases (debtor-creditor disputes) represent a large volume of cases in Minnesota district courts and that significant need for additional legal services and advice exists, especially for debtors. Nonetheless, the Committee ultimately decided not to recommend a pilot project in the case of debtor-creditor disputes. The Committee concluded that, outside of cases brought under the federal Fair Debt Collection Practices Act where lawyers may recover attorney fees and are currently providing legal services, the economics of debtor-creditor disputes make a market-based approach challenging. Further, the Committee recognized that the best place for intervention in debtor-creditor cases is before a complaint is filed, or within days thereafter, and the infrastructure is not currently in place to make a pilot project effective.

B. Format, Structure, and Rules

The Committee spent several meetings discussing the qualifications that should be required of legal paraprofessionals and supervising attorneys participating in the pilot project. The Committee received information and insight from paralegals, attorneys, civil legal services, educators, and other legal practitioners. In particular, the director of the Office of Lawyers Professional Responsibility (OLPR) presented information to the Committee about the statutes and rules related to the unauthorized practice of law. The OLPR director described some of the activities that are unlawful for a person who is not a member of the Minnesota bar to conduct. (See Appendix F) After much deliberation about suitable qualifications and experience for participants in the pilot project, it was suggested that Minnesota's student practice rules might provide a model for legal paraprofessional supervision in this pilot project. The Committee's recommended supervision requirements borrow heavily from the Student Practice Rules.³

The Committee explored whether and how malpractice insurance coverage may be available to legal paraprofessionals who participate in the pilot project. The Committee Co-Chairs met with the Board of Law Examiners and the MSBA Family Law Sections. As of this writing, questions remain about whether there is a market for separately insuring legal paraprofessionals or if the supervising attorney should be required to guarantee the

³ Minnesota Student Practice Rules, <https://www.ble.mn.gov/student-practice-rules/>.

actions of the legal paraprofessionals who are insured under the attorney’s malpractice insurance policy.

The Committee heard about efforts underway in Crow Wing County in northeastern Minnesota and Olmstead County to provide more legal assistance to tenants in housing disputes. In the Crow Wing County model, a legal aid office worked with the local court to establish a calendar each week for housing law disputes so that legal aid attorneys and/or legal paraprofessionals could be present to provide advice and representation more efficiently. (See Appendix G)

The Committee also received information about the Justice for All Grant, another Judicial Branch effort aimed at offering a simplified family court process that could eventually benefit from the assistance of qualified legal paraprofessionals for unrepresented parties. (See Appendix H) This program will pilot its own efforts in 2020-2021, so opportunities to coordinate with the pilot project remain open for future evaluation.

Another model that the Committee reviewed was a regulatory “sandbox” approach. The regulatory “sandbox” is a policy structure creating a controlled environment in which new consumer-centered innovations, which may be unlawful or unethical under current regulations, can be piloted and evaluated. The Utah Supreme Court issued an August 2019 report detailing this approach in their state.⁴ The Committee reviewed this report, but determined that replicating Utah’s level of regulatory oversight would require new funding, which is not available for this pilot project. The Committee therefore concluded that a regulatory “sandbox” approach is not practical at this time. The Committee recommends, however, that this approach be revisited and implemented if the pilot project is expanded in the future.

C. Stakeholder Outreach

The Committee committed early on to reach out to critical stakeholders. Committee members considered detailed information about the skills and abilities of paralegals in Minnesota. Their knowledge was critical to the Committee because of their experience as leaders in professional associations and higher education institutions that are responsible for certifying and training individuals in the paralegal field. Committee members also met with several individuals, including lawyers and other legal professionals, outside of committee meetings to explain the Committee’s charge and to hear concerns, comments, and other feedback.

⁴ Utah Implementation Task Force on Regulatory Reform, <https://sandbox.utcourts.gov/>.

The Committee also recognized that it did not have a thorough understanding of how legal paraprofessionals, including paralegals, work with attorneys, firms, or other legal professionals. To gain a more complete understanding, the Committee distributed a survey to Minnesota licensed attorneys, district court judges, and some paralegal association members in Minnesota. The Committee received 579 responses to the survey. (See Appendix I) Some survey respondents opposed any expansion of legal paraprofessional responsibilities. Others conveyed strong support for the effort. The Committee noted the concerns raised by “opposing” responses and incorporated those concerns into its deliberations. Nevertheless, understanding its charge to develop a pilot project for the Supreme Court, the Committee determined that abandoning the pilot project in the face of some opposition is not for the Committee to recommend.

The Committee worked with State Court Administration to organize and evaluate the many survey responses. The Committee learned that the range of responsibilities that Minnesota lawyers entrust to paralegals varies widely. Some lawyers limit their paralegals to a narrow range of responsibilities that is much more limited than what is allowed under current Minnesota law and Rules of Professional Responsibility. The Committee believes that expanded lawyer education should be made available regarding the level of responsibility that legal paraprofessionals are currently allowed to undertake.

After reviewing the survey responses, the Committee enlisted a focus group to gain additional outside perspectives. Several attorneys and legal paraprofessionals volunteered to participate in the focus group and met at the Judicial Center over the course of two days. The group made several helpful suggestions for the Committee’s consideration that helped formulate some of the Committee’s recommendations to the Court. (See Appendix J)

III. REASONS FOR IMPLEMENTATION COMMITTEE RECOMMENDATIONS

Under the Order, the Committee “must limit the pilot project to one of three areas of unmet need in civil law.” The Committee nevertheless respectfully suggests that the Supreme Court consider piloting in two of the three substantive legal areas: housing law disputes and family law disputes.

The Committee concludes that a pilot project for landlord-tenant disputes allowing the expanded use of legal paraprofessionals operating under the supervision of attorneys has the potential to assist civil legal aid providers to serve more Minnesota litigants. Several legal aid entities have expressed interest in deploying their existing legal paraprofessionals to do a broader range of legal work than is currently allowed. Corporate legal entities have also expressed their willingness to have their legal paraprofessionals provide assistance to legal services on a pro bono basis through the pilot project, possibly assisting with both housing law disputes and family law cases.

In the area of family law disputes, the Committee sees merit in testing a market-based approach where attorneys may expand their current business model by capitalizing on the expanded scope of legal paraprofessional activity to serve more clients. Through conversations with private attorneys, the Committee believes that there is interest in the legal community to test the market-based approach as well.

Although the Committee proposes that the pilot project include both of these substantive legal areas, it also recognizes that the Supreme Court will determine whether and how the pilot project proceeds. The Committee's recommendations that set forth the format, structure, and implementation of the pilot project are applicable regardless of the Court's decision on which legal area to focus the pilot project.

IV. RECOMMENDATIONS

Based on the information gathered during the course of the Committee meetings, the survey, the focus-group process, and meetings with stakeholder groups, the Committee identified three goals for the pilot project:

- A. Assess whether allowing legal paraprofessionals an expanded scope of work will help reduce unmet civil legal needs among low- and modest-income Minnesotans.
- B. Determine whether allowing legal paraprofessionals an expanded scope of work will improve court efficiency.
- C. Evaluate the sustainability and effectiveness of allowing legal paraprofessionals an expanded scope of work in the areas of housing and family law.

The Committee's substantive recommendations are aimed at achieving these goals.

Recommendation 1: The Scope of the Legal Paraprofessional Pilot Project Should Focus on both Housing Law Disputes and Family Law Disputes.

The Committee recommends that the Court establish a legal paraprofessional pilot project for housing law disputes and family law cases. The Committee recommends that the pilot project start on January 1, 2021, and end on June 30, 2022. The Committee further recommends that the scope of work within each substantive area must be under the supervision of a licensed attorney and should be limited as follows:

- A. The scope of the work that legal paraprofessionals may conduct in housing law disputes is limited to providing advice to and appearing in court on behalf of tenants in housing disputes as defined in Minnesota Statute [Chapter 504B](#) and [Section 484.014](#). The decision as to whether a case is suitable for a legal paraprofessional to appear in court

should be left to the judgment of the supervising lawyer who can assess the complexity of the issues and the legal paraprofessional's training and experience.. The Committee further recommends that the pilot project for landlord-tenant disputes be limited to district courts that have established a Housing Court or a dedicated calendar for housing law disputes. The Crow Wing County Eviction Court Project described in Appendix G is an example.

The Committee appreciates that some landlords, especially those who lease space in their personal homes, may also benefit from advice and representation by legal paraprofessionals. Although the Committee does not recommend including landlord representation during the pilot project, such a possibility could be revisited in the future.

- B. The scope of the work that legal paraprofessionals may conduct in family law disputes is limited to:
- Providing advice to and appearing in court on behalf of clients in cases dealing with child-support modifications, parenting time disputes, and paternity matters, appearing for default hearings, initial case management conferences (ICMC), pretrial hearings, early case management hearings, and informal court proceedings
 - Providing advice to and representing clients in mediations where, in the judgment of the supervising lawyer, the issues are limited to less complex matters such as simple property divisions, parenting time, and spousal support
 - With authorization from the supervising attorney, preparing and filing a limited set of documents without the supervising attorney's final review. (See Appendix K) Family cases involving allegations of domestic violence and/or child abuse should not be part of the pilot project.

Recommendation 2: Establish a Standing Committee for the Legal Paraprofessional Pilot Project to Oversee Pilot Project Development and Implementation.

The Committee recommends that the Court create and authorize a standing committee to further develop these proposed oversight recommendations before implementing the pilot project. The standing committee should be charged with the following tasks:

- A. Create an application and approval process that meets the requirements set forth by the Court based on these recommendations;
- B. Establish minimum qualifications and guidelines for legal paraprofessionals and supervising attorneys who participate in the program; and
- C. Develop and implement a complaint process to protect consumers.

The Committee additionally recommends that the standing committee's membership include, at a minimum, one lawyer who has substantial experience in, and currently practices, family law; one lawyer who has substantial experience in, and currently practices in, housing court; one legal aid lawyer; more than one paralegal; one district court judge; and one public non-lawyer/non-paralegal member.

Recommendation 2.1: Create an Application and Approval Process to Ensure Legal Paraprofessionals and Supervising Attorneys Meet Specific Minimum Qualifications and Requirements to Participate in the Pilot Project.

The Committee recommends that the standing committee create an application and approval process to establish a roster of legal paraprofessionals who are approved to participate in the pilot project. The standing committee should also develop rules and regulations for the removal of legal paraprofessionals from the roster if necessary. These rules and regulations should focus on consumer protection.

A. Legal Paraprofessional Roster Certification

As part of a thorough application process, the legal paraprofessional shall submit to the standing committee a written statement from attorneys who will supervise his or her work in the pilot project. The standing committee shall determine approval for certification based on the application, which shall include a statement:

1. That the supervising attorney agrees to supervise the legal paraprofessional;
2. That the supervising attorney vouches for the legal paraprofessional's skills, abilities, and substantive law-related experience to competently engage in the required work; and
3. That, in the supervising attorney's judgment and experience, the legal paraprofessional is qualified to participate in the pilot project as outlined in Recommendation 2.2.

B. Termination of Roster Certification

The certification shall remain in effect for the duration of the pilot project after the date the legal paraprofessional's application is approved. Roster certification shall terminate sooner upon the occurrence of any of the following events:

1. The supervising attorney withdraws certification by mailing notice to that effect to the legal paraprofessional, all courts where a joint certificate of representation has been filed, and to the standing committee, along with the reason(s) for such withdrawal.

2. The legal paraprofessional withdraws certification by mailing notice to that effect to the supervising attorney and to the standing committee.
3. The standing committee terminates certification by mailing notice to that effect to the legal paraprofessional and the supervising attorney, along with the reason(s) for such termination.

Recommendation 2.2: Establish Qualifications for Legal Paraprofessional Practice and Attorney Supervision in the Pilot Project.

The Committee recommends the following guidelines, modelled after the Student Practice Rules, for the standing committee's consideration:

A. Eligible Legal Paraprofessionals

An eligible legal paraprofessional is one who:

1. Has the following education and/or work experience:
 - a. An Associate's or Bachelor's Degree in paralegal studies from an institutionally accredited school; or
 - b. A paralegal certificate from an institutionally accredited school in addition to an Associate's or Bachelor's degree in any subject from an institutionally accredited school; or
 - c. A law degree from an ABA accredited school; or
 - d. A high school diploma and 5 years of substantive paralegal⁵ experience.
2. Meets established ethics and continuing education requirements. Legal paraprofessionals may achieve these requirements by:
 - a. Holding the Minnesota Certified Paralegal (MnCP) credentials from the Minnesota Paralegal Association; or
 - b. Providing sufficient proof that the legal paraprofessional has earned ten (10) continuing legal education (CLE) credits, including two credit hours in ethics, within the two years prior to seeking certification; or
 - c. Providing proof that the legal paraprofessional has obtained a paralegal studies degree or certificate, or a juris doctorate within the two years prior to seeking certification. Such a program must include an ethics component.

⁵ The Minnesota Paralegal Association defines a paralegal as a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, government agency or other entity or may be authorized by administrative, statutory or court authority to perform this work.... Additionally, the term "substantive" shall mean work requiring recognition, evaluation, organization, analysis, and communication of relevant legal facts and concepts. (<https://www.mnparalegals.org/About>).

B. Supervisory Attorney

The attorney who supervises a legal paraprofessional shall:

1. Be a member, in good standing, of the bar of this Court;
2. Assume personal professional responsibility for and supervision of the legal paraprofessional's work, including court appearances;
3. Assist the legal paraprofessional to the extent necessary;
4. Sign all pleadings;
5. Carry malpractice insurance that will sufficiently cover the attorney's supervision of the legal paraprofessional and the work and actions of the supervised legal paraprofessional, or ensure that the legal paraprofessional has adequate insurance;
6. Maintain regular and continuing supervision check-ins with the legal paraprofessional(s) under his or her supervision; and
7. Execute a clear, written agreement of the extent of work of the legal paraprofessional consistent with the scope of the pilot project prior to beginning the work.

Recommendation 2.3: Develop a Complaint Process.

The Committee recommends that the standing committee define a complaint process that is transparent and accessible to the public. The goal of the complaint process should be to protect consumers and hold providers accountable to professional standards.

The complaint process should include procedures for submitting, reviewing, and investigating complaints made against legal paraprofessionals and supervising attorneys in the pilot project. The Committee recommends these procedures be inclusive and accessible to all individuals. For example, the procedures must support language access for Limited English Proficient individuals. The complaint process should also define the consequences if it is determined that a complaint is valid and supported.

The Committee recommends that the standing committee review and investigate complaints about pilot project rostered legal paraprofessionals and supervising attorneys. The Committee further recommends that the standing committee be authorized to remove legal paraprofessionals from the roster and prohibit supervising attorneys from participating in the pilot project if there is a good cause to do so. Rostered legal paraprofessionals and supervising attorneys shall cooperate with standing committee investigations and failure to cooperate may be the basis for removal from the pilot project.

Recommendation 3: Certificates of Representation

For each case where a legal paraprofessional will appear in court on behalf of the client, the certificate of representation for the matter must identify both the supervising attorney and the legal paraprofessional. The legal paraprofessional may sign the certificate of representations, but must include with the filed certificate of representation as statement signed by the supervising attorney that authorizes the legal paraprofessional to appear in court. The signed authorization must identify the types of proceedings that the legal paraprofessional is allowed to handle and must specify the dates on which the legal paraprofessional is allowed to appear.

Recommendation 4: Develop an Evaluation Plan and Tools

The Committee recommends that the standing committee, or a workgroup designated by the standing committee, develop an evaluation plan for the pilot project in collaboration with the State Court Administrator's Office. The evaluation plan should measure the pilot project's impact on each of the three goals set forth in Recommendation 1. The evaluation plan should contain quantitative and qualitative measures, including surveys of clients, lawyers (supervising and non-supervising), legal paraprofessionals, judges, and court administrators.

Recommendation 5: Develop a Communication Plan and Select an "Identifier" that Distinguishes the Role of the Rostered Legal Paraprofessionals.

The Committee recommends the formation of an ongoing working group to develop a marketing communication plan to increase consumer, lawyer, and legal paraprofessional awareness about the pilot project by collaborating with strategic marketing partners both within and outside the Judicial Branch.

- A. Consistent with Minnesota's Rules of Professional Responsibility, the communication plan should expand awareness of the pilot project in a convenient and inclusive manner. To that end, published communication should include appropriate language formats. The following communication methods may be considered:
 1. Generate lists of all legal paraprofessionals and utilize targeted mailings and emails to inform those legal paraprofessionals of the pilot project.
 2. Publish pilot project information in web-based publications and public spaces, such as public and law libraries, community centers and organizations (especially those that serve underrepresented groups), and religious organizations.
- B. Draft and distribute a general notice of the pilot project to all firms, statewide attorney associations (e.g., MSBA, affinity bar associations, and Lawyers Concerned for Lawyers), and paralegal associations to help attract supervising attorneys and legal paraprofessionals.
 1. The Committee recommends the creation of an "identifier" for legal paraprofessionals who are participating in the pilot project. The Committee

considers this important because the purpose of the pilot project is to expand the services of all legal paraprofessionals through an approved certification process within the scope of the pilot project. The Committee suggests that it would be helpful if the ongoing working group includes people with a background in marketing. The goals for this recommendation are to establish a unique identifier that is attractive to individuals who may be interested in participating in the pilot project and distinguishes legal paraprofessionals who meet the requirements of, and are participating in, the pilot project from those who are not.

V. CONCLUSION

The Committee believes that the implementation of the Legal Paraprofessional Pilot Project has the ability to positively impact access to justice in Minnesota. The Committee urges the Supreme Court to continue to seek ways to expand upon the recommendations contained in this report, through the encouragement and support of ongoing innovative and entrepreneurial efforts to serve the unmet civil legal needs of low- and modest-income litigants in Minnesota's courts.

The Committee appreciates the cooperation it received from district court judges, the Minnesota State Bar Association and its sections, private attorneys, legal aid attorneys and managers, the Minnesota Paralegal Association, private and public paralegals, State Court Administration, the Office of Lawyers Professional Responsibility, the Board of Law Examiners, and all of the others who helped the Committee with this compressed and intensive effort to develop these recommendations. The Committee also thanks those who helped write the Report and Recommendations, especially Hannah Reichenbach, Sarah Doege, Madeline Baskfield, Brandon Carmack, Maria Campbell, and Joann Gillis.

Respectfully Submitted,

IMPLEMENTATION COMMITTEE FOR PROPOSED
LEGAL PARAPROFESSIONAL PILOT PROJECT

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FILED

March 8, 2019

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM19-8002

**IN RE IMPLEMENTATION COMMITTEE FOR
PROPOSED LEGAL PARAPROFESSIONAL
PILOT PROJECT**

ORDER

In 2017, the Alternative Legal Models Task Force convened by the Minnesota State Bar Association recommended the development of a program for affordable legal services that does not entirely rely upon licensed lawyers. Among the specific proposals the MSBA Task Force considered, and recommended, was a program that would allow a legal paraprofessional to provide legal advice and in some cases to represent a client in court, under the supervision of a licensed Minnesota attorney. Such a program would help address the needs of low- and modest-income citizens for civil legal representation, particularly in case types in which one party typically appears in court without representation. Other states have studied the delivery of legal services through alternative models, and have adopted rules that authorize legal paraprofessionals to provide civil legal representation and engage in the limited practice of law in certain defined areas of practice, such as housing law, family law, or debtor-creditor disputes. *See, e.g.,* Utah Sup. Ct. R. Prof'l Prac. 14-802(c) (2018). *See also* Utah Sup. Ct. R. Prof'l Prac. Ch. 15 (2018).

The supreme court has exclusive authority over the practice of law, *see In re Conservatorship of Riebel*, 625 N.W.2d 480, 482 (Minn. 2001), and to establish the rules and regulations that govern those who appear before the courts. *See Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 755 (Minn. 1992); *Sharood v. Hatfield*, 210 N.W.2d 275, 280–81 (Minn. 1973). In order to address the expanding need for access to civil legal services and build on the work of the MSBA Task Force, a pilot project is the appropriate framework for evaluating the delivery of legal services in areas of unmet civil legal needs. In order to successfully implement the pilot project, the format, structure, and rules that will govern legal paraprofessionals who participate in the pilot are needed.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The Implementation Committee for the Legal Paraprofessional Pilot Project is established to define the format, structure, rules, and implementation of a pilot project for the delivery of civil legal services by legal paraprofessionals. The pilot project should be designed to permit legal paraprofessionals to provide legal advice and in some cases to represent a client in court under the supervision of a licensed Minnesota attorney. The implementation committee must limit the pilot project to one of three areas of unmet need in civil law: housing disputes, family law, or creditor-debtor disputes; and if appropriate, must identify the specific sub-set of cases within that area that will be part of the pilot project.

2. The following persons are appointed as members of the implementation committee:

Hon. Paul C. Thissen

Hon. John R. Rodenberg

Thomas Nelson, Minnesota State Bar Association

Sally Dahlquist, Inver Hills Community College

Maren Schroeder, Rochester, Minnesota

Tiffany Doherty-Schooler, Duluth, Minnesota

Pamela Wandzel, Minneapolis, Minnesota

Christopher O. Petersen, Minneapolis, Minnesota

Bridget Gernander, Saint Paul, Minnesota

Liz Reppe, State Law Librarian, Saint Paul, Minnesota

Kim Larson, State Court Administration, Saint Paul, Minnesota

The Honorable Paul C. Thissen and the Honorable John R. Rodenberg are appointed as co-chairs of the committee. Kim Larson is appointed as staff attorney to the committee.

3. The committee must hold its first meeting on or before April 30, 2019. The committee shall file a report regarding the pilot project on or before February 28, 2020. The report must provide recommendations on the implementation date for the pilot project, the rules that will govern during the pilot project, and the criteria for evaluating the pilot project.

Dated: March 8, 2019

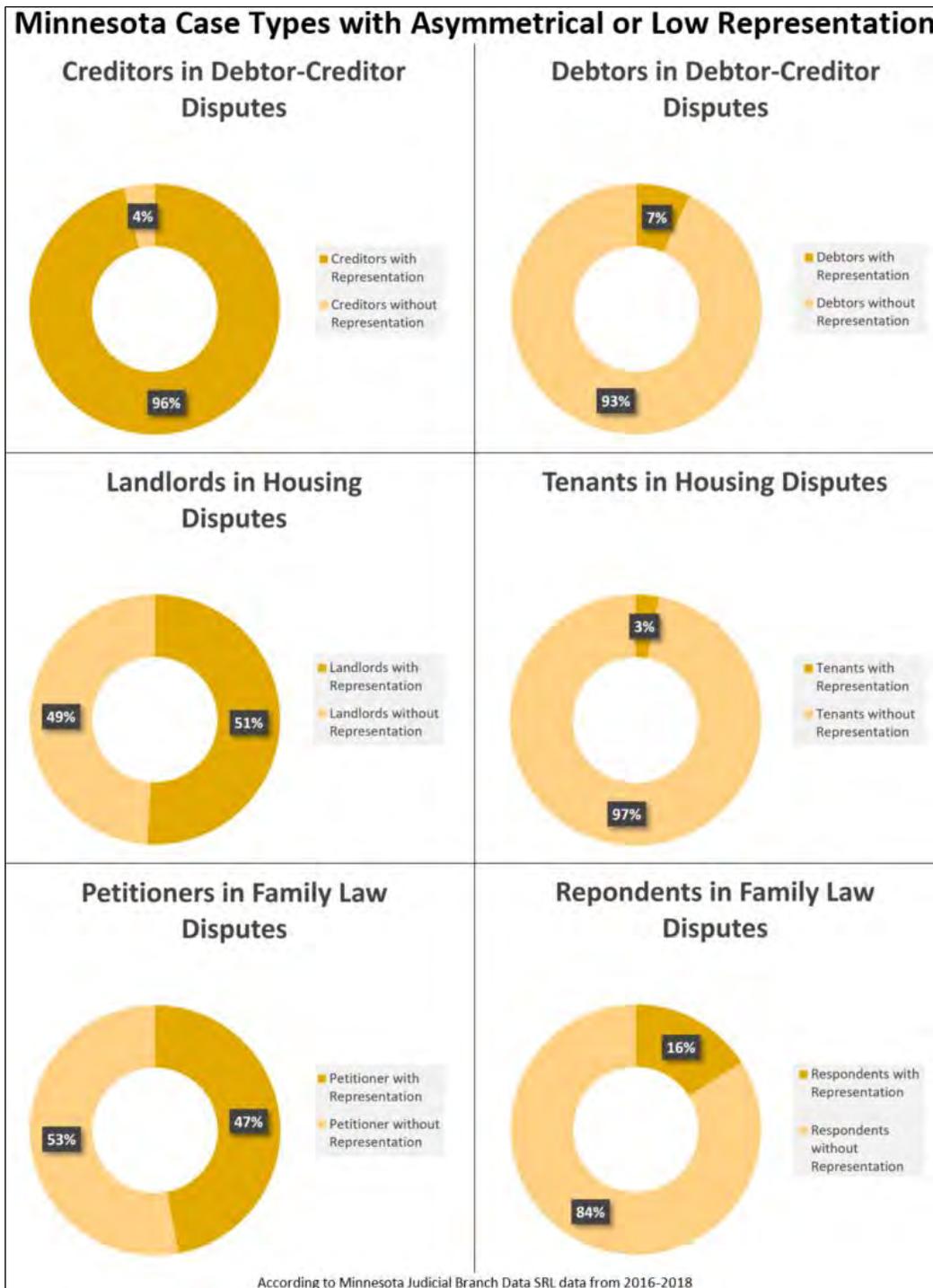
BY THE COURT:



Lorie S. Gildea
Chief Justice

Minnesota Case Types with Asymmetrical or Low Representation

The data shown in the figure above were extracted from the Minnesota Court Information System (MNCIS), which tracks, among other things, whether a party is represented. MNCIS records indicate on which days, if any, an attorney represents a client during the life of a case. The State Court Administrator’s Office pulled this information for select case-types ancillary to the work of the MSBA Alternative Legal Models Task Force. A litigant was considered to be unrepresented if, for at least 90% of the days in the life of a case, the MNCIS records show no attorney representing that litigant.



Consumer Credit Contract Cases

Cases where the plaintiff is a corporation or organization (not an individual), the defendant is an individual, the contract amount does not exceed \$20,000, and affidavits of default are not provided at filing.

	Population* 2016	Filings in 2017			Filings in 2018			Filings (2016-18) Per 1,000 Residents			Filings (2016-18) with 1 or more hearings			Filings (2016-18) with Motion to Vacate			Hearings in 2016			Hearings in 2017			Hearings in 2018			Motion Summary (2016-18)		
		2016	2017	2018	2017	2018	2018	2017	2018	2017	2018	2018	2017	2018	2018	2017	2018	2018	2017	2018	2018	2017	2018	2018	2017	2018	2018	2017
1st District	795,351	580	558	543	543	57%	2.1	57%	-	434	396	336	654	152														
2nd District	546,317	341	276	300	300	76%	1.7	76%	-	564	358	367	292	92														
3rd District	480,246	641	621	752	752	31%	4.2	31%	2	236	273	238	289	1														
4th District	1,249,512	711	584	598	598	63%	1.5	63%	2	552	504	427	746	96														
5th District	287,738	236	209	230	230	57%	2.3	57%	-	211	169	154	172	4														
6th District	251,496	217	170	170	170	78%	2.2	78%	1	395	252	226	127	5														
7th District	488,859	328	272	268	268	62%	1.8	62%	-	317	256	186	236	5														
8th District	159,955	87	75	122	122	59%	1.8	59%	-	73	66	94	88	2														
9th District	339,245	293	222	214	214	62%	2.1	62%	-	293	208	182	219	3														
10th District	978,768	1,576	1,297	1,412	1,412	43%	4.4	43%	1	888	774	628	889	89														
Grand Total	5,577,487	5,010	4,284	4,609	4,609	52%	2.5	52%	6	3,963	3,256	2,838	3,712	449														

Hearings by Type on Consumer Credit Contract Cases	Hearings (2016-18)
Motion Summary Judgment	3,712
Motion Hearing	1,483
Default Hearing	1,101
Scheduling Conference	1,028
Case Management Conference	841
Hearing	671
Court Trial	449
Pre-trial	354
Telephone Motion Hearing	151
Settlement Conference	133
Disposition Hearing	69
Review Hearing	36
Order to Show Cause Hearing	22
Discovery Conference	5
Evidentiary Hearing	2
Grand Total	10,057

*Source: MN State Demographic Center and the Metropolitan Council. Released August 2018.

Contract Cases

Cases where the basis of the lawsuit is a breach of contract agreement.

	Filings in Filings in			Filings (2016-18) Per 1,000		% of Filings with 1 or more hearings		Filings (2016-18) with Motion to Vacate		Hearings (2016-18)			Motion Summary		
	Population*	2016	2017	2018	2018	Residents	0.9	60%	Vacate	Hearings in 2016	Hearings in 2017	Hearings in 2018	Judgment Hearings (2016-18)	Court Trials (2016-18)	Jury Trials (2016-18)
1st District	795,351	269	245	237	0.9	60%	1	328	267	344	167	82	27		
2nd District	546,317	258	232	250	1.4	46%	3	224	212	215	138	21	14		
3rd District	480,246	125	108	120	0.7	58%	1	198	132	160	48	28	36		
4th District	1,249,512	726	677	671	1.7	52%	7	908	944	755	413	99	150		
5th District	287,738	98	111	152	1.3	59%	-	166	117	139	55	5	6		
6th District	251,496	71	54	52	0.7	81%	-	170	105	100	18	7	6		
7th District	488,859	115	133	137	0.8	56%	2	198	210	181	54	26	20		
8th District	159,955	69	47	51	1.0	78%	1	127	91	86	25	17	12		
9th District	339,245	95	90	89	0.8	67%	1	183	149	181	32	28	20		
10th District	978,768	295	242	232	0.8	50%	2	349	261	206	162	65	27		
Grand Total	5,577,487	2,121	1,939	1,991	1.1	55%	18	2,851	2,488	2,367	1,112	378	318		

Hearings by Type on Contract Cases	Hearings (2016-18)
Motion Hearing	1,870
Motion Summary Judgment	1,112
Scheduling Conference	895
Default Hearing	698
Hearing	638
Pre-trial	444
Case Management Conference	403
Court Trial	378
Jury Trial	318
Telephone Motion Hearing	317
Order to Show Cause Hearing	172
Discovery Conference	169
Settlement Conference	138
Temporary Restraining Order H	77
Review Hearing	35
Evidentiary Hearing	21
Temporary Hearing	7
Bail Hearing	6
Voir Dire	6
Arbitration Hearing	1
Mediation Hearing	1
Grand Total	7,706

Default Judgment Cases

A money judgment that is processed administratively in the Court Administrator's office. This primarily occurs when the plaintiff refrains from filing the summons and complaint until the period for answering the complaint has expired and the matter has been established as a default. In the majority of Default Judgment cases, the case is opened and closed at one time.

	Population*	Filings in			Filings (2016-18) Per 1,000 Residents	% of Filings with 1 or more hearings	Filings (2016-18) with Motion to Vacate	Hearings in 2016		Hearings in 2017		Hearings in 2018	
		2016	2017	2018				in 2016	in 2017	in 2016	in 2017	in 2018	
1st District	795,351	2,522	2,596	3,152	10.4	2%	13	102	81	93			
2nd District	546,317	1,718	1,500	1,850	9.3	1%	6	47	46	38			
3rd District	480,246	1,740	1,994	2,333	12.6	1%	7	66	47	38			
4th District	1,249,512	3,688	3,756	4,094	9.2	4%	35	338	239	200			
5th District	287,738	1,076	1,321	1,641	14.0	1%	2	31	17	25			
6th District	251,496	1,161	1,453	1,605	16.8	2%	2	55	44	48			
7th District	488,859	1,688	1,871	2,166	11.7	2%	6	95	55	55			
8th District	159,955	511	667	857	12.7	1%	2	22	15	18			
9th District	339,245	1,392	1,852	2,105	15.8	1%	-	59	32	48			
10th District	978,768	2,997	2,942	3,404	9.5	4%	15	286	189	149			
Grand Total	5,577,487	18,493	19,952	23,207	11.1	2%	88	1101	765	712			

Hearings by Type on Contract Cases	Hearings (2016-18)
Hearing	829
Default Hearing	498
Motion Hearing	475
Order to Show Cause Hearing	428
Motion Summary Judgment	123
Pre-trial	58
Court Trial	54
Telephone Motion Hearing	46
Scheduling Conference	32
Review Hearing	11
Bail Hearing	7
Case Management Conference	6
Discovery Conference	5
Settlement Conference	3
Evidentiary Hearing	2
Temporary Restraining Order H	1
Grand Total	2,578

Transcript Judgment Cases

Use when a judgment is transcribed from Conciliation Court to District Court for satisfaction of indebtedness. A Transcript Judgment may be filed in District Court because the judgment could not be satisfied in Conciliation Court.

	Population*	Filings in Filings in Filings in			Residents	Filings (2016-18) Per 1,000		Filings (2016-18) % of Filings with 1 or more hearings		Filings (2016-18) with Motion to Vacate		Hearings in 2016		Hearings in 2017		Hearings in 2018		Order to Show Cause Hearings (2016-18)
		2016	2017	2018		2018	2018	2018	2018	2018	2018	2018	2018	2018	2018	2018	2018	
1st District	795,351	2,062	2,880	3,596	10.7	2%	2	117	109	113	248							
2nd District	546,317	1,937	2,834	3,122	14.4	1%	4	53	40	58	81							
3rd District	480,246	815	915	911	5.5	4%	1	62	54	49	123							
4th District	1,249,512	3,278	4,905	5,514	11.0	2%	7	181	148	146	376							
5th District	287,738	884	920	1,142	10.2	4%	2	56	42	68	146							
6th District	251,496	1,694	1,650	2,031	21.4	1%	1	103	36	50	142							
7th District	488,859	1,540	1,852	2,028	11.1	3%	1	92	69	91	194							
8th District	159,955	258	272	270	5.0	3%	1	13	11	17	32							
9th District	339,245	1,218	1,204	1,201	10.7	2%	1	46	49	51	113							
10th District	978,768	2,290	3,533	4,640	10.7	2%	2	159	151	134	338							
Grand Total	5,577,487	15,976	20,965	24,455	11.0	2%	22	882	709	777	1,793							

Hearings by Type on Contract Cases	Hearings (2016-18)
Order to Show Cause Hrg Hearing	1,793
Motion Hearing	366
Bail Hearing	168
Review Hearing	18
Evidentiary Hearing	13
Conciliation Hearing	4
Court Trial	2
Discovery Conference	1
Pre-trial	1
Settlement Conference	1
Grand Total	2,368

Eviction Cases

Action to evict a tenant from rental property.

	Population*	Filings in Filings in Filings in Filings in				Filings (2016-18) Per 1,000 Residents	% of Filings with 1 or more hearings		Hearings in 2017		Hearings in 2018		Eviction Hearings (2016-18)		Court Trials (2016-18)
		2016	2017	2018	2018		in 2016	in 2017	in 2018	in 2018	in 2016	in 2017	in 2018	in 2018	
1st District	795,351	2,102	2,157	2,240	2,240	8.2	85%	1,974	2,138	2,204	5,550	49			
2nd District	546,317	2,888	2,839	2,686	2,686	15.4	93%	3,283	3,167	3,030	7,961	408			
3rd District	480,246	961	1,011	1,115	1,115	6.4	88%	940	990	1,109	2,833	58			
4th District	1,249,512	6,085	6,038	5,549	5,549	14.1	91%	6,582	6,813	7,035	16,098	694			
5th District	287,738	501	483	487	487	5.1	86%	475	452	469	1,325	37			
6th District	251,496	680	724	696	696	8.4	93%	776	848	802	2,023	283			
7th District	488,859	1,141	1,257	1,290	1,290	7.5	86%	1,102	1,216	1,278	3,309	99			
8th District	159,955	239	260	205	205	4.4	85%	215	241	186	604	10			
9th District	339,245	557	630	562	562	5.2	89%	591	653	579	1,620	115			
10th District	978,768	2,658	2,445	2,491	2,491	7.8	90%	2,852	2,685	2,612	7,199	325			
Grand Total	5,577,487	17,812	17,844	17,321	17,321	9.5	90%	18,790	19,203	19,304	48,522	2,078			

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Hearings by Type on Eviction Cases	Hearings (2016-18)
Eviction Hearing	48,522
Motion Hearing	5,252
Court Trial	2,078
Hearing	963
Evidentiary Hearing	245
Review Hearing	122
Scheduling Conference	35
Pre-trial	19
Telephone Motion Hearing	18
Jury Trial	17
Settlement Conference	7
Order to Show Cause Hearing	6
Default Hearing	5
Motion Summary Judgment	4
Temporary Restraining Order H	2
Case Management Conference	1
Harassment Hearing	1
Grand Total	57,297

Rent Escrow Cases

Used when a tenant deposits rent with the court and seeks relief because the owner of the premises has not complied with building codes or covenants or agreements regarding the rental property.

	Population*	Filings in 2016		Filings in 2017		Filings in 2018		Filings (2016-18) Per 1,000 Residents		% of Filings with 1 or more hearings		Hearings in 2016		Hearings in 2017		Hearings in 2018		Court Trials (2016-18)	
		2016	2017	2018	2017	2018	2018	2018	2016	2017	2018	2016	2017	2018	2016	2017	2018	2016-18	
1st District	795,351	24	35	26	0.1	88%	33	51	37	2									
2nd District	546,317	44	32	40	0.2	93%	71	48	63	35									
3rd District	480,246	15	17	24	0.1	70%	20	24	17	5									
4th District	1,249,512	89	78	121	0.2	89%	134	111	293	183									
5th District	287,738	9	1	6	0.1	88%	12	1	7	1									
6th District	251,496	9	14	15	0.2	87%	15	25	30	2									
7th District	488,859	25	16	14	0.1	85%	34	30	22	6									
8th District	159,955	4	1	4	0.1	100%	9	4	9	1									
9th District	339,245	11	9	8	0.1	96%	15	15	9	1									
10th District	978,768	38	28	30	0.1	89%	57	45	41	13									
Grand Total	5,577,487	268	231	288	0.1	88%	400	354	528	249									



Hearings by Type on Rent Escrow Cases	Hearings (2016-18)
Rent Escrow Hearing	673
Court Trial	249
Hearing	116
Review Hearing	111
Eviction Hearing	64
Evidentiary Hearing	35
Motion Hearing	26
Order to Show Cause Hearing	2
Pre-trial	2
Telephone Motion Hearing	2
Case Management Conference	1
Settlement Conference	1
Grand Total	1,282

Dissolution with child

Cases filed for the purpose of dissolving a marriage that involves minor children.

	Population*	Filings in			Filings (2016-18) Per 1,000 Residents		% of Filings with Hearings 1 or more hrgs in			Default Hearings		Court Trials (2016-18)
		2016	2017	2018	2016	2017	2018	in 2016	in 2017	in 2018	(2016-18)	
1st District	795,351	1,190	1,201	1,171	4.5	4.5	83%	2,910	2,976	3,028	1,839	392
2nd District	546,317	576	582	576	3.2	3.2	83%	1,749	1,652	1,585	824	121
3rd District	480,246	637	659	632	4.0	4.0	78%	1,544	1,392	1,422	929	137
4th District	1,249,512	1,494	1,430	1,519	3.6	3.6	89%	4,647	4,597	4,371	2,298	307
5th District	287,738	372	408	388	4.1	4.1	81%	915	877	845	410	94
6th District	251,496	358	329	322	4.0	4.0	87%	1,189	1,063	1,129	430	119
7th District	488,859	742	739	714	4.5	4.5	78%	1,835	1,876	1,845	934	162
8th District	159,955	219	204	192	3.8	3.8	79%	455	476	470	241	36
9th District	339,245	519	483	468	4.3	4.3	85%	1,360	1,382	1,288	576	164
10th District	978,768	1,541	1,516	1,364	4.5	4.5	84%	4,047	3,973	3,501	2,208	467
Grand Total	5,577,487	7,648	7,551	7,346	4.0	4.0	84%	20,651	20,264	19,484	10,689	1,999

Hearings by Type on Dissolution with Child Cases

Hearings	Hearings (2016-18)
Motion Hearing	11,201
Default Hearing	10,689
Initial Case Mgmt Conference	7,184
Hearing	7,170
Review Hearing	5,491
Telephone Motion Hearing	4,529
Pre-trial	4,488
Scheduling Conference	2,012
Court Trial	1,999
Order to Show Cause Hearing	1,451
Post Final Decree	1,109
Evidentiary Hearing	1,015
ENE Status Conference	576
Settlement Conference	481
Temporary Hearing	298
Bail Hearing	243
Post Decree Review	205
Mediation Conference	113
Admit/Deny Hearing	74
Post Final Decree Evidentiary	39
Discovery Conference	12
Post Final Decree Trial	10
Other Hearing	10
Grand Total	60,399

Dissolution without child

Cases filed for the purpose of dissolving a marriage that does not involve any minor children.

	Population*	Filings in Filings in Filings in			Per 1,000 Residents	% of Filings with 1 or more hrs	Hearings in 2016	Hearings in 2017	Hearings in 2018	Default Hearings (2016-18)	Court Trials (2016-18)
		2016	2017	2018							
1st District	795,351	1,098	1,019	1,066	4.0	23%	624	593	522	152	103
2nd District	546,317	704	719	753	4.0	32%	553	446	565	124	33
3rd District	480,246	597	576	598	3.7	20%	245	205	208	105	43
4th District	1,249,512	1,810	1,882	1,921	4.5	56%	1,802	1,860	1,555	2,019	91
5th District	287,738	371	323	338	3.6	25%	196	169	155	77	26
6th District	251,496	414	367	397	4.7	34%	271	251	286	68	31
7th District	488,859	652	636	644	4.0	26%	377	342	369	174	59
8th District	159,955	158	195	184	3.4	21%	66	103	96	29	14
9th District	339,245	452	456	438	4.0	28%	293	290	316	110	66
10th District	978,768	1,329	1,342	1,262	4.0	32%	853	871	815	280	137
Grand Total	5,577,487	7,585	7,515	7,601	4.1	35%	5,280	5,130	4,887	3,138	603

Hearings by Type on Dissolution without Child Cases	Hearings (2016-18)
Initial Case Mgmt Conference	4,077
Default Hearing	3,138
Pre-trial	1,529
Telephone Motion Hearing	1,425
Motion Hearing	1,268
Scheduling Conference	924
Hearing	894
Court Trial	603
Review Hearing	578
ENE Status Conference	215
Settlement Conference	172
Order to Show Cause Hearing	136
Evidentiary Hearing	122
Post Final Decree	102
Temporary Hearing	46
Mediation Conference	42
Post Decree Review	10
Bail Hearing	4
Disposition Hearing	4
Admit/Deny Hearing	3
Discovery Conference	3
Post Final Decree Evidentiary	2
Grand Total	15,297

**REPORT AND RECOMMENDATIONS
MINNESOTA STATE BAR ASSOCIATION
ALTERNATIVE LEGAL MODELS TASK FORCE**

OVERVIEW

An important component of the Minnesota State Bar Association's (MSBA) vision calls for the organization to "be a leader in the state of Minnesota in achieving effective and equal justice for all." Adequate access to legal representation for all Minnesotans remains elusive, despite efforts to increase funding for legal aid programs, rally members of the bar to volunteer for pro bono service and provide resources so lawyers, both new and experienced, can offer their services at rates affordable to modest income clients. The Alternative Legal Models Task Force, created in response to a recommendation from the MSBA's Future of the Legal Education Task Force, represents an opportunity for the MSBA to lead our state in providing "equal justice for all." The report and recommendations that follow are the product of hours of discussion, research and engagement. We hope the Assembly will seize this opportunity to help move our profession and the state forward towards greater access to legal representation for all our residents.

After many months of research, discussion and debate, the Task Force considered three distinct approaches to the delivery of legal services to help fill the access to justice gap that do not necessarily involve reliance upon licensed lawyers. The Task Force recognizes that no single solution will solve the problems the legal profession faces in providing affordable legal services, but believe it is time to take some action that has the potential to provide alternative legal services to those that require or desire it. Once these three approaches were accepted by the Task Force, the Task Force Co-Chairs and MSBA representatives held seven listening sessions around the State. The Task Force's ultimate conclusion that the MSBA move forward with two of these recommendations is based upon the Task Force's work through subcommittee meetings, full Task Force deliberations and the comments and suggestions received during the listening sessions. A majority of Task Force members voted to recommend the MSBA work toward implementation of two proposals.

The first proposal is designed after a model employed in British Columbia, Canada that allows a paraprofessional (Legal Practitioner) to provide legal advice and, in some circumstances, represent a client in court and administrative proceedings under the direct supervision of an attorney. The Legal Practitioner would work under the supervising attorney's law license and the ethical responsibilities required of Minnesota lawyers. There would be no separate licensing or licensing board of the Legal Practitioner. The details of this recommendation are provided below.

The second proposal is modeled after the State of Washington's Limited License Legal Technicians model ("LLLT Model"). The proposed LLLT Model for Minnesota allows licensed paralegals/administrative assistants to acquire a certain level of education and experience to qualify for licensing through the passage of an exam. Once licensed, the LLLT would be free to practice law in a specific area of law that is limited in scope. The LLLT would not be required

to work under the supervision of an attorney, but would be required to comply with a code of ethics, similar to lawyers' ethical requirements, and to obtain legal malpractice insurance. A separate licensing board would likely be required. The details of this LLLT model are more completely described below.

PROCEDURAL BACKGROUND

The genesis of this task force comes from the work of the MSBA's Task Force on the Future of Legal Education ("Legal Education Task Force"). The Legal Education Task Force, consisting of representatives from the judiciary, legal education, and the practicing bar, examined challenges and opportunities with respect to the state's legal education system. Considerable time was spent examining ways of making legal careers more affordable, as well as addressing the existing unmet need for legal representation by low and modest income Minnesotans. Consequently, as part of its final report and recommendations, the Legal Education Task Force included the following as one of its recommendations:

Recommendation 5: In order to identify a less costly path to a career in legal services and address unmet needs for specific types of legal services, the MSBA should establish a separate task force focused on studying the viability of certifying Limited License Legal Technicians ("LLLT") with authority to provide supervised legal services in defined practice areas. This task force should consist of representatives from the state court administrative office, civil legal services and pro bono programs, private practices from diverse practice settings throughout the state, potential clients, and institutions of higher education (including, but not limited to law schools). The task force should prepare a recommendation to the MSBA Assembly on the question whether to submit a petition to the Minnesota Supreme Court to establish an LLLT practitioner rule by June 2016.

The MSBA Assembly reviewed the Legal Education Task Force's Report and Recommendations at its June 2015 meeting and approved this recommendation, among others. MSBA President (2015-16) Mike Unger then created the Alternative Legal Models Task Force with the following charge:

The Task Force's charge is to examine the advisability of supplementing traditional lawyer representation through the creation of a new type of limited-scope certified legal assistance provider to increase access to justice for those who cannot afford a lawyer. One possibility the task force will examine involves certifying Limited Legal License Technicians (LLLT) who would possess authority to provide limited legal services in particular practice areas, as the state of Washington did recently. The Task Force will develop a recommendation to the Assembly regarding viable options to increase access to justice, including possible certification of limited license legal technicians, along with necessary safeguards to assure quality of service.

After reviewing applications, President Unger appointed 24 members to the Task Force. (A list of task force members can be found in Appendix A). These members bring a wide range of backgrounds to the Task Force's work and include representation from the judicial branch, the private bar, civil legal aid and academic institutions, as well as the paralegal community and paralegal training programs. The Task Force is co-chaired by Susan Wiens of Minneapolis and Kenneth White of Mankato, both attorneys in private practice. The Task Force has met eight times as a full group from February 2016 through March 2017, in addition to numerous subcommittee meetings. (A full listing of meeting agendas and notes, as well as resources, can be found on the MSBA website at www.mnbar.org/ALM.)

The Task Force reviewed numerous resources as part of its deliberations, as well as a presentation by representatives of the Washington State Bar on the LLLT program, a presentation by several task force members involved in paralegal training regarding paralegal certification programs, and a review of law librarian/self-help assistance. The Task Force reviewed numerous articles and studies demonstrating the access to justice gap as well as many reports of projects implemented by other legal organizations attempting to bridge the access to justice gap. (A listing of reference materials can be found in Appendix B.)

The Task Force initially divided into three subcommittees to start its work, as follows:

Forms Completion – This subcommittee examined practice areas that are heavily forms driven and studied ways to license non-lawyers to help individuals with completing forms and potentially assisting in court.

Washington Model – This subcommittee examined the Washington model more thoroughly to explore whether the model was one that could work in Minnesota and should be recommended.

Business Models – This subcommittee explored potential models for serving modest means individuals and examined what it would cost to create a sustainable practice.¹

Based upon the work and recommendations of these subcommittees, the Task Force then developed a series of three options for further study and feedback. These options are more fully discussed in the next section, but can be described briefly:

Regulated non-lawyer provider for limited tasks such as forms completion as permitted by statute;

Enhanced use of paralegals in the practice of law and delivery of legal services, as recently piloted in British Columbia; and

Limited License Legal Technician program (LLLT) which provides a process for non-lawyers to be licensed to provide limited legal advice in certain narrowly-defined legal areas.

¹ The Task Force also considered a fourth subcommittee (Limited Scope), but subsequently folded its work into the remaining subcommittees.

Three new subcommittees were established to study these options. Each subcommittee met numerous times, researched and studied other legal organization's efforts and provided a recommendation to the full Task Force. After the development of these focused options, the Task Force co-chairs, along with MSBA staff, convened seven listening sessions throughout the state (St. Paul (2), Minneapolis (live and as a webinar), St. Cloud, Duluth, Rochester and Mankato) in conjunction with local or district bar organizations during October and November 2016.² In addition, the co-chairs provided an update to the MSBA Assembly at the December 2016 meeting, with five simultaneous small group listening sessions held following this presentation. In total, over 200 MSBA members attended a live listening session during the fall of 2016. Discussions regarding the Task Force's work have also been ongoing via several MSBA online communities, including the Small and Solo Law Firm Section and the New Lawyers Section (which have been the most active). Task Force members reviewed feedback from all of these sources in developing the Task Force's recommendations.

LIMITATIONS

The task force recognizes the current regulatory framework, legal education models and market conditions that frame the practice of law inherently and specifically place limitations on how broad, how specific or how effective the recommendations of the Task Force can be in providing access to justice to all Minnesotans. The Task Force, aimed at providing guidance to the Assembly on ways the state bar association can increase access to justice, recognizes it must work within certain parameters for which it has no current ability to change. The following limitations on meeting access to justice goals were expressed by Task Force members during its deliberations and by members of the bar during the listening sessions.

- If more state and federal funds were allocated to legal-aid services, we could serve more of those in need.
- If more lawyers provided pro bono services, the legal profession could better meet the unmet needs for access to justice.
- If the Supreme Court required all lawyers to provide a certain number of pro bono hours, we could provide more legal services to those who cannot afford them.
- If law schools required students to provide pro bono services before they graduate, we could help provide additional legal assistance to those that cannot afford such services.
- If we developed a mechanism to forgive a portion of new lawyer's student loan debt, new lawyers could open a law practice more economically to provide services at a lower cost.
- If a legal education were to cost less, more new lawyers could open their own practices to provide services at a lower rate that is affordable by modest means clients.

² The document distributed at the listening sessions describes the options under consideration by the Task Force. (Appendix C)

- If the UPL statute was enforced, we would have fewer unqualified individuals providing ineffective legal advice and pushing willing lawyers from this market due to cost differentials.
- Allowing lawyers to enforce non-compete agreements would encourage small firms (and perhaps others) to hire and mentor more new lawyers.

While each of these suggestions for change may also have some positive effect in providing access to justice for all Minnesotans, the Task Force has no ability to effectuate such changes. Recognizing these limitations, the Task Force makes the following recommendations.

OPTIONS CONSIDERED & RECOMMENDATIONS

Overview

Throughout the Task Force’s discussions, members focused on how to bring new resources to serve low and modest income clients. In so doing, the Task Force recognized the challenges facing practicing lawyers in reaching those potential clients. At listening sessions, members of the profession discussed how the cost of doing business as a lawyer makes it difficult to set billing rates at levels affordable to many modest income clients. Younger practitioners, while concerned about the potential for competition from non-lawyers, also recounted the impact of how student loan debt, overhead and practice development place pressures on billing rates. The options considered by the Task Force reflect a need to supplement the existing system in which lawyers exclusively can provide legal advice.

Further, recent national initiatives have begun to focus on ways of providing access to all who may need legal services. For example, Resolution 5 of the Conference of Chief Justices and the Conference of State Court Administrators, adopted in 2015, urges courts to “support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs and urge their members to provide leadership in achieving that goal...”³ The Resolution urges court systems and related organizations to “develop a continuum of meaningful and appropriate services” in order to implement that goal.⁴ In addition, last year, Minnesota recently applied for and received a national Justice for All grant from the National Center for State Courts and the Public Welfare Foundation, the purpose of which is to develop plans for implementing this aspirational goal and coordinating services throughout the state. The Task Force’s work fits naturally within these state and national efforts to create multiple means for enabling all to obtain affordable effective legal assistance.

³http://www.ncsc.org/~media/Microsites/Files/access/5%20Meaningful%20Access%20to%20Justice%20for%20All_final.ashx

⁴ Also, in late 2016, the ABA Commission on the Future of Legal Services released its final report. The Commission’s first recommendation aligns with Resolution 5: “The legal profession should support the goal of providing some form of effective assistance for essential civil legal needs to all persons otherwise unable to afford a lawyer.” <http://abafuturesreport.com>.

Administrative/Regulatory Model

A few states, such as Arizona, California and Nevada, permit non-lawyers to provide limited non-legal assistance to clients – most typically, document/forms completion. These services are not legal advice, although they may be incorporated into an existing legal practice. The state regulates this service by statute, not court rules, because of the limitations involved in scope. Licensees can assist clients with document preparation assistance and assistance to pro se litigants similar to lay advocates (e.g. helping self-represented parties organize the chronology of their cases for presentation to a judge).

In many respects, this model duplicates the existing services already provided in Minnesota by the Judicial Branch’s self-help centers. Considerable information is already available online to enable non-lawyers to understand the legal process and complete forms. Staff at in-person and telephone self-help centers currently assist customers by providing limited guidance on forms and proceedings, but no advice regarding legal strategy.

The Task Force subcommittee reviewing this option considered whether licensed laypeople could play a helpful role in assisting clients in legal proceedings, even if no legal advice could be provided. They reviewed the use of free lay advocates as part of order for protection (OFP) hearings. Since the 1990s, the Minnesota Supreme Court has allowed lay advocates to sit at counsel table and assist in these proceedings. Advocates may also help petitioners complete paperwork, but they cannot provide legal advice. While many advocates have been affected personally by domestic violence, they do not bring formal training or skill in legal advocacy. As such, licensed attorneys are still necessary to adequately represent the interest of both petitioners and respondents.⁵ Domestic violence advocates are most effective in helping victims by being present at counsel table and offering their experience as an adjunct to effective legal representation.

The main advantage of administratively licensed non-lawyer providers is that they can take on relatively low level tasks for clients and leave more sophisticated issues to attorneys. Less stringent licensing requirements (as opposed to lawyer admission) would make it easier for someone who wishes to provide these services to do so. However, given the nature of legal proceedings and the nuances of different areas of the law, these licensed providers will never supplant the need for direct lawyer involvement.⁶ Indeed, they offer little more than what any lay person could already do to assist an individual with a legal matter. These services may duplicate already existing self-help resources by the court system and lead to a secondary industry of

⁵ Any expansion of the responsibilities of advocates would likely necessitate more extensive training and regulation. For example, advocates would need to have baseline knowledge of court procedure and forms drafting, as well as a more sophisticated understanding of victim trauma.

⁶ Completing forms alone does not meet some of the most significant client needs, which include legal advice, discovery assistance, preparation of affidavits and certain kinds of motions, analyzing courses of action and, perhaps most importantly, representation in court to assist the client in case presentation. Family law, in particular, is a subject area most in need of assistance by clients, yet it is a complex area of law as well as one involving emotional stresses where clients need a full range of assistance to sort out child-related issues and financial issues. The statutory framework is extensive as is the case law. Mere assistance with forms would be enough in only the most routine cases, and those are likely few.

licensed, but untrained non-lawyers providing what potential clients might take to be legal advice.⁷ Further, the subcommittee concluded that the services provided by such licensed providers could more easily be incorporated into the remaining two legal services delivery options. **Given these shortcomings, the Task Force ultimately decided not to recommend further investigation of the administrative/regulatory option.**

Designated Paralegal/British Columbia (BC) Model

The designated paralegal, or BC Model, in its most basic form, allows a lawyer to employ a skilled “designated paralegal” into his/her legal practice to provide to the extent the lawyer deems proper, legal advice as well as representation of the client in court. The lawyer remains responsible for the activities of the designated paralegal in the same way Minnesota lawyers remain legally and ethically responsible for those that work for them and their law firms. The expansion of services that a “paralegal” may provide to clients under the supervision of an attorney was envisioned in British Columbia as a partial solution to the access to justice gap found prevalent in the community.

Background

It bears noting that, in developing this model, British Columbia lawyers struggled with the very same issues the Minnesota State Bar Association grapples with in how to serve the unmet legal needs of those in poverty as well as those that may not be considered below the poverty line but nonetheless cannot afford typical lawyer fees. They wrestled with the same issues surrounding the fear of inferior legal services, the prediction that such non-lawyers would take work away from new law school graduates, and that the lower fees charged by non-lawyers would prevent new lawyers from staying competitive (because of higher law school debt). Recognizing the government-funded legal aid system provided needed assistance to the poor, it also found the system was severely underfunded and incapable of meeting the needs the lawyers recognized as a systemic problem.

In reviewing possible avenues for improving access to justice, the BC Law Society (the equivalent of our State Bar, although it is mandatory) determined that granting paralegals the ability to provide legal advice was at least a partial solution to the access to justice problem. The BC law society looked to the Ontario law society for guidance as Ontario, in 2007, became a leader in licensing and regulating paralegals. A five-year report to the Ontario Attorney General on the licensing program found “by an objective measure . . . it has been a remarkable success.”⁸ The BC Model,

⁷ The court’s self-help center staff will review completed forms for self-represented litigants using the I-CAN system. See <http://www.mncourts.gov/Help-Topics/Divorce/i-can-help.aspx>. I-CAN is available for divorce and fee waiver forms. Law libraries that have professional staff (Hennepin, Ramsey, Anoka, Dakota, Olmsted, Stearns, St. Louis, and Wright) can assist self-represented litigants in locating court forms, and also sample forms when fill-in-the-blank forms do not exist.

⁸ David Morris, Report to the Attorney General of Ontario: Report of Five-Year Review of Paralegal Regulation in Ontario (2012, Queens Printer for Ontario), which can be found at: https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/paralegal_review/. In February 2017, a former justice of the Ontario Supreme Court issued her report on improving access to legal services for low income people in the province and concluded there should be expanded use of paralegals in family law proceedings. See

unlike the Ontario program, requires the assessment by a lawyer of the skills of the paralegal to be made before a paralegal can become a designated paralegal. The BC Model does not require a minimum level of education as it relies entirely upon the judgment of the lawyer who has determined if a paralegal qualifies as a designated paralegal.

In British Columbia, the practice of law is defined by the Legal Profession Act. Like Minnesota, the “Practice of Law” was defined to include most services traditionally provided by lawyers such as appearing on behalf of clients in court or administrative hearings, giving legal advice, drafting legal documents, and negotiating and representing clients in mediations and arbitrations. The law allows a person acting under the supervision of a lawyer (i.e. a paralegal) to provide certain services to clients without violating the Act.

In June 2012, the BC law society approved a change in their Code of Profession Conduct, adopting the concept of a “designated paralegal” who would have the necessary skills and experience such that under a lawyer’s supervision, could perform tasks not previously permitted for paralegals including,

- Giving legal advice to clients
- Giving and receiving undertakings; and
- Representing clients before a court or tribunal (administrative court) as permitted by the court or tribunal

In this program, designated paralegals could manage a file, provide advice to a client and otherwise provide the similar service to the client that a lawyer may provide, with the supervising attorney monitoring the work and the advice provided. The BC courts were slow to accept paralegals in the court room causing some confusion as to when and where a designated paralegal may appear. Very few courts allowed designated paralegals to appear in their court rooms but very few designated paralegals attempted to appear in court. According to conversations with the staff attorney for the BC Law Society, the tribunal judges (administrative forum) have indicated recently a willingness to allow designated paralegals to appear in their courtrooms. As such access to tribunals is relatively new, there is no data on how this is working. Given the success of the program with lawyers and law firms, the law society’s next step is to change the Legal Profession Act to allow designated paralegals to practice law in limited areas of law and in a limited scope, patterned after the Washington State model (see the following section).

Explanation of BC Model

The BC Model restricts a lawyer to the supervision of just two designated paralegals. It does not require a certain level of education or experience but requires a lawyer to implement “Best Practices for Supervising Paralegals” and “Best Practices for Training Paralegals.” Best practices for supervising designated paralegals, set forth in Appendix E of the BC Code of Professional Conduct, include the following:

<https://www.thestar.com/news/gta/2017/03/06/judges-report-urges-ontario-to-let-paralegals-appear-in-family-court.html>.

1. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:

- (a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?
- (b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?
- (c) How complex is the matter being delegated?
- (d) What is the risk of harm to the client with respect to the matter being delegated?

2. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

- (a) Train the paralegal as if he or she were training an articulated student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;
- (b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;
- (c) Gradually increasing the paralegal's responsibilities;
- (d) A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:
 - (i) testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;
 - (ii) engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;
 - (iii) ensuring the paralegal follows best practices regarding client communication and file management.

3. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

4. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.

5. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training designated paralegals include the following:

1. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

2. Review the guidelines for supervising articulated students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.
3. Facilitate continuing legal education for the paralegal.
4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.
5. Have their paralegals “junior” the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal’s training.
6. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

Recommendations

A majority of the Task Force recommends adoption of a model based significantly upon the British Columbia Model where specifically trained or experienced paralegals are provided additional responsibilities, including some traditional legal responsibilities, to serve clients at a reduced cost. The subcommittee recommended changing the “designated paralegal” name to “Legal Practitioner.” The model we propose would continue to require that an attorney supervise all activities performed by the Legal Practitioner, but the level of supervision would be tailored to the level of experience. We suggest the following framework:

Education Qualifications and/or Years of Experience

Because lawyers would remain responsible for all activities of the Legal Practitioner, Task Force members believe the Legal Practitioner must possess sufficient education and experience to meet the lawyer’s legal and ethical requirements.⁹ Allowing experienced paralegals and legal assistants to assume the role of a Legal Practitioner would likely provide hundreds of individuals that could immediately begin service. However, to protect the public and to ensure this new legal position has credibility with the public and within the legal profession, the Task Force recommends at least a two-year college degree be required that would include a certain number of credits to be applied to a specific focus area in a paralegal-like training program. The Task Force found it particularly important that some amount of educational training should be required in the particular area of law that the designated paralegal proposes to practice within.¹⁰ The Legal Practitioner designation would apply to specific areas of law.

Number of Designated Paralegals a Lawyer May Supervise & Malpractice Insurance

The BC Model limits attorneys to two designated paralegals for each lawyer. The Task Force believes this may be too restrictive and recommends increasing that number to three. In addition,

⁹ Certain individuals who have many years of experience as a legal assistant or paralegal, who many not otherwise meet the educational qualifications, could also apply for the designation.

¹⁰ No new programming is deemed necessary as there are many options for obtaining paralegal/legal assistant training in Minnesota. Programs have been certified by the American Bar Association and/or the American Association for Paralegal Education.

the Task Force recommends that only currently licensed lawyers with malpractice insurance should be able to employ, engage or otherwise use Legal Practitioners within their law practice.¹¹

Areas of Practice & Court Approval

The Task Force recommends that court approval be obtained before any Legal Practitioner may appear in court in a legal proceeding. In addition, the Task Force discussed the following areas of law that may present opportunities for including Legal Practitioners within their practice. (These could be the subject of a limited time pilot if desired by the court.):

- Administrative Hearings (Unemployment Compensation, Medical Assistance and perhaps others)
 - Surveys from earlier subcommittees identified unemployment compensation issues as a frequent issue and one that may be ripe for a non-lawyer to assist.
- Landlord/Tenant Issues – Housing Court
 - Housing Court matters routinely entered Task Force meetings as an area that may properly be managed by a non-lawyer. This proposal would keep a lawyer in the mix but allow for much more front-end form driven issues to be advanced by a Legal Practitioner.
 - Non-lawyers are already permitted in Housing Court so this is not a big change.
- Debtor/Creditor Law – Civil Court
 - Individuals in low income groups are likely to have debt collection issues. This issue was identified often in the earlier subcommittee questionnaire results as an area of law often in need of legal assistance.
- Family Law – Civil Court
 - Surveys from the earlier subcommittees identified family law as an area of highest unmet needs of those unable to afford legal services.
 - Attorneys who practice family law indicate that it is too complicated to turn over decision making to a non-lawyer but such concerns may be alleviated in this particular model by requiring that a lawyer remain involved and ethically and legally responsible for all results.

¹¹ Some members were concerned that the BC Model would not significantly increase legal services to the poor. Some legal services programs already use legal assistants to provide services under attorney supervision. Given the below-market compensation for legal services attorneys, some members thought there would not be much incentive for programs to hire legal assistants for a little less than attorneys who could be used more broadly. In addition, some members also were concerned that, without restrictions on the income levels of clients served by legal assistants, law firms with high volume practices might hire more legal assistants at the expense of new attorneys. Examples could include plaintiffs in housing court matters and debt collection actions.

- Immigration Law
 - Non-lawyers are already permitted to appear in certain immigration matters so this is not a big change.
 - Certain routine tasks can be delegated from a supervising attorney to a Legal Practitioner, opening the doors for lawyers to serve more clients.
- Estate Planning and Corporate Work
 - Routine estate planning is already very form driven. This is an area where a seasoned Legal Practitioner could provide valuable legal services.

Scope of Legal Practice

The Task Force recommends that the scope of legal practice for a Legal Practitioner should, at a minimum, include the ability to provide legal advice to clients, meet with them independently, assist with legal forms and legal documents and otherwise manage an entire file/case. In addition to those responsibilities, with court permission, a Legal Practitioner may represent clients in court. Such a scope of practice would likely require a change to the UPL statute and approval by the Minnesota Supreme Court.

Limited License Legal Technicians (LLLT) (Washington Model)

In 2012, the Washington Supreme Court created a new category of licensed practitioners to meet what it believed to be continuing concerns about access to legal services for low and modest income people. Since the program was created, a number of states have studied the Washington experience in an effort to determine whether their courts should institute such a program.¹² The Task Force reviewed these reports, as well as feedback from the various statewide listening sessions, as part of its work.

Washington Model Details

The Washington LLT was discussed in extensive detail by members of the MSBA's Task Force on the Future of the Legal Profession. *See* Appendix F to the Report and Recommendations of the

¹² California Bar Civil Justice Strategies Task Force Report & Recommendations, <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000013003.pdf>; Colorado Subcommittee Formed By State Supreme Court, <http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm>; Florida State Bar's Vision 2016 Commission, <http://www.floridabar.org/vision2016>; Report and Recommendation of Vision 2016 Access to Justice Subcommittee, [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/BBF30D5952EF9F8D85257E890068B197/\\$FILE/Vision%202016%20Access%20to%20Legal%20Services%20Report%20and%20Rec.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/BBF30D5952EF9F8D85257E890068B197/$FILE/Vision%202016%20Access%20to%20Legal%20Services%20Report%20and%20Rec.pdf?OpenElement); Illinois Task Force, <http://www.isba.org/ibj/2015/09/abcsllts>; Final Report of OSBA Legal Technicians Task Force (January 2015), http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf; Utah Report & Recommendations of Supreme Court Task Force to Examine Limited Legal Licensing (November 2015), http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf.

MSBA’s Task Force on the Future of the Legal Profession. The relevant portions of that document are excerpted below:

In June 2012, the Supreme Court of Washington issued an order for a new Admission to Practice Rule (APR) 28 entitled “Limited Practice Rule for Limited License Legal Technicians.” The Court’s twelve page order states, “Our adversarial civil legal system is complex. It is unaffordable not only to low income people but...moderate income people as well.”¹³

In setting forth the rationale for its groundbreaking order, the Washington Supreme Court detailed how that state court system had attempted to fashion a number of strategies that are not dissimilar to Minnesota’s system: courthouse facilitators, court self-help centers, neighborhood legal clinics, pro bono programs and a statewide legal aid self-help center.¹⁴ The Court noted, however, these resources have limitations, including that “many litigants require additional one-on-one help to understand their specific legal rights and prerogatives and make decisions that are best for them under the circumstances.”¹⁵

The Court recognized that many self-represented litigants are “at a substantial legal disadvantage and, for increasing numbers, force(d) to seek help from unregulated, untrained, unsupervised ‘practitioners.’ We have a duty to ensure that the public can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.”¹⁶

Importantly, the Court noted that establishing a new category of limited legal provider would not aid family law litigants with complex, contested matters. On the other hand, “the authorization for limited license legal technicians to engage in certain limited legal and law related activities holds promise to help reduce the level of unmet need for low and moderate income people who have relatively uncomplicated family related legal problems...”¹⁷

The Court also addressed concerns that creating a new class of licensed professionals would threaten the practicing family law bar, stating, “(I)t is important to push past the rhetoric and focus on what limited license legal technicians will be allowed to do, and what they cannot do under the rule.” In particular, the new class would be limited to simple family law matters where “few private attorneys make a living.”¹⁸

¹³ In re the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, Wash. No. 25700-A-1005, 4 (Jun. 14, 2012), available at http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/LLLT%20Board/Legal%20Technician%20Rule.ashx.

¹⁴ *Id.* at 5.

¹⁵ *Id.*

¹⁶ *Id.* at 5–6.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 6–7.

While admitting that adopting APR 28 “will not close the Justice Gap,” including that for moderate income persons, the Court reasoned the new rule was a “limited, narrowly tailored strategy designed to expand the provision of legal and law related services to (persons) in need of individualized legal assistance with non-complex legal problems.”¹⁹

Subpart (A) of APR 28 states in part: “The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law.”

The Rule establishes a Limited License Legal Technician Board comprised of lawyers and non-lawyers which will recommend practice areas and license requirements on a go-forward basis and which will oversee administration of a licensing examination. In particular, the Rule requires that applicants:

- Be 18 years or older.
- “Be of good moral character and demonstrate fitness to practice as a...(LLLT)”
- Have an associate level degree or higher.
- Have earned 45 credit hours in a core curriculum of paralegal studies with the curriculum also being developed in conjunction with an ABA-approved law school.
- Each applicant must take an oath similar to an attorney’s oath.

Licensing requirements for Rule 28 include that successful applicants must:

- Pass a written examination.
- Acquire 3,000 hours of “substantive law-related work experience supervised by a licensed lawyer.” These 3,000 hours can precede the licensure (in other words, it appears that an experienced paralegal can apply to be a LLLT and be licensed upon passing the written examination).
- Carry malpractice insurance.

Attend annual CLE courses.

Rule 28 is very specific in terms of the scope of practice in which a Limited License Legal Technician can engage. In particular, under the rule, a LLT can:

- Perform usual paralegal duties.

¹⁹ *Id.* at 11.

- “Perform legal research and draft letters and pleadings documents beyond (customary paralegal duties), if the work is reviewed and approved by a Washington lawyer.”
- “Advise a client as to other documents that may be necessary to the client’s case and explain how such documents or pleadings may affect the client’s case.”
- All LLLTs are required to enter into a written contract “prior to the performance of the services for a fee...”
- LLLTs cannot appear in court or at administrative proceedings or engage in mediations or other forms of alternative dispute resolution (including negotiating settlements or agreements) on behalf of a client.

Under the Rule, an LLLT’s practice is restricted to “Domestic Relations” which is defined narrowly and confined to child support modification; divorces; parenting plans and other less complicated family law matters. Rule 28 specifically prohibits LLLTs from advising on the division of real estate or retirement assets or on bankruptcy or anti-harassment orders.

Other notable features of Rule 28 include that LLLTs are to be “held to the standard of care of a Washington lawyer.” Additionally, the Rule mandates creating a LLLT IOLTA program “for the proper handling of funds coming into the possession of the Limited License Legal Technician.” Moreover, Washington state law relative to the attorney-client privilege and law of a lawyer’s fiduciary responsibility to the client “shall apply to the Limited License Legal Technician-client relationship to the same extent as (they) would apply to an attorney-client relationship.”

Representatives of the Washington State Bar Association and Washington Supreme Court LLLT board presented to the Task Force at its first meeting in February 2016. At that time, there were nine LLLTs who were practicing, four independently of a law practice. (Approximately 100-200 people are currently taking the educational prerequisites.) The total cost for completion of the educational components of the program was approximately \$15,000 and LLLTs were charging between \$60-90/hour for their services. The Washington State Bar is paying for the expenses of the licensing and oversight process for the first five years of the program with the goal for the program to be self-supporting by licensing and exam fees.

Recommendations

A majority of the Task Force recommends the MSBA refine a proposal to be submitted to the Minnesota Supreme Court for the creation of an LLLT-type practitioner to expand access to legal assistance, particularly to low and modest income clients across the state with a focus in rural areas. Task Force members are aware of concerns about the LLLT model – the costs involved in setting up a separate regulatory structure, the expense (albeit less than for a JD) of satisfying the requirements for licensure, the potential for competition with lawyers (in particular, younger lawyers and lawyers in some rural communities) and the belief that clients who work with LLLT-type practitioners will receive second-class service. All of these concerns,

however significant, must be balanced against the reality that significant segments of the community lack access to any legal assistance, particularly in poor and rural communities.²⁰ Moreover, by providing a pathway for licensure, an LLLT-type program can begin to mitigate the appeal of non-regulated providers who engage in the unauthorized practice of law.²¹

The Task Force suggests the following parameters for an LLLT-type program:

Education/Experience Requirements

The Task Force suggests a minimum associate level degree with a paralegal certificate and a minimum of 2 years' paralegal experience. Paralegals lacking an associate degree could substitute a certain number of years of service. Education cost is a critical factor in creating the new class of legal professional; if it is too expensive, the program will falter and the population we seek to serve will continue to be without legal assistance. Additionally, given that many paralegals have specialized knowledge in a given legal field (and often know as much, if not more, than their supervising attorney), the associate degree requirement could be waived or relaxed.

Suggested Testing and Licensing Requirements

The Task Force suggests that all candidates should be required to pass a character/fitness test and background investigation. Additionally, they would sit for an examination covering the legal basics in the areas in which practitioners seek to practice (see below). Following exam passage, practitioners would take an oath similar to an attorney's oath and complete continuing legal education classes in the subject area of practice, including an ethics component. For practitioners who open independent offices (see below), they would be required to carry malpractice insurance and comply with IOLTA rules.²²

Since these practitioners will be considered legal professionals, they should be subject to various professionalism requirements. Additionally, these requirements will act to assure competency and reassure the public that they can confidently rely on the work of this new class of practitioners.²³

²⁰ This model would also allow social service agencies to provide legal services to some of their clients on-site without having to refer them to already overburdened legal services and volunteer attorney programs.

²¹ The Committee notes that there are reports of current illegal advocate practices representing landlords in eviction cases and parties in family law matters. The Committee hopes that by regulating stand-alone practice, illegal practitioners might be prosecuted or sanctioned.

²² It bears noting that current Minnesota rules do not require licensed attorneys to carry malpractice insurance, although they must disclose whether or not they do as part of the annual attorney registration process.

²³ Some members believed that the administrative costs of the Washington LLLT system weighed against supporting the recommendation. In the first two years since the Washington program has been operational, nineteen LLLT licenses have been issued. It is unknown how many years it would take for the LLLT system to be self-supported through license fees in the same way that the attorney license system is funded. That means that the resources necessary to create a new regulatory structure for LLLTs would have to come from somewhere else. In Washington, the resources to fund LLLT administration have come from their attorney licensing body itself. Some ALM task force members felt that in Minnesota any increase in access to justice spending would be better directed to civil legal aid rather than to the creation of an LLLT infrastructure and to ongoing regulation.

Independent Practitioners

Practitioners may be able to practice independent of attorney supervision and operate “stand alone” businesses/practices. In certain cases, usually based upon practice areas, some form of attorney oversight might be helpful. Nevertheless, to enable practitioners to serve marginalized or more remote geographic communities, the Task Force determined that allowing these practitioners to work independently would best serve the goal of providing access to justice to the targeted population. Questions about competency or experience levels (a primary reason for “tethering” to attorneys) could be dealt with through the education/credentialing/examination process and requirements.²⁴

Legal Advice and Practice Areas

Practitioners would be able to give legal advice in specific areas of law where the unmet legal needs is most prevalent, such as estate planning, family law, corporate representation, conciliation court matters, unemployment insurance, domestic abuse issues, landlord-tenant, social security benefits and immigration. As with Washington State, there should be an effort to approve the program with one or two legal areas before expanding to additional areas of practice. This would allow the effectiveness of the program to be assessed before program expansion.²⁵

Court Appearance

Practitioners could be permitted to appear in court on a limited basis relative to clearly defined legal matters or controversies with court approval and only for clients who meet certain income thresholds similar to Legal Aid eligibility.

CONCLUSION

The Bench and Bar continue to struggle with the need to provide legal services to low and moderate income residents of Minnesota. History has demonstrated those needs will not dissipate over time and with the increasing economic challenges facing lawyers, it seems unlikely that lawyers alone can meet this need. The Bar should suggest changes the Court and Legislature to meet this need.

The two alternatives suggested in this report – LLLTs and Legal Practitioners – offer two approaches toward meeting that need. Each has its strengths and challenges. But, the failure to act ensures that people of low and moderate income continue to confront a challenging and often difficult legal system that is necessary to resolve the legal issues and disputes in their lives. While some additional work is necessary to flesh out details, draft statutory and rule changes, each of

²⁴ Stand-alone advocate practices have existed in the past in Minnesota. The City of Minneapolis had such a practice, with the Minneapolis Housing Service. At first, several housing advocates were supervised by an on-site attorney. Later, on-site supervision ended, and the City contracted with a legal services program to provide training to the advocates and take calls from them for advice. The service could have been improved by the education and certification requirements of the Washington Model.

²⁵ If the practice areas were limited in scope to underserved areas, LLLTs would not compete with attorneys, new or old. Some members commented that an additional protection against competition with attorneys would be to put limitations on the income levels of clients served by practitioners.

these proposals presents an opportunity for Minnesota lawyers to take a significant step towards fulfilling one of their core missions – “achieving effective and equal justice for all.”

Appendix A

MSBA Alternative Legal Models Task Force Roster

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Steve Marchese

Nancy Mischel

Appendix B
Selected Resources

Reports and Studies

ABA Future of the Legal Profession Task Force (and related resources)

http://www.americanbar.org/groups/bar_services/resources/resourcepages/future.html

Supporting Justice III: A Report on the Pro Bono Work of American Lawyers (2013)

http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf

MSBA Civil Gideon Task Force Report (2011)

<http://www.mnbar.org/docs/default-source/default-document-library/access-to-justice-assessing-implementation-of-civil-gideon-in-minnesota.pdf?sfvrsn=0>

Minnesota Client Access and Barriers Study (2011)

http://www.mncourts.gov/Documents/0/Public/administration/Final_MN-CABS_Study_September_2011.pdf

The Importance of Representation in Eviction Cases and Homelessness Prevention (Boston Bar Association, 2012)

<http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>

British Columbia Designated Paralegal Materials

Designated Paralegal Survey (2016)

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/DesignatedParalegalSurvey.pdf>

Report of the Legal Services Regulatory Framework Task Force, The Law Society of British Columbia (December 2014)

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LegalServicesRegulatoryFrameworkTF.pdf>

Final Report of the Legal Service Providers Task Force, The Law Society of British Columbia (December 2013)

https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LegalServicesProvidersTF_final_2013.pdf

Report of the Specialized Legal Assistants Study Committee (February 1994)

<http://www.mncourts.gov/mncourtsgov/media/AdministrativeFileArchive/Spec%20Legal%20Assistants%20Study%20Cmte%20C2-92-667/1994-03-08-Spec-Legal-Assist-Cmte-Rpt.pdf>

Report to Benchers on Delegation and Qualifications of Paralegals (April 2006)
https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/Paralegal-delegation_06-04.pdf

Washington State LLLT Program Materials

Limited License Legal Technician Program: The History and the Future of the Program (February 2016)
<http://www.mnbar.org/docs/default-source/policy/lllt-program-mn-task-force-february-2016-pdf.pdf?sfvrsn=0>

In re the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, Wash. No. 25700-A-1005, 4 (June 2012)
http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/LLLT%20Board/Legal%20Technician%20Rule.ashx.

Task Force Reports from Other States Reviewing Washington State LLLT Program

California

California Bar Civil Justice Strategies Task Force Report & Recommendations
<http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000013003.pdf>

Colorado

Subcommittee formed by state supreme court
<http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm>

Florida

State Bar's Vision 2016 commission
<http://www.floridabar.org/vision2016>

Report and recommendation of Vision 2016 Access to Justice Subcommittee –
[http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/BBF30D5952EF9F8D85257E890068B197/\\$FILE/Vision%202016%20Access%20to%20Legal%20Services%20Report%20and%20Rec.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/BBF30D5952EF9F8D85257E890068B197/$FILE/Vision%202016%20Access%20to%20Legal%20Services%20Report%20and%20Rec.pdf?OpenElement)

Illinois

Task force appointed
<http://www.isba.org/ibj/2015/09/abcslllts>

Oregon

Final report of OSBA Legal Technicians Task Force (January 2015)

http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf

Utah

Report & Recommendations of Supreme Court Task Force to Examine Limited Legal Licensing (November 2015)

http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf

Administrative/Regulatory State Initiatives

Arizona

Legal Document Preparers (licensed by Arizona Supreme Court)

<https://www.azcourts.gov/cld/Legal-Document-Preparers>

California

Legal Document Assistants (created by statute – formerly independent paralegals)

<http://calda.org/>

New York

Court Navigator program established in NYC Housing Court in the Bronx and Brooklyn

<http://www.nycourts.gov/COURTS/nyc/housing/rap.shtml>

Appendix C

Handout for Fall 2016 Listening Sessions

The Alternative Legal Models Task Force is co-chaired by Susan Wiens of Minneapolis and Ken White of Mankato and consists of 22 members, appointed by the MSBA President.

The Task Force's charge is to examine the advisability of supplementing traditional lawyer representation to increase access to justice for those who cannot afford a lawyer. The task force has been reviewing a select number of potential models for increasing access through the use of non-lawyers, including enhanced use of paralegals and an alternative non-lawyer licensure model.

Since February of this year, the Task Force has reviewed an extensive amount of information from other jurisdictions, as well as recent report on the future of the legal profession from the ABA. The Task Force has identified the pros and cons of various options such as:

- Washington State Limited License Legal Technician program (LLLT) (the first of its kind in the US) which provides a process for non-lawyers to be licensed to provide limited legal advice in certain narrowly-defined legal areas (currently only family law). LLLTs must meet specific educational, training and testing requirements and are individually subject to the jurisdiction and oversight of the Washington state bar.
- Enhanced use of paralegals in the practice of law and delivery of legal services, as recently piloted in British Columbia. This model, in its most basic form, allows a lawyer to employ a skilled "designated paralegal" in his/her legal practice to provide, to the extent the lawyer deems proper, legal advice and representation of the client in court. The lawyer remains responsible for the activities of the designated paralegal in the same way Minnesota lawyers remain legally and ethically responsible for those that work for them and their law firms. There is no separate licensure for the paralegal beyond the supervising attorney.
- Regulated non-lawyer provider for limited tasks, as permitted by statute. This would include registered document preparers, as permitted in Arizona, California and Nevada, who may assist with the completion of forms without providing legal advice.

The Task Force co-chairs are presenting information about these options to solicit feedback from the legal profession in listening sessions throughout Minnesota. The Task Force plans a more detailed report on its work for the December 2016 Assembly meeting with the goal of presenting any formal recommendations at the April 2017 Assembly meeting

	<i>Limited Scope Legal Practitioner</i>	<i>Designated Paralegal</i>	<i>Regulated Provider</i>
<i>Requirements?</i>	Yes - AA degree, paralegal certificate, 2 years exp.	Suggested – AA degree, paralegal certificate, experience	Depending on statute
<i>Licensure/Oversight?</i>	Yes. State court license, character & fitness, examination, direct PR oversight	None. Oversight by attorney.	Registration with SOS office or state bar
<i>Practice Areas?</i>	Limited areas w/demonstrated legal need (e.g., conciliation court, landlord/tenant, domestic violence, family)	Limited. Requires exception to unauthorized practice of law statute (e.g., admin hearings, landlord /tenant, family law, debtor/creditor)	Limited by statute (e.g., document preparation only)
<i>Court Representation?</i>	Yes, limited by areas of specific service	Yes, by designation of supervising attorney	No
<i>Supervision by Attorney?</i>	Not required	Yes, up to a maximum number of paralegals	Yes, depending on statute
<i>Stand Alone?</i>	Yes, may affiliate with law practice or operate independently. Malpractice for stand alone.	No	Maybe, depending on statute
<i>Jurisdictions?</i>	Washington State (LLLT)	British Columbia (designated paralegal), Ontario (licensed paralegal)	Arizona, California, Nevada (licensed document preparer)

COMPREHENSIVE PARALEGAL CERTIFICATION COMPARISON**Minnesota Certified Paralegal (MnCP)***Issued by: Minnesota Paralegal Association*

Eligibility	<ul style="list-style-type: none"> • The applicant has obtained an associate's degree or its equivalent in paralegal studies from an ABA approved or institutionally accredited educational institution and has 4 years of substantive paralegal experience. • The applicant has obtained a baccalaureate degree in paralegal studies from an ABA approved or institutionally accredited educational institution and has 2 years of substantive paralegal experience. • The applicant has received a baccalaureate degree in any discipline from an accredited educational institution, has obtained a post-baccalaureate certificate in paralegal studies from an ABA approved or institutionally accredited educational institution, and has 2 years of substantive paralegal experience. • The applicant has received a baccalaureate degree in any discipline from an institutionally accredited educational institution, and has 4 years of substantive paralegal experience. • The applicant is a PACE Registered Paralegal. • The applicant is a CORE Registered Paralegal or a Certified Paralegal (through the National Association of Legal Assistants) and has 4 years of substantive paralegal experience. • The applicant has received a high school diploma or its equivalent, has a minimum of 10 years of substantive paralegal experience, and has completed a minimum of 10 CLE credits in the two years prior to application. • The applicant has graduated from an accredited law school and has not been disbarred or suspended from the practice of law by any jurisdiction and has a minimum of 2 year of substantive paralegal experience immediately preceding their application.
Exam	No exam.
CLE	10 credit hours, including 1 ethics credit, every two years
Fees	Application: \$50 members / \$100 non-members Renewal: \$30 members / \$60 non-members
More Information	https://www.mnparalegals.org/regulation/Minnesota-Certified-Paralegal

PACE® Registered Paralegal (RP®)

Issued by: National Federation of Paralegal Associations

<p>Eligibility</p>	<ul style="list-style-type: none"> • A bachelor’s degree in paralegal studies from an institutionally accredited or ABA-approved school and at least 2 years of substantive paralegal experience; OR • A bachelor’s degree in any course of study obtained from an institutionally accredited school and three (3) years of substantive paralegal experience; OR • An associate degree in paralegal studies obtained from an institutionally accredited school, and/or ABA approved paralegal education program; and six (6) years substantive paralegal experience; OR • An associate’s degree in any course of study obtained from an institutionally accredited school or ABA-approved program and at least 7 years of substantive paralegal experience; OR • An associate’s degree in any course of study obtained from an institutionally accredited school or ABA-approved program, successful completion of the PCEE, and 2 consecutive renewals of the CRP credential; OR • A member of the active duty, retired, former military, or the reserve component of any branch of the US Armed Forces, qualified in a military operation specialty with the rank of at least an E6 in a paralegal rate as a Staff Sergeant (Army and Marines), Petty Officer First Class (Navy), Technical Sergeant (Air Force), or higher as a supervisory paralegal within that branch of service and 12 hours of continuing legal education (“CLE”), including 1 CLE hour of ethics, within 2 years preceding the Application; OR • Four (4) years substantive paralegal experience on or before December 31, 2000.
<p>Test</p>	<p>Paralegal Advanced Competency Exam</p> <ul style="list-style-type: none"> • Execution of Client Legal Matters: legal technology, databases, e-filing, stock databases, stock certificates, closing checklists, ordering corporate documents, SEC filings, transaction closings, data rooms, conflict checks, docketing, trust accounting, organization of electronic files, engagement letters, data preservation, legal holds, minute books, scheduling, UCCs, closing funds transfers, background and criminal history checks, ABA and NFPA ethical guidelines. • Development of Client Matters: interviewing clients, electronically stored information, disseminate information, case status reports, execution of documents, corporate consents, capitalization tables, data classification, real property records, exhibit organization, conflict checks, pleadings preparation, surveys, title searches, lien searches, jurisdiction determination, payoffs, lien releases, obtain court records, respond to document requests, transfer of files, subpoenas, witness preparation, ADR preparation, expert preparation, client financial records • Factual Legal Research and Writing: locating witnesses, jury research, authorities, Fed. Rules of Civil Procedure, Fed. Rules of Evidence, review changes to charter documents, drafting of pleadings, correspondence, discovery, summarization of legal research, factual summaries, deposition summaries, declarations, judgments, attorneys fees, assignment of judgment,

	<p>corporate document drafting and management, UCCs, due diligence searches, security agreements, real estate documents, contract review, Uniform Probate Code, Uniform Trust Code</p> <ul style="list-style-type: none"> • Office Administration: ethical rule application, technology, billables, hour tracking, case file management, document management, docketing and deadlines, workflows, confidentiality, trial technology, conflicts checks, workload prioritization, managing administrative assistances, vendor relations • Technology: litigation document management, time management, research, software • Ethics: conflict checks, ethical walls, confidentiality, attorney-client privilege, work product, document retention, confidentiality agreements, billing, technology, UPL • Substantive law: bankruptcy (chapters 7-9, 11, 12, and 13), family law (divorces, annulments, custody agreements, pre and post nuptial agreements, property division, spousal support/alimony), Contracts (offer, acceptance, consideration, elements, UCC), corporate (structures, partnerships, LLCs, DBAs, non-profits, tax), probate and estate planning (types and forms of wills and trusts, probate administration, probate versus non-probate, solvent versus insolvent administration, community property, rights of survivorship, income, estate tax issues)
CLE	12 credit hours, including 1 ethics credit, every two years
Fees	<p>Application: \$325 members / \$350 non-members</p> <p>Renewal: \$50 members / \$75 non-members</p>
More information	https://www.paralegals.org/14a/pages/index.cfm?pageid=3298

CORE™ Registered Paralegal (CRP®)

Issued by: *National Federation of Paralegal Associations*

Eligibility	<ul style="list-style-type: none"> • A bachelor's degree in any subject, a paralegal certificate, no experience or continuing legal education (CLE); OR • A bachelor's degree in paralegal studies, no experience or CLE; OR • A bachelor's degree in any subject, no paralegal certificate, 6 months of experience and 1 hour of ethics taken in the year preceding the exam application date; OR • An associate's degree in paralegal studies, no experience or CLE; OR • An associate's degree in any subject, a paralegal certificate, no experience or CLE; OR • An associate's degree in any subject, no paralegal certificate, 1 year of experience and 6 hours of CLE, including 1 hour of ethics taken in the year preceding the exam application date; OR • Active duty, retired or former military personnel qualified in a military operation specialty as a paralegal and 1.0 hour of Ethics CLE within the year preceding the exam application; OR
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	<ul style="list-style-type: none"> • Candidates who are within two months of graduating and registered for the PCC Exam by a Director of a paralegal studies program participating in the PCCE Assurance of Learning (AoL) Program at the Partner level; OR • A paralegal certificate from a program that meets or exceeds the requirements set forth in NFPA's Short Term Paralegal Program Position Statement, 1 year of experience and 6 hours of CLE, including 1 hour of ethics taken in the year preceding the exam application date; OR • A high school diploma or GED, 5 years of experience and 12 hours of CLE, including 1 hour of ethics taken in the 2 years preceding the exam application date.
<p>Test</p>	<p>Paralegal CORE Competency Exam</p> <ul style="list-style-type: none"> • Paralegal Profession (52%) <ul style="list-style-type: none"> ○ Ethics and Professional Practice: Advertising and solicitation, confidentiality, conflicts of interest, communication of paralegal role to clients and other legal professionals, fees and client funds, fiduciary responsibility, NFPA code of ethics, privilege, rules of professional conduct, unauthorized practice of law ○ US Legal System: Terminology related to legal and court systems, administrative law, branches of government, case law, codes, constitutional law, court personnel, court rules, court systems, criminal versus civil law ○ Legal research: primary sources (mandatory and persuasive), secondary sources, case law, statutory law, computer-assisted legal research (Lexis, Westlaw, free), US and State reporters, state codified laws and rules, digests, legislative records, administrative publications, law review and legal research ○ Legal writing and critical analysis: written communication basics (grammar, punctuation, spelling, formatting, citations), critical analysis basics (audience, issues, rules, legal authorities, IRAC, application to fact patterns), legal writing products (types of pleadings, persuasive writing, discovery, memoranda, case briefing, settlements, forms, client communication, appellate briefing) ○ Communication: effective communication techniques, electronic communications, interviewing and evaluating responses, written correspondence ○ Law office management and legal technology: case management systems, conflict checks, database management, docketing, calendar control, e-discovery, litigation support, fee arrangements, timekeeping and billing ○ Civil Litigation: terminology, filing, parties, discovery, document production and control, process service, third party actions, entering and enforcing judgments, appellate process and procedure, trial practice, Federal Rules of Civil Procedure, Federal Rules of Evidence • Substantive Areas of Law (48%) <ul style="list-style-type: none"> ○ Business organizations; terminology, types of entities, formation and dissolution, registering a foreign entity, governance ○ Contracts: terminology, elements, defenses, discharge of obligations, remedies, UCC ○ Criminal: terminology, classifications, defenses, constitutional rights, elements, evidence, procedure, sources of law, appeals, trial practice ○ Estates, wills, and trusts: terminology, guardianship, incapacity, intestate succession, living wills/healthcare proxies/POAs, probate, trusts, wills

	<ul style="list-style-type: none"> o Family: terminology, adoption, spousal support, custody and visitation, child support, asset division, dissolution, prenuptial and postnuptial agreements, paternity, ADR o Real estate: terminology, closing, deeds, easements and covenants, mortgages, promissory notes, foreclosure, landlord-tenant, liens, ownership types, regulations, zoning, rental and leases, surveys, title searches, types of transfers o Torts: terminology, negligence, types of torts, defenses, effects of insurance, remedies, damages, injunctions
Character & Fitness Requirements	<p>Applicants may be disqualified for:</p> <ol style="list-style-type: none"> 1. Conviction of a felony or comparable crime as defined by an individual state that does not have a felony designation; or 2. Currently under suspension, termination, or revocation of a certificate, registration, or license to practice by a professional organization, court, disciplinary board or agency in any jurisdiction.
CLE	8 credit hours, including 1 ethics credit, every two years
Fees	<p>Application: \$215 members / \$250 non-members</p> <p>Renewal: \$35 members / \$50 non-members</p>
More information	https://www.paralegals.org/i4a/pages/index.cfm?pageid=3297

Certified Paralegal (CP®)

Issued by: *National Association of Legal Assistants*

Eligibility	<ul style="list-style-type: none"> • Graduation from or completion of a paralegal program, or currently in the last semester or quarter of the program, that meets one of the criteria listed in sections (a) through (e) below. <ul style="list-style-type: none"> (a) approved by the American Bar Association; or (b) an associate degree program; or (c) a post-baccalaureate certificate program in paralegal studies; or (In addition to the official school transcript, candidate must submit an original letter from the school registrar or program director attesting that the program is a post-baccalaureate certificate program requiring a bachelor's degree as a prerequisite.) (d) a bachelor's degree program in paralegal studies; or (e) a paralegal program which consists of a minimum of 60 semester hours (or equivalent quarter hours) of which at least 15 semester hours (or equivalent quarter hours) are substantive legal courses. <p>(Candidates applying under Category 1(e) may combine college hours from more than one institution. The candidate must have graduated from a paralegal program consisting of a minimum of 15 semester hours (or 22.5 clock hours or 22.5 quarter hours.) Evidence of the minimum hours required under Category 1(e) must be provided with the application form.)</p>
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	<ul style="list-style-type: none"> • A bachelor's degree in any field plus one year of experience as a paralegal or successful completion of at least 15 semester hours (or equivalent quarter hours) of substantive paralegal courses. (Those applying under the provision allowing for additional course work in lieu of the one-year work experience must submit an official school transcript showing completed course work.) • A high school diploma or equivalent plus seven (7) years' experience as a legal assistant/paralegal plus a minimum of twenty (20) hours of continuing legal education completed within a two-year period prior to application for the examination. (Evidence of continuing legal education credit is documented by the attorney/employer attestation that must be signed as part of the application form or by submitting certificate of completions of CLE taken.)
Exam	<ul style="list-style-type: none"> • Knowledge Exam <ul style="list-style-type: none"> ○ United States Legal System: sources of law, judicial system, remedies, administrative law ○ Civil litigation: jurisdiction, Federal Rules of Civil Procedure ○ Contracts: formation, rights, and duties; enforcement and defenses ○ Corporate/Commercial: business organizations, rights and responsibilities, transactions ○ Criminal law and procedure ○ Estate planning and probate: estates and trusts, wills ○ Real estate and property: property rights and ownership, transactions ○ Torts: intentional torts, negligence, strict liability ○ Professional and Ethical Responsibility: ABA Model Rules of Prof. Conduct, unauthorized practice of law • Skills Exam <ul style="list-style-type: none"> ○ Writing: grammar, spelling, and punctuation; clarity of expression ○ Critical thinking: reading and comprehension, analysis of information, decision making
Character and fitness	May not be incarcerated or on probation, parole, or other court imposed supervision for a felony offense
CLE	50 CLE hours, including 5 ethics, every five years
Fees	Application: \$250 members / \$275 non-members Renewal: unknown
More Information	https://www.nala.org/certification/certified-paralegal-cp-program

Advanced Certified Paralegal (ACP®)

Issued by: National Association of Legal Assistants

Eligibility	To hold the credential, the paralegal must first hold the CP® credential
Specific Training	<p>20 hour (average) course for ACP certification; may take course without CP® credential. Applicable courses:</p> <ul style="list-style-type: none"> ● Family Law - Adoption and Assisted Reproduction <ul style="list-style-type: none"> ○ Fee: \$250 members / \$300 non-members ● Family Law – Child Custody, Support and Visitation <ul style="list-style-type: none"> ○ Fee: \$250 members / \$300 non-members ● Family Law - Dissolution Case Management <ul style="list-style-type: none"> ○ Fee: \$250 members / \$300 non-members ● Family Law - Division of Property and Spousal Support <ul style="list-style-type: none"> ○ Fee: \$250 members / \$300 non-members <p>If all four courses are completed, ACP in Family Law (generally) is award to Certified Paralegals</p>
Character and fitness	N/A
CLE	Maintain CP® credential
Fees	Above
More Information	https://www.nala.org/certification/certified-paralegals/advanced-paralegal-certification

Accredited Legal Professionals (ALP®)

Issued by: National Association of Legal Secretaries

Eligibility	<ul style="list-style-type: none"> ● Completion of an accredited business/legal course, ● Completion of a NALS Legal Training Course, or ● One year of general office experience.
Exam	<ul style="list-style-type: none"> ● Communication ● Technology, office procedures, and billing

	<ul style="list-style-type: none"> • Ethics and judgment, legal history, the courts, and legal authority
Character and fitness	Revocation for: felony conviction, determination by appropriate authority of UPL, falsification of information on application form, violation of NALS Code of Ethics and Professional Responsibility. Individuals currently serving a prison term are ineligible to sit for the exam.
CLE	50 hours in 5 years
Fees	<ul style="list-style-type: none"> • Full-Time Student – \$75 • NALS member – \$100 • Nonmember –\$125 • Military – \$75 Proctoring Fee- \$45.00 (to provider) \$50 renewal https://www.nals.org/page/2019ALPPG
More Information	

Certified Legal Professionals (CLP®)

Issued by: National Association of Legal Secretaries

Eligibility	<ul style="list-style-type: none"> • Three years of experience in the legal field
Exam	<ul style="list-style-type: none"> • Communication • The Law Firm: Office Procedures and Knowledge • Legal Ethics and Authority • Legal Procedure and Document Preparation
Character and fitness	Revocation for: felony conviction, determination by appropriate authority of UPL, falsification of information on application form, violation of NALS Code of Ethics and Professional Responsibility. Individuals currently serving a prison term are ineligible to sit for the exam.
CLE	75 “points” every five years; earned through post-secondary education, CLE, authoring articles, = online education, earning other certifications, etc.
Fees	<ul style="list-style-type: none"> • NALS member –\$175

	<ul style="list-style-type: none"> • Nonmember –\$225 • Military—\$175 • *Proctoring Fee- \$45.00 Paid directly to service provider
More Information	https://www.nals.org/page/2019CLPPG

Professional Paralegal (PP®)

Issued by: *National Association of Legal Secretaries*

Eligibility	<ul style="list-style-type: none"> • Have a minimum of five years of experience performing paralegal/legal assistant duties. • Hold a bachelor’s degree in paralegal studies. • Have graduated from an ABA-approved Paralegal Program. • Have graduated from another accredited paralegal program which consists of a minimum of 60 semester hours and/or 900 clock hours, of which a minimum of 15 semester hours and/or 225 clock hours were in substantive law. • Hold a bachelor’s degree in an unrelated field and have a minimum of one year of experience performing paralegal/legal assistant duties.
Exam	<ul style="list-style-type: none"> • Advanced Communication: advanced grammar, diction, spelling, punctuation, number usage, capitalization, syntax, memos, letters, interoffice and intraoffice communications, proofreading, legal writing, and legal terminology • Advanced Legal Procedures and Technology: legal research, citations, computer information systems, electronic discovery, legal authority, civil procedure, interviewing, investigations • Advanced Legal Ethics: contact with clients, the public, coworkers and subordinates; other ethical considerations; decision-making and analytical ability; recognition of priorities • Advanced substantive law: all areas of law
Character and fitness	Revocation for: felony conviction, determination by appropriate authority of UPL, falsification of information on application form, violation of NALS Code of Ethics and Professional Responsibility. Individuals currently serving a prison term are ineligible to sit for the exam.
CLE	75 “points” every five years; earned through post-secondary education, CLE, authoring articles, = online education, earning other certifications, etc.
Fees	<ul style="list-style-type: none"> • NALS member –\$225 • Nonmember –\$275 • Military—\$225

	<ul style="list-style-type: none"> Individuals with a current, valid PLS/CLP- \$175.00 <p>*Proctoring Fee- \$45.00 Paid directly to service provider</p> <p>https://www.nals.org/page/2019PPPG</p>
More Information	

American Alliance Certified Paralegal (AACP)

Issued by: *American Alliance of Paralegals*

Eligibility	<ul style="list-style-type: none"> Five years of experience; and <ul style="list-style-type: none"> (a) A Bachelor or advanced Degree in any discipline from an accredited institution; or (b) An Associate Degree in paralegal studies from an ABA approved paralegal program or a program which is a voting institutional member of the American Association for Paralegal Education; or (c) A Certificate from an ABA approved paralegal program or a program which is a voting institutional member of the American Association for Paralegal Education.
Exam	No exam
Character and fitness	Any AACP who violates any provision of the Code of Ethics, or who is currently incarcerated, or been convicted of a felony involving crimes of moral turpitude or engages in the unauthorized practice of law will have his/her American Alliance certification revoked.
CLE	18 CLE hours, including 3 ethics, every three years
Fees	<ul style="list-style-type: none"> Application: \$75 Renewal: \$40
More Information	https://aapipara.org/https_aapipara.starchapter.com_images_downloads_AACP_Certification_aacp_certification_program_08_2_2018_rev.pdf

Practicing Law and the Unauthorized Practice of Law

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Authority

- ▶ Ethics rules do not define the practice of law.
- ▶ Provide that “a lawyer” shall not practice law in a jurisdiction in violation of the regulation of the profession in that jurisdiction. Rule 5.5(a), Minnesota Rules of Professional Conduct.
- ▶ Two additional resources—Supreme Court case law and Minn. Stat. § 481.02

Authority

- ▶ Case law —no comprehensive definition.
- ▶ In discussing UPL, the Court stated:
 - ▶ “The line drawn between the work of a law clerk and an attorney is a fine one. The composition and preparation of legal documents by one not authorized to practice law for approval and signature by an attorney does not ordinarily constitute the practice of law. As long as the legal assistant’s work is of a preparatory nature only, such as legal research and investigation, such that the work merges with the work of a supervising attorney, it is not considered the practice of law. Where, however, the non-lawyer acts in a representative capacity in protecting, enforcing, or defending the legal rights of another, and advises and consults that person in connection with those rights, the non-lawyer steps over that line.” *In re Jorissen*, 391 N.W.2d 822 (Minn. 1986) (interpreting the predecessor rule to Rule 5.5) (internal citations omitted).

Authority

- ▶ Case law — no comprehensive definition.
- ▶ Examples from case law of UPL:
 - ▶ Meeting with client, reviewing documents and accepting retainer— *In re Day*, 710 N.W.2d 789 (Minn. 2006).
 - ▶ Negotiating settlement on behalf of a party — *In re Ray*, 452 N.W.2d 689 (Minn. 1990)
 - ▶ Appearing in court or contacting opposing counsel in a representational capacity — *In re Jorissen*

Authority

Statute—Minn. Stat. § 481.02—Unauthorized Practice of Law

- ▶ Misdemeanor
- ▶ Authority to prosecute with county attorneys or AG's Office—Not Office of Lawyers Professional Responsibility
- ▶ Long statute but basically says—It is unlawful for a person who is not a member of the bar of Minnesota as a lawyer
 - ▶ “to appear as an attorney or counselor at law in any action or proceeding in any court in this state to maintain, conduct, or defend the same”
 - ▶ “to hold out as competent or qualified to give legal advice or counsel”
 - ▶ “to prepare legal documents”
 - ▶ “for a fee or any legal consideration, to give legal advice or counsel”

Authority

Statute—Minn. Stat. § 481.02—Unauthorized Practice of Law

- ▶ “to prepare a will” or similar instrument of trust
- ▶ For a fee, prepare any legal document, with some exceptions noted.

Authority

Rule 5.8, MRPC, Employment of Disbarred, Suspended, or Involuntarily Inactive Lawyers.

Cannot:

- (1) render legal consultation or advice to the client;
- (2) appear on behalf of the client in any hearing or proceeding or before any [legal proceeding] unless the rules of the tribunal permit nonlawyers to appear and the client has been informed of the disbarment, suspension or disability inactive status;
- (3) appear as a representative of the client at a deposition or other discovery matter;
- (4) negotiate or transact any matter for or on behalf of the client with third parties;
- (5) receive, disburse, or otherwise handle the client's funds; or
- (6) engage in activities that constitute the practice of law.

Authority

Conversely, Can

- (1) preform legal work of a preparatory nature for the lawyer's review;
- (2) communicate directly with a client regarding such matters as scheduling, billing, updates, information gathering, and confirmation of receipt or sending of correspondence or messages;
- (3) accompany a lawyer to a deposition or other discovery matter for the limited purpose of providing clerical assistance.

Supervision

Ethics rules impose supervision responsibilities over non-lawyers:

Rule 5.3, MRPC

(a) shall make reasonable efforts to ensure that that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

Supervision

Rule 5.3, MRPC

(c) responsible for conduct of a nonlawyer for violation of the Rules of Professional Conduct:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer with managerial authority knows of the conduct at time when consequences can be avoided or mitigated and fails to take reasonable remedial action.

Not personally responsible for actions unless ratify, order or do not stop when can

Supervision

Compare: Student Practice Rules, Rule 1.04

Supervising Attorney:

- (1) be a member of the bar of this court;
- (2) assume personal professional responsibility for and supervision of the student's work;
- (3) assist the student to the extent necessary;
- (4) sign all pleadings;
- (5) appear with the student in all trials;
- (6) appear with the student at all other proceedings unless the attorney deems his or her personal appearance unnecessary to assure proper supervision. This authorization shall be made in writing and shall be available to the judge or other official conducting the proceeding upon request.

****No authority to enforce****

Supervision

Potential issues to address:

- ▶ Actions considering are defined as a misdemeanor under state law (appearing in court; negotiating settlements; completing legal documents without lawyer signature)
- ▶ (But this is also true for some of student practice activities and permissible multijurisdictional practice in Minnesota by non-MN lawyers)
- ▶ No disciplinary authority over nonlawyers under ethics rules
- ▶ Limited supervisory hook
- ▶ How to limit to only authorized individuals (already broad misunderstandings)

Closing

▲ Questions?

▲ Thank You!

Crow Wing County Eviction Court Project Proposal, 4.3.19

Purpose.

One of Legal Aid's primary goals is to ensure decent, safe, and stable housing. Evictions are therefore a priority legal issue, because they can lead to housing instability, homelessness, and barriers to finding future housing. Despite our current efforts to aid tenants in evictions, there are still tenants who do not contact our office and cannot afford private counsel. These litigants therefore represent themselves. This is bad for tenants, but also for landlords, courts, and the community.

Lawyers provide better outcomes for the tenants. But lawyers also help lighten the burden on the legal system. Lawyers mean cases are more likely to settle. If a case does not settle, litigation is likely to be more efficient. Judges have a more complete understanding of the relevant law and facts. Tenants have a better understanding of their responsibilities. Tenants who must move are more likely to move out on time, and they are more likely to find other housing. Higher likelihood of settlement, efficiency, and tenant understanding benefits tenants, landlords, and the court system.

There is also a ripple effect into the community at large. Housing stability means fewer familial disputes caused by the stress of eviction, lightening the load on social service providers and law enforcement. Employers have employees who can come to work because they have a housing plan. Schools have fewer absence and behavior problems because of housing crises.

The model we propose has been effective in other jurisdictions. While Crow Wing County is smaller than the Minneapolis program, many of the tools they use there are applicable here.

Methods.

Our method to reach this goal is by improving access to legal services by being present at the courthouse when eviction hearings occur. We aim to provide legal information to all people, and we can represent and advise any tenant who qualifies for our services.

Legal Aid will provide staff at the courthouse for the 1:30pm eviction calendar on Wednesdays. Legal Aid will provide all technology and materials necessary to perform the task. We envision having a private conference room with a clinic sign posted, staffed by Legal Aid, near the courtroom. Generally we will have a paralegal staffing the room, and at least one lawyer present to advise and represent tenants. Tenants who are not already clients would privately complete an intake in the conference room to ensure that they qualify financially for our services. We

anticipate that most tenants will qualify, but if they do not, we will educate them about the process and provide them with *pro se* materials and resources.

We will have written materials available at the main table for all people, regardless of whether they are a tenant or a landlord.

For tenants who do qualify, where possible, we will represent them in the court process. Representation will include approaching landlords to attempt to seek a negotiated resolution, appearing in court with tenants, and, where necessary, trying eviction cases to a judgment. Legal Aid will have at the courthouse the technology necessary to contemporaneously efile any pleadings relating to representation. We anticipate this will be at least one laptop, a wireless device for internet access, and a scanning device. These latter two devices could be a cellular telephone.

Legal Aid will still continue to use our normal intake process for evictions (people can call or come to our office), which is still preferable because this helps us address problems before they get to court. Therefore, any publicity should encourage people to contact Legal Aid as soon as they know they have a legal problem.

Legal Aid will track relevant data.

How Court Administration can help.

1. Allow Legal Aid staff to bring wireless devices to aid in the administration of the program (e.g., allowing non-lawyer staff to bring a mobile phone into the courthouse).
2. Provide one designated conference room near the eviction courtroom for Legal Aid staff to meet privately with clients.
3. Allow Legal Aid to post a temporary sign regarding the program indicating the conference room we will be in.
4. Court staff at the main office and in the eviction courtroom (including the court staff person responsible for rounding up parties before hearings) will encourage unrepresented tenants to contact Legal Aid for assistance.
 - a. On days Legal Aid is at the courthouse, court staff will direct tenants to the Legal Aid table outside the courtroom.
 - b. On days Legal Aid is not at the courthouse, court staff will encourage tenants to call or go to Legal Aid right away.
5. Track data, especially for any cases in which Legal Aid is not involved.

Future.

If the project goes well, we could consider expanding the program:

- We anticipate that a natural outgrowth of the project will be to improve relationships with local landlords so that we can seek proactive solutions to avoid litigation entirely.
- Invite other housing-related providers that might assist in resolving cases. For example, we could invite agencies like Lutheran Social Services, Bridges of Hope, and Crow Wing County financial services. This program could be a one-stop service “hub” for people in a crisis at the place they have to be anyway--the courthouse. This would also allow service agencies to quickly and effectively work together. More services to tenants will lead to housing stability, and is anticipated to lead to more settlements and reduce the burden on the court system.
- Expand the program to include other landlord-tenant issues heard at the same time as evictions, such as rent escrow actions.
- Expand the program to include Orders For Protection since they tend to be heard on Wednesday afternoons.

Resources.

- Minnesota Bench and Bar article about the Minneapolis project:
<https://www.mnbar.org/resources/publications/bench-bar/articles/2019/02/05/in-eviction-proceedings-lawyers---better-outcomes>
- Star Tribune article about the Minneapolis project:
https://www.insightnews.com/news/minneapolis-mayor-jacob-frey-legal-advocates-launch-housing-initiative/article_bdf60b7c-f3fe-11e8-8645-43902968a41b.html
- Pew charitable trust article about tenant representation in evictions:
<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/10/27/how-free-legal-help-can-prevent-evictions>
- Washington Post article about tenant representation in evictions:
://www.washingtonpost.com/opinions/we-have-a-right-to-counsel-in-criminal-cases-why-not-in-evictions/2018/11/06/bbdb8600-d879-11e8-83a2-d1c3da28d6b6_story.html?noredirect=on&utm_term=.fb451de3a7c6



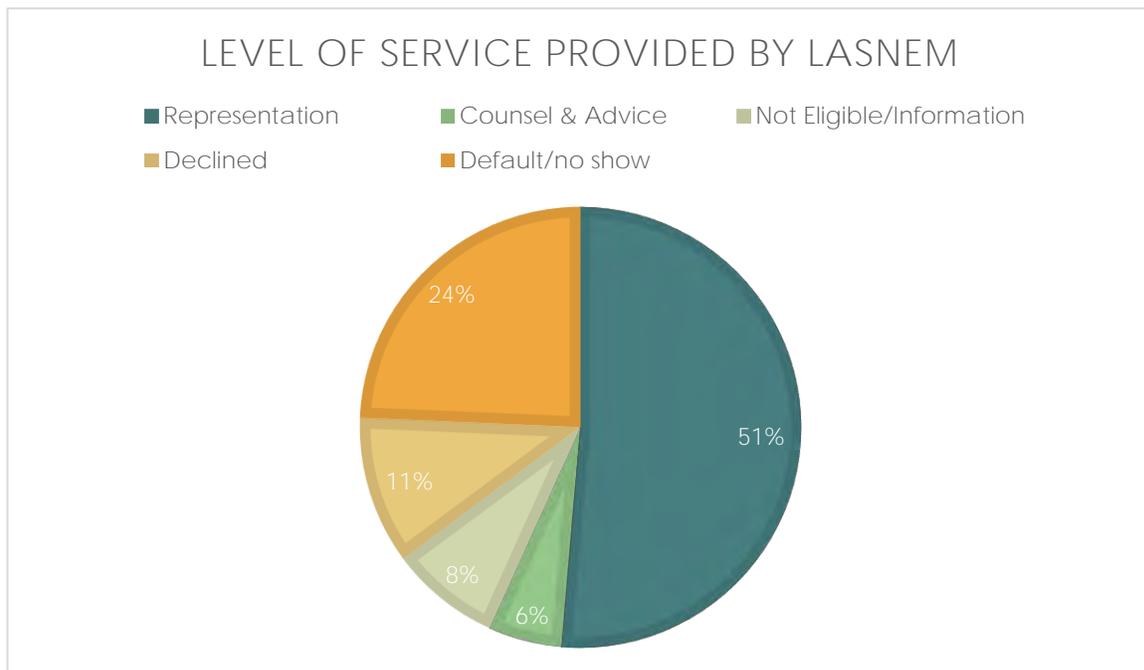
CROW WING COUNTY EVICTION CLINIC

Legal Aid Service of Northeastern Minnesota (LASNEM) began the Crow Wing County Eviction Clinic project on April 10, 2019. The project has been ongoing for eight weeks currently, as of June 2, 2019.

The Crow Wing County District Court schedules eviction matters on Wednesday afternoons. There has been a total of 37 hearings scheduled in eight weeks, or an average of 4.625 per week.

30 of the cases have been the first admit/deny hearings or eviction trials and 7 have been motion hearings.

Legal Aid Service of Northeastern Minnesota has provided representation at 19 hearings to 14 defendants; 2 defendants received counsel and advice; 3 defendants were not eligible for servicesⁱ; 4 defendants declinedⁱⁱ; 9 defendants did not make an appearance and the cases proceeded by default.



ⁱ Applicants who are not eligible receive information

ⁱⁱ Reasons for declining services included: settlement already agreed upon before court with landlord and/or private attorney already retained by defendant.

LASNEM has provided services to 16 clients through the Crow Wing County Eviction Clinic. Of the 16 clients served, only 3 had completed an application for services or contacted LASNEM prior to the court date and applying directly at the Eviction Clinic. 77% of clients applied for services at Court.

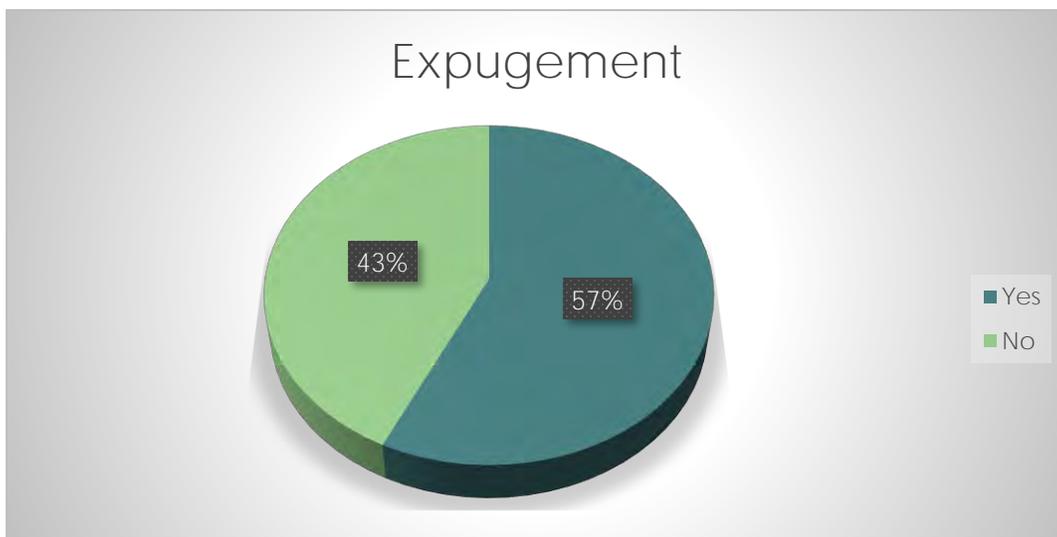


*LASNEM has had one person apply for services through the Eviction clinic for a non-eviction housing matter.

LASNEM has provided representation to 14 clients at 19 hearings in the 8 weeks of the Crow Wing County Eviction Clinic.

7 of the 14 cases have been resolved. 7 cases remain open and are ongoing. 5 of the unresolved 7 cases began one week ago.

4 of the 7 resolved eviction cases have been expunged and removed from Court records.



Justice for All Grant

Judge Sarah Hennessy and Bridget Gernander

January 18, 2018

Background

866

Resolution 5 of the Conference of Chief Justices envisions state systems in which everyone has access to:

effective assistance for their

essential civil legal needs through a comprehensive approach that provides a *continuum of meaningful and appropriate services*.

Background

867

- Minnesota was one of 7 states to receive Justice for All grants from the National Center for State Courts (NCSC) out of 25 that applied
- First year of the grant was to assess current systems and look for areas to improve access to justice in civil cases regardless of income; more information available at www.ncsc.org/jfap
- Required the courts, civil legal aid and the private bar to work together and get input from non-traditional stakeholders

Background

868

- Strategic planning work looked at areas of strength in our current civil justice system and areas where there could be the biggest impact for making changes
- After initial assessment, steering committee focused on:
 - Triage / Channeling Portal
 - Governance
 - Simplification
 - Unbundled / Limited Scope Services
 - Community Integration / Prevention

Strategic Goals

869

1. Simplify family law court processes
2. Increase the number of attorneys providing unbundled representation
3. Create a “no wrong door” system
4. Integrate legal information, resources and referrals into community settings
5. Increase communication across existing governance structures

Recommended Initiatives

870

- Convene a Triage Portal Advisory Committee
- Develop an Unbundled Services Roster through the MSBA
- Fund Remote Mediation through Community Dispute Resolution Programs
- Create SRL Judge Team
- Recommend simplified family law processes
- Create a Rural Housing Protection Toolkit
- Increase civil legal aid community outreach work in targeted areas in Greater Minnesota

Recommended Initiatives 871 - More Detail on Court Impact

Out of the seven initiatives recommended, the courts are most impacted by the following:

- SRL Judge Team
 - Modeled on the Domestic Violence judge training team
 - Would need to receive funding from implementation grant
- Family Law Simplification
 - Looking at coordination with Early Case Management work underway
 - Modeled on successful project in Alaska that includes remote services and remote trials conducted by SRL specializing judge
 - Would need rule changes for simplified dissolution trial where judge conducts questioning if both parties agree

872 Next Steps

- Implementation Grant Application due January 31st
 - Limited to two pilot projects
 - Initiatives not included in implementation grant may be appropriate for FY20-21 Strategic Plan discussions
- Should know what is funded by the end of February

Strategic Action Plan

MINNESOTA JUSTICE FOR ALL PROJECT



**MINNESOTA
JUDICIAL
BRANCH**



Minnesota
State Bar
Association



December 2017

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Executive Summary

Minnesota was one of seven states to receive a grant from the Public Welfare Foundation, administered by the National Center for State Courts (NCSC), to assess relevant available resources and to design a strategic action plan for achieving the Justice for All (JFA) vision of a system where everyone has access to effective assistance for their essential civil legal needs through a comprehensive approach that provides a continuum of meaningful and appropriate services.¹ This project required close coordination among the Minnesota Judicial Branch, civil legal aid and the private bar as the project leads, as well as input and review from over sixty stakeholder groups from across the state.²

The Justice for All Steering Committee led the assessment effort. Committee members examined the sixteen components detailed in the NCSC Guidance Materials for the project and the results of that assessment are detailed in this report. Working with community partners, the Steering Committee held outreach events and conducted focus groups to bring new perspectives to this work.

Based on the assessment and the input from community partners, there were five areas that the Steering Committee identified as high priorities for improving the Minnesota access to justice system. The five strategic goals identified in the plan are:

1. Simplify family law court processes to both (1) maximize efficiency and resources within the Minnesota Judicial Branch and (2) improve litigant usability, trust and confidence in the civil justice system.
2. Increase the number of attorneys providing discrete task (also referred to as “limited scope” or “unbundled”) representation to low- and middle-income people with civil legal needs through a robust and effective referral system.
3. Create a “no wrong door” system through which people with civil legal needs access legal information, self-help resources, and legal providers, through a user-centric approach that places the burden on the system to provide the best referral at the outset.
4. Integrate legal information, resources and referrals into community settings through co-located services, community collaboration and prevention efforts that build trust and decrease the number of civil court cases, with a specific focus on the prevention of housing evictions across Minnesota.
5. Increase communication across existing governance structures to implement the Justice for All projects and create a new governance committee specific to the triage portal work.

The strategic goals outlined above led to the following key initiatives to be implemented in 2018:

- Convene a Triage Portal Advisory Committee governance structure to coordinate the work already being done to redesign the civil legal aid online intake system with additional court self-help, ADR and private bar resources and ensure there are sufficient resources for the long-term success of this project.
- Create a Self-Represented Litigant (SRL) Judge Team to train judges and be a resource for the Minnesota Judicial Branch on best practices for working work with self-represented litigants

¹ Conf. of Chief Justices & Conf. of St. Ct. Administrators, *Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All* (2015), available at www.ncsc.org/~media/microsites/files/access/5%20meaningful%20access%20to%20justice%20for%20all_final.as.hx.

² See *infra* page 6.

- Recommend simplified family law processes in conjunction with Early Case Management work underway in State Court Administration and develop a pilot project.
- Develop an Unbundled Services Roster and integrate this within both the triage portal and the phone intake and referral networks statewide.
- Create a Rural Housing Prevention Toolkit to support community partnership work in rural Minnesota.
- Fund Community Dispute Resolution Programs to provide remote mediation services to expand statewide reach and better connect with community partners in underserved areas.
- Fund a part-time position focused on general community outreach work in targeted areas in Greater Minnesota.

I. Introduction

Project Overview & Goals

Minnesota applied for a Justice for All grant to develop a shared future vision across the civil justice system of access to effective assistance for essential civil legal needs through a comprehensive approach that provides a continuum of meaningful and appropriate services. The Justice for All Grant was established in response to Resolution 5. Unanimously passed in 2015 by the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA), Resolution 5³ supports an aspirational goal of 100 % meaningful access to justice for all in the civil court system. Building on our strong stakeholder network in the civil justice arena, our Justice for All project leverages existing investments and integrates systems to provide coordinated civil legal services across the state.

Minnesota has a strong foundation on which to build our Justice for All work. The Minnesota Judicial Branch (MJB) has a stated access to justice goal, which it defines as working toward “[a] justice system that is open, affordable, understandable, and provides appropriate levels of service to all users.”⁴ The Minnesota Legal Services Coalition (MLSC), the regional legal aid programs which together serve all 87 counties in Minnesota, work closely to enhance coordination and to prevent duplication of effort among legal services programs.⁵ Minnesota also has strong volunteer attorney programs and issue- and population-specific legal services providers. The Minnesota State Bar Association (MSBA) has operated the Legal Assistance to the Disadvantaged (LAD) committee since 1981, which works to secure more stable funding sources for civil legal aid and develop policy proposals promoting access to justice.⁶

While these foundational strengths provided an excellent starting point for our work, Minnesota’s robust and decentralized services culture creates challenges. Multiple entry points for seeking legal assistance in a large state make it difficult for providers across the system to know all of what is being offered and how their service or program fits. The complexity of programs and services also makes it difficult for people to know how to access the system to reach the appropriate services for their needs. In designing the process for our planning, we saw a need to increase shared understanding among our many program stakeholders of the entire web of services across the system. In addition to identifying the gaps in services, we wanted our process to identify, expand or bring to scale some of the promising practices showing good results in various parts of the state. In addition, we wanted to move towards a more integrated system that would help people navigate this very complex system to find the services they need.

The vision held at the forefront of our strategic planning effort was to work towards a system where everyone has access to effective and equitable assistance for their essential civil legal needs through a comprehensive approach that provides a continuum of meaningful and appropriate services.

³ See *supra* note 1.

⁴ The full Minnesota Judicial Branch strategic plan for Fiscal Year 2018-2019 can be accessed here: www.mncourts.gov/mncourtsgov/media/scao_library/MJB-Strategic-Plan.pdf.

⁵ See www.mnlegalservices.org for more details about the Minnesota Legal Services Coalition and its statewide support project, Legal Services State Support.

⁶ Learn more about the LAD committee at www.mnbar.org/members/committees-sections/msba-committees/legal-assistance-to-the-disadvantaged.

Project Approach & Process

Project Team

Our project structure was divided into three tiers of participation: a planning team, a steering committee, and stakeholders.

The planning team included:

- Judge Sarah Hennesy, Assistant Chief Judge, Seventh District
- Bridget Gernander, Grant Manager for the Minnesota Judicial Branch Legal Services and Minnesota's IOLTA Program Director
- Lisa Cohen and Mary Kaczorek of the Minnesota Legal Services Coalition
- Ginny Belden-Charles, consultant, and her partners, Bob-e Simpson Epps and Corrie Lapinsky.

The planning team was responsible for designing the planning process, designing and facilitating project meetings, gathering research data, project management and communications and drafting all project documents, including the final recommendations and written plan.

In developing our project leadership, we recognized that Minnesota's rich network of services and systems necessitated a wide range of stakeholders to be actively engaged to this effort. The Justice for All steering committee consisted of representatives from the following entities:

- Minnesota District Court
- Legal Services Advisory Committee
- Statewide Self Help Center
- Volunteer Lawyers Network
- Legal Services of Northwest Minnesota
- Greater Twin Cities United Way
- Minnesota Appellate Courts
- State Law Library
- Minnesota State Bar Association
- Mid-Minnesota Legal Aid
- Client Representative
- Legal Services State Support

The role of the Steering Committee was to conduct the assessment, identify and agree on the priorities, strategic goals and initiatives, and to approve the final plan.

In addition to the Planning Team and Steering Committee, participation was sought from a wide range of stakeholders outside the legal services network to provide input in the assessment and prioritization phases. Some of these stakeholders participated in steering committee meetings, others came to a larger stakeholder meeting to set priorities, others were invited to review process step outcomes and provide input on these, others were interviewed during various steps. These stakeholders included representatives from the following:

Civil Legal Aid

- Minnesota Justice Foundation
- Standpoint
- Legal Assistance of Dakota County
- Central Minnesota Legal Services
- Legal Aid Service of Northeastern Minnesota
- Legal Assistance of Olmsted County
- Loan Repayment Assistance Program of Minnesota
- Legal Aid Self-Help Forms Staff
- Call for Justice
- Intake staff from multiple programs

Alternative Dispute Resolution

- Bureau of Mediation Services | Office of Collaboration & Dispute Resolution
- Conflict Resolution Center
- Dispute Resolution Center & Community Mediation Minnesota

Private Bar

- Hennepin County Bar Association
- Faegre Baker Daniels
- Thrivent Financial
- Collaborative Community Law Initiative
- St. Paul Port Authority & MSBA Council
- Dorsey & Whitney
- Cooper Law
- Mundahl Law, PLLC
- Avivo
- Legalnudge

Government

- Hennepin County Law Library
- Minnesota Attorney General's Office
- MJB Forms Manager

Social Services & Community Voices

- Greater Twin Cities United Way 2-1-1
- Northside Residents Redevelopment Council
- Community leaders
- Community residents
- Aurora St. Anthony Neighborhood
- The Bridge for Youth
- Domestic Abuse Project
- Program for Aid to Victims of Sexual Assault
- Native American elder
- InquilinXs UnidXs Por Justicia
- Northpoint Social Services
- Safe Avenues
- Avivo (Formerly Resource Inc.)
- Morningstar Baptist Church
- Camphor Memorial United Methodist
- Model Cities
- Aurora St. Anthony
- NAMI Minnesota
- Ramsey County Sheriff
- Ujaama Place
- Hope United

In addition to working with the above groups and individuals, we presented to and received input from the following groups:

- Over 250 statewide legal services staff at the Minnesota Legal Services Statewide Conference (October 2017)
- Community Dispute Resolution Advisory Council, which is a group of alternative dispute resolution experts from non-profit, government, law school and community settings, to discuss

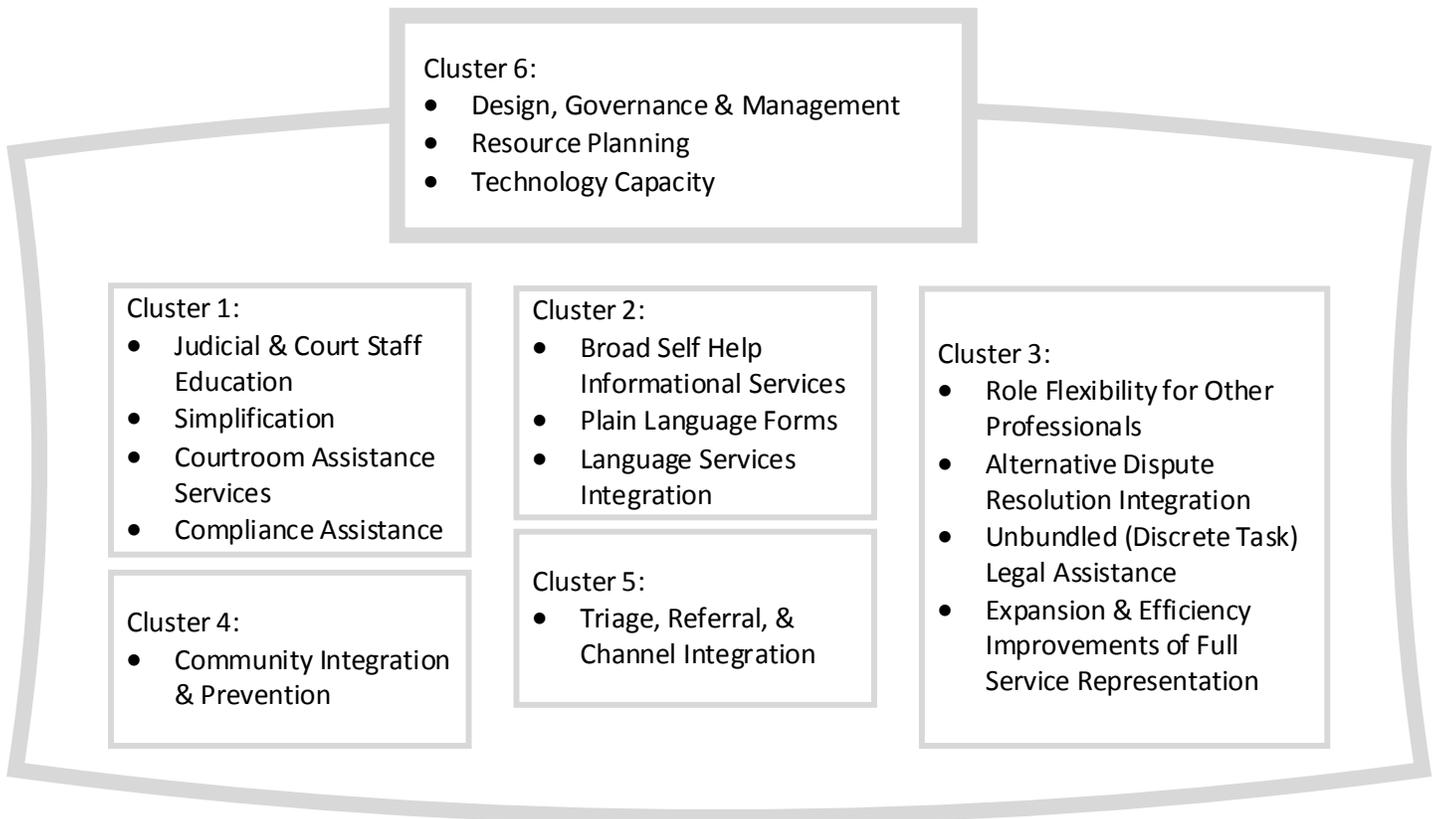
ways that these grassroots programs could be more integrated into the Justice for All projects, especially as they are expanding to provide statewide remote services (November 2017)

- State Court Administration Staff, to tell them about the JFA project and get input on priority areas (most interested in simplification and triage), and to get support for eventual implementation (June 2017)
- Minnesota Supreme Court, to provide an overview of the JFA project so far and ensure their support for the emerging priorities (June 2017)
- Minnesota Judicial Branch Committee for Equality and Justice, to tell them about the project and get input; most interested in unbundling and triage (July 2017)
- Minnesota State Bar Association Assembly, to give an overview of the project and get input and support for innovations in unbundled representation (September 2017)
- Minnesota Legal Services Coalition Partners Meetings, to provide updates on the project to civil legal aid stakeholders and receive input (July 2017 and September 2017)
- Minnesota Corporate Counsel Pro Bono Committee, to provide an overview; most interest in triage (September 2017)
- Minnesota District Judges Conference, to give an overview of the Justice for All project and a primer on unbundled attorney ethics rules so judges would support private practice attorneys doing more of this work (December 2017)
- HCBA Pro Bono Working Group, to give an overview of the project and get input and support for innovations in the triage component (September 2017)
- Focus groups of attorneys and self-represented litigants, to get input on the unbundled initiative (November and December 2017)

Project Steps

1. Assessment

Our process for completing this work followed the approach outlined in the guidance materials provided by the Justice for All expert working group.⁷ We began by completing an inventory assessment of the 16 components outlined in the guidance materials, organized into 6 clusters which we used to conduct our assessment:⁸



We organized the components into these clusters primarily because of who in the justice and broader community would need to participate in each discussion. The community and triage discussions were large enough that we felt each deserved its own meeting and separate analysis. Three of the components we assessed differently: Design, Governance & Management; Resource Planning; and Technology Capacity. We considered these three in all other component assessments and again on their own.

The Steering Committee held an assessment meeting for each of the first five component clusters. Additional individuals working on programs or services within the cluster were included during the meetings and in additional information-gathering. Pre-work was done before each meeting to identify

⁷ Nat'l Ctr. for St. Cts., Justice for All Strategic Planning Guidance Materials (Aug 3, 2016), www.ncsc.org/~media/Microsites/Files/access/Justice%20for%20All%20Guidance%20Materials%20Final.ashx.

⁸ See *infra* section II, Assessment Findings.

existing programs/resources, identify additional participants and gather relevant research data for that cluster.

The first part of the assessment was to provide an overview of the existing programs and services. We invited those engaged in relevant programs to provide information and answer questions for participants. This proved to be an important outcome of our assessment: a better understanding of the full range of legal services and programs in urban and rural Minnesota; questioning and dialoguing with those directly engaged in those services; and learning from these stakeholders about new developments, overlaps and gaps in services across the state. The result was a more comprehensive map of the various pieces of the system and how they fit into the web of services across the state.

The second part of each assessment meeting was discussion of a series of questions laid out in the project assessment materials for each component in the cluster. We asked: (1) who do these serve, (2) how much of the need is met, what are the (3) strengths and (4) gaps for each component, and we highlighted when (5) additional information was needed to complete the assessment.

The Community Integration and Prevention assessment included a longer and larger meeting in which members of community groups were invited to share information on their perceptions of the access to justice in the civil legal system. In this meeting, previous research efforts⁹ were validated regarding community perceptions, particularly in low-income and immigrant communities and communities of color: awareness of the differences between civil and criminal court is lacking; many community members do not know when they have a legal problem; and if they do, legal problems are often viewed as a lower priority to address than the more immediate needs for safety, shelter, and food. People feel intimidated going to court and communities of color and immigrant communities often do not feel welcome in the judicial system. We learned from the participants that legal/community partnerships were seen as highly important in building trust, educating communities and in doing prevention work.

2. Prioritization

We used a two-phased prioritization process. The first phase was a survey of Steering Committee member asking them to independently prioritize areas based on the inventory assessment. The second phase was a group discussion about the components and their respective rankings to come to develop a group consensus.

After completing the component assessments, the Steering Committee reviewed the summary assessment notes and completed a poll that included the following three questions:

- Choose the three component areas that you believe are the highest priority to address
- Explain why you chose these areas (how you prioritized)
- Please explain any disagreements you have with the summary assessment document or provide any additional information

The results of the poll¹⁰ were shared with the Steering Committee members, who discussed the poll results and identified areas of agreement and disagreement. The Steering Committee next discussed criteria for prioritization, reviewing the criteria from the JFA guidance materials and a summary of prioritization criteria pulled from the survey responses.

⁹ <https://www.lsc.gov/sites/default/files/attach/resources/LegalNeedsStudy-MinnesotaBarAssociation.pdf>

¹⁰ See Appendix A, Survey Results.

The group then discussed and decided on the following criteria (developed as questions we would use to assess potential action areas within each component):

- Is it something we can accomplish?
- Will it enable us to serve more people?
- Will it improve trust in the civil justice system?
- Will it leverage our strengths?
- Will it address our weaknesses?
- Will it have significant benefits at a reasonable cost?
- Will it have broad reach across the civil justice system?
- Will it respond to the most important needs of the community?

We evaluated each of the 16 different components using these prioritization criteria.¹¹ Finally, we selected five Target Areas to move forward for further research over the summer months. The five components for further research presented to stakeholders were:

1. Community Integration and Prevention
2. Triage, Referral and Channel Integration
3. Design, Governance & Management
4. Unbundled (Discrete Task) Legal Assistance
5. Simplification

Research teams were established to explore promising practices/approaches in the five select target areas and develop recommendations to bring forward for final prioritization and goal setting.

For example, in the Community Integration and Prevention component we had learned through the assessment process that legal- community partnerships were an important way in which community members gained trust and successfully accessed needed services. We researched eight successful partnership programs using a combination of online research and interviews.¹² We learned about the partnerships' origins, focus areas, the outcomes they had achieved to-date, and what had they learned in establishing a community partnership. Findings and recommendations from this research were aggregated and shared with stakeholders during the fall stakeholders meeting.

At the Fall Stakeholder meeting, discussion tables were set up for each of these five priority areas. Participants first rotated to each of the discussion tables to hear about the practices and recommendations and to ask questions. Then participants were invited to choose one area for deeper discussion. Finally, the full group heard reports from each of the discussions and the meeting finished

¹¹ See *infra* Section III, Prioritization Summary.

¹² Successful programs were potentially replicable projects showing positive outcomes. The projects included Legal Aid Service of Northeastern Minnesota's Iron Range Housing Project; Southern Minnesota Regional Legal Services' Frogtown Project Housing Early warning system for vacant buildings; Mid-Minnesota Legal Aid's Bank of America Community Redevelopment Project with Northside Resident's Redevelopment Council; Southeast Roseville Interagency Work Group (SRIWG); Stearns County Felony Domestic Violence Court; Hawaii Justice For All project approach and activities; Kansas City "Adopt-A-Neighborhood" project; and Medical-Legal Partnerships.

with a group polling tool to identify the top priorities within the five areas presented.¹³ These formed the basis for the five strategic goals in the plan.

3. Action Plan

As a final step, the Planning Team, considering current initiatives, funding sources, Court priorities and recommendations of the Steering Committee and Stakeholder meetings, drafted a set of next step initiatives which were brought to the Steering Committee for discussion and approval.

What follows is Minnesota's strategic action plan outlining our findings and strategic goals, key JFA initiatives, performance measures and communications consideration that will work toward justice for all – a system where everyone has access to effective assistance for their essential civil legal needs through a comprehensive approach that provides a continuum of meaningful and appropriate services. Section II details our assessment findings, Section III discusses our prioritization step, and Section IV details our action plan with key initiatives for 2018 and beyond. Section V discusses our communications plan.

¹³ See Appendix A, Survey Results.

II. Assessment Findings

This section contains a summary of our assessment for all 16 Justice for All Components, organized into clusters. These are summaries of our findings from our steering committee meetings and research completed during the assessment.

Cluster 1.

The components in this cluster included:

- Courtroom Assistance Services
- Judicial & Court Staff Education
- Simplification
- Compliance Assistance

To prepare for our assessment of these components, the planning team consulted with leadership with the Statewide Self Help center and the Judicial Education Program Manager at the State Court Administrator's Office. The steering committee met via webinar to discuss these components, and overall assessed these components as areas of relative strength for Minnesota. Following the assessment, we also held a webinar to learn more about Alaska’s simplified family court processes and researched the family law simplification efforts underway in Oregon, Utah, Iowa and Idaho.

Courtroom Assistance Services	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>Instructional videos on logistics and procedures</i> • <i>In-person assistance</i> • <i>Technology tools to support work of assistants, such as automated forms</i> • <i>Technology tools for the judges to prepare final orders in the court room</i> • <i>Training tools for personal assistants and court staff</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • “Going to Court” videos in English, Spanish, Hmong, Somali. • Training for judges for working with SRLs.¹⁴ • Some technology tools for judges to use in courtrooms with courts online records system (MNCIS). • MNCIS is improving access for the public. • Online resources & SRL training statewide. • Satisfied with quality of existing services. • Judicial Branch piloting text reminder system in Hennepin County. <hr/> <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Difficult to issue same-day orders in some cases (e.g. family). • No court navigator program.

¹⁴ SRL = Self-Represented Litigant; someone who is going to court without a lawyer.

Judicial & Court Staff Education	
<p>Key elements for this component: <i>State judicial and court staff education programs should follow adult learning principles, be dynamic and interactive, and address the following topics:</i></p> <ul style="list-style-type: none"> • <i>Engagement with self-represented litigants (e.g., reassure judges about engagement through questioning and principles of neutrality, share courtroom techniques that are most effective in providing access while protecting neutrality)</i> • <i>Availability of community resources and other referral opportunities</i> • <i>Language access requirements and procedures</i> • <i>Procedural fairness</i> • <i>Change leadership for judges</i> • <i>Cultural sensitivity</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • Judges are required to participate in trainings about working with SRLs, interpreters, and implicit bias. • Have cultural trainings 4x/yr. • Trainings are available to all staff, with many recorded to view on demand. • Many other optional trainings. • Annual judicial conference and train the trainer programs. • Good use of technology: trainings available on-demand in electronic format <hr/> <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Many trainings are optional. • Judges have limited time for optional trainings.

Simplification	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>One-stop shopping used to simplify user experience</i> • <i>Streamlined internal court operations, including automated generation of orders and judgments</i> • <i>Online dispute resolution</i> • <i>Forms, legal documents and oral communications, face to face conversations use plain language.</i> • <i>Review of courtroom procedures to determine more effective ways of providing information, helping parties come to resolution</i> • <i>Simplified court rules to eliminate unnecessary appearances and filings</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • Unified statewide court system. • Strong statewide self-help services system; some remote, some in-person. • Some specialty courts (e.g. for domestic violence). • New MJB forms manager working on plain language and automated forms. • Most counties use ENE, ICMC, and/or FENE.¹⁵ • Courts building tech capacity by using Benchworks technology. <hr/> <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Online dispute resolution not widely available. • Limited resources in some counties prevent automated or same-day orders. • ENE, etc. can be cost-prohibitive for litigants. • No existing simplification efforts like Alaska’s streamlined family law process.

¹⁵ ENE = Early Neutral Evaluation. ICMC = Initial Case Management Conference. FENE = Financial Early Neutral Evaluation.

Compliance Assistance	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>Written orders and compliance information available immediately after hearing</i> • <i>Use of plain language orders and judgments</i> • <i>Explanations provided by judges and other court staff</i> • <i>Reminders prior to deadline</i> • <i>Online tools to assist with compliance and enforcement</i> • <i>Collaboration with stakeholders and users to identify common problems and ways to address them</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • Some plain language proposed orders available. • Courts encourage judges to issue same-day orders; available in some case types. • Good online instructions for family matters if the other party fails to comply. • Good coordination of compliance efforts through the MSBA’s Legal Assistance to the Disadvantaged (LAD) Committee .¹⁶ <hr/> <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Difficult to issue same-day orders in some cases (e.g. family). • Unclear extent of where same-day orders are available. Can vary based on judge practice.

¹⁶ <http://www.mnbar.org/members/committees-sections/msba-committees/legal-assistance-to-the-disadvantaged#.WjxH2LpFymQ>.

Cluster 2.

The components in this cluster included:

- Broad Self Help Informational Services
- Plain Language Forms
- Language Services Integration

To complete our assessment of these components, the steering committee consulted with the Minnesota Judicial Branch’s new forms manager, the community education and outreach staff for legal aid, a representative from the Attorney General’s office, and a client representative who runs a translation and interpretation company. While recognizing there is always more work to be done in these areas, we also assessed these components as areas of relative strength for Minnesota.

Broad Self Help Informational Services	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>All information provided in plain language</i> • <i>Instructions on legal processes, applicable law, and how to prepare for and present a case</i> • <i>Links to information and forms on other specific subject matters, including out-of-court resolution</i> • <i>Materials optimized for mobile viewing</i> • <i>Information on which courthouses hear what cases and court access (e.g., transportation)</i> • <i>Staffed self-help centers in/near courthouse or accessible in community</i> • <i>Multiple channels of providing information (e.g., workshops, online)</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • <u>Legal Aid</u>: Hundreds of online & print resources with focus on issues with which legal aid provides service; LiveHelp with State Law Library. • <u>AG’s office</u>: Print & online materials with consumer focus; respond to public. • <u>State Law Library</u>: Librarians & online resources; broader scope; also serve inmates. • <u>Self Help Center</u>: Statewide remote services, some districts in-person; online help topics. “Going to Court” videos in multiple languages. • Great online resources & use of technology. • Sustainable remote service delivery at SHC - ~25K Statewide SHC calls/yr. • Strong in-person services in some areas - ~40K Henn Co. SHC walk-in customers/yr. • Self-help is relatively well-resourced at courts & legal aid. <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Less comprehensive in-person coverage in Greater Minnesota. • Not many preventative materials. • Gaps in materials – e.g. service of process. • Inconsistent internet access in Greater Minnesota may limit access to videos and online resources. • Could improve governance, especially coordination with AG’s office.

Plain Language Forms	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>Implementation of standardized plain language forms</i> • <i>Protocols for assessing and updating forms</i> • <i>Testing for comprehensibility and usability</i> • <i>Form data integration with the court information system</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • 500+ static court forms; Self Help Center building more automated forms. • Legal Aid has 19 automated forms and some static forms attached to fact sheets. • State Law Library has appellate forms. • New position at SHC to improve forms. • MJB using new technology for form assembly (Guide & File, fillable PDFs) with ability to eFile. • Statewide access to forms review through remote SHC. • Some forms updated for plain language. • Courts have rules committee, advisory group. • Courts & legal aid currently invest resources in this area. <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Many forms not yet updated for plain language & require high literacy level. • Many forms not translated. • Need more appellate forms. • Still some variation among districts for forms.

Language Services Integration	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>Language access services at all points of contact between LEP users and all legal system components (e.g., provision of qualified interpreters and translators, multilingual staff, written and audio-visual tools in languages other than English, and the use of technology to provide access to LEP users in their primary language)</i> • <i>Quality of language access services and providers</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • Minnesota ranked #6 in nation for language access.¹⁷ • Courts have statewide LEP plan;¹⁸ served 26,000 in 2016. • Some forms & videos available in other languages. • Court rules provide the right to an interpreter in civil and criminal cases. • Legal aid provides interpreters. • Legal aid has fact sheets, audio, & video in other languages. • Courts have mandated service budget dedicated to interpreter services. • High potential for technology via video conferencing and phone.

¹⁷ NAT'L CTR. FOR ACCESS TO JUSTICE, Performance Map: Access to Justice for People with Limited English Proficiency, The Justice Index 2016, available at <http://justiceindex.org/2016-findings/language-access>.

¹⁸ Language Access Plan for the Minnesota Judicial Branch (June 2016), available at http://www.mncourts.gov/mncourtsgov/media/scao_library/LAP/Minnesota_LAP-FINAL-July-2016.pdf.

<ul style="list-style-type: none"> • <i>Language access planning and monitoring</i> • <i>Increased availability of multilingual information and education for LEP users</i> • <i>Effective use of multi-lingual outreach and court and community agency staff</i> 	<p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Forms must be completed in English. • Hard to find interpreters for some exotic languages. • Difficult to assess need – what percent of people who have needs are being served? • Interpreter service expenses growing for courts and legal aid.
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Cluster 3.

The components in this cluster included:

- Role Flexibility for Other Professionals
- Alternative Dispute Resolution (ADR) Integration
- Unbundled (Discrete Task) Legal Assistance
- Expansion & Efficiency Improvements of Full Service Representation

To complete our assessment of these components, the Access to Justice Director at the Minnesota State Bar Association (MSBA) prepared reports for the Steering Committee on recent efforts at the MSBA about Alternative Legal Models and the state of unbundled in the private market. The Legal Services Advisory Committee program manager gathered data on unbundled and full representation within legal services. A solo practitioner with unbundled as her primary practice model and shared her perspective on doing unbundled work within the private market with the Steering Committee. We also invited representatives from Community Mediation Minnesota and the Bureau of Mediation Services to discuss ADR.

Given the recent outcomes of the MSBA’s Alternative Legal Models Taskforce, the Steering Committee viewed role flexibility for other professionals as not feasible at this time. The Steering Committee viewed ADR as a promising area with existing momentum. While viewing full representation as a strength area, it saw unbundled within the private bar as lacking necessary momentum and infrastructure to adequately serve people unable to get help at legal aid. The MSBA Access to Justice Director completed some additional research about unbundled at the request of the Steering Committee as part of our “promising practices research.” We also completed some focus groups with both attorneys and potential consumers of unbundled legal services to gauge interest in this approach. Other than not liking the term "unbundled", the response from the potential customers was very favorable to limited scope or a la carte services.

Role Flexibility for Other Professionals	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>Assist litigants in navigating court processes on-site</i> • <i>Assist litigants in selecting and filling out forms</i> • <i>Assist litigants in complying with legal processes for case actions with large numbers of self-represented litigants</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • None; there is no existing work in this area. <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • The MSBA Future of Legal Education Task Force created an Alternative Legal Models Task Force that researched promising models and drafted recommendations for the broader MSBA Assembly. In 2017, the MSBA voted down proposals for both limited license technicians and expanded paralegal roles. This could be revisited in the future, but there is not political capital to revisit this issue in the near term.

Alternative Dispute Resolution Integration	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>Provision of information about ADR modes and processes, substantive ADR law, and consequences</i> • <i>ADR information available online and integrated into portal</i> • <i>Clear codes of ethics for the non-judicial neutrals</i> • <i>Access to ADR modes provided within procedural context, possibly through self-help</i> • <i>Ethically appropriate collaborations between ATJ stakeholders and ADR providers</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • Existing infrastructure: there is an Office of Collaboration and Dispute Resolution within the state’s Bureau of Mediation Services. • Community Mediation Minnesota new umbrella for expanding ADR statewide. • ~500 cases/yr for metro programs; ~30-200 cases/yr for Greater Minnesota programs. • Other nonprofits & community-based programs outside of formal ADR. • 70% of people served by Community Dispute Resolution Programs (CDRP) are low income. Services are often free or sliding-scale fee. • Community-centered approach; building infrastructure to expand • Current programming has high agreement rates & satisfaction levels • New governance/coordination structure with the CDRP Advisory Council. • High potential for technology to meet rural need; e.g. Skype <hr/> <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Only 8 of 87 counties served plus additional programs; • Some legal areas missing (e.g. divorce, guardianship). • Concerns about power imbalances and monitoring quality of volunteers. • Not always well coordinated with courts. • Not as well-resourced in Minnesota as in other states.

Unbundled (Discrete Task) Legal Assistance	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>Lawyers willing to provide legal services on a discrete task (unbundled) basis</i> • <i>Training and resources to support participating lawyers</i> • <i>Screening, triage and referral components to connect these lawyers with persons seeking their services</i> • <i>Processes for conclusion of limited scope representation, (i.e. client is aware of any remaining legal needs and how to do that through self-help or other resources)</i> • <i>Adoption of rules (e.g., ghostwriting, conflicts, limited appearance) that</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • Legal aid & pro bono do a lot of unbundled. Legal aid has offices statewide - ~22K advice & brief service/yr by legal aid staff. ~11K advice & brief service/yr by pro bono & Judicare. • Many online market-based unbundled services (e.g. Avvo.) • A few in-person market-based unbundled practices (e.g. Legal Nudge.) • Minnesota Legal Advice Online. • Minnesota has good unbundled rules from the professional responsibility office. • MSBA provides good online resources for unbundled. • Technology used well in both legal aid & private bar.

<p><i>facilitate limited scope representation and ease in entering and exiting a matter for an attorney</i></p> <ul style="list-style-type: none"> • <i>Full acceptance by the judiciary of the practice</i> • <i>Good lines of communication between the limited scope attorney and the client</i> 	<p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Difficult to find lawyers for Judicare, pro bono or staff programs because of shrinking pool to draw from in rural areas. • Fear within private bar of ethical rules & requests for free services. • Missing some forms. • No unbundled roster or MSBA section.
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<p>Expansion & Efficiency Improvements of Full Service Representation</p>	
<p>Key elements for this component: <i>With the proviso that strategies will be different for free legal services versus market-based solutions, key elements include:</i></p> <ul style="list-style-type: none"> • <i>Assessment of existing service capacity in the state, factoring in geographic differences where they exist.</i> • <i>Identification of effective service pro bono, legal aid and market-based delivery strategies that have potential to be replicated or scaled up.</i> • <i>Incorporation of litigation strategies that have the potential to impact many people and thus decrease the need for full representation in the future.</i> • <i>Training and assistance with implementation of best practices for utilizing technology and process improvement; and identification of potential funding, pro bono and in-kind support to make this possible.</i> • <i>Training and mentoring for pro bono volunteers, both on substantive issues and on how to work with low-income clients.</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • Legal aid, Judicare, and pro bono attorneys do full rep at no cost to client. Legal aid has offices statewide - ~9K full rep/yr by legal aid staff. ~2K full rep/yr by pro bono & Judicare. • Modest means family law panels in Hennepin and Ramsey Counties generally serve up to 300% FPG; HCBA does ~50/yr. MSBA expanding panel statewide in late 2017. <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Difficult to find lawyers for Judicare, pro bono or staff programs because of shrinking pool to draw from in rural areas. • Resourcing Greater Minnesota is challenge – funding often tied to decreasing population.

Cluster 4.

The component in this cluster included:

- Community Integration & Prevention

While legal aid and the courts have started promising work in this area, the Steering Committee recognized that this area needs significant growth in Minnesota. To complete our assessment of this component, we had discussions with community and social service stakeholders and held a standalone meeting where we asked:

- What are the types of issues that cause your community members to need to go to civil court?
- Where do your community members go for help with these issues?
- What resources do you know of in your communities that can assist people with civil court issues/access to civil court?
- Who do these resources serve (and who is not being served)?
- How much of the current need do you think is being met by existing resources?
- What have you heard from your community members about their experiences with civil court?
- What are the barriers to accessing justice within the civil court system for your community members?

The Steering Committee reviewed the existing work happening in the civil justice system, and confirmed its perception that these efforts are insufficient to meet the needs in this area. In an extensive 2011 study of barriers to civil justice in Minnesota,¹⁹ respondents identified most frequently as underserved included the working poor, immigrants and non-English speaking persons, persons with disabilities (particularly those with mental illness), the geographically isolated, youth and ex-offenders. Their most frequently experienced problems included those in the areas of transportation, housing, health care and employment. Community stakeholders in the Justice for All assessment affirmed this study's suggestion that working with community partnerships is a key way to increase access to civil legal aid for underserved populations.

¹⁹ Legal Assistance to the Disadvantaged Comm. of the Minn. State Bar Ass'n, *Overcoming Barriers that Prevent Low-Income Persons from Resolving Civil Legal Problems* (Sept. 2011), available at www.mncourts.gov/Documents/0/Public/administration/Final_Minnesota-CABS_Study_September_2011.pdf.

Community Integration & Prevention	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>Robust information exchange between organizations, including cross training</i> • <i>Community resources integrated into provider services</i> • <i>Collecting and sharing information on user experience across providers</i> • <i>Collaborative partnerships, including social services providers</i> • <i>Community outreach, enabled by a robust communication strategy</i> • <i>Early issue identification and proactive, robust referrals in a range of areas</i> • <i>Education about dispute resolution without legal action</i> • <i>Cross-training between organizations.</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • Many Minnesota legal aid programs are underway to strengthen relationships with community partners: Co-located services provided through Bank of America-funded projects, medical-legal partnerships, and other projects. • Legal aid does community outreach events. • State Law Library does outreach with public libraries. • Courts have existing Committee for Equality and Justice and “Know Your Court” model where justices do community outreach. • Call for Justice trained 2-1-1 and other social service providers about legal issue-spotting and referrals through Legal Liaison Program (program closed in late 2017). • Some existing court models that integrate community partners, e.g. restorative justice project in Hennepin County. <hr/> <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Systemic racism and oppression. • Perception that the system isn’t there to help people. Lack of trust of judicial system. • Going to court is complicated and intimidating; court forms are hard to use. • Lack of awareness of legal aid and existing self-help materials. • Difficulty qualifying for free lawyer; difficulty affording a private lawyer. • Access barriers for communities of color, people with disabilities, people living in rural areas, and other communities.

Cluster 5.

The component in this cluster included:

- Triage, Referral, & Channel Integration

As with community integration, the steering committee recognized that this area needs significant growth in Minnesota. To complete our assessment of these components, we held a standalone meeting with representation from the Hennepin County Bar Association, Call for Justice,²⁰ and front-line intake staff from two legal aid organizations who talked about how they complete intake and referral work.

The Legal Services Advisory Committee (LSAC) program manager also presented about a June 2017 report authored by the Legal Services Advisory Committee titled “Analysis of the Civil Legal Aid Infrastructure in Minnesota” that examined client intake and referrals in civil legal services.²¹ The timing of this report meant that it could be used as a resource for the Justice for All work, both in collecting data about current client intake and referral and in hearing community voices through focus groups.

Legal Services State Support, a project of the Minnesota Legal Services Coalition, also presented to the committee about its work in this area. State Support operates Minnesota’s legal information website, LawHelpMinnesota.org, and a statewide online intake system for civil legal aid. It applied for and received federal funding through the Legal Services Corporation Technology Innovation Grant program, and state funding through Minnesota’s Court Technology Fund, to completely redesign the system using a user-centric approach that replicates successful triage and online intake models from other states. Work on this online portal project began in October 2017.

Triage, Referral, & Channel Integration	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>Identified, consistent triage and referral protocols & practices</i> • <i>Initial triage/assessment and referral by any existing resource (e.g., self-help centers, lawyers, social service agencies)</i> • <i>Effective referrals (i.e. entity can take matter without time, income, or subject matter restrictions precluding service)</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • LawHelpMN.org has online legal directory and statewide online intake for legal aid. • 2-1-1 makes legal referrals - ~14K referrals/yr. • State Law Library and Statewide Self Help Center make referrals. • Knowledgeable intake staff and strong local connections in each legal aid program. • 2-1-1 trained on making legal referrals. • Strengths identified in LSAC Report: <ul style="list-style-type: none"> ○ Capacity for flexible response to the specific needs of local communities and their diverse populations and circumstances ○ Awareness of local conditions ○ Addressing the needs of specific populations and legal needs ○ Self-help materials and online resources

²⁰ Call for Justice was a nonprofit that, among other things, trained 2-1-1 information and referral specialists about making legal referrals. Call for Justice closed in late 2017.

²¹ John Tull et al., *Analysis of the Civil Legal Aid Intake Infrastructure in Minnesota: Final Report* (June 2017) (on file with author).

<ul style="list-style-type: none"> • <i>Central legal aid hotlines, and market-based equivalents for moderate income people, to diagnose legal issues and potential solutions and resolve less complex issues at an early stage</i> • <i>Triage supported by technology (self-help portals and case management systems)</i> • <i>All stakeholders, including non-traditional ones, aware of referral information.</i> 	<p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Duplication: most legal aid programs keep their own referral resource guides, in print or via internal intranet. • LawHelp directory hard to use. • Limited phone availability over lunch or after hrs. • Barriers and costs associated with civil legal aid’s access to public court records that impede the efficiency and effectiveness of up-front triage and referral activities, as well as all phases of case evaluation from initial intake through case acceptance and, later, through case investigation. • The LSAC report cited awareness of legal resources, process & technical issues with online intake, delays in responding to applicants, and lack of availability in callback times as gaps in the civil legal aid referral and intake system. It also discussed bounce, including before an applicant reaches legal aid, when an applicant is referred to multiple legal aid programs, and when an applicant has multiple contacts within a program.
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Cluster 6.

The components in this cluster included:

- Design, Governance & Management
- Resource Planning
- Technology Capacity

We assessed these components slightly differently than the other components due to a view that these three components are related to all the other components and assessment of the other component clusters would help to inform evaluation of this cluster. Rather than discuss these during the assessment phase with the Steering Committee, the planning team completed an initial assessment of these components on its own and shared its findings with the Steering Committee. During prioritization, the Steering Committee flagged Governance as a high-priority area and dove deeper into this issue in our promising practices research. We also evaluated how governance, resourcing, and technology related to the remaining components during our broader assessment, and again during the action planning phase.

Design, Governance & Management	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>An established body and processes to address Access to Justice (ATJ) issues</i> • <i>ATJ body includes all relevant stakeholders</i> • <i>Collection of user data and information (through surveys, focus groups, etc.)</i> • <i>User membership on ATJ body</i> 	<p>Minnesota System Strengths: Minnesota has several existing ATJ structures:</p> <ul style="list-style-type: none"> • Judicial Council strategic plan includes Access to Justice, including expansion of pro bono; supports civil legal aid funding at the legislature. • Legal Services Advisory Committee (LSAC) administers funding and leads statewide civil legal aid planning efforts. • Judicial Administrators and Directors (JAD) group and the Court Operations Advisory Workgroup (COAW) manage creation of statewide forms and of Statewide Self-Help Center. • Seven regional civil legal aid programs form the Minnesota Legal Services Coalition, which works to fund statewide projects, secure state appropriation, fund ATJ Positions at the MSBA, and coordinate bi-monthly meetings of legal aid partners. • The MSBA’s Legal Assistance to the Disadvantaged (LAD) Committee recommends rule and policy changes to support access to justice, promotes pro bono service, and supports increased resources for civil legal aid. All initiatives must be approved by the MSBA Assembly. <hr/> <p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • No Access to Justice Commission. There had been a separate Legal Services Planning Committee from 2005-2011, but the supreme court sunset it and moved the planning responsibilities to LSAC. • Justice for All planning effort has demonstrated need for courts, legal aid, private bar, and non-traditional justice system stakeholders to improve communication and coordination • Limited community involvement in existing ATJ initiatives

Resource Planning	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>Staffing position dedicated to resource planning</i> • <i>Existence of an updated resource budget</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • Legal Services Advisory Committee (LSAC) administers \$17 million in funding per biennium. • Minnesota Legal Aid Foundation Fund was created for statewide cy pres and settlement awards to benefit all programs and voluntarily gives its annual earnings to LSAC. • The MSBA, legal aid, and the Minnesota Judicial Branch all lobby for civil legal aid funding at the legislature. • Civil legal aid programs receive funding from LSC and other federal sources. • New Court Technology Fund available to all justice system partners. • Greater Twin Cities United Way has organized a legal aid funders circle in the Twin Cities.
	<p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • No staffing position dedicated to resource planning. • Opportunity for increased coordination of resource planning efforts.

Technology Capacity	
<p>Key elements for this component:</p> <ul style="list-style-type: none"> • <i>User experience design expertise</i> • <i>Multimedia design expertise</i> • <i>Application integration expertise</i> • <i>Process simplification expertise</i> • <i>Facilitates remote access and resolution.</i> 	<p>Minnesota System Strengths:</p> <ul style="list-style-type: none"> • MLSC & LSAC support statewide technology projects via State Support. • Most legal aid programs have electronic case management systems. • Innovative use of technology at legal aid & courts. • Legal aid has strong online presence, including online advice, advocate support site, and site for the public.
	<p>Minnesota System Gaps:</p> <ul style="list-style-type: none"> • Legal aid programs use different case management systems. • Significant limitations with existing statewide online intake platform (to be remedied in 2018).

III. Prioritization

Prioritization Summary

Following our assessment, the next step of our Justice for All project was prioritization. While recognizing every Justice for All component is an important, if not essential, piece to providing access to justice in Minnesota, the question became how to decide which areas to advance first. With limited resources, which areas were our top priorities for the next 2-3 years?

Starting with the NCSC guidance materials, the Steering Committee developed a list of prioritization criteria values:

- Is it something we can accomplish?
- Will it enable us to serve more people?
- Will it improve trust in the civil justice system?
- Will it leverage our strengths?
- Will it address our weaknesses?
- Will it have significant benefits at a reasonable cost?
- Will it have broad reach across the civil justice system?
- Will it respond to the most important needs of the community?

After developing these values, we had a general discussion where we asked these questions of each component (see below chart “Prioritization Takeaways for Each Component” for summary).

Because the JFA components are so different in scope and nature, these criteria ended up serving more as guiding principles than a strict grading rubric. We did not attempt to quantify or fully rank the components by importance. The planning team felt this exercise was unnecessarily complicated: having a detailed ranking would not be more helpful to the broader discussion, and the final list would likely have low consensus among the Steering Committee. Rather, we decided to create three categories to signify importance: **Target Areas**, **Sustaining Areas**, and **Low-Priority Areas**. (See the chart to the right titled “Prioritization Groupings.”)

Target Areas are high-priority and need additional attention, planning, and structure beyond what we are

Prioritization Groupings
<p>Target Areas</p> <p>These high-priority components need additional attention, planning, and structure beyond what we are currently doing:</p> <ul style="list-style-type: none"> • Design, Governance & Management • Community Integration & Prevention • Unbundled (Discrete Task) Legal Assistance • Triage, Referral & Channel Integration • Simplification
<p>Sustaining Areas</p> <p>These areas need support to continue expanding the good work currently being done through existing channels & structures:</p> <ul style="list-style-type: none"> • Resource Planning • Technology Capacity • Judicial & Court Staff Education • Broad Self Help Informational Services • Plain Language Forms • Language Services Integration • Alternative Dispute Resolution Integration • Compliance Assistance • Expansion & Efficiency Improvements of Full Service Representation
<p>Low-Priority Areas</p> <p>These areas are not feasible for additional development in Minnesota at this time, but will be revisited at a future date:</p> <ul style="list-style-type: none"> • Courtroom Assistance Services • Role Flexibility for Other Professionals

currently doing. **Sustaining Areas** need support to continue expanding the good work currently being done through existing channels & structures. **Every component identified as a Target Area or Sustaining Area needs support.** The Target Areas are differentiated by the fact that they need additional, more urgent action than is currently underway in the civil justice system in the Sustaining Areas.

Low-Priority Areas are those areas that were identified as not currently feasible for additional development in Minnesota at this time, but would be revisited in the future.

Prioritization Takeaways for Each Component

Design, Governance & Management

Minnesota has access to justice governance structures for the courts, the bar association and many of the civil legal aid providers. The Steering Committee has wrestled with whether to recommend disbanding some of the existing committees in favor of a new overarching governance structure. The existing structures have achieved much in terms of access to justice measures, including ongoing state legislative funding, strong language access, statewide forms, and self-help resources, and the Minnesota Supreme Court favors maintaining these structures.

While these existing governance structures provide a strong foundation for access to justice work in Minnesota, the Steering Committee felt additional governance was needed to continue the work completed in 2017 through the Justice for All project. Specifically, the steering committee wanted to ensure a continuation of bringing resources to the access to justice project and robust communication among the Minnesota Judicial Branch, civil legal aid, and the private bar after the grant term ends.

Community Integration & Prevention

Community trust and understanding of both rights and responsibilities in civil legal matters create a foundation for all other systemic supports, including improved triage, referral and channel integration, self-help informational services, use of language services and plain language forms and courtroom assistance services.

Many legal aid and other partner organization efforts are underway to co-locate services within communities and strengthen community partners. Our community stakeholders, however, said that for many members of our communities, particularly low income, communities of color and immigrant communities, civil justice is lacking. Community stakeholders in the Justice for All assessment affirmed that more work with community partnerships is needed to increase access to civil legal aid for underserved populations.

Unbundled (Discrete Task) Legal Assistance

The Steering Committee saw the lack of affordable legal services for low- and moderate-income people over civil legal aid income guidelines as a significant gap in our current system. Minnesota, like many states, sees a large gap between the people who qualify for and receive services through legal

aid, and those who can afford to hire a private lawyer for their case. We see unbundled legal assistance as the most realistic, cost-effective way to help serve low- and moderate-income people with civil legal needs, particularly in family law.

Minnesota’s professional responsibility rules support unbundled representation,²² and our Office of Lawyers Professional Responsibility routinely educates attorneys about Minnesota’s rules and promotes unbundled as a promising solution to help address the justice gap.²³ Only a small number of practitioners, however, actively advertise unbundled services to the public and promote their unbundled practice as a successful business model within the private bar. There is no easy referral mechanism between the court self-help services and attorneys providing unbundled services because the current attorney referral services are based on a traditional practice model.

Triage, Referral & Channel Integration

Triage, referral, and channel integration is a strategic goal for Minnesota because it is feasible, it will increase efficiency and reduce duplication of effort across the system, create a better first point of access for people with civil legal needs, and help move toward some level of meaningful service for everyone. Minnesota has a complex system of civil legal aid programs, litigant support through the MJB, and other resources available to help people with civil legal needs.

The analysis of the Civil Legal Intake Structure identified lack of knowledge about legal aid and "bounce" as significant issues in our referral system.²⁴ Helping people navigate this system is a necessary step in achieving the “access” outlined in Resolution 5.²⁵

Simplification

Simplifying court processes will have a high return on a relatively minimal investment. Rule changes have a broad reach in Minnesota because of our unified statewide court system. The Alaska early resolution triage model, for example, saves time for both SRLs and court staff.²⁶ Replicating this program or pursuing other rule changes to simplify court processes will benefit many litigants at a relatively low cost.

Simplification efforts are also feasible given current priorities and similar projects already underway at the Minnesota Judicial Branch (MJB). With the transition to eCourtMinnesota in 2015 resulting in all district courts being on the same case management system and capable of accepting electronic filing, the MJB has already started thinking creatively about how to do its work in the most efficient

²² Rule 1.2(c), Minnesota Rules of Professional Conduct (MRPC).

²³ See, e.g., Susan Humiston, *Ethically Unbundling Legal Services*, BENCH & BAR, Oct. 2017, available at <http://mnbenchbar.com/2017/10/ethically-unbundling-legal-services>.

²⁴ See *supra* note 21.

²⁵ “Access to effective assistance for their essential civil legal needs through a comprehensive approach that provides a continuum of meaningful and appropriate services” (emphasis added). Conf. of Chief Justices & Conf. of St. Ct. Administrators, *supra* note 1.

²⁶ Stacey Marz, *Faster for Self-Represented Litigants and the Court: An Evaluation of Alaska’s Early Resolution Triage Program*, available at www.alaskabar.org/servlet/download?id=3577.

and effective manner. This work fits well with additional reengineering efforts currently underway at the MJB through its oneCourt regional specialization initiative.

Focusing on this component will also improve litigant trust in the civil justice system. Simplifying court processes will make going to court easier for self-represented litigants (SRLs), as well as free up limited resources at legal aid offices.

Resource Planning

While recognizing that legal services is always in need of additional funding, strong resource planning infrastructure already exists in Minnesota through the Legal Services Advisory Committee, coordinated statewide lobbying efforts through the Minnesota Legal Services Coalition, and the MSBA Legal Assistance to the Disadvantaged community. Although this is not a standalone focus area, we do have resource planning woven in to our initiatives.

Technology Capacity

We did not view technology capacity as a component to focus on in and of itself, but instead recognized throughout our planning that technology will play a key role in most, if not all, initiatives and proposed solutions.

Judicial & Court Staff Education

Even though one of our key JFA initiatives has a judicial training component, and other initiatives will also involve judicial training, we did not view this as a focus area on its own because Minnesota has a strong training system currently in place for judges and court staff. We do not need to start from scratch, but rather can build on existing programs with a JFA focus.

Broad Self Help Informational Services

The State Law Library, Legal Services State Support, Attorney General's office, and Statewide Self Help Center have already developed an expansive library of self-help information and resources on civil legal issues. The amount of content is a strength of the Minnesota system, but access to this content will be improved with the Triage and Channel Integration initiative.

Plain Language Forms

Minnesota has had statewide forms used throughout the unified court system for more than a decade. In 2017, Minnesota Judicial Branch created a position in the courts solely devoted to improving the plain language and accessibility of court forms, both static and intelligent. Again, this is a strength of the Minnesota system, but access to forms will be improved with the Triage and Channel Integration initiative.

Language Services Integration

Minnesota is a national leader in access to justice for people with limited English proficiency;²⁷ legal services and the Minnesota Judicial Branch already prioritize and designate resources to this area. This will continue to be part of JFA work going forward.

Alternative Dispute Resolution Integration

While we recognize that ADR is not as well-resourced in Minnesota as it is in other states and this is an area for growth, the steering committee felt that it made more sense to work to initially focus on how to integrate ADR in to the triage and channeling work while also expanding community outreach by partnering with Community Dispute Resolution Programs that provide free and low-cost services and have outreach to underserved communities as a priority. Therefore, one of our JFA initiatives described below has ADR as a primary focus.

Compliance Assistance

The Judiciary Subcommittee of the Minnesota State Bar Association Legal Assistance to the Disadvantaged committee²⁸ has focused on compliance assistance in recent years, and the MJB is already doing some work in this area. This will also be integrated into the JFA initiative on judge training.

Expansion & Efficiency Improvements of Full Service Representation

While recognizing full representation is a core component of the civil justice system, and we only partially provide full representation for those eligible, legal aid already has structures in place to seek funding and support for expansion of its full representation work. Because unbundled services are such an area of growth for the private bar in Minnesota, the steering committee felt it made more sense to prioritize unbundled services over further expanding full representation at this time.

Courtroom Assistance Services

The MJB's MNCIS system has expanded online access to case records for SRLs. While Minnesota does not have any court navigators, there are many in-person self-help centers as well as a statewide self-help center is available to all litigants via phone and email. Videos are available in multiple languages on going to court in Minnesota. The steering committee felt additional work in this area was not feasible in the short term given current priorities within the civil justice system, and thought other components offered less expensive alternatives for improving access to justice.

²⁷ See *supra* note 17.

²⁸ See *supra* note 6.

Role Flexibility for Other Professionals

This did not emerge as a focus area because it is not currently feasible. The MSBA Alternative Legal Models Task Force completed research and developed proposals for limited license legal technicians and expanded roles for paralegals, but both proposals were voted down by the broader MSBA assembly in 2017.

IV. Action Plan

From the assessment process, the project partners narrowed the focus to five targeted components for further research on promising practices. Small teams were formed to investigate information and ideas for implementation to be shared at the stakeholder summit meeting in October. This meeting included the members of the steering committee plus community partners. Participants reviewed the research and recommendations, then participated in an in-depth discussion on the component of their own choosing. Below are the strategic goals and key initiatives that we developed from this research, stakeholder discussions, a second prioritization process, and final approval by the Steering Committee.

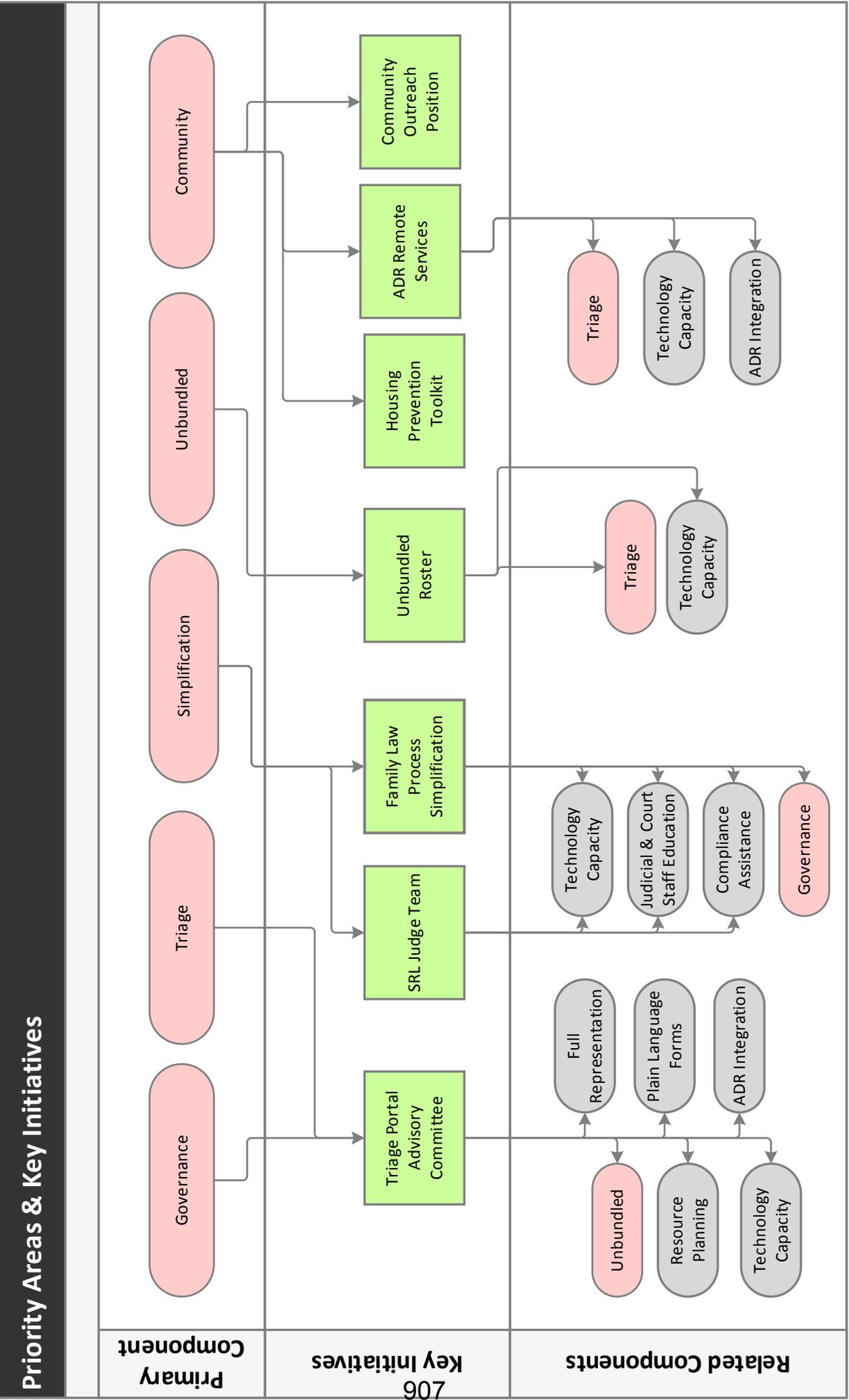
The final set of goals and initiatives submitted:

- Address the recommendations of the Steering Team and Stakeholder meetings
- Are feasible with current or reasonable additional funding
- Have the support of the MJB and align with the MJB’s strategic plan
- Provide a logical next or first step given past and current work

Strategic Goals

<p>Simplification</p>	<p>Simplify family law court processes to both (1) maximize efficiency and resources within Minnesota Judicial Branch and (2) improve litigant usability, trust and confidence in the civil justice system.</p>
<p>Unbundled (Discrete Task) Legal Assistance</p>	<p>Increase the number of attorneys providing discrete task (also referred to as “limited scope” or “unbundled”) representation to low- and middle-income people with civil legal needs through a robust and effective referral system.</p>
<p>Triage, Referral, & Channel Integration</p>	<p>Create a “no wrong door” system through which people with legal civil legal needs access legal information, self-help resources, and legal providers, through a user-centric approach that places the burden on the system to provide the best referral at the outset.</p>
<p>Community Integration & Prevention</p>	<p>Integrate legal information, resources and referrals into community settings through co-located services, community collaboration and prevention efforts that build trust and decrease the number of civil court cases, with a specific focus on the prevention of housing evictions across Minnesota.</p>
<p>Design, Governance & Management</p>	<p>Increase communication across existing governance structures to implement the Justice for All projects and create a new governance committee specific to the litigant portal work.</p>

The following page presents an outline showing how the key initiatives (in green) relate to these target areas (in pink) and other components. Following the outline, each key initiative is discussed in turn, including why it was chosen as a priority action, the current state and desired future state, how the community will be involved, resources needed and the initial evaluation and communication plans.



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Triage Portal Advisory Committee

Current State

The state courts, bar association and civil legal aid all maintain separate websites. These websites link to each other, but do not share user data or provide any triage logic to assist users with navigating to the best available resource. In addition to the public facing websites, each stakeholder also separately maintains its own referral lists. This means that there is staff time spent at each civil legal aid program, the statewide self-help center, law libraries, and bar associations creating and maintaining referral lists. When new services are created or existing services end, there is no easy way to inform all stakeholders.

Future State

The vision is to create a governance structure focused on a triage portal that would be the primary online referral site for people with legal issues, regardless of income level. The database that feeds the triage portal would be updated to include information from all primary stakeholder groups and would have a component for partners to generate up to date legal referrals without having to maintain their own lists. The governance committee would make policy recommendations related to the online triage system and referral database.

JFA Action Item

Convene a Triage Portal Advisory Committee (Advisory Committee) governance structure to coordinate the work already being done to redesign the civil legal aid online intake system with additional court self-help, ADR and private bar resources and to ensure there are sufficient new resources developed for the long-term success of this project.

Why It's a Priority

Learning from the work of the NCSC Litigant Portal Workgroup, it is critically important that our triage portal have a clear governance component. There are many policy issues that have not yet been resolved in Minnesota, including defining the roles of lead agency for the portal. For example, the technological work that is already underway is through Legal Services State Support, but the resources for clients above legal aid funding guidelines are coming from the Minnesota Judicial Branch. Having the governing body ready to address these and other policy decisions as the portal development gets underway will be very important to its overall success.

Community Involvement

Community representatives from United Way 2-1-1 would be members of the Advisory Committee. Other community involvement would be in work groups for design and user testing.

Related Components

Design, Governance & Management

Community Integration & Prevention

Unbundled (Discrete Task) Legal Assistance

Triage, Referral & Channel Integration

Simplification

Resource Planning

Technology Capacity

Judicial & Court Staff Education

Broad Self Help Informational Services

Plain Language Forms

Language Services Integration

Alternative Dispute Resolution Integration

Compliance Assistance

Expansion & Efficiency Improvements of Full Service Representation

Courtroom Assistance Services

Role Flexibility for Other Professionals

Resources Needed

Funding for a .25 FTE in providing staffing support to the Advisory Committee. The funding would be sustained by LSAC, ideally through a dedicated pro hac vice fee, which is under consideration.

Performance Measures

- Amount of funding the Advisory Committee is able to dedicate to the triage portal work and supporting related JFA projects
- One of the tasks of the Advisory Committee would be to create performance measures for the triage portal itself.²⁹

Communications

The Advisory Committee would need to be very intentional about its communications plan. It will need to have regular communications (e.g., newsletter) with stakeholders to maintain excitement and commitment to the triage portal project. As the portal gets closer to implementation, the Advisory Committee would be tasked with creating an outreach strategy. Communications about the JFA project initiatives will also be included in the overall communication effort Minnesota will be coordinating with the Voices for Civil Justice staff.

²⁹ See Rebecca Sandefur, *Increasing Access to Justice through Expanded “Roles Beyond Lawyers”*: Preliminary Classification Frameworks (2015), available at www.americanbarfoundation.org/uploads/cms/documents/rbl_evaluation_and_program_design_frameworks_4_12_15.pdf, for a discussion of designing evaluation criteria in access to justice initiatives.

SRL Judge Team
<p><u>Current State</u> Minnesota Judicial Branch requires judges to receive 45 hours of continuing education credits every three years, and a wide variety of training opportunities are organized by the Judicial Education Manager and her staff. Courses on working with self-represented litigants are regularly offered, but the trainers change, and content varies year by year.</p> <p><u>Future State</u> The vision is for the Minnesota Judicial Branch to be a national leader in training for judges working with self-represented litigants.</p> <p><u>JFA Action Item</u> Create a Self-Represented Litigant Judge Team to train judges and be a resource for the Minnesota Judicial Branch on best practices for working work with self-represented litigants.</p> <p><u>Why it's a Priority</u> Taking advantage of the judicial leadership that has emerged from the first phase of the JFA project, this is an opportunity to improve the quality of training on self-represented litigant issues and have a team of judges able to advocate for best practices in this area. The Minnesota Judicial Branch has a successful model where a team of judges trained on best practices in domestic violence cases then provide training to benefit judges statewide, and replicating this model for self-represented litigant services will help to prioritize the JFA work.</p> <p><u>Community Involvement</u> There is an opportunity to create a series of training videos with self-represented litigants talking about their experience and how it could be improved. This would provide the community voice as judges are learning from one another about how to best work with self-represented litigants.</p> <p><u>Resource Needs</u> Funding for a team of five judges to attend national self-represented litigant training and pay for retired judges to assist with their work while the judge team is out of the office for training. Once the judge team is in place, the Judicial Branch will pay for the ongoing costs related to these trainings in the future.</p> <p><u>Performance Measures</u></p> <ul style="list-style-type: none"> • Tracking the number of judges trained • Tracking the responses in the Minnesota Judicial Branch Access and Fairness Survey to see if there is an improvement in results after the training has been provided

Related Components

Design, Governance & Management

Community Integration & Prevention

Unbundled (Discrete Task) Legal Assistance

Triage, Referral & Channel Integration

Simplification

Resource Planning

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Judicial & Court Staff Education

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Alternative Dispute Resolution Integration

Compliance Assistance

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Courtroom Assistance Services

Role Flexibility for Other Professionals

Communications

Communications about the JFA project initiatives will also be included in the ongoing communication effort Minnesota will be coordinating with the Voices for Civil Justice staff.

Family Law Process Simplification
<p><u>Current State</u> Minnesota has invested significant resources in creating family court forms and providing self-help services throughout the state. Less work has been done on simplifying the court process that begins once those forms are filed. Minnesota does have Early Case Management services in some counties, but many rural areas have not found a way to make that model fit due to lack of local resources.</p> <p><u>Future State</u> The vision is for simplified family court processes in Minnesota for cases involving two self-represented litigants, including an informal domestic relations trial process. There would be services statewide to assist with the effort, including the ability to receive pro bono assistance and appear in court remotely, to ensure that rural areas are able to see full benefits of the simplification effort.</p> <p><u>JFA Action Item</u> Recommend simplified family law processes in conjunction with Early Case Management work underway in State Court Administration and develop a pilot project.</p> <p><u>Why It's a Priority</u> There was consensus among the Steering Committee and the stakeholders attending JFA events that this is an area of need. The current family court process (outside of expedited child support) was designed by lawyers for lawyers. With more than 90% of family cases having at least one self-represented party at some stage of the case, it makes sense to try to design a process that is simplified when that is appropriate (e.g., not domestic violence cases). The Alaska model was of great interest to the Steering Committee, especially the judges, and Minnesota would like to benefit from their experience, especially in reaching rural areas with a full range of services at the front end of the case.</p> <p><u>Community Involvement</u> The private bar will be involved with the project for the expansion of pro bono and feedback on recommended court rule changes. Self-represented litigant feedback would be part of the pilot project effort to improve the user experience before expanding to other parts of the state.</p> <p><u>Resources Needed</u> Having a portion of a State Court Administration staff person's time to coordinate the simplification effort would ensure that the project is integrated in to business operations and staff training. There will be more detail on the amount requested in the implementation grant application.</p>

Related Components

Design, Governance & Management

Community Integration & Prevention

Unbundled (Discrete Task) Legal Assistance

Triage, Referral & Channel Integration

Simplification

Resource Planning

Technology Capacity

Judicial & Court Staff Education

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Plain Language Forms

Language Services Integration

Alternative Dispute Resolution Integration

Compliance Assistance

Expansion & Efficiency Improvements of Full Service Representation

Courtroom Assistance Services

Role Flexibility for Other Professionals

Performance Measures

- Reduction in post-trial motions filed by litigants
- Increase in satisfaction levels of SRLs about their court experience
- Reduction in court staff time

Communications

Communications about the JFA project initiatives will also be included in the ongoing communication effort Minnesota will be coordinating with the Voices for Civil Justice staff.

Unbundled Roster
<p><u>Current State</u> The Minnesota State Bar Association (MSBA) maintains a referral list for their members who choose to participate through www.mnfindalawyer.com. The district bar associations for some of the larger counties in the state provide attorney referral services by phone, including some lower fee services for people of modest means (usually defined as 300% of poverty or below). None of these attorney referral services maintain a roster specific to unbundled services. Most attorneys interviewed during the JFA unbundled focus groups reported not advertising unbundled as part of their practice, which makes it very difficult to refer people who could benefit from this service to appropriate attorneys.</p> <p><u>Future State</u> The vision is for a high volume of self-represented litigants to be referred to appropriate unbundled services, providing a market based solution for people in need at a cost they can afford and a reliable referral source for attorneys who choose to make unbundled a significant portion of their practice.</p> <p><u>JFA Action Item</u> The state and district bar associations would coordinate rosters of private attorneys willing to provide unbundled services accessible both for online users and phone users. For people who access services online, this would be connected to the triage portal. For people who contact legal aid or the court statewide self-help services via phone, they would be referred to the attorney referral services via phone. It is a “no wrong door” approach for people who are over the income guidelines for civil legal aid, but who can benefit from limited scope services. For the online system, users who are referred from the triage interview will have the information they have already entered in the system passed to the bar association roster, including case type, geography and income level, so that the user doesn’t have to answer all the same questions again. The bar associations would have training requirements for participating attorneys and would commit to public education regarding the purpose and availability of unbundled service.</p> <p><u>Why It's a Priority</u> Minnesota has had favorable court rules in place allowing for limited scope services since 2005, but the lack of attorneys advertising unbundled services and insufficient referral systems has made it difficult to match unbundled services with people who need it (particularly self-represented</p>

Related Components

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Community Integration & Prevention

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Courtroom Assistance Services

Role Flexibility for Other Professionals

litigants above income guidelines for legal aid limited scope clinics). This is an area for significant growth in our state.

Community Involvement

JFA Steering Committee has conducted focus groups with self-represented litigants to get their input on the need for unbundled services and how to best market the services. This outreach would continue with community members who would help with user testing of the online system as it is developed.

Resources Needed

Funding for development of the online roster, outreach to attorneys and outreach to community; bar associations would provide staffing and sustaining funding for the effort

Performance Measures

- Tracking the number of unbundled referrals to each of the bar association partners
- Tracking the success of the referrals with information back from participating attorneys
- Measuring customer satisfaction with the service through a research sample of participants

Communications

The bar association is planning a communications effort directed at potential consumers of the unbundled service. Communications about the JFA project initiatives will also be included in the ongoing communication effort Minnesota will be coordinating with the Voices for Civil Justice staff.

Housing Prevention Toolkit
<p><u>Current State</u> Rural housing cases are primarily SRLs with advice only due to short lead times, fewer available attorneys and long travel distances. 93% of eviction cases are for non-payment of rent, and the average amount of money owed is under \$1500. Understanding of rights and responsibilities on the part of both tenants and landlords is lacking.</p> <p><u>Future State</u> The vision is for legal services to work in partnership with tenants, landlords, government services, mediation and community services through effective education and access to services for tenants (mediation, financial help, legal advice) to maximize the number of housing disputes that can be resolved without an eviction being filed.</p> <p><u>JFA Action Item</u> Community outreach and partnering through one coordinator’s work in Northeastern Minnesota has moved toward zero evictions in this region. The project will gather in one place the resources and templates that have worked in this region and include other successful practices in use in rural Minnesota. The toolkit will be piloted in at least one other rural area and evaluated in the pilot for its help in reducing eviction cases. Feedback will be incorporated to create a final toolkit, which can be promoted statewide and made available to other states.</p> <p><u>Why It's a Priority</u> Minnesota has a statewide initiative focused on ending homelessness. Minnesota housing shortages mean even first evictions can translate to homelessness. Stable housing is cited as one of the most critical “upstream” social determinants affecting families and children’s health, education and safety. Evictions “travel” with those affected, impacting future employment and future housing opportunities.</p> <p><u>Community Involvement</u> This project will be focused on community involvement, drawing from the experiences of one region’s successful community partnering practices and encouraging other communities to build community partnerships through the tools provided.</p> <p><u>Resources Needed</u> Funding for the development and piloting of the toolkit in one or more rural area as resources allow.</p>

Related Components

Design, Governance & Management

Community Integration & Prevention

Unbundled (Discrete Task) Legal Assistance

Triage, Referral & Channel Integration

Simplification

Resource Planning

Technology Capacity

Judicial & Court Staff Education

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Courtroom Assistance Services

Role Flexibility for Other Professionals

Performance Measures

- Successful pilot of the rural Housing Court prevention toolkit as measured by qualitative feedback on the toolkit pilot(s) – Year 1
- Track the number of rural communities who use the toolkit and survey feedback on its effectiveness in their efforts to reduce eviction cases through community prevention
- Track number of eviction cases, year over year, in Minnesota to see if eviction cases are being reduced in areas using the toolkit and compare this to other areas not using the toolkit.

Communications

Part of the toolkit will be focused on communications. One key message for launching this project is that it will gather good practices from across the State.

ADR Remote Services
<p><u>Current State</u> Minnesota has six Community Dispute Resolution Programs in eight counties, with services focused in the metro area and some regions in the northeastern and southwestern portions of the state. These programs provide free and low-cost dispute resolution services using supervised volunteer mediators. The Community Dispute Resolution Programs provide mediation services for a wide range of civil disputes including neighbor to neighbor, landlord tenant, small business disputes and family members including juveniles and elders. By state statute they are prohibited from providing services in divorce proceedings, but they do cover post-divorce and never married parenting time mediations. The current service model is for telephone based intake case management followed by in-person mediation services. This has limited the ability to provide mediation services outside the eight county areas where their offices are located.</p> <p><u>Future State</u> The vision is to make free and low-cost mediation services available in all 87 counties in Minnesota. This capability will include a centralized website and 1-800 number for individuals from anywhere in Minnesota to submit a mediation request. These requests then will be referred to mediation. In this future state the 400+ volunteer mediators will be able to respond to any Minnesotan requesting mediation either in person, or using remote conferencing. This statewide capability to access a mediation requests will be integrated in the Triage Portal so that people who could benefit from mediation will be made aware about the option for ADR before proceeding with litigation.</p> <p><u>JFA Action Item</u> Fund Community Dispute Resolution Programs capacity to provide remote mediation services to expand statewide reach and better connect with community partners in underserved areas.</p> <p><u>Why It's a Priority</u> The Community Dispute Resolution Programs have a service that is not well integrated with the existing civil justice system partners. In discussions about reaching new community partners and having a full range of services available through the triage portal, the Community Dispute Resolution Programs have asked how they can better connect through the JFA efforts. Their idea of providing statewide remote services and outreach fills a gap and helps reach the goals of better coordination and providing services that are not limited by geography.</p>

Related Components

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Community Integration & Prevention

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Simplification

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Role Flexibility for Other Professionals

Community Involvement

The six Community Dispute Resolution Programs recently entered into a joint venture agreement. Part of the mission of this new organization is to increase statewide access to mediation. As a part of this work they are reaching out to community partners in all 87 counties. Through an outbound calling campaign, local agencies have been identified to act as referral partners. In each county we are reaching social services providers, faith based organizations as well as local county help desks for outreach to clients that would be appropriate for mediation. This aligns with JFA efforts to connect with stakeholders outside of the courts, civil legal aid and the private bar.

Resources Needed

Funding for an implementation grant to buy the hardware and accessories for each location for remote mediation services through Community Mediation Minnesota and to provide outreach about the new service. Continuing funding would be provided by LSAC if the initiative is successful.

Performance Measures

- Tracking the number of community partners reached through the expansion effort
- Tracking the number of mediators trained to conduct remote mediations
- Tracking the number of people served by remote ADR

Communications

Community Mediation Minnesota is developing an outreach and communication plan. Communications about the JFA project initiatives will also be included in the ongoing communication effort Minnesota will be coordinating with the Voices for Civil Justice staff.

Community Outreach Position
<p><u>Current State</u> While civil legal aid and the courts have many different community-based initiatives underway, there is no statewide position currently devoted to community integration and prevention within the civil justice system.</p> <p>Call for Justice was a nonprofit that did training of United Way 2-1-1 referral and information specialists and held legal liaison programs educating social service providers about legal issues and providers. Call for Justice closed in late 2017, and worked with the Hennepin County Bar Association to continue its legal liaison program work in the Twin Cities metro area.</p> <p><u>Future State</u> We envision a future state that expands outreach and communications efforts between the civil justice system and community partners, including social service providers. Communities across Minnesota will have better access to legal information, resources, and services to help resolve civil legal problems. Social service providers and community leaders will be able to better issue-spot legal issues, and make better referrals to legal aid and other resources when appropriate.</p> <p><u>JFA Action Item</u> In addition to the Housing Prevention Toolkit and ADR Remote Services initiatives, we see an additional action item to staff general community integration and prevention work, with a focus on Greater Minnesota. This position would start as a part-time position that would continue the work started at Call for Justice to connect social service providers with legal resources and providers and support the implementation of the Housing Prevention Toolkit. The project partners propose this position to exist at Legal Services State Support, a statewide project of the Minnesota Legal Services Coalition.</p> <p><u>Why it's a Priority</u> During the assessment, project partners received clear feedback from community-based participants that the civil justice system needs to increase its coordination and outreach with nontraditional justice system partners. This position will ensure that community involvement also continues to move forward as the Justice for All work and related efforts gain momentum in the next few years.</p>

Related Components

Design, Governance & Management

Community Integration & Prevention

Unbundled (Discrete Task) Legal Assistance

Triage, Referral & Channel Integration

Simplification

Resource Planning

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Judicial & Court Staff Education

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Courtroom Assistance Services

Role Flexibility for Other Professionals

Community Involvement

Community involvement will be central to this initiative – community stakeholders will help identify their substantive training needs and the areas where this work will be most impactful.

Resource Needs

This position needs kickoff funding for a .25 FTE position and will be sustained LSAC grants that had previously been granted to Call for Justice.

Performance Measures

- Survey of social service providers and community leaders' understanding and awareness of issues and resources within the civil justice system before and after outreach activities
- Volume and quality of referrals to legal aid from social service providers

Communications

Communication channels outside of traditional civil justice system channels will be critical to this initiative. The staff funded by this position will need to create a communications plan that reflects the communities they are trying to reach. This will likely involve a combination of social media platforms and in-person outreach.

V. Communications Plan

Our communication plan is set up in three phases for 2018. The first phase is “Establishing Resources for Implementation.” We will keep communications within the working committees during this phase as we are completing the Strategic Action Plan and while 2018 initiatives are being finalized and resourced. The second phase is “Announcing the Plan.” This phase will begin when resources are confirmed, likely at the beginning of February. This Strategic Action Plan will be announced, posted and communicated more broadly through the judicial, legal aid and other related service communities. The third phase will be to weave ongoing communication on the Access to Justice priorities and plans into the community.

Phase 1: Establishing Resources for Implementation – January 2018

While we have broad agreement on the priorities and strategic goals for our plan, we will be working to secure resources for launching the initiatives in 2018. During this time, the communications will be focused to the Steering Committee and the Chief Justice.

Key Messages

- Ensuring alignment on our five strategic goals
- Preparing proposals for implementation grants and other funding
- Communicating with recipients of funds to identify roles, plans and evaluation strategies
- Extending appreciation to key stakeholders for their work over the past 12 months
- Meeting with the Chief Justice to determine messages and method to communicate the plan through the judicial system

Phase 2: Announcing the Plan – February 2018

When resources have been determined for implementing proposed initiatives, we will finalize our plan and announce it to the civil justice community, including the Minnesota Judicial Branch, civil legal services, and the private bar. The JFA Plan will be announced through the following communications:

- Announcement to the Steering Committee with a summary of next step communications
- Plan with letter of appreciation to all stakeholders participating in the planning process
- Plan communicated throughout the judicial system
- Plan posted on www.mnlegalservices.org and www.mncourts.gov
- Meetings to discuss the plan in February 2018

Key Messages

- Why access to justice is important for Minnesota
- 5 key priorities/strategic goals
- 2018 Initiatives
- Evaluation plans
- Where to send comments and feedback
- How to get/stay engaged in this effort

Phase 3: Ongoing Communications – June, September, and December 2018

Keeping the JFA plan visible in the legal and judicial communities is a final and ongoing step of communications for our work. In this phase, we want to establish quarterly communications on the implementation and evaluation of our efforts, starting 2nd quarter, 2018. It will be important to maintain awareness of our strategic goals, to evaluate the work underway, and to modify the plan as we implement.

The key audiences for this phase of our communications will be the primary stakeholder groups involved in the planning work, the Judicial branch and the Implementation grant recipients.

Communication Vehicles:

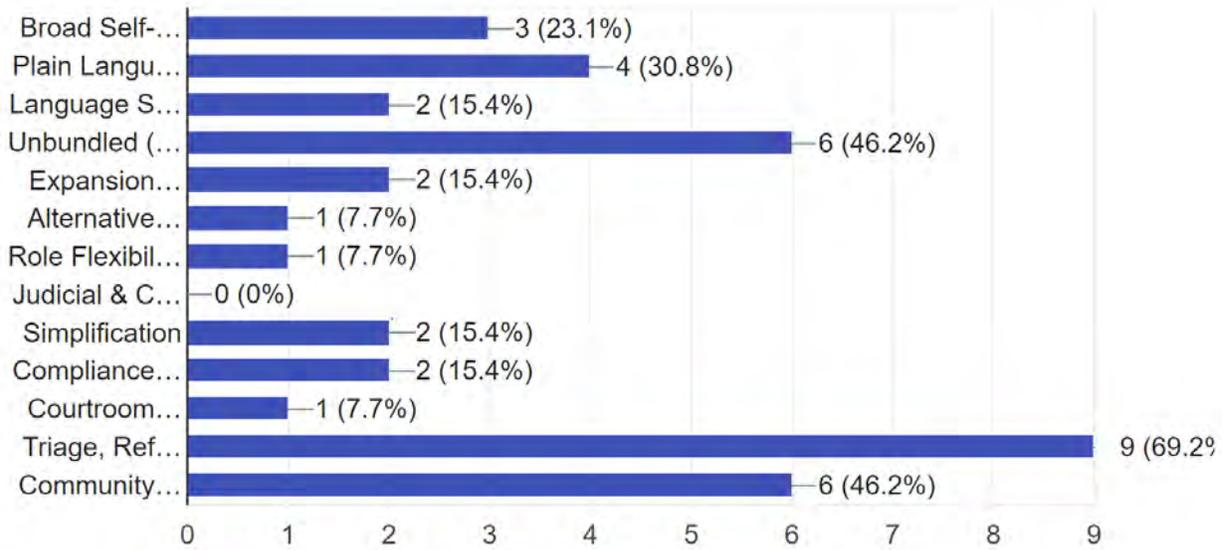
- Minnesota Legal Services Coalition blog and monthly newsletter
- Bi-monthly legal aid partner meetings
- MSBA LAD Committee, pro bono council, and assembly meetings
- Direct emails to key stakeholders
- Community meetings
- Judicial Branch newsletter “Branching Out”
- Judicial Branch annual report
- Work with the Court Information Office of the Judicial Branch to work on getting more information in legal and other media outlets.

Conclusion

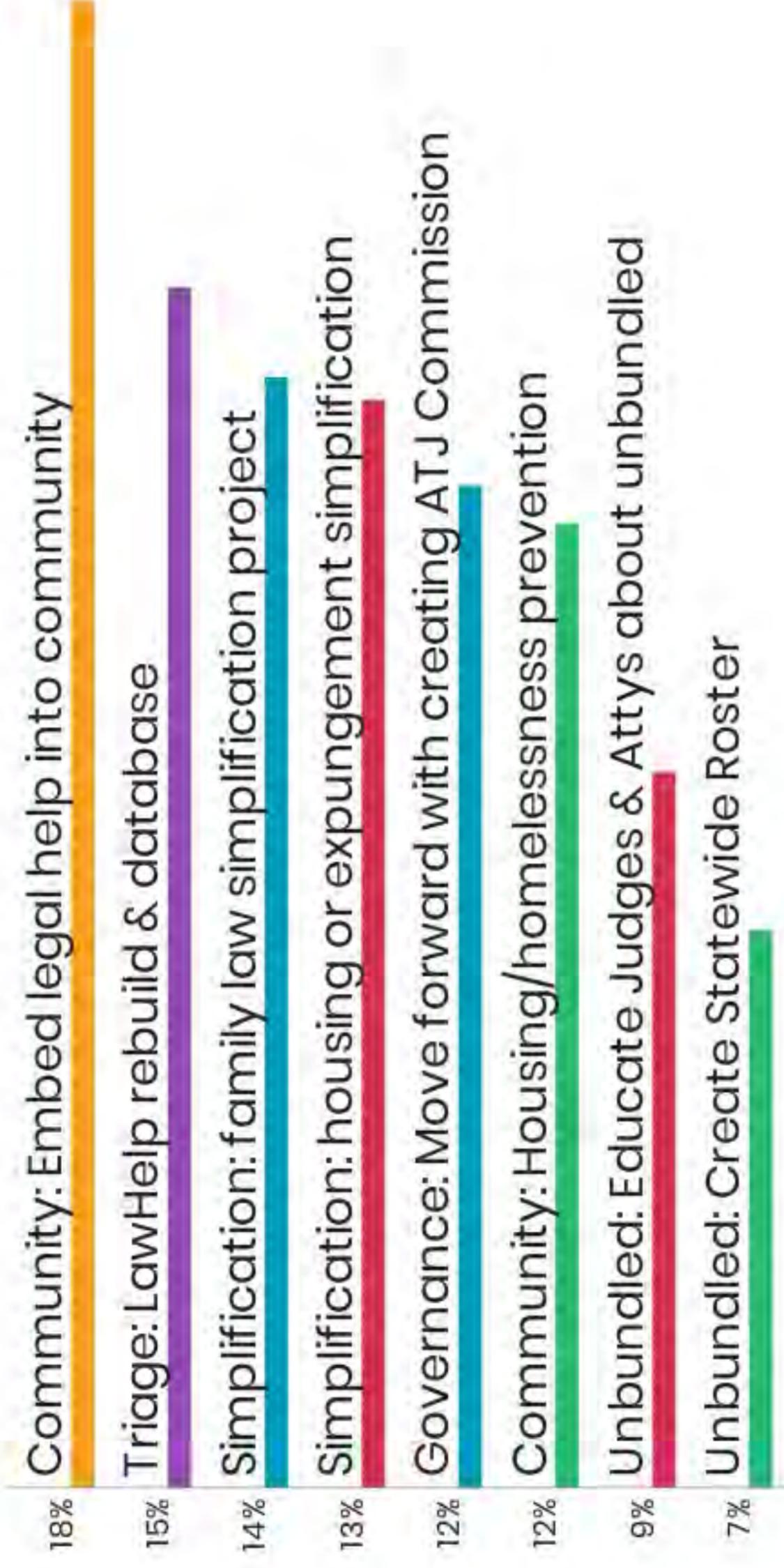
Minnesota civil justice system stakeholders are committed to steady progress towards the Justice for All goals. This strategic plan is the result of many people from across the state who provided important feedback and input into the project. The initiatives described in this report will result in expanded legal services for many Minnesotans and real changes in how partners work together to create a more user-friendly system. The JFA process has led to real commitments on the part of the courts, civil legal aid and the private bar to stretch beyond the usual stakeholders and integrate even more with the community. This plan is intended to complement and supplement a wide range of current efforts already in place or underway in Minnesota to ensure that all Minnesotans have access to effective assistance for their essential civil legal needs; that we have a comprehensive and integrated approach to the services we provide; and that our system provides a continuum of meaningful and appropriate services for all. This has been a meaningful process for our state and we are ready to move our strategic plan in to action.

Appendix A: Survey Results

The below chart shows the survey findings of the steering committee prior to our meeting about prioritization. The following page shows the audience live polling results from the Fall Stakeholder meeting.



100 points



Paraprofessional Pilot Survey Results

Appendix I

Legal Paraprofessional Pilot Project Implementation Committee September 30, 2019

926



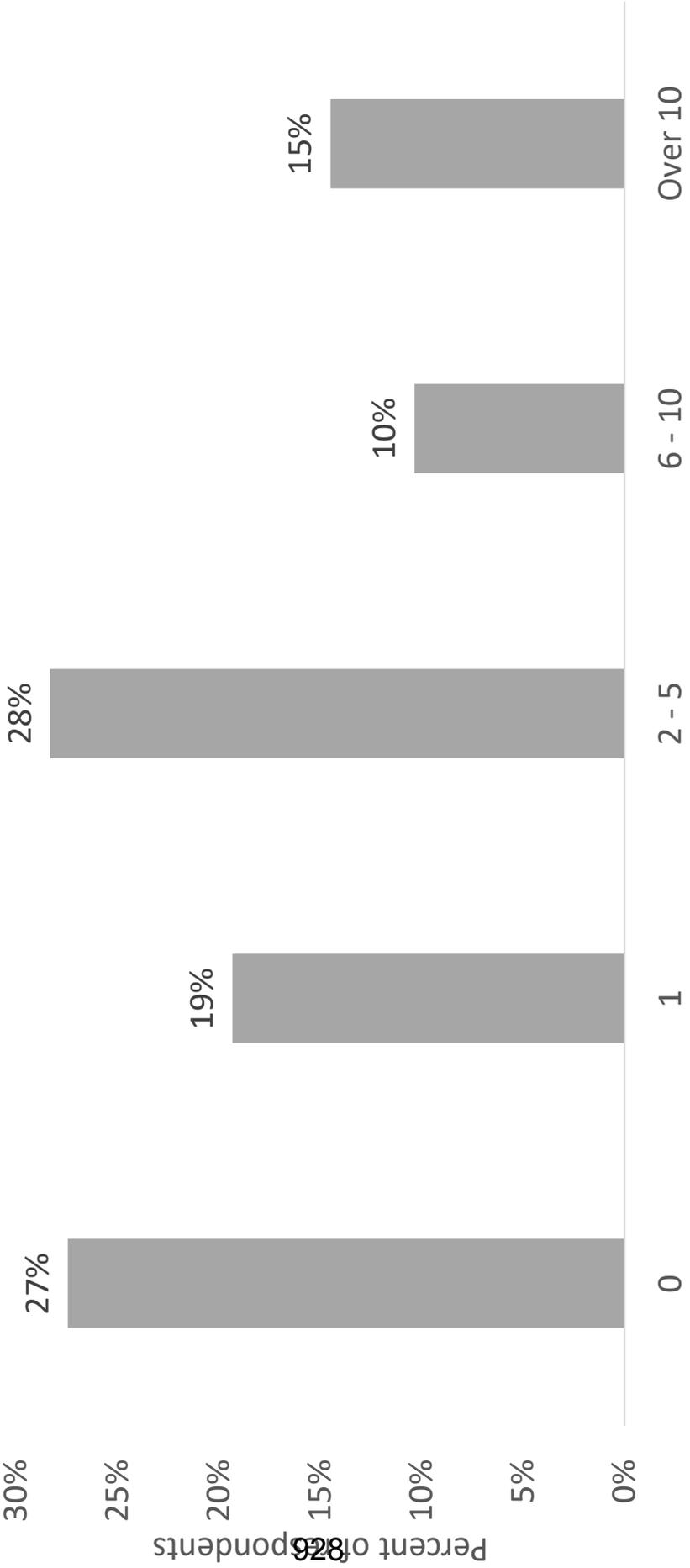
*To provide justice through a system that
assures equal access for the fair and timely
resolution of cases and controversies*

MJB Mission Statement

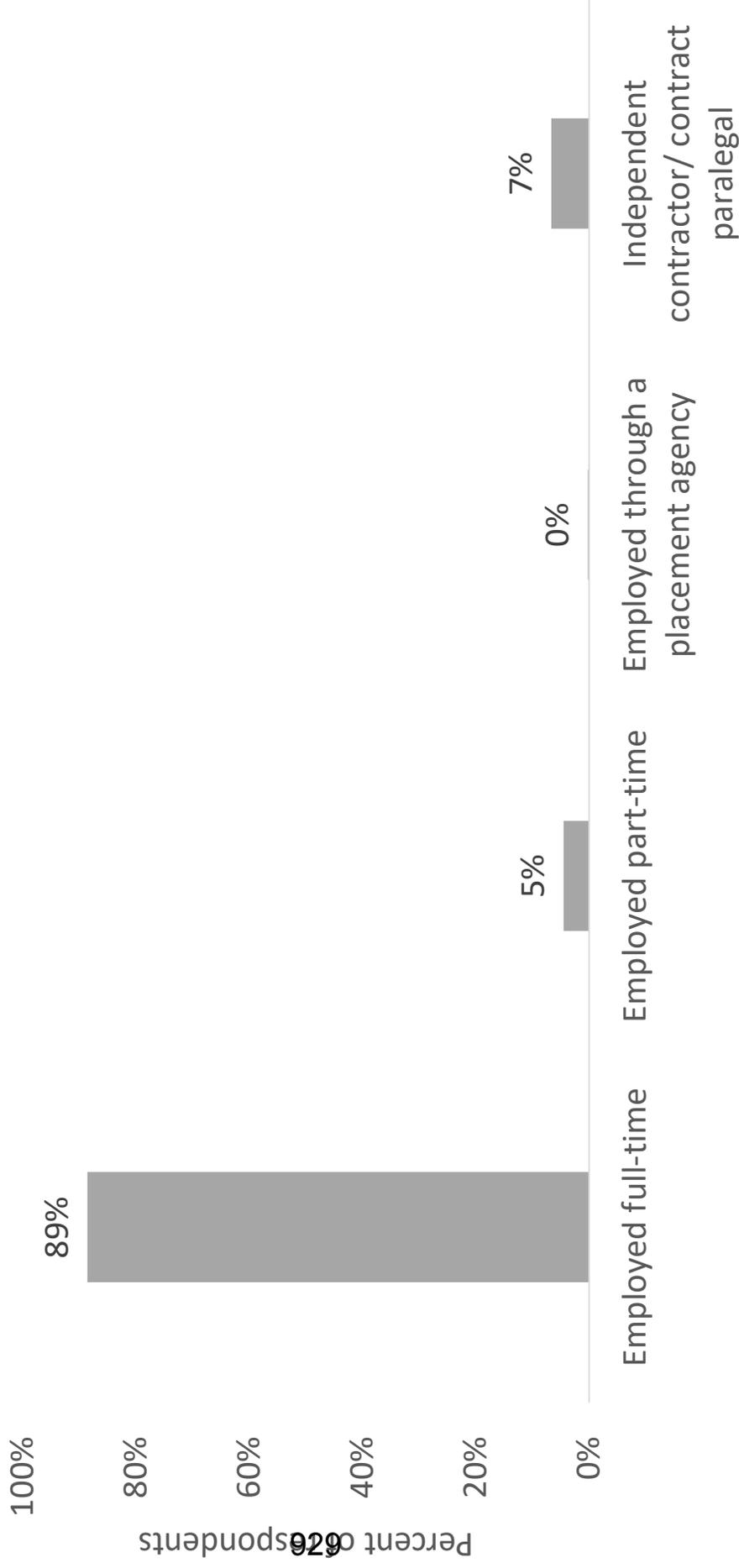
Survey Responses

- 579 completed surveys from Thursday, September 12th through Tuesday, September 24th
- Completion rate of 69%
 - 835 started surveys
- Average time to complete: 6 minutes
- Written responses included as appendix

How many paralegals does your office currently employ, as either permanent staff or contract staff?

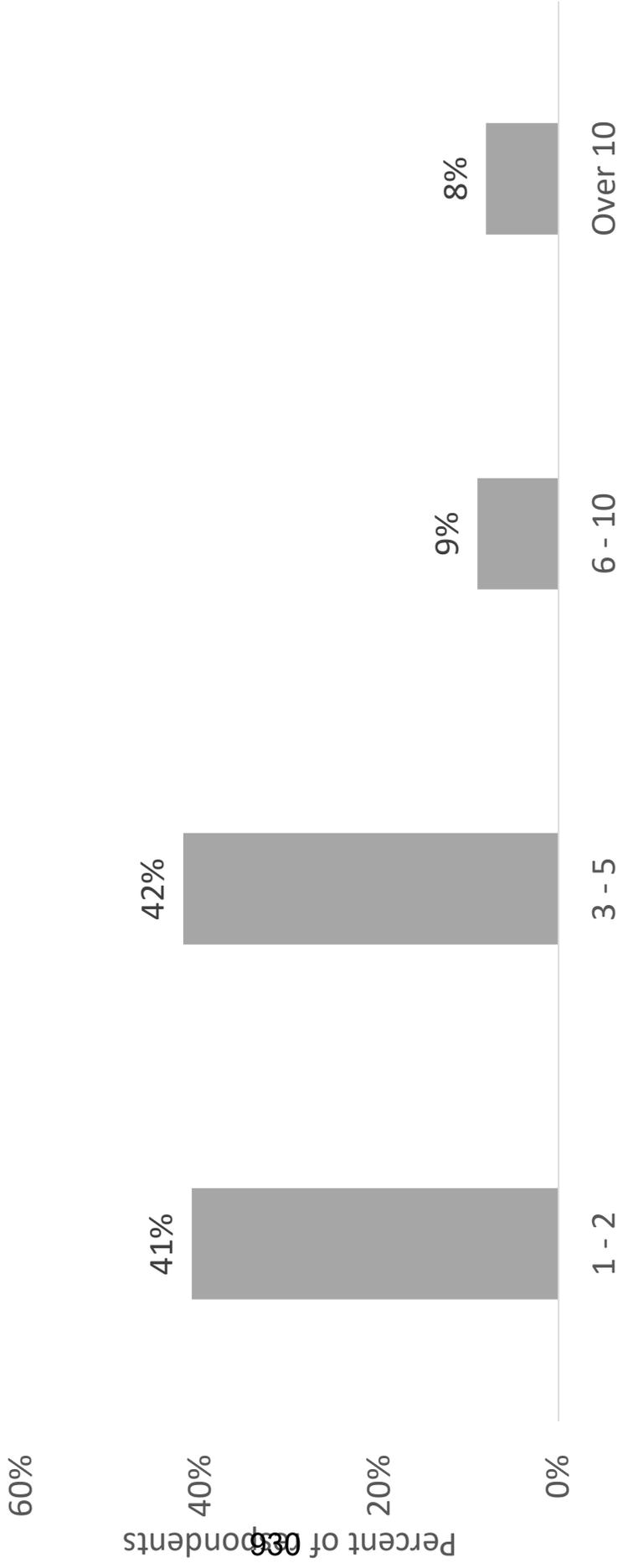


What is the paralegal's employment status? (Select the most appropriate answer.)*



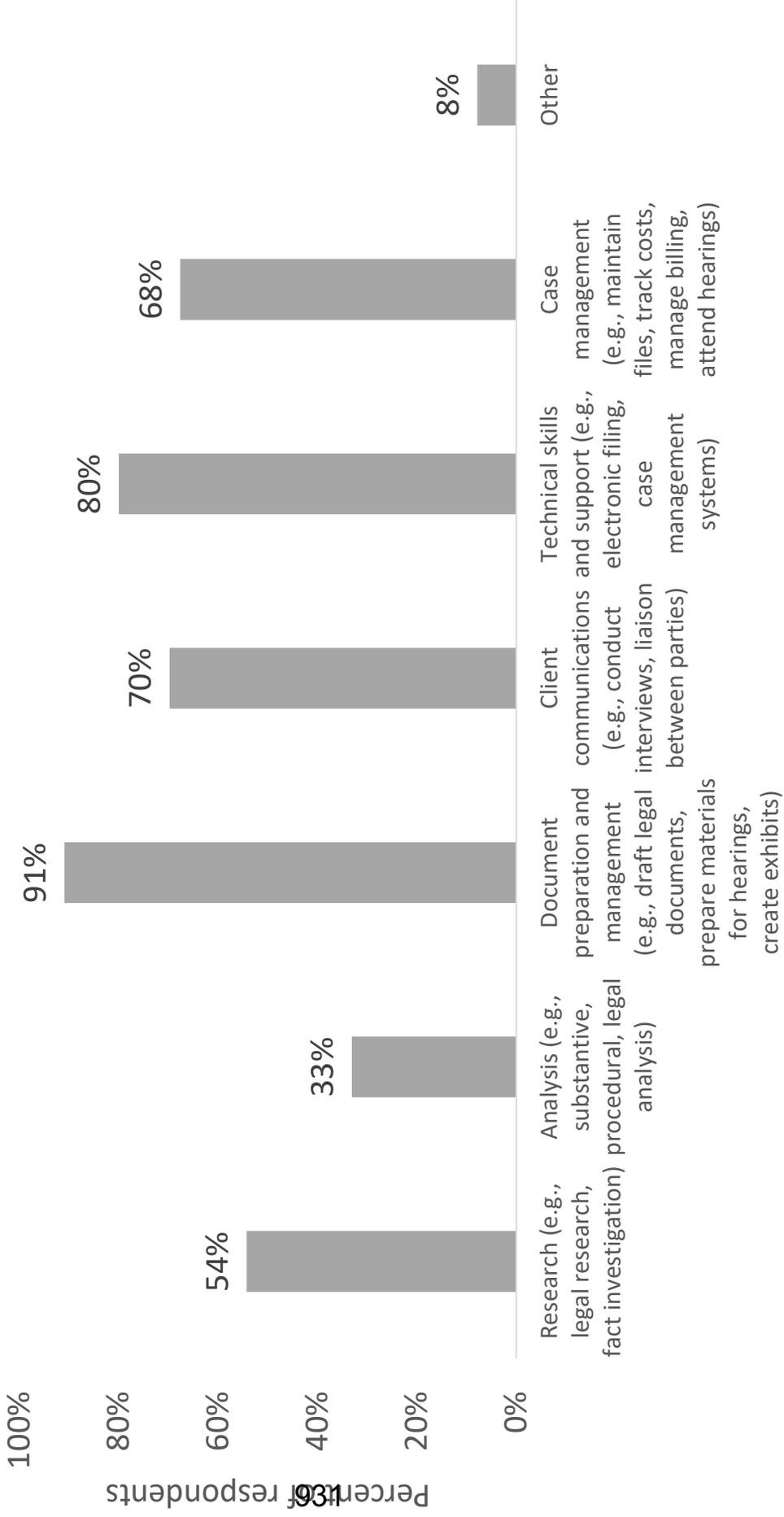
*Question asked only of respondents with at least one paralegal in their office.

In your office, how many attorneys does the paralegal support? (Select the most appropriate answer.)*



*Question asked only of respondents with at least one paralegal in their office.

What kind of work does the paralegal currently do for your office?*

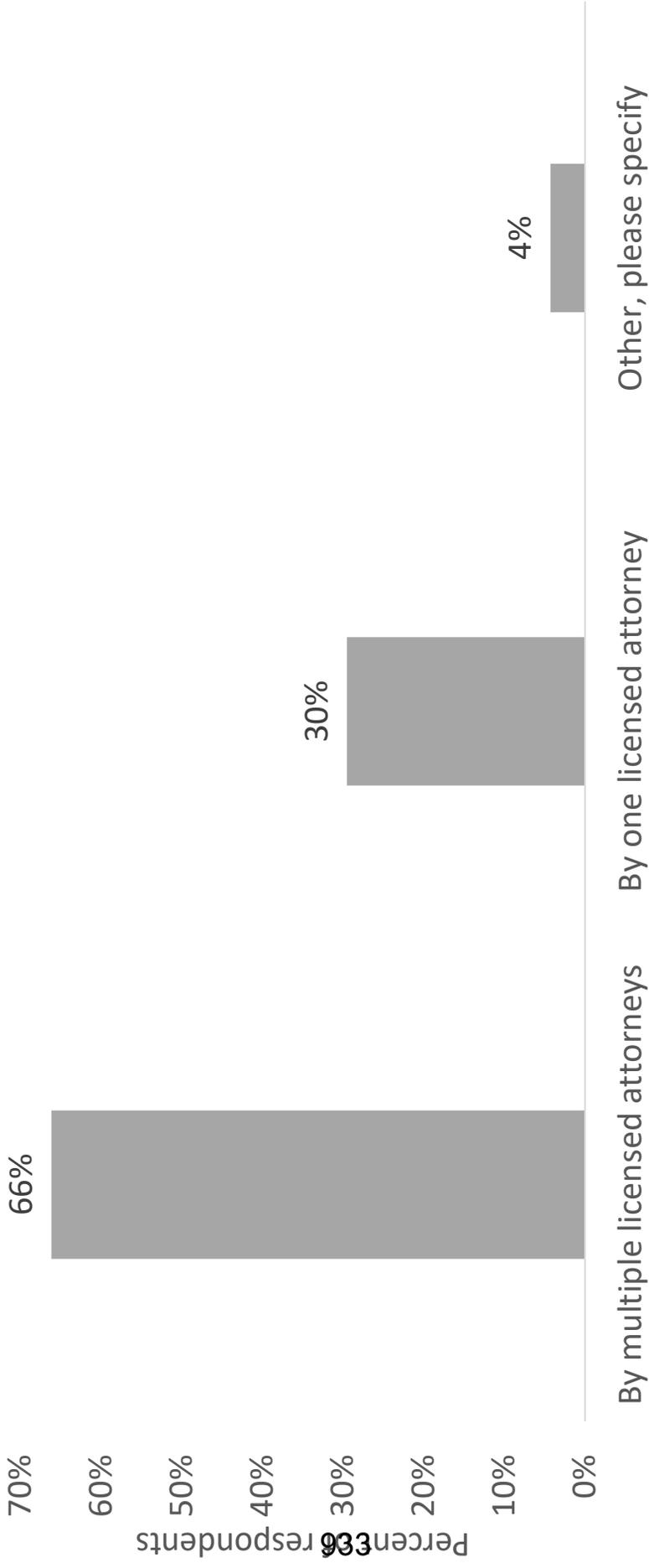


*Question asked only of respondents with at least one paralegal in their office.

What kind of work does the paralegal currently do for your office? Other – write in

- Secretarial - Prep of Correspondence, Discovery, eFilings
- Trial, post-trial matters and appellate work
- Prepare probate & trust accountings; prepare estate, gift, and income tax returns
- Liaison for counsel.
- Makes copies of digital evidence
- Scheduling, subrogation/medical expense organization and presentation
- None of the above describe the work performed by paralegals. Paralegals in my office gather and summarize records, perform social media searches, communicate with outside parties regarding obtaining records, maintain files. Paralegals do NOT perform substantive legal work.
- Real estate work, such as abstracting, preparation of conveyancing documents, etc.
- Industry subject matter expert
- manage front desk and applications
- consult with internal clients; project work
- doc management but not drafting
- Office manager, consults with attorney's and sometimes clients
- Review contracts from third parties, draft contracts
- Translation
- docket tracking; to-do lists
- contract review
- Answer phones
- representation at social security hearings
- Administrative roles
- Collects and organizes documents
- tax preparation
- Draft correspondence to Court and opposing parties/counsel
- Provide input in case strategy meetings; writing & editing briefs, etc.
- contract management
- Board/committee governance
- Hospital and case manager communications
- Summarize documentary evidence - medical and other records
- Discovery - preparation of discovery, tracking of productions
- Intake
- Administrative Hearings
- Represent in Admin hearings
- Direct case handling - administrative hearings. Have own case load

Please describe how the paralegal is supervised.*

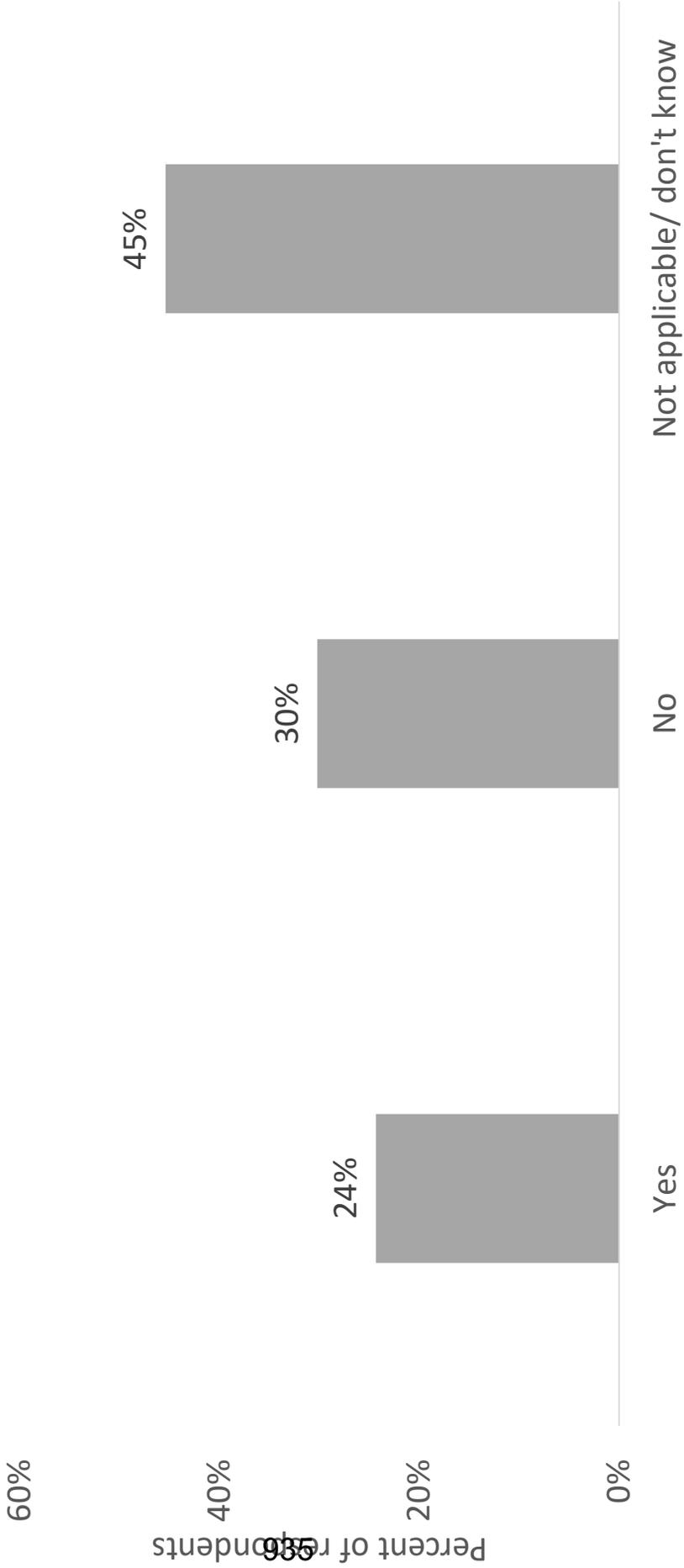


*Question asked only of respondents with at least one paralegal in their office.

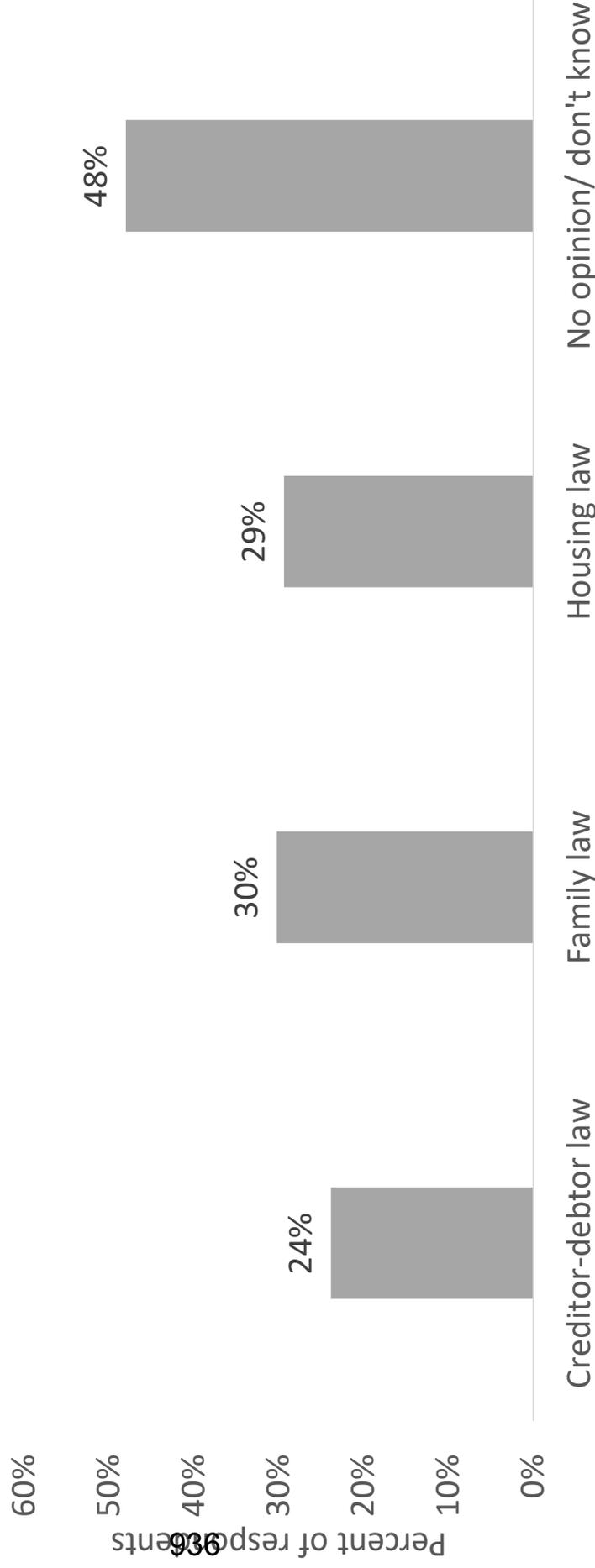
Please describe how the paralegal is supervised. Other – write in

- office manager
- by a supervising attorney
- Not really supervised. Billable hours.
- Staff supervisor
- Non-attorney administrative staff
- There is one non-attorney supervisor that manages all staff members.
- There is attorney supervision through each practice area in the office.
- By multiple attorneys and an Admin person
- Through Admin
- Supervising paralegal
- Paralegal supervisor (also a paralegal)
- Administrative supervisor
- Paralegal Manager
- Director of Sales/Marketing
- Legal Manager
- We have a head supervisor in each department
- By assigned attorney and by unlicensed paralegal supervisor
- Division Support Staff Supervisor
- Firm Administrator

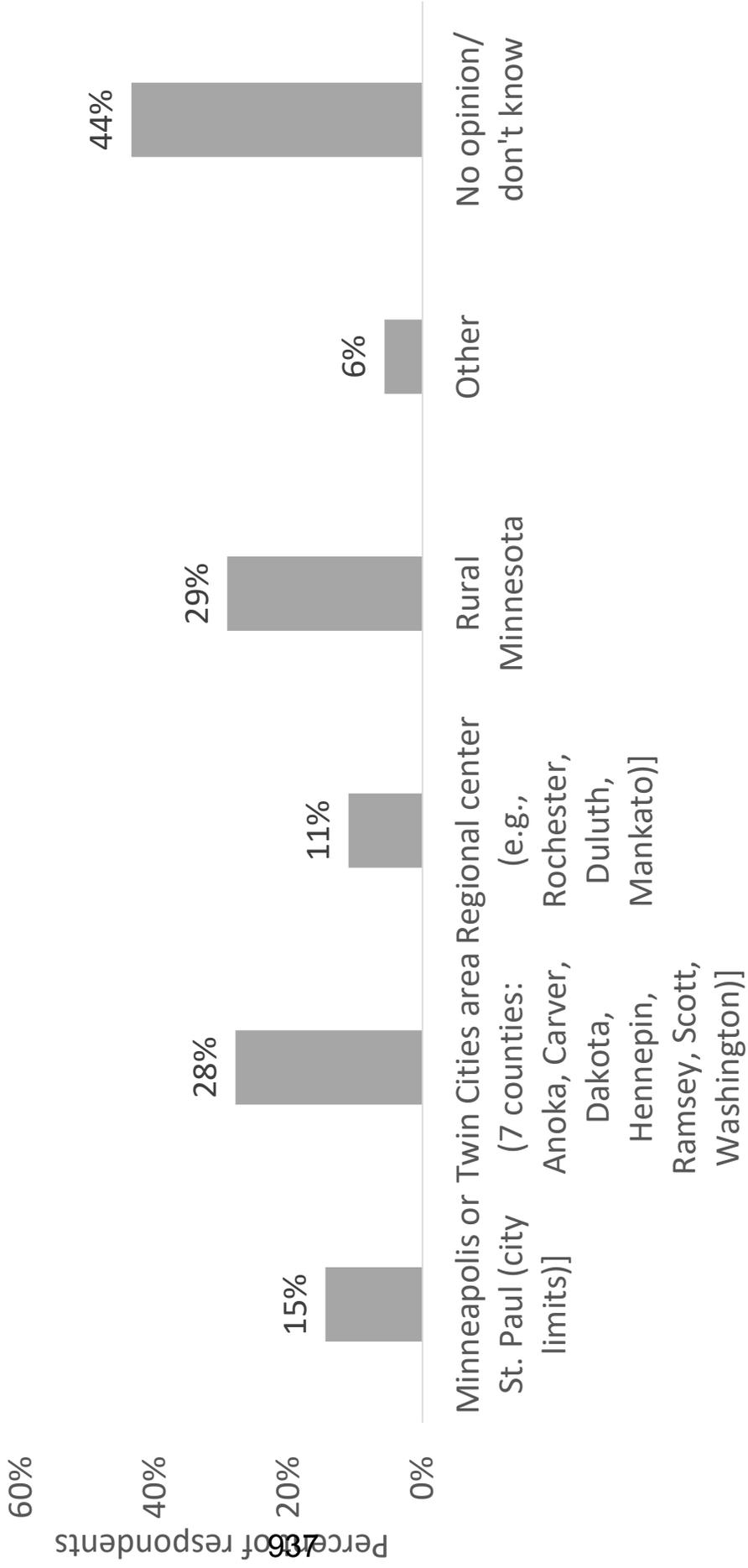
In the last five years, have you or your legal office had difficulty finding qualified paralegals?



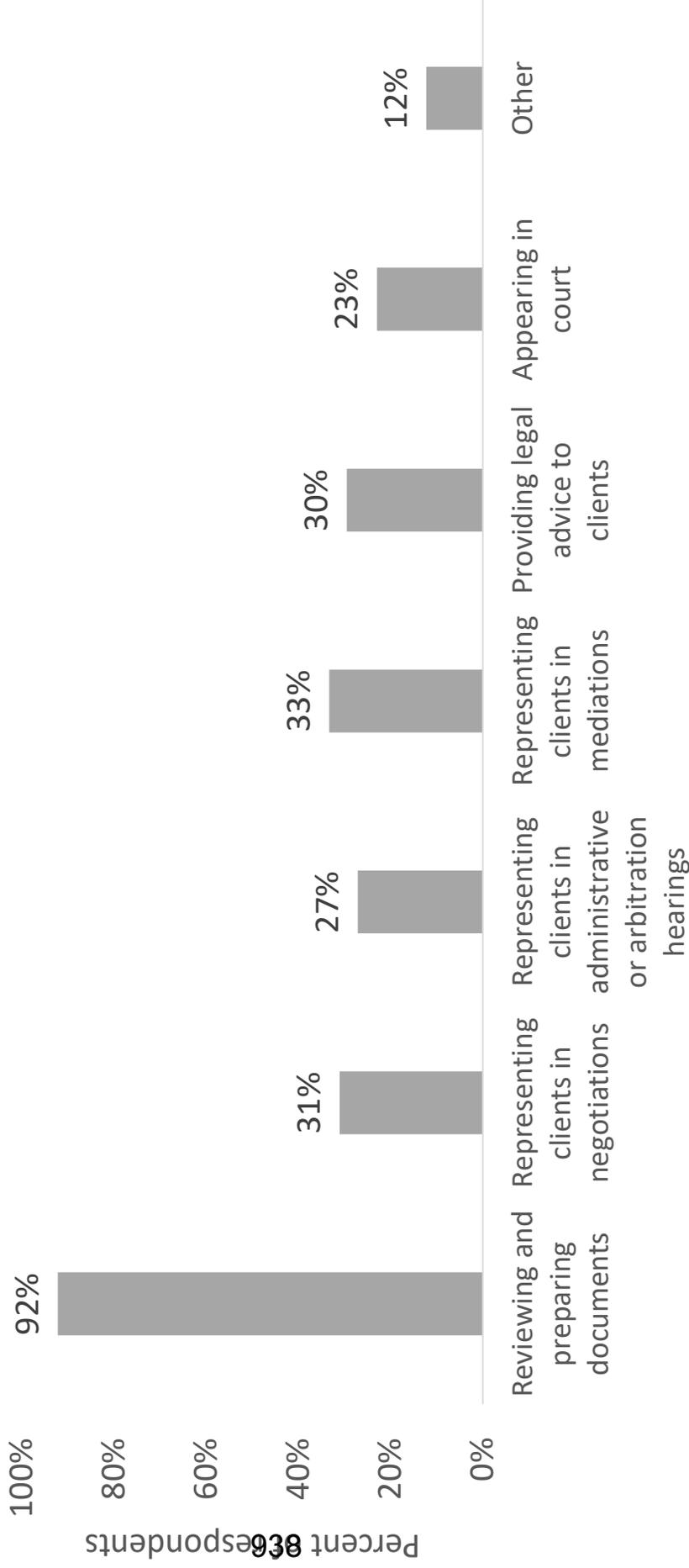
Of the three areas of law, creditor-debtor, family, and housing, in which area(s) do you believe additional assistance from paralegals would provide the most benefit to clients? (Select all that apply.)



In which area(s) of Minnesota would clients benefit most from this pilot project? (Select all that apply.)



Which tasks or responsibilities would you be comfortable with a paralegal handling under the supervision of a licensed attorney? (Select all that apply.)



* 5% of respondents wrote in 'none' in Other

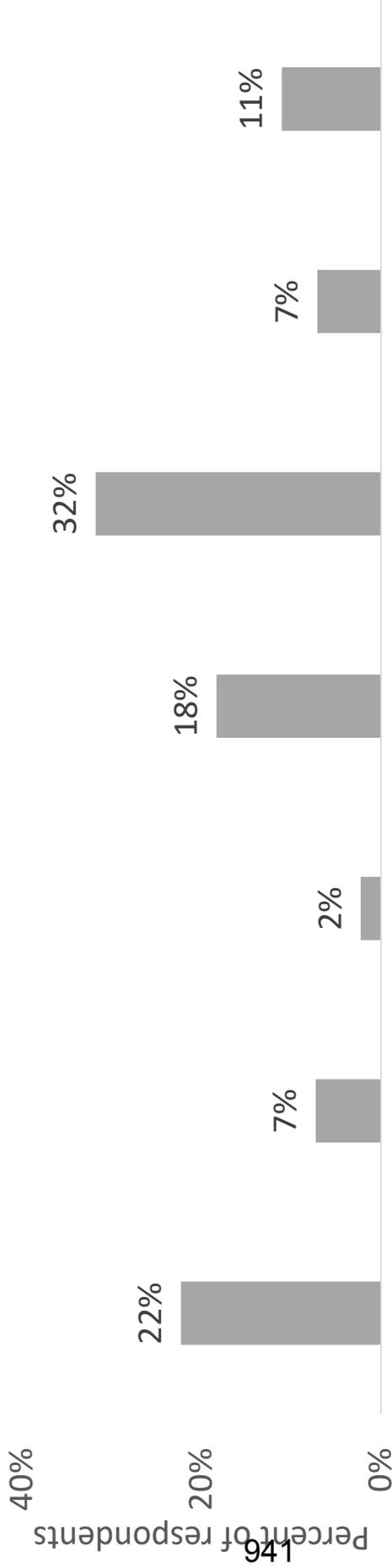
Which tasks or responsibilities would you be comfortable with a paralegal handling under the supervision of a licensed attorney? Other – write in

- A lot of the answers above are practicing law and ethically, I cannot endorse any of them for that reason. Let's provide more attorney help to people instead of stretching the ethical obligations.
- Add long as the representation is limited to areas that they would be prepared for and skilled in, they should be able to
- Appearing in conciliation court.
- Appearing in conciliation court; appearing at eviction hearings (1st appearance); appearing at FENE
- Appearing in Court for hearings where no legal argument is being made such as scheduling conferences and status conferences.
- Appearing in special courts, like housing court, or the equivalent in rural jurisdictions.
- Attend child case planning activities, such as mental health or child welfare
- communication on scheduling / hearing prep
- client communications, research as to facts of a case, initial legal research, file and calendar management.
- Conciliation court appearances
- Conducting witness interviews. Drafting generic discovery requests.. Summarizing medical records. Legislative-history research.
- Depends on the matter
- Depends on the paralegals number of years of experience
- Explaining options to clients, without providing legal advice.
- Explaining the law
- Filing documents, managing case files.
- For all of the above answers, with limitations (i.e. comfortable with paras preparing certain routine documents, negotiations, mediations etc.)
- Helping clients fill in self help forms that are later reviewed by an attorney.
- I would feel comfortable in some limited settings such as negotiations or administrative hearings. However, it entirely depends on the level of training they've had. None of my paralegals are presently competent to appear in court, manage a negotiation, attend administrative hearings, or appear in mediation. But they could be trained over several years to become capable of doing those things.
- Legal research
- I am not sure where I think the line should be. The truth is the a lot of people, including paralegals, think they know more than they do which can end up doing more harm than good. But maybe if paralegals could sign off on documents and appear at uncontested hearings, that could be a good balance. Really it depends on the person and what they are capable of though. Mediation and contested hearings should require a level of knowledge that frankly not all lawyers have either.
- I do not think this is a good idea.
- I honestly wouldn't feel comfortable have any one other than a attorney handling any of these items.
- Intake, calendaring, file management
- Interviewing the client and performing discovery
- It really depends upon the person and malpractice insurance. I do not know if I would feel comfortable for a paralegal to be unsupervised unless they have done courses or experience in representing clients.

Which tasks or responsibilities would you be comfortable with a paralegal handling under the supervision of a licensed attorney? Other – write in

- None of those things should be handled by paralegals.
- None [x17]
- NONE - ALL communications should only be done by licensed attorneys.
- None of the above
- none of the above
- None of the above.
- None of these categories are sufficient detailed for me to offer an opinion (what kinds of documents? what kinds of negotiations? etc etc)
- NONE!!!!!!!!!!!!!!!!!!!!
- None, stop taking business away from attorneys
- None. Terrible idea.
- None. I question the wisdom of this project.
- None. Why isn't 'none' an answer?
- Only the tasks currently performed by a paralegal
- Paralegals should not be representing clients at hearings, mediations, appearing in court or giving legal advice.
- preparing and reviewing documents only under attorney supervision.
- preparing documents subject to review by attorney only. Drafting and managing discovery may be beyond a paralegal's ability depending on the complexity of the case.
- Research and efilling
- Research, drafting memos, organizational systems
- Reviewing and preparing documents under the supervision of a licensed attorney
- See prior answer, supra; our clients are all probate, trust, estate planning and taxation matters
- Sharing statutory provisions with clients
- The caveat to each of the selections above is I feel they should have to pass some sort of test or licensing process as many holiding themselves out to be paralegals lack the breadth of experience I feel would be needed to represent a client in court.
- The paralegals I have worked with are better than first to third year attorneys, yet we still have those first to third year attorneys do all of the above.
- This question assumes an answer with a starting point, it directs the answer to an assumption that supervising someone to do something makes them as qualified as the person licensed to perform that duty. Other than review documents, none. Paralegals are not trained or qualified to provide legal representation.
- VERY limited provision of general legal advice to clients.
- Why not fund the agencies that have already established an effective means to aid low income litigants? Legal Aid; Volunteer Lawyers Network, Central MN Legal Services?
- With the right training and education and under supervision of licensed attorney a paralegal could represent a client in court, be involved in negotiations, mediation, and provide legal advice.

What do you think the minimum qualifications should be for a paralegal to do any or all of the tasks or responsibilities listed in the previous question? (Select the most appropriate answer.)



A bachelor's degree A high school diploma, or its equivalent, and more than 3 years of paralegal experience A high school A diploma, or its equivalent, and up to 3 years of paralegal experience A law degree or other advanced professional degree A paralegal certification or degree An associate degree specify

What do you think the minimum qualifications should be for a paralegal to do any or all of the tasks or responsibilities listed in the previous question? Other – write in

- High school diploma, Paralegal Associate Degree or 3 years equivalent experience + 3 years experience
- A LAW DEGREE!!!
- there should be competency standards established by the court with ethics rules
- A paralegal certification is sufficient to review and prepare documents. I don't think that paralegals should do any of the other tasks listed in the previous question.
- Street smarts and savvy. I can TRAIN anyone with common sense. Being able to meet client expectations requires ability to triage and think on ones feet
- Bachelor's degree or associate degree plus more than 5 years' experience
- Law degree. That's what we went to law school for.
- Bachelor degree, paralegal certification, and character and fitness review; including ongoing education requirements.
- At least a bachelor's degree that's more than just a paralegal certification.
- A bachelor's degree and a paralegal certification
- I don't think paralegals should be handling anything outside of drafting documents, research or memos. They are not versed in the law the way attorneys are and should still remain behind the scenes.
- This survey is defective -- it presupposes that allowing paralegals to function as lawyers is a good idea, when in fact it is an overwhelmingly bad idea.
- We have employed paralegals with a secretarial background that we essentially trained on the job and from 2 year paralegal programs,
- a high school diploma and 7+ years of hands-on experience. Maybe in lieu of some of the years of experience a paralegal certificate.
- A bachelor's degree, with a paralegal program within it, plus 5 years experience working as a paralegal
- This is a horribly drafted question. I think someone with a bachelors degree or less who is smart can draft paperwork especially if you automate your documents. I think someone who has worked in a law firm for a long time and has become familiar with the firm's practice area can likely handle a mediation. Depending on they type of hearing, if just a simple one, someone with a bit of education and instruction could represent a client at a hearing or administrative hearing. Complex legal arguments and hearings - need much higher level person to handle.
- should test for knowledge

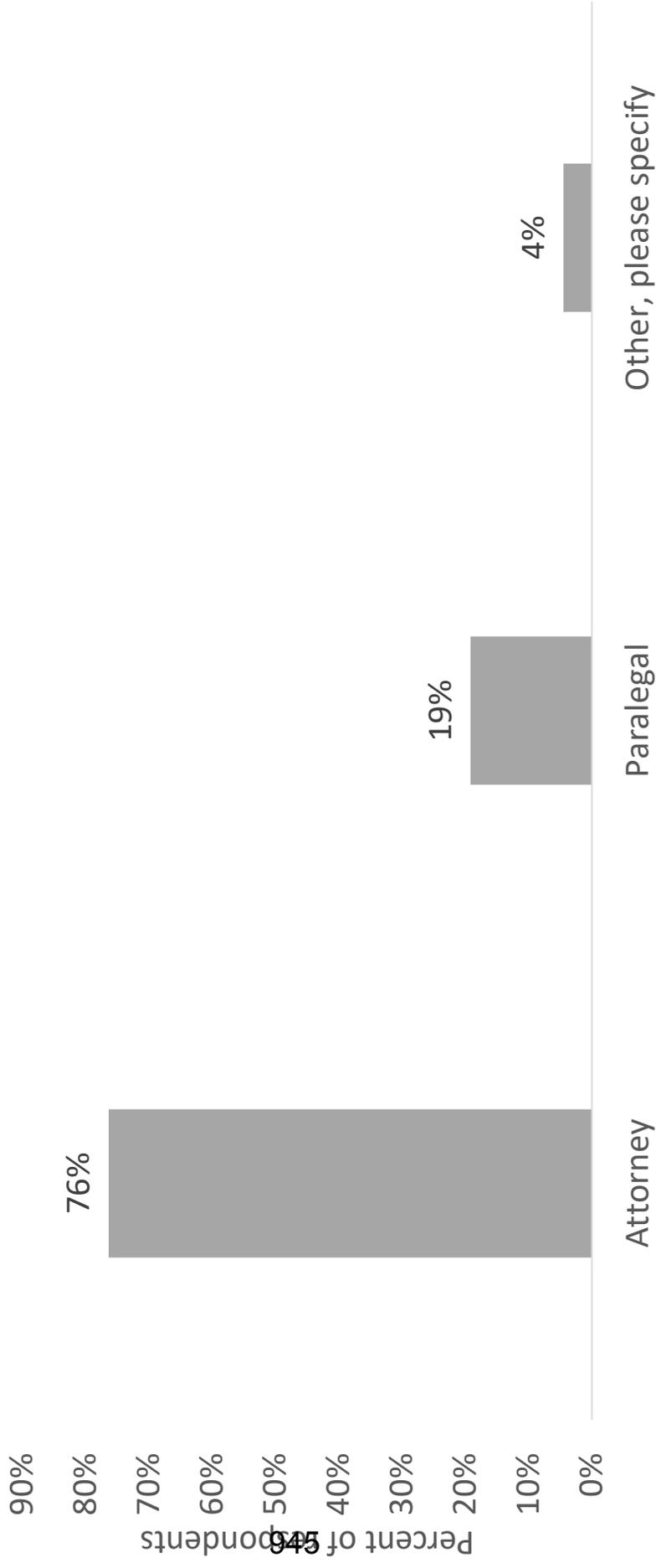
What do you think the minimum qualifications should be for a paralegal to do any or all of the tasks or responsibilities listed in the previous question? Other – write in

- I think it is about a persons skill and experience so a smart person with no diploma could still learn and do good work.
- first year of law school
- apprenticeship-style training in the specific area of law
- Certain number of years experience. 5-10?
- Atty's lic.
- minimum years experience - ex. 5 years
- An associate's degree AND three years of paralegal experience.
- A bachelors degree AND a paralegal certification are ideal if we are going to allow these individuals to give advice and other assistance.. I do think that individuals can learn on the job so a number of years working under the supervision of a licensed attorney may also be acceptable as long as the attorney is confident of the legal assistants skills.
- A law degree and a license to practice law
- The idea that we should be expanding the ability of Paralegals to actually represent people, is wrong and misguided
- Two years full time experience
- Either option 2 (HS diploma plus 3 years) or an apprenticeship or equivalent
- In my opinion, degrees matter less than experience and a certification.
- A law degree and admission to the bar.
- Bachelor's Degree or a paralegal certification and a minimum of 2 years paralegal experience
- ABA approved paralegal studies bachelor's degree or graduate degree
- I think if this is done, it should only be paralegals that have a number of years of experience.
- Some college degree (AA, BA, MBA) with practical paralegal work which can be authenticated by a licensed attorney
- A bachelor's degree in paralegal/law or a paralegal certification, plus at least 5 years substantive experience directly in the field of law services are provided.
- An associate's degree in paralegal/legal studies, 5 years experience, and pass a licensing test OR a bachelor's degree in paralegal/legal studies, 3 years experience, and pass a licensing test.
- Bachelor's degree and paralegal certificate or more than 3 years substantive paralegal experience
- A bachelor's degree plus five or more years of substantive paralegal experience
- Bachelor's Decree AND Paralegal Certification
- A law degree, bar passage, and upkeep of all licensing requirements for attorneys.

What do you think the minimum qualifications should be for a paralegal to do any or all of the tasks or responsibilities listed in the previous question? Other – write in

- A paralegal should have at least a Bachelor Degree plus a post baccalaureate paralegal certification. Licensing should be required, such as PACE
- At least an associates degree or a paralegal certification
- It all depends on the program attended. An AA with a paralegal certificate might be enough, but my thought would be there should be specific and special classes/CLEs related to any additional responsibilities in any of these areas for clients
- Bachelor's degree and five years of paralegal experience in area of practice and paralegal certification
- A bachelor's degree plus paralegal certification
- I think a law degree, paralegal certification or bachelors degree in some sort of law area would qualify as they pertain to the area we would practice in.
- Paralegal degree and 5+ years of experience.
- An associate degree and more than 3 years legal experience
- A paralegal certification and more than 3 years of relevant paralegal experience
- JD and law license
- High school diploma, Paralegal certification, and 3-5 years of legal experience
- An Associate's Degree in Paralegal Studies or a Bachelor's Degree with a Paralegal Certificate
- A bachelor's degree and more than 3 years experience
- A paralegal degree with X number of years of experience in that area of law.
- Bachelor's degree, at a minimum, and then either some certification with SUBSTANTIAL training (more than a real estate agent, for instance) or an apprenticeship with an attorney and some sort of test/certification afterward.
- Significant experience in the relevant area of law, perhaps demonstrated via referral from a lawyer or judge.
- Experience & a good grasp of the area of law addressed, is key. I'd say more than 3 yrs experience and some kind of degree or para certificate.
- no comment
- I am a paralegal
- A law degree-however then the point is moot, they are no longer a paralegal but an attorney
- An associate degree and paralegal training.
- A high school diploma and close supervision of a competent paralegal or attorney.
- a four year degree AND a paralegal certification

What is your profession?



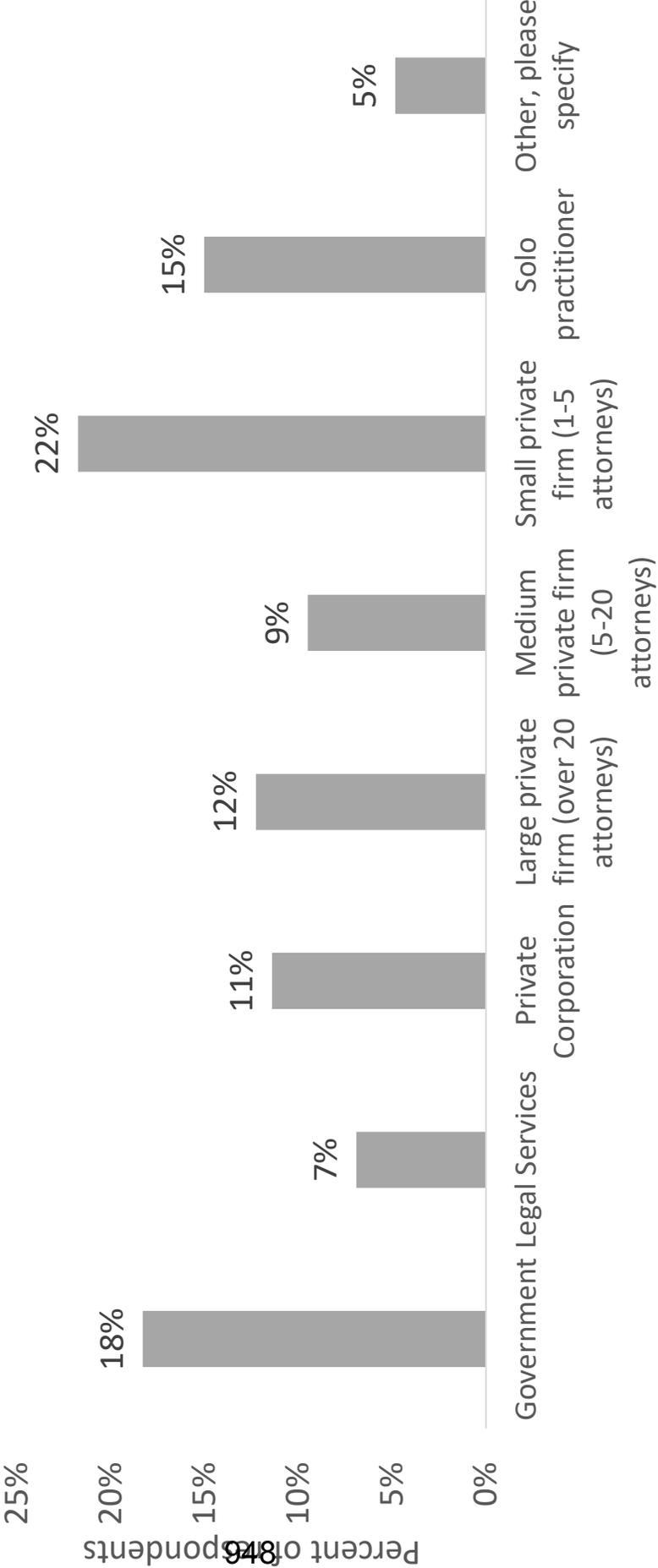
What is your profession? Other – write in

- non profit case manager
- Legal AA
- law professor
- District court judge
- Judicial officer
- Judge
- Attorney working in compliance
- Judge
- District Court Judge
- District court judge
- Judge
- Court employee
- judge
- Judge
- District Court Judge
- Judge
- judge
- Court Administration
- Legal Assistant
- Judge
- Law librarian/attorney
- Legal Assistant - no paralegal certificate
- Trust officer
- Regulatory Compliance
- Judicial Officer
- legal education

How long have you worked in your current role?



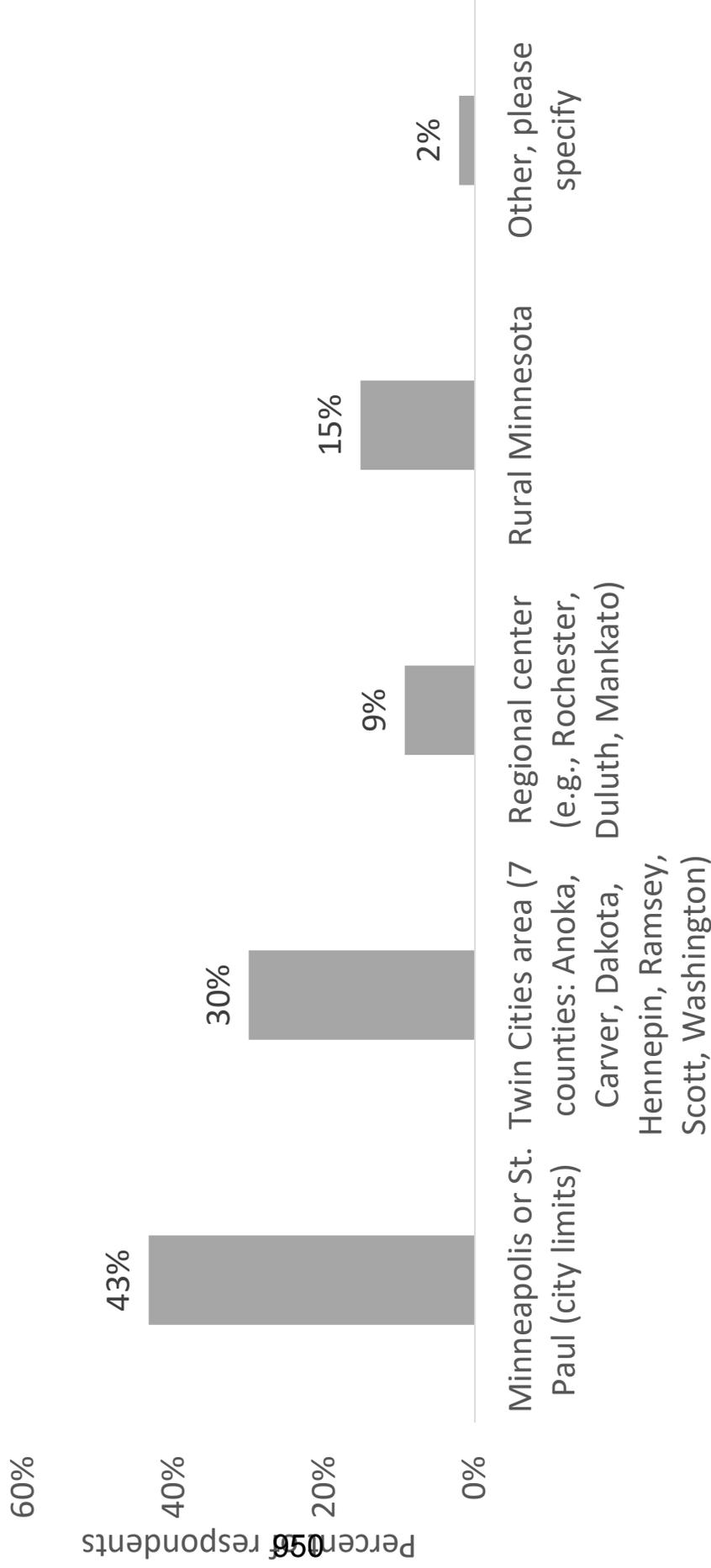
How would you describe your office? (Select the most appropriate answer.)



How would you describe your office? Other – write in

- nonprofit
- education
- Retired
- Public company
- Solo practice now; previous managing shareholder of a 20+attorneysuburban firm
- Judge
- Non-profit- Legal Education
- Consulting services
- My office provides sliding scale fee representation to low and middle income clients. We are already doing what you are trying to do and we offer attorneys to represent people.
- Judge
- I'm freelance and support 5 firms virtually
- local govt. not in CAO
- nonprofit
- Non-profit that does not provide legal services.
- Nonprofit Trade Association
- non-profit
- County law library
- In house Counsel Private Bank
- Publishing
- University
- public corporation
- Public company
- Large public corporation
- Department at the University of Minnesota
- Financial Corporation
- I am a contract paralegal working under the supervision of licensed attorneys.
- educational institution
- Non profit

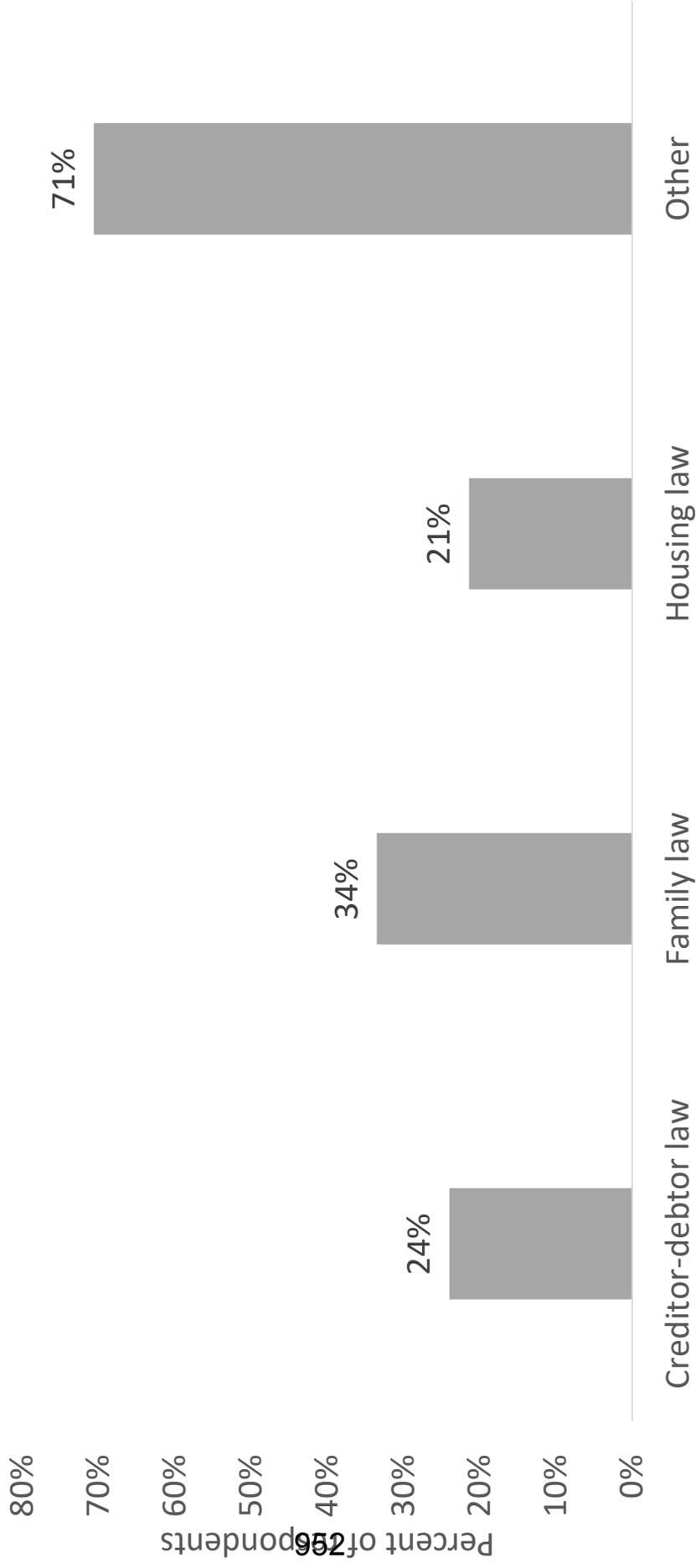
Where is your office located?



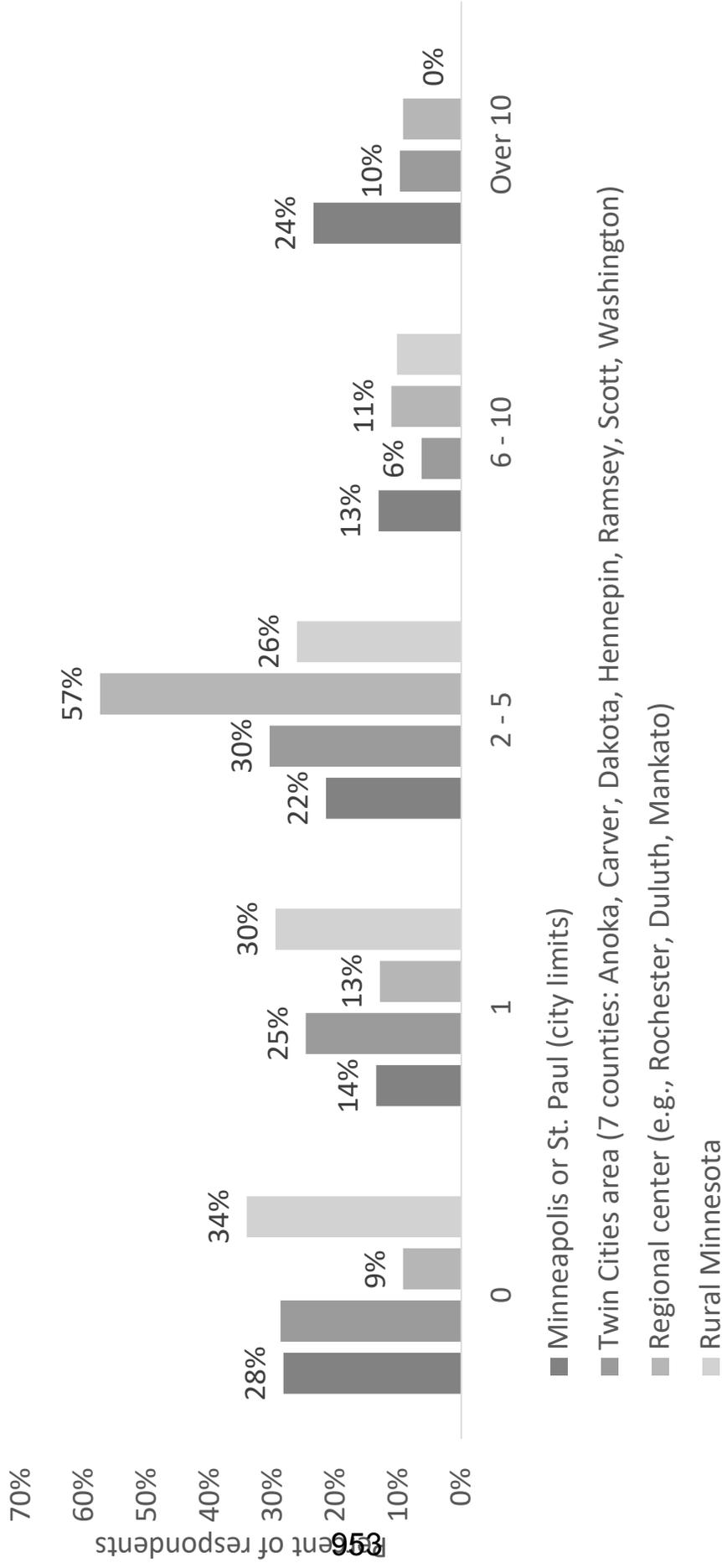
Where is your office located? Other – write in

- No office
 - CA
 - We are located in Mpls but represent people in counties that are an hour less from our office.
 - California
 - Rice and Ramsey Counties
 - Wright and Sherburne
 - Fargo
 - St. Cloud
 - There are two office locations
- one in the Twin Cities area and one in Rural Minnesota
 - Rochester and the surrounding 11 county area
 - St. Cloud. By the way, how is St. Cloud not a regional center but Mankato is?
 - I am in St. Paul, but we have other offices.

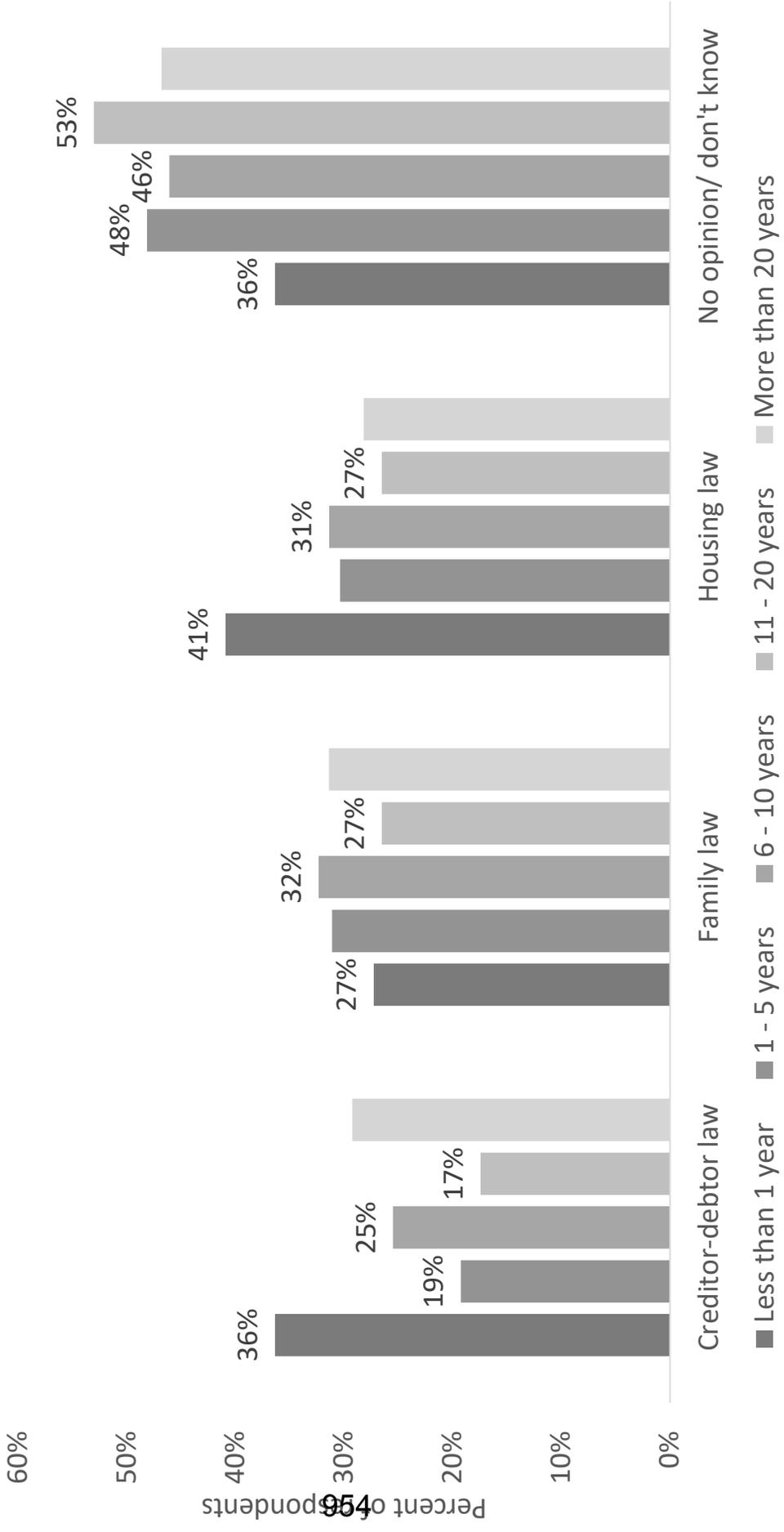
In what area(s) of law do you or your office practice?



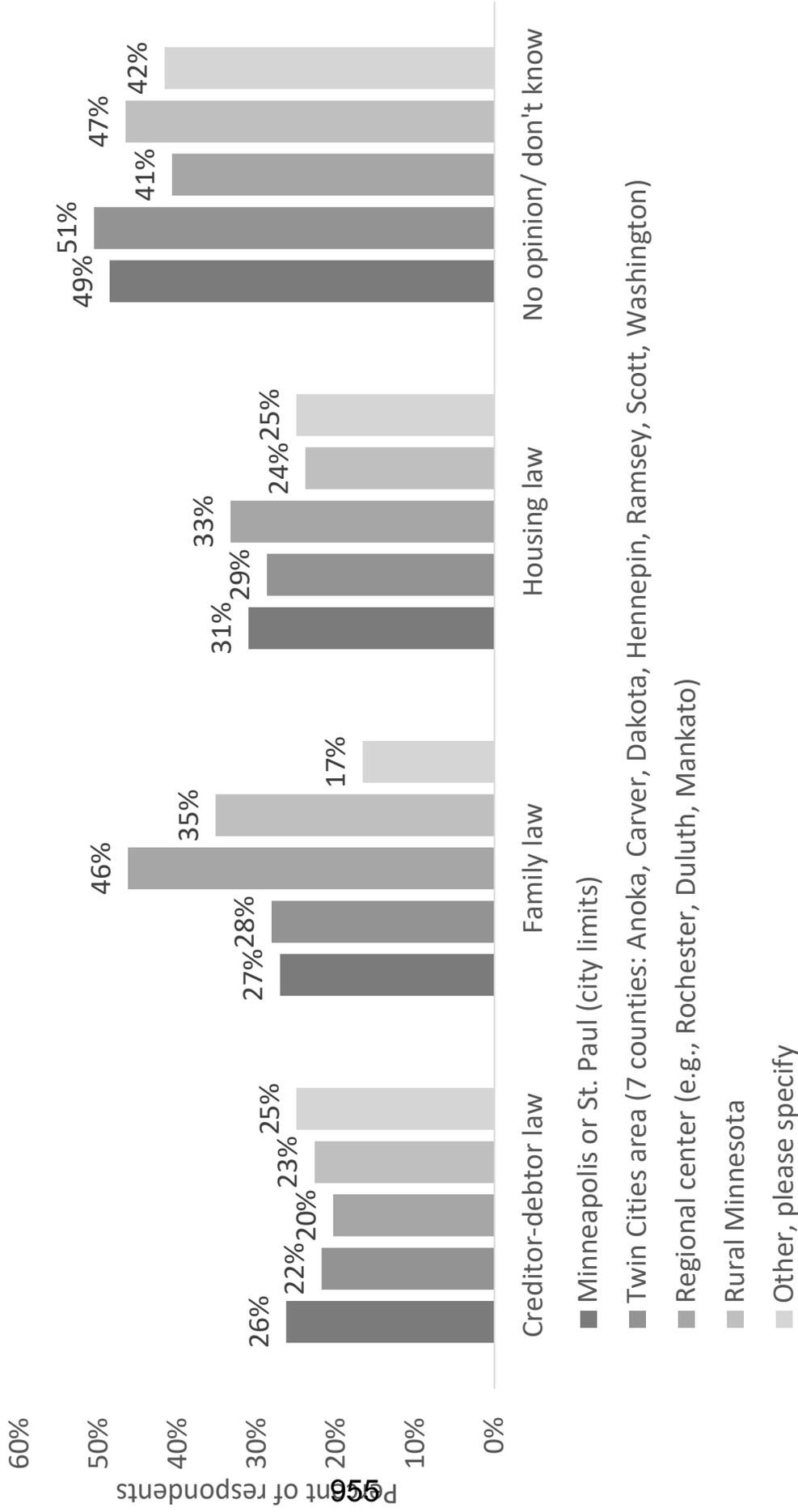
Paralegals currently employed, by office location



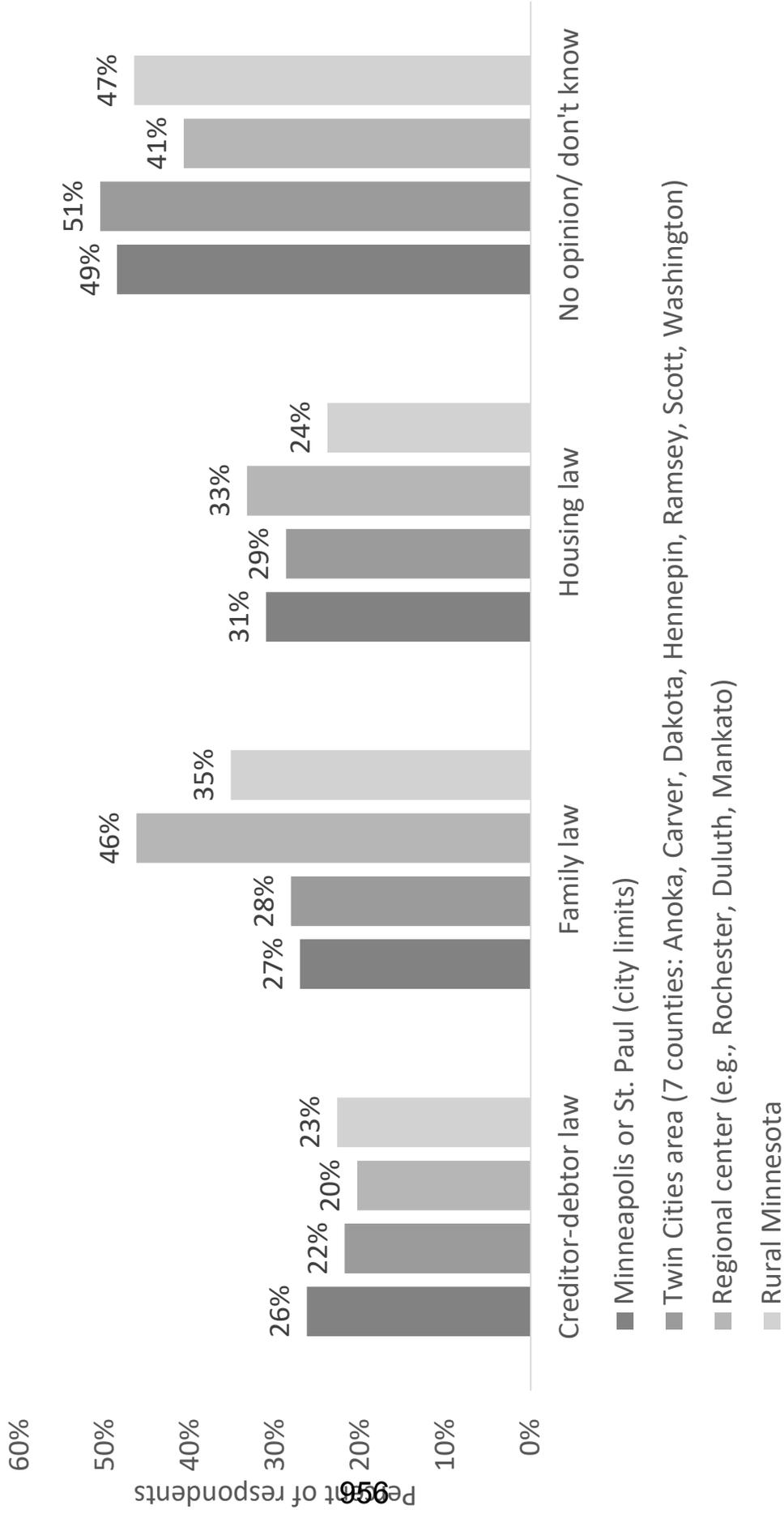
Area(s) of law where additional assistance from paralegals would most benefit clients, by how long respondent has worked in current role



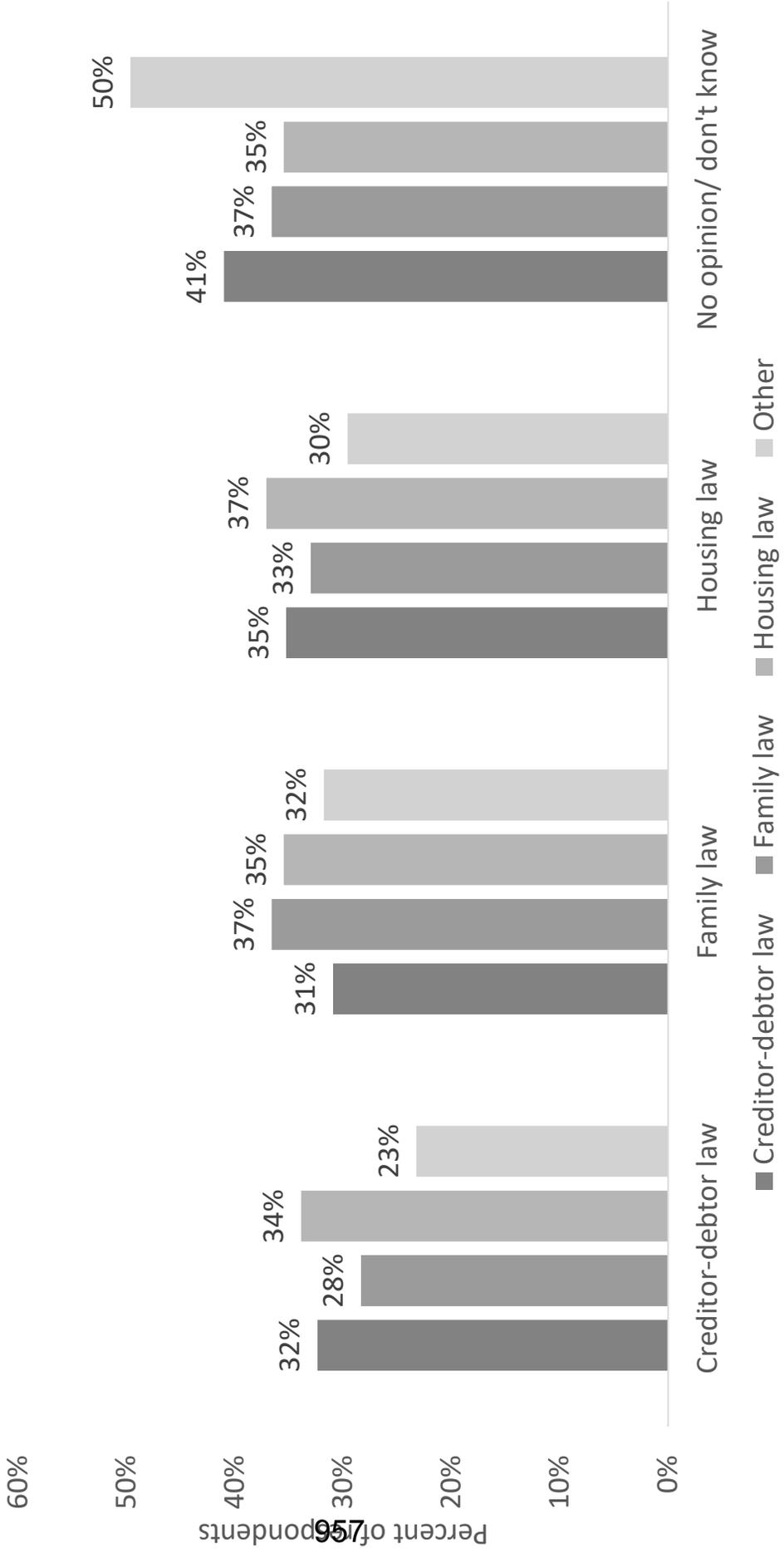
Area(s) of law where additional assistance from paralegals would most benefit clients, by respondent office location



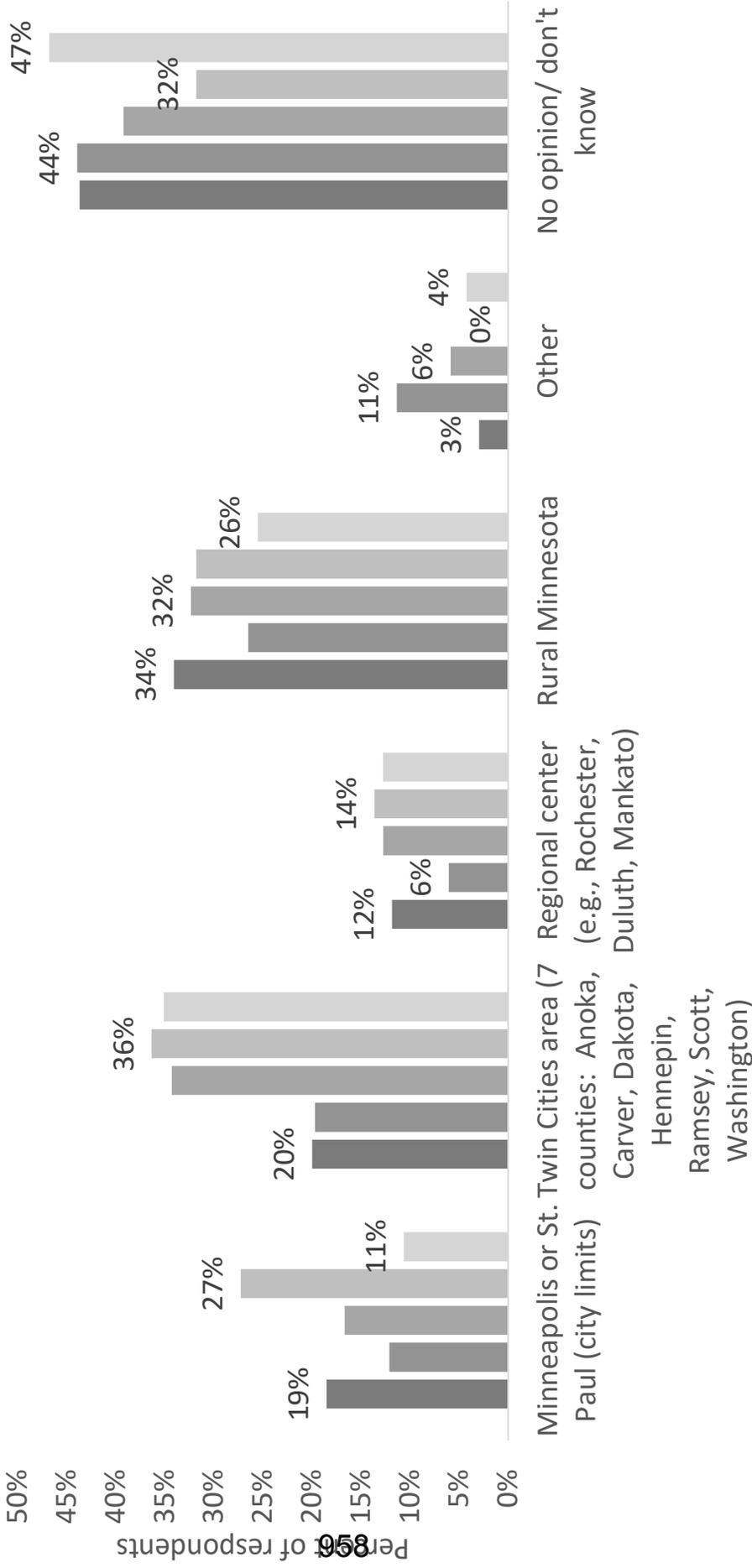
Area(s) of law where additional assistance from paralegals would most benefit clients, by respondent office location



Area(s) of law where additional assistance from paralegals would most benefit clients, by respondent's area of practice

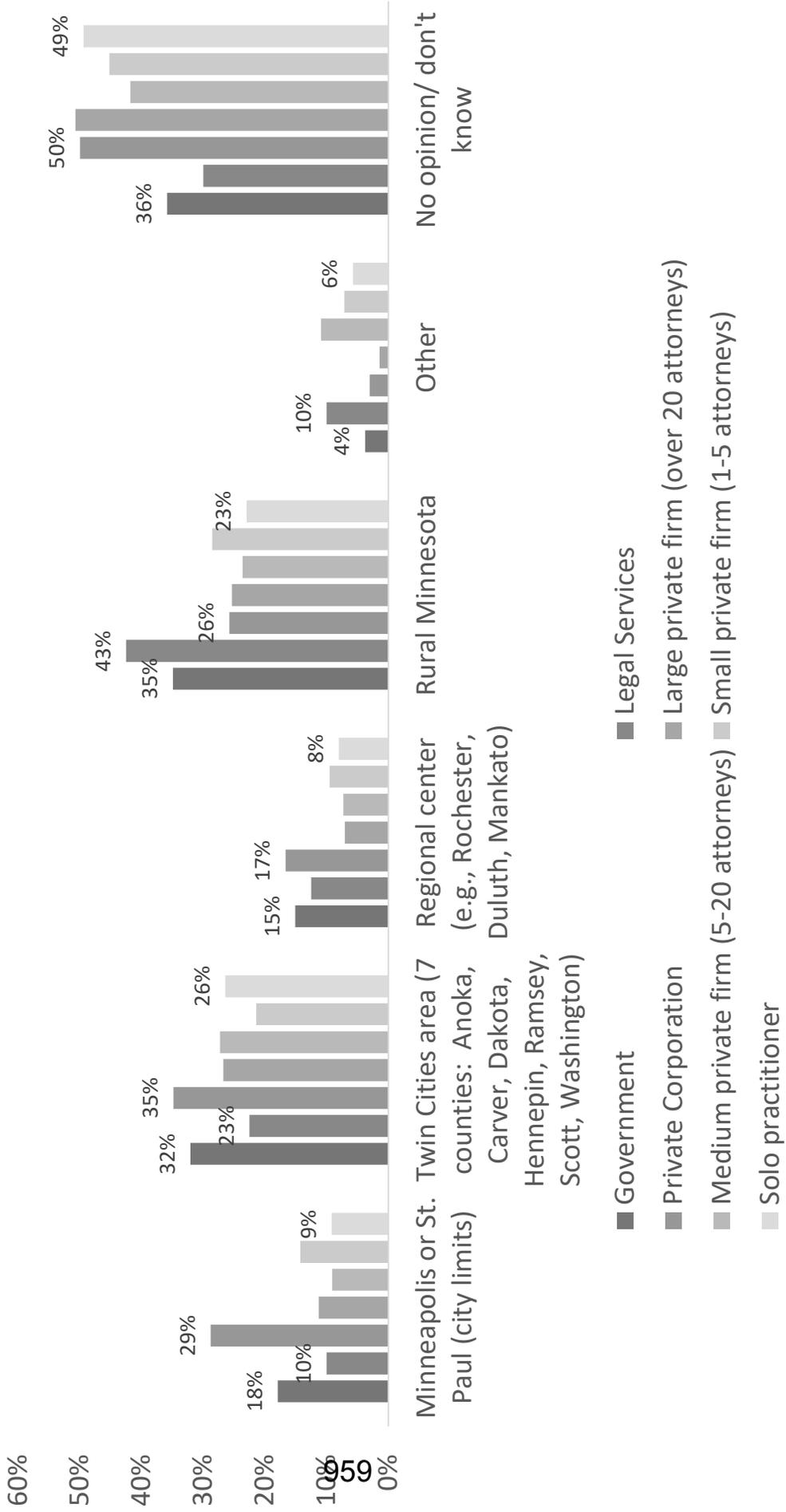


Area(s) of Minnesota where additional assistance from paralegals would most benefit clients, by how long respondent has worked in current role

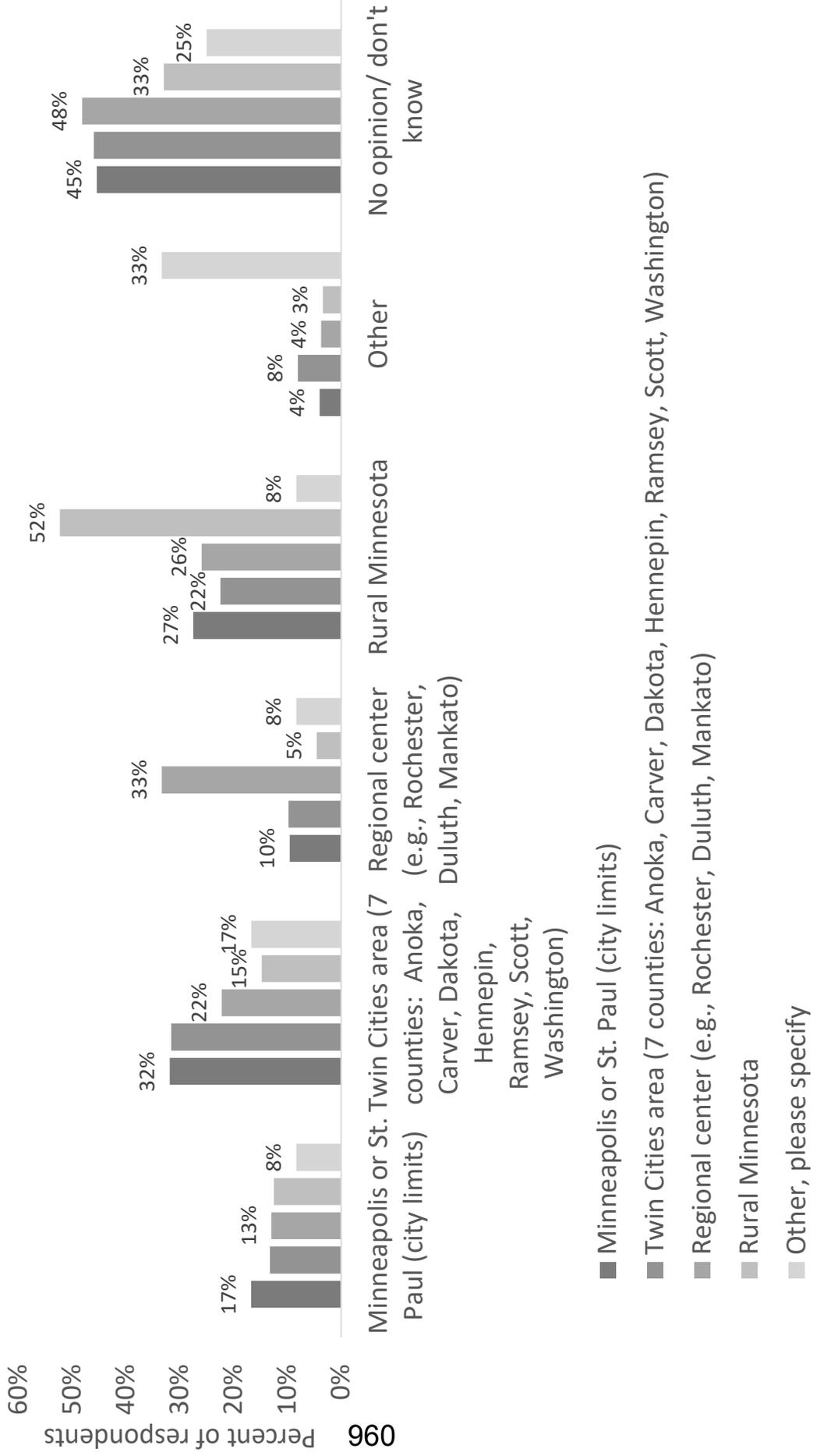


■ Less than 1 year ■ 1 - 5 years ■ 6 - 10 years ■ 11 - 20 years ■ More than 20 years

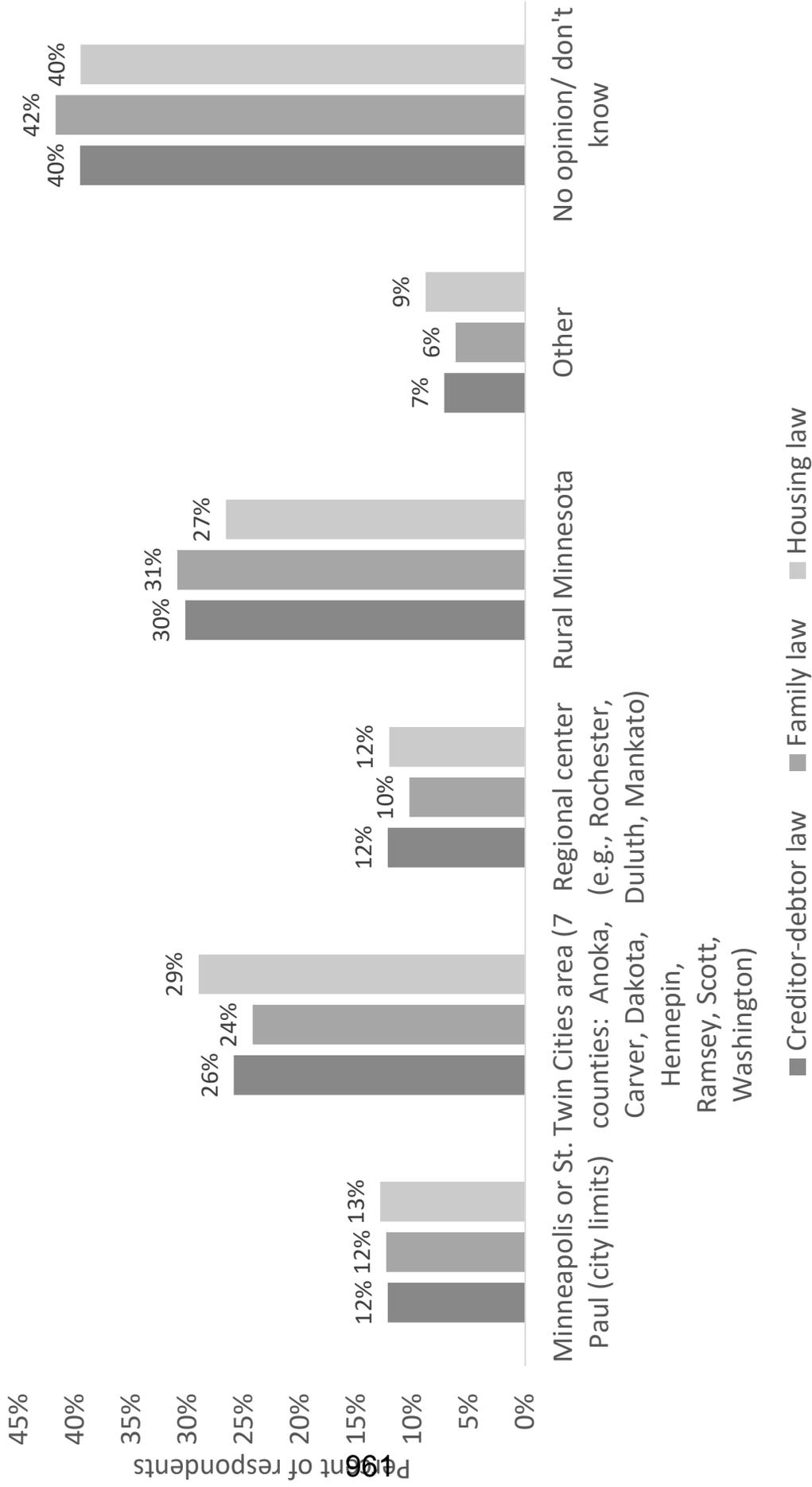
Area(s) of Minnesota where additional assistance from paralegals would most benefit clients, by respondent's office type



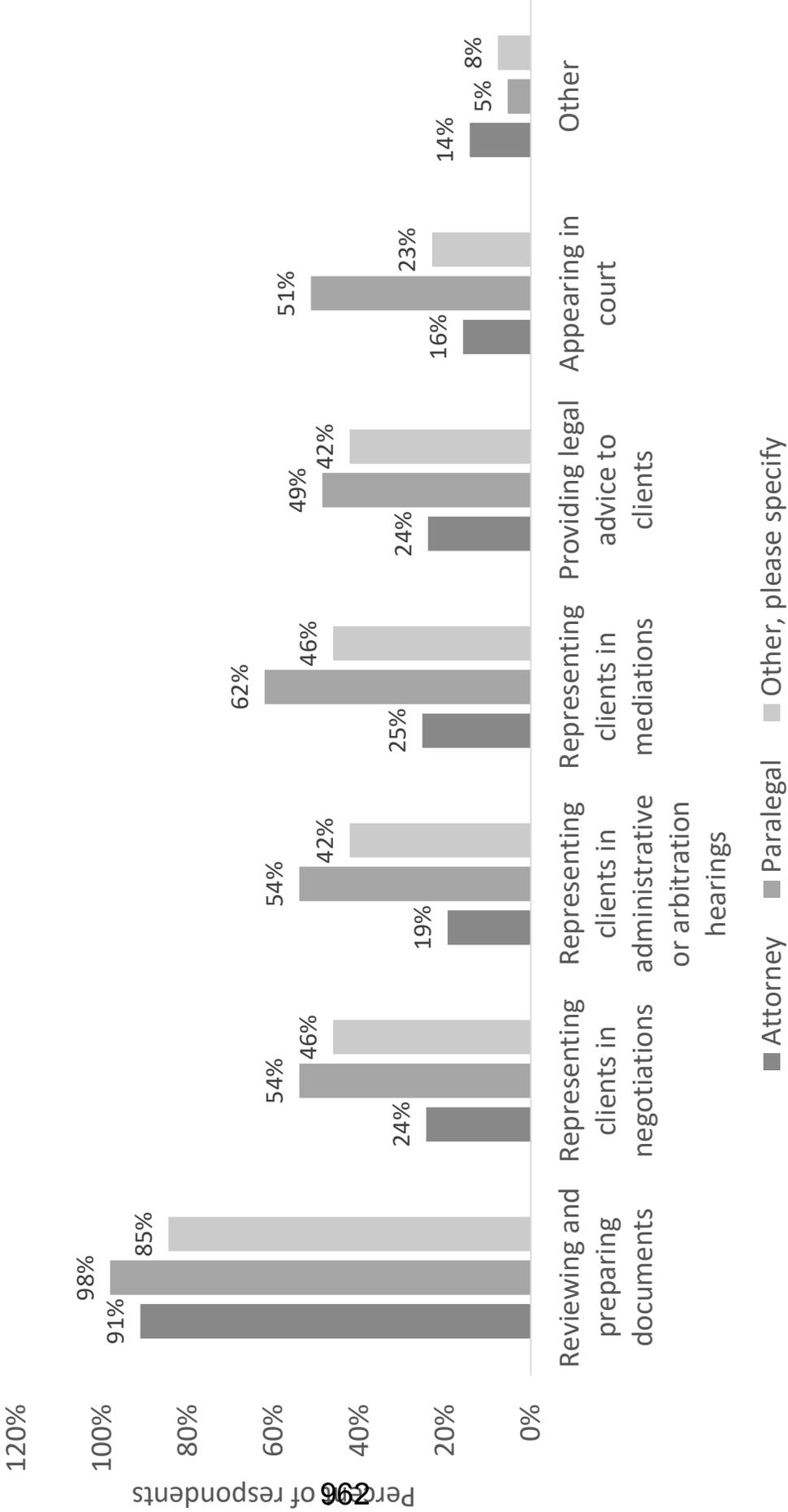
Area(s) of Minnesota where additional assistance from paralegals would most benefit clients, by respondent's office location



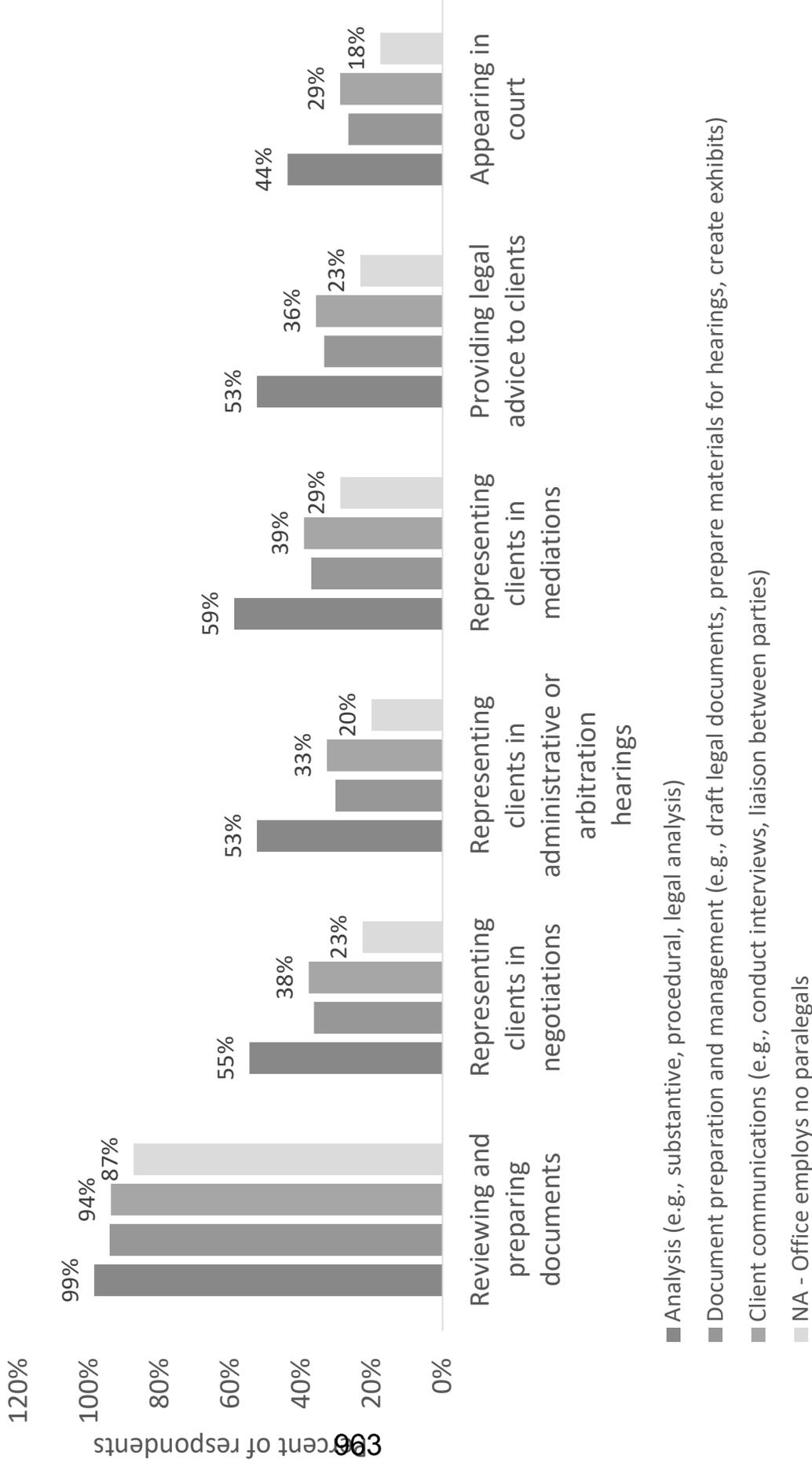
Area(s) of Minnesota where additional assistance from paralegals would most benefit clients, by respondent's area of law



Tasks respondent would be comfortable with paralegals handling under the supervision of an attorney, by respondent profession



Tasks respondent would be comfortable with paralegals handling under the supervision of an attorney, by current paralegal responsibilities



■ Analysis (e.g., substantive, procedural, legal analysis)

■ Document preparation and management (e.g., draft legal documents, prepare materials for hearings, create exhibits)

■ Client communications (e.g., conduct interviews, liaison between parties)

■ NA - Office employs no paralegals

Paraprofessional Pilot Survey Comments on Difficulty Finding Qualified Paralegals

September 25, 2019

This is a small firm with many needs, and it is difficult to find a paralegal with enough experience to handle the position who doesn't demand a salary a small firm cannot afford to pay.

Low quality applicants, high pay demands

Part time estate planning paraprofessional

The ability of Paralegals varies greatly, but finding qualified and trainable Paralegals as well as keeping them within the ethical requirements when they work is a challenge.

Most paralegals applying had little experience or the most experience was more in the role of secretary or administrative assistant and not substantive paralegal work

Paralegals must have experience in field, be computer literate and understand and use multiple client EDS systems. Hard to find anyone with all those skills. To some extent, such a person is worth more than a practicing attorney

There is a shortage of qualified paralegals in the marketplace.

Yes, difficult

Paralegal expectations and requirements vary per legal field and 'side' of claim (i.e. different paralegal expectations for plaintiff vs. defense). Thus, finding a qualified paralegal for 'side' and area of law is not automatic.

It has been difficult finding competent paralegals.

It's a sellers' market.

difficulty finding skilled paralegals to appropriately manage files and provide support to attorneys

We have cycled through numerous paralegals over the past few years and many have had difficulty understanding the law and procedures. Not to mention general work requirements.

Most are entry level

It is a competitive market.

Not enough paralegals that are qualified for the position.

Shortage of highly skilled and experienced candidates

It's been difficult to hire additional qualified paralegals

Paralegal program completion is not a good indication of being a qualified paralegal. In fact, the paralegal I work with most now has no formal paralegal education or certification.

Quality of education concerns

Insufficient interest by qualified persons with required work ethic when openings were posted

Nature of the work required

Not enough experience and do not speak the native language of most of our clients.

Particularly in the patent area, it is difficult to hire paralegals with substantive experience and requisite attention to detail.

I practice IP law, primarily, and it is very difficult to find IP paralegals in Minnesota.

There aren't many experienced paralegals available

Not enough good ones

We have had two hiring rounds where we were unable to find paralegals with bachelor's degrees, a preferred qualification.

The employment market is tight, due to economic boom created by President Trump.

Rural Minnesota

Our office is located in a suburb of the Twin Cities and most paralegals do not want to travel outside the metro core.

Lack of training and skill sets required training and extra supervision that did not make it cost effective to have paralegal staff

There are many people who say that they are a paralegal but do not actually have appropriate training and background to do the job.

No enough properly trained in our area.

The title paralegal is often attached to legal assistants with no formal training or skillset.

We usually hire legal assistance. The problem is hiring of younger people whose attendance is absolutely s***

Most paralegals we have interviewed who have come out of programs are poorly prepared, to work in an office, don't understand the legal process, and have no experience with customer service. The paralegal programs appear to be training people who have community college or lesser degrees and throwing them out there with a certificate.

Too many paralegals who are used as legal assistance in firms so lack training or experience; those who have training or experience are overpaid

It's difficult to find paralegals specifically educated to be paralegals.

it's simply too easy to get a paralegal certificate. They come out of schools, both online and in person with inability to do even the basics, typing for example. using PDF's or advanced Word skills, no basic office decorum or ability to speak in a professional manner. Then moving on to an utter inability to problem solve. That might be developed after say 15 years...but even then unlikely.

Many people who apply for the positions do not have formal education or prior experience

There's a lack of paralegals in northern MN.

Our office is outstate and wages are lower than in the Twin Cities. We tend to train our own legal assistants. We have just 1 certified paralegal.

The best paralegals for our field of law intelligent, self-motivated, hard-working specialists. These qualities are hard to find in any field.

There are not enough qualified paralegals in the job pool and not enough persons seeking out formal paralegal training. The 'good ones' are very expensive. We have engaged a hiring firm to find paralegals over the last 2-4 years and they are hard to find.

Hard to find good people with attention to detail.

Just had some hiring misses that didn't work out.

It has been hard to compete with government positions that hire paralegals for similar pay, but far better benefits.

Finding any paralegal that is capable of problem solving or understating the legal field has been very challenging. Generally, the last 4 paralegals I have worked with have been willing and able to perform only specifically delineated tasks. They have not developed a feel for litigation, they have not been problem-solvers, they do not understand the client goals and needs. We have ONE SHINING STAR of a paralegal who should be an attorney - she could do any of this. But she has proven a unicorn, we have been unable to find anyone close.

The pool is very small. The paralegal career path is not appealing to many.

Staff turnover

They are difficult to retain as many opportunities exist for qualified legal professionals.

Hard to find people with sufficient experience to allow them to be independent enough to make the paralegal a good investment.

Few to no people apply for openings

There seems to be a very small pool of good paralegals with the interpersonal skills and intellect to do the job well.

hard to find paralegals with supervisory experience

pay

Not qualified, or did not want to put in the hours

We work in a very specialized field

Candidates are hard to find. We have to locate people with basic skills and train them.

Supply appears to be tight right now.

no qualified candidates in the area

It has been difficult to find quality candidates that do a good job and have the level of detail needed for the position.

we are a legal aid office and can't pay a lot, so we tend to train recent graduates on the job which is a win-win

It is especially difficult to find qualified paralegals in Greater Minnesota.

There are fewer applicants for job openings and must fewer qualified applicants.

Rural Minnesota has a hard time finding people to hire with a paralegal degree.

Technology deficiencies

Our office is in rural Northwest Minnesota. It is hard to find paralegals that are willing to work in this area. The implementation of this pilot project would allow for more paralegals to be available because there would be more incentive to move and/ or work in the area.

We lost a very experienced paralegal. It was difficult to find a paralegal with similar experience and attitude.

Unfilled open positions

In rural Minnesota we have few applicants for Paralegal positions with education or experience. The paralegals we do have have been trained by us for the work.

Difficult to find paralegals with broad experience to work in smaller firm setting.

We have had difficulty finding qualified paralegals with the capacity to effectively research and draft.

There isn't much in the middle. Young and inexperienced or very experienced and very expensive.

We struggle to find well-trained paralegals for a litigation practice.

Our pay for paralegals might be below market which has made it difficult to replace paralegals who retire.

Most applicants are not qualified and those that are want too much money.

None around in NW Minn

rural area

need additional help sometimes and people are looking for a more permanent situation.

Three in a row were self-serving, ill-prepared, disloyal, and/or substance abusing.

We require a broad set of skills and analytical capabilities

Quality; location

WE are a rural firm and can't pay what Twin Cities firms pay

We had extreme difficulty finding an experienced probate paralegal and a criminal law paralegals.

Our paralegals have to learn a variety of areas of law and handle a fairly heavy caseload, which can be difficult. There are a variety of skills necessary and it can be hard to find someone to fulfill all the expectations.

Our labor market in Bemidji makes it difficult to find potential candidates who have office experience and/or experience working in the legal sector.

to many factors to explain

The paralegal certificate graduates I've encountered are generally unprepared for the workplace and resistant to putting in the extra time to learn the 'system.' There seems to be a feeling of entitlement that a certificate will immediately produce an income-generating job without meaningful contribution or commitment to a legal project. The outstanding paralegals I've encountered are not certified and come from an office manager or small business background conducive to self-starting.

This is a bit of a cheat answer. I work for a large private corporation. Our paralegal candidates for our recent job openings have been more likely to be over-qualified. The company is reluctant to compensate the paralegals at a market rate, which can make it a challenge to find a good fit.

Hard to find someone qualified who wants to work part time and can do so independently.

It is a specialized field and finding a well qualified paralegal is not easy. Most do not have the work experience, or knowledge of the case type.

Shortage in family law of qualified candidates

Unqualified applicants with general secretary or reception skills in a law office does not equal Paralegal.

Pay is too low for qualified paralegals

Not enough good candidate paralegals in out state Minnesota.

lack of experience and understanding of legal concepts

Area specifications / probate, trust administration. Very few knowledgeable candidates in this practice area with probate and tax knowledge

Difficult to find paralegals with training. Office assistants are more prevalent in the work force.

Not enough qualified paralegals out there. People are going to law school instead- better money

We are currently short staffed. Finding corporate paralegals with securities experience and qualified intellectual property paralegals is a challenge.

Minimal difficulty; my company rarely has paralegal openings and rarely hires entry level paralegals. It can be difficult to find qualified paralegals to fill openings requiring experience, education, etc. but the company has a good reputation and pays its paralegals well.

Paralegals are expensive. They want to earn \$60-80k - which is more than most first year attorneys make! Which then makes more sense to hire an attorney...

Paralegals don't have the enough experience for what law offices are looking for.

Employees don't have the education in writing, research or understanding of the profession. We see this a lot with paralegal certificates and 2 year degrees.

To hire experienced paralegals, the salary requirements are usually prohibitive of a small firm.

Experienced candidates are hard to find.

Potential candidates do not have sufficient education, training or knowledge.

Yes, skill levels and knowledge vary. Our firm does not utilize a recruiting service so all postings are done on our own through traditional job posting sites.

Paralegals who applied did not have requisite years of experience.

Extremely difficult to find somebody with the soft skills for clients and technical research skills

There has been an issue with finding paralegals with the level of experience and attention to details. There are also a fair number that have problems getting to work timely due to family commitments, etc. They are not reliable and their error level is high.

rural community

We posted and interviewed for a paralegal position but were unable to find a qualified candidate that could perform the job requirements for the salary we were offering.

We are a nonprofit and unable to pay for qualified paralegals who can support attorneys in tasks beyond technical skills. Our attorneys make approximately what a paralegal at a large firm can make.

I have looked for part time help and struggled to find qualified assistance.

Very few applicants for open position in the non-metro area

in real estate, not enough highly skilled paralegals in marketplace

When I worked at a large firm, I had difficulty finding qualified paralegals to work with, largely because they had the position based on work experience and did not have current or recent education in a paralegal training program.

We're not in MPLS, so it's always a challenge to find qualified people

Highly trained paralegals (not just a 6 month certificate) hard to hare-- note that this is outstate and all hiring is challenging.

We have had difficulty finding qualified, experience paralegals

Can't afford paralegals. The definition of paralegal is not clear. I use non-certificated legal assistants. That is, I use individuals that have a four year degree (and some working on their four year degree) but their degrees are not in a paralegal program.

we just used a head hunter to find a paralegal with real estate experience

We are not getting quality applicants. Turnover is high.

do not seem to be enough paralegals

We have had trouble having applicants apply.

not many paralegals have the skills required to draft briefs, etc.

Our nonprofit pay scale makes it difficult to find and retain quality paralegals.

My impression is that fewer young people are becoming paralegals. The pool of available and qualified paralegals seems to be diminishing.

We have had paralegals that have had little to no training.

just not many applications or candidates are the wrong fit.

lack of law office understanding

Salaries are an issue. Some paralegals lack drafting experience and need heavy supervision to do pleadings correctly.

Few applicants to recent job postings

Paraprofessional Pilot Survey Area of Law Comments: Creditor-Debtor Law

September 25, 2019

correspondence with creditors, advising clients about the process and procedural and substantive rights

Good rules, good resources, paraprofessionals would make a huge difference.

Often low income individuals have creditor debtor problems, and low or no cost help with understanding or enforcing their rights would be helpful

A lot of paper involved and the issues are usually clear.

Paralegals should not handle family law matters.

Under the guidance of an attorney, basic rights could be conveyed by a paralegal--as well as stop creditor calling letters

significant need in this area; simple turn-key matters

Too many unrepresented parties need additional legal assistance.

A paralegal can be helpful in the collection of information and by preparing legal documents.

In any area of a law practice in which there is high volume and in which basically administrative form-filling is prevalent, consumers of legal services benefit from sufficiently trained lower cost providers.

paralegals can be helpful in the procedural aspects of collection

relatively simple area of law

High need and an administrative-heavy area of practice

Unlike family law, there are almost no private attorneys representing individuals in creditor-debtor cases. Unlike housing, there are almost no dedicated clinics paired with court calendars to assist individuals in creditor-debtor cases.

Often the clients have limited financial means.

Creditor-debtor law is more straight forward & assistance for those issues is not as available.

Lots of clients need simple explanations of routine matters. Paralegals can do this well.

Depends on qualifications.

Paralegals would be in an ideal position to gather data and assist with the technical aspects of resolving creditor-debtor disputes.

Debtor defense is relatively uncomplicated but the procedural hoops of maintaining a defense are often insurmountable for pro se litigants

These matters are generally less complex, and typically have the least frequency of significant collateral consequences.

The form if this question assumes I agree with the premise. In the early stages of my career as an attorney who became licensed during the recession and watched public interest and government jobs dry up, these three areas of law were my primary income source. I made a living practicing in these areas on a "low bono" basis. And I frequently watched as attorneys making \$150,000+ volunteered their time to folks who genuinely could have afforded legal representation (not at typical attorneys' rates, but mine). I know I am not the only attorney who built a small practice this way. We should be reaching out to newly licensed attorneys and giving them a platform to help clients and make a living, not devaluing their services.

paralegals can help complete paperwork for clients

People finding themselves in deep debt often have neither money nor a basic understanding of personal finance. You don't need a lawyer to provide practical, effective advice and insight for most of those cases.

NOT family law.

Involves issues of money. Laws demand less interpretation.

I work for prepaid legal plans. Creditors use system to threaten/harass debtors. Service requirements are a joke for small claims and people are always dealing with suits where they had no notice they were even sued.

I support any creative solution to help historically underrepresented parties receive legal help/representation.

This area has the highest ratio of unrepresented to represented parties. It is less complicated than family and housing.

Formulaic pleadings and responses that will rarely stray into unique or complex issues.

Relatively formulaic practice.

consumer, personal plight area needing to be streamlined and made more affordable

I know little about it, but I know family & many family paralegals couldn't do it. 29 years experience with paralegals both in office & on other side. Some paralegals cause a lot of the problems — dumb pursuit of minor discovery issues in particular.

Very dangerous to have paralegal representing people in housing or family law matters

It's fairly process driven and PLs would be able to assist given this.

Most of the time this area only involves filing of documents and default hearings.

Collection work involves use of a lot of statutory forms and careful attention to deadlines for service, but does not involve a lot of technical legal skill or analysis. This is a good area for paralegals to assist in to lower costs for clients.

Simplest and most frequently abused - family is far too complicated and the effects too far-reaching.

Because it is very rules oriented and form dependent and the issues are simple. Anyone could be taught to point out the correct paperwork someone should fill out, what the deadlines are and what to do next. Also, there are not a lot of attorneys who work in this area because the potential clients have no money.

Paralegals could handle conciliation court claims. Save creditors cost of legal fees (which often pass thru to debtors) and give debtors access to representation (where cost of hiring lawyer for one appearance can be 1000+). Rules of evidence are not strictly enforced; not a court of record; and either party can appeal to district court so overall low risk.

A paralegal who is specifically trained in creditor-debtor law could efficiently discuss the issues with the clients without fear of UPL. This would be a financial benefit for the client and a time-saver for the attorney.

Significant consumer needs but often cost is a barrier to access to legal assistance.

I'm a bankruptcy attorney. I think my paralegal could do an amazing job helping clients in other capacities, including those clients who do not necessarily need to file bankruptcy but could benefit from legal representation in a limited manner with one or two specific creditor issues.

We should have had an option for 'OTHER' so I could provide explanation. Our legal assistants are not decision makers. They make recommendations. I see this as the best use of legal paraprofessionals

A paralegal operating under the direction of an attorney will provide an edge an otherwise unrepresented party would lack in this setting.

As I understand this area of law, there are many issues that are similarly resolved and involve standard forms and procedures. This is where paralegals do their best work.

Often requires low-cost representation

Paralegals could advise clients on whether or not they need a bankruptcy, and if not, where resources are to draft letters to debt collectors. They can also advise if there are any violations of the FDCA.

Creditor and family seem like they have similar issues recur frequently. A paralegal could guide pro se parties in getting the lay of the land on those issues.

this area of the law is clear cut (unlike family, which is so fact-specific I think it would be very difficult to have non-attorneys handling those issues)

It's largely form-based

things like bankruptcy could be handled by a paraprofessional

Clients often can't afford lawyers, or lawyers cannot prepare bankruptcy related docs cost-effectively

I believe that paralegals working in one or two specified areas can provide quality representation.

little representation is done in this area

Paralegals would reduce costs making access to justice more available.

There appears to be a shortage of well trained consumer rights lawyers who can help people resolve credit disputes that are still troubling but are not large enough to consider bankruptcy.

The statutory aspects of Creditor-Debtor law are relatively straight forward and help with garnishments, foreclosures and bankruptcies, under supervision of a qualified attorney would be of benefit to potential clients.

Given a lot of creditor rights' law firms sue out cases in bulk, it would be beneficial for debtors to have some representation through the process--particularly in regards to negotiating a settlement of the debt.

This is an area of great need, and if expanding the role of paralegals can provide a more cost-effective in at least some cases, I think it's a good idea.

Fill out the paperwork and negotiate with creditors regarding a settlement.

There is limited Housing law in our area but it would allow for clients to be better served because a paralegal would be able to provide the attention that is necessary.

I think competent paralegals are capable of work that is as high-quality and helpful as an attorney.

Clients would benefit because paralegals can provide adequate, helpful legal services.

These are generally simple cases, and it is a high volume practice area. As it is my own area of practice, I believe that the use of paralegals in an expanded role would benefit all sides.

Thousands of debt collections suits are filed annually. Most debtors cannot afford an attorney.

Creditors are very familiar with the process and either obtain default judgments or settlements even in cases where the creditor has serious proof problems. Once reduced to a judgment, the debt becomes an ongoing stressor in the debtors life- collection through garnishment may result in other bills not being able to be paid- this cycle can lead to homelessness, serious depression and more. I do have reservations about the proposal. You will note that my emphasis is on the need for paraprofessionals to help debtors defend. My concern is that the large collection firms are already streamlined- allowing them to send legal assistants to prove up cases means they will be practicing law if the case is contested. It also means that rather than working to solve a problem, we may be making it worse by making it even more easy for these firms to continue to file thousands of cases a year. This last comment applies to each of my answers. UNLESS THE PARALEGALS are required to follow our ethical guidelines, we may be doing a greater disservice to the public than we intend. It is important that whatever rules are adopted, there be some kind of licensing, maybe testing or other means to determine abilities, and an obligation to follow ethical rules similar to the ones attorneys follow.

Afford unrepresented persons legal advise as to their rights and options for resolution

letter writing can often solve creditor problems and paralegals would be able to provide this service to clients which results in a higher level of service than counsel and advice.

The law seems to be fairly straightforward with little judicial discretion.

In creditor-debtor matters, there is a lot of researching of records, tracking and document preparation that needs to be executed and maintain in order to either defend or pursue a case. Often times, consult is also required because creditor debtor issues can be numerous and difficult for laymen to navigate the terrain of laws and protections.

there are simple questions that a paralegal cannot answer because he/she is not an attorney

More providers means more opportunity. This is a no-brainer. No more protectionism for lawyers.

This seems to be an area of law where people can be assisted by a paralegal to help them resolve an issue.

A paralegal, with the help of template forms, could help the debtor understand the legal proceeding and provide a checklist for defenses to claims. The paralegal could also provide references to let the debtor know about bankruptcy counsel for advice in that area..

Pretty basic fact patterns

Simple claims and responses to creditors would be easily managed by virtually all paralegals.

Paralegals can provide legal analysis of a client's case and advice on how to proceed.

Sometimes they know day to day than lawyer

just seems like a very complicated area with a lot of potential clients with student loan, medical, housing, and other debts that can't be navigated by people without significant expertise

Unrepresented parties may not understand this area of law

I feel this area of law has a lot of unrepresented individuals who would benefit from assistance from a paralegal.

access to information and assistance

Ensuring that SRLs have the necessary information to enforce their rights, especially debtors.

there is min. paid work helping debts compared to creditor work so there is a need for low cost services

Time crunches

I don't think the paraprofessional project will benefit clients. This survey is not designed in a way to allow lawyers to select 'none' as an option or to voice concerns about non-attorneys practicing law in some very difficult practice areas. The MSBA previously has expressed concern about this project. The survey should allow attorneys to answer in a way that is not in the affirmative.

There are many areas in this type of law that do not specifically require an attorney to represent the client, but a paralegal to help assisting in the correct paperwork, filling out the paperwork, giving fact information and procedural information and filing assistance.

the consequences of defaulting are quite serious and clients would benefit greatly if they had an advocate to explain the process. Such as a default judgment could be granted but may not be collectible.

all of these areas are heavily used by pro-se litigants which clog up the system - having a paralegal available to assist and streamline in each scenario would be very helpful to the judicial system and other attorney's waiting to have their cases called.

Huge need

This appears to be an area of need

the rules are clear and strict and forms can be completed without attorney

document preparation

Dispute Resolution, etc.

Creditor-debtor law involves contractual agreement between a debtor and creditor/borrower and lender. Attempts could be made to settle out of court.

From what I know of the bankruptcy area, it is very paper intensive and these folks are filing bankruptcy because they have no money, so paralegal rates would be cheaper and more cost effective for the clients

Debtors often lack the funds to pay their creditors, thus landing them in court, let alone being able to hire an attorney with high hourly rates.

This area can be confusing, and difficult to know the debtors rights while under stress

In conciliation type cases and/or judgment enforcement type cases, all work can be done by a paralegal most likely more efficiently and cost effective.

Paralegals can provide more cost efficient help in this area.

This affects a large population in daily life and they often don't have the money to hire representation.

It would allow for more affordable representation for people who are already struggling financially.

Law is fairly simple and need is great for low income people

Hard to find an attorney

This can assist individuals who need this service but do not qualify for legal aid and cannot afford full representation attorney. This could provide another option for the public and lessen court congestion with pro se.

Creditor-debtor law is typically procedural and straight forward. Having paralegal assistance, especially for small claims cases would be very beneficial and cost-effective for clients.

Consumers need affordable help when fighting credit cards, medical bills due etc. As a paralegal who previously worked in creditor rights for over a decade I've seen first hand how debtors give up and these creditors are not always forthcoming in proving the debt.

Attorneys typically see themselves as above this work and have little interest in it. This might be a good area for paralegals to participate.

Helps individuals that can't hire an attorney

Providing clients with legal representation for a lower cost.

paralegal can help give information on debt collection which is very helpful in easing one's mind if they are lower income, protection of assets/income very important

Standardized forms

chapter 7 bankruptcy prep and filing, advice on forms

Clients need more understanding of creditor-debtor law. Most cannot afford high legal fees when they are negotiating a debt

More opportunity to provide streamlined, less-complex legal services by legal paraprofessionals at better cost to assist broader population who need the representation from those who have more background and knowledge of issues

Minimal benefit in working on right forms.

Easier to make a difference because usually complex cases.

help and support for short-term cases

more cut and dry, which requires less need for practicing law

When I was a law clerk in civil court, there was zero representation for debtors in civil actions. If people did show up, the creditors were often able to negotiate a pay agreement with them. I don't believe there is enough support in consumer law for debtors. Often, the attorneys filing consumer credit cases could barely prove that their client owned the debt but because the client wasn't there, they proceeded by default in 90% of the cases.

I believe with the knowledge paralegals have they can provide benefits to clients in all of these practice areas in many different ways.

Assuming there is some basic CLE/training required before being able to assist in this subject-matter, I believe this is a relatively simple subject-matter that would be covered and the need is high.

Many debtors simply ignore lawsuits-- if paralegals could provide unbundled services to answer and help negotiate payments plans that would be helpful for unserved clients.

Creditor-debtor seems to me to be the most opaque, with the fewest online resources and help, and the least lay experience. Paralegals have so much more experience and ability to understand the law than your general layperson, so I think they could significantly help clients in need.

Creditor collections

These kinds of disputes are usually involving folks with no means to hire an attorney

providing client with support

Because it's an issue our office doesn't handle as much and is therefore less familiar.

creditor-debtor has a high volume of need, the process moves quickly

would help people rebuild themselves

An experienced paralegal would be able to effectively advise a client and negotiate a fair settlement on the party's behalf short of trial.

FDCPA

I think many individuals with these issues need a simple form filled out - garnishment exemption, for example, or need help drafting a basic answer so they don't default when sued on a debt.

Many clients would not be able to otherwise afford to hire private counsel; much of the law is stable in this area

This is an area where individuals with smaller claimed debts may not be able to afford an attorney to represent them.

Paraprofessional Pilot Survey Area of Law Comments: Family Law

September 25, 2019

Provide cheaper assistance to clients especially at court or driving to court in the rural areas of Minnesota.

Many parties go through family law matters alone and self-prepared documents lead to future legal problems. Paralegals could more accurately draft documents like joint petitions or child support pleadings so the public is filing sufficiently accurate documents at a lower cost than hiring an attorney.

The number of family law cases filed in MN along with the training and CLE's available seems like it would provide the most benefit with the least immediate risk to clients for a pilot project.

Creditor/debtor and housing law usually happens fast with serious impact life, money and shelter.

Many individuals just need direction in what and how to file when it comes to Family Law.

The most research involved from all the choices.

I think a lot of people can't afford an attorney. They usually are young and have families and just need some assistance in filing the divorce papers with the Court. Most people don't have a lot of money.

The ramifications of parentage, support and custody affect minors and are very difficult to modify and the determination re property are permanent and freq drafted ambiguously or inequitably by self-represented persons

Providing representation to unrepresented parties in family law would most directly benefit children, who are often the victims of family law disputes.

Under the guidance of an attorney, the sheer volume of paperwork with court forms could be completed with the help of a paralegal

significant need in this area; simple turn-key matters

Paralegal would be a needed bridge between the Self-Help products produced by the State Court Administration and end users.

I know of many people who have unresolved family law issues due to the inability to pay for legal assistance

Paternity, child support, etc

Too many unrepresented parties need additional legal assistance.

A paralegal can be helpful in the collection of information and by preparing legal documents.

In any area of a law practice in which there is high volume and in which basically administrative form-filling is prevalent, consumers of legal services benefit from sufficiently trained lower cost providers.

Often the clients have limited financial means.

Lots of clients need simple explanations of routine matters. Paralegals can do this well.

Cut down on fees charge. Gathering information from client.

I would say the most typical reason for being called into court for creditor-debtor and housing issues is failure to pay due to lack of funds. In those cases there is nothing anybody can do to help. Family law involves a variety of issues that someone with legal training may be able to explain to a party.

child support, chil custody and chil protection

Much of the work is gathering information and providing it to the court, which can be done cost-effectively by a paralegal

I interact with many people who can't afford an attorney to obtain an OFP, file for a modification of custody or child support, etc, and would greatly benefit from having someone help them navigate the system.

I don't practice in the area, but I get the distinct impression that there's a real need for practical, cost-effective advice in a lot of cases where one or both of the spouses don't have money for a lawyer. I believe empathetic people with a desire to learn can do so without sitting for three years listening to non-practicing talking heads drone on about the rise and decline of the Erie Doctrine and other eggheaded navel-gazing.

I support any creative solution to help historically underrepresented parties receive legal help/representation.

To provide assistance to low to middle income parties.

more and more divorce and custody matters are being handled pro se and basic issues become complicated when the judge cannot give legal advice to help the parties conclude their case.

Paralegals already provide significant service to our clients in this practice area.

Clients going through a divorce need more support.

Many cases in this area

largely a consumer, personal plight area needing to be streamlined and made more affordable

Many divorces do not require full representation from attorneys, assuming the parties agree on the terms, but require assistance in drafting documents.

I practice in this area and believe that there are simple forms and documents that a paralegal can complete.

Most need

It's fairly process driven and PLs would be able to assist given this.

This area seems like the one unrepresented clients would use more often than the other areas listed.

I don't really practice housing law and debiter/creditor law. I am aware that family law is very form-based.

'Simple' divorce may be most usefully done indepently by paralegal

A properly trained paralegal would be capable of helping the attorney by handling many of the issues arising in a family law case without fear of committing UPL. This would be a financial benefit for the client and a time-saver for the attorney.

High amount of need but cost is often prohibitive to legal assistance. This area can be complex so a paralegal may not be appropriate in all situations.

Simple document prep

Many family law issues are relatively simple and routine, and need for access to justice is high in this area.

There are many routine proceedings that would require minimal customization from a legal professional but are daunting for the average person without legal training. It's expensive to hire an attorney to do this work but makes a big difference for the people involved.

A paralegal operating under the direction of an attorney will provide an edge an otherwise unrepresented party would lack in this setting.

As I understand this area of law, there are many issues that are similarly resolved and involve standard forms and procedures. This is where paralegals do their best work.

Most dissolutions do not involve significant conflict but are difficult because of the parties' unfamiliarity with court processes. Paralegals could handle many such cases more cost effectively than lawyers. Similar factors are present in guardianships and custody matters.

Individuals and families going through divorce, custody, other family law situations often cannot afford the assistance that they need, or come through the process with debt or tight finances. Having paraprofessional guidance would facilitate the process and assist individuals in navigating the court and administrative systems.

Interaction with clients

Low income individuals have the greatest need for greater access to family law assistance. Without assets family law is largely form-driven and can be handled by someone who understands the forms and doesn't necessarily have the ability to perform deeper legal analysis.

Paralegals could provide advice to clients on how to proceed with a divorce, custody, parenting time, child support, and OFPs. Paralegals could certainly advise and tell clients the standard for modification of custody to deter non-meritorious actions from being filed. They could also advise when a child support modification is necessary. In addition, they could work with family law clients to draft affidavits and motions and advise them concurrently.

Paralegals could provide basic information that would help people to know their rights at a lower cost than an attorney.

Most common request for assistance we receive

Family law has high need and legally is less complex than other areas of law. Success in family court usually involves effective story-telling, and paralegals are good at helping clients tell their stories. This involves understanding the process and knowing where to get information and how to present it. 75% or more of family law work can be done by paralegals.

Family law has many intricacies and paralegals need high quality skills to investigate and support the client and attorney through what is usually a very emotional process. There is significant evolution of a case that encompasses, at times, a person's whole life, and there can be many swift changes that require prompt response. Paralegals are needed to be able to meet with and respond to a family's changing needs.

I don't know the other areas. Maybe they would be better.

A lot of people will have experience with family law at some point in their lives these days and could use basic instruction or assurance that they're doing the right thing

a lot of the paper wrk could be handled with the assistance of the paraprofessional

The pro se forms are voluminous and can be confusing for many people.

We have a lot of unrepresented people trying to handle divorces and custody cases on their own. They struggle with the forms, information is incomplete and they have no idea how to put together the necessary documents to try their own custody case.

I believe that paralegals working in one or two specified areas can provide quality representation.

Family law cases require a lot of face time with the client or time on the phone, which can be prohibitively expensive when billing at an attorney's rate. Additionally, while the facts of each case are different, the dispute resolution procedure in family law cases is fairly consistent from case to case and the rules are not overly technical.

When the issues are amicable or not disputed, a paralegal could assist cheaper and quicker than an attorney.

The need is overwhelming for clients, and most of the trouble seems to be getting agreements in writing

There are a lot of pro se forms available, but a paralegal may be of assistance helping a person fill out the forms correctly and to make sure relevant information is included for the court.

There are many pro se family law litigants and having legal assistance for them would greatly help.

Assist in filling out petitions, child care, custody, visitation, holiday schedules, debt responsibility

there are so many self-represented litigants that need assistance.

Paralegals would reduce costs making access to justice more available.

There is a high need for family court in our society and a lot of people don't know where to start. A paralegal generally familiar with filings, forms and issues could help in a lot of cases. Housing law and creditor-debtor law are more technical and there are a lot of esoteric laws/rules that can be easily missed.

This is an area of great need, and if expanding the role of paralegals can provide a more cost-effective in at least some cases, I think it's a good idea.

The number of SRL in family law continues to grow. People don't have the money to hire an attorney, yet need the guidance a lawyer or paralegal could provide.

Frequent client questions; factual interviews, etc.

Fill out paperwork and prepare for mediation/court hearing.

This program would meet the demand in Family law in our area. There are more and more attorneys leaving Family law. This would better serve the rural population if this was opened up for paralegals to serve.

Spousal support and maintenance calculations are, generally, formula driven. Many marital dissolutions are done administratively. Both of these considerations are ideal for paralegals.

I think competent paralegals are capable of work that is as high-quality and helpful as an attorney. Clients would benefit because paralegals can provide adequate, helpful legal services.

I believe there is currently a shortage of legal resources to support lower income clients. Allowing paralegals to engage in additional activities at a lower price point would provide more cost effective services to a broader group of people.

Dissolution is expensive - both sides lose financially when you take one household and divide it into two separate households. The reality is that many minnesotans cannot afford an attorney for these cases but they do need advice and guidance if they are going to proceed. Having a lesser cost option would be extremely helpful- provided the paralegals are required to be licensed, and some test to determine abilities as well as ethical obligations are in place

We get daily inquiries looking for pro-bono or low bono representation on family law matters. Our geographic area would benefit greatly from additional representational options in this field.

There are numerous low-income individuals that do not have access to family law support and should be. Providing consult, setting expectations, and helping prepare documents would benefit low-income individuals seek the assistance they need.

there are simple questions that a paralegal cannot answer because he/she is not an attorney - negotiating property settlement - how much the Payee must pay, etc. --Standard guidelines

Paralegals assist in compiling documents for asset/debt issues, as well as parenting time, freeing attorneys to work on more strategic legal issues.

child custody, marriage

We are overworked and have to turn so many clients away in this area. IT takes time to prepare docs and such.

More providers means more opportunity. This is a no-brainer. No more protectionism for lawyers.

Family law is complicated and assistance in finding forms and filling them out correctly would have a significant impact.

Higher number of people needing immediate help and safety is sometimes a concern.

Family law guidelines for alimony/spousal support and child support, as well as child custody criteria could help educate the clients about what factors a court will consider on those issues.

Big area of need.

Many people do not have the means to hire an attorney for simple matters related to child support, custody and dissolution. If more people utilized paraprofessionals, there is a chance that some matters would be less contentious, thus freeing up Judges for more important matters.

Clients are going through tough times. More experienced and knowledgeable staff would be greatly beneficial.

Navigating these issues is complex and there are many self represented litigants. Undoing something that may be done wrong or may not be what the client is seeking is difficult.

It would be helpful if paralegals could attend scheduling conferences and default hearings.

Many clients lack resources to hire attorneys.

I know how great the need is and have had personal experience paying a high-level family law attorney more than the value of the outcome in services in a divorce.

drafting and filing

Having some level of support through a highly emotional conflict could provide a benefit to those who want to/ must represent themselves

Family law requires more one on one time with clients since issues can be complex..

access to information and assistance

Your question assumes that I think more involvement from paralegals is necessary in general. I don't think that is a fair assumption. Attorneys are licensed and trained for a reason. The law is complex. But intake and helping with details would be a place for the paralegal.

The demand for this service is high, the amount of paperwork necessary is high, more help is always needed.

Time crunches

there are numerous pleadings and documents that need to be prepared in this area

most common area where clients are in the legal system, not of their own volition, and need representation to avert unjust results.

There are many pleadings in family law that could be prepared and filed by a paralegal alone. There are many procedural questions they could assist with.

Clients receive a great amount of misinformation from friends and media about how family law works.

Huge need to have help in filling out forms and navigating the court system.

This appears to be an area of need

document preparation

Family Law, ADR, etc.

Many people cannot afford to hire an attorney, but need basic advice about the law and help with drafting documents that are effective and do not cause them more issues, and expense, at a later time.

Paralegal's in our office often work with child support and paternity issues that involve similar procedures with any case.

if parties are amicable and there are no children, it really becomes paperwork driven. Even with children, there is so many guidelines for support etc. again if parties are amicable

Parties to a family law case should have representation to educate them on their options and the law. Unrepresented parties are more likely to reach an agreement that is unfair as they do not fully understand their rights.

This is an area where there are many individuals representing themselves due to lack of finances to hire an attorney

This area is stressful, and difficult to know rights and procedures under duress

Guidance in a very emotional time from a paralegal, who knows the ins and outs of family law would be less expensive. In addition, clients often prefer talking with a paralegal- less intimidating. Many family law issues are already handled by the paralegal, under supervision of the attorney. Minor court cases, especially when undisputed, can easily and more cost effectively be handled by a paralegal. In many cases the parties are limited on funds and getting support and advice from a paralegal, under the supervision of an attorney, may be the best option. Paralegals can provide more cost efficient help in this area.

This is an area that a lot of low income people are unable to hire an attorney to help them

At our family law firm, we receive a lot of calls from people looking for pro bono or low-cost attorneys.

I currently work in family law and the ability to afford an attorney for family law disputes is limited in many cases.

It would be a more affordable option for uncontested matters or during the beginning stages for things like the Initial Case Management Meeting or Status Conferences. Often, it is the paralegal who is the most intimate with the facts of the case.

Need is great for middle to low income people who can't afford an attorney and act pro se instead.

A lot of people complain about how much family law attorneys cost when their tasks seemed relatively simple

Many clients dealing with family law matters do not have the funds necessary to hire an attorney for litigation. I could see paralegals at lower fees be a great value.

This can assist individuals who need this service but do not qualify for legal aid and cannot afford full representation attorney. This could provide another option for the public and lessen court congestion with pro se.

Helping people with forms and client management (keeping the client informed; managing expectations; listening to their stories...)

Family law is more complicated than one may think. There are a lot of complex issues that arise.

Even when neither party is legally represented, and it is an amicable situation, there are often simply questions that come up where both parties could benefit from having someone assist with legal procedures, forms, typical situations, etc.

it seems the most practical and commonly used compared to the other two areas

I think there are many facets of Family law with which a paralegal might be of assistance.

Helps individuals that can't hire an attorney

Clients have a lot of questions in family law, lots of things happen, and paralegals may have more time to talk it out with the client, easier to get in touch with than an attorney

Standardized forms

Area of law usually fact intensive and not particularly complex.

Most times, either or both sides are not represented by an attorney due to inability to afford, or desire to hire independently.

explanation of procedures for divorce, custody filings, forms, mediation, joint prep of divorce decrees

Clients need guidance in family law matters - especially younger parents. They may not have the resources to hire high level attorneys.

Many individuals need legal assistance regarding family disputes but don't qualify for legal aid and can't afford to retain a private attorney for a lengthy parenting time and/or custody dispute.

More opportunity to provide streamlined, less-complex legal services by legal paraprofessionals at better cost to assist broader population who need the representation from those who have more background and knowledge of issues

Can cause emotional and financial strain especially for those who don't have the ability to pay an attorney and if matters are prolonged.

Order for Protections and Harassment Restraining orders

the demand

I believe with the knowledge paralegals have they can provide benefits to clients in all of these practice areas in many different ways.

There are often forms that apply to family cases that pro parties can fill out, but they often need guidance in completing those forms.

Pro Se litigants often need assistance in navigating through the process.

Because it can be a very hard field to get help in, and many people don't have money for attorneys. It might be more cost effective for them to have a paralegal who can help them better advocate for themselves.

The need is huge. For simple dissolutions, paralegal assistance would be helpful if under an attorney's supervision.

much of the due diligence and drafting could be completed a paralegal

Limited to certain areas like document creation and service and filing in areas like parenting time schedules or child support modification

People need to get a court order for a divorce. Creditor-debtor is a funny area of law. 99% of the time the debtor owes the money. And have not paid. Creditors already have a high bar to pass in terms of cost to enforce debts and debtors have the majority of laws in their favor - everything is a protected asset/income from judgments. Debtors do not need additional counsel, they have all the rules in their favor. They don't have money to fight - even at a reduced rate. I think this a nonsense waste of time and effort to provide debtors with low-cost services. The only fights they ever offer are procedural.

families are already under extreme stress from divorce, whatever we can do to lessen the financial burden (without compromising on the legal help they get) we must do

There are many unrepresented parties.

This is perhaps a philosophical rather than practical choice. A married couple can want to get divorced without there being a true conflict between them. If they nevertheless need to get involved in the legal system to be allowed to end their relationship, they should be able to do so as cheaply as possible.

providing client with support

I was a family law paralegal for 22+ yrs at SMRLS & private practice. Paras could represent in OFPs which would then allow attys to focus on other family law actions. Happy to give more feedback by phone, if necessary. I think this is especially true in a more rural county.

That is where there is the most need

there are many people who need assistance with basic, non-complicated matters where a paraprofessional could be a great asset to help a significant number of people with basic questions hopefully keep families together or get family members out of bad situations

can help more clients

Experienced family law paralegals are able to draft family law pleadings with instructions from attorneys with little to no supervision.

The vast majority of folks I've seen at ask an attorney events with family law questions at least benefited from a little advice. Usually the debtors simply incurred the debt and can't pay it (so

there's no real legal issue, unless bankruptcy is on the table or a 'stop calling me' letter which doesn't resolve anything) or the tenant is being evicted for good reason (even if not the tenants fault-such as a lost job leading to inability to pay rent) - those folks benefit more from talking to the county for help with rent assistance if available. That said there are a ton of traps in family law where people are making decisions with long term permanent consequences, so it's also the easiest area to mess up in a way that hurts people. But a paraprofessional might be in a better position to provide limited representation without getting stuck with all the ethical baggage attorneys have to deal with that goes along with limited representation for lawyers, which can make the process smoother and more affordable by excising labor intensive due diligence and follow up.

An experienced paralegal would be able to effectively advise a client and negotiate a fair settlement on the party's behalf short of trial.

Most need. OFP's also.

Most need

Many family members are impacted by the lack of representation of an attorney and can't afford one.

A bit of a guess based on family lawyers I know!

It's an area that involves a lot of information gathering and client follow-up. Many cases are settled, and paralegals can provide much of that workup.

Paraprofessional Pilot Survey Area of Law Comments: Housing Law

September 25, 2019

Because unlike the other areas of law, there simply are not the attorneys who practice in housing law. Or they only represent the landlord and not the tenants. Simply put, housing is a single issue area, as opposed to family which OFTEN has crossover in estate planning, tax, criminal, bankruptcy and immigration.

Housing law is very complicated and tenants needs to be advised on their rights especially when they are low income and often fighting with a landlord or property Management company where money is not an issue

You are taking work away from licensed attorneys with this proposed program-eroding the value of a law degree. Personally I think paralegals shouldn't be in any of these areas of law.

With the guidance of an attorney, basic guidelines around the eviction process and eviction expungement process could be aided by a paralegal.

Procedurally, the law is fairly straight-forward.

Assuming appropriate paralegal training, and the existence of a housing court, tasks could be performed by paralegals within a confined structure maximizing benefits to courts and minimizing risk to clients that unexpected legal issues raised in court exceed the scope of knowledge and training

significant need in this area; simple turn-key matters

I know of many people who have had lived in illegal circumstances due to the inability to pay for legal assistance

Too many unrepresented parties need additional legal assistance.

There are currently not enough attorneys to represent all tenants facing eviction and stats show that representation improves outcome for tenants

A paralegal can be helpful in the collection of information and by preparing legal documents.

Many parties in housing court are unrepresented and a paralegal could assist otherwise unrepresented parties- usually tenants understand their rights and prepare for housing court proceedings

In any area of a law practice in which there is high volume and in which basically administrative form-filling is prevalent, consumers of legal services benefit from sufficiently trained lower cost providers.

Paralegals can be helpful in typical residential landlord/tenant situations.

relatively simple area of law

Often the clients have limited financial means.

Lots of clients need simple explanations of routine matters. Paralegals can do this well.

Much of housing law is procedural and many people are unable to afford attorneys to resolve these matters. In addition, housing law is relatively straightforward. Paralegals would be in a good position to help tenants understand their rights and assist them with hearings in eviction proceedings, etc.

Just having a knowledgeable person at an eviction hearing can make a big difference

The area of most need and with least amount of subtleties in most situations.

It's the simplest/most recurring issues

In my experience clients either self-represent in housing court, often going against the landlord's attorney, or they avoid housing court even if their case has merit. Access to additional and more affordable assistance may provide better outcomes for those clients who need this assistance.

Housing law is, generally, statutorily clear. And the likelihood of accidentally ruining someone's life is less.

paralegals can help complete paperwork for clients

I work in a pro bono housing clinic. Most of the clients I see don't understand what's going on. Many of them have no significant defenses and really just need someone to hear them out and run through a quick checklist of possible defenses. You don't need a lawyer to provide practical, effective advice and insight for most of those cases.

NOT family law

As someone who routinely provides more than 40 pro bono hours a year at legal clinics and representing OFP clients, housing is a huge area many in the cities need assistance with. Whether it's expungements of evictions or dealing with landlord tenant issues...it is a problem big enough to be a fix but not profitable enough for a lot of attorneys to specialize in. Also, family law has SO many levels and layers of complexity. I don't think paralegals are appropriately educated to deal with all of that information in a way that would be beneficial to most clients.

I think of evictions as the primary issue in housing law. It seems the area of housing law is narrow and defined enough that a non-attorney could readily learn and master the content and procedures without difficulty.

Litigants are not represented and the issues are not particularly difficult.

Tends to be one hearing and limited legal issues

I support any creative solution to help historically underrepresented parties receive legal help/representation.

Poor people who are in most need of advice in usually urgent circumstances
mostly about money

High need for help

consumer area personal plight area needing to be streamlined and made more affordable

Many people don't know their rights as a tenant.

its an area where help may be needed

Same - I know little about housing but I know family & many family paralegals couldn't handle.

Housing law is fairly basic and usually involves similar issues case to case, which would limit the expertise the paralegal would need.

It would be helpful to have a paralegal be able to explain the basics to many clients at a fraction of the cost of an attorney.

Landlords often have more experience/familiarity with the system than renters. Any representation by a person, with even minimum knowledge of housing law, should help those who have previously been unrepresented.

There are a number of tenants that are unrepresented but would benefit if they had it.

Housing court less complicated another other areas.

It's fairly process driven and PLs would be able to assist given this.

Obviously, there is a great need in all three categories. I chose housing, since I suspect it would be the fastest area to learn.

Probably just based on familiarity stemming from some of my pro bono work, but I know how large the need is and how straightforward the legal issues tend to be.

Simplest and most frequently abused - family is far too complicated and the effects too far-reaching.

Paralegals could handle eviction hearings. Many LL use property managers. Many T rely on legal aid who are unable to spend much time with client or provide individualized advice. Including

paraprofessionals could increase access to client-specific advice and possibly ease burden on court

The process is currently set up to handle pro se litigants , so adding non licensed paralegals will not substantially change the advocacy structure

The need for effective communication with a client suffering unfair treatment from a landlord requires more than just licensed attorneys. Again, the fear of UPL would be eliminated and the cost to the client would be minimized.

High need, but not a lot of legal options for clients who cannot afford to retain an attorney. Often, the dispute is not overly complex.

Housing. Housing is a low dollar area of the law where there are very few practitioners, since there is so little ability to make any money. If a person is renting that sets the tone of their financial straits right there. Creditor debtor might be the next area, for the same reason. Letting paralegals work unsupervised by an attorney to help fill out forms would be catastrophic for the damage that would occur to families breaking up both on the financial side and on the children side.

Many housing law issues are relatively simple and routine, and need for access to justice is high in this area.

There are many routine proceedings that would require minimal customization from a legal professional but are daunting for the average person without legal training. It's expensive to hire an attorney to do this work but makes a big difference for the people involved.

A paralegal operating under the direction of an attorney will provide an edge an otherwise unrepresented party would lack in this setting.

As I understand this area of law, there are many issues that are similarly resolved and involve standard forms and procedures. This is where paralegals do their best work.

Often requires low-cost representation

Could do initial intake

Lots of details to navigate, forms to fill out.

The principles of basic residential housing law can be mastered by anyone with a basic education and enough motivation. A paralegal could help individuals fill out the right forms, guide the tenant through the process and prepare him or her to present arguments at court. The paralegal should not assist the presentation but could assist the pro se party's preparation.

Paralegals can assist with public housing denials, advise on eviction defense, appear with clients in housing denials, appear for first appearances on evictions. They could also provide assistance in and representation in rent escrow actions.

Of the three areas, tenants likely leave the most meritorious defenses and claims on the table because they lack representation

Housing law hearings are often less formal than other types of hearings and many people represent themselves. Access to paralegals could be beneficial for people who would not be able to afford an attorney.

Housing law seems like it is very form-based. A paralegal could help pro se parties navigate the forms.

information only

I've seen paralegals do good work in housing cases

Rental Tenant Eviction law can more easily be reduced to standardized scripts/boilerplate documents. Family law is too complex for paralegals to make decisions or give advice, or represent clients, even with close supervision. I don't know about creditor/debtor.

Again a lot of this could be handled with a paraprofessional and this would save money for the clients

Currently registered agents represent landlords so the paraprofessional playing field is level. Not so in other areas of practice, like family law or debtor/creditor.

Housing law is arguably more straight forward and less complicated than family law.

I believe that paralegals working in one or two specified areas can provide quality representation.

This is such a niche area of law that a paralegal could become proficient at it and offer a great alternative to attorney representation. Because timelines can be so short in eviction actions, having alternate, cheaper options could benefit many.

Those most affected by eviction need to be well informed about their rights. It is my opinion that involvement of skilled paralegals in this area would help achieve a better balance of rights between landlord/tenant; home owner/lender.

High need for people with knowledge of the housing laws.

There are fewer legal issues to address and the subject matter is straight forward. Individuals who are being evicted are unlikely to be able to afford to pay attorneys.

Paralegals would reduce costs making access to justice more available.

This is a discrete legal area in which knowledgeable paralegals could effectively provide guidance, support, and representation to an under-served client population.

Land-lord Tenants and Evictions are often done pro-se and some guidance and assistance with the Statutory defenses and processes could be provided as again, these are relatively straight forward.

Given the power disadvantage for tenants and landlords, it would be beneficial for tenants to have access to someone who can represent them through the process.

This is an area of great need, and if expanding the role of paralegals can provide a more cost-effective in at least some cases, I think it's a good idea.

Represent clients if it is a simple eviction hearing.

There is limited Housing law in our area but it would allow for clients to be better served because a paralegal would be able to provide the attention that is necessary.

I think competent paralegals are capable of work that is as high-quality and helpful as an attorney. Clients would benefit because paralegals can provide adequate, helpful legal services. I believe there is currently a shortage of legal resources to support lower income clients.

Allowing paralegals to engage in additional activities at a lower price point would provide more cost effective services to a broader group of people.

Large numbers of people & housing is such a fundamental right and need.

Similar to my response to creditor debtor law. Tenants need assistance, most large landlords do not- they already are familiar with the system. We have witnessed non-attorney agents misleading tenants in court about their rights. There have to be licensing and ethical obligations in place to protect the public.

Afford unrepresented persons legal advice as to their rights and options for resolution

Paralegals can handle administrative processes such as public housing and subsidized housing application denials, lease terminations, and appeal process. This frees up an attorney's time. The law seems to be fairly straightforward with little judicial discretion.

Many tenants do not know their rights nor how to pursue relief from housing matters, which can greatly impact their lives for the long term. Paralegals would be integral to this area, because they could assist with researching a housing issue, assist with filling out forms, advise on filings, and provide consult with regard to local housing matters.

Paralegals assist in compiling documents relating to payment, rent abatement claims, etc., freeing attorneys to work on more strategic legal issues.

Housing law seems to be the area that could use the most help and, frankly, would be easiest for paralegals to help.

There is always work to do in this area.

More providers means more opportunity. This is a no-brainer. No more protectionism for lawyers.

Housing law is generally conducted as an administrative/quasi-judicial process in cities of Minneapolis and St. Paul.

Needs are immediate for clients, cannot wait for volunteer attorneys

It's arguably the least intricate of the three legal areas with usually the most immediate and life-altering outcome (i.e. being evicted).

A template form of an answer or rent escrow action, could be provided to help educate the litigant.

It would do the least harm to have paralegals assist with these issues.

Seems like an area where limited means folks could use some additional assistance

Pretty basic fact patterns

Paralegals could help in all areas of court in housing law. Housing law suffers from a lack of legal professionals, and help from paralegals would help protect all parties' rights.

Limited scope of the area of representation.

Many clients lack resources to hire attorneys.

Paperwork prep

It's not clear whether the question refers to my current clients or to 'clients' generally, i.e. people with a legal problem who do not have a lawyer. That said, most of LL/T law (what I assume you mean by 'housing') consists of negotiating with the landlord rather than analyzing the law or providing unique legal advice.

Studies have shown better outcomes when people have representation of some sort

I would be very concerned about a non-lawyer handling family law cases. Housing law seems like it might be more straightforward.

access to information and assistance

Tight timelines require the delivery of quick, efficient and accurate information to litigants.

Housing law has some clearly defined requirements regarding service requirements, escrow, and other bright-line rule issues. Areas such as family law are far more discretionary and require more focused practice, legal study, and training.

The demand for this service is high, the amount of paperwork necessary is high, more help is always needed.

I think a lot of bad advice will be given in the family law area, doing permanent damage in an already tense and expensive environment.

Time crunches

Evicting parties are almost always represented by counsel, and, in my experience, tend to try to bully individuals who aren't familiar with the law and can't stand up for themselves. Housing law is narrow enough that I believe many paralegals can adequately advise tenants/foreclosed homeowners on their rights and options so they don't simply get steamrolled by parties with more resources.

There are many areas in this type of law that do not specifically require an attorney to represent the client, but a paralegal to help assisting in the correct paperwork, filling out the paperwork, giving fact information and procedural information and filing assistance.

so many problems could be resolved if clients had a basic understanding of their rights.

Huge need

This appears to be an area of need

document preparation

Section 8, Labor/Housing Law

Housing law is again a contractual area that often involves local ordinances or laws. A paralegal with knowledge in those areas could certainly work to resolve disputes with landlord/tenant issues.

Same as with debtors, above.

This is an area of great need without sufficient attorneys to handle the flow as well as lack of finances by most potential clients.

This area is extremely time sensitive as well as stressful. Difficult to navigate rights when facing eviction/poor living conditions without a legal advocate

The dollar amounts in each case don't justify having lawyer fees. A paralegal knowledgeable in the area would be able to handle the case without a problem.

Many housing law cases are undisputed and just require presentation of facts to the court. This is work paralegals prepare for and are more than capable of handling through the hearing. Paralegals can provide more cost efficient help in this area.

This is an area that a lot of low income people are unable to hire an attorney to help them

This affects a lot of renters who don't have the money to hire representation.

It would be an affordable option for people to be able to have representation. Usually housing matter are pretty straight forward as well.

Law is fairly simple and need is great for low income people

Cost savings compared to lawyers

Believe there is a great need for legal assistance in this area of law

really hard to find an attorney, especially for seniors and other who are working class

This can assist individuals who need this service but do not qualify for legal aid and cannot afford full representation attorney. This could provide another option for the public and lessen court congestion with pro se.

LL/Tenant law is an important area - people need help; if more attorneys were familiar with Alternative Fee Models then maybe they'd take more of these cases

Housing law isn't taught in paralegal school and of the firms that I have worked at, we didn't practice housing law.

Tenants and smaller-size landlords cannot typically afford legal representation and could benefit from legal assistance.

This is our most popular area. It would definitely help if paralegals could be more involved.

Helps individuals that can't hire an attorney

Providing clients with legal representation for a lower cost.

Our housing law can consist of advice/information on notices to vacate, L/T issues, and then evictions, loss of subsidized/public housing - paralegals can be trained to give out information to help with these areas, and fact gather for the court level cases

Standardized forms

Area of law not complex.

Most times, either or both sides are not represented by an attorney due to inability to afford, or desire to hire independently.

More opportunity to provide streamlined, less-complex legal services by legal paraprofessionals at better cost to assist broader population who need the representation from those who have more background and knowledge of issues

Housing law is fairly cut and dried so perhaps paralegals could help them fill out the forms.

Highest volume calls for United Way 211 - (formerly First Call for Help) regard Housing issues.

landlords break the rules all the time

help and support for short-term cases

I believe with the knowledge paralegals have they can provide benefits to clients in all of these practice areas in many different ways.

The need is great and the issues tend to be insular.

I am a housing law paralegal. Our office participates in a clinic 2x/wk in one county. Several of the hearings are settled prior to court or at court. A paralegal could easily handle these cases. Paralegals could also rep clients at Rent Escrow/TRA cases. Most of the investigation is done by the paralegals already. Paralegals can already handle administrative hearings for subsidized housing issues (PBS8, Section 8, Public Housing, Section 42, Section 515, Bridges, etc.).

Assuming there is some basic CLE/training required before being able to assist in this subject-matter, I believe this is a relatively simple subject-matter that would be covered and the need is high.

helping tenants in evictions would hopefully get better results for tenants

Evictions frequently involve folks who cannot afford an attorney

providing client with support

My office has a para who represents and maintains her own case load in housing matters.

There are a lot of people who have landlord questions and who can't afford an attorney

the need is great, impacts the housing stability of people

I think the other two are too complicated. Housing seems more clear cut.

hopefully avoid homelessness

can help more clients

An experienced paralegal would be able to effectively advise a client and negotiate a fair settlement on the party's behalf short of trial.

It's an area in demand, with many low-income individuals who cannot afford an attorney.

Paraprofessional Pilot Survey Geography Comments: Minneapolis or St. Paul

September 25, 2019

These are heavily populated areas.

Could provide cheaper assistance for those who can't afford an attorney

existence of specialty courts, huge volume of unrepresented parties, existence of nonprofits willing to train volunteers, an established system where trained paralegals could make a difference minimizing risk to clients

significant need in this geography

I know of many people who have unresolved family law issues due to the inability to pay for legal assistance and I know of many people who have had lived in illegal circumstances due to the inability to pay for legal assistance

The problem of unrepresented parties and the lack of access to justice is a state-wide issue.

This pilot project could impact the supply-side of legal representation. By increasing supply, competition should increase and prices for legal representation decrease. The metro areas have the highest populations. The metro areas have the highest populations of legal representors. Thus the demand side (i.e. client-side) would benefit most in the metro area.

I think the pilot could be helpful throughout the state and is not geographically specific

Low income clients who are on budgets could benefit from having paralegals do some of the work.

lower cost

For a pilot program of this nature to be successful, you need to have one set of laws and procedures as well as a large pool of cases.

Lots of evictions

I think all areas would benefit from this service, but I believe the greatest need is in Minneapolis and St. Paul. Additionally, I think it would be good to start with a limited number of jurisdictions for the pilot at first, then see how things go and expand the services to other areas if the pilot is successful once the major kinks are worked out..

All 3 law schools, numerous communities in need, and an overwhelming population are there, it would be unreasonable to have the pilot project excluded from this geographic area.

Sufficient numbers of attorneys willing to provide supervision and large numbers of persons unable to afford legal representation

From the clinics I work at in Hennepin and Ramsey I know for a fact there is great need in this area.

All. I support any creative solution to help historically underrepresented parties receive legal help/representation.

Highest case load and population.

I believe allowing paralegals to represent individuals in a limited capacity would allow low income and middle class individuals to seek more guidance. It would improve their access to legal services.

High need

Volume of unrepresented individuals.

Most need

Plenty of attorneys are available in the suburban and rural counties.

Court & legal access is becoming more expensive and PLs would reduce these costs considerably.

Sheer volume of cases and number of attorneys available to train and supervise.

High number of low income persons seeking legal assistance.

Housing court is overwhelmed in those counties

The cost and time saving would benefit clients in all areas of the state.

I think the tone of the question implies that clients would benefit...they would not. Right now you have licensed attorneys who are nearly incompetent, they graduate law school, hang a shingle then proceed to commit malpractice daily. The PR complaints are up and letting paralegals do anything more than what they do...would just drive that number even higher at the same time providing even poorer (if that is possible) service to clients on the low end of the financial spectrum.

More housing issues because of density

There's a substantial number of individuals who do not qualify for civil legal aid, and this may be a more affordable option to help decrease the justice gap.

Biggest concentration of people and poverty

Greatest need

High volume of cases so a paralegal could provide a great alternative.

More need for resources for clients of limited means

All places would benefit from a project that helped pro se litigants be better prepared when coming to court.

Higher concentrations of people who need services.

unique housing court and large populations who regularly face issues of this nature, often without representation

Need is great, many employers that would benefit from higher level work; many company's use paralegals at higher levels that law firms all ready.

Every part of the state would benefit.

This is a very high volume area.

I believe that broader use of paralegals for Housing cases in particular, would assist currently unrepresented clients in the Twin Cities.

The second and 4th judicial districts serve a lot of low and lower income individuals- Affordable options for assistance would help both the individuals needing assistance and the courts.

Dense population with limited ability to afford legal representation

majority of educated paralegals

Any area would benefit because the cases would be streamlined better -- efficiency, take on more cases, cost less for the client. Cases only need an attorney should they reach the court level.

Family law, especially, should be an administrative matter. If a person appeals the decision, then an attorney needs to step in and represent them in court.

All areas would benefit, because of population, at least one metro city could be selected.

Good area for a test

largest concentration of people

It should be equal access

I believe this venue would be most appropriate as I feel there are a lot of individuals who cannot afford an attorney in these venues.

There is a high population of low income persons and minorities that account for the majority of these cases.

They know the cases as much if not more than the attorneys

high volume

There are many people in this area that could benefit from this program because of the lack of finances to pay for an attorney and the lack of assistance that the courthouse offers in this area.

Huge need

This would be the most geographically compact area in which to perform a pilot.

low income

Minneapolis or St. Paul cases.

High volume of low income or indigent clients who need help

I think that every where would benefit for individuals who cannot afford an attorney

I believe this would be beneficial for all areas

I believe in all of these areas there are persons who cannot afford to hire attorneys.

This is a highly populated area and certainly all of the citizens aren't going to be able to afford attorneys. Access to paralegals who could assist with people with legal services and provide access to the legal system.

There are low income people everywhere who need access to justice

smaller area for pilot project may reflect whether it would work

the public who don't qualify for legal aid but cannot afford to retain a attorney.

I think Minneapolis/St. Paul has a wider base of lower-income potential clients.

More people this will help take case load off attorneys/legal aid

The need for these services at a more reasonable cost are not defined by where those who need the services live in MN

They have a lot of people and few solo/small law firms

There is a huge case load and if paralegals could do some of the leg work and administrative filing, attorneys could get to more clients

volume of people

Higher population of people that need help and courts are over booked so there is limited time for courts to help.

rural minnesota residents do fall victim to predatory lenders because there aren't any.

There are individuals who lack financial resources in all areas of Minnesota and would benefit from this pilot project.

There are more housing cases.

I think the higher populated communities or area would have more individuals needing this help.

Large debt-collection practices in civil / conciliation courts in Hennepin / Ramsey.

Non profit and legal aid need paralegals and the high population of low income cases in Minneapolis supports this reasoning

Paraprofessional Pilot Survey Geography Comments: 7-County Twin Cities Metro

September 25, 2019

The Twin Cities is heavily populated with diverse groups of people and limited low-cost/no-cost legal services, particularly for minorities.

Larger law firms within this area.

These are the areas I am familiar with.

Biggest area with most paralegals.

Could provide cheaper assistance for those who can't afford an attorney

Because of the volume of cases that need help to efficiently move through the court system.

Pilots need sufficient participation to create meaningful data results and this area has true highest population.

The higher poverty levels--especially in Ramsey County indicate people cannot afford attorneys

I would say the entire metro area.

Higher volume, more need.

uneven existence of specialty courts and trained volunteers, greater travel burdens on attorneys, leaves a hole that would need judicial structures like specialty courts and administrative support to locate and coordinate paralegal representation--nonprofits dont have the funding to make this happen and smaller firms dont have the resources or incentives to address these big picture market issues. The impact could be huge on clients in reducing the cost of representation but also increases the burden on supervising attorney (but on the upside for attorneys, it reduces the need for attorney travel and expands potential client base). It is unclear whether there are sufficient qualified paralegals to meet the need of firms so firms could remain competitive in the market

significant need in this geography

I know of many people who have unresolved family law issues due to the inability to pay for legal assistance and I know of many people who have had lived in illegal circumstances due to the inability to pay for legal assistance

The problem of unrepresented parties and the lack of access to justice is a state-wide issue.

Most coverage of areas needed

I think the pilot could be helpful throughout the state and is not geographically specific

low income clients have need

That's where more than half the state's population resides.

Low income clients who are on budgets could benefits from having paralegals do some of the work.

All of the above.You should not force people to answer questions.

lower cost

To make it worthwhile you need a large population. Rural areas clients expect to talk directly to their attorney.

Wherever the need exists and the person is truly competent and FAIR

Clients come from all these counties and more; very few clients from the core cities of Minneapolis or St. Paul

Lots of evictions

I suspect this is a statewide need, but I am personally familiar with the metro

Provide assistance in conciliation court

Metro areas are generally more litigious, generally have a higher population of vulnerable individuals, generally have a higher frequency of incidences requiring external intervention, and metros have the housing stock and amenities to attract and retain professionals.

Lots of renters

Although the Twin Cities area has a large concentration of attorney, many people cannot afford their rates. The additional assistance, offered at lower rates, has the potential for helping those who need the help the most.

the need is great and making additional resources available would help underserved populations

Great need.

From the clinics I work at in Hennepin and Ramsey I know for a fact there is great need in this area.

Where the most people are.

That is where the paralegals are.

All. I support any creative solution to help historically underrepresented parties receive legal help/representation.

As a pilot project for low to middle income parties the metro area makes sense as a high volume family law population

These are the areas with the busiest court houses and larger calendars

This is our principal geographic practice area.

Greatest concentration of people and filed cases

most people

Not enough legal aid representatives in these areas

The 7 county metro area has the highest population of clients and paralegals. Economically diverse.

More cases in these areas

Highest demand for legal services and clients who cannot afford to pay attorney rates

Court & legal access is becoming more expensive and PLs would reduce these costs considerably.

Higher number of low income persons seeking legal assistance.

Lower income individuals in the inner city could benefit from having a paralegal perform at a lower cost a lot of the divorce work which CAN BE very form based.

The cost and time saving would benefit clients in all areas of the state.

Most densely populated and can assist the most clients.

Specialized court systems may be helpful. For example, Hennepin and Ramsey counties have specialized housing courts where it may be easy to pilot this structure.

This is where most people live, so I would suspect this is where they could have the greatest impact.

In this well populated area there are many without three funds to hire an attorney. Allowing paralegals to step in under three directing of an attorney allows attorney to help more pro bono cases without jeopardizing their ability to do paying work at the same time. It cost attorneys time and money to leave the office and attend court.

Higher density of population

Greatest number of cases.

More housing issues because of density

More access

Same answer as above.

The Twin Cities area has a lot of the population and most of the attorneys in that geographic area are too busy or practice in other areas to help with creditor, family, and housing law.

this is where there is the most need, although I can see how a program like this could also be useful in the other regional hubs (duluth, rochester, etc.) as well as very rural areas

Seems to be where the paralegals are

Large population in need of lower cost legal services.

more population of lower income

Some people cannot afford attorneys and yet do not qualify for legal aid.

Paralegals still need supervision by a lawyer qualified in the subject matter. The majority of debtor-creditor lawyers are located in the metro.

High volume of cases so a paralegal could provide a great alternative.

Plenty of paralegals available

Will help the most people

Am making that assumption based on population density.

All places would benefit from a project that helped pro se litigants be better prepared when coming to court.

The need exists across the region in suburbs as well as cities. I suspect there also is a need in rural Minnesota, I'm not as familiar with the services provided out state so I cannot say for sure.

Ramsey and Hennepin are understaffed and overburdened so they could use paralegals that could offer more help. The other counties have less work so they have fewer staff and having a paralegal being able to do more would help fill in some of those gaps.

for the same reasons as set forth above

The courts in general are overburdened and underfunded with regard to these high-volume civil issues, and this problem is worst in higher population areas. A lot of people cannot afford lawyers and at the same time do not qualify for low-income legal services. Having some direction and assistance can streamline the process and save courts time.

Because the volume of cases is so high in this area, presumably the need is greatest there.

I think the twin cities metro would benefit best from this program.

Every part of the state would benefit.

This is a very high volume area.

Limited access to legal representation that is largely located in Minneapolis/St. Paul.

majority of educated paralegals

There is a significant population within this area.

Any area would benefit because the cases would be streamlined better -- efficiency, take on more cases, cost less for the client. Cases only need an attorney should they reach the court level. Family law, especially, should be an administrative matter. If a person appeals the decision, then an attorney needs to step in and represent them in court.

Paralegals can help contain costs of representation in the metro, where hourly rates are normally higher.

Most need, I assume

Too many cases

Because of the population size, one of these counties would be a good location.

Population centers - large numbers of pro se clients

All listed metro area counties

Diverse population

many lower-income people end up living in the suburban areas around the twin cities, thus the need for services close to where they are rather than expecting them to come into the city

It should be equal access

I actually think whole state would benefit

It seems like a good idea to test out this project in a smaller area.

I believe this venue would be most appropriate as I feel there are a lot of individuals who cannot afford an attorney in these venues.

access to information and assistance

its the metro area

They know the cases as much if not more than the attorneys

high volume

Majority of State population

There are many people in this area that could benefit from this program because of the lack of finances to pay for an attorney and the lack of assistance that the courthouse offers in this area. the court cases are increasing - and the calendars are very tight - any help would be welcomed.

Huge need for assistance

This would be the most geographically compact area in which to perform a pilot.

low income

County cases

Probably the areas with the most issues in housing, family or creditor/debtor issues.

My selection is based on volume of people needing this service.

This area is populated more densely therefore would have a higher number of individuals needing representation or legal advice.

High volume of low income or indigent clients who need legal assistance

While the central urban areas are visibly affected just based on density, outlying areas face the same issues

These 7 counties make up a good variety of the state population- city and country. I believe you need to start with Hennepin and Ramsey County first and then add the other 5 counties.

This area encompasses a large amount of law firms and paralegals, and likely has the large caseload of work that would fit into the areas considered for the pilot project.

I think that every where would benefit for individuals who cannot afford an attorney

Would assist with the cost and time of attorneys.

I believe this would be beneficial for all areas

High demand, cost of attorney legal services too high for anyone middle-income or lower

I believe in all of these areas there are persons who cannot afford to hire attorneys.

Based on the calls we get, I believe an area larger than just Hennepin and Ramsey would be beneficial.

This is a highly populated area and certainly all of the citizens aren't going to be able to afford attorneys. Access to paralegals who could assist with people with legal services and provide access to the legal system.

There are low income people everywhere who need access to justice

highly populated

I know there's a need for help amongst working class people in the twin cities

the public who don't qualify for legal aid but cannot afford to retain a attorney.

More firms in the Twin Cities area

I live in the suburbs and often get asked questions on these three areas of law - and typically it is a simple question and understandably, people are reluctant to approach an attorney and pay large legal fees for something that isn't very complicated.

this is the most populated area of the state

There is a great need. These are the population centers.

More people have moved to the outer counties outside of Minneapolis and St. Paul.

More people this will help take case load off attorneys/legal aid

Probably the greatest need is in the Twin Cities.

Paralegals would be helpful anywhere.

Areas with the most population likely have the heaviest Court case loads.

all 7 counties

I believe everyone should have access.

The need for these services at a more reasonable cost are not defined by where those who need the services live in MN

more people>more poverty

All the Suburbs around the Twin Cities

These are major counties that need as much help as possible, paralegals are mini attorneys and can help in a major way.

High case loads tax other resources whether people may otherwise be able to get assistance. Wait lists for legal aid are long.

Higher population of people so less time for the courts to help as well as more people needing assistance.

There are a lot of people in the 7-county area who are on the border of being able to get help, but they make just a little too much, but not enough to pay for legal services of an attorney. This would fill that gap.

Greater demand

There are many people/cases here that are being handled pro se, where the litigants have very little money, and for which it would be beneficial.

Population centers

everyone can use legal help, likely more users in these counties

More people in the metro area have needs that a paralegal could assist.

lots of people cannot afford a lawyer and need help in the cities

There seem to be a high number of unrepresented litigants in the metro area

I would think Density would be key . . . especially if there's any hope for the pilot project to create any kind of actual market, and not just be a series of Ask a Paralegal advice clinics. Harder to get buyin if it's one person a day who needs 30 minutes of help because there's a lot of overhead in setting up a new service.

There are individuals who lack financial resources in all areas of Minnesota and would benefit from this pilot project.

Many more people are affected and go without legal representation

This way you can have more diversity within the target area and population that is served.

These counties are relatively close to each other. Would have easier access getting to a paralegal if not located in their community.

Paraprofessional Pilot Survey Geography Comments: Regional Center

September 25, 2019

These areas are big enough that there are attorneys, but also have a need for additional programs. Could provide cheaper assistance for those who can't afford an attorney and add available resources where there aren't any now
significant need in this geography

I know of many people who have unresolved family law issues due to the inability to pay for legal assistance and I know of many people who have had lived in illegal circumstances due to the inability to pay for legal assistance

The problem of unrepresented parties and the lack of access to justice is a state-wide issue.

I think the pilot could be helpful throughout the state and is not geographically specific
lower cost

Lots of evictions

This is where housing courts are seeing more cases.

Answer similar to the explanation given for the Twin Cities area.

Clients would likely benefit from improved access to legal services.

All. I support any creative solution to help historically underrepresented parties receive legal help/representation.

There are less attorneys in these regions.

Court & legal access is becoming more expensive and PLs would reduce these costs considerably.

The cost and time saving would benefit clients in all areas of the state.

There is a relatively high population of potential users compared to more rural areas but relatively few resources such as those already established in the TC Metro.

Same answer as above, plus there is a much lower number of attorneys in greater Minnesota than in the metro, and this would increase the options and potential for pro bono work if paralegals could also provide these services.

information only

High volume of cases so a paralegal could provide a great alternative where there many not be attorneys available to help or out of reach for many people.

Allow would-be lawyers in these areas to serve their community without having to go away to law school first

All places would benefit from a project that helped pro se litigants be better prepared when coming to court.

We have a history of taking on pilot projects.

There is no reason to limit these services to the Twin Cities.

The courts in general are overburdened and underfunded with regard to these high-volume civil issues, and this problem is worst in higher population areas. A lot of people cannot afford lawyers and at the same time do not qualify for low-income legal services. Having some direction and assistance can streamline the process and save courts time.

The Twin Cities already has a number of ways to help SRL, but areas that are very busy like Rochester, Duluth and Mankato do not have the same resources - but do have the need for them.

Every part of the state would benefit.

There are fewer attorneys to represent parties in this area.

Duluth has a high number of housing cases and this program would benefit our area.

Any area would benefit because the cases would be streamlined better -- efficiency, take on more cases, cost less for the client. Cases only need an attorney should they reach the court level. Family law, especially, should be an administrative matter. If a person appeals the decision, then an attorney needs to step in and represent them in court.

These are areas where there's a higher need for legal assistance.

One of the areas selected for the pilot project should be outside the Twin Cities.

Greater Minnesota has fewer resources for low income clients

It should be equal access

access to information and assistance

Duluth, Virginia, Grand Rapids, Brainerd, Pine City

They know the cases as much if not more than the attorneys

Huge need

low income

There are many more resources available already in the Metro area. Regional centers are accessible to larger populations outside the metro, and to many in rural areas. Rural Western and Northwestern Minnesota also would have a high need.

I think that every where would benefit for individuals who cannot afford an attorney

Would assist with the cost and time of attorneys.

I believe this would be beneficial for all areas

I believe in all of these areas there are persons who cannot afford to hire attorneys.

People in out state don't have as many options for legal services as those in the metro area. Allowing use of paralegals to provide some limited legal services will broaden access to the legal system.

A Regional center is the hub for many legal proceedings, especially creditor/debtor matters, since there is a Federal Court located in them. Also, they are somewhat populated area, but not as big as the metropolitan areas where you have a vast array of options available to you.

There are low income people everywhere who need access to justice

the public who don't qualify for legal aid but cannot afford to retain a attorney.

Limited number of attorneys

The need for these services at a more reasonable cost are not defined by where those who need the services live in MN

limited number of legal professional

Greater demand

Legal services handles most of the defendant housing cases. Staff have the expertise. While we don't have housing court in these areas, I believe the case load for evictions would be smaller and better local attorney collaboration.

There is limited affordable legal services for these types of litigants, so there would be a fair amount of litigants who could benefit rather than handling the matter pro se.

Rochester is short on paralegals and attorneys.

Due to lower accessibility of pro bono legal services

less resources and staff

There are individuals who lack financial resources in all areas of Minnesota and would benefit from this pilot project.

Paraprofessional Pilot Survey Geography Comments: Regional Center

September 25, 2019

There is a shortage of attorneys in rural Minnesota. If this program can help where there are no, or limited legal help rather than act in competition to the current attorney market, that would be best for all.

Fewer attorneys in out state.

Rural Minnesota lacks many of the support systems and access to affordable justice tools that the Twin Cities and surrounding areas have. The number of attorneys, volunteer attorneys, clinics, self help centers are substantially less available in rural Minnesota.

Services in Rural MN are limited so offering outside the metro would be ever so helpful

St. Cloud area

Rural-only because lawyers in rural areas are retiring and no new attorneys are replacing them. There are many attorneys in the Twin Cities needing clients. This pilot is unfair to them.

It's more likely there's not available assistance in rural aread

Many small towns have no attorney.

Fewer legal resources, increased low income populations (by %), no public transportation, little access to interpreters...so often the last group to receive innovative services

Less likely to have lawyers available.

Could provide cheaper assistance for those who can't afford an attorney and add available resources where there aren't any now

Clients could benefit from lower cost and access to representation, attorneys could benefit in expanding a client base but with the added responsibility of oversight and management of paralegals which might require training (not all attorneys have or need to develop this skill); adding these providers might significantly impact the way legal services are delivered and lead to a restructuring of small firms to remain competitive and whether there are qualified paralegals might determine firm competitiveness and viability

Harder to get legal assistance in the rural communities.

significant need in this geography

Greater likelihood of lawyer shortage.

I know of many people who have unresolved family law issues due to the inability to pay for legal assistance and I know of many people who have had lived in illegal circumstances due to the inability to pay for legal assistance

The problem of unrepresented parties and the lack of access to justice is a state-wide issue.

I think the pilot could be helpful throughout the state and is not geographically specific

low income clients have need

See, Pruitt, Lisa R. and Kool, Amanda L. and Sudeall, Lauren and Statz, Michele and Conway, Danielle M. and Haksgaard, Hannah, Legal Deserts: A Multi-State Perspective on Rural Access to Justice (June 18, 2018). 13 Harvard Law & Policy Review 15 (2018); Georgia State University College of Law, Legal Studies Research Paper No. 2019-01. Available at SSRN: <https://ssrn.com/abstract=3198411>)

Low income clients who are on budgets could benefits from having paralegals do some of the work.

lower cost

lack of attorneys generally

Less paralegal help out there

My colleagues tell me that it is difficult to get younger attorneys to move to the 'outstate' areas; the paralegals could help solve that issue

Lots of evictions

Provide assistance in conciliation court

Fewer attorneys available.

Access to legal representation is often limited in Rural Minnesota. This pilot project would fill a big need for legal assistance in this area.

Clients would likely benefit from improved access to legal services.

Lack of lawyers in rural areas.

Resources are light in rural Minnesota where local offices for legal services for the indigent are either closing or do not offer services. In addition, if a client has to drive for a meeting, it is better to have someone in those rural areas be able to assist than having the client drive for half of a day to receive services. This affects a client's employment or clients are possibly incapable.

the need is great and making additional resources available would help underserved populations

Not enough attorneys.

Fewer attorney options

I am in a town with a population of fewer than 4,000. The closest town with a population of more than 10,000 is one hour away. The closest metro area is two hours away.

All. I support any creative solution to help historically underrepresented parties receive legal help/representation.

Expanding legal services in rural areas would be beneficial to rural communities.

There are probably fewer resources currently available in rural Minnesota.

The financial burden and travel costs could be offset with this program

Areas underserved by attorneys

There are just not sufficient attorneys in many rural areas.

Areas where not enough attorneys are available

Court & legal access is becoming more expensive and PLs would reduce these costs considerably.

There are fewer pro bono attorneys in rural Minnesota.

There are not as many lawyers.

Underserved in general (lack of licensed attys)

Because this area does not have the resources that the Twin Cities has.

Rural Minnesota could use more paralegal support due to the overall lack of attorney support in those areas.

We have plenty of lawyers in the metro.

The cost and time saving would benefit clients in all areas of the state. Additionally, in the rural areas of the state, legal assistance would be more readily available if paralegals could take over some of the duties of an attorney, saving traveling time and money.

Fewer low cost options

Lack of professionals in rural mn

Rural Minnesota has folks that are lower income or that don't want to hire one of the two lawyers in town. Allowing a paralegal to come in would allow attorneys who aren't local to provide representation. This Also allows the public to sample outside the 'good ol' boys club' found in small towns.

Few attorneys in rural Minnesota represent persons on low-profit matters.

Based only on rumors, my perception is that attorneys are difficult to find in rural Minnesota.

There tend to be more attorneys and legal professionals located in the Twin Cities and regional centers; it would be helpful to have access to qualified paraprofessionals for rural Minnesotans so they don't have to spend money/time to travel to the nearest regional center.

Where ever there are few attorneys per 100,000 people, and potential law clients have limited resources.

There are not enough attorneys in rural Minnesota to represent the populations out there.

information only

Rural Minnesota lacks the density of resources that exist in the metro area. From my own experience, pro se family law litigants are the rule, not the exception.

There are a lack of lawyers in rural Minnesota, so there would not be a dual system of legal representation. In contrast, urban centers have a plethora of lawyers and all citizens deserve to be represented, by a licensed attorney, in court.

something other than the metro

Rural MN benefits from few pilot projects, yet has some of the most diverse populations based on need, geography, cultural differences, and economic issues. The highest levels of poverty are in Northern MN and there are limited attorneys with limited professional staff resources. Any opportunity to help further develop and support small community resources helps further develop that community.

attorneys are easier to come by in the metro and regional centers. rural areas would benefit the most from increased access to legal services.

difficulty with getting lawyers and access to low cost legal services

There are fewer legal resources in outlying areas. County law libraries and self help centers can be fifty miles away.

There are less/no options in rural Minnesota.

Rural Minnesota has less attorneys per person than the metro or regional centers.

large cities already have lots of pro se clinics, specialty courts etc. for these issues. Even Regional centers have free legal services. Rural MN does not.

I think there is a shortage of attorneys in these areas generally, but especially in the rural areas.

There are fewer stakeholders to get on board with the project.

Fewer attorney options in rural Minnesota.

High volume of cases so a paralegal could provide a great alternative where there many not be attorneys available to help or out of reach for many people.

It's hard enough to find attorneys in these areas...

There are very few private attorneys in rural Minnesota that take family cases or even evictions.

There are a lot of people who may have an agreement on custody, parenting time, etc. and need to get a court order (stipulation signed by a judge) but the system is not set up for parties in agreement to navigate the process.

All places would benefit from a project that helped pro se litigants be better prepared when coming to court.

There are fewer attorneys in rural areas, and incomes tend to be lower, and so increased access to affordable legal guidance could be helpful in rural areas.

Larger number of the population would benefit from lesser fees..

There is more working poor and not a lot of options for attorneys to take low-bono or pro-bono work. Plus, if one party has legal aid and the other does not, there is no incentive for the party who is represented to settle and will more likely go to trial.

There are fewer and fewer attorneys, mainly in Family law, in rural Minnesota. This pilot project would allow for the population in these areas to be better served by allowing Paralegals to be able to assist. This is almost a necessity at this point in our area.

less access to attorneys and other assistance mechanisms, including affordable services in rural areas. Greater access to paralegals could help.

Every part of the state would benefit.

There are fewer attorneys to represent parties in this area.

I believe that family law practice would benefit from broader use of paralegals across the state, but in particular, in rural areas.

Fewer lawyers and fewer clinics/free services available

Sadly there are fewer attorneys practicing in rural mn- having another option would help, but here my concern is supervision. People should be able to obtain high quality, competent assistance regardless of where they live.

Practicing in rural Minnesota I see a significant need for additional avenues of representation.

I believe there are less practicing attorneys in general in Rural Minnesota. In addition, I believe there specifically less 'junior' level attorneys in Rural Minnesota. In my opinion, it sounds like the work that would be completed by this pilot project is the same type of work that would be completed by a 'junior' attorney.

Any area would benefit because the cases would be streamlined better -- efficiency, take on more cases, cost less for the client. Cases only need an attorney should they reach the court level. Family law, especially, should be an administrative matter. If a person appeals the decision, then an attorney needs to step in and represent them in court.

Paralegals can help bridge the representation gap in rural MN.

Attorney's in rural Minnesota are difficult to find and legal aid does not visit rural courthouses on a regular basis

IT is where i work so i can not comment on the other, but we are understaffed and a paralegal being able to do things they are capable off would lighten the load.

Access to attorneys (both privately paid and through Legal Services) is limited in rural areas.

These are areas where there's a higher need for legal assistance.

It seems there is no shortage of lawyers in the metro area and a reasonable number work for below-market rates, but rural areas may benefit from additional legal resources.

Scarcity of nearby legal resources would make rural Minnesota a good location for the project.

Fewer outstate lawyers to assist people.

Access to legal help might be limited due to fewer attorneys

There is not enough help in the rural areas with many legal needs. And frankly, there's not enough legal help to help poor people in any area. Though, giving them someone who is not an attorney is not necessarily giving them effective help.

Outstate Minnesota has a paucity of legal representation and many debtors

Access to justice for indigent persons in rural communities could be improved.

There is a dearth of attorneys in rural Minnesota.

There are fewer legal resources for a person in Rural Minnesotas.

Shortage of attorneys in rural Minnesota.

The attorney shortage is greatest in rural MN

Within 100 miles of the Metro

as the economic landscape changes, and trade wars linger, many rural citizens are likely in need of assistance with financial issues

It should be equal access

access to information and assistance

It is extremely difficult to recruit attorneys to practice in a rural area. Legal paraprofessionals would help expand the ability of a small firm to offer services.

Bemidji

Rural Minnesota has a lower percentage of lawyers than the metro with less access to services such as legal aid.

They know the cases as much if not more than the attorneys

I have a belief that these are underserved areas

Legal services in rural MN are not as easily obtained, so I'm told.

I think the Rural areas would benefit the most because their courthouses do not supply attorneys to the building to help on preparing documents and assisting. This area would be most beneficial. Also, the income is much lower typically in this area, so the clients would benefit from that.

Huge need, few attorneys

Due to the lack of attorneys that practice in the area and distance to courthouses

There are plenty of legal programs in the Twin Cities and surrounding Counties; Sherburne, Stearns need assistance.

low income

Lack of attorneys available in the rural outstate areas.

It's where I live.

I think that every where would benefit for individuals who cannot afford an attorney

Would assist with the cost and time of attorneys.

I believe this would be beneficial for all areas

Cost of attorney legal services too high for rural community

I believe in all of these areas there are persons who cannot afford to hire attorneys.

People in out state don't have as many options for legal services as those in the metro area. Allowing use of paralegals to provide some limited legal services will broaden access to the legal system.

It would allow for there to be additional options for people to gain representation where there are not many options.

There are low income people everywhere who need access to justice

I've heard that it's very difficult to find attorneys in rural mn

the public who don't qualify for legal aid but cannot afford to retain a attorney.

Less access to the court system due to lack of finances or the ability to travel.

I think that people in rural MN often feel overlooked and not offered the same services as those in 'the Cities'. There are many indigent people in rural MN who may not have access to legal assistance.

Limited number of attorneys

More need for affordable legal services.

Rural Minnesotans likely have more limited incomes to be able to retain an attorney's services

outside of county law workshops not a lot of options

I believe everyone should have access.

The need for these services at a more reasonable cost are not defined by where those who need the services live in MN

Fewer and fewer lawyers practice in rural Minnesota. Allowing supervised paralegals to assist would enlarge the pool of available legal help.

There is a rapidly decreasing number of attorneys practicing in Rural Minnesota, many of the hearings presented in court are uncontested and could be easily performed by a legal paraprofessional e.g.

uncontested probate hearing or assisting a conservator with annual accountings. The demand for legal services are growing because there are a limited number of licensed attorneys.

fewer attorneys

because there are limited resources in general

limited number of legal professionals

Rural Minnesota doesn't have as much access to legal sources as the cities, paralegals would help fill that gap.

Clients in rural MN have less access to legal services and less income available to pay for legal services. The expanded use of paralegals would allow more access to professional legal services at a lower cost to the client than if they had to pay the usual hourly rates for attorney work.

Fewer attorneys available

ALL of the legal services clinics exist in a metro area or smaller city. None exist in smaller communities. Plus, small town and solo attorneys in Rural areas lack the capacity to cover all the practice areas they're expected to handle. Having one of these paraprofessionals in smaller communities, even to assist a client to get prepared before they meet with an attorney in a city if they end up needing that, would make a huge difference in these smaller communities.

being outstate doesn't mean issues don't apply, the hard part of course is that there are fewer lawyers and paralegals. Consider on line and web conferences

Attorneys are leaving and no one is replacing them.

It seems the rural areas are in most need of legal professionals. Urban areas of MN have larger numbers of atty's available

Our office is based in Grand Rapids (i.e., not a regional center).

To help address shortage of attorneys in those regions

Due to lower accessibility of pro bono legal services

there are very few resources for people who need it in rural Minnesota

less access compared to large cities

less resources and staff

There are individuals who lack financial resources in all areas of Minnesota and would benefit from this pilot project.

There are less choices for attorneys.

Not as many attorneys

Paraprofessional Pilot Survey Geography Comments: Other

September 25, 2019

I do not believe this concept is a good idea. Allowing others to do attorney work devalues a law license. Profession is already under attack from AI and computerized systems.

They won't benefit

While I suspect rural communities have the most to gain from any access initiative, I don't think geography or proximity to lawyers/paraprofessionals should be the only factor in measuring need. State-wide.

None

You're assuming there would be a benefit. Your questions are phrased poorly.

This seems like jumping the gun. You will find more potential paraprofessionals and attorneys willing to use them in the metro area but there are barely any attorneys in the rural areas.

Awful framing of question, as with previous question, especially for those who believe that this is not appropriate. Presupposes support.

Thank you for giving an 'other' option. I still have difficulty with legal assistants or paralegals giving legal advice. It's hard enough dealing with individuals who received poor advice from an attorney. I hate thinking what would happen when someone receives poor advice from a paralegal--with the attorney responsible for the advice.

I believe that paralegals can benefit clients throughout Minnesota without regard to geography.

I don't believe that clients would benefit from this project. I have worked in all three areas, and find them all to be relatively complex. Most clients need an attorney to make the most informed decision. Even with my best paralegal, she was unable to appreciate small facts which changed the tenor of the case remarkably. No matter what the rules say, courts give deference to unrepresented parties, and having a paralegal would diminish that deference, without providing actual representation.

All would benefit equally. The issues of access to justice or the high cost of legal representation are not unique to any community or geographic local.

I think this project is a terrible idea. We have TONS of lawyers in Minnesota, and lawyers are licensed professionals with a minimum knowledge and education level - and there are STILL bad lawyers. Telling poor people to get their legal advice from paralegals is rude to them and dismissive of the legal profession.

Rental tenants get evicted everywhere.

I'd look at whether pro se parties tend to be from the metro area or out of state.

This is a terrible idea that is going to result in more people turning to self employed paralegals to help with 'simple' cases that are not actually simple. People will go for a 'cheap' alternative and wind up in significant financial trouble when creditor-debtor, and especially family law matters, are mishandled.

Client will not benefit from having unqualified non-attorneys do legal work

Anywhere in Minnesota

None of Minnesota would benefit from this pilot program. This survey is skewed toward accepting the program and assumes the program is a good idea. It is not. It is a disservice to the profession and to clients to allow those untrained in the law or subject to the obligations of the profession to act as advocates in creditor/debtor, housing or family matters. All of these matters have collateral consequences beyond resolution of a particular case and non lawyers are not equipped to provide full and complete advice regarding such consequences. Time and effort would be better devoted to developing newly admitted lawyers to provide services for these cases. Develop a pro se project.

Structure an internship program. It doesn't matter what form -- just make sure that we use licensed, trained lawyers to practice law.

Must be statewide to begin. Totally unfair to provide more services in the Twin Cities if a whole system change is being proposed

All of the options and all for same reasons - needs exceed availability of professional support and many paralegals are better than some lawyers and know day to day how things work

Again, to what 'clients' is the question referring? How is geographic location related to whether the services would be useful or effective?

I am concerned that this proposal will benefit anyone.

I don't think the paraprofessional project will benefit clients. This survey is not designed in a way to allow lawyers to select 'none' as an option or to voice concerns about non-attorneys practicing law in some very difficult practice areas. The MSBA previously has expressed concern about this project. The survey should allow attorneys to answer in a way that is not in the affirmative.

The whole state could benefit-you don't have to be inner city to have legal issues, there are poor people all over the state. Personally I'm tired of everything focusing on inner city.

I think all places in MN would benefit, why just limit it to one area when every where needs more support.

I am not convinced any clients would benefit from this pilot project.

Wherever courts/judges/staff would be most amenable to participate in a pilot.

None. A person without a JD and law license should NEVER provide legal advice or counsel period. This survey is poorly designed and clearly biased/tainted in favor of permitting uneducated and unlicensed people to provide legal advice and counsel. This should NEVER be permitted; it is a logical fallacy to even claim it can occur under the supervision of a licensed attorney--that simply is not possible to govern.

Hard to know - larger areas have more clients so more need....but also more resources. Paras could be used for more simple/streamlined cases. Rural areas have less clients, but less resources and attorneys. Paras could be used to fill the gap of legal resources in rural locations.

As long as a paralegal is directly supervised by an attorney; being able to draft simple family law forms would be beneficial; however, if child support and/or property analysis is required, then attorneys should be more involved. Attorneys, NOT paralegals, should appear in court because final settlement agreements may need to be tweaked and/or renegotiated.

I am adamantly opposed to the use of paralegals for any type of legal representation. Paralegals provide an extremely valuable service to the legal system by providing SUPPORT to attorneys, government agencies, as well as corporations by researching legal precedent, conducting investigative work on cases, as well as preparing legal documents for the licensed attorney to review. The ultimate liability is on the attorney for any misinformation regarding the law or an individual's possible cause of action in any given area of the law. Attorneys go through a rigorous educational program (i.e. must have a four year degree, a high GPA, and a proficient LSAT score) prior to entering law school which is at minimum a three year commitment) AND are then required to take the bar exam and pass in order to become an attorney. A typical paralegal program is at most two years and accreditation is irrelevant, as paralegal education is not mandated under Minnesota law. Each of us plays an integral role in the justice system and I strongly encourage you to think not only of the additional number of people who MAY be assisted under this program but rather how many will unknowingly be harmed irreparably if paralegals are allowed to provide legal assistance to individuals.

In what area(s) of law do you or your office practice? Other - write in

A variety of civil law	Bankruptcy	Child protection and ICWA
Administrative Law Judge	Bankruptcy and tax controversy.	Civil [x2]
Administrative, labor, OSHA, employment, and workers' compensation.	Bankruptcy, Criminal Defense	Civil law, Criminal defense
Adoption/Juvenile protection	Bankruptcy, Real Estate	civil legal aid - so all areas of poverty law
Agricultural law, banking law, business law, criminal defense, guardianships & conservatorships, probate & trust law, real property law, tax law, etc.	Broad array of civil litigation.	civil lit, criminal defense
all [x8]	Business [x3]	Civil litigation [x14]
all low-income civil matters	Business & Estate Planning	Civil Litigation, Corporate Transactional, and IP
All of the above and other poverty law areas including criminal expungement, bankruptcy, immigration, etc.	Business and commercial law	Civil litigation, criminal prosecution, tax protest, condemnation, child support, protective services unit, victim witness, many areas that local county governments represent the citizens and community
all of the above plus Estate planning, Probate, Employment, Real Estate, criminal and a couple others	Business and estates and trusts; employment, litigation	civil litigation, estate litigation
all relevant corporate areas for a major corporation	Business Law, Education Law, Corporate Law, Litigation	Civil Litigation; Corporate; Appeals
Any legal area that patrons ask about	business law, litigation, employment law	civil litigation; probate; estate planning
appellate	Business law, tax law, litigation, trust and estate, and real estate	Civil probate criminal
appellate in the areas of criminal, civil, family and immigration	Business litigation, corporate law, and similar business-orientated areas	Civil rights
Banking Law	Business real estate litigation	civil, estate planning
Banking Regulation	Business Transactional	Civil, many areas generally
Banking; Estate; Probate	Business, Corporate, Real Estate, Estate Planning	Civil, real estate, estate and trusts, guardianships/conservatorships, and criminal
	Business, estate planning, elder law	Class action plaintiffs-side cases
	Business/Commercial Law	
	Charitable trust and estate planning	

Commercial contracts	Contracts, health Care, real estate, litigation	criminal and immigration
commercial in-house		criminal but I have done family law
Commercial law, Advertising law, Regulatory	Contracts; agricultural law	
Commercial law, Municipal law	Corporate [x13]	Criminal Defense [x3]
Commercial litigation [x4]	Corporate (corporate governance, regulatory, litigation, contracts)	Criminal defense, but I have taught paralegals for several years.
commercial litigation, employment law, real estate transactions, criminal defense, privacy law	corporate advice and litigation	criminal defense, juvenile
Commercial, real estate, probate	Corporate and intellectual property	Criminal Defense, Personal Injury
Commercial/corporate/trans actions - what ever a company need but legal team is very active with VLN	Corporate and IP litigation	Criminal law and Licensure
Complex business litigation, IP litigation	Corporate counsel	Criminal Prosecution
complex civil litigation and transactional work; white collar criminal defense	Corporate governance	Criminal Prosecution for the City
Compliance and civil litigation	corporate law department	criminal prosecution, civil forfeiture
Compliance and corporate governance	Corporate law firm	Criminal, administrative
Constitutional Law	corporate, business litigation, estate planning	Criminal, civil litigation
construction	Corporate/Business	Criminal, civil, juvenile
Construction and contract law	Corporate-Commercial-Real estate-Estate Planning	Criminal, estate planning, corporate
construction litigation	Corporation	criminal, juvenile, civil
Contracted Tribal Representation	corporation - so business	criminal/civil municipal law
Contracts [x2]	County	Delinquency, Probate
	County Attorney [x6]	diversity and inclusion
	Courts	Domestic/sexual violence law
	courts-general jurisdiction	Elder Law, Estate Planning, Guardianship, Probate, Trusts
	Criminal [x16]	Election law
	Criminal and civil government	Eminent Domain, Data Practices
	Criminal and civil government related issues.	

Eminent domain, probate/estate collection and litigation.	estate planning, business litigation	General business/construction/real estate
Employment [x6]	Estate Planning, Criminal Defense	General civil advice for the county
Employment and corporate law	estate planning, personal injury	General civil litigation
Employment and financial services	Estate planning, probate	General comprehensive practice
Employment and Immigration	Estate Planning, Probate, Criminal, Litigation, Real Estate, Contracts, Business Formation and Governance	general contract, business and property law
Employment and Labor	estate planning/probate	general corporate
Employment law/ERISA	Estate Planning/Probate/Elder Law/Guardianship	General corporate law, IP, environmental and financial regulations,
Employment, consumer, ERISA	estate planning/probate/guardianship/conservatorship/real estate	General legal aid
Employment, non-compete, business and business owner	Estate, Probate, and Elder Law	General poverty law
employment, other	Estates, probate, ChiPS	General practice [x6]
employment, product liability, personal injury, tort, workers compensation and compliance	Ethics	General Practice excluding Family Law
employment, public benefits	Examiner of titles	government [x5]
Energy law	Financial	government employee, do not practice
Energy law, regulatory	Financial Services	Government, administrative, contract
Entrepreneur Law (all legal areas except debtor rep in bankruptcy)	Full service	I also have a contract Paralegal business in which I do mediations for civil and family matters.
Estate and probate	Full Service Law Firm [x2]	
Estate planning [x6]	General [x4]	I am at SMRLS - including Government Benefits, Family, Housing, Elder Law, Education law, Immigration, Agricultural Workers Program, plus volunteer attorney program - handling consumer & other areas
Estate Planning & Administration	General business services, litigation, creditor-debtor law, and family law	
Estate Planning and Administration, Elder Law		
Estate planning and probate		

I am in a law library--we offer information in all areas of law	In-house, insurance - product development, support, and operations	Litigation - Mass Tort, Drug & Device, product liability, business litigation, corporate
I do family law, others tend to represent the landlords or creditors. General all-practice area firm.	Insurance [x5] Insurance benefits disputes	Litigation - personal injury, etc
I work for the judicial branch, so I don't practice in any areas.	Insurance defense [x4] Insurance Defense and Civil Litigation	Litigation, corporate, general practice Litigation, insurer defense
I work in a healthcare company and specialize in regulatory compliance.	Insurance defense. Employment law. Business law. Products liability. Construction litigation.	Litigation; Professional Ethics Many misc. government
I work in a personal injury / criminal defense practice. My mother is a paralegal with 30 plus years of experience in family law. I know the work that she produces is better than what a lot of the attorneys are doing.	Intellectual property [x3] Intellectual property; contracts IP and business law Judge Judicial officer	Multiple (County Attorney's Office) Municipal [x2] Municipal law, criminal prosecution, criminal defense, family law. Municipal law, including employment and labor law
I work in the Civil Commitment area, but being in a government setting, the office itself practices in all areas.	L&E, product liability, corporate and business litigation, health care labor and employment Labor and Employment law	My division handles child protection cases. My primary focus is real estate issues right. I spent four years in private practice with 80% of the workload on housing related issues and creditor-debtor law.
Immigration [x4] Immigration, criminal defense	labor and employment OSHA; commercial contracts; corporate M&A	n/a [x6]
immigration, education, farm, public benefits, Social Security	Lawyers Professional Liability/Insurance Defense	No longer practicing
Immigration; Criminal Defense	legal aid -- lots of random stuff Legal publishing.	none None - software company
In-house	Litigation [x4]	None of the above nonprofit not law office

other [x2]	Probate, conservatorship, real estate, guardianship, estate planning, corporate	business-corporate, governmental
Other legal services		real estate, estate planning
Our firm provides legal services to governmental entities in the State of Minnesota.	Probate, Trusts, Wills, Taxation	real estate, estate planning, business, tax, probate
Pensions and employee benefits	probate. trusts. tax. other.	Real Estate, etc.
Personal injury [x7]	Probate/Estate Planning	real estate, probate & trust, estate planning, municipal, business
Personal Injury and Criminal Defense	Probate/Estate Planning	Real estate, tax, business, etc.
Personal injury, medical malpractice, class actions, civil rights, products liability	Probate/estates; personal injury; criminal; corporate	regulation [x3]
personal injury, workers compensation, Social Security Disability, Long term disability insurance disputes, and general litigation	Product liability	Regulatory Banking matters
Plaintiff injury law	Product Liability Defense	restraining orders, also provide general advice at clinics
Pretty much every practice area, but not family law	Product liability litigation (defense)	seniors law, disability law, public benefits law, immigration, other consumer
Primarily Personal Injury Defense and No-Fault	Professional defense	Social Security
Privacy [x2]	Real Estate, Estate Planning	Social security disability (administrative)
Private corporation, all areas relevant	Real estate [x2]	Social Security; Elder Law
Probate [x2]	Real Estate and Construction Litigation	Special education
Probate & Estate Planning [x2]	real estate and environmental	Tax, Business and Estate Planning
Probate and Mental Health	Real estate and landlord/tenant	tax/probate
Probate and Tax	Real Estate, Administrative Law, Environmental Law	Tax; estate planning
Probate Trust Real Estate	Real Estate, Bus, Corp. Litigation, Construction	Transactional and litigation matters for the University of Minnesota.
	Real estate, business, estates	Trust and estates [x2]
	Real Estate, Business, etc	Various
	Real estate, corporate, estate planning	
	real estate, eminent domain, wills and trusts, probate,	

We are a full service firm.

we cover most areas - all of
the above plus municipal,
banking, real estate,
software, transportation,
litigation etc

We have 145 attorneys

we practice in nearly every
area

Wide variety, but usually on
the creditor's and housing
owner's side

Wills and trusts, real estate,
and business law

Workers Comp, Insurance
Defense, Construction
Litigation

workers' compensation

Workers' Compensation,
Construction, personal
injury, railroad

Workers' Compensation,
Personal Injury, employment
discrimination

workers' compensation, soc.
sec.

Paraprofessional Pilot Survey Open-Ended Comments

September 25, 2019

The Legal Paraprofessional Pilot Project Implementation Committee is looking for ideas about where to pilot this program. If you're aware of projects or programs in Minnesota working to provide more legal services to underrepresented parties that could benefit from the expanded work of paralegals, please describe the program/project and if know, contact information.

Neutral or positive comments:

I only know of attorneys who would love to have more clients. I suppose the law librarians could use paralegals to assist them with the 100s of people who funnel through the library wanting free legal help.

CCLI (Collaborative Community Law Initiative)--651-321-9255

I am not aware of projects or programs available for underrepresented parties, but I am a former paralegal with a bachelor's degree from Winona State. If it is decided that a bachelor's degree should be a requirement for the Legal Paraprofessional Pilot project, I would suggest looking in the Winona area for piloting it because you would have access to very qualified paralegals.

I would start with pro bono service areas like VLN and Legal Aid

Collaborative Community Law Initiative

the Olmsted County Eviction Prevention Project (EPP) provides advice and representation to eligible tenants being evicted in Olmsted County Court... this project (or a similar project) might benefit from expanded work of paralegals. For more information about the EPP contact Brian Lipford at the SMRLS Rochester office at (507) 292-0080 or brian.lipford@smrls.org

Tubman; possibly Amicus or other ex-offender programs can help with housing and employment discrimination issues, family reunification/visitation disputes; driver license (e.g. work permit) issues; and banking or debt-relief issues. Hamline-Mitchell has a program to help low income people.

General practice including real estate and corporate work

Home Line is a tenant rights organization that could likely benefit from the use of paralegals as attorney extenders.

Legal Assistance of Olmsted County has an eviction clinic held before housing court. It has been successful and a good community resource.

I work with the Volunteer Lawyers Network, representing indigent Hennepin County residents in housing matters. It's a great organization. They use paralegals, but they are essentially limited to client intake when they could do so much more.

Volunteer Lawyers Network, perhaps Legal Services Corporation.

Self help Program 10th Judicial District

The wills for heros program is always looking for volunteers. They have attorney oversight for all volunteers including attorneys. This would be a good opportunity for paralegals to interact and advise clients in a controlled environment.

Children's Law Center, Any court based self-help center

completion of petition and other forms that need to be completed. Review of completed documents to ensure that they are properly completed. Helping individuals to understand legal terminology.

If any, the rural counties. It's difficult to find attorneys willing to travel to said counties.

Self help and document preparation programs.

Rural Minnesota, but only with properly trained and certified paralegals (8th district or possibly arrowhead, Iron Range areas)

I'm watching this project closely. I'm not sure if a paraprofessional would be useful in the sliding scale fee realm or not. As mentioned, so far the people who we've interviewed coming out of paralegal school have been unqualified. Maybe the more qualified ones are looking for way more pay. My contact info is emily@cooperlawmn.com (Emily Cooper - Cooper Law, LLC)

You can't find paralegals in regional hubs let alone rural Minnesota. The only possible place would be the metro area.

Volunteer lawyers network - <https://www.vlnmn.org/>, Muria Kruger is the housing lead attorney

Knowing the standards, ethical, legal and practical, I have extreme concern with allowing someone who is not a license attorney to represent clients in legal settings, but do believe assistance with document preparation, explanation of the process and support could be appropriate.

Ramsey and Hennepin county offers free legal aid counseling once or twice monthly to underrepresented individuals who may or may not need to file bankruptcy. This is not legal advice. Rather it is an initial intake and opportunity to give an individual all the options available to them. It may be a good place for a paralegal to start. They are always short staffed and looking for more volunteers.

I believe Hennepin Cty would benefit the most because they have such a large need and volume of pro se parties.

Southern Minnesota Regional Legal Services is generally unable to take on Family Law matters because of overwhelming need for critical need (housing, benefits, child custody) matters.

I would recommend Sherburne or St. Louis- Duluth. Both counties have judges that are very hands-on and would be able to provide feedback as to the quality of the representation.

Legal Aid Service of Northeastern Minnesota has a paralegal in the Brainerd office who would be a good fit for a pilot program. Brainerd is significantly understaffed for the number of those in poverty that the office serves. This would increase it's ability to provide more service. However, this would require some additional resources to promote this paralegal for the purposes of this pilot project.

Contact Executive Director, Dori Streit, to discuss. dstreit@lasnem.org

Rural areas--- housing law matters (evictions, etc.) and debtor assistance. Some probate and real estate too.

VLN or SMRLS might be a good partner, otherwise the legal incubator program through Mitchell Hamline

Volunteer lawyers network

Any legal aid office, including legal aid svc of NE MN.

This is not a project or program, but Rebecca McConkey-Greene, (218) 606-2226 Duluth, MN has taken a creative approach to parent representation. Her paralegal has social work background, is able to provide support and advocacy during case plan meetings, has assisted clients with obtaining needed services or locating services and making referrals. Can help parent attorney obtain services for parents that are needed - either through formal child protection proceedings, or family law matters and assist with navigating systems. Fathers often benefit greatly from support that is often not available in smaller communities. Places like Bemidji, MN have significantly high overrepresentation of Native Americans in legal systems with few services to assist with other associated proceedings like probate, housing, or family matters.

Law school clinics -- it's not sufficient to rely on pro bono from attorneys. There has to be lawyer staff and administrative staff to support the paralegals who would do this type of work.

Winona State University has a Legal studies major. It develops and trains wonderful paralegals every academic year. These students would be EXCELLENT sources of support for such a program. The Chair of that program is an enthusiastic man with whom I have worked in the past. I am happy to speak to him about this proposal and strongly urge the committee in charge of this program to consider Winona as a location for a pilot program.

I have no doubt this will be thoughtfully done and I have no doubt there are good intentions, but I have done family law in every socio-economic level (and continue to do so). There is complexity at every level. I am concerned that we there should be some specific training for the role they are to undertake. Perhaps there should be some requirement of liability insurance. I have seen attorneys inflict significant harm on a client by mistake. I am very concerned that paralegals would miss things and the injured party would have no recourse. I have the impression that there is a feeling that something is better than nothing but that is not true all of the time.

Under supervision of VLN

There are several Minnesota credit counseling agencies and mortgage foreclosure prevention groups that would benefit from the services of skilled paralegals.

The Office of the Public Defender in every county could benefit from this program assuming paralegals are interested. I'm always looking to expand my role and would love to be able to get more education, more certifications, and do more for the office.

The City of Minneapolis currently is trying to offer legal representation to all tenants facing eviction. There might be an opportunity to pilot an expanded role for paralegals in conjunction with the Housing Court Clinic staffed by Legal Aid and Volunteer Lawyers Network.

several programs that legal professionals can volunteer time within the Mpls area.

Minnesota Adult and Teen Challenge Legal Clinic is a great legal clinic in which attorneys help participates through any family, creditor/debtor, criminal, or child protection legal issues. The attorneys help them fill out the paperwork and get it filed, but they are usually not represented in court.

I believe that this should be piloted in rural Minnesota. This is where it is definitely needed due to access and availability of attorneys in Northwestern Minnesota. Our area has seen attorneys leaving Family law in a heavy pace. This would allow for the public to be better served if it was opened up. An option may be to run it through Legal Services of Northwest Minnesota located in Moorhead, MN.

SMRLS, VLN

Not exactly on topic with the question above, but something worth noting: I think there is a misconception among attorneys that this program would be used to: (1) artificially command higher rates for paralegals in large offices by having paralegals become 'super-certified' and thus be billable at a higher rate - something that would not assist underrepresented communities as is the goal of the program; and (2) would compete with solo/small practitioners who already feel pressure for lower rates based on their client's ability to pay. It is my understanding that this program envisions professionals (not necessarily just paralegals) working under an attorney (i.e. not by themselves) to provide quasi-legal services to low income people (i.e. to people who aren't hiring lawyers in the first place - this isn't taking away paying work from attorneys who already work on a reduced fee basis). Some iterations of the program, however, do involve these professionals working by themselves and not necessarily as part of a law office. The crafting of the program, and where (geographically, area of law, logistically) to implement it , are co-defendant decision-making processes.

Volunteer Lawyers Network

Rural areas -- Sherburne County, Anoka County, Wright County

The federal pro se project is a good model to match clients with licensed, qualified attorneys looking for opportunities for courtroom experience. The concept of having non lawyers advise clients or appear in court is frightening. I worked with many paralegals before becoming a judge -- excellent paralegals who are smart and capable people and excelled at their assigned tasks -- but the skills they develop as paralegals do not translate to the kind of representation, advising and advocacy necessary for proper representation in a court proceeding. They have no malpractice insurance and are not subject to the rules of professional conduct. They may have finished law school but were unable to pass the bar -- or worse, may have been disbarred. I can't imagine this concept will generate meaningful support from the bar, or the law schools, or the bench.

The Supreme Court should be in the business of promoting the legal profession, recruiting qualified, licensed attorneys to provide services for clients -- encourage pro bono work or mentoring programs for new lawyers. The Supreme Court should not be in the business of ignoring our existing resources by looking outside of the legal profession for inadequate substitutes.

I think almost any legal aid would greatly benefit from a program like this.

VLN

Collaborative Community Law Initiative (CCLI) - cclimn.org

I believe that paralegals could be of most use (in what I see) helping people in housing court. I personally helped a landlord (who an older woman working two jobs to pay her mortgage, and renting part of her house out to a family who was not paying and damaging her property). The family, because they were tenants, got free legal aid help, but she got nothing until she came to me. She could and was willing to pay something, but could definitely not afford an attorney. And yet, what she needed was relatively simply information, explanations and help filling out forms/writing a basic letter/putting together an accounting of damages upon move out. Easy stuff, but stuff that was hard for a regular blue collar worker.

One idea is within an existing legal-aid society setting, where more needy people can be served but where generally exists more experience, training and supervision.

Courts- help fill out forms

Legal Aid and Volunteer Attorney Program

None other than volunteer opportunities on MPA website

Probate would be a perfect

Legal Corps

Volunteer Lawyers Network, Legal Corps

HOME Line - (612) 728-5767

Judicare, Central Legal Minnesota, county law libraries

Central Minnesota Legal Services operates a Volunteer Attorney Program from its offices in St. Cloud and Willmar. Jessica Mastellar, Coordinator, (320) 253-0138.

Unmarried Parents Clinics, Expungement Clinics, and Divorce Clinics currently being offered by Legal Aid Service of NE MN. Also, Volunteer Attorney Program being recently merged with Legal Aid.

health care and disability

Negative comments:

This is a terrible idea. The previous questions assume that these areas are proper for non lawyers. There is no option to object to any use of paralegals are you contemplate.

N/A. This program constitutes a danger to the public welfare.

Should not be representing clients in court

Maybe you should focus on making it more accessible to obtaining and affording a law degree.

Rather than allowing paralegals to practice law and take away even more income from rural attorneys you should work on allowing more law schools. if you add more law schools you would force the other schools to compete in obtaining an affordable law degree. Instead of exploring ideas to get more attorneys outstate you have already decided "let's have paralegals do the legal work. Sounds like the community colleges that are hurting for students have lobbied the legislators who play golf with the judiciary. Your mind is already made up this is going to happen but it is outstate who will suffer. Good luck with your endeavors as you will need it.

This program should not be piloted anywhere. It is a bad idea, and it should be abandoned.

The program sounds like a bad idea. Don't do it.

This program is a terrible idea. It puts unqualified people into positions of legal advice to the most vulnerable citizens. It dilutes the value of actual legal professionals. There are shining stars of paralegals, but they are rare. Attorneys cannot even give casual advice to a friend without implicating an attorney's legal and ethical obligations, but this program wants to let non-attorneys give legal advice? This program is a terrible idea.

I do not think it is a good idea to allow non-attorneys to handle legal matters without supervision. Specifically, non-attorneys should not be drafting legal documents without an attorney reviewing them and approving them. A non-attorney should not appear in court on behalf of any party. Allowing a non-licensed attorney to handle these tasks is a slippery slope that will do more harm than help.

IN my experience, the paralegals I work with are not competent to represent clients individually, in any fashion.

This program should not be piloted. It is misguided to allow paralegals to do actual "legal" work, when the irresponsible law schools of the Twin Cities (and nationwide) continue to pump out far more lawyers than are needed already. Couple this with the possibilities for abuse that this program could generate, and it is a looming problem for those on the receiving end of these "services".

Ask the court staff and legal services programs in all counties. And for crying out loud, please study whether this is even going to meet the need that you think it will. I am an attorney with not enough work. I am willing to (and I do) take sliding scale work and limited scope work, and I volunteer. Feels like my law degree is being watered down with this program.

I think this is a waste of time. And - it will take business away from me. What is the purpose of me spending \$200,000+ on a law degree ... then encourage me to work in rural Minnesota to provide services to those underrepresented ...if you are just going to allow competitors into my market? (clients will drive for cheap legal advice and clients in rural Minnesota have been conditioned to drive for services to metro and mini-metro areas, this would be no different). You are going to allow competitors into my market that have a lower debt level than

me. Nice job focusing on lawyer's stress level...hey, lets bring in competitors that are price competitive and the lawyers can stress about the work they will lose and the rates they can charge!!! - fantastic idea. Now here are some breathing exercises and even though you have to bill hours to make ends meet for you and your staff take time off - wait, now you have to lower your already low rates some more so you have to work more hours to capture the same income level, either you work more and have less time for time away or you make less so you can't afford to take your kids to the Minnesota Zoo! Contradiction in policy goals we call that. What training does a law degree provide that these paralegals don't need? Then remove those requirements from the law school programs and cut classes and reduce lawyer's debts. do SOMETHING that helps lawyers. Not to mention you are begging for lesser quality of work. I don't care that there are a few vocal paralegals clamoring they can provide better service than some lawyers. I am correcting one of the most public paralegals ALL. THE. TIME. Hey, big bad wolf you are nice, right? Nice person you will ever meet, Red! This is why you don't ask people to be objective about themselves...they always over represent their own abilities.

If interested in participating in a focus group to inform the Implementation Committee's decisions about the location, structure, and other criteria for the pilot, please send an email with your contact information to parapilot@courts.state.mn.us. Is there anything else you would like to share with the Implementation Committee for consideration as the pilot project is developed?

Neutral or positive comments:

The project should begin with highly experienced paralegals and it would be desirable to require recommendations from attorneys regarding a paralegal's competency to serve in a more independent manner

I am in favor of the concept in general in order to provide greater access to justice for all.

I work in the Ramsey County Law Library where we hold brief advice clinics for pro se folks--there's a great need to assistance in basic legal areas, and quite often people need help completing court forms

Thank you for taking on this challenge, which is hard to do without critical knowledge of the legal market and without the full support of the bar, solo/small practitioners, and newer attorneys

Allowing paraprofessionals to do legal work for clients is necessary. The Justice Gap is too wide. There are many other professions that are already providing legal services without authorization. I often see botched cases that business advisors, accountants, real estate agents, insurance agents, and the like have created by giving legal advice. People trust these professionals but their advice isn't always the best--and they are not authorized to practice law anyway. So your committee's work is invaluable!

I'm glad you are looking at options.

Prior to working as a medical paralegal, I retired from nursing. I've seen the growing role of physician extenders in health care and have appreciated the way these paraprofessionals increase people's access to health care. Paralegals with advanced training could fill a similar role in expanding access to legal services.

Over the years, I've worked with some really good paralegals. I think the problem with low-income programs for paralegals, especially inexperienced paralegals, is that clients get pushy and angry (even with lawyers) and would worry they need a lot of training on how to deal with that.

Pour system is broken. The legal profession is a self-policed, self-propagating monopoly. Limiting supply keeps prices artificially high. I learned very little of what I need to do my job in law school and I use surprisingly little of what I did learn there. A paralegal with a field-focused 3-year apprenticeship can better serve clients in that field than can a newly-minted lawyer with nary a day in the real world. Expanding the paralegal role would also expand opportunities for bright people that can't afford 7 years of unpaid college. As an added benefit, that lack of formal schooling probably helps one relate to similarly situated clients that don't have the money to spend on a stuffed shirt in white shoes.

I support any creative solution to help historically underrepresented parties receive legal help/representation.

I have a hard time understanding how this new role would work and to whom it would appeal. Is this an entry-level legal position? Would it work for high school debate team alumni, or for law enforcement and legal retirees?

Thank you for reading!

Craig Andresen, Atty., 952-831-1995, craig@andresenlaw.com. 2001 Killebrew Dr., # 150, Bloomington, MN

My mother is a paralegal working in a family law office under a solo practitioner. She's been working there for over 30 years and the quality of the work that she produces is far superior to that of most the attorneys are there. For the majority of the legal professions history in the United States attorneys develop their skills by studying under a licensed practitioner. Allowing a paralegal who has had a certain number of years of experience under an attorney to perform legal work that is more form based would probably be a good thing given the current expense of hiring attorney, the fact that most attorneys have they're paralegals do a lot of the work, and that it's primarily form based.

Other areas of focus that would benefit greatly would be juvenile petty proceedings, employment, and immigration

I worked in law offices almost 20 years before I earned my law degree. I think I have a unique perspective on these questions

The focus should be the greatest good for the greatest number.

The implementation committee should consider expanding legal services at a much higher attorney compensation. Pay would draw competence and passion. A very dedicated attorney could reasonably supervise a cadre of competent paralegals. The infrastructure for doing so is in place through legal services, but the funding is not there. It's hard to attract and keep attorneys for long enough to build a high functioning team when the pay amounts to about half of what other positions are starting at.

I strongly support this pilot project. As lawyers, we are responsible for the devastation visited upon unrepresented parties as a result of our unwarranted restrictions around representation. The injustices that result from repeatedly matching unrepresented parties against represented parties are our fault, and this pilot project should be the start of significant structural changes to remedy that problem.

This is a politically charged topic. Look at how difficult it was to permit non-dentists to provide dental care solo in rural MN.

restrict to info only, not legal advice

You may have to sell this to lawyers afraid of losing clients. I think the key here is to focus on the number of pro se litigants who can get some help that wouldn't otherwise have it. Also helps to compare to medical model—doctors, PAs, nurse practitioners, etc. . Then lawyers can focus on the legal end of the spectrum.

this seems like a good idea to assist more people with legal services

GREAT idea--MUCH needed in rural MN

I would be happy to participate in further surveys or meetings about this. I grew up modestly and families could not afford attorneys. I am concerned about the lack of access as well as the need for quality. Tom Tuft (651) 771-0050

great idea!

I think if done correctly, leveraging the skills of legal professionals who do not have law degrees could significantly streamline some court proceedings. At the same time, we don't want to throw the baby out with the bathwater. A law degree has significant value, and should remain as the standard certification which allows someone to take responsibility for a case with some limited and carefully prescribed exceptions.

Malpractice insurance for individual paralegals

I believe that this pilot project would benefit the State of Minnesota greatly, not only by being able to assist in the maintenance of the workload of attorneys but also to better serve the population.

I strongly encourage you to look at the Ontario Canada model for licensing paralegals. They grappled with training and certification as well as ethical obligations and developed a good program. The difference there is that it is a unified bar- everyone has to be a member.

See Legal Document Assistant (California)

It would be an immense help if the court could develop a definition of 'practicing law' as has been done in other states to help clarify what it is, and what it isn't. There need to be things that only an attorney can do, otherwise the enormous expense of legal education is wasted.

I think it is great that this is being studied. This should ultimately be focused on what court litigants need, not what attorneys are comfortable with, so I hope these survey results are given an appropriate level of skepticism

It is my opinion that we need to consider de-valuing lawyers and the time and dollars spent obtaining their education as well as the experience gained through practice. Without a well-defined paralegal certification of some sort, we are potentially opening up the legal practice to persons without adequate training.

I am not in support of paralegals representing people in hearings, mediations, or other types of proceedings, or giving legal advice. However, I do think they could be utilized greatly for giving out information (not advice), and helping people with forms and such. I also think they can be used well for research and writing, because an attorney can oversee things that are not so 'in the moment' like hearings. I don't believe, based on personal experience, paralegals receive enough training on trial advocacy/court appearances, for that type of work.

If non-attorneys will be allowed to give legal advice, then those individuals should be required to perform under the same rules of professional conduct and same consequences when they fall short. The probate practice again is very paperwork driven and for estates over \$75,000 but under even \$500,000, people could perhaps afford a paralegal vs. an attorney to handle the administration, vs. family trying to handle pro se, which likely uses more Court personnel time.

I fear the one thing that would potentially hold this program back would be supervising attorneys allowing their paralegals to participate.

Thank you for taking on this project.

I appreciate the willingness to consider this option. I would also recommend trial/court procedure training for paralegals approved to represent clients in court.

really glad you are doing this. Legal costs are too much for the average person, but with the cost of law school and running a firm i don't think we can lower our hourly rates. Paralegals can assist here

I think there should be an ethics part of the process, but not sure what that should be. I have a 4 yr legal assistant degree. Part of my education included a legal ethics class.

I'm happy to assist the committee in anyway - Ann Sullivan, email: ann.sullivan@smrls.org

Consideration should be given to experience and certification with CLE requirements in the specific areas

Great idea to have this pilot project move forward.

I think there needs to be some instruction of paralegals involved in a pilot, such as in ethics and unauthorized practice of law, before a pilot is started.

Negative comments:

DO NOT make this a competition with current attorneys. It is already hard enough to find paying clients, do not make it harder by offering a 'non attorney' alternative. Family law is complex. Frankly, I don't know that attorneys with less than 3 years should practice without supervision, let alone someone who has not completed law school.

Please scrap this hair brained idea. The assumption that there is a qualified group of non lawyers to practice law is flawed. People finish law school and can't pass the bar to practice law and then become paralegals. You want them advising clients and appearing in court? It's a disaster waiting to happen

Why on earth would allow someone who isn't a licensed attorney practice law? I paid nearly \$80K for my legal education. Now, all I need is a paralegal certificate? It is already incredibly competitive in the market place. I will now have to compete with less expensive paralegals who are handed clients by my own branch of government, while I spend hundreds on a web site and marketing? I will work with the underrepresented. Why aren't attorneys being offered this work or these clients? I am assuming these paralegals will be paid, and not be volunteering. Pay lawyers first assuming they are willing to accept the work.

This is a bad idea. Practice in court requires a lifetime of learning. This would be a disservice to the public. This is like having an amateur electrician that would burn down your house with faulty wiring. If this comes to pass the practice of law as a profession is over. This is a hare brained idea.

Instead of finding ways to take work away from attorneys, try to find ways to fund the work for low income clients in civil matters, sort of like the public defender office model.

Although I am sympathetic to the plight of many individuals who cannot access legal services, I am not in favor of this expansion because the attorney's license is still on the line if the Paralegal who goes

outside the ethical guidelines and I have had experiences where Paralegal's have done so. I am not willing to gamble my license on a Paralegal undertaking any attorney functions unless the Court would license the Paralegal and would NOT punish the attorney if the Paralegal goes outside of the ethical requirements. I know of Paralegals who are good at their job, but WILL push the ethical limits because they have no skin in the game.

While paralegals can be efficient to varying degrees in filling out forms and completing repetitive client documents and become quite knowledgeable through years of experience, I have not found those coming out of a 2 year or 4 year paralegal certificated program to have the skills or knowledge to fully advise a client, 'know what they do not know', or to be able to theoretically provide competent 'representation' as a spokesperson and advisor for the client at a negotiation or hearing. The most knowledgeable paralegals who I have worked with have developed expertise in very limited areas through repetitive familiarity with documents and consistent active supervision by attorneys. Although these individuals have gained the experience to skillfully fill out forms to submit in proceedings, it is difficult to know their skill level unless they would take a comprehensive exam of limited a limited area of law. The do not have such an exam and do not appear to receive the necessary training for a paralegal certificate to undertake legal representation even in a simply narrow area without substantial quality experience. Length of time employed as a paralegal is not by itself adequate and positions of legal secretary, legal assistant, administrative assistant are often held by paralegals and titled 'paralegal' which do not provide the training to act as an attorney even in vary limited areas of practice.

I do not believe that paralegals should be used to replace functions that should be reserved for those trained as an attorney. We can all appreciate the need to save money and provide services to underserved populations, however, that should be a reason to diminish legal services provided by trained attorneys.

I don't like this idea. I think it will end up helping large firms cut out younger lawyers. I don't believe the underserved will actually benefit. I am also worried about protecting the public.

I believe that well-meaning paralegals will not recognize the nuances and unintended outcomes in many family law cases and may do more harm than good. I do not believe it is appropriate for paralegals to appear in court nor negotiate settlements.

I object to this program and programs like it. Such programs serve to increase supply of legal representation. Moreover, paralegals require less education/certification. Thus, a paralegal can hypothetically obtain the similar business to an attorney with fewer resources/debt and charge a lower price. As an attorney, such programs facially are adverse to our business and professional interests. Presumably, this would especially impact small or solo practitioners. Moreover, there would be ethical concerns on the efficacy of paralegal representation when legal advice can be provided without legal degree and corresponding licensure.

I think paralegals drafting and reviewing documents is acceptable, but not giving legal advice, negotiating, or representing clients. Speaking as a former paralegal that is now a practicing attorney, there is a vast difference between the two roles. The education and licensing required to be an attorney and complete the tasks only attorneys are allowed to do is mandated for a reason. Paralegals are essential to the practice of law and a key resource to minimize legal fees to the client, but the line between these two roles should not be blurred. Who will screen paralegals in this program to determine whether they are giving competent legal advice on the possible legal ramifications of the client making a certain decision or whether they simply know how to fill out the form because they have filled it out before? Who bears the liability if the advice given by a paralegal is wrong? The goal of more affordable legal representation is wonderful, but I am not sure this is the best way to achieve that. Too often, the more cost-effective routes are the ones that end up costing the client more in the long run because it was done incorrectly.

I am very concerned about the ethical requirements for the paralegal. Will they be held to the same standard as an attorney? Who is held accountable if they harm a client? What is the disciplinary process?

I would be very hesitant to have a paralegals perform tasks beyond the scope of preparing documents. Allowing paralegals to conduct negotiations, provide legal advice (tasks listed in one of the questions above) appears to be allowing them to practice law without a license.

The reason unrepresented persons are not represented is because they do not have the funds, or are unwilling to pay, for legal representation. Unfortunately, any business, whether paralegals or attorneys, exists to make a profit sufficient to pay its employees at the very least a living wage, and whether you're an attorney or paralegal, you'll find that you cannot live on the amounts this market is willing to pay. These people do not lack representation because there is a lack of attorneys; these people lack representation because NOBODY can make a living on what these people are willing to pay.

Be careful; harm can be done by well meaning but inexperienced folks trying to practice law

It's my understanding Gildea supports this so it's a done deal. Don't waste my time.

I have seen work performed by paralegals in the past, and often times the paralegals with which I have worked have had a misunderstanding of certain laws and how they are applied. Often times the paralegals appear to be essentially secretaries, but it seems that they think they know more than they do. I think allowing them to actually represent clients would be an error. I do not believe it would be beneficial to the clients

I have a concern that these types of paraprofessionals generate a race to the bottom in terms of providing legal services. Without character/fitness reviews, ongoing education, and a limited scope, we risk flooding the marketplace and ultimately damaging professional legal services as a whole. Finally, in my humble opinion, legal paraprofessionals should be attached to larger institutions like a non-profit social service group, a courthouse, or the county law libraries. This would provide credibility, reduce the risk of duplication of services, encourage public participation in the existing frameworks, and potentially reduce the overhead costs of the program. It would also emphasize the social justice nature of the program.

Best of luck!

I really believe expanding their role to appearing in court and other matters beyond what is allowed now is a big mistake!!! Expanding it will not serve clients or the profession well.

Expanding access to justice is no doubt a worthy and necessary cause. I simply urge you not to overlook the potential of our high number of newly licensed attorneys graduating from our three (formerly four) law schools who may simply need a platform to help.

Will paralegals be subject to the same stringent laws as attorneys under the Fair Debt Collection Practices Act?

My concern with permitting paralegals representing clients is their lack of knowledge and accountability may actually increase the costs of representation to other litigants. I practice in the area of creditor rights, an area of practice all too often portrayed by anecdotal misrepresentations of events. I receive enough frivolous answers prepared by self help centers and MN Court forms which only delay the inevitable. Where normally I would forgo request for attorneys fees in such situations I will request (and receive) fees to relieve the burden imposed on my client. How will the pilot program protect those it seeks to help from the inappropriate assistance of a paralegal?

In addition there is also the deference to a paralegal by the court in contested matters. In my experience, the court often gives lip service to holding the unrepresented to the same standards as an attorney while then permitting that which not be allowed an attorney, ignoring the court rules, statutes and caselaw.

In my opinion allowing paralegals to do more than they currently do is a dilution of our profession and I am against it.

This program constitutes a danger to the public welfare.

Please stop trying to broaden who can provide legal services to the public. Look at the federal VA claims process to see what kinds of things happen when unlicensed laypersons attempt to practice law.

I worry about further devaluing legal education (law school) and attorney services while many attorneys (myself included) are in significant debt due to JD program

I have serious reservations about lay people practicing law without enough supervision. I think that people who cannot afford a lawyer should still have adequate representation. There is no shortage of attorneys where I practice. There is a shortage of attorneys who charge a reasonable fee for the income of the clients. However, overhead is still there whether one is an attorney or not. Malpractice insurance, rent, etc. do not stop. I try to keep reasonable rates, but I have paralegals at other firms charging almost as much as I charge and most attorneys are charging double or more compared to my rates.

Will this increase available legal services? Or, will it take resources away from one group of professionals to another?

I don't support paralegals representing people in court, mediations, or negotiations due to the fluidity and possibility of unique or complex issues arising that they are not equipped to advise on.

I think this is a slippery slope, particularly if non-lawyers are allowed to do real legal work. I understand the desire to help, but anything beyond filling out forms and providing guidance about the process should require a law degree. We have standards and ethical rules for a reason. As a profession, we should not bend those rules because we want to help. The answer is to get attorneys to do more pro bono work - not to allow non-attorneys to practice law.

Better to more boldly incentivize innovation and regulatory reform in Minnesota than to tinker at the paralegal level.

Stop taking away our business. There are plenty of legal clinics, etc. to help. I volunteer a lot.

It looks as if you have already made up your mind by the questions of This survey so why bother asking

Most paralegals with whom I have worked (many, both in office or opposing counsel's paralegals) don't have the knowledge or judgment to make lawyer decisions. Maybe 5-10% of the paralegals out there are super-qualified and could do so. They are the ones I have urged to go to law school but they either don't want to spend the money or shirk from the responsibility. As a family attorney, I take offense that family is even on the list. There are some no kids, no real estate, no assets other than "a car and a toaster" cases that most paralegals could handle unsupervised. There are many cases where a domineering husband has convinced his wife not to seek spousal maintenance but she should, for example. (Major problem with some minority populations). It is very important to have people with the judgment to question the parties' "agreements" drafting papers.

I am an attorney of 13 years and work side by side on a daily basis with paralegals, most of whom are early in their career. Many of the people we provide service to need assistance with the areas of law that are being considered as part of this pilot. Although the paralegals provide valuable service I do have significant concerns about giving them too much independence, especially in conducting legal analysis. There is a stark contrast between the analytical skill of the paralegals in our office and the attorneys in our office (some of whom are also early in their careers).

This survey appears to be rigged to support a conclusion reached in advance.

I am very worried about this, I do not think expanding the role of a paralegal would result in good legal services to underrepresented parties

This is a bad idea, and there is a better solution. Civil Gideon cannot and should not be created by judicial fiat; rather, meaningful civil Gideon can only be created by legal precedents, probably from the US Supreme Court.

Paralegals are integral to the practice of law and a quality paralegal is invaluable to a firm or legal department. However, paralegals are not attorneys or law students (i.e. a group training to be attorneys and, thus, allowing them to practice law while supervised makes sense). I am concerned about blurring the line for who can engage in the practice of law and what that will mean for our legal

system as a whole. In short, based on the information I have, I disagree with this pilot and would rather see effort put towards incentivizing attorneys to do more pro bono work for underrepresented parties.

I think this survey has an answer in mind and is not really interested in attorneys opinions but how the program will be implemented. I think this is wrongfully being forced on the profession and is a very bad idea.

I think more could be done to engage attorneys for Legal work.

These are complex areas of law (particularly in family law) and opening the door to "very low cost" legal services will have clients further objecting to anything but 50-100 dollar wills and complimentary consultations. This issue is bad enough without adding paralegals in the mix.. This program is a Terrible idea.

Terrible idea.

This is a bad idea and should not move ahead.

I believe allowing paralegals to practice law without a license would be an ethical violation and must be strictly limited and have supervision by licensed attorney.

I am generally not in favor of this program. My view is that legal services should be performed by a lawyer. what is needed is better funding for Legal Aid and his project could even divert needed funds for Legal Aid programs. The VAP program in Duluth has been quite a success and our firm has put steadfast hours into being involved. I just did a 6 hour hearing on rather complex issues in such a matter. It needed a lawyer.

Legal advice and representation are not appropriate for the paralegal role. There are plenty of forms and procedural questions paralegals can answer and frankly know better than attorneys, but entering into negotiations, settlement, action steps, future repercussions of legal decisions - they are a separate thought process and the whole point of legal training. Most paralegals are capable of studying and taking the Bar exam, but without some measure, it is a recipe for disaster to open the field to ALL paralegals to provide legal advice - ESPECIALLY in family law. The irritating idea that it is the easiest area of the law and anyone can do it has GOT to be rooted out. It is dangerous to Minnesota's children to include family law in such a program.

This takes away from the education and work done to receive a law degree. Paralegals should not be providing legal advice.

It is always good to see those who have secure positions, as do members of this committee, envision ways to make less secure the positions of others. The problem is not that there are not attorneys to represent the un(der)represented. The problem is one of fees. Attorneys, like judges, work for a living. They cannot take all cases on a pro bono basis. Your committee is suggesting a program that would significantly devalue the JD for a significant percentage of the practicing population. Again, that might look noble from your perch. From the bottom looking up (i.e., from the solo practitioner's view), however, it is akin to pulling the rug out. It is not at all clear that you would be addressing the primary problem. Rather, you would simply be creating a larger group of for-pay 'professionals,' thereby reducing hourly fees. That might work well for paralegals, but it is not so helpful to those who invested in a legal education. It also would not address the issue for the vast majority of pro se parties--the complete lack of resources. Rather than devalue the JD degree, you might consider better funding non-profit legal services.

I think this is a bad idea. I would much rather see foreign law school grads admitted to the bar after a one year LLM degree here.

This seems like a slippery slope to incompetent representation.

The liability exposure created with this opportunity. Is concerning. There is no error/ommission, pro cardinal liability or malpractice type insurance available to paralegals because they do not hold a license.

I am not sure housing law is an appropriate area for paralegals as it relates to rep'ing tenants in Court. Certainly, not appropriate for rep'ing LLs. Currently, there are many lawyers in housing court rep'ing tenants that do not understand housing law. The lawyers from VLN and Mid MN Legal Aid are

sometimes not competent to represent the tenants they represent. They fill out canned Answers and documents and send litigants into Court with documents they do not understand. I think paralegals will do the same thing and it will not be helpful in housing cases. I am not sure paralegals could represent Tenants in the current environment just due to all the nuance in housing law. Maybe 1st appearances? I believe housing law is the most contentious, adversarial, and litigated among LL and T cases. It demands persons with experience - not some paralegal under the supervision of an atty that has never done housing law. Since the Supreme Court has denied the hybrid rule that was proposed by the 2nd and 4th districts re representation of corporate entities by attys at trials, I am not sure paralegals add anything to the equation except more confusion and problem for LLs.

This program is a terrible idea, and it harms both the legal profession in Minnesota and Minnesota's most vulnerable citizens.

Please consider civil Gideon as an alternative. The idea that poor people should be represented by anything less than a licensed attorney is offensive. For example, should a consumer bring a Fair Debt Collection Practices act against one of my clients, my first step will be to remove the matter to federal court. Not only is it unlikely that the federal courts will allow a non-attorney to appear, a non-attorney would struggle to comply with the procedural and substantive hurdles that a federal court action would entail. Even if debt resolution does not necessarily implicate an FDCPA action, a civil litigant is at a disadvantage if they are not advised of the possibility of such an action before executing a release of claims related to resolution of the underlying debt.

I would also note that Hennepin and Ramsey county already have a housing court project that would allow non-attorneys to represent people. Although these 'agents' do fine at initial appearances, once they have to introduce exhibits into evidence and comply with the rules of civil procedure, their sheen of knowledge quickly falls apart.

Non-lawyers should not practice law in the State of Minnesota. Instead, these resources should be dedicated to providing people with qualified counsel.

There are plenty of unemployed actual lawyers with licenses who would be happy to accept paralegal wages in a full time job with benefits. Rather than saddling the disadvantaged with legal advice/representation from someone who does not have the fundamental education to get a law license, why not just advocate a job class for lawyers where they are paid less, with less responsibility? I would absolutely do that job after retirement, and I know many younger, unemployed lawyers who would jump at it. I also regularly see Family lawyers who cannot understand the current complexities of the shared income guidelines and PEA, even in simple cases. Why would less legal education help pro se parties? Baby boomer lawyers like me can't carry the load we once did, and many of us would love a limited job, with paralegal wages to keep a hand in, but reduce stress. Many new lawyers are forced to hang out a shingle as a solo, before they have any competence at all, because they can't get hired. There are many, many of us who would be happy to take this less stressful job, for a fraction of the money.

There are large numbers of attorneys in the metropolitan areas that are underemployed - temporary e-discovery, Small contract jobs, or doing work outside the legal profession. Find a way to utilize this attorneys in large population areas. Use paraprofessionals sparingly in practice areas where formally trained legal expertise is not available.

I have deep concerns about this - I am an immigration attorney and it is VERY COMMON for bad actors to hold themselves out as 'notarios' and provide incorrect legal advice that results in clients's being removed from the United States or it being impossible to fix problems. I view this as a slippery slope and I believe the only professions who should be allowed to provide unsupervised legal services in Minnesota should be licensed attorneys.

The existing system is there for a reason. These areas have significant impacts on people's lives. If the cost of an attorney is too high, then the State should look at reducing the costs to produce attorneys by condensing law schools, reducing costs for law school for individuals servicing low

income areas, or offering money to defray legal costs. Handing the lives of Minnesota Citizens to underqualified legal service providers is poor planning.

The only legal services a non-lawyer should be providing is making copies!!!!!!!!!!!!!!!!!!!!!! This is a farce!!!

I am concerned about creating a two tier or two class system for our citizens where the wealthy and poor have lawyers, but middle class are relegated to less appropriate representation. As the Court said in the desegregation cases 'Separate is not equal'.

Quality paralegals are difficult to find. Most of the ones that I have worked with require quite a bit of oversight and supervision and/or don't have the level of detail needed for this type of position so I have concerns about this pilot project. I do not think it is a good idea to allow paralegals to handle negotiations, legal advice to clients, court appearances, etc.

Having non-attorneys perform attorney work .. if the ultimate goal is to reduce the lawyer population in Minnesota - great job!

Look at the legal aid services in the rural areas and compare them to the cases chosen in the twin cities. The working poor does not get any options and they are the ones that get further into debt and make it difficult for anyone to stay in these areas to practice.

I have background knowledge about this project based on my bar association, but for those that don't, this survey was not set up to provide the committee with useable answers. Little background information was given on what the answer choices mean, and the answer choices did not encompass all possible answers (ex: 'None' was not a possible choice for the question about what areas of law would benefit). Many of the answers are dependent on what exact program is implemented - for example, 'representation at a hearing' is not something that I would delegate to a paralegal if it meant a regular trial, but I would not have a problem if that meant assisting pro se parties at a conciliation court hearing on a debt collection calendar. All that to say: whatever results you get from this survey, take them with a grain of salt.

My concern about this option is that it will disadvantage new lawyers who will be phased out of this type of work by people who will be able to get this work at a cheaper rate than they can afford to (and are entitled to) provide.

This is a terrible idea

I will again say that giving people who cannot afford an attorney lesser legal services is not the way to really solve the problem. A lot of the ideas asked here about what tasks a paralegal could/would perform appear to be the unauthorized practice of law, which is unethical. I understand there is a definite need for good legal help, but throwing paralegals at the problem is not the way to go. I love the paralegals I work with, but there is no substituting them for attorneys.

not super comfortable with this idea...

I am not sure if paralegal certification would include how to represent a client in court. Even though I passed the bar exam, only actual court experience prepared me.

This survey is very disappointing. The questions are far too broad to elicit meaningful responses. I hope that there will be other opportunities to provide input other than applying to participate in focus groups.

I think this is a mistake. Paralegals should not be giving legal advice, appearing in court, etc.

This is a terrible idea. There is obviously a need for people to be represented, but it's unfair to people with lower incomes to provide worse representation. If there are any areas of law that are straightforward and don't have surprise issues, a paralegal might be able to handle representation on that, but for most legal matters, even simple cases can rapidly become complex. If law school and lawyers are too expensive, we should be focusing on improving access to lawyers and remodeling law school to focus on essential skills over 2 years, not providing paralegals when people need lawyers. I can only imagine how many legal messes the lower and middle class clients will be caught up in when paralegals start trying to do everything a lawyer does without the training. We owe the public more.

I think this pilot program is a horrible idea, you are only devaluing the J.D. and contributing to the over population of attorneys in this field. If you allow Paralegals to provide legal advice and represent clients there is no longer incentive to get a J.D. this will be the downfall of qualified attorneys.

I think you're treading on thin ice here and will erode the profession if you begin allowing paralegals in court.

I don't think the paraprofessional project will benefit clients. This survey is not designed in a way to allow lawyers to select 'none' as an option or to voice concerns about non-attorneys practicing law in some very difficult practice areas. The MSBA previously has expressed concern about this project. The survey should allow attorneys to answer in a way that is not in the affirmative. Family law in particular is significantly more complicated than non-family law attorneys realize. My paralegals are wonderful, they both have paralegal certificates from highly rated programs, but they are not qualified or trained to enter my role.

I am very concerned about this bordering on the unauthorized practice of law. Is protection of the public from incompetency a consideration? Also, if paralegals become authorized to practice law, defaults on student loan debt for earning a law degree could skyrocket. Lawyers will have to settle for being underemployed as paralegals, which is likely to depress salaries.

I do not agree with this pilot project. People need ATTORNEYS not some second-rate second-class separate but equal sort of representation. Paralegals can never do what attorneys do; attorneys know how to 'think' about the law (think like an attorney). Many paralegals are highly skilled and professional but they should NEVER be allowed to work without the supervision of an attorney.

The focus on creditor-debtor, housing and family law is too narrow. There are many areas of probate and real estate practice in which a supervised paralegal could provide valuable assistance.

I think the premise is highly flawed. Our firm is very suspect of this process and program. We have countless young attorneys who leave the profession and just as many who struggle to pay their law school debts- finding a way to make it harder for them to hang a shingle or in any way devaluing the service they provide is a slap in the face to those who have spent 6 figures investing in their legal education.

This is basically the legal field's equivalent of nurses getting doctorates and wearing white coats, giving patients the impression that they are equally qualified to do the work of an MD. Paralegals doing attorney work is the equivalent of the hygienist practicing the dental work because she's seen 90% of it. The point in legal services being performed in a representative capacity by attorneys is for the 10% that makes them qualified to do 100% of the job, not 90%. I recently had my taxes done by Jackson Hewitt, only to find out that I was not in fact talking to a CPA, only after going through the entire interview and finishing the meeting. My whole point in having someone do my taxes was that I would be assured 100% that they were correct, and I in fact had done them correctly prior to the meeting. I was a little bamboozled--that's how people will feel when paralegals do not immediately present themselves as paralegals rather than attorneys. Let me make my point clear: the paralegals will begin to forget or entirely stop telling clients they are in fact paralegals and not attorneys. The idea of 'under attorney supervision' is not 'supervision' when the paralegal is in fact acting in the advocacy and representative roles--that is a sham idea.

I am very concerned that they have a level of understanding of the law and the implementation. I have seen far too many attorneys who are providing inadequate advice. I am concerned that we are adding another level of instability to the people most in need of good legal advice.

A person without a JD and law license should NEVER provide legal advice or counsel period. This survey is poorly designed and clearly biased/tainted in favor of permitting uneducated and unlicensed people to provide legal advice and counsel. This should NEVER be permitted; it is a logical fallacy to even claim it can occur under the supervision of a licensed attorney--that simply is not possible to govern.

I am strongly opposed to paralegals appearing in court on behalf of clients. This undermines the value of law school and passing the bar exam.

The implementation committee entirely lacks representation by anyone with any familiarity with rural Minnesota. Rochester and Duluth are not rural communities. They are cities. Their problems are not the same problems as Walker, Bemidji, Marshall, Morris, Sauk Centre, Pine City, Virginia, and the dozens of other small cities and towns that act as hubs for their surrounding rural communities. You need to get outside the Metro bubble and start seeking answers from attorneys in the styx.

You think you will reach 'unrepresented' parties. Majority of them can't help themselves - regardless of rate of service provider.

I think this is a bad idea. I don't think attorneys are going to want to supervise these para-professionals. And if they do, it will be for a cost that will negate the whole idea of this, which is to provide low-cost legal services. Also, there are enough attorneys out there, myself included, who provide sliding scale fee structures to clients in need.

Again, I wish to reiterate that paralegals should not be representing clients in court; paralegals should only be doing their work under the direct supervision of an attorney. Family law requires analysis of income and assets that are should only be completed under direct supervision of an attorney.

As I previously stated, in my opinion this pilot project is a disaster waiting to happen. If the Committee truly perceives an extreme shortage of representation to individuals in the State of Minnesota there are other avenues to explore to remedy this issue rather than allowing a non-licensed attorney to provide legal advice and representation. Possibilities to consider may be to require a certain amount of time every attorney in the state must work at a volunteer clinic in the areas of housing, family, and creditor/debtor law. In the area of bankruptcy law there are volunteer bankruptcy clinics attorneys can volunteer their time at in order to assist non-represented parties with bankruptcy questions. While I realize that there are many attorneys who will not participate in such clinics unless forced to do so, I honestly believe this is a better solution that to allow paralegals to provide legal services to underrepresented parties.



Legal Paraprofessional Pilot Project

Recommendations for the
Minnesota Supreme Court
Implementation Committee

December 19-20, 2019

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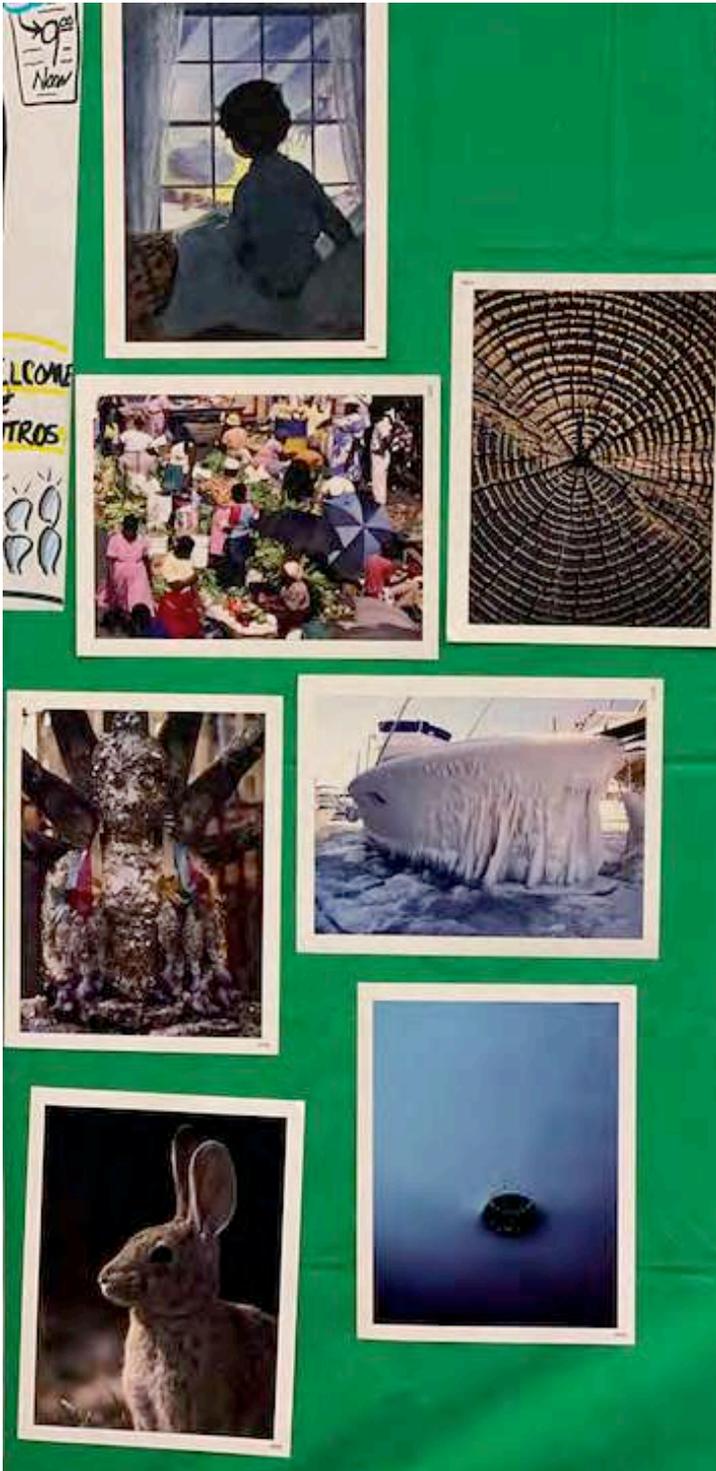
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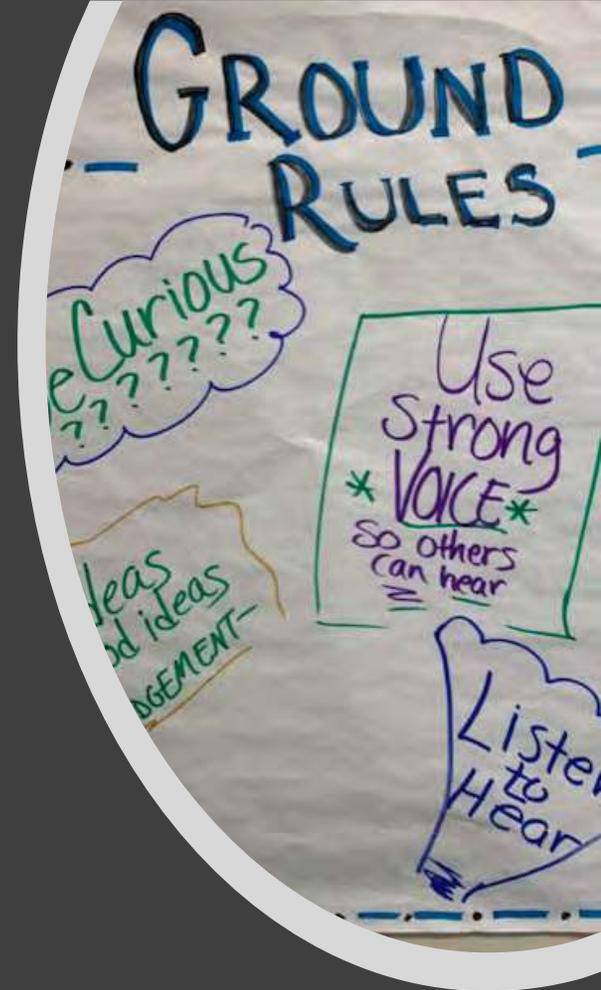
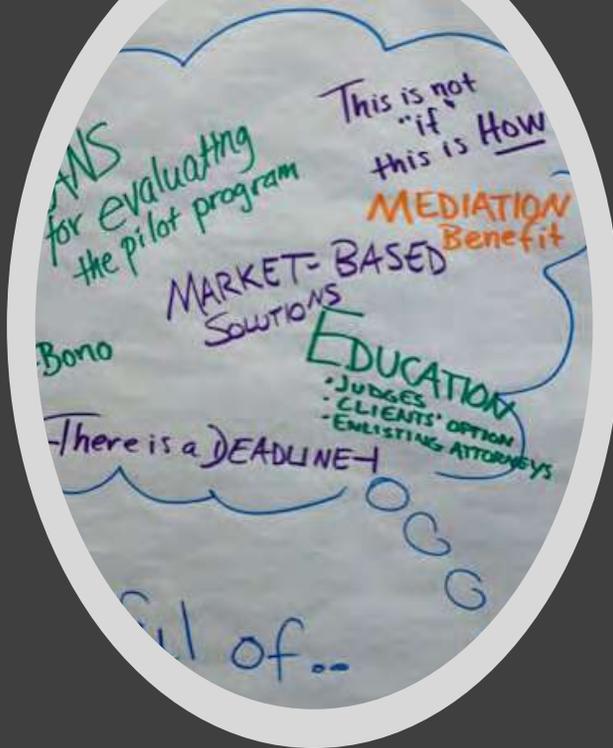
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WELCOME AND INTRODUCTIONS



Day 1 | Shared Understanding



Ground Rules and Supreme Court Order Review

Survey Review

The 104-page survey was reviewed using a cooperative study approach. Each group distilled themes from sections of the report.

Difficulty Finding Qualified Paralegals

+	-
<ul style="list-style-type: none"> • None / Not many comments • 579 Respondents = 69% completion rate • Most paralegals are employed full-time (7%) independent paralegal contractors • Over 1/2 paralegals are doing legal research • Paralegals are used broadly • 96% paralegals supervised 	<ul style="list-style-type: none"> • FEAR • Lack of paralegals outside metro area (wages lower) • Knowledge of specific legal area • Harder for smaller firms to hire paralegals • Paralegals are too expensive • Concern about paralegal training qualifications

Key points to be mindful of:

Responses appear to be mostly from attorneys
 Underappreciation of paralegals' abilities
Educate attorneys on what skilled paralegals can do
 Approximately 1/2 of respondents worked with 0 or 1 of paralegals
 Qualifications need to be defined guidelines

Geography

+	-
<ul style="list-style-type: none"> • Metro / County • More housing issues b/c of density • Need enough data • More economic diversity • Transportation is better 	<ul style="list-style-type: none"> • Metro / County • Metro has lots of services already • Not a lot of attys or paralegals • Economic disparity

Key points to be mindful of:

Need is everywhere – access in remote areas
Family / housing mentioned most for need



Areas of Law

+	-
<ul style="list-style-type: none"> • Paralegals can collect info & prepare legal paperwork • <u>Specific training in legal area & experience</u> • Paralegal supervised by atty will provide an edge to an unrep party • Paralegals c/would reduce costs, making access to justice more available • More people providing representation is opportunity for unrep parties – not only attys can do some of this work • More comments contradicting w/creditor / debtor • Family / Housing stronger support in survey responses • High % agree that paralegals can rep parties in mediations 	<ul style="list-style-type: none"> • Very dangerous to have paralegals representing in housing & family • Reach out to newly licensed attys giving them a platform to help clients & not devaluing the new attys services • Depends on qualifications • Do not think this will benefit clients • Training & skills for complex areas • Seems that many do not understand what paralegals are already permitted to do

Key points to be mindful of:

Comfort w/what paralegals already do
 Many see this as cost effective & expanding access to justice
 Comfort w/clear qualifications & ongoing ethics / education
 Lots of confidence that paralegals "can do this well" in all 3 legal areas
 Scope of family law

Survey Review

The 104-page survey was reviewed using a cooperative study approach. Each group distilled themes from sections of the report.

Open Ended Comments

+

- Huge need recognized
- Rural communities need recognized
- Recognizing that highly experienced paralegals needed
- Training, certification, education and accountability is needed
- "I learned very little of what I need to do my job in law school..."
- There is support for the idea

-

- De-valuing law school and JD
- Attorney buy-in
- Lack of understanding of paralegals vs support staff
- Competition
- Form prep only
- UPL
- Unemployed attorneys
- Bad legal advice
- Malpractice, UPA, consequences

Key points to be mindful of:

Attorneys need to be educated on what good paralegals (or secretaries) can do now and what is included in current education programs

This is not a competition (or should not be)



Anything Else To Share With The Committee

+

- Using legal aid / VLN as pilot agency
- Concern about loss of business or competition
- Need is rural
- Qualified / Trained paralegals
- Need for supervision
- Level of insurance

-

- Availability of paralegals
- Concern about loss of business or competition
- Need is rural
- Qualified / Trained paralegals



Key points to be mindful of:

Overall info shows current underuse of paralegals
 Concern of qualified paralegals
 Get past income-based programs



Strategic Juncture Analysis

A look at multiple perspectives as to what is impacting the development of the pilot project. Answering the question: What are the factors in the pilot project that require strategic attention?

What is our window of opportunity?	What are the negative consequences of inaction?	What could be affected or changed in a positive direction in 5-10 years if we <u>successfully</u> implement the pilot program?	What future desired result is going to require our persistence and perseverance for this program to be successful?
<ul style="list-style-type: none"> • ** Interest of the court in providing leadership • More represented – NOW • Building up the legal profession as a whole • **Delivering on the Chief Justice's Order • Get info to litigants when they come to the Court Admin's window • National Conversation 	<ul style="list-style-type: none"> • Continue Increase in SRLs in court • <u>** Need not met</u> • People come in with the wrong forms! • <u>Eroding public trust and confidence in courts / justice system</u> • Inefficient use of court resources and time • Bad outcomes for litigants / parents / children • People feeling hopeless / overlooked • The powerful and status quo win • People messing up that requires more expensive fix later • Citizens lose faith in legal system • Unrepresented # explode • People suffering / chain reaction • Harder to go forward in life • If we don't someone else will w/o our input 	<ul style="list-style-type: none"> • <u>**Courts might / would arrive at more-just results for litigants not being served today</u> • <u>Less disparity in representation</u> • <u>The financial & emotional well-being of single parents and children</u> • Meeting the needs of our citizens • Finding a solution and appreciation for the joint practice of law • ^^Develop a model that can be used in other areas of law • Increased / new educational opportunities for paralegals. Innovation b/c of market need for educators • <u>People law affordable to middle-income clients</u> • <u>Paralegals could see/explain process and law in different ways that may lead to better ways of actually serving clients</u> • Helps with systems change • Opportunity / cultural proficiency • New vision/new voices • Self rep. people will have better resources • System more user friendly (forms) • Lawyers more efficient & better understand their area of expertise • Altering leads area of expertise 	<ul style="list-style-type: none"> • <u>Viewing success through the client perspective rather than attorney perspective</u> • Continue current energy & results • Understanding that paralegals can assist underserved with attorneys • Maintaining a system perspective • Having attorneys and the public understand the skills and specific roles paralegals can have in meeting legal needs • Judges buying in and developing organized processes – consistency • Tweak program as results come in- don't be rigid • <u>With good advice and support early fewer contested cases in the court – move mutually agreed resolutions</u>



Strategic Juncture Analysis

A look at multiple perspectives as to what is impacting the development of the pilot project. Answering the question: What are the factors in the pilot project that require strategic attention?

What bold new risks could we explore or take?	What is working that needs to be carefully watched, preserved or encouraged?	Where do you see signs of the future happening now?	What is placing limits on our success?	What are barriers to success?
<ul style="list-style-type: none"> • Not only defining, clarifying, and refining role of paralegals for attys during pilots but for paras after pilot. • <u>Team approach to serving underrepresented</u> • <u>Regulatory sandbox – ask innovative people to try new things with less regulation</u> • <u>YES – opportunities for metro firms (atty & paralegal) to provide services to rural area through remote work structures</u> • <u>More process simplification (success of child support system)</u> • Getting attorneys & paralegals in the same live space to work together • Getting other professionals (e.g. social workers) involved in helping clients – broader team approach to serve needs of those facing family, house – debt issues – beyond just legal issue. • Joint innovative law program (combine business with law) • Re-regulation approach • <u>Call “this” name something different</u> 	<ul style="list-style-type: none"> • <u>Legal assistance / pro bono clinics</u> • <u>The pilot should be seen as a supplement to SMRLS, etc.</u> • County law clinics – some via skype / zoom • Participation in pro bono services / pro bono challenge • **Self-help options for those who can (want to) handle things alone • How the pilot proceeds – what is working what are opportunities / what doesn't work • MNCIS Website • North Star Attorneys – include paralegals • What is appropriate for pilot • Unbundled legal services (limited scope) 	<ul style="list-style-type: none"> • Utah • Washington (licensing of paralegals) • California • Canada • Minnesota • Administrative law immigration • Court navigators • Healthcare legal partnerships • <u>Other areas – Drs and APNs</u> • British Columbia • <u>Child Support Magistrates</u> • Paralegal Advocates  	<ul style="list-style-type: none"> • **Lack of understanding • Recognition that how things exist is not working • This is not a metro vs outstate issue – it's a statewide concern • Attorney comfort in delegating more to paras • <u>Risk averse profession & move of law to serving business rather than people</u> • <u>Options for remote court hearings</u> • Court calendaring practices • Disparities in paralegal training / ability – don't limit based on someone who isn't adequately prepared – against someone who can do the work well • <u>Other blocks to access –gender, culture, language, etc.</u> • Large debt (school loans) of attorneys 	<ul style="list-style-type: none"> • <u>Attorney buy-in</u> • <u>Understanding / education of scope</u> • Failure to adequately explain limits, requirement • <u>Clients can't afford services – how do you make this work as market model?</u> • Funding for legal services / VLN type programs • Financial based programming • \$\$\$ • <u>Judges need to be willing to hear these paralegals in court</u> • Non-requirement of judges to hear • "Most of the things worth doing in this world were deemed impossible before they were done" – Justice Louis Brandeis • Understanding cultural differences of litigants • \$ for use of interpreters • <u>Client buy-in</u> • Burn out rates

Key Elements of a Successful Program

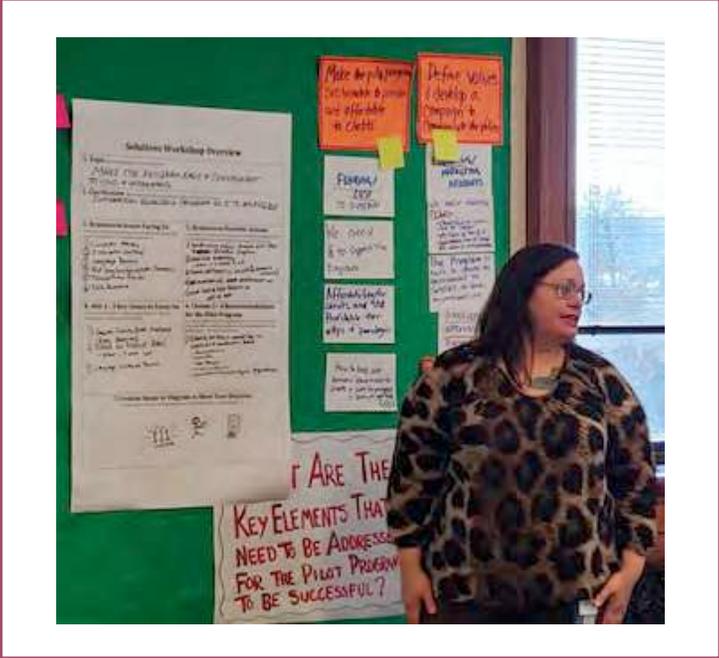
What are the key elements that need to be addressed for the pilot program to be successful?

Make the program easy & convenient to find & understand	Make the pilot program sustainable to providers and affordable to clients	Establish a cool identifier for participating paraprofessionals	Identify pilot goals & establish evaluation plan	Establish required minimum qualifications	Develop a process to protect consumers & hold providers accountable	Define values & develop a campaign to communicate the values	Define parameters for programs	Define what services participant can and cannot provide
<i>As illustrated by:</i>								
<ul style="list-style-type: none"> Public access / education Getting info to the public – awareness that project exists Way to match needs to service (roster) Education, marketing for consumer buy-in Ease of access for all clients. (language, location, cost, understand program) 	<ul style="list-style-type: none"> Funding / cost to sustain We need \$ to support the program Affordability for clients and still profitable for attys & paralegals How to keep cost barriers down & costs for clients (costs for paralegals, salary for paralegals) 	<ul style="list-style-type: none"> Name / Title of paraprofessional Branding / naming for clarity of role 	<ul style="list-style-type: none"> Evaluation plan to learn for future How to evaluate and get quality data There must be a way to measure success ... for clients and for the program Evaluation plan measures success from client perspective What is the goal? 	<ul style="list-style-type: none"> Education and training is essential for all parties Highly skilled/educated paralegals Clear qualifications (education, experience) for paralegals Paralegals brave enough to go into court & attys to support & encourage Attorney supervision & vouching for paralegal(s) How to define paralegal qualifications Competent attorney supervision 	<ul style="list-style-type: none"> Define complaint process & consequences Program oversight Identify entity for complaints or concerns from consumers 	<ul style="list-style-type: none"> Educating / marketing attorneys We must address FEARS (client fear of outcomes... and no "lawyer" ... atty fear of loss of \$... court system fear of change and adding to work / calendars The program is built to create an environment of SUPPORT – for bench, bar, participants, etc. Innovative attorneys to learn for future 	<ul style="list-style-type: none"> Generate pilot idea / programs Where pilot will take place 	<ul style="list-style-type: none"> Define scope (area of law and practice limitations) Handbook / guideline What and how to provide applicable education ...





Day 2 | Committee Recommendations



Make program easy & convenient to find & understand

What and Why:
Information regarding program so it's accessible

Issues:

1. Computer literacy
2. Information overload
3. Language barriers
4. Pilot program / geographic restrictions
5. Transportation issues
6. Public awareness

Possible Actions:

1. Consider using Judicial Branch self-help to advertise program
2. NEED for rollout plan – what it is / what it isn't
3. Identify add'l players (i.e.. interpreters, community involvement)
4. Lawhelpmn.org / mnfindalawyer.com
5. State bar to help rollout as well as MPA

Key Issues:

1. Computer literacy / info overload (public awareness)
2. NEED for ROLLOUT PLAN
- what is & what isn't
3. Language / Cultural barriers

Committee Recommendations:

- 1) Identify all players needed for a successful & coordinated rollout.
 - Associations
 - Websites
 - Law libraries
 - Public libraries
 - Community & Ethnic & Religious Organizations



Image:





Make the pilot program sustainable to providers and affordable to clients

What and Why:

Who are we serving? Low & moderate income clients
 We want it to continue beyond the pilot

Issues:

1. Financial concerns – clients
2. Credibility – get what you pay for
3. Energy & interest by providers
4. Insurance?
5. Profitability for providers
6. Impact of client's emotions
7. Other sources of funding

Possible Actions:

1. Sliding fee scale / other fee structure
2. Discuss w/practitioners how it would work
3. Marketing / min req. / evals
4. Insurance companies – discuss
5. Flat fee
6. Registry of participants
7. Ensure oversight process



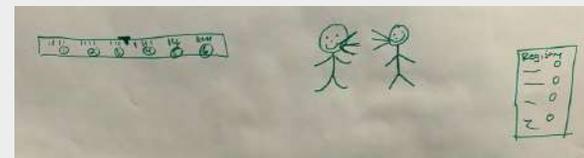
Key Issues:

1. Profitability
2. Credibility
3. Financial concerns for clients

Committee Recommendations:

1. Develop oversight process
2. Outreach to providers Re: fee schedule
3. Determine models for profitability using business models (RFP: request for proposal)
4. Create a registry of participants

Image:



Establish a **cool** identifier for participating paraprofessionals ❄️

What and Why:

Need a way to quickly distinguish paraprofessionals who work in these programs as different from all other legal paraprofessionals

Issues:

- Communicate the specialization focus of the role
- Attorneys think of paralegals as many different things
- Not a distinct role for attys or legal profession
- Clients don't know what the term paralegal means
- Need to build cohesion and pride in the role
- Communicate what these individuals do thru name
- Will paralegals not in this role feel left behind?
- Legal profession may not be the best group to come up w/name – need marketers / advertisers
- Path to advancement

Possible Actions:

Consult branding / marketing firms / professionals
 Focus group names options
 Select a simple, clear, vivid, non-acronym-based name
 Consider a logo / visual – how does this look on swag? – will someone buy the T-shirt?
 Do not need precision in the name, we need emotion and positivity

Key Issues:

1. Client focused name that builds cohesion and pride
2. Communicate specialized focus of role
3. Consult professional **cool** "namers"! (e.g. not attorneys) (ALSO NO ACRONYMS)



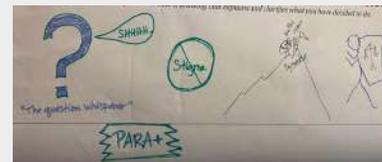
Committee Recommendations:

Qualities, values of the role

- Advocate Accessible Sherpa (Federal Sherpa 🟡) Champion Advisor
- Helper Companion People-first Community Docent Guide Democracy
- Empowered

Ask clients what they wish they'd had

Image:



Identify pilot goals & establish evaluation plan

What: Identify goals and data/info needed to assess whether satisfied
 Why: Order, pilot program, identify area to improve/change

Issues:

- Defining area of law may drive goal
- Are goods consistent w/order
- Who is going to evaluate?
- Identify what is success?
- How do we track data?
- Know what tasks paralegals did?
- Who do we check in with?
- Does geography limit help?
- Can we scale pilot, and sell pilot?

Possible Actions:

- Who do we check in with?
 - Courts (judges, administrators)
 - Paralegals
 - Clients
 - Lawyers (both supervision & "other side")
- Identify what is success
- Look at Order
 - Look at need
- How do we track data
- Survey
 - Will modesty of scope affect ability to collect data
 - How do we get non-court data (mediation)
 - Are there new types of data we need to collect

Key Issues:

- Identify what is success
- How do we track data
- Who do we check in with

Committee Recommendations:

- Identifying success
- Fewer SRL
 - More satisfied clients
 - Calendar congestion reduction
 - Low & moderate income, unmet needs, met
 - Paralegals are comfortable / satisfied

Image:





Establish required minimum qualifications

What and Why:
 Must be minimum qualifications that are measurable/verifiable, so we have confidence in the program/individuals by clients/attorneys

- Issues:**
- No consistent current paralegal requirements
 - Experience/knowledge of area of law (A)
 - No consistent definition of paralegal (B)
 - Type of proof needed
 - Deciding what is qualifying & agreement on it (C)
 - Is further education or test required
 - What training is needed

- Possible Actions:**
- Define minimum education &/or experience
 - Define paraprofessional roles for this project
 - Consider attorney training, vouching and/or certifying

Key Issues:
 A
 B
 C

- Committee Recommendations:**
 All 3 (A, B, C)
- Talk with attorneys on what is required to meet this
 - Minimum 5-year experience in that area of law
 - MnCP certification by MPA

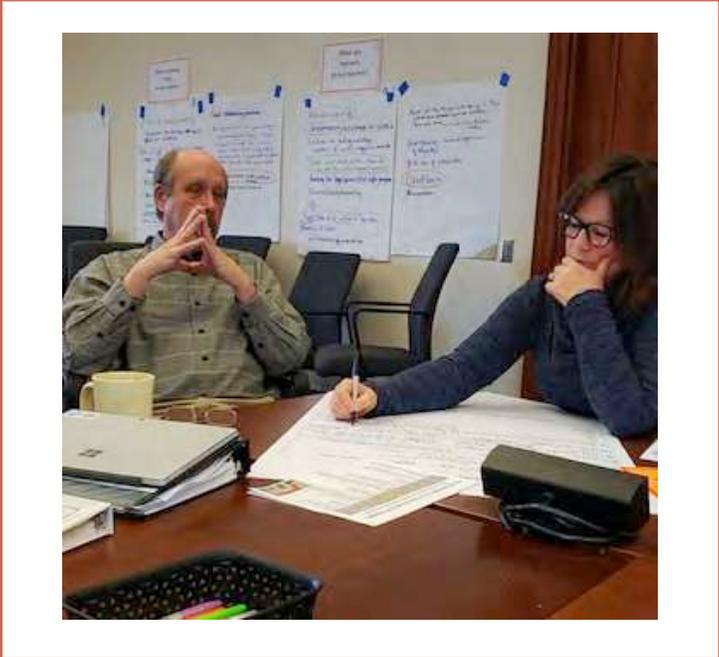
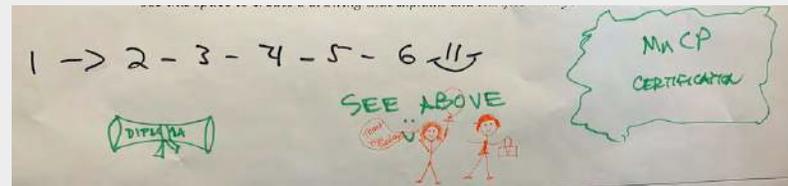


Image:



Develop a process to protect consumers & hold providers accountable

What and Why:

There needs to be a person or entity to receive and act on complaints concerning the pilot project, to provide some level of consumer protection and to determine the merits of complaints

Issues:

- There is no such thing right now
- Lack of uniform definition of a paralegal
- Multiple credentialing organizations
- What role, if any, does the Lawyers Board of Professional Responsibility have?

Possible Actions:

- Develop a form / affidavit / certification for participating lawyers and paralegals
- Enlist assistance of Lawyers Board of Professional Responsibility

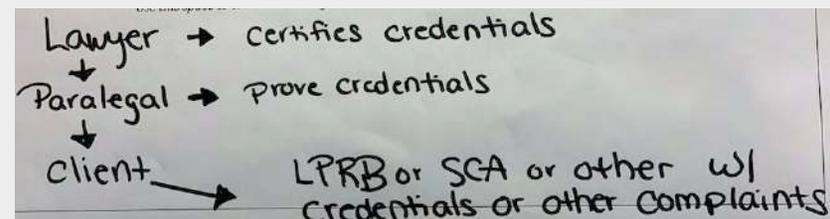
Key Issues:

- Identify credentialing organization(s) for paralegals
- How to verify paralegal qualifications
 - Something from supervision attorney?
- At what point is a registry created

Committee Recommendations:

1. Committee will identify the credentialing paralegal organization(s)
2. Identify additional / other credentialing requirements
3. Develop reporting system for both lawyer and paralegal (Lawyers Board, State Court Admn)

Image:



Define values & develop a campaign to communicate the values

What and Why:

- Establish the direction
- Allows us to assess alignment w/values to make intelligent choices resources
- Educate and engage attorneys, para, Judicial Branch / stakeholder
- UPL concerns & define supervision

Issues:

- Mixture of knowledge about program
- ✓ **Current confusion about goal(s) of program**
- ✓ **No succinct definition of program**
- No consistent definition of para
- Communicate WIIFM for all
- Concern about skills to expand role
- There is work to be done to expand knowledge
- Can this be addressed uniquely based on audience
- ✓ **Message might be different to family law attys vs other attys**
- Need champions / evangelists
- Validation of pts of view
- ✓ **Recognize shared need & approach**

Possible Actions:

- Create an environment of support
- Document WIIFM
- Identify benefits
- Identify spectrum of tasks that role does
- Visual – infographics, accessible communication, varied channels & methods
- Develop user stories, anecdotes
- Say specifically what this is NOT
- Distinguish from what other states are doing (WA state example)
- Create examples of how to use the program
- Client testimonials
- Already work w/paraprofessionals
- Do not have exp w/ paraprofessionals
- Handbook / templates knowledge bank

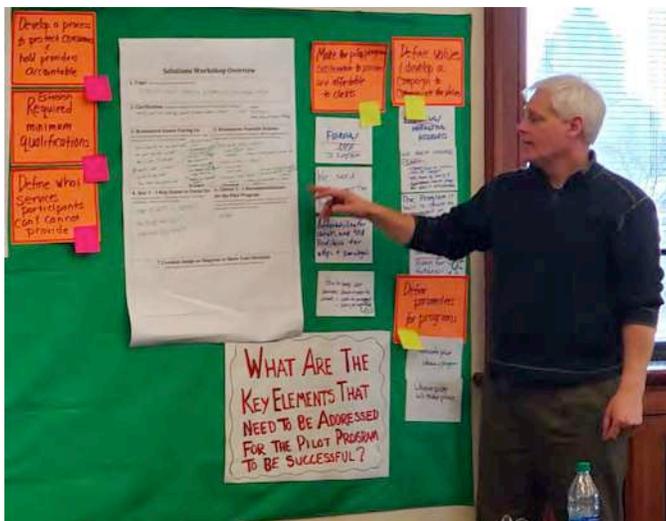
Key Issues:

1. Shared need & approach
2. Unique communication strategy to include WIIFM & role acknowledgment
3. Confusion re: goals & definition of program

Committee Recommendations:

1. Create CLE re: Rule 5 & Supervision of paraprofessionals in this role for ethics credit / elimination of bias
2. Environment of Support – knowledge bank, mentoring, shared space, like MSBA section, blog/online space
3. Document benefits and WIIFM
4. Make sure the communication campaign is full circle

Image:





Define parameters for programs

What and Why:
 Need geographic areas defined
 Need substantial legal areas defined

Issues:

- A. Is rural better / worse
- B. Identify how many venues & where
- C. Start with 1, 2 or 3 legal areas (subjects)
- D. Start with 1 or multiple geographic areas
- E. Do we house it in legal services
- F. Do we also allow it outside of legal services (market based)

Possible Actions:

- Need to have sufficient number of cases where the current resources are insufficient
- Recruiting willing & qualified providers (attorneys & paralegals)
- Pilot needs to be big enough to be helpful & small enough to be studied

Key Issues:

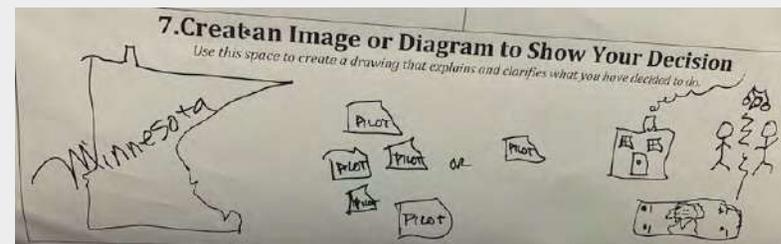
- B)
- C)
- D)

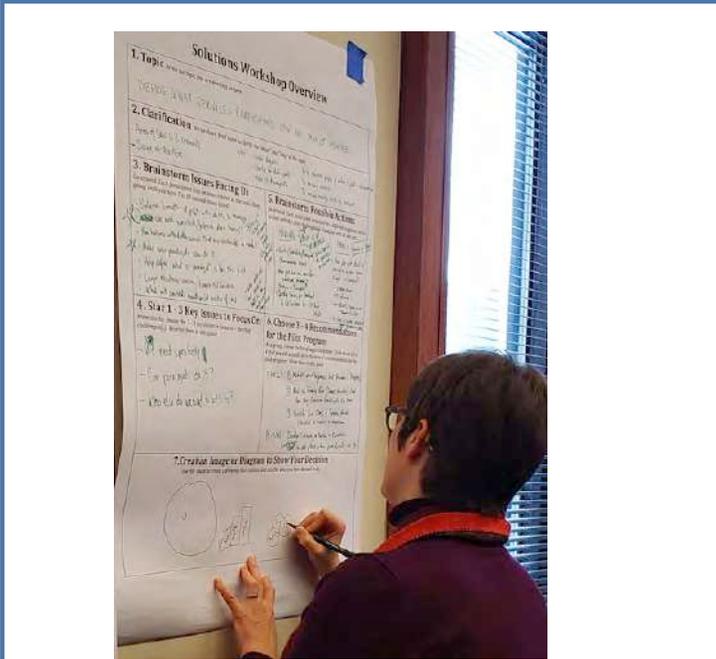
Committee Recommendations:

All three above
 (Done ☺)



Image:





Define what services participant can and cannot provide

What:
Area of law
Scope of practice

Why:

- Order requires
- Clarity for participants
- Make it manageable

- Help convince people of value of pilot – alleviate fear
- To ensure success
- To ensure enough data to evaluate

Issues:

- Balance breadth of pilot with ability to manage
- ★ We need specifics (to break down 'housing')
- How balance affordable services that are sustainable in market
- Make sure paralegals can do it
- ★ Help define what a "paralegal" is for this pilot
- Layer resistance concern / lawyer enthusiasm
- What will constitute authorized practice of law
- "Policing" issues of making sure people stay w/in scope of practice
- Who else do we need to talk to too understand program of scope

Possible Actions:

Housing

- ★ Value is in reaching solutions as opposed to ejection
 - Eviction / Habitability / Expungement (home ownership issues)
 - Move fast but one area for paralegals because housing is trainable
 - Develop training for paralegals to place guidance in – pro se litigant
- Family (practice as dyad)
- How do we deal w/morphing of case from simple -> complex
 - Mediation
 - Informal
 - Identify tipping point (domestic viol/OFP)
 - Family lawyer w/in each that couldn't cover

Key Issues:

- We need to specify
- Can paralegals do it?
- Who else do we need to talk to?

Committee Recommendations:

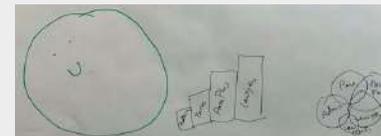
Family

1. Mediation and informal court process (morphing)
2. Meet with Family Bar (small practices) about how they conceive paralegals do more
3. Identify red flags / tipping points (related to training & experience)

Housing

- Develop training on housing & evidence
- Eviction trials is one place where paralegals in ct.

Image:



Final thoughts for the committee to be mindful of...

- Arriving at an organized and understandable public rollout that reaches communities in need of legal services
- What needs to be included in the pilot vs. what can come after the pilot?
- Outreach to other unique stakeholder groups. i.e. family law section, courts/judges, community organizations (any connections w/committees who confirm/affirm for equality & justice) qualifications? Buy-in
- Regulatory changes that need to be made in courts for paralegals to appear in court
- Who will handle oversight / registry / complaints
- Pilot doesn't have to be perfect; need to keep in continuous improvement mindset
- Can this just all be overseen by a supervising atty (case by case) or does there need to really be a separate structure to oversee
- How will you get the word out?
- Who is going to manage this pilot project?
- Will there be a point person(s)?
- Reach out to already existing law firm partners during implementation process or for ideas
- Think about the paradox: the "newest" lawyers & paralegals who "know the least" (1-3 years practice) are often the most motivated to serve, most diverse, best connected to communities needing services, most able to work at affordable rates, most open to change & innovation, most skilled at social media evangelism, hungriest for clients, mentorship & experience – and everyone thinks it is someone else's job to train them so they are largely abandoned & overlooked. How do we integrate them into this program and harness their energy? A pathway to participation?
- This is about the clients with unmet needs – not about lawyers & paralegals
- We need to talk to practitioners working on the ground to see how it will work
- Allow grassroots ideas to bubble up
- We need to work through concerns & values in communication
- **Must do** and communicate what we did over the last 2 days
- What does "attorney supervision" look like? What are the requirements? What liability is taken on by the attorney vs. the participant? - Key to attorney buy-in, but maybe has to be limited supervision vs. normal in office to get them to agree to supervise
- Scale realistic for a business model that is sustainable
- Serves the greatest number of those in need
- Attorney buy-in
- Cool name (not acronym/paralegal)
- This happens
- This program needs to be able to offer value and be realistic for : paralegals; attorneys; clients
- Use what resources are available now to make it happen (associates, MSBA, Paralegal Association, M CCP, etc.) and not create something new from scratch





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Angie Asa-Lovstad, MS, CTF
Training and Facilitation Specialist
Angie.asa-lovstad@hue.life

THANK YOU!

**Recommended Documents Legal Paraprofessionals May File
without Final Attorney Review**

General Filing Documents

- Notice of Appearance
- Certificate of Representation
- Application to Serve by Alternate Means
- Affidavit of Default
- Affidavit of Service
- Substitution of Counsel
- Notice of Withdrawal
- Notice of Filing
- Affidavit for Proceeding In Forma Pauperis
- Proposed In Forma Pauperis Order
- Settlement Agreement
- Request for Continuance
- Motion to Request Correction of Clerical Mistakes

Landlord-Tenant Specific

- Affidavit of Compliance and Proposed Order for Expungement
- Notice of Motion and Motion for Expungement of Eviction Record
- Petition for Emergency Relief Under Tenant Remedies Act
- Rent Escrow Affidavit
- Eviction Answer
- Eviction Action Proposed Findings of Fact, Conclusions of Law, Order and Judgment
- Answer and Motion for Dismissal or Summary Judgment (Eviction)
- Notice of Motion and Motion to Quash Writ of Recovery
- Petition for Possession of Property After Unlawful Lockout

Family Law Specific

- Confidential Information Form 11.1
- Confidential Information Form 11.2
- Felon name change notice
- Notice to Public Authority
- Notice of Default and Nonmilitary Status
- Affidavit of Non-Military Status
- Default Scheduling Request
- Notice of Intent to Proceed to Judgment
- Proposed Default Findings
- Initial Case Management Conference Data Sheet
- Scheduling Statement
- Parenting/Financial Disclosure Statement
- Discovery (Interrogatories, Request for Production of Documents, Request for Admissions)
- Summary Real Estate Disposition Judgment
- Certificate of Dissolution
- Delegation of Parental Authority
- Revocation of Delegation of Parental Authority
- Application for Minor Name Change
- Parenting/Financial Disclosure Statement
- Certificate of Settlement Efforts
- Notice of Motion and Motion to Modify Parenting Time
- Stipulation of the Parties
- Notice of Motion and Motion to Modify Child Support/Medical Support
- Notice of Motion and Motion (examples: Stop COLA, Reinstate Driver's License)
- Request for County to Serve Papers

Implementation Committee Member Bios

Sally Dahlquist, J.D. is the Director of an ABA-approved Paralegal Program and Chair of the Beyond the Yellow Ribbon Company at Inver Hills Community College in Minnesota. She is very active as a member of the Minnesota Paralegal Association, American Bar Association Standing Committee on Paralegals, and Minnesota State Bar Association, and has served as the Past Chair of the ABA Approval Commission for Paralegal Educational Programs. Ms. Dahlquist works tirelessly to bring attorneys and paralegals together to deliver competent and affordable legal representation to our citizens, and is a dedicated advocate of public access to equal justice.

Tiffany Doherty-Schooler serves as Director of Advocacy for Legal Service of Northeastern Minnesota, a civil legal service provider that provides legal services to low income clients in 11 counties in matters such as housing, family law and benefits. Previously she owned a general legal practice in rural central Minnesota and served as a part-time public defender. She is a former Humphrey School of Public Policy Fellow and has years of experience working to meet the legal needs of the residents of Greater Minnesota.

Bridget Gernander has worked for the Minnesota Judicial Branch since 2001, focused exclusively on access to justice funding and policy work for the last twelve years. Prior to joining the Judicial Branch, Bridget was an Equal Justice Works Fellow with the Minnesota Justice Foundation. She is a graduate of the University of Minnesota Law School.

Kimberly Larson is the manager of business education for the Minnesota Judicial Branch. Prior to coming to the Judicial Branch, Kim worked as an attorney with Mid-Minnesota Legal Aid representing clients in the areas of family, housing, immigration, and disability law. She is a National Center for State Courts Fellow, certified Court Executive, and graduate of Hamline University School of Law in St. Paul.

Tom Nelson is the 2019/2020 President of the Minnesota State Bar Association. He previously served as the President of the Hennepin County Bar Association. He is a partner at the Stinson law firm, formerly Leonard, Street and Deinard; prior to that, he was with Popham, Haik, Schnobrich, Kaufman and Doty.

Christopher Petersen is president of the Columbia Mutual Funds and a senior legal officer at Ameriprise Financial supporting U.S. registered products and the global asset management business. In this role, he and his team are responsible for corporate governance and providing legal support for the Columbia Mutual Funds and their service providers. Mr. Petersen has worked for Ameriprise Financial since 2004. From 1999 to 2004, Mr. Petersen worked for U.S. Bancorp and Strong Financial providing legal support to their asset management business and sponsored fund groups. Mr. Petersen received B.A. and J.D. degrees from the University of Minnesota.

Implementation Committee Member Bios

Liz Reppe is the Minnesota State Law Librarian. She earned a J.D. from Hamline University School of Law and an M.L.I.S. from Dominican University. She has been assisting people seeking legal information for almost 20 years as a public and academic law librarian. She was a recipient of the 2017 Minnesota Attorney of the Year award for her work creating the Appeal Self-Help Clinic and the First Judicial District Amicus Curiae award for her efforts to create the Dakota County Criminal Defense Panel.

Hon. John R. Rodenberg is a 1978 graduate of St. Olaf College, *cum laude*, and a 1981 graduate of Hamline University School of Law, *cum laude*, where he was an Associate and later an Editor of the HUSL Law Review. He entered the private practice of law with the firm of Berens, Rodenberg & O'Connor, Chtd., in New Ulm, MN, where he was primarily a civil trial practitioner from 1982 to 2000. Judge Rodenberg was appointed to the District Court in Minnesota's Fifth Judicial District by Governor Ventura in 2000, a position to which he was reelected in 2002 and 2008. Judge Rodenberg was appointed to the Minnesota Court of Appeals by Governor Dayton in 2012, a position to which he was reelected in 2014.

Maren Schroeder, RP, MnCP holds an M.B.A. in Legal Administration, and is a PACE Registered, Minnesota Certified Paralegal who performs freelance paralegal work in the areas of litigation, family law, and criminal law. She is the current Director of Positions & Issues for the Minnesota Paralegal Association (MPA) and serves in various capacities with the National Federation of Paralegal Associations. Previously, she served as MPA's Director of Greater Minnesota, Director of Professional Development, and Director of Marketing, and as NFPA's Regulation Review Coordinator and Association Management Coordinator. In 2014, Maren led a committee to establish the Minnesota Certified Paralegal program, a non-governmental credentialing program for paralegals in Minnesota.

Hon. Paul C. Thissen was appointed to the Minnesota Supreme Court in 2018. Prior to that, he worked as an attorney for 25 years and made access to justice and pro bono an important priority. He served in the Minnesota House of Representatives for 16 years including as Speaker of the House.

Pamela Wandzel is the Director of Pro Bono at Fredrikson & Byron where she has managed the firm's pro bono legal program for the past 24 years. Pam also served as a litigation paralegal at the firm after graduating with honors from North Hennepin Community College's paralegal program. She has served on a number of committees at the MSBA and on the board of numerous community-based nonprofits.



APPENDIX
ATTACHMENT 11



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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

May 13, 2019

NO. 19-8110

**IN THE MATTER OF THE
NEW MEXICO LICENSED LEGAL
TECHNICIANS WORK GROUP**

ORDER

WHEREAS, a team of judges and court staff from New Mexico attended an Innovation Summit sponsored by the Conference of Chief Justices in May 2018;

WHEREAS, the Innovation Team from New Mexico identified several projects worthy of further study for improving access to legal services in this state, including the use of licensed legal technicians or other non-lawyer professionals trained to deliver legal services that are responsive to unmet legal needs in New Mexico;

WHEREAS, recent studies reveal a chronic shortage of legal services for low and moderate income individuals who need help to address their legal needs, and some states have implemented or are currently evaluating the use of non-attorney professionals to address this persistent gap in legal services and expand

1 access to the justice system;

2 WHEREAS, the need for legal service providers to address unmet legal
3 needs in New Mexico is felt most acutely beyond the Rio Grande corridor and
4 throughout rural New Mexico, as evidenced by the fact that thirty-three percent
5 (33 %) of New Mexico's counties have ten (10) or fewer lawyers, twenty-one
6 percent (21 %) of New Mexico's counties have five (5) or fewer lawyers, and
7 two counties in New Mexico have no lawyers at all;

8 WHEREAS, following the return of New Mexico's Innovation Team from
9 the 2018 Innovation Summit, the Court identified interested parties willing to
10 study alternative methods for addressing the crisis of unmet legal needs and now
11 wishes to formalize their appointment to serve on an *ad hoc* work group that
12 would develop a report and recommendations for the Court to consider;

13 WHEREAS, the Court anticipates that the report and recommendations of
14 the work group would include an assessment of the use of licensed legal
15 technicians or other non-attorney professionals to help address the gap in legal
16 services in New Mexico; and

17 WHEREAS, in light of the foregoing, and the Court being sufficiently
18 advised;

1. NOW, THEREFORE, IT IS ORDERED that the Ad Hoc New Mexico
2 Licensed Legal Technicians Work Group hereby is ESTABLISHED;

3 IT IS FURTHER ORDERED that the following persons are appointed to
4 serve as members of the work group until further order of the Court:

5 Hon. Donna J. Mowrer
6 Ninth Judicial District Court

7 Emmalee Atencio
8 State Bar of New Mexico Paralegal Division

9 George Chandler, Commissioner
10 New Mexico Commission on Access to Justice;

11 Prof. April Land
12 UNM School of Law Community Lawyering Clinic

13 Cindy Lovato-Farmer, Chair
14 Board of Bar Examiners;

15 Susan Page
16 Private Attorney;

17 Steven Scholl, Shareholder
18 Dixon, Scholl, Carrillo, PA;

19 William Slease, Chief Disciplinary Counsel
20 NM Disciplinary Board;

21 Scot Stinnett, Publisher/Editor
22 DeBaca County News;

23 Kathy Ulibarri

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New Mexico Independent Community Colleges; and

Dr. Katharine Winograd
Central New Mexico Community College;

IT IS FURTHER ORDERED that Hon. Donna J. Mowrer shall serve as
chair of the work group until further order of this Court;

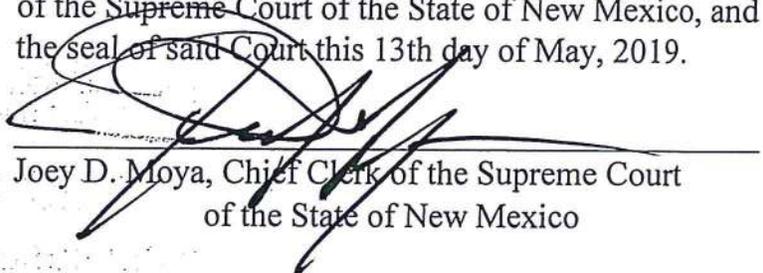
IT IS FURTHER ORDERED that the work group shall review existing
rules and programs for the delivery of legal services in New Mexico and
recommend changes the work group determines would be appropriate for
improving the delivery of legal services in New Mexico, including whether to
authorize the use of licensed legal technicians or other non-attorney
professionals for the delivery of defined types of legal services; and

IT IS FURTHER ORDERED that the work group shall submit a report
and initial recommendations to this Court no later than January 1, 2020, and may
submit interim reports to the Court as the work group deems appropriate.

IT IS SO ORDERED.

WITNESS, Honorable Judith K. Nakamura, Chief Justice
of the Supreme Court of the State of New Mexico, and
the seal of said Court this 13th day of May, 2019.

(SEAL)



Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico



APPENDIX
ATTACHMENT 12

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, and upon consultation with and approval by the Chief Judge and the Presiding Justices of the Appellate Division, First and Second Judicial Departments, I hereby adopt, effective February 11, 2014, the following rules relating to a pilot program for provision of pro bono non-legal services to unrepresented litigants in consumer credit, housing, and others matters where such services are urgently needed.

1. The Court Navigators Program

There is hereby established a pilot “Court Navigators Program” of the Unified Court System, in the New York City Civil Court and in such other courts and parts as shall be designated by the Chief Administrator of the Courts, for the purpose of providing essential non-legal services, without cost, to unrepresented litigants by qualified non-lawyers (“Navigators”). The program initially shall be established in the following locations:

1. Civil Court, Bronx County (consumer credit matters); and
2. Civil Court, Kings County (Housing Part).

2. Standards, Qualifications, and Assignment of Court Navigators

A. The Chief Administrator of the Courts shall establish minimum qualifications, education, and training standards for Court Navigators. These shall include an educational and field training course, pursuant to a curriculum approved by the Chief Administrator or her designee. The Chief Administrator shall maintain a list of qualified Navigators eligible for appointment pursuant to this program.

B. Court Navigators shall be assigned by, and act under the supervision of, not-for-profit service providers approved for this purpose by the Chief Administrator. For purposes of this pilot program, approved providers include the following:

1. The New York State Access to Justice Program (A2J)
2. University Settlement
3. Housing Court Answers

3. Duties and Limitations of Court Navigators

A. Upon the assignment of a Court Navigator, the Navigator may, in conformance with standards and guidelines approved by the Chief Administrator of the Courts or her designee:

(1) inform the unrepresented party about, and assist in, the completion of court-designed and court-approved “do-it-yourself” form documents, and the use of Law Help to obtain legal information or to locate an attorney;

(2) assist the unrepresented party in the gathering and organization of documents relating to the case;

(3) inform the unrepresented party about, and assist in, the scheduling of court proceedings;

(4) accompany the unrepresented party to court appearances and, if directed by the court, answer factual questions posed by the court;

(5) inform the unrepresented party about, and assist in, obtaining available court services (such as interpreter services); and

(6) provide such other non-legal information and perform such other non-legal services as the court may direct.

B. In the performance of these services, Court Navigators may not:

(1) provide legal advice, legal counseling, or (unless in a manner approved by the Chief Administrator or her designee) legal information to the unrepresented litigant;

(2) draft, execute, serve, or file with the court any documents on behalf of the unrepresented litigant (other than the provision of assistance in completing court-approved “do-it-yourself” documents as described above);

(3) hold themselves out as representing, speaking for, or advocating on behalf of a litigant, or act in any manner as to convey the impression that they are legal practitioners or are associated with a law office;

(4) address, or conduct negotiations with, opposing counsel, unless at the court’s direction;

(5) address the court on behalf of the unrepresented litigant, unless to provide factual information at the court’s direction; or

(6) perform any service that constitutes the practice of law.

C. Court Navigators shall receive neither direct nor indirect compensation from the unrepresented parties to whom they provide services.

D. Court Navigators shall follow the court’s directives at all times.



Chief Administrative Judge of the Courts

Dated: February 10, 2014

AO/42/14



APPENDIX
ATTACHMENT 13

ROLES BEYOND LAWYERS

Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and its Three Pilot Projects

December 2016

*Prepared by Rebecca L. Sandefur, American Bar Foundation,
and Thomas M. Clarke, National Center for State Courts,
with support from the
Public Welfare Foundation*

ABF American Bar Foundation
EXPANDING KNOWLEDGE • ADVANCING JUSTICE



Public Welfare
Foundation

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Research Summary and Recommendations

Introduction

There is now a major movement in the United States to expand the use of appropriately trained and supervised individuals without full formal legal training to provide help to people who would otherwise be without legal assistance of any kind. The general approach has been endorsed by The Commission on the Future of Legal Services of the American Bar Association,¹ and by the *Guidance* issued by the National Center for State Courts in support of the Justice for All Strategic Planning Initiative developed in response to a recent resolution of the Conferences of Chief Justices and State Court Administrators.²

The need for such innovations is clear. At the time this evaluation was conducted, approximately 90 percent of tenants facing eviction in New York City did not have a lawyer, while the vast majority of landlords did.³ Research from the National Center for State Courts shows that in 70 percent of non-domestic civil cases in urban counties, one party is unrepresented while the other has lawyer representation.⁴

The first comprehensive evaluation of programs providing assistance through staff or volunteers without full formal legal training provides important evidence that these initiatives can influence the experiences of unrepresented litigants in positive ways and can also shape the outcomes of court cases, including legal and real-life outcomes.

The umbrella program, New York City Court Navigators, makes use of trained and supervised individuals with no prior formal legal training to provide one-on-one assistance to unrepresented litigants in the City's Housing and Civil Courts. Navigators provide information, assist litigants in accessing and completing court-required simplified forms, attend settlement negotiations and accompany unrepresented litigants into the courtroom. If judges address direct factual questions to a Navigator, the Navigator is authorized to respond.

In February 2014, three distinct Navigator pilot projects began operation in New York City Courts as part of the larger Navigator program. Two of these pilot projects involve volunteer Navigators. A third pilot project involves experienced caseworkers on the staff of a non-profit organization; these caseworkers had previously performed more limited roles.

The evaluation of the New York City Court Navigators program was conducted by researchers from the American Bar Foundation and the National Center for State Courts, under a research project supported by the Public Welfare Foundation. The research assessed the *appropriateness, efficacy, and sustainability* of each of the three Navigator pilot projects. The program design and evaluation frameworks, published

¹ABA Commission on the Future of Legal Services, Report on the Future of Legal Services in the United States (2016), http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

² National Center for State Courts, <http://www.ncsc.org/jfap>.

³ SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES: THE RESULTS OF TWO SURVEYS. SELF-REPRESENTED LITIGANTS IN THE NEW YORK CITY FAMILY COURT AND NEW YORK CITY HOUSING COURT, Office of the Deputy Chief Administrative Judge for Justice Initiatives. New York, NY: Office of the Deputy Chief Administrative Judge for Justice Initiatives, 2005. At time of the release of this report (October 2016), increased funding for lawyer representation in eviction cases has reduced the percentage of unrepresented tenants to around 83 percent.

⁴National Center for State Courts Civil Litigation Project, *The Landscape of Civil Litigation in State Courts* (2015), <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

elsewhere⁵, were newly developed for the evaluation as models for general use in access to justice evaluation research.

The positive results of the three Navigator pilot projects were produced in a context that is both adverse and supportive. The New York City Courts are among the most chaotic and overloaded in the United States. That the pilot projects showed evidence of positive contributions in such environments suggests that such programs could be effective in a wide range of jurisdictions. At the same time, the New York City Courts are leaders in developing innovations to provide fairness for unrepresented litigants. The fact that the courtrooms in which Navigators worked were those in which other significant efforts had already been made to improve the experiences of unrepresented parties may have been an important support to the pilot projects, making some results easier to achieve here than might be the case elsewhere. Alternatively, Navigators working in courts that have not made efforts to improve the experiences of unrepresented litigants could be found to have comparatively larger influence on litigant experience and case outcomes.

Key Findings: Evidence of Program Impact

The three Navigator pilot projects differ in important respects, but all involve the same core capacities: providing to unrepresented litigants the services of information, moral support, and accompaniment to negotiations with the other side’s attorneys and into courtrooms. Navigators are authorized to respond to questions from court attorneys and judges and to prompt litigants to provide additional information. Complete descriptions of each pilot project are available in the full Report.⁶ The evaluation uncovered evidence that assistance from appropriately trained and supervised individuals without formal legal training is associated with changes in a range of outcomes, including both legal and real-life outcomes.

Principal findings of the evaluation include:

- The ***Access to Justice Navigators Pilot Project*** is built around trained volunteer Navigators “for-the-day.” These Navigators assist unrepresented litigants in understanding and moving through nonpayment or debt collection proceedings. Access to Justice Navigators currently operate in a variety of housing courts and in consumer debt cases in civil court in New York City. ***Surveys of litigants revealed that litigants who received the help of any kind of Navigator were 56 percent more likely than unassisted litigants to say they were able to tell their side of the story.***
- The ***Housing Court Answers Navigators Pilot Project*** involves trained volunteer Navigators “for-the-day,” operating in the Brooklyn Housing Court. These Navigators provide individualized assistance with tenants’ preparation of a legal document, the “answer” to the landlord’s petition for nonpayment of rent, in which the tenant responds to the petition by asserting defenses. Litigants assisted by Housing Court Answers Navigators ***asserted more than twice as many defenses as litigants who received no assistance.*** A review of case files reveals that ***tenants assisted by a Housing Court Answers Navigator were 87 percent more likely than unassisted tenants to have their defenses recognized and addressed by the court. For instance, judges ordered landlords to make needed repairs about 50 percent more often in Navigator-assisted cases.***
- The ***University Settlement Navigators Pilot Project*** employs trained caseworkers who are employees of a nonprofit organization. These Navigators, operating in the Brooklyn Housing Court, are

⁵ INCREASING ACCESS TO JUSTICE THROUGH EXPANDED ‘ROLES BEYOND LAWYERS’: PRELIMINARY EVALUATION AND CLASSIFICATION FRAMEWORKS, Rebecca L. Sandefur and Thomas M. Clarke, American Bar Foundation and National Center for State Courts, Chicago, IL and Williamsburg, VA, 2015. Available at americanbarfoundation.org/research/A2J.

⁶ The full report may be found here: americanbarfoundation.org/research/A2J/RolesBeyondLawyers.

Navigators “for-the-duration,” working the case from initial appearance through resolution and beyond. This pilot project’s aim is to prevent evictions by providing both the in-court services that all Navigators are able to provide as well as an ongoing relationship with litigants in which the Navigator both accompanies the unrepresented litigant to all of the court activities related to her case and assists the tenant outside of court in connecting with benefits and services for which she may be eligible. ***In cases assisted by these University Settlement Navigators, zero percent of tenants experienced eviction from their homes by a marshal. By contrast, in recent years, one formal eviction occurs for about every 9 nonpayment cases filed citywide.***

The programs were found to be appropriate uses of trained personnel without full formal legal training and to have potential for sustainability. Navigator programs, through their impact on both legal and life outcomes, thus can result in *financial savings to society as well as a reduction in the hardships experienced by unrepresented litigants in civil cases.*⁷

Description of the Program, Evaluation, and Pilot Projects

On February 11, 2014, then New York State Chief Judge Jonathan Lippman announced in his State of the Judiciary speech what he described as:

[A] series of court-sponsored incubator projects to expand the role of non-lawyers in assisting unrepresented litigants. This idea of finding ways for non-lawyers to help pro se litigants is one that has only just begun to emerge in the United States. But it has taken hold elsewhere in the common-law world, including the United Kingdom, to great positive effect. With the new projects that we announce today, it is my hope that we can graphically illustrate the tremendous difference non-lawyers can make in closing the justice gap.

The three pilot projects commenced operation in 2014 under the general guidance of a special task force, the Committee on Non-Lawyers and the Justice Gap,⁸ appointed by the Chief Judge. The pilot projects operated within the New York Civil Court, under the Supervision of Deputy Chief Administrative Judge Fern Fisher and with close participation of community groups and regular input from legal aid agencies and bar associations.

All of the pilot projects shared a general approach, as described by Chief Judge Lippman in the 2014 State of the Judiciary speech:

...This kind of one-on-one assistance will include providing informational resources to litigants and helping them access and complete court do-it-yourself forms and assemble documents, as well as assisting in settlement negotiations outside the courtroom.

Most significantly, for the first time, the trained non-lawyers, called Navigators, will be permitted to accompany unrepresented litigants into the courtroom in specific locations in Brooklyn Housing Court and Bronx Civil Court. They will not be permitted to address the court on their own, but if the judge directs factual questions to them, they will be able to respond. They will also provide moral support and information to litigants, help them keep paperwork in order, assist them in accessing interpreters and other services, and, before they even enter the courtroom, explain what to expect and what the roles are of each person in the courtroom.

⁷ For estimates of the costs and benefits of providing lawyer assistance in eviction cases, see Stout Risius Ross, Inc., *The Financial Costs and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A*, (2016).

⁸ See the press release at http://www.nycourts.gov/press/pdfs/pr13_07.pdf.

Clear guidelines govern what a non-lawyer can and cannot do to ensure that they do not cross the line into the practice of law. They will receive training and develop expertise in defined subject areas. When these non-lawyers confront situations where the help of a lawyer is crucial, they will have access to legal service providers for help and referrals.

An Order issued by the Chief Administrative Judge of the Courts codified these protections and authorizations.⁹ The courthouses in which the Navigators projects were piloted are chaotic, loud, confusing and overwhelming, perhaps even to new lawyers as well as to the approximately 90 percent of tenants who, at the time of this research, were there without legal representation.¹⁰

In 2014, the Public Welfare Foundation made a grant to the National Center for State Courts and the American Bar Foundation to fund the development of frameworks for the design and evaluation of such programs and the use of that evaluation framework to assess two distinct initiatives, i) the New York Court Navigators program, reported on here, and, ii) the Washington State Limited License Legal Technicians program, which authorizes trained, licensed and regulated legal technicians to provide a range of services in a provider-client relationship without attorney supervision.¹¹

The evaluation of the New York Court Navigators program included review of court files, surveys of litigants and Navigators, and interviews with stakeholders such as lawyers, judges, court staff, staff in nonprofit organizations that work in these areas, and current and potential funders as well as Navigators themselves. The majority of the data were collected in the Brooklyn Housing Court, as this was the only site of two of the three pilot projects. Following the evaluation framework, the data collected were reviewed for evidence of 1) *appropriateness*: whether the services as designed could potentially produce the kinds of outcomes desired; 2) *efficacy*: whether the services showed evidence of producing those outcomes; and 3) *sustainability*: whether it was reasonable to anticipate that the project could be maintained, expanded and replicated in other jurisdictions.

Recommendations for Enhancements of the New York Navigators Program

The New York City Court Navigators Program shows evidence of achieving the goals of the program as a whole and of its individual pilot projects. One broadly shared benefit from the launch and evaluation of pilot innovations is the opportunity to learn about both what works and what could work better. Some improvements to the existing projects can be achieved at minimal cost. Expanding the projects' size to have greater impact on legal and life outcomes would be more expensive, but also likely accompanied by substantial savings to society as well as reductions in hardship.

⁹ See Administrative Order of the Chief Administrative Judge of the Courts 42-14, February 11, 2014. Available at <https://www.nycourts.gov/courts/nyc/SSI/pdfs/AO-42-14.pdf>.

¹⁰ SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES: THE RESULTS OF TWO SURVEYS. SELF-REPRESENTED LITIGANTS IN THE NEW YORK CITY FAMILY COURT AND NEW YORK CITY HOUSING COURT, Office of the Deputy Chief Administrative Judge for Justice Initiatives. New York, NY: Office of the Deputy Chief Administrative Judge for Justice Initiatives, 2005. At time of the release of this report (October 2016), increased funding for lawyer representation in eviction cases has reduced the percentage of unrepresented tenants to around 83 percent.

¹¹ "Limited License Legal Technician Program," <http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians>. The Roles Beyond Lawyers Evaluation report on the Limited License Legal Technicians is scheduled to appear later this year.

Lower-cost changes to achieve improvements include:

- Providing dedicated, on-going supervision for Access to Justice Navigators in all the courthouses where they work. Volunteer Navigators should be supervised by trained and experienced staff who are on-site and available for questions, consultation, and support during all the hours Navigators are providing services. This supervision should include additional “on-the-job” training for Navigators about working with unrepresented litigants and court staff within the bounds of the Navigator role.
- Educating both the judges and the court attorneys who assist the judges about Navigators’ role and capacities, so that both groups are able to use Navigators as a resource in acquiring information they need to make decisions and in using courtroom time as efficiently as possible.
- Educating court staff about Navigators’ role, and working with court staff to develop means to better integrate Navigators into the case flow, so that Navigators’ work is a consistently helpful supplement to the work of clerks and other courthouse workers.
- Increasing availability of the DIY (“do-it-yourself”) computer kiosks for the preparation of answers and other legal documents.
- Developing a triage referral system that integrates the various services currently available in the courthouse, so that those cases that would benefit most from the enhanced services provided by some types of Navigators are more likely to receive them.
- Providing more information about all types of Navigators to the public, with the goal of increasing the use of all types of Navigators.

Cost projections for expansion of the projects appear in the full Report.

General Conclusions About “Roles Beyond Lawyers” Programs

This is the first comprehensive evaluation of a “Roles Beyond Lawyers” program, in which appropriately trained and supervised individuals without full formal legal training provide help to litigants who would otherwise be without assistance. As in all empirical social science, questions remain to be answered by future research. Nonetheless, actionable conclusions about the range of Roles Beyond Lawyers initiatives can be drawn from this evaluation.

1. People without formal legal training can provide meaningful assistance and services to litigants who are not represented by a lawyer.
2. These services can impact several kinds of outcomes, ranging from litigants’ understanding of court processes and empowerment to present their side of the case, to providing more relevant information to the decision-maker, to formal legal outcomes and the real-life outcomes experienced by assisted litigants and their families.
3. The tasks Navigators are actually able to perform, and thus their impact, are influenced by the philosophy and attitude of the court in which the services are provided, including the attitudes of case processing staff and judges.
4. Contributions of Navigators’ work to legal outcomes and real-life outcomes such as eviction prevention are likely similarly influenced by court environment and by the range of services and benefit programs available in the jurisdiction. The availability of such services and benefits to

which Navigators can connect litigants is a major mechanism of Navigator impact. Some jurisdictions, such as New York City, have significantly more such resources than most.

5. The impact of Roles Beyond Lawyers programs on legal outcomes can be greatly assisted by the availability and use of plain language, standardized legal forms, such as the Answer form, and of software programs (what in New York are called “DIY” programs) that help litigants prepare legal documents such as answers. Such programs have been developed for many jurisdictions, facilitating the replication of Roles Beyond Lawyers programs.

General Recommendations

1. Sustaining the Current Program

The Navigators projects produce goods valued by a range of stakeholders. Sustaining funding for the program is recommended, with sufficient increases to follow the Navigator supervision recommendations in the Report.

2. Replication in New York City and State

Replication is recommended, but with careful attention to changes of the kind described above to enhance efficacy and total cost effectiveness.

3. Replication Beyond New York State

The Navigators program shows potential to contribute to the national goal of providing meaningful access to justice for all, as urged for adoption by the states by the Conference of Chief Justices.¹² The findings of the Report suggest that these approaches can be an important tool in helping achieve this goal, and that they should be integrated with other initiatives developed to meet the goal.

4. The Overall Evaluation Framework

The framework is recommended for evaluations of all types of “Roles Beyond Lawyers” programs. It is offered as useful for evaluations of other access to justice innovations. Potential downsides of a standardized approach are likely to be outweighed by the benefits of being able to compare different innovations on their appropriateness, efficacy and sustainability.

¹² Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All. Conference of Chief Justices and Conference of State Court Administrators (2015). http://www.ncsc.org/~media/microsites/files/access/5%20meaningful%20access%20to%20justice%20for%20all_fi nal.ashx

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I. Roles Beyond Lawyers: Research Project Overview

Roles Beyond Lawyers (RBLs) encompass a range of service models for civil legal assistance that draw upon personnel who have not received full formal legal training. These programs attempt to achieve the goals of increasing access to justice and ensuring consumer protection. The Roles Beyond Lawyers research project explores these models, both as currently implemented and as opportunities to be realized.

In 2014, the Public Welfare Foundation made a grant to the American Bar Foundation and the National Center for State Courts to fund the development of frameworks for the design and evaluation of such programs and for the use of that evaluation framework to assess two distinct initiatives: i) the New York Court Navigators program, reported on here, and ii) the Washington State Limited License Legal Technicians program, which authorizes trained, licensed and regulated legal technicians to provide a range of services in a provider-client relationship without attorney supervision.¹³

The first products of the project were two conceptual frameworks, one for program design and one for program evaluation.¹⁴ In developing these, we identified three challenges that all programs must meet in order to be successful, which became the criteria on which RBLs are evaluated in this research. Achieving the dual goals of access and protection requires programs to respond to the challenges of *appropriateness*, *efficacy*, and *sustainability*:

- *Appropriateness*. Program designers must identify a discrete bundle of services that can both make a material difference in the conduct of justiciable events and be competently performed by staff who are not fully trained attorneys. Achieving appropriateness is the foundational goal of any program using RBLs. If this goal is not met, the innovation will be ineffective even if well implemented and sustainable.
- *Efficacy*. The discrete bundle of services provided must be both competently performed and positively impactful on the work of participants in the legal matters served. Participants may include courts and their staff, who have interests in the timely, efficient and lawful processing of cases, and litigants, who have interests in these same goals. Litigants also have interests in the outcomes and experience of justice processes in their own particular matters. If appropriateness is meeting the challenge of designing an RBL that could work, efficacy is about implementing it so that it does work in attaining its specific goals for service delivery.
- *Sustainability*. Sustainability is perhaps the greatest challenge confronting any method of delivering appropriate and efficacious services. Services must be produced by personnel managed through durable models of training, supervision and regulation that ensure the consistent delivery of services of adequate quality. The means of funding production and delivery must be durable, whether the source is public funds, charity or philanthropy, client fees, or some combination of these. Models of service production successful at a small scale may require revision to succeed at a larger scale. Sustainability requires not only maintaining material efficacy, but also legitimacy. Stakeholders, who include the public and the organized

¹³ “Limited License Legal Technician Program,” <http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians>. The Roles Beyond Lawyers Evaluation report on the Limited License Legal Technicians is scheduled to appear later this year.

¹⁴ INCREASING ACCESS TO JUSTICE THROUGH EXPANDED ‘ROLES BEYOND LAWYERS’: PRELIMINARY EVALUATION AND CLASSIFICATION FRAMEWORKS, Rebecca L. Sandefur and Thomas M. Clarke, American Bar Foundation and National Center for State Courts, Chicago, IL and Williamsburg, VA, 2015. Available at americanbarfoundation.org/research/A2J

legal profession as well as individual litigants and courts, must accept and employ the new roles as means of delivering assistance, and perceive them as at least as valuable as other uses of the same resources.

This report presents findings from an empirical study of three different pilot projects under the larger umbrella of the New York City Court Navigators program. The research follows the evaluation framework¹⁵ and draws on multiple methods of analysis – surveys, interviews and a review of case files – that collect views from many angles, including the perspectives of litigants, judges, court attorneys, court clerks, program supervisors, potential funders, other service providers and Navigators themselves.¹⁶ Any given data source has limitations. Using the social scientific technique of triangulation, we employ information collected and analyzed with a range of different methods and from different perspectives, so that weaknesses in one type of information may be offset by strengths in others.

II The New York City Court Navigators Program

A. The Courthouse Context

Familiar from television and novels, the classic image of an American courtroom includes a robed judge who presides over a legal battle between two parties, each represented by lawyers who examine witnesses, present evidence and make legal arguments. This image no longer describes civil litigation in the United States. In many common kinds of civil court cases, including eviction and consumer debt collection, at least one side rarely has a lawyer. The modal pattern is one of imbalance: an unrepresented person faces an opponent represented by an attorney.¹⁷

When people face a legal action such as an eviction or a lawsuit to collect a debt, the prospect of going to court and seeing the matter through can be overwhelming. Consider this scene, typical of the Brooklyn Housing Court. The court is busy and chaotic, described as “hot” by more than one person we spoke to, processing on the order of 58,000 nonpayment cases each year. At the time the research was conducted, as many as 90 percent of tenants were appearing without lawyers,¹⁸ meaning that many people were arriving at the court with little understanding of where to go, what to do, and who might be able to help them.

Just before eight on a weekday morning, a long line of people, many holding papers of different sorts, snakes down the block where sits the main Kings County Civil Court. A police officer enforces a break in the line, directing people to keep free the width of a driveway, where cars enter the parking garage. Outside the locked glass doors of the courthouse, two vendors offer their wares. One is a man with a fruit cart selling bottled water and produce. The other hands out flyers, calling out, over and over again,

¹⁵ Id.

¹⁶ See Appendix A.

¹⁷ See, for example, *THE LANDSCAPE OF LITIGATION IN STATE COURTS*, Paula Hannaford-Agor, Scott Gravea and Shelley Spacek Miller. Williamsburg, VA: National Center for State Courts, 2015. Available at <http://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

¹⁸ *SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES: THE RESULTS OF TWO SURVEYS. SELF-REPRESENTED LITIGANTS IN THE NEW YORK CITY FAMILY COURT AND NEW YORK CITY HOUSING COURT*, Office of the Deputy Chief Administrative Judge for Justice Initiatives. New York, NY: Office of the Deputy Chief Administrative Judge for Justice Initiatives, 2005. Increases in funding to legal aid have reduced the percentage of unrepresented tenants to 83 percent at the time of this writing (October 2016).

“Moving! Free Storage! Moving! Free Storage!” This is the public entrance to the court. Judges and court staff have their own entrance, down the block on the corner.

When the public entrance is unlocked, people file in slowly, following a line of ropes leading past a table of plastic tubs and up to a large “STOP” sign. Attorneys who have gone through background checks may show their credentials and enter through the public entrance without search. The public, by contrast, is greeted by a court officer who calls out gruffly, “Once you’ve emptied your pockets, come up to the STOP sign.” Gruffness will characterize much of the communication from court officers to the public, both in the hallways and in the courtrooms. Cloth bags, plastic sacks, purses and an occasional briefcase pass through these x-ray machines as their owners file through metal detectors. On the other side is an entry-way both high and dingy. The Brooklyn court is a converted office building, neither a pretty nor a pleasant space. A sign reads, “Information Desk. EXIT.” Just beyond it waits a bank of old, slow elevators, at least one of which is usually out of order. A court officer points to an open door and announces that this car is for judges and court staff only. Men and women in suits file in. The public waits its turn, standing in line sometimes for twenty or thirty minutes to use these elevators. Those who can, take the stairs.

If she is responding to an initial nonpayment petition - the landlord’s legal demand that the tenant pay rent owed or face eviction - the tenant’s first task is to file an answer. Under law, the tenant is required to answer within five days of receiving the Notice of Petition. It is not possible to file electronically in this court, so the answer must be filed physically with the Landlord-Tenant Clerk’s office, a bank of glassed-in windows along one side of a room on the second floor. When people arrive there, they find another line, stretching out into the hallway and looping back and forth around in front of the elevators. People wait here in the first line to tell the clerk at the information window why they are visiting the clerk’s office that day. Once the clerk determines why each is there, each receives a number.

People then wait on wooden benches in the clerk’s waiting room until their number is called and they are told which window to visit. Most people waiting will be answering “in person”: when their number is called, they will file their answer orally by speaking with a clerk, who will record their stated defenses and inform them of their court date. New York City courts provide standardized answer forms, which list the possible defenses to the claim of nonpayment.¹⁹ In the clerk’s waiting room, large signs list these possible answers and define each briefly. A big flat screen TV plays informational videos in English and Spanish, advertising the availability of various services such as interpreters and the court Help Center. The videos also explain basic concepts of housing law and the roles of different courthouse personnel. In the back of the waiting room is a table staffed by Housing Court Answers, a local nonprofit organization that provides information about law and court processes to unrepresented people involved in eviction cases.

When the court is busy, visitors may wait well over an hour – occasionally as long as two hours -- to get through their tasks with the clerk. People who have come to court because they have an appearance scheduled before a judge may find the small sign on the second floor that lists the “parts” of the court and the room number where each part is held. If they do not find this sign, they can visit each floor and inspect each courtroom’s door. Or they can ask someone. The courthouse opens at 8 a.m., and judges take the bench at 9:30. All tenants will have received an appearance time of either 9:30 a.m. or 2 p.m., but this scheduled time has little to do with the actual time of their appearance. Most courtrooms do not start actually calling individual cases until well after 9:30. Litigants must wait, sometimes for hours, until their case is called. It is often difficult for people to figure out what they are meant to do and how. For example, a first task for litigants when a courtroom opens is to find a specific number and use it to check in with the court officer. As the court officer will announce, this “number is not on any of the documents you received from the court.” Rather, it is listed on a piece of paper posted in the hall outside the

¹⁹ See Appendix B.

courtroom. Many first-time litigants seem lost, “sitting there waiting to be scolded” into doing what comes next, as one Navigator described to us.

While people wait, they may watch informational videos, like those in the clerk’s office, playing on large monitors. They are often waiting not only to see a judge, but also to be called into the hall by their landlord’s attorney. There they will talk about their case and perhaps arrive at some kind of settlement. Not all attorneys exhibit the highest degree of professionalism in these hallway conferences; for example, we heard reports of bullying, deception and sexual harassment. Even when one’s landlord’s attorney is professional and respectful, this interaction can nevertheless be very intimidating for a tenant without representation. And also high stakes: a recent study in this court found that average demands for back rent were over \$4,000,²⁰ and eviction is a potential outcome of a nonpayment action.

B. The New York City Court Navigators Program

It was into this context of chaos, high case volumes and low rates of attorney representation that Chief Judge Jonathan Lippman launched the Court Navigators program. Navigators are lay people who assist litigants who appear in court without attorneys to represent them. Navigators were conceived as assistants for unrepresented litigants in contexts where the vast majority of individuals appear unrepresented and most of their opponents are represented by lawyers.

On February 11, 2014, Chief Judge Lippman announced in his State of the Judiciary speech what he described as:

[A] series of court-sponsored incubator projects to expand the role of non-lawyers in assisting unrepresented litigants. This idea of finding ways for non-lawyers to help pro se litigants is one that has only just begun to emerge in the United States. But it has taken hold elsewhere in the common-law world, including the United Kingdom, to great positive effect. With the new projects that we announce today, it is my hope that we can graphically illustrate the tremendous difference non-lawyers can make in closing the justice gap.

That same month, three different pilot Navigator projects commenced under the general guidance of a special task force appointed by the Chief Judge. The pilot projects operated within the New York Civil Court, under the Supervision of Deputy Chief Administrative Judge Fern Fisher and with close participation of community groups and regular input from legal aid organizations and bar associations.

All of the pilot projects shared a general approach, described by Chief Judge Lippman in the 2014 State of the Judiciary speech:

. . . . This kind of one-on-one assistance will include providing informational resources to litigants and helping them access and complete court do-it-yourself forms and assemble documents, as well as assisting in settlement negotiations outside the courtroom.

Most significantly, for the first time, the trained non-lawyers, called Navigators, will be permitted to accompany unrepresented litigants into the courtroom in specific locations in Brooklyn Housing Court and Bronx Civil Court. They will not be permitted to address the court on their own, but if the judge directs factual questions to them, they will be able to respond. They will also provide moral support and information to litigants, help them keep paperwork in order, assist

²⁰ DATA BRIEF: PROVIDING NON-LAWYER ASSISTANCE TO NEW YORKERS IN HOUSING COURT, University Settlement and Housing Court Answers, Table 1, 2014.

them in accessing interpreters and other services, and, before they even enter the courtroom, explain what to expect and what the roles are of each person in the courtroom.

Clear guidelines govern what a non-lawyer can and cannot do to ensure that they do not cross the line into the practice of law. They will receive training and develop expertise in defined subject areas. When these non-lawyers confront situations where the help of a lawyer is crucial, they will have access to legal service providers for help and referrals.

An Order issued by the Chief Administrative Judge of the Courts codified these protections and authorizations.²¹

C. Similarities among the Three Navigator Pilot Projects

Though the three Navigator pilot projects differ in important respects, all involve the same core capacities. New York Court Navigators can provide a range of in-court assistance to unrepresented litigants, including:

- Providing information about
 - the legal process the litigant is involved in.
 - the courthouse and the roles of the different people who work there.
 - resources that the litigant might find helpful, including legal services and social services available both inside and outside the courthouse.
- Assisting litigants in organizing papers they bring to court.
- Accompanying litigants
 - to meetings with clerk's office staff,
 - during hallway conversations with the opposing side,
 - during conferences with court attorneys, and,
 - during appearances before a judge.
- Speaking in court in answer to factual questions addressed directly to them by a judge or court attorney.

Court Navigators may not give legal advice, advocate for or otherwise represent litigants before the court or in conversations with the opposing side's attorney, nor may they fill out forms on litigants' behalf. While serving in court, all Navigators wear badges identifying themselves as Navigators and signaling that their presence is approved by the court.

Beyond the core capacities shared by all Court Navigators, the three models of Court Navigator represented in the pilot projects are distinctive in their aims and design. Each is described below.²²

²¹ See Administrative Order of the Chief Administrative Judge of the Courts 42-14, February 11, 2014. Available at <https://www.nycourts.gov/courts/nyc/SSI/pdfs/AO-42-14.pdf>.

²² A summary table in Appendix C of the full report succinctly describes the pilot projects, their aims, and the findings for each.

D. Descriptions of the Three Navigator Projects

1. Access to Justice Navigators Project

Navigators in the Access to Justice Navigators pilot project provide in-court assistance only. They are “Navigators for the day.” Access to Justice Navigators may accompany unrepresented litigants when they meet with judges, court attorneys, or the other side’s attorney, whether in the hallway or the courtroom. They may also assist unrepresented litigants in organizing papers they have brought to the courthouse, provide information about available resources, explain court processes and the roles of different court personnel, and help find people or places in the courthouse building. All courthouses provide computer kiosks with “DIY” (do-it-yourself) legal document creation software. Access to Justice Navigators assist unrepresented litigants in using the software to prepare court forms, such as Answers to petitions of nonpayment and Orders to Show Cause. Access to Justice Navigators operate in housing court in Brooklyn, the Bronx, Manhattan and Queens, and assist in consumer debt cases in the Bronx.

Litigants learn of the availability of Access to Justice Navigators through signage in the courthouse and announcements made in the courtroom. Near the beginning of the courtroom’s workday the judge or court attorney will announce that Navigators are available to assist and that people should sign up if they would like assistance that day.

In all of the courthouses in which they are active, Access to Justice Navigators projects have common elements of staffing and training, though recruitment, supervision, workflow and activities can be organized in different ways in different courts. All Access to Justice Navigators are volunteers, and all receive a 3-hour training including videos in which actors (often members of court staff) role-play common courthouse scenarios. They receive basic instruction about their role and an orientation to housing court, a manual, and copies of informational materials produced by the court and various nonprofit organizations. The training is interactive, with opportunities for Navigator-trainees to ask questions. To participate in the Access to Justice Navigators project, volunteers commit to serving at least 30 hours over the course of the three months after training.

In the different courthouses where they work across the city, the Access to Justice Navigator role has been implemented in somewhat different ways, including:

a. Differences in the amount of supervision:

- Because of a scarcity of court funding in the State of New York, the model of supervision varies across different courthouses. In some courts, Access to Justice Navigators are supervised by court staff assigned exclusively to this task. In other courts, supervision of the Access to Justice Navigators is a task added to the existing job responsibilities of a court attorney who works with the judge in the courtroom.
- Court attorneys differ in their engagement with the Access to Justice Navigators. Some estimate spending as much as an hour each day organizing the Access to Justice Navigators’ work and answering questions. Others are more hands-off.

b. Differences in what supervision entails:

- All Access to Justice Navigators receive the core training developed by the court. In some courts, supervisors organize additional activities that involve shadowing more experienced Navigators and supervisors’ observation of them at work and frequent feedback. The purpose of this “on-the-job” training is to help Navigators be more effective in their interactions with court staff and litigants while remaining within the bounds of the Navigator role.

- In some courts, the Navigators’ supervisor allocates Navigators across different areas of the courthouse based on anticipated workflow; in others, the Navigators decide themselves where to focus their efforts.

c. *Differences in activities:*

- In some courts, Access to Justice Navigators work only in a single courtroom; in others, they work in multiple courtrooms and actively roam the hallways.
- As we will discuss below, the specific tasks Navigators are most likely to perform differ from court to court.

d. *Differences in the source and compensation of those staffing the Access to Justice Navigator role:*

- Though all Access to Justice Navigators are volunteers, they have different credentials and experience. Most have been college students. Some law students and retirees have also participated in the project.
- Some of the college students are receiving course credit; others are not.

Since the project began in February 2014, 604 people have served as Access to Justice Navigators in housing court and 72 people have served as Access to Justice Navigators in consumer debt cases.

2. Housing Court Answers Navigators Project

Navigators in the Housing Court Answers Navigators pilot project provide in-court assistance only. They are, like Access to Justice Navigators, “Navigators for the day.” Currently, the Housing Court Answers Navigators work in the Brooklyn Housing Court. This pilot project is operated by Housing Court Answers, a New York City nonprofit organization that assists people with information about housing court and local housing laws and regulations.²³ Two days each week from 9a.m. to noon, as people line up at the clerk’s office to file paperwork or ask questions, Housing Court Answers Navigators work the line, approaching them and asking them if they are in court “because they have received nonpayment papers.” If they meet the criteria for project eligibility²⁴, a Housing Court Answers Navigator will offer to assist the litigants in filing an answer. The Brooklyn court uses a standardized answer form. The form lists the possible defenses that a tenant may have to the landlord’s claim that she owes unpaid rent, such as that notice was not properly served, that the amount demanded is incorrect, or that the conditions of the apartment are not up to code.²⁵ Using an informational script, the Housing Court Answers Navigator takes the unrepresented litigant through the potential defenses on the form. The Housing Court Answers Navigator accompanies the litigant to the clerk’s window, where the form is then filed as an answer in person with the clerk, and signed “Navigator.” All Housing Court Answers-navigated cases are currently assigned to the same courtroom, that in which Access to Justice Navigators and employees in the third Navigator project, University Settlement (see below), currently work. As part of their interaction with litigants, Housing Court Answers Navigators conduct an assessment to determine whether litigants are candidates for services from University Settlement.

²³ See <http://cwtfhc.org/>.

²⁴ To receive Housing Court Answers assistance, a litigant must be a named respondent on a nonpayment case who is in court to file a first time answer. The housing must be a rent-stabilized apartment, and cannot be in zip codes 11212 or 11226 (such cases are referred to the Legal Aid Society).

²⁵ See Appendix B.

Housing Court Answers Navigators are volunteers; almost all have been college students, though some have been law students. Some receive course credit; others do not. Housing Court Answers Navigators receive the Access to Justice Navigators training described above, as well as an additional training provided by Housing Court Answers staff. In addition, during the time that Housing Court Answers Navigators are working, a paid supervisor is present overseeing their work.

During the first year of the pilot project, 15 people worked as Housing Court Answers Navigators.

3. University Settlement Navigators Project

Navigators in the University Settlement Navigators pilot project work in the Brooklyn Housing Court. University Settlement Navigators are paid employees of University Settlement, a New York City nonprofit organization that provides social and human services.²⁶ The University Settlement Navigators pilot project coordinates activities with the Housing Court Answers pilot project, whose eligibility screening is used to identify cases to be referred to University Settlement for further screening and possible intake. The University Settlement Navigators pilot project focuses on cases that both meet the eligibility requirements for the Housing Court Answers project and have characteristics that suggest that the University Settlement Navigators project may be able to make a difference in case outcomes. The University Settlement Navigators project targets tenants who may be particularly vulnerable to eviction, such as those with limited English proficiency, limited literacy, cognitive limitations, or underlying social service needs that may be contributing to housing insecurity, those facing claims for substantial amounts of back rent, and those eligible for rent subsidies or other social programs.

University Settlement Navigators work their cases from intake through resolution and beyond. In addition to providing in-court assistance with paperwork and accompaniment to meetings with judges and court attorneys, University Settlement Navigators work to connect litigants with eviction-prevention grants, city, state and federal benefits for which they are eligible, and services for social and other needs they may identify, such as family mediation or mental health treatment. University Settlement Navigators are present with litigants when they have court appearances, and check in with them repeatedly over the life of their cases and after their cases conclude.

For most of the life of the University Settlement Navigators project, two full-time University Settlement Navigators, sometimes assisted by part-time University Settlement Navigators, have worked in the Brooklyn courthouse. Their work is coordinated by a paid supervisor who oversees the project.

E. Relationships between the three pilot projects

Access to Justice Navigators work in courts in four of the City's boroughs, including the Brooklyn Housing Court that is the site of the Housing Court Answers and University Settlement pilot projects. At present, Housing Court Answers and University Settlement work together to coordinate intake in the Brooklyn courthouse, while the Access to Justice Navigators pilot project operates independently of the other two. The three pilot projects differ in how they connect with litigants and organize the flow of cases served. Access to Justice Navigators offer services to all litigants on both sides, and serve those who accept the offer, with the only eligibility screen being that the litigant has no lawyer representation. The Housing Court Answers pilot project serves tenants filtered through a more elaborate eligibility screen, as

²⁶ See <http://www.universitysettlement.org/us/about/>.

described above. The Housing Court Answers pilot makes referrals to the University Settlement pilot for further screening.

III. Findings of the Evaluation -- Appropriateness

The evaluation follows the framework developed for the research, focusing on three challenges that all Roles Beyond Lawyers programs must meet in order to be successful:

- Appropriateness: identifying a discrete bundle of tasks that makes a difference in the conduct of some legal matter and can be successfully carried out by someone who does not have the full formal legal training that has traditionally led to bar admission.
- Efficacy: carrying out that appropriate bundle of tasks competently and with desired impact.
- Sustainability: organizing and funding the production of services in a durable way, so that key stakeholders accept the new role and perceive positive value from it.

Because the different Navigator pilot projects both share core competencies and were created with different aims and important differences in their design, we discuss them both as an umbrella Navigator program and separately as distinct pilot projects.

Appropriateness requires crafting a role that makes a positive difference in the conduct of a matter but does not require the full qualifications of an attorney. Here, we focus on the perspectives of stakeholders who have expertise in the relevant law and court processes, including attorneys, judges and other court staff, and those involved in the design and implementation of the Navigator program and the three pilot projects.

A. Broad Agreement on Appropriateness of Core Aspects of the Navigator Role

Stakeholders were generally in agreement that all forms of Navigators were an appropriate model for achieving improvements in litigant experience and enhancing unrepresented litigants' participation in their own cases. They judged that the core capacities of all forms of Navigators – information, moral support, and accompaniment through case activities – could be used effectively by trained lay people, and that these capacities showed promise to achieve the aims of improved litigant experience and enhanced litigant participation. Some spoke in terms that strongly echoed what scholars term *procedural justice*: people's sense that a decision process was fair and incorporated their participation, that they were treated with respect, and that the decision-maker was impartial.²⁷ These stakeholders wished unrepresented litigants to have an experience that these litigants perceived as fair and just. They wanted unrepresented litigants to have information that would help them understand what was happening to them and with their cases. They described Navigators as providing this information and also moral support. They emphasized that an important part of training was explaining to Navigators what they should *not* do, as a way of helping Navigators to understand the boundaries of the practice of law, so that they could be sure not to “cross the line.”

²⁷ *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE*, E. Allen Lind and Tom R. Tyler, Springer, 1988.

B. Varied Views on Expectations of Broader Impact

Some stakeholders envisioned a further expanded role for Navigators. These stakeholders shared the view that the Navigator role was an appropriate model for achieving procedural justice, but they believed Navigators could achieve other goals as well. These stakeholders focused on material outcomes. They believed that Navigators could and should change the legal outcomes of the cases they assisted, and in so doing contribute to the attainment of goals beyond the conduct of court cases, such as preventing evictions or maintaining the stock of rent-stabilized housing. These stakeholders believed that providing information, accompaniment through court processes, connections to useful services, and moral support were appropriate capacities for trained nonlawyers, but they also further expected that these activities could change both the legal and real-life outcomes of court cases.

C. Conclusions: Appropriateness

Stakeholders were in broad agreement that the Navigator roles were appropriately designed: the bundles of tasks that comprised each of the three models of Navigator were seen as being well within the capacity of trained nonlawyers and as likely to have the impacts desired by program creators.

IV. Findings of the Evaluation -- Efficacy

A program's efficacy might be reflected in a range of specific outcomes desired by pilot project stakeholders. In this report, we will focus on two: (1) usage of the service; and (2) competence of service providers. While all three kinds of Navigators were designed to be used and meant to do their work competently, the pilot projects differ in their aims and design; thus, what use and competence mean are different for the different projects. For example, case outcomes are not targeted by the Access to Justice Navigator project. Case outcomes are relevant measures of efficacy for Housing Court Answers and University Settlement Navigators, which are intended to affect the conduct of nonpayment cases.

A. Usage of Navigator Services

1. Usage by Varied Stakeholders

Most basically, a Roles Beyond Lawyers program has to be used to have positive impact. While litigants are often understood as the main users of RBL services, RBLs work can impact a range of different actors involved in the matters on which they work. In the case of Court Navigators, we identified four groups of people who effectively used Court Navigators' services, only some of whom are clients in a conventional sense: clerk's office staff, court attorneys, judges, and litigants.

Clerks and other clerk's office staff. Clerks typically have three kinds of interactions with Navigators. The first two can occur with any of the three kinds of Navigators – Access to Justice, Housing Court Answers, and University Settlement. The first type of interaction between clerks and Navigators occurs when the Navigator accompanies a litigant to file some kind of paperwork or ask a question. A second occurs when the Navigator interacts with clerks at one remove, as when a litigant interacts with clerk's office staff based on information that she or he declares having received from a Navigator. A third occurs when clerks and Access to Justice Navigators coordinate to triage litigants to the Do-It-Yourself (DIY) computer kiosks where they can complete legal forms such as answers and orders to show cause. Access

to Justice Navigators reported working with clerks to “clear the line” at the clerk’s window in the Brooklyn courthouse. The clerk at the information window would meet with litigants, try to discern what they were there to do that day, and when appropriate hand the litigant a slip of paper to give to an Access to Justice Navigator. This slip would indicate that the litigant needed to produce a specific document. The Access to Justice Navigator would then accompany the litigant to the computer and assist her in creating the document.

Court attorneys and judges. Court attorneys and judges are also users of Navigators services. Navigators may accompany litigants when they meet with attorneys or judges. In addition, Navigators can answer factual questions directed to them by judges. As we will discuss below, aspects of the context in which Navigators work affected what Navigators actually did and, therefore, the interactions they had with other participants in the cases. Judges and court attorneys in the different courthouses reported very different frequencies of interaction with Navigators. Some reported noticing them and their work, others did not. These differences corresponded with Navigators’ reports of their own activities in different courthouses.²⁸

Litigants. Litigants are the end users of all three kinds of Navigators’ services. The current Navigator projects are at the scale of pilots, and thus can serve only a small proportion of unrepresented litigants.

2. Administrative Records for Litigants’ Use of Navigators’ Services

One measure of litigants’ use of the projects’ services is provided by the administrative records of the programs themselves.

Between the beginning of the pilot and August 2016, 604 Access to Justice housing Navigators working across the city had served 9,303 tenants in housing cases. In the Brooklyn Housing Court specifically, Access to Justice housing Navigators served 1,259 litigants between the start of the project and August 2016. During this same period, 72 Access to Justice consumer Navigators served 3,196 consumers facing debt proceedings.

During two years of the pilot, Housing Court Answers Navigators records indicate answer-filing assistance to 1,371 litigants, 567 of whom were referred to University Settlement for potential services by University Settlement Navigators.

University Settlement records indicate service in 301 cases over this period.

3. Survey Findings for Litigants’ Use of Navigators’ Services

Another measure of use comes from surveys of litigants in the Brooklyn courthouse. Visitors to the courthouse were asked “while you’ve been here today, have you gotten help with your case from anyone?” As Table 1 reports, most people were not helped by anyone on the day they were surveyed: 27 percent reported getting help from someone that day while at the courthouse; 73 percent of litigants surveyed reported that they had received no help from anyone at the courthouse. Those who reported help were asked, “Who helped you? Was this person an attorney or a Court Navigator or someone else?” Of those litigants who reported being helped, the most common source of help reported was actually an attorney. Over two fifths (43 percent) of those reporting help believed that they had been helped by an attorney. Of those about two-fifths, 78 percent reported that the attorney was working with them for the whole case, while 15 percent reported receiving assistance from a “lawyer for the day.” Litigant reports thus suggest that during the summer of 2015 about 12 percent of tenants had some kind of attorney

²⁸ See below, Table 3 and accompanying text.

assistance in the Brooklyn Housing Court. However, this figure likely overstates the amount of representation actually received by tenants at that time. It is clear from the comments of the survey takers that tenants sometimes believed that their landlord’s attorney was an attorney representing them, and that some even believed that their landlord’s attorney was counsel appointed for them by the court. This misunderstanding is part of the confusion that pervades the court.

About a fifth (19 percent) of those who reported help from someone believed that they had been helped by a Navigator. This implies that Navigators in the Brooklyn Housing Court were assisting about 5 percent ($=.27 \times .19$) of litigants during the summer of 2015. These reports are an imprecise estimate of Navigators’ use by litigants since, as we have seen, people are not always clear on who has assisted them.

About two-fifths (38 percent) of those who reported getting help at the courthouse from someone reported receiving help from a person who was neither an attorney nor a Navigator, such as a court officer, a clerk or another litigant.

Table 1: Sources of Assistance Received by Litigants in the Brooklyn Housing Court: Summer 2015

Receive help in the courthouse today?	Total	Of those reporting assistance
Yes	27 %	100 %
Helped by		
Attorney	12 %	43 %
For the whole case	9 %	34 %
For the day	2 %	7 %
Court Navigator	5 %	19 %
Someone else	10 %	38 %

Source: Courthouse Visitors Survey. N=679.

Notes: Some quantities may not sum to 100 percent due to rounding and the omission of “don’t know” and declined to answer responses from the table. For example, 1 percent of respondents either did not know or did not want to report whether their attorney was working the whole case or was a lawyer for the day.

4. Litigant Survey Reports of Specific Assistance Received from Navigators

Just as important as whether Navigators’ services are used at all is *which* of the specific services that Navigators are empowered to provide are used by litigants. Tenants who reported assistance from a Court Navigator were more likely to report using Navigator assistance for some portions of their cases than for others.

Based on the information from the sample of people who believed they had been served by Navigators, as Table 2 reports, half (50 percent) of those who reported assistance from a Navigator said that the Navigator had helped them organize papers, 17 percent reported that the Navigator accompanied them in meeting with their landlord’s attorney, while 12 percent reported that the Navigator went with them to meet with the court attorney. Among the few Navigator-assisted survey respondents who had met with the judge before being surveyed, 40 percent said that the Navigator had accompanied them to meet with the judge. Because litigants do not typically know what kind of Navigator they are working with, their reports do not permit us to compare the activities of different kinds of Navigators.

Table 2. Types of Assistance Litigants Received from Court Navigators in the Brooklyn Housing Court: Summer 2015

Help organize papers	Accompany to meet with landlord's attorney	Accompany to meet with the court attorney	Accompany to meet with the judge
50 %	17 %	12 %	40 %

Source: Courthouse Visitors Survey.

Notes: Don't know, would rather not say, and not applicable responses excluded.

N=33 people reporting assistance from a Court Navigator on the day they were surveyed, of whom 5 had met with a judge, 26 had met with a court attorney, and 24 had met with their landlord's attorney.

5. Navigator Survey Reports of Activities

Navigators' reports of their own activities do allow separate examinations of the activities of the three different kinds of Navigators. They also permit a first comparison of the activities of Access to Justice Navigators working in different courts. In the survey of Navigators, each was asked to report on how frequently she or he provided seven different forms of assistance in each courthouse in which she or he reported working. Table 3 reports on results of an analysis of the activities of Access to Justice Navigators in each of the courts where they worked, as well as those of Housing Court Answers and University Settlement Navigators working in the Brooklyn Housing Court. The Table reports, for each type of assistance, the percentage of each group of Navigators who reported "frequently" or "almost always" providing each type of assistance to the unrepresented litigants whom they served.

a. Activities Reported by Access to Justice Navigators

The first panel of the Table reports on Access to Justice Navigators' activities overall and in each of the courtrooms where each reported working during his or her period of service as a Navigator. The first row reports the percentage of Access to Justice Navigators who said that they "frequently" or "almost always" gave each type of assistance in any courtroom in which they worked. Consistent with the design of the Access to Justice Navigators pilot project, the most commonly reported activities are answering litigants' questions and providing information, either about the courthouse itself (56 percent of Access to Justice Navigators reported doing this at least frequently) or about court processes (53 percent of Access to Justice Navigators reported doing this at least frequently). The next most common activity reported was escorting litigants around the courthouse (42 percent of Access to Justice Navigators reported doing this at least frequently in at least one of the courthouses where they worked). A fifth (40 percent) of Access to Justice Navigators reported that they typically helped litigants with papers or documents. Access to Justice Navigators were less likely to report that they typically accompanied litigants to talk to court attorneys or the other side's attorney (30 percent and 33 percent, respectively, reported doing these activities at least frequently). A quarter (25 percent) of Access to Justice Navigators said that they at least frequently accompanied litigants to meet with judges.

Access to Justice Navigators are meant to engage in all of the activities queried, so it is interesting to ask why they are more likely to perform some forms of assistance than others. One possibility is, of course, that litigants are more open to some kinds of help than others. However, an analysis of Navigators' reports of what they do in different courts is instructive. The second panel of Table 3 presents Access to Justice Navigators' reports of their activities in different courts. Each court in which Access to Justice Navigators work is designated by a randomly chosen letter. As the table shows, Navigators were more or less likely to perform specific tasks depending on the court in which they were working. For example, helping litigants with papers or documents was common in most courts, but not all: for example, in Court B, only 25 percent of those Navigators who had worked there reported that they frequently or almost

always helped litigants with documents in Court B. This specific finding is an example of a general pattern: Access to Justice Navigators report different patterns of activity in different courts. As we will see, a review of the evidence reveals that an important part of the differences seen across courts is associated with differences in Navigator supervision and in the openness of courthouse professionals to Navigators' presence and work.

This analysis reveals the importance of two key supports for the efficacy of this new role: supervision and cooperative court staff. The importance of supervision is illustrated by the comparison of Courts A and B to Courts D and E. Courts A and B are both environments where supervision of the Access to Justice Navigators was relatively light, while in Courts D and E supervision was active and engaged, with dedicated staff time set aside for this work. When working in the courts with dedicated supervisory staff, Access to Justice Navigators were, across the board, more active, reporting that they were more likely to provide to litigants every service that we asked them about. For example, in Court B, few Access to Justice Navigators (17 percent) reported frequently or almost always accompanying litigants to talk with the other side's attorney; few (17 percent) reported frequently or almost always accompanying litigants to talk with the court attorney; and fewer (8 percent) reported frequently or almost always accompanying litigants to meet with the judge. The picture of activity is different in Court D, where 42 percent reported frequently or almost always accompanying litigants to talk with the other side's attorney, 31 percent reported frequently or almost always accompanying litigants to talk with the court attorney, and 15 percent reported frequently or almost always accompanying litigants to meet with the judge.

The differences between Courts A and E are even more striking, and reflect the importance not only of supervision, but of the cooperation of court staff. Court A was for several months presided over by a judge who was described as "hostile" to Navigators, and who worked with a court attorney described as indifferent. It is telling that in this environment Navigators were unlikely to report that they frequently accompanied litigants to meet with the court attorney (13 percent reported doing so frequently or almost always) or the judge (none reported doing so frequently or almost always). Court E provides an interesting comparison: here, both the judge and the court attorney embraced the Access to Justice Navigators project. In this more cooperative environment, Access to Justice Navigators were much more likely to accompany the litigants they served to their meetings with the court attorney (78 percent reported doing so frequently or almost always) and the judge (89 percent reported doing so frequently or almost always).

b. Activities Reported by Housing Court Answers Navigators

The third panel of Table 3 reports on the activities of Housing Court Answers Navigators. As we described above, the Housing Court Answers Navigators focus their efforts on the front end of the case: the first trip to the courthouse to file an answer to a nonpayment petition received from the landlord. Housing Court Answers Navigators reported activities are consistent with this vision of their role: their most commonly reported activities are helping litigants with papers or documents (90 percent reported doing this frequently or almost always for litigants) and answering questions or providing information about court processes (100 percent reported doing this frequently or almost always for litigants).

c. Activities Reported by University Settlement Navigators

University Settlement Navigators take cases selected from those referred by Housing Court Answers and then follow those cases through their time in court to resolution and afterwards. University Settlement Navigators activity reports are consistent with this vision of their role: they report high rates of

“frequently” or “almost always” accompanying litigants throughout activities in the courthouse, including meetings with the other side’s attorney, the court attorney, and the judge, as well as providing information about court processes.

Though all Navigators have the same in-court capacities, the different projects exhibit distinctive patterns in the extent to which Navigators actually use each of the specific capacities. These differences reflect a range of factors, including differences in how Navigators are supervised in the different pilot projects and courthouses, and differences in the openness of judges, clerks and court attorneys to interacting with Navigators.

B. Competence of Court Navigators

Competence is reflected in work product – for example, legal documents, legal advice, or information – of satisfactory quality. Our evaluation of Navigator work product will focus on Navigators’ assessment of their own competencies, assessments of Navigators’ competence from stakeholders who interact with them or observe them at work, legal documents (answer forms), litigant understanding, and case outcomes.

1. Navigators’ Self-Assessments of Competence

As we saw above, Navigators in the different projects reported different activities. Similarly, Navigators working in the different projects also reported different activities as more successful or effective. What different types of Navigators reported actually doing (above, Table 3) paralleled their assessments of what they were successfully providing to the people whom they served. Table 4 draws on questions that asked Navigators what benefits or services they felt best able to provide to litigants. The quantities in Table 4 are the percentage of each group of Navigators who ranked each kind of assistance among the two they felt best able to provide; that is, the percentage who assigned a rank of 1 or 2 to that particular form of assistance.

Table 4 groups the different types of assistance into three categories and provides the information separately for Access to Justice Navigators and for Housing Court Answers and University Settlement Navigators.²⁹ Three kinds of assistance involve providing goods that support a positive experience of procedural justice: information about court processes, information about the courthouse, and moral support. Two kinds of help could be considered material assistance: connecting litigants to other useful services that they may want or need and helping litigants to accomplish the tasks they are in the courthouse to complete. Finally, we asked Navigators how able they felt they were to provide litigants with specifically legal help.

Providing information and support is at the core of the role intended for Access to Justice Navigators. Access to Justice Navigators see themselves as fulfilling this role. Access to Justice Navigators felt particularly effective at providing information to litigants about what was happening in their cases: 93 percent of Access to Justice Navigators ranked this form of assistance as first or second among those they felt best able to provide. Two fifths (40 percent) of Access to Justice Navigators ranked moral support as among the two forms of assistance they felt best able to provide. About the same proportion of Access to Justice Navigators (42 percent) believed that connecting litigants to useful services was among the most successful parts of their work.

²⁹ To protect Navigators’ confidentiality, the responses of Housing Court Answers and University Settlement Navigators are combined in this report. See Appendix A for details about the Navigator Survey.

Table 3. Types of Assistance Navigators Reported Giving “Frequently” or “Almost Always,” by Type of Navigator and Court

	Help with papers or documents	Answer questions or offer information about the courthouse	Escort them to a place in the courthouse	Answer questions or provide information about court processes*	Accompany litigants when talking with the other side’s attorney	Accompany litigants when they were talking with the court attorney ⁺	Accompany litigants when they were meeting with the judge ⁺
ACCESS TO JUSTICE NAVIGATORS	40 %	56 %	42 %	53 %	33 %	30 %	25 %
Court A	50 %	63 %	50 %	50 %	38 %	13 %	0 %
Court B	25 %	50 %	33 %	33 %	17 %	17 %	8 %
Court C	67 %	67 %	56 %	78 %	44 %	50 %	33 %
Court D	62 %	85 %	77 %	85 %	42 %	31 %	15 %
Court E	44 %	78 %	56 %	78 %	67 %	78 %	89 %
HOUSING COURT ANSWERS NAVIGATORS	90 %	60 %	30 %	100 %	30 %	30 %	20 %
UNIVERSITY SETTLEMENT NAVIGATORS	60 %	60 %	80 %	80 %	80 %	80 %	80 %

Source: Navigators Survey.

See Appendix A for a description of the Navigators Survey.

* p < .05 for χ^2 test of significant difference across the three types of Navigators.

⁺ p < .10 for χ^2 test of significant difference across the three types of Navigators.

While the Access to Justice Navigators’ role is designed to enhance the procedural justice of litigants’ courthouse experiences, Housing Court Answers and University Settlement Navigators’ roles were designed to change how these cases turn out. Our analysis of where Navigators saw their own efficacy bears these design features out. Two fifths (40 percent) of Housing Court Answers and University Settlement Navigators ranked the two forms of material assistance -- connections to services and help doing necessary tasks at the courthouse -- as among the services they were best able to provide. These Navigators also felt effective at explaining to litigants what was happening in their cases, with 53 percent ranking information about court processes as among the two forms of assistance they felt best able to provide.

None of the Navigator roles is meant to encompass *any* of the tasks currently considered as part of the practice of law. Indeed, all three roles are explicitly designed to provide different kinds of help to people in court for a legal problem without straying into giving those people any kind of legal advice or representation. An important component of the Navigators’ initial training is designed to communicate the importance of *not* taking actions or giving advice that might shade into legal practice. Navigators’ assessments of their own effectiveness were consistent with this limitation. All types of Navigators were unlikely to say that they felt best able help litigants with their legal problems.

Table 4. Percentage of Navigators Ranking Specific Types of Assistance as Among Those They Felt Best Able to Provide to Litigants

	Housing Court Answers and University Settlement Navigators	Access to Justice Navigators
Information and support		
Information about court processes**	53 %	93 %
Information about the courthouse	9 %	13 %
Moral support	20 %	40 %
Material assistance		
Connections to useful services	40 %	42 %
Help doing what they needed to do in court that day	40 %	23 %
Legal assistance		
Help with their legal problems	13 %	18 %

Source: Navigators Survey.

** $p < .01$ for χ^2 test of significant difference across the two groups of Navigators.

2. Review of Legal Documents (Answers)

We turn now to a review of evidence about competence as illustrated in a specific work product, legal documents. One assessment of the quality of a legal document is whether it performs successfully as the document it is meant to be – as a will, or a power of attorney, or a decree of divorce, or an answer to a petition for unpaid rent, for example.

In the sample of Brooklyn housing case files that we reviewed, every single answer filed with the assistance of a Housing Court Answers Navigator successfully performed as such. In fact, every answer

in the files we reviewed successfully performed as such. No doubt this was in part a result of two factors. The first is the codification of legal expertise into the form itself, which lists for the respondent the possible defenses to the claim of rent owed (see Appendix B). The form greatly simplifies the process of constructing an answer, and likely facilitates assistance by nonlawyers. The second is the fact that clerks did not file answers that would not function as such. This screening of answers is part of clerks' interaction with litigants. The finding that all answers performed is not trivial: this specific court process has been designed so that litigants can successfully complete it without attorney assistance, when success is defined as the creation of a legal document that performs as intended.

While all answers performed, they were not all the same. In New York law, defenses must be asserted at the time of initial answer; consequently, what is asserted on the answer form shapes the possibilities for how a respondent may develop her defense to the claim of nonpayment and the possibility of eventual eviction. Thus, a key first step in defense against a nonpayment claim is the assertion of all applicable defenses at the time of answer.

We will draw on two sources of data to investigate how Navigator assistance may have shaped defenses asserted on the answer form. In both instances it is important to recognize that cases and litigants who receive service and those who do not are not necessarily drawn from identical groups. While Housing Court Answers Navigators did not target specific litigants, but rather worked the line of those waiting at the clerk's office, litigants who accepted their services may have been different in some ways from those who did not. For example, litigants who accepted their help may have been more motivated to get or hopeful about getting a good resolution for their cases, they may have been more confident talking to strangers in a bustling place like a courthouse, and so forth. These differences in who accepts assistance may have implications for how people are likely to conduct themselves as their case goes forward. Thus, while our analyses can provide some insights into how Navigators shape the conduct of cases, they are not a definitive test of a "Navigator effect." Rather, the study is an assessment of available evidence about whether such an effect might be in operation.

The first source of data is an analysis produced by Housing Court Answers and University Settlement in collaboration. They reviewed a random sample of 100 Brooklyn Housing Court case files, comprised of 50 cases assisted by Housing Court Answers Navigators and processed in the courtroom where Navigators operate in Brooklyn and 50 cases that did not receive Housing Court Answers assistance and were processed in a different courtroom. The Housing Court Answers-assisted case files included answers that raised an average of 4.1 defenses, while the sample of unassisted cases raised an average of 1.3 defenses.³⁰

The second source of data is our review of random samples of case files selected from the records of each pilot project and from the case files of unassisted litigants. All cases were assigned to the same courtroom, the Brooklyn courtroom where all three kinds of Navigators work.³¹ Both Housing Court Answers and Access to Justice Navigators can assist with the answer step of the nonpayment process. Housing Court Answers Navigators specialize in this activity and provide this service to every litigant they serve. We compared the answers raised by tenant-litigants who received Housing Court Answers Navigator assistance to those who received no assistance. Housing Court Answers-assisted litigants raised an average of over two defenses more than those who received no recorded assistance (see below, Table 7). Navigator assistance is associated with a statistically significant difference in a key element of legal process in these nonpayment cases: the assertion of specific defenses to the claim of nonpayment and the possibility of eviction.

³⁰ See DATA BRIEF, included with the Snapshot Report described in Appendix A.

³¹ See Appendix A for information about the sample.

3. Courthouse Professionals' Assessments of the Quality of Information Provided by Navigators

An important part of the Navigator's role is to provide accurate and useful information. In this section we assess available evidence about the accuracy and utility of the information Navigators provided to litigants. This assessment could potentially be conducted in a variety of ways. Above, we reviewed Navigators' self-assessments: the vast majority (93 percent) felt able to provide information about court processes. Here, we draw on interviews with key informants for their assessment of the quality of the information Navigators were able to provide. Courthouse professionals who interact with Navigators or with litigants who report being assisted by Navigators provide a useful perspective on the accuracy and utility of the information that Navigators provide.

Among these observers of Navigators' work, University Settlement Navigators and Housing Court Answers Navigators were widely seen as competent and providing accurate and useful information to litigants, among other benefits.

Across the different courthouses where Access to Justice Navigators worked, many Access to Justice Navigators were described as highly competent, motivated, effective assistants to unrepresented litigants. However, in courthouses where Access to Justice Navigators were more lightly supervised, views of their work could be more varied. Some staff in these courthouses described incidents where they believed that Access to Justice Navigators had given litigants incorrect information, creating problems for court staff who then had to spend time re-educating litigants. As one staff member put it, "Some people want to do other people's jobs, and that's fine, but I have to fix their mistakes." At the same time, when asked directly about this issue, other staff who had frequent contact with Access to Justice Navigators in these courthouses "didn't find problems with them creating work" for courthouse staff members.

4. Litigant Reports of Understanding Court Process

An important part of moving successfully through a housing case is understanding the next steps. Litigant understanding, like the information that is meant to enhance it, could be assessed in a variety of ways. For example, we could quiz litigants before and after they received assistance from a service provider and see if their understanding of their cases improved. Another way of assessing litigant understanding is to ask for litigants' self-assessments of how well they understand their situations, which is what we do here. Tenant-litigants at the Brooklyn courthouse who had seen a judge or visited the clerk before being surveyed that day were asked how well they felt they understood what happened during their meeting with the judge or clerk and how well they understood what would happen next.

Table 5 compares the responses of litigants who reported receiving Navigators' services to those who reported no assistance at the courthouse on the day they were surveyed. The Table reports, for each category of assistance, the percentage of litigants who agreed or strongly agreed with the statement that they were "able to understand what was happening" when meeting with the judge or clerk, and that they "understand what to do next" in their case. Because most people (just under three quarters) reported receiving *no help* from anyone at the courthouse on the day they were surveyed, and only about a sixth (17 percent) had met with a clerk or judge at the time of survey, the cell sizes for the analysis are in some instances quite small; thus, small differences are less likely to be statistically significant.

Table 5. Tenant Understanding of What Happened in Contacts with Judge or Clerks and What to Do Next, by Type of Helper: Brooklyn Housing Court, Summer 2015

	Understood what was happening	Understand what to do next
Helped by		
No one	86 %	85 %
Navigator	100 %	100 %

Source: Courthouse Visitors Survey.

N=75 people who had met with a judge or clerk on the day they were surveyed. “Don’t know” and “prefer not to say” responses excluded.

The differences between assisted and unassisted tenants are not statistically significant, but they are notable. While rates of reported understanding among all litigants were generally high, those among Navigator-assisted litigants were universally high. Most litigants (at least 85 percent) reported that they understood what was happening when they met with the judge or clerk, and that they understood what to do next -- regardless of whether they received any kind of help at the courthouse. While this high rate of reported understanding may reflect some people’s wish to be agreeable with the survey-taker or desire not to appear confused in front of a stranger, it is also consistent with findings from other studies of how people understand and handle civil justice problems. These studies find that people often report that they believe that they understand their situations and their options for handling them.³² All (100 percent) of the litigants who reported being assisted by Navigators agreed or strongly agreed with the two statements about understanding.

Another lens on tenants’ understanding comes from analysis of open-ended responses to the last question on the litigant survey. At the end of the survey, people were asked “What kinds of help would have made today’s visit to the courthouse easier for you?” Several themes emerged in these responses: wishes for legal assistance, need for money to pay a lawyer or rent, need for more information, a sense that the court was unfair, a sense that court staff were hostile or rude. In these open-ended responses, 15 percent of tenants expressed a wish for more information. This percentage was basically identical whether the tenant reported being assisted by a Navigator (15.2 percent of those assisted wished for more information) or not (15.6 percent of unassisted tenants expressed a wish for information).

5. Litigant Reports of Procedural Justice Experiences

When people believe that a decision process was fair and incorporated their participation, that they were treated with respect, and that the decision-maker was impartial, they experience what social psychologists have termed “procedural justice,” a positive sense of the just-ness and fairness of the process leading to a legal decision or outcome. An early investigation of the Navigator program found that people who had received Navigators’ services evaluated the experience of receiving those services in highly positive ways. In a survey of 61 litigants helped by Navigators, most respondents reported that “Navigators were helpful, courteous and understood their questions.” Most agreed that Navigators had helped them to “understand what was happening in their case” and to “feel that progress was being made in their case.”³³

³² WHAT WE KNOW AND NEED TO KNOW ABOUT THE LEGAL NEEDS OF THE PUBLIC, Rebecca L. Sandefur, *University of South Carolina Law Review* 67:443-459, 2016.

³³ Navigator Snapshot Report, p. 7. See Appendix A for details.

Another lens on procedural justice focuses not on satisfaction with a service received, but rather the experience of the actual process itself: the experience of moving through a nonpayment proceeding or receiving a court’s decision.

Evidence about the relationship between Navigator service and the procedural justice of these experiences is provided by examining whether service from a Navigator is associated with increases in people’s sense of procedural justice when they do have interactions with court personnel. Table 6 reports on the results of another analysis of the litigant survey. Litigants who had seen a judge or clerk at the time of the survey were asked about aspects of the procedural justice of that experience.

Table 6. Procedural Justice Experiences of Litigants, by Type of Help Received: Brooklyn Housing Court, Summer 2015

	Had chance to tell own side of story ⁺	Treated with respect	Treated fairly
Helped by			
No one	64 %	91 %	80 %
Navigator	100 %	100 %	80 %

Source: Courthouse Visitors Survey.

N=75 people who had met with a judge or clerk on the day they were surveyed. Don’t know and prefer not to say responses excluded.

⁺ p<.10 for χ^2 test of significant difference between Navigator-assisted and unassisted cases.

Table 6 compares Navigator-assisted and unassisted litigants on three conventional measures of procedural justice. Each aspect of procedural justice is measured by tenant-litigants’ report of their level of agreement with statements describing their experience with the judge or clerk: “I had a chance to tell my side of the story”; “I was treated with respect”; “My case was handled fairly” (for those who saw judges) or “I was treated fairly” (for those who saw clerks). The table reports the percentage of litigants who agreed or strongly agreed with each statement by type of assistance received.

The pattern of differences and similarities is instructive. No significant differences emerge in comparisons of whether the litigant was treated fairly or treated with respect. However, a large difference emerges in the comparison of whether litigants had a chance to tell their own side of the story: 64 percent of those receiving no assistance reported that they had a chance to tell their own side of the story when they met with a judge or clerk, while all (100 percent) of those reporting Navigator assistance said that they had a chance to tell their own side of the story. Having a chance to tell one’s own side of the story of course depends on the listener, but it also depends importantly on the speaker, her preparation of the story and her confidence in her right to tell it. Navigators were meant to encourage this kind of legal empowerment³⁴ for unrepresented litigants.

C. Case Outcomes

The final lens on efficacy is provided by an analysis of case outcomes. Navigators’ work is of course not the only factor that shapes how cases turn out – there are judges, arguments, attorneys for the other side, evidence and other facts of the situation, as well as laws that guide what happens in a case. However, the

³⁴ See MEASUREMENT OF LEGAL EMPOWERMENT THROUGH THE SUBJECTIVE PERCEPTIONS OF INDIVIDUALS, Robert B. Porter, *Impact Assessment and Project Appraisal* 32(3): 213-221, 2014.

three different Navigator pilot projects were designed to affect cases in distinct ways, in some instances by changing legal and/or real-life outcomes.

Drawing as we do on case files for our analysis of outcomes, we have available to us only some of the life history of these cases: that which is recorded by the court in the file. Case files are both a rich and a challenging source of information. They are rich in that they include a very large number of facts, such as how much money was demanded and how much was awarded, whether a warrant of eviction was issued and under what terms, what specific defenses were addressed by the judge, and many others. As a source of information, case files are challenging because the variations in case details and in record-keeping across cases can make it difficult to construct measures that are comparable across cases. For example, the case files do not reliably contain information that allows us to determine whether an actual eviction took place. We will not learn everything we want to know from reviewing case files, but we can explore how Navigator assistance is associated with certain key moments in case histories.

The analysis draws on four samples of Brooklyn Housing Court case files: those assisted by Access to Justice Navigators; those assisted by Housing Court Answers Navigators; those assisted by University Settlement Navigators; those that received no Navigator or attorney assistance.³⁵ In consultation with legal aid attorneys and creators and supervisors of Navigator projects, we identified a set of case process and result outcomes that Navigators might be reasonably anticipated to affect and which could be measured in comparable ways across case files.

All of these cases were conducted in the same courtroom, and most were presided over by the same judge. Thus, by design we provide some control for an important factor shaping case outcomes: the typical practices of a given judge and the standard operating procedures of a given courtroom. The case files were collected in summer 2015, and were drawn from cases that commenced between March 2013 and March 2015, thus allowing at least three months for each case to conclude. Most cases (91 percent) commenced in calendar year 2014.

1. Overview of Case Characteristics

Before turning to differences in the outcomes of cases served by Navigators and those that received no service, it is instructive to review the characteristics of these cases in general. The case files reveal a picture of eviction cases that is highly consistent with the image from contemporary media accounts: very low rates of lawyer representation for tenants and high rates for landlords; rent demands in the thousands of dollars; and, a decision in the landlord's favor. Specifically, the typical nonpayment case in this court:

- Pits a landlord with lawyer representation against a tenant with no representation
- Demands from the tenant an average amount of almost \$3,500.
- Concludes within three months (no more than 90 days between the date of the petition and the last recorded activity in the case).
- Is resolved in two or fewer appearances.
- Awards money to the landlord.
- Results in a formal judgment against the tenant, with a warrant for eviction issued forthwith.

³⁵ See Appendix A for a description of the case file sample.

2. Case Process Outcomes

Our analysis of case outcomes investigates two different types of case activity. One type of activity is a set of what might be termed “process outcomes”: these measures provide information about how the case moves through different activities in the court. The process outcomes we examine here are:

- Number of visits to the courthouse. This is a measure of both litigant and court burden, as each appearance requires work on the part of the court as well as time and travel on the part of litigants or their representatives. We begin counting visits after the tenant has filed an answer. We define a “visit” as an instance where both parties appeared before a judge to try to resolve the dispute or an occasion when one or the other side came to court to take legal actions once the case began. Typically, this latter kind of appearance is a tenant filing an Order to Show Cause to raise issues that can delay the execution of an actual eviction. Less often it is a landlord’s attorney filing an Order to Show Cause to receive a judgment when a tenant has not complied with a stipulated settlement.
- Duration of the case. This also is a measure of both court and litigant burden.
- Orders to Show Cause. We collected information about the number of Orders to Show Cause filed in each case. This is one measure of the use of legal maneuvers in a case.
- Use of court interpreters. New York is a diverse city, with over three million residents of the five boroughs born outside the United States.³⁶ In Kings County, which is coterminous with the borough of Brooklyn, almost half (46.3 percent) of residents speak a language other than English at home (see Appendix A). Nevertheless, the language of the courts is English: legal documents are written and recorded in English, most courthouse signage is in English, and court proceedings and many hallway interactions are carried out in English. People who lack English language facility thus face a real possibility of being unable to understand and participate in their own cases.

3. Case Results Outcomes

The results outcomes we discuss here are:

- Whether any of the tenant’s defenses were addressed in the stipulations that resolve the case. The defenses raised on the original answer form are the groundwork for any legal defenses against a nonpayment claim. Whether those defenses are addressed in the resolution of the case is one measure of litigants’ success in getting their claims addressed.
- Judge referrals to social services. These actions can help connect tenants to needed assistance that can aid them in maintaining their housing or working out a smooth transition to a new residence. For each case, we determined whether the judge had referred the tenant to the Department of Social Services or appointed a Guardian ad Litem for the tenant.
- Formal judgment on file. Preventing the entry or securing the vacating of a formal judgment is an important “win” for tenants, as having a judgment on record not only renders eviction imminent, but can affect future access to housing and credit. For each case, we determined whether a formal judgment had been entered and remained on file.
- Who will pay whom. In all of the cases under review, landlords are making claims of nonpayment of rent against tenants. Stipulations and judgments record parties’ agreements and/or the court’s

³⁶ “New York City (NYC) Foreign-Born Population – By Country of Birth. 2012 Estimates,” <https://www.baruch.cuny.edu/nycdata/population-geography/foreign-birthcountry.htm>.

determination about how much money is owed to whom. Routinely, tenants agree to or are ordered to pay landlords. However, in some instances landlords forgo rent or pay tenants if tenants will agree to move out.

- Judge orders repairs. Low-income housing stock is often in poor repair. Poor conditions and needed repairs are a common defense asserted against nonpayment petitions. A judge's order for repairs potentially improves the housing stock and also suggests an assumption or prediction that the tenant will remain in the apartment.
- Judge orders city inspection of repairs. Judges may choose to direct the landlord to inspect and repair, or they may order a city inspection of the repairs, providing independent evaluation of the premises and whether they correspond to housing code standards.
- Rent abatement for repairs. In nonpayment cases, a possible remedy for poor conditions is the abatement of rent to the tenant.
- Judge reviews rent history. Rent demands are not always accurate and do not always reflect lawful rents. One tool for assessing the accuracy and legality of rent demands is a review of the rent history for the apartment.

Table 7 reports on the analysis of case characteristics and process outcomes, while Table 8 reports on results outcomes. Each Table presents this information both for the full sample of cases in which tenants received no lawyer assistance and, separately, for cases with no Navigator assistance and cases receiving assistance from each of the three pilot projects. Interesting differences emerge in the analysis.

4. Case Characteristics, Process Outcomes and Results Outcomes for Access to Justice Navigators

Access to Justice Navigators are navigators-for-the-day, providing service to people who sign up requesting their assistance. The Access to Justice Navigator project was not designed to affect case outcomes, but rather to support people going through stressful and confusing proceedings. Certainly, in the Brooklyn Housing Court, Access to Justice Navigators provided service in particularly burdensome cases. As Table 7 reports, the cases Access to Justice Navigators worked involved significantly higher demands for back rent, by about \$1,000. Access to Justice Navigator-assisted cases involved more visits to the courthouse, more Orders to Show Cause, and lasted longer than cases that received no assistance. The analysis of case results, reported in Table 8, finds that Access to Justice Navigator-assisted cases were significantly more likely to conclude with formal judgments than were unassisted cases. There were no other significant differences in results measures: compared to unassisted tenants, Access to Justice Navigator-assisted tenants were no more likely than unassisted tenants to have any of their defenses recognized in the stipulations resolving the case, no less likely to agree or be directed to pay money to the landlord, no more likely to have the judge order repairs, and not significantly more likely to be referred to social services by the judge.

Access to Justice Navigators have relatively brief involvement with any given case – they assist on days the project happens to be staffing a given courthouse, helping litigants without lawyer representation who accept an invitation to Navigator assistance. The review of case files suggests that people who are taking up Access to Justice Navigators services are in complex and perhaps dire situations: they face larger demands for unpaid rent, their cases take longer and are in some respects more involved. Their cases tend to end less favorably. Since an Access to Justice Navigator touches a case usually only once and briefly, it is unlikely that their activities cause the differences in case outcomes that we see. Rather, the differences we see reveal a substantial need for assistance. The body of evidence is consistent with a service model that has no impact on case outcomes, but is used by tenants facing very challenging situations.

5. Case Characteristics, Process Outcomes and Results Outcomes for Housing Court Answers Navigators

Housing Court Answers Navigators are navigators-for-the-day, providing service to people screened while waiting in line at the clerk's office. The principal Housing Court Answers Navigators project goal is to assist tenants in identifying and asserting viable defenses to the claim of nonpayment. The findings support an assessment of effectiveness in achieving this goal. Compared to unassisted cases, Housing Court Answers Navigators-assisted cases look very similar in terms of the amount of rent demanded, the duration of the case and the amount of activity the case involves. However, Housing Court Answers Navigators-assisted cases differ from unassisted cases in two important respects. First, as Table 7 reports, Housing Court Answers Navigators-assisted tenants raised significantly more defenses in their answers than did unassisted tenants. Unassisted tenants raised an average of about two defenses, whereas Housing Court Answers Navigators-assisted tenants raised twice as many defenses. Second, not only did Housing Court Answers Navigators-assisted litigants raise more defenses, they were more successful in getting those defenses recognized. About two-fifths (39 percent) of unassisted tenants had one or more of their defenses addressed, while almost three-quarters (73 percent) of Housing Court Answers Navigators-assisted tenants had at least one of their defenses recognized. A common defense is a claim of substandard conditions. Housing Court Answers Navigators-assisted litigants were also more likely to see the judge order repairs than were unassisted tenants. Housing Court Answers Navigator assistance is associated with achievement of the aims intended in the pilot project's design.

6. Case Characteristics, Process Outcomes and Results Outcomes for University Settlement Navigators

University Settlement Navigators are navigators-for-the-duration. Housing Court Answers Navigators-screened litigants who meet University Settlement's service priorities are referred to University Settlement for possible assistance. University Settlement Navigators work on their cases throughout the time of legal process and beyond, providing both in-court assistance and a range of out-of-court supports, such as assistance in securing benefits, medical treatment, and counseling.

In terms of basic characteristics, the cases worked by University Settlement Navigators look very much like cases that do not receive assistance: the amounts at stake are about the same, the time to conclusion is about the same, the number of visits to the courthouse and the number of Orders to Show Cause filed are all about the same. One important difference, however, is that University Settlement Navigators-assisted tenants are much more likely to be assigned a Court Interpreter – about four times more likely, 15 percent versus 4 percent. This is consistent with University Settlement Navigators service priorities, which include limited English proficiency of litigants as a service priority. All University Settlement Navigators-assisted tenants are first assisted by Housing Court Answers Navigators, and also raise significantly more defenses than unassisted tenants.

Assistance from University Settlement Navigators is associated with statistically significant differences in case outcomes. As Table 8 reports, compared to tenants with no assistance, University Settlement Navigators-assisted tenants are more likely to have their defenses recognized by the court, and more likely to have the judge order repairs.

7. Real-World Outcomes of Eviction Cases

The case files themselves do not provide reliable information about whether evictions occurred for any group of tenants. However, we can compare Navigator project records to city eviction data to get a sense

of how Navigator service may relate to changed case outcomes. The city eviction figures for cases filed and cases calendared can give us a rough idea of how likely evictions are, but cannot be used to calculate a precise annual eviction rate for the city: not all cases calendared in a given year conclude in that year, and we cannot know how all cases filed but not calendared were resolved. Administrative records indicate that, for example, citywide in 2015 one actual eviction occurred for every 9.2 cases filed and for every 5.1 cases calendared.³⁷

The records of the University Settlement Navigators pilot project indicate that, over the first project year, the percentage of University Settlement Navigators-served cases that resulted in actual eviction was zero percent. University Settlement records indicate that this Navigators pilot project retained housing for 96 percent of the tenants it served during the first project year. Those few tenants served by University Settlement Navigators who left housing did so voluntarily rather than through eviction.³⁸ Thus, for every case served by University Settlement Navigators in the first project year, no actual evictions occurred. By comparison, across New York City, one eviction was occurring for about every nine cases filed and every five cases calendared.³⁹ The University Settlement figures thus compare very favorably with the citywide figures.

The legal and real-life outcomes of University Settlement Navigators-served cases are different from those of unassisted nonpayment cases and from citywide trends. It is instructive to consider where these differences may come from. The main difference revealed in the case file review was the court’s recognition of the tenant’s defenses: University Settlement Navigators-assisted tenants were significantly more likely to have defenses recognized than were unassisted tenants. But this finding also held true for those tenants assisted by Housing Court Answers Navigators, and all University Settlement Navigators clients are first assisted by Housing Court Answers Navigators. University Settlement Navigators-assisted tenants were no less likely than unassisted tenants to have a judgment on file, and most judgments were attended by warrants for eviction “to be issued forthwith.”

This pattern of findings suggests that what University Settlement Navigators do *outside of court* -- by connecting tenants with benefits and services that provide resources to help them reliably pay their rent

³⁷ Over the past six years, the numbers of cases filed and calendared per formal legal eviction were:

Cases per Eviction		
	Cases Filed	Cases Calendared
2010	8.3	5.0
2011	8.0	4.6
2012	7.6	4.6
2013	7.6	4.5
2014	7.8	4.7
2015	9.2	5.1

Source: Housing Court Answers, “Eviction Trends,” <http://cwtfhc.org/wp-content/uploads/2009/06/EvictionTrends1998to20151.pdf>.

³⁸ According to the records of the pilot project, these were instances in which the tenant left the apartment voluntarily because the rent burden was simply too high given her income.

³⁹ In 2015, 203,119 nonpayment cases were filed, 111,409 cases were calendared, and 21,988 evictions were carried out by city marshals. This amounts to one eviction for every nine filed cases ($9.2 = 203,119/21,988$) and one for every five calendared cases ($5.1 = 111,409/21,988$). See Housing Court Answers, “Eviction Trends,” <http://cwtfhc.org/wp-content/uploads/2009/06/EvictionTrends1998to20151.pdf>.

and comply with the terms of judgments and stipulations -- may be at least as important as the in-court services they provide.

D. Conclusions and Potential Enhancements: Efficacy

Our assessment of the efficacy of the three Navigators projects focused on usage of the service and competence in the service's performance. We considered a range of measures of each, including service records, litigants' reports of their experiences, Navigators' descriptions of their own work, and legal outcomes as revealed in case files. We consider the evidence on efficacy separately for each pilot project below. Without other information, we cannot know precisely how much of the difference in the conduct of Navigated cases is due to case selection and how much is due to these Navigators' work once they become involved in a case. However, services provided in each of the three Navigator projects are associated with impacts desired by program designers.

1. Efficacy of Access to Justice Navigators

Findings for the efficacy of Access to Justice Navigators' work suggest some successes, as well as some opportunities for enhancements.

Navigators working in the Access to Justice Navigators pilot project had served over 9,300 litigants between project inception and August 2016, a service load of about 15 litigants per Access to Justice Navigator who worked in the housing courts. Access to Justice Navigators working in the consumer debt parts of civil court served 3,196 litigants over this period, a service load of about 44 litigants per Navigator working in this context. These figures reveal very different service rates for Access to Justice Navigators in the two different types of courts. These differences reflect differences between housing and consumer cases, and also differences between courts in how Navigators' work is made known to litigants, supervised, and incorporated into the workflow in the different courts where Navigators work. Some Access to Justice Navigators in housing court reported feeling underutilized, wishing that more people would accept their assistance. This concern was seldom if ever raised by Access to Justice Navigators working on consumer debt cases.

All three pilot projects share the same core capacities of information, moral support and accompaniment through activities in the courthouse. Navigator-assisted litigants report universally high levels of understanding their cases and feelings of being able to tell their sides of the story. They do not report a greater sense of fairness. Access to Justice Navigators are more efficacious when they have active supervision and support available to them while they are on the courthouse floor, and when court staff are open to their participation in the cases. Describing Access to Justice Navigators in a courthouse that provided this kind of supervision and support, one observer concluded that Access to Justice Navigators helped *both* the litigant *and* the court. In this observer's view,

[A] Navigator is somebody that they can give an outline of their goals for conference or trial. [This] keeps them focused, close to what they want. Sometimes they're flustered, emotional, angry. [The Navigator] facilitates the conference [with the court attorney]. Some are good at reminding litigants about what they should say. [Access to Justice Navigators are] good even just for the emotional support.

The findings of the case file review suggest that the litigants who turn to Access to Justice Navigators for help are involved in particularly challenging cases, in the sense that more money is at stake, the cases last longer, and the cases involve more visits to the courthouse and Orders to Show Cause. Given that an

Access to Justice Navigator has a brief involvement in any given case and can provide only basic information and support, it is unlikely that Access to Justice Navigators' involvement in these cases causes the complexity we observe. The more likely scenario is that assistance from Access to Justice Navigators is accepted by people who have found themselves in very complex situations.

The Access to Justice Navigators pilot project does not currently coordinate intake with any other service. Litigants reach Access to Justice Navigators largely through their own initiative: litigants are offered the service and can take it up or not. Thus, Access to Justice Navigators' services are used by people who, for whatever reason – lack of eligibility, lack of capacity in other programs, lack of information about available resources – have not connected with other services. Some coordination with other Navigator projects and other resources available in the courthouse or the community could assist in a more efficient matching of needs to services.

2. Efficacy of Housing Court Answers Navigators

Findings for the efficacy of Housing Court Answers Navigators' work are consistent with both usage of the service and competence in its performance. The Housing Court Answers Navigators pilot project is at capacity under its current service model, with Housing Court Answers Navigators fully occupied in working with litigants during all the hours the project is in operation. The purpose of the Housing Court Answers Navigators project is to assist tenants in identifying and raising valid, viable defenses at the time of answer to a nonpayment petition. A review of case files suggests that litigants assisted by Housing Court Answers Navigators raise significantly more defenses than unassisted litigants, and these defenses are significantly more likely to be recognized by the court. These findings are consistent with success in the major goal of the project.

3. Efficacy of University Settlement Navigators

Findings for the efficacy of University Settlement Navigators are also consistent with both usage of the service and competence in its performance. The University Settlement Navigators pilot project operates at capacity under its current service model. A review of case files uncovers differences in legal process that may be related to later differences in legal outcomes, as illustrated in the analyses of tenants' answers to nonpayment petitions and access to interpreter services. A comparison of eviction rates for the City of New York to eviction rates in University Settlement Navigators project records finds that the percentage of University Settlement Navigators-assisted cases that resulted in a tenant being evicted was zero percent -- no actual evictions occurred in the cases served by University Settlement Navigators. The percentage of University Settlement Navigators-served cases that resulted in a tenant moving out for any reason, in these instances voluntarily, is roughly two-thirds to four-fifths *lower* than the citywide percentage of nonpayment cases that result in a tenant being evicted. At the same time, there are similarities between University Settlement Navigators-assisted cases and unassisted cases in terms of the markers available in the case files, yet University Settlement Navigators-assisted cases result in very different outcomes from the modal nonpayment case. This pattern suggests that the services University Settlement Navigators provide out of court may be at least as important as those they provide at the courthouse in preventing eviction.

This assessment of efficacy is echoed by key informants who have observed and worked with University Settlement Navigators. As one member of the Brooklyn courthouse staff told us,

The [University Settlement Navigators are] great. Because they...take complex cases where tenants have viable defenses, navigate benefits [for them and help them to work

with] other offices. A tenant might have taken six months to navigate the bureaucracy, and, by that time, might have been evicted.

V. Findings of the Evaluation -- Sustainability

The ultimate test of sustainability is, of course, time: models that persist are by that result revealed to be sustainable. New York City Court Navigators, like many Roles Beyond Lawyers programs, are at a pilot stage. The challenge is to identify markers of sustainability, including those that provide evidence about how and how successfully pilot projects may be taken to scale. RBL programs face two main challenges of sustainability: they must establish legitimacy with key audiences, including potential adversaries or competitors for the same resources, and they must be perceived to create sufficient value to justify stakeholders' support.

We collected information about a range of stakeholder groups whose support, or at least acquiescence, would be necessary for the success of Navigator programs: courthouse staff, who include clerks, court attorneys, and judges; attorneys on the opposing side of Navigated cases; Navigators themselves; funders and potential funders of Navigator projects; and litigants.

A. Legitimacy of the New York City Navigator Program

The legitimacy of any innovation, such as Court Navigators, will reflect the degree to which a range of audiences accept it as an appropriate and acceptable way of doing some work or accomplishing some goal. In New York City, assessments of Navigators' legitimacy were divided. An important division arose between those who saw the Navigators' purpose as providing moral support and information and those who saw Navigators as an important tool in eviction-prevention. Among court staff and other service providers, legitimacy was threatened when Navigators' role was not understood and when Navigators were perceived as poorly trained or supervised. Navigators' legitimacy was enhanced when stakeholders understood their role and when Navigators were perceived as competent. Among attorneys on the opposing side of Navigator-assisted cases, legitimacy was threatened when Navigators' work affected standard operating procedures.

1. Judges, clerks, court attorneys, and other service providers

For some stakeholders, particularly those associated with the courts, Navigators were a legitimate innovation only if their work expressly *did not* affect the outcomes of court cases. These stakeholders questioned whether it was desirable that Navigators' work affect the actual outcomes of cases, since "in no way shape or form do Navigators provide legal advice or representation." These stakeholders believed strongly in the court's impartial role in the cases it hears. They felt that court support of a service that actually changed the outcome of cases would violate that impartial role.

These stakeholders did highlight the value of Navigators' ability to provide moral support, basic information, and connections to out-of-court services. They also pointed to the benefits of the Navigators program for the Navigators themselves, for example, celebrating ways the Access to Justice Navigator project allowed young people to give back to their communities and explore possible careers.

Table 7. Brooklyn Housing Court Case Files: Case Characteristics and Process Outcomes

	Case Characteristics		Process Outcomes				
	Average petition amount	Landlord has attorney	Court interpreter assigned	Average visits to the courthouse	Duration in days	Average number of Orders to Show Cause filed	Average number of defenses raised in Answer
Total	\$3,449	99 %	6 %	2.4	86	1.1	3.6
No recorded assistance	\$3,154	100 %	4 %	2.3	72	1.1	1.9
A2JN	\$4,165 ⁺	100 %	4 %	3.9 ^{***}	154 ^{***}	2.6 ^{**}	2.7 ^{***}
HCAN	\$3,225	99 %	4 %	2.1	78	0.9	4.3 ^{***}
USN	\$3,887	100 %	15 %	2.3	79	0.8	3.7 ^{***}

Source: n=181 Brooklyn Housing Court Case Files. A2JN = Access to Justice Navigators; HCAN = Housing Court Answers Navigators; USN = University Settlement Navigators.

*** p < .001 for test of significant difference between this group and the unassisted group

** p < .01 for test of significant difference between this group and the unassisted group

* p < .05 for test of significant difference between this group and the unassisted group

+ p < .10 for test of significant difference between this group and the unassisted group

Table 8. Brooklyn Housing Court Case Files: Results Outcomes

	Judgment on file at review date	Any of tenants defenses' recognized in stipulations	Money to landlord	Judge refers to social services	Judge orders repairs	Judge orders city inspection	Judge inspects rent history	Rent abatement for conditions
Total	70 %	63 %	99 %	3 %	57 %	< 1 %	4 %	0 %
No recorded assistance	59 %	39 %	96 %	0 %	41 %	0 %	9 %	0 %
A2JN	86 % ⁺	42 %	100 %	10 %	52 %	5 %	0 %	0 %
HCAN	74 %	73 % ^{***}	100 %	2 %	63 %	0 %	4 %	0 %
USN	63 %	73 % ^{**}	97 %	3 %	60 % ⁺	0 %	3 %	0 %

Source: n=181 Brooklyn Housing Court Case Files. A2JN = Access to Justice Navigators; HCAN = Housing Court Answers Navigators; USN = University Settlement Navigators.

*** p < .001 for test of significant difference between this group and the unassisted group

** p < .01 for test of significant difference between this group and the unassisted group

** p < .05 for test of significant difference between this group and the unassisted group

+ p < .10 for test of significant difference between this group and the unassisted group

When stakeholders who took this view of Navigators' role doubted its legitimacy, it was usually because they had concerns about how the role was being implemented, rather than about how it was designed. Stakeholders taking this view were concerned about unevenness in Access to Justice Navigators' competence, observing that "some [Navigators] are better than others." Some of these observers believed that certain personality traits and skills were important for Navigators to be successful, and that Access to Justice Navigators were not always well-selected for these traits. Others believed that more active supervision or the requirement of longer service commitments by Navigators would improve the quality of the services that Access to Justice Navigators were able to provide.

By contrast, another group of stakeholders regarded Navigator projects as legitimate only if they did change the outcomes of court cases. For these observers, Navigators were a legitimate innovation only if they created what these stakeholders perceived as the important value: preventing evictions. Otherwise, the projects were seen as poor uses of scarce resources. As one put it, success for the Navigator projects "would really have to boil down to evictions being prevented for low income people. No matter what anybody tells you about 'They were happy with the result of their case. They got \$10,000 to move,' they're not going to find housing in New York City" after being evicted. As another observed about those Navigator projects focused on providing information and facilitating procedural justice: "if that's all they're doing...that's something that a good court attorney could do."

An additional factor that affected the pilot projects' legitimacy with court staff and other service providers working in the courts concerned how the projects were introduced to the various courthouses. When communication from central court administration to clerks, judges, court attorneys and court officers about the pilot projects was clear and timely, the results were better than when communication was confused or delayed. With a large-scale program, word of mouth and personal experience would have quickly communicated knowledge of the innovation. Here, the small scale of the pilot projects made formal communication about the projects particularly important, as the personal experience of most court staff would not have included contact with any kind of Navigator. As one Navigator put it, "there should be more communication about the program. I found myself working with court staff who never heard about the program and were not sure about the role of a Court Navigator."

2. Opposing attorneys

Attorneys on the opposing side of Navigator-served cases have not to date engaged in organized efforts to limit Navigators' impact, but they have expressed some dissatisfaction. At least initially, Navigators received some push-back from lawyers on the other side, who complained to judges or court attorneys that Navigators were acting as advocates or otherwise engaging in the practice of law. As one member of a court staff described to us, after Navigators arrived

[Opposing] attorneys are getting more difficult cases because defendants are more empowered. [When the Navigators programs were first rolled out,] court attorneys got some complaints about [Navigators being] seen as that person's advocate, [because] now people are prompting the litigant not to clam up.

Without exception, all courthouse stakeholders with whom we spoke believed that these claims were unfounded and reflected opposing attorneys' frustration at having their normal business practices disrupted. As one put it, describing the work of Navigators he had observed, "I have never seen anyone crossing the line."

3. Litigants

Litigants' views of Navigators are generally positive, but many litigants are unaware of Navigators and how they can help. As revealed in an earlier study (see appendix A), in our conversations with Navigators and their supervisors, and in reports by survey takers, people who receive assistance from Navigators are often very grateful and perceive the service to have been appropriate and to have benefited them. A number of program supervisors shared with us testimonials from litigants praising Navigators and their work. At the same time, many litigants who are offered Access to Justice Navigators' services are not accepting them, as described in the accounts of Access to Justice Navigators who expressed frustration that they wished to be helpful, but felt that litigants seldom wanted their help. It is possible that part of litigants' hesitancy in embracing the service reflects a lack of information: in the survey of litigants in the Brooklyn courthouse, only 17 percent reported that they had ever heard of Court Navigators. Once again, the pilot scale of the programs means that few people could learn of them by direct experience or through word of mouth, making active outreach more important.

4. Conclusions: Legitimacy

Overall, most stakeholders have come to accept Navigators in the courthouse, if not necessarily to embrace them. Navigator legitimacy is threatened when stakeholders lack information about what they do or how they will fit in to existing roles and tasks. Stakeholders doubt Navigators' legitimacy when they perceive them as incompetent in their roles, and or as acting outside the bounds of what these stakeholders perceive as their appropriate role -- whether by affecting the conduct and outcomes of court cases, or by failing to do so, depending on which view of Navigators' role they take.

B. Perceived Value of the Navigator Program

Stakeholders can differ in their assessment of perceived value in at least two ways: they can differ in their assessment of how much of a specific kind of value a program provides, and they can differ in their views of what specific activities or contributions constitute values rather than costs, or are simply irrelevant. In the analysis of perceived value, a key difference emerged between those who saw Navigators' contribution as providing information and moral support and those who saw their value in changing legal outcomes. In this analysis, we focus on perceived value for two key groups of stakeholders: Navigators themselves and current and potential program funders.

1. Perceived Value among Navigators

A central challenge in sustainability is creating a role that incumbents value staffing. As we have described, Access to Justice and Housing Court Answers Navigators are volunteers, while University Settlement Navigators are employees. The survey of Navigators revealed that most Navigators believe that they both create and receive value. When Access to Justice Navigators were asked how often their work as a Navigator helped people, 52 percent responded that it always or almost always did so, while an additional 39 percent said it frequently did so. Asked how often their work made a difference in the outcomes of people's court cases, 30 percent of Access to Justice Navigators responded that their work always or almost always did so, and an additional 43 percent responded that it frequently did so. When Housing Court Answers and University Settlement Navigators were asked how often their work helped people, 60 percent said that it always or almost always did so, and an additional 33 percent said that it frequently did so. When Housing Court Answers and University Settlement Navigators were asked about how often their work made a difference in the outcome of people's court cases, 20 percent said that it

always or almost always did so, and an additional 67 percent said that it frequently did so. Clearly, all types of Navigators see themselves as providing valuable and impactful services.

Nonetheless, some Access to Justice Navigators expressed frustration about what they were able to do. Some felt that more on-the-job training or better support while on task would have helped them. As one Access to Justice Navigator wrote in the Navigators survey, “the work feels kind of bleak because there are so few resources. I wish a supervisor would be available for questions.” Others wished for a broader scope of action and impact, expressing disappointment that they were not able to be more helpful.

Though Navigators indicated some areas where they desired improvements, they also reported receiving a range of benefits from their service experience. As Table 9 reports, they believed that the experience had been educational, had provided them with rewards such as personal fulfillment and self-esteem, and would be helpful to them in future work. Another telling finding from the Navigators survey was the number of volunteer Navigators who were willing to volunteer when they could have been working elsewhere for pay: almost three-quarters (72 percent) of Navigators reported that they could have been working for pay during the time they spent volunteering as a Navigator. At the same time, more than one respondent to the Navigators survey suggested that Navigators should be a paid position, as an employee of the court. These Navigators felt that their role was essential and should be a regular part of the court staff, like a clerk or a court officer.

Table 9. Navigators’ Evaluation of the Benefits of Serving as a Navigator: Percent agreeing or strongly agreeing with each statement, by type of Navigator

	Access to Justice Navigators	Housing Court Answers and University Settlement Navigators
Serving as a Navigator...		
[Is something I do] because I feel it is important to help others	95 %	87 %
Increases my self-esteem	74 %	71 %
[Helps me make] new contacts that might help my career	68 %	33 %
Lets me learn through direct "hands on" experience	95 %	87 %
Allows me to gain a new perspective on things	98 %	87 %
Allows me to explore career options	75 %	67 %
I can learn how to deal with a variety of people	98 %	80 %
Will look good on my resume	83 %	60 %
Is personally fulfilling	86 %	73 %

Source: Navigator Survey.

2. Perceived Value among Current and Potential Funders of Navigator Projects

The three Navigator pilot projects currently operate with different models of staffing and compensation. Effectively, Access to Justice Navigators are subsidized by the court system. Access to Justice Navigators are volunteers, and their training and supervision are provided by court staff. Because of limited funding

in the state court system, the predominant model is that a court attorney incorporates Access to Justice Navigator supervision into his or her initial job description, taking on Navigator supervision as an additional duty. In a minority of instances, Access to Justice Navigators work with dedicated supervisors. Housing Court Answers Navigators are also volunteers, but are supervised and supported by dedicated paid staff from Housing Court Answers. University Settlement Navigators are full- or part-time employees, whose salaries, benefits and supervision are paid for by a range of sources, and who are supervised by paid staff. Expanding any of these projects will require larger commitments from funders, whether those be philanthropies, local, state or federal government, or the court system.

Outside of the court system, potential funders of continued or expanded Navigator projects are for the most part uninterested in procedural justice and moral support for unrepresented litigants. They are interested in eviction prevention and in Navigators as one tool among several in the use of law as an anti-poverty strategy. In our conversations with these stakeholders, they indicated a willingness to consider supporting Navigators, but only if they could be shown to prevent evictions. Some funders looked forward to an expanded cadre of University Settlement-style Navigators. Others envisioned Access to Justice Navigators as adjuncts to legal aid programs, providing assistance to litigants who did not have the kinds of complex and meritorious cases that legal aid societies select for full representation.

3. Financial Sustainability of the Access to Justice Navigators Project

The court system is the current funder of the Access to Justice Navigators project. This funder prioritizes the moral support and enhanced litigant experience of procedural justice that Access to Justice Navigators were designed to provide. Keeping the projects at their current pilot scale, supplying the dedicated supervision for Access to Justice Navigators that this analysis suggests is needed for both efficacy and sustainability would require an investment of about one full time equivalent (FTE) staff annually per project per courthouse, in addition to the .4 FTE central court administration currently invests in supervising the pilot project throughout the city. Thus, providing dedicated supervision in all courthouses participating in the current Access to Justice Navigators pilot project would require an additional four FTE staff, given that Access to Justice Navigators already have dedicated, on-site supervision in two courthouses. With greater supervision, Access to Justice Navigators might be able to handle more cases than they do currently, so it is possible that expansions in scale would be possible without comparable cost increases.

4. Financial Sustainability of the Housing Court Answers Navigators Project

Housing Court Answers Navigators are volunteers working under paid supervisors. Outside of school terms, when college student volunteers are not available, supervisory staff work the project. Under the current service model, Housing Court Answers Navigators work the line of people waiting at the Clerk's office, spending one to two minutes conducting eligibility screening of each litigant. Litigants who are not eligible for Housing Court Answers Navigators services may be referred to legal services providers, to the city's Human Resources Administration, or the Help Center in the courthouse. Tenants screened as eligible who want Navigator assistance will spend 15 to 20 minutes completing the answer form with the Housing Court Answers Navigator. The Housing Court Answers Navigator then accompanies the litigant in waiting to file the answer with the Clerk's office. When the Clerk's office is busy, this third step can require as long as an hour. Under the current service model, the long lines at the courthouse limit how many people the project can serve. If Clerk's office lines were shorter, or if the project created a service model that allowed Housing Court Answers Navigators to serve more than one litigant at a time, the number served could be increased.

During one project year, Housing Court Answers Navigators screened 3,559 people for eligibility for their services and helped 544 people file answers, at a total cost of just over \$88,000. Considering only the 544 answers filed, the “per case” cost under this model is about \$162. This does not include services provided in the form of referrals or other information given to the 3,015 people who were screened and not found eligible.

Expansion of the Housing Court Answers Navigator project would require additional investment. Approximately 79,000 cases are filed in the Brooklyn courthouse each year. Based on Housing Court Answers service records, about 15 percent of tenants are eligible for and will accept Housing Court Answers Navigators services.⁴⁰ This implies a possible service population of around 11,850 people per year. Under the current service model, and not accounting for possible economies of scale, serving the entire interested and eligible population in the Brooklyn courthouse would cost roughly \$1.9 million annually. Expanding the project to housing courts in other boroughs would require comparable investments.

4. Financial Sustainability of the University Settlement Navigators Project

The University Settlement Navigators pilot project selects for service cases from among those referred to the project by Housing Court Answers Navigators. The University Settlement Navigators pilot project focuses on tenants who may be particularly vulnerable to eviction, such as those with limited English proficiency, limited literacy, cognitive limitations, or underlying social service needs that may be contributing to housing insecurity, those facing claims for substantial amounts of back rent, and those eligible for rent subsidies or other social programs. The services provided by University Settlement Navigators include not only assistance with paperwork and accompaniment through each stage of the litigant’s case, but also out-of-court work connecting the litigant with resources that can assist her in staying in housing, such as public benefits, medical treatment, eviction-prevention grants, and counseling.

In the last contract year, University Settlement Navigators provided these services to 140 tenants, at a total cost of \$149,250. Including the cost of both Housing Court Answers Navigators and University Settlement Navigators services, the total per case cost in the pilot projects under this coordinated service model averages \$1,228. By comparison, a recent report on civil legal aid in New York City estimates that service by a legal aid lawyer costs approximately \$2,500 per case.⁴¹

Expansion of the University Settlement Navigators project would also require additional investment. Housing Court Answers currently refers around two fifths (38 percent) of the tenants they serve to University Settlement Navigators. If the Housing Court Answers Navigators project were scaled up to full capacity in the Brooklyn Housing Court, they would be referring about 4,500 cases a year to the University Settlement Navigators project. If University Settlement Navigators were to take every referral, that would imply an annual caseload of roughly 4,500 cases for University Settlement Navigators. Under the current service model, the annual costs of a University Settlement Navigators project that size would be about \$4.5 million. Combining this with the estimated cost of expanding the Housing Court Answers Navigators project, around \$6.4 million would be required annually to serve all eligible and interested tenants at the Brooklyn Housing Court. By comparison, providing legal aid services to this population would cost roughly \$11.3 million. Expanding the program to housing courts in other boroughs would require comparable investments.

⁴⁰ This estimate is based on Housing Court Answers’ report of providing service to 544 of 3,559 people screened while waiting in line at the Clerks’ office.

⁴¹ This is the mid-point of the estimate range presented in Stout Risius Ross, Inc., *The Financial Costs and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A*, (2016), p. 7

D. Conclusions and Potential Enhancements: Sustainability

Our analysis of sustainability has focused on legitimacy and perceived value. We investigated both of these factors for a range of stakeholders, including court staff, litigants, funders, and Navigators themselves.

Many stakeholders value the New York City Court Navigators program and its three pilot projects. Navigators themselves value the work they do, believe that they benefit from it, that it helps others and is worth doing. Volunteer Navigators are often willing to forgo income in order to serve in this role. Litigants who are aware of and receive Navigators' services value those services. Other stakeholders, including court staff, other service providers and potential funders of Navigator projects, are divided in their assessments of Navigators' legitimacy and value. These divisions reflect the distinctive goals that these groups of stakeholders have for the Navigator program. Stakeholders focused on legal and life outcomes are less appreciative of other benefits such as procedural justice and moral support. Stakeholders who believe Navigator programs should have no impact on legal outcomes are less appreciative of projects that strive to create those impacts.

Two key opportunities for improvements emerged in the analysis of sustainability: communication and, unsurprisingly, resources. The legitimacy of the Navigator program could be enhanced by better communication with litigants, judges, court attorneys, court officers, court clerks, and the landlords and debt-buyers bars about what Navigators are and what they can do. When the arrival of Navigators changes established work routines, good communication is an important means of creating a space for the new role and openness to its use. In environments as confusing, chaotic and multilingual as the New York City courts, it can be difficult to communicate to litigants what the different roles and services available in the courthouse are and how these can help, but this is essential if litigants are to be aware of services available to them.

Expanding any of the three pilot projects will require greater investment. This is true even for the project that is currently least expensive to operate on a per-case basis, Access to Justice Navigators. There is no way to expand the Access to Justice Navigators project and support its efficacy without consistent supervision by qualified staff. This means that in high volume courts, the Access to Justice Navigators project cannot be expanded based on its current model, which often adds Navigator supervision to the existing duties of an already busy court attorney. Cost estimates for expanding the Housing Court Answers and University Settlement Navigator projects are higher than for expanding the Access to Justice Navigators project, but are substantially less – by roughly half -- than the estimated cost of providing legal aid lawyers' services to the same population.

VI. Recommendations for Future Research

As with any empirical research, the evaluation provides answers while raising further questions. Among the most important questions for further research are:

- How do project efficacy and sustainability change with increased scale? All three Navigator projects are at the scale of pilots. This small scale provides many opportunities to learn, but also means we lack some useful information. First, when projects are at a small scale, samples of people who have received assistance will be small, so researchers have less information to evaluate impact than would be the case if the projects were larger. Small differences are difficult

to detect in relatively small samples and in populations in which there is large variability in examined factors. Second, when innovation projects are at a small scale, they do not have the capacity to broadly affect the standard operating procedures of the courts or other agencies where they operate. Scale itself can change the environment for an innovation, for example affecting people's awareness of its existence. If the projects are expanded, researchers should take advantage of the existence of more data points to explore the significance of small differences and explore how increased scale affects the projects' operation and impact.

- How much of the differences in outcomes are due to case and litigant selection and how much are due to the impact of Navigators' work? This is a general question that emerges from all observational research that seeks to explore the effects of any kind of intervention. The evaluation finds a number of significant differences between the experiences and case outcomes of assisted and unassisted litigants. A determination of how much of these observed differences are due specifically to the services provided by Navigators, how much is due to differences between cases that receive Navigators' services and those that do not, and how much is due to differences between litigants who accept and do not accept assistance from Navigators would require more information. Different kinds of selection mechanisms are operating in the different Navigator projects. Access to Justice Navigators offer services broadly, and take all litigants who wish for their services. Housing Court Answers Navigators screen potential clients individually and offer their services to litigants who meet program eligibility requirements. University Settlement Navigators select cases based on judgments about their ability to make a difference, much as legal aid lawyers do.

One straightforward method for gathering information that would permit estimating more precisely the effect of Navigators' services would be a randomized controlled trial, where litigants are randomly assigned to different types of service. Given the potential cost savings of University Settlement Navigators over attorneys, such an experiment could fruitfully compare University Settlement assistance to attorney assistance in these cases.

- How could increased coordination shape the efficacy and sustainability of the projects? Currently, the Housing Court Answers Navigators project and the University Settlement Navigators project coordinate intake activities, while the Access to Justice Navigators project conducts intake independently. All Navigator projects make referrals to other programs, including the court Help Center and legal aid. There is currently no systematic process to guide people to the most appropriate service given their needs. Some mechanism of triage could be designed that might more effectively match people and cases to the services for which they are eligible and that are most appropriate for their situations.
- What role do judges and court environments play in shaping Navigators' activities and impact? Because the projects are at a pilot scale, a large share of the information about their impact comes from a single courthouse and a single courtroom. The courthouse is adverse in some ways and supportive in others. The court is a particularly busy and chaotic one. At the same time, the courtroom where Navigators work was for a substantial period of the Navigator pilots supervised by the same judge, who was highly supportive of the New York City Navigators program. It is clear from this research that courthouse environments shape what specific assistance Navigators are likely to perform, as well as many other aspects of litigant experience. Future research should

explore the efficacy and sustainability of Navigator programs in different kinds of court environments.

- What role does community context play in shaping Navigators' activities and impact? The evidence revealed here suggests that an important mechanism enabling University Settlement Navigators' impact is the existence of benefits and services to which Navigators can connect litigants. In comparison with other areas of the country, New York City is comparatively rich in these resources. Future research should explore the efficacy and sustainability of Navigator programs in other kinds of communities, with different amounts and types of out-of-court support.

Appendix A. Sources of Data

1. Navigators Survey

Between July and September 2015, we administered a web-based survey to past and current Navigators. The Navigator projects provided email contact information for 247 past and current Navigators. Fourteen of the email addresses were no longer valid at the time of survey, leaving 233 valid addresses. From contacts with these addresses, two potential respondents wrote us to explain that they had never actually served as Navigators. From these 231 potential respondents, the survey received 72 responses, for a response rate of 30 percent. This is a common response rate for web-based surveys,⁴² and not surprising given that many Navigators were students at the time of their service and had graduated and were therefore no longer using their college email accounts.

Table 10. Respondents to the Navigator Survey, by Project

Navigator Project	N
Housing Court Answers	10
Access to Justice: Housing Court	41
Access to Justice: Consumer Debt	16
University Settlement	5

Just as litigants were not always certain who had helped them, Navigators were not always certain about which Navigator project they had participated in. In particular, several Access to Justice Navigators who had worked in the housing courts identified themselves as “Housing Court Answers Navigators.” As a result, more people identified themselves as Housing Court Answers Navigators than had ever worked in the Housing Court Answers Navigators project. Since Housing Court Answers Navigators work only in Brooklyn, it was possible to identify most of the Access to Justice Navigators who had misclassified themselves by isolating those who reported being Housing Court Answers Navigators but working in other boroughs. These Navigator-respondents were reclassified as Access to Justice Navigators, as were Navigators who could not identify the project in which they worked.

2. Courthouse Visitors Survey

During June and July 2015, teams of survey-takers recruited visitors to the Brooklyn Housing Court to take a brief, five-minute survey about their experiences in the courthouse. The survey was presented to potential respondents as the “Courthouse Visitors Survey.” Survey-takers had contact with a total of 1,493 visitors to the courthouse. Seven hundred-twenty agreed to participate, for a response rate of 48 percent. While most respondents were tenants, a few indicated that they were landlords, attorneys or building managers. The findings reported here exclude all respondents who were discernibly not tenants, leaving a sample of 679.

Table 11 reports on selected characteristics of respondents to the survey and residents of the borough. As is common in all kinds of survey research, women were more likely to agree to participate than men. The most striking differences between the demographics of the borough and those of the surveyed litigants concern race and language. The language of the survey, like that of the court, is English. And, while

⁴² See, e.g., COMPARING RESPONSE RATES FROM WEB AND MAIL SURVEYS: A META-ANALYSIS, Tse-Hua Shih and Xitao Fan, *Field Methods* 20(3): 249-271, 2008.

bilingual survey takers did report translating the survey a few times for some litigants, most surveys were conducted in English. Respondents who did not feel comfortable speaking to a stranger in this language likely declined to participate, and for this reason they may be under-represented among the survey respondents.

The second finding of difference concerns the race of the visitors to the Brooklyn Housing Court. The respondents to the survey are much more likely to be African American or Black and much less likely to be Asian or White than are the residents of the borough. We strongly suspect that this difference reflects differences between racial and ethnic groups in vulnerability to eviction actions, rather than differences in response rates to the survey. Survey takers were asked to report their best guess about selected demographic characteristics of the people they approached who declined to participate. Survey takers identified 61.7 percent of nonrespondents to the survey as African-American/Black, a proportion similar to the group’s representation among respondents to the survey. Similarly, survey takers identified 13.1 percent of nonrespondents as White, a proportion similar to that among respondents. In the Brooklyn Housing Court, African-American and Black tenants are over-represented.

Table 11. Selected Characteristics of Respondents to the Survey and Residents of Kings County

	Kings County (US Census)	Kings County Courthouse Visitors Survey
Gender		
Male	47.4 %	39.8 %
Female	52.6 %	58.4 %
Race/Ethnicity		
African-American/Black	35.2 %	57.4 %
Asian	12.1 %	1.6 %
Hispanic/Latino	19.5 %	19.1 %
White, not Hispanic or Latino	35.8 %	13.4 %
American Indian, Native Alaskan or Native Hawaiian	1.1 %	0.6 %
Two or more races	2.4 %	
Language spoken at home		
English	53.7 %	89.1 %

Sources: US Census (<http://quickfacts.census.gov/qfd/states/36/36047.html>) and Courthouse Visitors Survey.

3. Key Informant Interviews

During summer and early fall 2015, we talked with a range of stakeholders, including project supervisors, potential and current project funders, Navigators, judges, court attorneys, and clerks. Our conversations ranged over a variety of topics, including those related to appropriateness, efficacy and sustainability. A few of the conversations were audio-recorded with the key informant’s permission; in all cases, we took detailed notes. All informants were promised confidentiality; for that reason, we do not provide information that would permit informants to be identified.

4. Case File Review

During June and July 2015, with the assistance of state court data staff and clerks in the Brooklyn Housing Court, we collected random samples of housing court case files of four different types: those served by Access to Justice Navigators, those served by Housing Court Answers Navigators, those referred by Housing Court Answers Navigators to University Settlement Navigators, and those initially assigned to the same courtroom (the “Navigators courtroom”) but not served by any of the Navigator projects. At the time the research was conducted, Navigators did in-courtroom work in only one courtroom in the Brooklyn courthouse. Because this project is interested in evidence of the impact of Navigators, we must do what we can to control for the impact of other factors on how cases turn out. Differences in specific judges’ behavior and in courtroom practices shape these aspects of case histories, so our sample controls for these differences by limiting the analysis to a single courtroom and comparing Navigated cases to other cases processed in that courtroom.

Our requests to the court produced 214 files, which were scanned and reviewed. We received 34 files for cases served by Access to Justice Navigators; 143 files for cases served by Housing Court Answers Navigators; 39 files for cases served by University Settlement Navigators; and 48 files that received no Navigator assistance. The different sample sizes for the different case groups reflect a range of factors, including the record-keeping practices of the different Navigator projects and the availability of specific court files at the time we made our requests. Not all of the scanned files were usable in the analysis: some were defaults, some were missing important pieces of information and, in a few, tenants were served by Volunteer Lawyers for the Day. These files were excluded from the analysis, leaving 181 files that could be analyzed.

Because of the way the projects are designed, it is possible for a case to be served by more than one type of Navigator. All University Settlement Navigators cases are first served by Housing Court Answers Navigators, and cases that Housing Court Answers Navigators serves but University Settlement Navigators does not take up can later receive services from Access to Justice Navigators. However, in our sample, we did not discover any cases where a Housing Court Answers Navigators-assisted person later received assistance from an Access to Justice Navigator.

5. Snapshot Report

In February 2015, the Committee on Nonlawyers and the Justice Gap, working with Professor Jeffrey Butts of John Jay College of Criminal Justice and state court data staff, produced an initial report on the Navigators programs in the Brooklyn Housing Court. The Snapshot Report drew on a small survey of litigants assisted by Navigators, survey-takers’ observations, a review of case files, and conversations with a small set of key informants. The report is available here: <http://nylawyer.nylj.com/adgifs/decisions15/022415report.pdf>.

Appendix B. Answer Form

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF _____: HOUSING PART

Index No. _____

Petitioner(s),
-against-

LANDLORD/TENANT
ANSWER IN PERSON

Name: _____

Address: _____

Respondent(s).

Respondent / Person claiming possession has appeared and orally answered the Petition as follows:

SERVICE

1. _____ I did not receive the Notice of Petition and Petition.
2. _____ I received the Notice of Petition and Petition, but service was not correct as required by law.

PARTIES

3. _____ My name appears improperly , or by the wrong name , or does not appear on the Notice of Petition and Petition ; the tenant is dead .
4. _____ The Petitioner is not the landlord, owner of the building, or otherwise a proper party.

RENT

5. _____ The Petitioner never asked me or properly asked me for the rent, orally or in writing, before starting this case.
6. _____ I or someone on my behalf tried to pay the rent, but the Petitioner refused to accept it.
7. _____ The monthly rent asked for is not the legal rent or amount on the current lease.
8. _____ The Petitioner owes money to me because of a rent overcharge I paid for repairs or services
9. _____ The rent, or a part of the rent, has already been paid to the Petitioner.

APARTMENT/HOUSE

10. _____ There are or were conditions in the apartment and/or the building/house which the Petitioner did not repair and/or services which the Petitioner did not provide.
11. _____ The petition does not properly describe the apartment/house: wrong apartment/house number ; wrong or missing program(s) and/or laws covering my tenancy .
12. _____ The apartment/house is illegal.

OTHER

13. _____ The Petitioner has harmed me by waiting too long to bring this case (laches).
14. _____ General denial.
15. _____ **NEW YORK CITY ONLY** The Petitioner has harassed me _____
16. _____ I serve in the military or depend on someone in the military.
17. _____ The petitioner seeks the HUD or Housing Authority Section 8 part of the rent . The petitioner did not notify HUD or the Housing Authority about this case Other: _____

18. _____ **COUNTERCLAIM:** I seek a judgment and/or order based upon the above defense(s).
19. _____ Other counterclaim(s): _____

Dated

Clerk / Judge's Initials

COURT DATE

DATE: _____ TIME: _____ PART: _____ ROOM: _____

THE CLERK CANNOT CHANGE YOUR COURT DATE. YOU MUST COME AND BRING THIS FORM AND ALL OF YOUR PROOF (RECEIPTS, PHOTOGRAPHS, ETC.) WITH YOU. BE AT THE COURTHOUSE AT LEAST 30 MINUTES BEFORE YOUR COURT DATE, TO ALLOW TIME TO GO THROUGH THE METAL DETECTORS. IF YOU ARE LATE OR DO NOT APPEAR, YOU MAY LOSE YOUR CASE AND BE EVICTED. IF YOU ARE UNABLE TO SETTLE YOUR CASE, YOU MAY HAVE AN IMMEDIATE TRIAL. IF YOU WILL NOT BE READY FOR TRIAL, YOU MUST ASK THE JUDGE FOR A NEW DATE. THE JUDGE WILL THEN DECIDE IF YOU HAVE SHOWN A GOOD REASON TO POSTPONE YOUR CASE.

For assistance visit a Help Center in the courthouse or the Court's website: <http://nycourthelp.gov/>

CIV-LT-91(Revised April 24, 2013)

Appendix C. Summary of Goals, Design, Evidence of Impact and Possible Improvements

Program Goals	Tasks Performed	Evidence of Impact	Possible Improvements
<p>Access to Justice Navigators (courts throughout the City of New York)</p> <p>Moral support, information about the system and process, procedural justice and sense of fairness, empower to tell own side of the story.</p>	<p>Provide services for the day only and in court only. Provide information, accompany unrepresented litigant through tasks at the courthouse, including meetings with attorneys, judges and clerks. Assist in organizing papers. Assist in the use of court-provided “Do It Yourself” computer technology to create legal documents.</p>	<p>Surveys of litigants revealed that litigants who received the help of any type of Navigator were 56 percent more likely than unassisted litigants to say they were able to tell their side of the story. No other statistically significant differences in procedural justice experiences were found.</p>	<p>The project is most successful under two conditions: (a) when Navigators have dedicated supervision and additional “on-the-job” training to supplement their initial training; (b) when judges, court attorneys and other court staff are well-informed about Navigators and their role and not opposed to their presence. Though this is the least expensive Navigator program, increases in funding for Navigator supervision and greater investment in training court staff are indicated.</p>
<p>Housing Court Answers Navigators (Brooklyn Housing Court)</p> <p>Improve tenants’ understanding and ability to put forward their side of the case. Change legal outcomes by assisting tenants in raising legally valid defenses to eviction.</p>	<p>Provide services for the day only and in court only. Provide information and assistance in completing a legal document, the Answer to the landlord’s petition of nonpayment. Accompany litigant to meet with the clerk, file answer and receive court date.</p>	<p>Tenants assisted by Navigators asserted more than twice as many defenses as tenants who received no assistance. They were 87 percent more likely than unassisted tenants to have their defenses recognized and addressed by the court. For instance, judges ordered landlords to make needed repairs about 50 percent more often in Navigator-assisted cases.</p>	<p>Increased resources would permit expanded service. A modified service model might permit service to a larger number of people with the same resources.</p>
<p>University Settlement Navigators (Brooklyn Housing Court)</p> <p>Prevent evictions.</p>	<p>Provide services for the life of the case, both inside and outside court. Provide information, moral support and accompaniment to meetings with judges, attorneys and clerks. Work with tenant to make connections to benefits and human and social services that can support the timely and full payment of rent.</p>	<p>Zero percent of tenants assisted by Navigators experienced eviction from their homes by a marshal. By contrast, in recent years, one formal eviction occurs for about every nine non-payment cases city-wide.</p>	<p>Increased resources would permit expanded service.</p>

Appendix D. Acknowledgments

Over the course of this research project, many people made contributions that improved it and, indeed, made it possible. We are particularly grateful to the Public Welfare Foundation and its president Mary McClymont for funding and other support of the project, and to Judge Fern Fisher, Roger Maldonado, Fern Schair, and Richard Zorza for their sustained engagement with the research. We also thank Katherine Alternator, Martha Bergmark, Steve Crossland, and Paula Littlewood for their insights and advice. Eddy Valdez was unfailingly helpful in assisting with access to court files. Yacine Barry-Wun, Jenny Laurie, and Jennifer Valone were generous in answering questions about the details of the different Navigator pilot projects. We thank David Udell and Connie Matteo for their assistance in organizing an important first step in the case file review activities. We are also grateful to Teresa Cruz-Paul, who helped us to connect with some fantastic research assistants and to Chip Mount and Gail Miller for assistance in selecting case files for review. We thank Katharine Hannaford and Cheyenne Blount for editorial assistance.

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Any errors or omissions that remain are the sole responsibility of the study's authors.



APPENDIX
ATTACHMENT 14



Licensed Paralegal Task Force Report

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Prepared for: Benchers

Prepared by: Licensed Paralegal Task Force

Purpose: Proposal for developing and regulating alternate legal service providers

Date: September 25, 2020

Background

1. The report proposes an approach that differs both from the Task Force’s mandate and from how the topic of alternate legal service providers has been approached to date. The Task Force seeks approval from the Benchers to make the conceptual shift set out in the report. If the Benchers adopt the recommended approach, additional work will be necessary to address some issues that are identified in the report, but not resolved.
2. The Benchers created the Licensed Paralegal Task Force in 2019. Its mandate and terms of reference are to further develop the work of the Alternate Legal Service Provider Working Group that had considered, and consulted on, the possibility of regulation and scope of practice of family law alternate legal service providers in 2018. Specifically, the Task Force was directed to:
 1. *Consider and identify opportunities, in consultation with the profession and others, for the delivery of legal services in areas where there is a substantial unmet legal need and the public would benefit from the provision of those services by licensed paralegals; and*
 2. *If the Task Force identifies areas of legal services where licensed paralegals may meet an unmet legal need:*
 - a) *consider the scope of services that would be appropriate for licensed paralegals to provide in relation to the identified areas of legal services;*
 - b) *consider what education, qualifications, credentials, experience and insurance would be necessary to enable licensed paralegals to deliver legal services in a competent and ethical manner in the identified areas of legal services; and*
 - c) *make recommendations to the Benchers for a regulatory framework that will ensure that licensed paralegals provide legal services in a regulated, competent and ethical manner only in the identified areas of legal services approved by the Law Society.*
3. The Task Force has met through the remainder of 2019 and into 2020. It has reviewed the Law Society’s prior work on alternate legal service providers, including a consideration of the 2018 consultation report and the commentary the Law Society received. It has also analysed the results of a 2020 IPSOS Reid survey of legal needs that updated the Law Society’s 2009 survey.
4. For the reasons set out below, the Task Force recommends an approach that varies from the approach contained in its mandate.

Licensed Paralegal Initiative: Brief Review

5. The licensed paralegal initiative is intended to address, at least in part, the broader access to justice challenge. The Law Society has made a policy decision that licensed paralegals

may help address areas of underserved or unmet legal needs where people are seeking legal services, but are unable to obtain them and has obtained legislative amendments (as yet unproclaimed) through which the policy decision may be implemented.

6. The research and data reviewed by the Task Force, including our 2009 and 2020 Surveys, establish that over any three year period approximately 50% of Canadians will experience a serious, difficult to resolve legal problem.¹ These problems can cluster and cascade into more problems, including economic, social and health problems. For people experiencing these problems, only about 15% get help from lawyers.² In 2009 when the Law Society surveyed legal need, approximately 16% of people sought help from someone other than a lawyer, including paid services, and approximately 70% sought no help.³ In 2020, the number of people seeking help from someone other than a lawyer increased to 27%, the number seeking help from lawyers remained steady at 15%, and the number of people who sought no help declined to 60%.
7. Clearly, therefore, while many people facing a legal problem are getting no legal help, a sizable portion of the population facing a legal problem is getting some legal assistance from someone other than a lawyer (16% in 2009 and 27% in 2020). Some of this may be from persons (like notaries or community legal advocates) who have some ability and qualifications to provide the advice or assistance, but some will undoubtedly be from people who have no demonstrable qualification and who operate under no regulatory structure, which leaves the client vulnerable.
8. The problem faced by the justice system, to which the licensed paralegal initiative directs itself, is that a large portion of the public (a) experience serious, difficult to resolve, legal problems, and want help from a professional, (b) have some money to spend, but (c) are not getting help from lawyers.

Discussion

Setting the Stage: “Top Down” vs. “Grass Roots”

9. British Columbia is not unique when it comes to having an access to justice challenge. Other jurisdictions face the same challenge and have made efforts to examine how legal services may be provided by people who do not have the full training of a lawyer.

¹ Ab Currie, “The Legal Problems of Everyday Life – The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians”, Department of Justice, 2009-05-12; Ab Currie, “Nudging the Paradigm Shift, Everyday Legal Problems in Canada” 2016 CanLIIDocs 352.

² Law Society of BC, IPSOS Reid Surveys 2009 and 2020 confirm these data.

³ The rounding totals are explained in the reports.

10. The Task Force’s examination of other jurisdictions suggests that the consideration of regulation relating to other legal professionals has resulted in two possible approaches: “top down” or “grass roots”
11. The “top down” approach is one in which the regulator defines a category of provider, a scope of practice, and a set of qualifications, credentials and experience in the expectation that there will be an interest in joining that category.
12. An example is Washington State’s Limited License Legal Technicians (“LLLT”) program. The LLLT initiative was driven by the courts (the body ultimately responsible in that state for professional regulation) particularly in response to self-represented litigants in court. The Supreme Court issued a practice rule, which created LLLTs, and the State Bar worked with local universities and colleges to design the training and credentialing requirements. The program was limited to family law, but was intended to be scaled up for other areas of need.
13. The LLLT requirements for licensing were considerable, including an associate level of post-secondary education, completion of ABA approved programs in family law and other basic legal subjects, 3000 hours of practice experience supervised by a lawyer over a three year period, and successful completion of a core education exam and practice area exam.
14. Over the course of the seven years during which the program was in place, only 45 LLLTs were registered and as of early summer there were only 39 active LLLTs.
15. In June, 2020, at the request of the State Bar, the Washington State Courts announced the LLLT program will end. The Chief Justice’s announcement cited the costs of the program and limited participation as the reasons for ending the program.⁴ The Task Force is of the view that the Washington State experience illustrates some of the problems with a top down approach.
16. A “grass roots” approach, on the other hand, is one where the regulator looks to revise or recalibrate its regulatory scope to permit the provision of legal services by providers who may already be providing services.
17. An example of the “grass roots” approach is the evolution of licensed paralegals in Ontario.
18. As a result of the definition of the practise of law in the Ontario *Law Society Act* and various court decisions⁵, by the year 2000 there had developed a fairly robust community of paralegals acting as "agents," who could represent individuals in court in certain

⁴ The board of the LLLT program has recently announced that it will be asking the Court reconsider its decision or at a minimum allow more time for the LLLT candidates to complete the licensing requirements.

⁵ The most significant was *R. v. Lawrie and Pointts Ltd.* (1987), 59 O.R. (2d) 161 (C.A.)

circumstances. Concerns about the scope of practice which paralegals could undertake led to calls for regulation of paralegals and, on the part of the Law Society of Upper Canada, calls for limitations on what matters paralegals could act on in court.⁶

19. Over the next seven years, there were repeated calls for regulation or limitations on the role of paralegals that eventually resulted, on May 1st, 2007, in the extension of the mandate of the Law Society of Ontario to include the regulation of paralegals. The number of paralegals initially registered following 2007 exceeded the estimates of the Law Society of Ontario and today there are over 9,000 paralegal licensees.⁷
20. While the grass roots development of a viable paralegal community in Ontario was the result of factors peculiar to that province, more recently other jurisdictions have taken to implementing changes to foster a grass roots approach to the development of alternate legal service providers that aim to create an environment for the provision of legal services by persons who are not lawyers.
21. The Law Society of Saskatchewan (LSS) created a task team to explore the issues of access to justice, increased consumer options and regulatory reform. As a result of the task team's 2018 report, the LSS expanded the exemptions to the unauthorized practice rules, including identifying a range of services that currently exist and do not pose a threat to the public and therefore no longer need to be "regulated" by the Law Society. The LSS has adopted an incremental approach that is application-based, guided by a set of principles, and takes a flexible and tailored approach to defining the qualifications, scope of practice, and practice controls that would be applicable to each licensee.
22. Utah, Oregon and California are all now looking at revising their regulation of the legal profession to permit alternatives to the delivery of legal service only by lawyers. They are either considering or implementing what is commonly referred to as a regulatory "sandbox" to permit experimentation in the delivery of legal services within the ambit of the practice authority in those states.
23. The Task Force recognizes that the Law Society's entire engagement with the idea of licensed paralegals to this point has been premised on what we have described here as the "top down" approach. The recommendations from the 2013 Legal Service Providers Task Force and the 2014 Legal Services Regulatory Framework Task Force assumed that the appropriate approach was to seek an amendment to the *Legal Profession Act* to permit the Law Society to establish new classes of legal service providers to engage in the practice of

⁶ A convenient summary of the evolution can be found in [The Cory Report and the Regulation of Paralegals in Ontario](#)

⁷ As a further example of the "ground up" approach, it was the existing barristers and solicitors of the day in 1869 who came together to form the Law Society and it was the existing bar that prompted the creation of the *Legal Professions Act* in 1884.

law, set the credentialing requirements for such individuals, and regulate their legal practice. The implementation of that recommendation eventually resulted in the as-yet unproclaimed amendments to the *Legal Profession Act* permitting the regulation of licensed paralegals.

24. The Task Force also recognizes that the predecessor to this Task Force, the Alternate Legal Service Providers Working Group, made an attempt to move forward with a “top down” approach relating to the provision of family law legal services by licenced paralegals. It encountered conceptual issues in relation to determining the scope of practice and regulation as well as objections from the bar regarding the overall proposal.
25. However, the Task Force also recognizes that the Law Society has been engaged with the issue of recognizing paralegals as independent legal service providers for many years and that during that time, no “top down” approach has resulted in the existence of any licensed paralegals. The Task Force believes that such an approach must therefore be recognised as having limitations when trying to *create* a cohort of legal service providers and to determine, in a vacuum, what services that cohort should provide and how they should be regulated.
26. The Task Force therefore suggests that a more fruitful approach is to undertake a “grass roots” approach to the issue and, under some supervision, create a space that will let a marketplace develop that might address the unmet or underserved legal needs of the public. It is more likely that the marketplace will identify what these services are before the Law Society is able to do so.
27. In addition, the approach recommended in this report aligns with the Access to Justice BC Triple Aim, which the Benchers adopted in 2018. The Triple Aim seeks to ensure that the user experience is improved, access to justice is enhanced, and there is overall cost efficiency.
28. The Task Force is therefore recommending the creation of a process that will allow service models to develop under general oversight of the Law Society in a manner that allows for creativity and innovation while determining, based on evidence that will be gathered as the market develops, the level of regulation required relative to the risk to the public. The environment in which this process can unfold is increasingly referred to as a regulatory “sandbox.”

A Proposed “Sandbox.”

29. The Utah Implementation Task Force on Regulatory Reform described its regulatory sandbox as a well-established policy tool through which regulators permit new models and services to participate in a market under careful oversight to test the interest, viability, and consumer consequence of the model or service and inform policy development. New legal

practice providers and services have to apply to enter the regulatory sandbox before they will be permitted to offer services in the legal market. The application form sets out a series of criteria that must be met in order for people to be granted admission to the sandbox. The Task Force recommends tailoring a similar, yet British Columbia specific, model of intake. Successful applicants will be able to offer services under careful oversight to ensure there is no demonstrable harm to a person or public.

30. As will be obvious from the description of the regulatory sandbox, there is a necessary connection with s.15 of the *Legal Profession Act* and the exercise of the Law Society’s ability to restrain the unauthorized practice of law. To that end, the Unauthorized Practice Committee has been working to develop a clear statement of policy as to when the Law Society will and will not take steps to respond to allegations and instances of the provision of legal services that may amount to the unauthorized practice of law. The goal is to publish this policy so that individuals and organizations may be able to assist with providing access to some legal services where there is no demonstrable harm to a person or the public. This work aligns with the recommendations of this Task Force.

Populating the Sandbox

Application

31. It is expected that the application form will require basic information about the applicants, the services they intend to provide, the evidence in support of how those services meet the criteria of unmet or underserved legal need,⁸ the skills, experience and knowledge the applicant brings that are relevant to providing those services, as well as certain requirements to adhere the standard ethical obligations that will be developed as part of the regulatory process.

“No action agreements”

32. Individuals who meet the requirements of the application phase will be issued a “no action agreement,” which will set out the terms and conditions on the limited scope of legal services the applicant will be permitted to perform. The letter will also set out conditions for oversight, including reporting requirements and the potential requirement for insurance coverage. The letter will explain that the ability to provide the services is revocable by the Law Society. A no action agreement could be provided to a person, or categories of persons, who meet objective identified, approved criteria for providing particular services.
33. This approach will create a controlled environment, within a “sandbox” structure, through which to test the types of services that may be offered, the degree of regulation may be

⁸ This evidence could be tested against existing data such as the 2009 and 2020 Law Society IPSOS Reid surveys.
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required, and the degree of qualification or background of the provider.

Paralegals

34. The Task Force recognizes that the British Columbia Paralegal Association (BCPA) has, for some time, expressed interest in a more formal recognition of paralegals. A survey by the BCPA prior to the introduction of the amendments to the *Legal Profession Act* indicated that, if paralegals were regulated in a manner similar to Ontario paralegals, a significant majority would choose to practise as a regulated paralegal.
35. There are currently over 800 designated paralegals. Designated paralegals are permitted to provide all legal services, albeit under the supervision of a lawyer. The Law Society assumes that lawyers who have designated a paralegal as a “designated paralegal” have confidence that the paralegal has a significant degree of ability to provide legal services directly to a client. The program proposed in this report might therefore usefully leverage the existence of a group of “designated paralegals” as potential applicants for entry to the regulatory sandbox.
36. One way the Law Society can foster the “grass roots” approach is by providing a pathway for existing paralegals and designated paralegals to engage in providing legal services to the public through inclusion in the regulatory sandbox. The Task Force has come to recognize that this approach is the most viable way to move forward with a licensed paralegal program.
37. A system can eventually be developed by which paralegals who enter the sandbox, and meet identified objectives/criteria for a defined period of time, could eventually apply to the Law Society to become licensed paralegals.

Some further comments on the sandbox

38. Ultimately, the Task Force expects that if paralegals embrace the opportunity to provide legal services within the regulatory sandbox, there will eventually be a qualified cohort of providers within the sandbox that will form the basis for a more structured licensed paralegal regime, based on those actively providing paralegal services. The sandbox could continue to operate with the other individuals who, while not having a path to licensing, will be able to continue to operate under the no action agreement regime.
39. The Task Force recognizes that as the sandbox is developed, discrete matters such as the needed level of regulation will need to be determined. The sandbox will include a spectrum of responses to the access to justice problem, not a single model of service delivery or even potential licence. For some service providers, entry into the sandbox will put them on a path to eventual licensing by the Law Society, while others will operate without a license, but in a limited and discrete area of service. Although the model

recommended below might present as a linear progression, it is not intended to be presented in that fashion, except to the degree that the act of licensing (if it does take place) will be informed by what the Law Society learns from the sandbox.

40. The Task Force also recognizes that even within a relaxed, regulatory sandbox it is important that the people providing legal services adhere to certain essential aspects of the *Code of Conduct for British Columbia*. While not all elements of the *Code* would transfer to people in the sandbox, at a minimum concepts of maintaining client confidences, not acting in a conflict of interest, not providing services in an illegal manner, are all important. The Task Force is of the view that key aspects of the *Code* must be included in the terms of any non-action letter or other contractual document that permits activity within the sandbox, and reinforced in the initial application process. The key will be to identify principles that aim to reduce the risk of harm to the public.

Recommendation

41. The Task Force recommends a “grass roots” approach to advance the licensed paralegal initiative within a regulatory sandbox.
42. The regulatory sandbox would:
- (a) Permit individuals to apply to the Law Society to provide legal advice or services in areas where the Law Society determines it is in the public interest to expand the permitted services, as well as in areas where there the Law Society has assessed that there are no services (or insufficient services) being provided by lawyers;
 - (b) Develop a system of no action agreements to cover categories of legal service providers, and individual-based letters for applicants who wish to provide discrete services based on their skills and knowledge in circumstances where the Law Society has assessed that it is in the public interest to permit the services to be provided in the sandbox; and
 - (c) Eventually provide the basis for the formal recognition of licensed paralegals within the licensed paralegal regime, by way of amendments to the LPA, providing for the types of paralegals who will be able to provide legal services directly to the public in identified areas of need, either working with lawyers or independently.
43. If this proposal is accepted by the Benchers, additional work will be required to detail the administrative and operational implications of overseeing the sandbox. The Task Force is of the view that it is premature to develop those criteria without the Benchers’ endorsement of exploring the framework of a sandbox.
44. In closing, the Task Force observes that the amendments to the *Legal Profession Act* have been in a holding pattern for almost two years, and it is time to move forward with a program of expanded service provision with a path towards licensing. For the reasons

contained in this report, the Task Force recommends the Law Society further develop what we call a grass roots sandbox approach and consult with interested stakeholders for their ideas, comments, and critiques on how best to make that work.



APPENDIX
ATTACHMENT 15

The Supreme Court
State of Washington

DEBRA L. STEPHENS
CHIEF JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929



(360) 357-2050
E-MAIL Debra.Stephens@COURTS.WA.GOV

June 5, 2020

Stephen R. Crossland, Chair
Limited License Legal Technician Board
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Rajeev Majumdar, President
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Terra Nevitt, Interim Executive Director
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Re: Washington Supreme Court Votes to Sunset the Limited License Legal Technicians Program

Dear Mr. Crossland, Mr. Majumdar, and Ms. Nevitt:

I am writing to you on behalf of the Supreme Court to advise you that the court voted by majority Thursday, June 4, 2020, to sunset the Limited License Legal Technicians (LLLT) Program. The majority also rejected the LLLT Board's requested expansion of practice areas and proposed rule revisions.

The LLLT program was created in 2012 as an effort to respond to unmet legal needs of Washington residents who could not afford to hire a lawyer. Through this program, licensed legal technicians were able to provide narrow legal services to clients in certain family law matters. The program was an innovative attempt to increase access to legal services. However, after careful consideration of the overall costs of sustaining the program and the small number of interested individuals, a majority of the court determined that the LLLT program is not an effective way to meet these needs, and voted to sunset the program.

Current legal technicians in good standing may continue to be licensed and may continue to provide services. Individuals already in the pipeline as of June 4, 2020, who can complete all the requirements to be licensed as a LLLT by July 31, 2021, may do so. No new LLLTs will be admitted after that date.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra L. Stephens", with a long horizontal flourish extending to the right.

Debra L. Stephens, Chief Justice
Washington State Supreme Court

The Supreme Court
State of Washington

BARBARA A. MADSEN
JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929



(360) 357-2037
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June 5, 2020

Stephen R. Crossland, Chair
Limited License Legal Technician Board
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1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Terra Nevitt, Interim Executive Director
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Re: Washington Supreme Court Votes to Sunset the Limited License Legal
Technicians Program

Dear Mr. Crossland, Mr. Majumdar, and Ms. Nevitt:

Today, the court issued a letter announcing its vote to “sunset” the Limited License Legal Technician (LLLT) “program.” Despite these benign words, let there be no mistake about the nature of the court’s action: the elimination of an independent legal *license*. What’s more, the court did so at a single meeting, without question or comment from LLLT license holders, legal practitioners, or the public at large. What took over a decade of toil to create, this court erased in an afternoon. I passionately disagree with the court’s vote as well as the way in which it was carried out.

Unlike the opaque process governing the court’s June 4, 2020 vote, I believe it is useful to review the history of the LLLT “program”—to use the court’s preferred terminology—before opining on its future. First, as a matter of definitions, limited legal technicians are those qualified by education, training, and work experience who are authorized to engage in the limited practice of law in specific subject areas. APR 28(B)(4). Turning to history, the LLLT license did not spring fully formed from the head of Zeus. Rather, it is the work of thousands upon thousands of hours dedicated to rectifying a simple truth: that access to

justice in this country is not equal. The Civil Legal Needs Survey of 2003 confirmed that almost 80 percent of low income and nearly 50 percent of moderate income Americans cannot access or afford legal services.^[1] Critically important to addressing this disparity was protecting the public from the unauthorized practice of law. The solution to both was expanding the options for providing legal services. Thus, APR 28 was approved and the limited legal technician license was born.

The creation of the LLLT was by no means the end of our labors. In many ways it was only the beginning. Since 2012, stakeholders have crafted and this court has approved the contours of the LLLT license: educational requirements, scope of practice, and governing ethical rules. *E.g.*, APR 28; Order (July 12, 2013) (setting out educational requirements and scope of practice for LLLT, among other things); Order (Aug. 8, 2013) (establishing the admission and licensing requirements for LLLT applicants); Order (March 23, 2015) (adopting changes to Rules of Professional Conduct for Lawyers to coordinate those rules with the LLLT Rules of Professional Conduct); WASHINGTON LLLT EDUCATIONAL PROGRAM APPROVAL STANDARDS, WASHINGTON STATE BAR ASS'N (June 10, 2019). Throughout this rule-making process, we have heard from interested parties, students, legal professionals, and members of the public. The questions and comments from all sides have formed and shaped the LLLT from an ambitious plan into a concrete professional license. Make no mistake, LLLT is a new professional license.

2014 marked the first class of LLLT candidates and more have added to these ranks. THOMAS M. CLARKE & REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 5 (March 2017), http://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf. The Public Welfare Foundation studied this new legal practice after its creation and found it was significant in helping create access to justice and was replicable. *See id.* at 14. As a testament to this, other states are considering adopting similar licenses: efforts are underway in states such as Utah, California, Oregon, Colorado, New Mexico, Minnesota, Massachusetts, and Connecticut; and in Canada, British Columbia. Simply put, countless individuals have contributed

^[1] The dire need for affordable legal services has not decreased. In 2017, 86 percent of litigants in civil cases received inadequate or no legal help. *2017 Justice Gap Report: Measuring the Civil Legal Needs of Low-income Americans*, Legal Services Corporation, June 2017, <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

thousands of hours of their time and energy to devise, bring about, grow, and support the LLLT practice. Not to mention the men and women who have taken on the challenge of trailblazing this innovative, new profession in our state.

I recall this history in order to illustrate the depth of the court's misunderstanding in eliminating the LLLT license. Not only is the LLLT not simply a "program" that was easily created, and just as easily paused and canceled as budgets—or attitudes—permit, the LLLT is an independent legal license. As such, it warrants the respect of time and consideration before alteration, let alone total elimination. With yesterday's vote, the court *sua sponte* ended a completely viable licensing category that the public can draw on. There was no process. No questions. No comments. The public was not consulted. This is not how an institution should go about changing or dismantling such a bold initiative. In no other professional area would a regulated license be so summarily erased with so little thought given to those who will be most affected.

Not only was yesterday's vote a disservice to the stakeholders, current and aspiring LLLT license holders, and to the people of Washington, it stands in stark contrast to the way in which the LLLT license was crafted and directed for over a decade. The primary reason offered by the Washington State Bar Association Board of Governors for eliminating the LLLT "program" is cost: it is too expensive to maintain and lawyers should not have to underwrite the cost. This ignores the fact that the cost of growing and maintaining this group of licensed professionals is less than 1 percent of the Association's budget. It also ignores the many thousands of dollars the Bar expends every year investigating *lawyer* misconduct and does not acknowledge the lack of grievances against LLLT practitioners. I find the Board of Governors' cost rationale a hollow one. While current LLLT license holders are "grandfathered in" and allowed to continue practicing, there has been no evaluation offered about the cost of this decision and whether there would be any appreciable change in the cost of administering the LLLT license. As a fiscal matter, the silence on this point speaks loudly, as does the lack of deliberation on other options to address concerns expressed by the Bar while maintaining this professional license and the valuable services it provides in the pursuit of access to justice.

Today's decision also resonates on another level, both abstract and imminently tangible. Just this week, my colleagues and I authored a letter examining the systemic racism that has plagued our country since its inception. We accepted the role judges and the legal community at large have played in maintaining this reality, and recommitted our efforts to ending racial disparity in our governmental, community, and social institutions. The elimination of the

Dissent to Sunset of LLLT

June 5, 2020

Page 4

LLLT license, which was created to address access to justice across income and race, is a step backward in this critical work. It is not the time for closing the doors to justice but, instead, for opening them wider.

With these considerations in mind, I respectfully dissent.

Sincerely,

A handwritten signature in black ink that reads "Barbara Madsen". The signature is written in a cursive, flowing style.

Barbara A. Madsen
Justice



APPENDIX
ATTACHMENT 16

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD
AGENDA for October 8, 2018

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
1:00 p.m. to 4:00 p.m.

1. **Call to Order/Preliminary Matters** (1:00 p.m.)
 - Introductions
 - Outreach Update
 - Approval of Meeting Minutes - **ACTION**
2. **Trust Account Committee Report** (Jeanne Dawes, Sarah Bove and Andrea Jarmon) (1:30 p.m.)
3. **Consumer, Money, and Debt Committee Report** (Nancy Ivarinen) (1:45 p.m.)
4. **Board Development Committee Report** (Steve Crossland) (2:00 p.m.)
5. **RPC and Family Law Enhancement Comments** (WSBA Staff) (2:15 p.m.)
6. **Courthouse Facilitator Discussion** (WSBA Staff) (2:30 p.m.)
7. **ELC & ELLTTC: Overview and Comparison** (Felice Congalton) (3:00 p.m.)

MEETING MATERIALS

1. Outreach Update
2. August 16, 2018 Draft Meeting Minutes
3. Consumer, Money, and Debt Comments
4. Signing Authority on Trust Accounts Issue Summary
5. Court Facilitators Issue Summary
6. Family Law Enhancements Comments sent to Supreme Court
7. LLLT RPC Comments sent to Supreme Court
8. Consumer, Money and Debt FAQs



LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

UPDATE: October 2018

Outreach & Press
<p>Press:</p> <ul style="list-style-type: none">July 24, 2018: Limited License Legal Technician with guest host Patrick Palace (Episode #27 7/24/18)August 6, 2018: Utah Nears Licensing of Paralegals to Practice Law in Limited Circumstances <p>Recent Events:</p> <ul style="list-style-type: none">September 4, 2018: Q&A session at Spokane Community College for students. Attended by Jaimie Patneau and Barbara Esselstrom, LLLT.September 24, 2018: LLLTs added to the WOIS.org database <p>Upcoming Events:</p> <ul style="list-style-type: none">September 29, 2018: Family Law and Mediation CLE with Washington State Paralegal Association (Christy Carpenter will be a guest speaker)October 25-28, 2018: NFPA Annual Convention, Hilton Seattle Airport. Steve Crossland & Paula Littlewood. WSBA table will be staffed by Renata Garcia, Jaimie Patneau and LLLTs.October 27, 2018: NALS of Washington Fall Education Conference, Great Wolf Lodge. WSBA table will be staffed by Sara Niegowski and LLLTs.
Statistics & Other Events
<ul style="list-style-type: none">Number of current LLLTs: 384 LLLTs are inactive
Meetings
<p>Recent:</p> <ul style="list-style-type: none">September 18, 2018: Collection Agency Board Meeting attended by Jean McElroy, Renata Garcia, Sarah Bove, and Jennifer Ortega <p>Upcoming:</p> <ul style="list-style-type: none">November 19, 2018: LLLT Board MeetingNovember 19, 2018: New Practice Area, Consumer Money and Debt Workgroup Meeting



LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD
Meeting Minutes for August 16, 2018

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101

LLLT Board Members in Attendance:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Stephen Crossland | <input checked="" type="checkbox"/> Nancy Ivarinen |
| <input checked="" type="checkbox"/> Sarah Bove | <input type="checkbox"/> Andrea Jarmon |
| <input checked="" type="checkbox"/> Brenda Cothary | <input type="checkbox"/> Genevieve Mann |
| <input checked="" type="checkbox"/> Greg Dallaire | <input checked="" type="checkbox"/> Ruth McIntyre |
| <input type="checkbox"/> Jeanne Dawes | <input checked="" type="checkbox"/> Jennifer Petersen |
| <input type="checkbox"/> Stephanie Delaney | <input checked="" type="checkbox"/> Amy Riedel |
| <input type="checkbox"/> Lynn Fleischbein | <input checked="" type="checkbox"/> Gail Hammer (remote) |

Staff and Others in Attendance during some or all of the meeting:

Renata Garcia (Innovative Licensing Programs Manager), Jean McElroy (RSD Associate Director), Jaimie Patneau (LLLT Lead), Doug Ende (Chief Disciplinary Counsel), Geoff Revelle (ATJ liaison), Dan Clark (BOG liaison, remote), Christy Carpenter (FY2019 Board Member), Catherine Brown (FY2019 Board Member), and Kim Kinchen (paralegal student, remote)

Call to Order / Preliminary Matters

The meeting was called to order at 1:00 p.m.

- Outreach Update

Sarah Bove advised the Board of a class she is involved in preparing that will be held at the King County Law Library. This class will be recorded and shared with anyone interested and will cover LLLTs and unbundled legal services. Sarah's goal is to get this recording shared at other law libraries and local libraries.

Steve Crossland mentioned he is working on creating a group that will work with LLLTs and attorneys.



Brenda advised Seattle will be hosting the National Federation of Paralegal Association convention October 25th-28th. WSBA will have a booth at the convention and Steve and Paula Littlewood will be speaking at the convention.

The Board generally discussed making connections with community colleges in other states and Steve discussed the steps for redoubling efforts in this area.

Amy discussed how Whatcom Community College has created a certification of completion for the paralegal courses, and this change allows someone with a Bachelor's degree to take these courses and receive financial aid.

- Approval of Meeting Minutes

The May 10, 2018 meeting minutes were approved.

- Approval of Board Meeting Schedule

The Board approved the meeting schedule for FY19. The Board discussed the agreement made at the Board retreat to adjust the meeting day to every second Monday. The Board changed the November meeting from November 12th to November 19th.

License fee increase for LLLTs

Steve discussed a letter he has drafted to the Supreme Court regarding the increased license fee for LLLTs. This letter will also discuss the LLLT/LPO seat on the Board of Governors that has not been filled.

Staff Report

- LLLT exam was held on July 23rd
- Applications are being accepted for the family law curriculum at the University of Washington
 - Discussion of other outreach options to spread the word to people who qualify for the limited-time waiver

Trust Account Report

Members of this committee need to connect on trust account issue. Steve asked the committee to make a recommendation to the Board at the next board meeting.

New Practice Area Discussion

The Board requested that staff create a chart detailing all substantive comments received related to Consumer, Money and Debt along with a FAQ page on the website we can direct



people to. The Board determined that the people who provided substantive comments should be invited to the next New Practice Area committee meeting to assist with this process.

The family law enhancements comment period was also discussed. Members were advised to encourage contacts to provide comments to the Supreme Court.

Board Development Committee Report

Steve discussed the ATJ meeting and support. He asked Geoff Revelle for clarification on how to respond to the ATJ Board. Geoff suggested gathering more statistics and providing information on what is changing and if there are a significant amount of people interesting in becoming licensed. Geoff explained they are not opposed but would like to see more documentation before a new practice area is requested.

Steve described the committee determining a workgroup is a group of Board Members and public members working together on a specific topic. Committees are considered the long standing groups (exam committee, education committee, etc.) who meet consistently and are comprised of only Board Members. Steve also discussed how the committee determined the best way to set chairs for each committee would be to have an executive committee assign chair positions.

Coordinated Discipline Presentation from Jean McElroy, Doug Ende, and Paula Littlewood

Executive Session

The Board went into executive session to answer staff questions related to applicant qualifications for enrollment in the Family Law classes at the University of Washington.

Adjournment

The meeting adjourned at 4:00 p.m.



NANCY HAWKINS
ATTORNEY AT LAW

6814 GREENWOOD AVE. N.
SEATTLE WA 98103
(206) 781-2570
FAX (206) 781-7014

July 16, 2018

Cindy Phillips
Judicial Administrative Assistant to
Chief Justice Mary E. Fairhurst
Washington State Supreme Court

Re: LLLT Expansion Proposal

Dear Ms. Phillips:

Please provide this letter to the Justices of the Washington Supreme Court for their consideration.

At the time that I started to be active in the Family Law section and started attending meetings of the WSBA Board of Governors, the Family Law section's opposition to the LLLT program was well-known. Detailed comments had been submitted by individuals and the section executive committee for several years. Nonetheless, I approached the subject with an open mind. I write today as an individual member and not as a representative of the Family Law Section. It is a continuing concern that issues are raised without adequate time for Section Executive Committee's to discuss and formulate detailed responses. This letter has not been reviewed nor approved by the Family Law section; I speak only for myself.

I comment today against the proposed expansion of the LLLT program into debt issues or any other subject area. The presently considered expansion seems truly ill-advised. As another attorney stated in a listserv email recently "the fact that many lawyers don't know how to do this stuff and/or do it badly is not an argument that other people who don't have a law school education should be taught it so they can represent people." Another said with regard to the LLLT program, "the cost was incredibly high for the number of people who are licensed, and I can't believe that anyone would want to replicate that result with other disciplines...FDCPA stuff is so insanely complicated that very few lawyers really understand it..."

While there are consumer and/or debt issues that the low income public struggles with, the LLLT program that is being considered is clearly headed for failure. The LLLT Board itself said that "it was unclear whether or not legal assistance would materially address the consumer law problems ... and whether that assistance could be provided through some method other than direct representation exclusively by a lawyer." The LLLT Board also reported that significant advice already exists through the Northwest Justice Project site washingtonlawhelp.org. Yet the recommendation continued to be pushed forward.

The LLLT Board recommendation is that LLLTs be able to assist with RCW 10.82 Motions re Interest in LFOs. These apply to convicts trying to integrate into society. I didn't see that the LLLT Board provided any number of the people seeking help in this matter. There is a recommendation that LLLTs help with small claims court matters. There are numerous websites and materials available to help pro se parties with these small claims. Certainly paying a LLLT is not a likely priority when a person is trying to get someone to pay them \$500 that is owed. The recommendation is that LLLTs can help with debt collection not involving collection agencies. In fact, in this day and age, most collection actions involve collection agencies. There is a recommendation that LLLTs help with garnishments. Very few consumers initiate garnishment actions and there are limits on reimbursable "legal" fees. There are rarely court hearings. Packets of forms and instructions are generally available in every county and are also part of the legal forms available through the Administrator of the Courts. The recommendation regarding identity theft is also ill-advised. This information is available through the Attorney General's office at no cost. The recommendation regarding loan modifications is also somewhat laughable. These programs are very complicated and there are attorneys that specialize in it. These loan modifications are rarely granted and adding LLLTs to the mix will not improve that. LLLTs are not needed with regard to protection orders since each county is required to have people at the courthouse to help provide forms. It is not explained how they would help get no contact orders in criminal cases; this is routinely done by prosecutors at initial criminal hearings. LLLTs cannot provide meaningful help in bankruptcy issues since federal laws govern the debt counseling that consumers must obtain. The program is simply designed for failure; hundreds of thousands of dollars will be spent and any LLLT eventually trained will have few clients, if any, able to pay his/her fees.

The LLLT program is not being forthright with the WSBA membership and, perhaps, the Washington Supreme Court. The program seems to be exploring expansion into numerous fields and, is now doing so without any meaningful oversight. I have reviewed the LLLT Board meeting minutes, as much as are available. This can be difficult since I have sometimes had to prompt staff to get the minutes online. Of course, I do not know if the LLLT board is not providing their minutes to the staff on a timely basis. Most recently, the LLLT Board cancelled its April and June 2018 meetings so no minutes are available. The May 2018 draft minutes are not available either. See attached email of July 9, 2018 from Renata Garcia.

The minutes of the New Practice Area sub-committee which explores subject expansion used to be on-line. That is no longer the case. In fact, I was informed this morning that I would have to submit a public records request to get them. See the attached email of July 16, 2018 from Margaret Shane.

My review of LLLT board minutes and the New Practice Area Committee have been

revealing and startling, particularly with regard to a previously planned expansion into immigration law. The April 2018 minutes state that the LLLT program is expanding into immigration law and that they had already contacted Governor Inslee to get his support for legislation to try and “preempt” the federal law to allow local LLLTs to practice in the immigration field. This action by the LLLT program seems to have been done without the permission of the Washington Supreme Court or the WSBA Board of Governors. This attempted expansion is ill-advised and should not be encouraged or permitted. The Washington State Immigration Services page on the Attorney General website calls immigration law “one of the most complicated areas in the legal field.” ... [and] specialized training” is required...[and] the lawyer/expert must be “authorized under federal law to provide immigration services.” While it seems that this attempted expansion has been dropped, the LLLT board seemed to have acted improperly by going to the Washington State Governor without the support of the BOG or the Supreme Court.

I also ask the Washington Supreme Court to demand some answers from the LLLT board. Such answers should be in writing and made available to WSBA members. How many LLLTs are presently in practice and whom are they representing? What are they charging? While their fees may not be controlled under anti-trust considerations, the fees can certainly be used to determine whether this program is meeting the needs of low-income people. What is the goal of the LLLT program?

I am concerned that the LLLT program seems to be operating without true and objective oversight or administration. The meeting with the Governor’s office involving the Executive Director, Paula Littlewood, is a prime example. It is troubling that this action was not disclosed in her monthly activity reports. She apparently had two BOG members with her but this action was not reported in their monthly activity reports provided to the BOG and the membership. The Executive Director report of January 12, 2018 makes no mention of LLLT issues at all. Steve Crossland’s report to the Board of Governors of January 4, 2018 discusses proposed expansion of the LLLT Family Law work and needed amendments to APR 28 and RPCs but no mention of immigration or consumer debt expansion.

How was it acceptable for these people to go to the Governor to lobby for changes in the law? Sections are not allowed to make any public statements without approval of the WSBA yet a meeting was apparently conducted with the Governor of this state without any such prior approval. Making public statements on the LLLT program and potential expansion without any report of the meeting to the BOG means that the BOG and the membership is being denied information that it should have.

I have another concern about the LLLT program and its administration. The program is marketed enthusiastically by Paula Littlewood and Steve Crossland. It is an open secret that they are involved in a personal relationship. This is a delicate issue that seems to be ignored. I do not easily raise this issue; it should be personal and private. But, it cannot be ignored in this circumstance. I do not see how the program can be administered by the WSBA appropriately under those circumstances. Paula and Steve travel to various other states and countries together “wearing WSBA hats” to talk up the LLLT program concept. I am concerned about the direct and indirect costs of their joint travel to various locales, including Hawaii and Canada. I am concerned about the appearance to the membership. It would certainly seem that the WSBA and the WSC are leaving themselves open to public criticism.

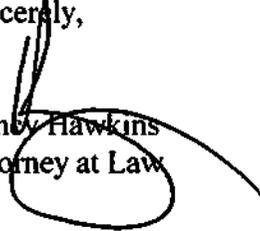
The lack of independent and objective analysis and administration by Littlewood is also clear if the WSBA website is reviewed. The website lauds the LLLT program as a way to practice law without going to law school. It is excited and enthusiastic about the program. Contrast this with the website with regard to lawyers. There is no reference to the long and distinguished role of lawyers in civil rights, or in helping people access the justice system. There is instead a dry description of the costs and burdens of becoming an attorney (fees, testing, etc.) The legal directory now lists LLLTs and lawyers in the same directory. Not only are the lines being blurred, the preference for LLLTs by the Executive Director is obvious.

It also seems that the LLLT program is described by Crossland and Littlewood in their various travels as a “success.” This seems to be an inaccurate description of the program. After years of funding, the program continues to operate at a substantial loss and has very few people working in the field. There is no proof that the program is truly meeting the needs of low-income people and, in fact, the anecdotal information conveyed at meetings is that LLLTs are charging significant rates for their work, generally comparable to attorneys. The Washington Supreme Court should require that Crossland and Littlewood provide transcripts of any speeches and copies of any written materials that either has provided with regard to the LLLT program. Their representations must be accurate and complete so that the reputation of this state bar association and the Washington Supreme Court is not harmed.

Washington Supreme Court
LLLT Expansion Program
July 16, 2018
Page 5

I think it is time for the Washington Supreme Court to take another good hard look at the LLLT program and its purpose and structure. It is time for a plan for reasonable administration. It is also time for the Washington Supreme Court to demand that the WSBA administration enthusiastically support and applaud the work of lawyers.

Sincerely,


Nancy Hawkins
Attorney at Law

cc. LLLT Board

Nancy Hawkins

From: Margaret Shane <Margarets@wsba.org>
Sent: Monday, July 16, 2018 11:10 AM
To: Nancy Hawkins
Subject: RE: LLLT New Practice Area Committee minutes

Hi Nancy –

Since minutes for LLLT committee and work group meetings are not posted on the website, it has been determined that the information you are looking for needs to be obtained through a Public Records Request. To request Bar records, please send your request to WSBA's public records officer at PublicRecords@wsba.org. Under Washington General Rule 12.4(e)(1), requests must be made in writing to WSBA's public records officer, and may not be made to other Bar staff.

Best,
Margaret



Margaret Shane | Executive Assistant

Washington State Bar Association | 206.727.8244 | fax 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact karar@wsba.org.

From: Nancy Hawkins [<mailto:nhawkins@seanet.com>]
Sent: Friday, July 13, 2018 2:10 PM
To: Margaret Shane
Subject: LLLT New Practice Area Committee minutes

These used to be on the website. Are they somewhere else now?

Nancy Hawkins
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6814 Greenwood Avenue North
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(206) 781-2570
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Nancy Hawkins

From: Renata Garcia <renatag@wsba.org>
Sent: Monday, July 09, 2018 2:55 PM
To: Margaret Shane; Nancy Hawkins
Subject: RE: LLLT Board minutes

Hi Nancy –



The LLLT Board April meeting was cancelled. The June meeting was also cancelled which means that the May meeting minutes have not yet been approved.

The meeting materials are posted on the website. Here is one way to access them:

1. <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/LLLT-board>
2. Click on WSBA Event Calendar

Meeting Materials

WSBA
NB: Starting October 2017 meeting materials are linked to the meeting event item in the [WSBA Event Calendar](#). This static list will not be updated.

January 2017
February 2017
March 2017

3. Select Limited License Legal Technician Board

WSBA | EVENTS CALENDAR



WSBA
Updated: June 9, 2018

Enter Email

Today	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Agenda	
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																								

4. Select the month and click on the event
5. Click on the link under "Agenda"

Add to:

- Outlook
- iCal
- Google Calendar

The Limited License Legal Technician (LLLT) Board

Agenda:

LLLT Board Meeting Materials - March 2018

Let me know if you have any other questions.

Thank you,
Renata



Renata de Carvalho Garcia | Innovative Licensing Programs Manager
Washington State Bar Association | 206.733.5912 | renatag@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact barbarao@wsba.org.

From: Margaret Shane
Sent: Friday, July 06, 2018 1:49 PM
To: Nancy Hawkins
Cc: Renata Garcia
Subject: RE: LLLT Board minutes

Hi Nancy –

Renata Garcia is the person to contact for LLLT matters, but she is out of the office today. I have copied her on this email so she can contact you when she returns to the office next week.

Please let me know if you need anything further at this time.

Best,
Margaret



Margaret Shane | Executive Assistant
Washington State Bar Association | 206.727.8244 | fax 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
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From: Nancy Hawkins [<mailto:nhawkins@seanet.com>]
Sent: Friday, July 06, 2018 10:32 AM
To: Margaret Shane
Subject: RE: LLLT Board minutes

I also don't see any board meeting materials for the past year or so on the website.

Nancy

Nancy Hawkins
Attorney at Law
6814 Greenwood Avenue North
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(206) 781-2570
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From: Nancy Hawkins [<mailto:nhawkins@seanet.com>]
Sent: Friday, July 06, 2018 10:30 AM
To: 'Margaret Shane'
Subject: LLLT Board minutes

Do you have minutes for their April, May and June board meetings?
Nancy

Nancy Hawkins
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NANCY HAWKINS
ATTORNEY AT LAW

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September 14, 2018

Cindy Phillips
Judicial Administrative Assistant to
Chief Justice Mary E. Fairhurst
Washington State Supreme Court

Re: LLLT Expansion Proposal

Dear Ms. Phillips:

Please provide this letter to the Justices of the Washington Supreme Court for their consideration.

I am a 36 year member of the Washington State Bar Association. I am a proud family law attorney. I practice law in Seattle, Washington, and am a sole practitioner. Almost all of my practice is family law.

I graduated from the University of Puget Sound Law School in 1981 and was admitted to the Washington State Bar in 1982. I am also admitted to practice in the Federal courts in the State of Washington. In addition to being a member of the family law sections of the Washington State Bar Association and the King County Bar Association, I am a former chair of the King County Bar Association's Family Law Section's Legislative Committee and a former chair of the King County Bar Association's Family Law Section. I have spoken at numerous continuing legal education seminars on the subject of family law. I am a chapter author for the Washington State Bar Association's Family Law Deskbook. I have received awards for my work from the Greater Seattle Business Association as well as the King County Bar Association Access to Justice Award, and the WSBA Family Law Section Attorney of the Year award for 2017. I coordinate a neighborhood family law clinic in King County and have performed hundreds of hours of pro bono work.

Over the past two years, I have studied the LLLT situation and I write today after learning more disturbing information about the program. I urge the Washington Supreme Court to reject any expansion of the program in Consumer, Money and Debt Law, reject any expansion of the Family Law Program and, instead, examine this entire program in detail and determine its future.

Program training.

The training provided to prospective LLLTs is clearly inadequate since, according to information provided at the July WSBA Board of Governors meeting, more than 50% of the

persons taking the test fail. No information was given as to the results of those who passed. It would be appropriate to know how many barely pass, solidly pass or sail through with flying colors. It appears that the training is not being improved but, instead, the qualifications of the trainers is being reduced down. There is no indication that the LLLT Board is concerned in any way about the low passage rate and the apparent inadequacy of the training provided to date.

With such a poor passage rate, it is inconceivable to me that it would be appropriate that there would be an increase in the curriculum/program in the areas of family law to be taught. As has been demonstrated by prior submissions from the Family Law Section, family law is an extremely complex area covering a broad gamut of legal issues. Adding subjects is far more likely to further reduce the passage rate. This seems grossly ill-advised at this time.

There has been no objective determination that the LLLT program is a success in family law. After years of efforts and hundreds of thousands of dollars, there are a minimal number of independently practicing LLLTs. There has been no determination of the number of low income people actually helped by the program. In fact, it seems that most of the LLLTs work as paralegals just as they were doing prior to any certification or licensing at a LLLT. With the poor passage rate and the lack of success of the LLLT program with regard to family law, it seems further ill-advised to add any new subject area or any expansion of the existing subject area. Without objective analysis and determination of the flaws in the curriculum design, teaching methods and training overall in the family law program, the flaws are likely to be repeated in a new or expanded subject area. Expansion into a new subject area is premature, at best.

The choice of Consumer, Money and Debt Law for expansion is particularly ill-advised.

Expansion into Consumer, Money and Debt Law.

I comment again against the proposed expansion of the LLLT program into debt issues or any other subject area. The presently considered expansion seems truly inappropriate. As another attorney stated in a list serve email recently “the fact that many lawyers don’t know how to do this stuff and/or do it badly is not an argument that other people who don’t have a law school education should be taught it so they can represent people.” Another said with regard to the LLLT program, “the cost was incredibly high for the number of people who are licensed, and I can’t believe that anyone would want to replicate that result with other disciplines...FDCPA stuff is so insanely complicated that very few lawyers really understand it....”

While there are certainly consumer and/or debt issues that the low income public struggles with, the LLLT program that is being considered is clearly knowingly headed for failure. The LLLT Board itself said that “it was unclear whether or not legal assistance would materially address the consumer law problems ... and whether that assistance could be provided through some method other than direct representation exclusively by a lawyer.” The LLLT Board also reported that significant advice already exists through the Northwest Justice Project site washingtonlawhelp.org. Yet the expansion recommendation continued to be pushed

forward.

The LLLT Board recommendation is that LLLTs be able to assist with RCW 10.82 Motions re Interest in LFOs. These motions apply to convicts trying to integrate into society. I didn't see that the LLLT Board provided any number of the people actually seeking help in this matter. In my 36 years of practice, including work with convicted criminals, no one has ever sought help with this kind of matter. I wouldn't think that this is a population with the funds to hire a LLLT.

There is a recommendation that LLLTs help with small claims court matters. There are numerous websites and materials available to help pro se parties with these small claims. Certainly paying a LLLT is not a likely priority when a person is trying to get someone to pay them \$500.

The LLLT Board recommendation is that LLLTs can help with debt collection not involving collection agencies. In fact, in this day and age, most collection actions involve collection agencies. If they don't initially, they surely will shortly.

There is a recommendation that LLLTs help with garnishments. Very few consumers initiate garnishment actions and there are limits on reimbursable "legal" fees. Packets of forms and instructions are generally available in every county and are also part of the legal forms available through the Administrator of the Courts.

The recommendation regarding identity theft is also ill-advised. This information is available through the Attorney General's office at no cost.

The recommendation regarding loan modifications is also somewhat laughable. These programs are very complicated and there are attorneys that specialize in it. These loan modifications are rarely granted and adding LLLTs to the mix will not improve that.

LLLTs are not needed with regard to protection orders since each county is required to have people at the courthouse to help provide forms. It is not explained how LLLTs would help get no contact orders in criminal cases; this is routinely done by prosecutors at initial criminal hearings.

LLLTs cannot provide meaningful help in bankruptcy issues since federal laws govern the debt counseling that consumers must obtain.

This proposed expansion of the LLLT program is simply designed for failure. If it is approved by the Washington Supreme Court, hundreds of thousands of dollars will be spent by the WSBA and any LLLT eventually trained and licenses will have few clients, if any, able to pay his/her fees.

LLLT family law program costs.

The Washington Supreme Court mandated the existing LLLT program and required the Washington State Bar Association to pay its costs. But, the Court also anticipated that the program would be self-sufficient in a reasonable period of time. In fact, the Court required that it do so in its Order: "[t]he Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership." June 15, 2012 Order by the Washington Supreme Court, page 11. Despite the Court's good intentions, this confidence has not been borne out.

At this point, it is six years since that order by the Court. Not only is the program not self-sufficient, it is operating at a greater loss year after year. In 2017, the program sustained a loss of \$189,508.00. It was budgeted to lose \$262,022 in 2018. The draft budget for 2019 projects a loss of \$240,000 but this figure is misleading in that it does not reflect the total cost of the program. It is my understanding that many of the costs for the program are now included in other portions of the WSBA budget so this \$240,000 appears to be artificially lowered. See page 48 of the materials for the July 2018 BOG meeting, attached hereto. I am making a request for the data necessary to determine the cost of those other line items not included in the \$240,000 (see the footnote to that same page 48). It is concerning to note that the LLLT Board claimed that its expenses, direct and indirect, for 2018 were \$17,000 and \$92,636 (see page 433 of the materials for the July 2018 BOG meeting, attached hereto.) These significant costs seem to be in addition to the \$240,000. Additional data for those expenses has also been requested.

Time for a limit.

The lawyers of Washington State pay a significant sum in license fees. Many object to the amount of fees. Many sought to hold a referendum on the amount of fees but were not allowed to do so when the Court issued an order that the fee increase that had been imposed was "reasonable." Unhappiness with the fee increase and the inability to register an opinion with the referendum still resonates with many. This is made more concerning to many when the fees paid are used to pay for unpopular and unsuccessful programs such as the LLLT program. The BOG seems to feel that they are powerless to control costs in this program since the Court has mandated the program. But, the Court did not mandate a program that would be funded at the present extent by the lawyers of the WSBA or that the program would operate at such a loss. At this point, it seems this annual substantial financial loss seems to be permanent. This concern is not abated by the July 2018 fee development. As the Court likely knows, at its July 2018 meeting, the Board of Governors recommended that the LLLT license fees be increased to that of lawyers. That increase, even if approved by the Washington Supreme Court, would not make the present program self-sufficient. There would need to be over 500 LLLTs to even come close to paying for the program for one year. There is no realistic expectation that this will ever happen, let alone happen before another \$2,000,000-\$3,000,000 in WSBA losses occur.

The LLLT program simply shows no promise whatsoever that it will EVER be self-sufficient. Its budgeted costs are approximately 35% higher for 2019 than for 2018. This cannot be sustained for even another year or two without hurting other more successful WSBA programs, a further increase in fees or staff reductions. Yet the LLLT Board and the Executive Director do not seem to be concerned about this in any way.

In the June 15, 2012 order which established the program, it was clear that the program was not necessarily permanent but that it would be "a sound opportunity to determine whether and, if so, to what degree the involvement of effectively trained, licensed and regulated non-attorneys may help expand access to necessary legal help in what that serve the justice system and protect the public. June 15, 2012 Order by the Washington Supreme Court, page 11-12. That objective analysis has never been done.

Time for a program assessment.

The LLLT program was designed to meeting the needs of low income Washingtonians. The program has provided no substantive analysis demonstrating that this goal has been met. The hourly rate charged by LLLTs is, quite simply, beyond the ability of low income people. The rates are also beyond the ability of almost all moderate income people.

After over five years of work, there are only 38 active LLLTs. I have reviewed the information available via the internet and/or the WSBA website. Most work in law firms and it is reasonable to assume that their work is little changed from that of an employed paralegal. It is likely that each of those LLLTs are being billed out at a significant rate. My review concludes that about half or less of the LLLTs are independently employed.

The needed type of assessment of the LLLT program must be done objectively. It is not reasonable to expect the Executive Director or staff under her control to conduct this objective analysis since, in fact, they have not done so. In the past several years, there have been no flags raised over the low number of active LLLTs given the funds spent and the hours of work, no flags raised over the increasing cost of the program, no flags raised over the dismal passage rate, etc. If the LLLT Board or the Executive Director have not done so by now, and given the conflict of interest posed by the personal relationship between the LLLT Board President and the WSBA Executive Director, the Court must provide a mechanism for this kind of objective analysis. Frankly, I believe that the available information should be sufficient to determine that the program is an utter failure already without any further analysis.

Lack of transparency.

I am also concerned about the large gaps in transparency about this program. The April, June, July and September 2018 LLLT Board meetings were cancelled. Without minutes from meetings, it is not possible to review the work of that Board during that time. The meetings of

the sub-committee that considers new subject areas used to be announced on the WSBA website with minutes available for review but are not any longer. My request for the minutes of the sub-committee working on new subject areas was denied. I was told I needed to make a public records request. This lack of transparency is quite troubling, particularly given the funds being expended and the demonstrably poor decision-making by the Board and the Sub-Committee from my perspective (and that of many others).

My review of the materials for the August LLLT Board meeting were troubling. The Board supposedly was given all of the comments about the program expansion but, upon review, my own prior comments were not included in the material provided. I don't know how many comments from others were withheld from the Board. The Board also commented about a letter favorable to the expansion and suggested that the author be invited to a meeting to elaborate. There seems to be little concern that the majority of responses were negative to the expansion idea.

It was also disturbing to see that the LLLT Board seems to be planning on offering scholarships to LLLTs. With a program operating hundreds of thousands of dollars in the red, even consideration of a program scholarship is inappropriate.

My review of the available LLLT board minutes and the New Practice Area Committee raise more concerns, particularly with regard to a previously planned expansion into immigration law. The April 2018 minutes state that the LLLT program is expanding into immigration law and that they had already contacted Governor Inslee to get his support for legislation to try and, in effect, "preempt" the federal law to allow local LLLTs to practice in the immigration field. This action by the LLLT program seems to have been done without the permission of the Washington Supreme Court or the WSBA Board of Governors. That attempted expansion was also ill-advised and should not be encouraged or permitted. The Washington State Immigration Services page on the Attorney General website calls immigration law "one of the most complicated areas in the legal field." ... [and] specialized training" is required...[and] the lawyer/expert must be "authorized under federal law to provide immigration services." While it seems that this attempted expansion is not presently being pursued, the LLLT board seemed to have acted improperly by going to the Washington State Governor without the support of the BOG or the Supreme Court.

The Washington Supreme Court should demand some answers from the LLLT board and the Executive Director. Such answers should be in writing and made available to WSBA members. How many LLLTs are presently in practice and whom are they representing? What are they charging? While their fees may not be controlled under anti-trust considerations, the fees can certainly be analyzed to determine whether this program is meeting the needs of low-income or moderate means people. After all, this was the intent of the LLLT program. It is odd that the Executive Director and the LLLT Board are quick to say that they cannot/will not look at the fees charged by LLLTs while allowing LLLTs to advertise that they charge one-third of that

of a lawyer. How do they make that assertion without a factual basis for it?

I am concerned that the LLLT program seems to be operating without true and objective oversight or administration. The meeting with the Governor's office involving the Executive Director, Paula Littlewood, is a prime example. It is troubling that this action was not disclosed in her monthly activity reports. She apparently had two BOG members with her but this action was not reported in their monthly activity reports either. The Executive Director report of January 12, 2018 makes no mention of LLLT issues at all. Steve Crossland's report to the Board of Governors of January 4, 2018 discusses proposed expansion of the LLLT Family Law work and needed amendments to APR 28 and RPCs but no mention of immigration or consumer debt expansion.

How was it acceptable for these people to go to the Governor to lobby for changes in the law? Sections are supposedly not allowed to make any public statements without approval of the WSBA yet a meeting was apparently conducted with the Governor of this state without any such prior approval. Making public statements on the LLLT program and potential expansion without any advance consideration of the BOG or a subsequent report of the meeting to the BOG means that the BOG and the membership is being denied information that it should have.

Promotion of the program as a success.

I am particularly concerned about the promotion of the LLLT program to other states as a success. This program has 35 people working in the field, only some of which work independently. The others work in law firms and it seems that their work is that of a normal paralegal.

This program has cost the WSBA over \$1,000,000 since its inception. It operates at a considerable loss and that loss is increasing each year. This is not a success. The program should not be "sold" to other states as a success. Doing so will only serve to lower our standing with those states when they, too, suffer such losses and failures. It is distressing that our funds are being spent by Paula Underwood and Steve Crossland to visit various other states and countries "wearing WSBA hats" to talk up the LLLT program concept. I am concerned about the direct and indirect costs of their joint travel to various locales, including Hawaii and Canada. While I have been told that their "travel costs" are not paid by the WSBA, I do not know the status of their other costs. But, even if the costs are out of the picture, I am concerned about the appearance to the membership of this joint travel. It would certainly seem that the WSBA and the Washington Supreme Court are leaving themselves open to public criticism.

WSBA approach to LLLT program.

The present Executive Director's unbalanced and unobjective support for the LLLT program compared with her tepid or non-existent support for actual lawyers is disturbingly clear

Washington Supreme Court
LLLT Expansion Program
September 14, 2018
Page 8

when the new website is examined. I am proud to be a lawyer. From my childhood spent reading and watching Perry Mason and other legal shows, I have always wanted to be a lawyer. This was solidified as I became an active feminist starting at age 16 or so and has continuing for the last 46 years. I followed and studied a civil rights movement that included landmark legal cases regarding education, public facilities, marriage (interracial and gay), sexuality, privacy and many others. None of that glorious history is reflected in the WSBA website, not even a reference to Thurgood Marshall, Ruth Bader Ginsburg or, even, our own William O. Douglas. Not a mention of any landmark cases which have resulted in improved lives for millions of Americans. In fact, the website page which describes becoming a lawyer is a dry recitation of the costs and burdens of being a lawyer.

By contrast, the website pages which describe becoming a LLLT is enthusiastic and glowing and makes broad promises about a career as a LLLT.

Conclusion.

I think it is time for the Washington Supreme Court to take another good hard look at the LLLT program and its purpose and structure. If it is to continue, it is time for reasonable and unbiased administration. It is also time for the Washington Supreme Court to demand that the WSBA administration enthusiastically support and applaud the work of lawyers.

If the Court agrees with my concerns, it is likely time to end this failed program. The 35 people that are presently licensed would likely just continue as well-paid paralegals.

Sincerely,


Nancy Hawkins, a proud lawyer.

cc. LLLT Board (with enclosures)

Washington State Bar Association
Budget Comparison Report
For the Period from October 1, 2018 to September 30, 2019

LIMITED LICENSE LEGAL TECHNICIAN	FISCAL 2018 BUDGET	FISCAL 2019 BUDGET	\$ CHANGE IN BUDGET	% CHANGE IN BUDGET
REVENUE:				
TOTAL REVENUE:	-	-	-	
DIRECT EXPENSES:				
LLT BOARD	17,000.00	17,000.00	-	0%
LLT OUTREACH	8,000.00	8,000.00	-	
STAFF TRAVEL/PARKING	600.00	600.00	-	0%
TOTAL DIRECT EXPENSES:	25,600.00	25,600.00	-	0%
INDIRECT EXPENSES:				
FTE	1.70	1.55	(0.15)	-9%
SALARY EXPENSE	142,602.00	135,526.00	(7,076.00)	-5%
BENEFIT EXPENSE	49,304.00	41,592.00	(7,712.00)	-16%
OVERHEAD	42,495.00	38,095.00	(4,400.00)	-10%
TOTAL INDIRECT EXPENSES:	234,401.00	215,213.00	(19,188.00)	-8%
TOTAL ALL EXPENSES:	260,001.00	240,813.00	(19,188.00)	-7%
NET INCOME (LOSS):	(260,001.00)	(240,813.00)	19,188.00	

The Limited License Legal Technician (LLLT) license type (APR 28), was created by the Supreme Court and delegated to WSBA in 2012. In the past, this cost center was used to track all revenues and expenses associated with the "LLLT Program". LLLTs are now WSBA members, and consistent with the WSBA Bylaws and the Washington Supreme Court Admission and Practice Rules, the administration and regulation of these member license types has been consolidated within existing work groups and cost centers that already perform these functions for lawyers, including Admissions, License and Membership Records, and MCLE (although it continues to be possible to determine these costs separately by member type if needed). For FY19, this cost center is used primarily to track staffing and expenses related to the LLLT Board, which by court rule oversees the license.

WSBA COMMITTEE/BOARD ANNUAL REPORT – FY18

<p>Limited License Legal Technician (LLLT) Board</p> <p>Chair: Steve Crossland</p> <p>Staff Liaison: Renata Garcia</p> <p>BOG Liaison: Dan Clark</p>	<p>Size of Committee: 15</p> <p>Number of FY19 Applicants: 6</p> <p>FY18 direct expenses: \$17,000</p> <p>FY18 indirect expenses: \$92,636</p>
<p>FY18 Demographics:</p> <ul style="list-style-type: none"> • Gender (Female: Male: Not Listed): 12:2:0 (0 did not answer) • Number of members self-identified with a racial/ethnic under-represented group: 3 (0 did not answer) • Number of members self-identified as having a disability: 2 (0 did not answer) • Number of members self-identified as LGBT: 2 (0 did not answer) 	
<p>Background & Purpose:</p> <p>The Limited License Legal Technician (LLLT) Board derives its authority from the Washington Supreme Court under Rule 28 of the Admission to Practice Rules (APR), adopted effective September 1, 2012. By order of the Court, the WSBA is to administer and fund the LLLT Board and the program.</p> <p>APR 28 authorizes persons who meet certain educational and licensing requirements to advise clients on specific areas of law. The only currently approved practice area is domestic relations. The Supreme Court established the LLLT Board to oversee the LLLT license.</p>	
<p>Strategy to Fulfill Purpose:</p> <p>From 2013-2016, the LLLT Board concentrated on creating the operational details for the LLLT license; the LLLT Board is now focusing on the promotion, expansion, and development of the license.</p>	
<p>2017-2018 Accomplishments and Work in Progress:</p> <ol style="list-style-type: none"> 1) In February 2018, the LLLT Board submitted suggested amendments to APR 28, the LLLT RPC and the RPC for lawyers for consideration by the Washington Supreme Court. These amendments would enhance the scope of the current family law practice area. The Court recently published the suggested amendments for comment. Comments are due by no later than September 14, 2018. 2) The LLLT Board is currently circulating a new proposed practice area, Consumer, Money, and Debt, for comment before taking further action, i.e., developing curriculum requirements, seeking approval by the Court, etc. The LLLT Board hopes to engage as many subject matter experts as possible in the development of this and any future proposed practice areas. 	

- 3) The LLLT Board recently approved the University of Washington Continuum College Paralegal Studies Program to teach the LLLT core curriculum.
- 4) The LLLT Board has been engaging in discussions to explore ways in which LLLT students may qualify for financial aid.

2018-2019 Goals:

- 1) The LLLT Board will continue to consider and recommend new practice areas for approval by Supreme Court.
- 2) If the family law enhancements are approved by the Court, the LLLT Board will develop the required training for currently licensed LLLTs.
- 3) The LLLT Board also plans to expand the accessibility of the LLLT core curriculum across the state by continuing to approve core class programs at additional community colleges.
- 4) The LLLT Board will continue to engage in outreach efforts, including working with the WSBA communication team to expand outreach to a diverse pool of LLLT candidates, including college and high school students.
- 5) The LLLT Board also plans to advance its efforts to provide access to financial aid for students in the LLLT practice area classes.

Please report how this committee/board is addressing diversity:

1) Are you using any of the tools provided by WSBA and if so, how? 2) Have you sought out training or consultation from the Inclusion and Equity Specialist? 3) How have you elicited input from a variety of perspectives in your decision-making? 4) What have you done to promote a culture of inclusion within the board or committee? 5) What has your committee/board done to promote equitable conditions for members from historically underrepresented backgrounds to enter, stay, thrive, and eventually lead the profession? 6) Other?

- 1) The LLLT Board seeks members from different backgrounds and experiences who work together to foster a positive work environment in concert with WSBA's commitment to diversity and inclusion.
- 2) The LLLT Board will schedule training with WSBA's Inclusion and Equity Specialist.
- 3) The LLLT Board seeks input from all WSBA members as well as the legal community in general when making important decisions such as developing a new practice area.
- 4) APR 28 has been amended at the request of the LLLT Board to allow LLLTs and LPOs as well as attorneys with judicial and emeritus pro bono status to serve as Board members.
- 5) The core curriculum educational approval process reflects the LLLT Board's commitment to diversity in that it requires any institution offering the core curriculum to have diversity, inclusion, and equal access policies and practices in place. The LLLT Board also sought to increase diversity within the LLLT profession by extending the limited time waiver (see APR 28 Regulation 4) to 2023 in order to allow a group of candidates qualified by work experience rather than by education to enroll in the practice area classes. The ongoing effort to provide a pathway to financial aid for the practice area classes also aims to provide more opportunities to join the LLLT profession to prospective applicants from diverse socio-economic backgrounds.
- 6) N/A

Please report how this committee/board is addressing professionalism:

- 1) Does the committee/board's work promote respect and civility within the legal community?
- 2) Does it seek to improve relationships between and among lawyers, judges, staff and clients?
- 3) Does it raise awareness about the causes and/or consequences of unprofessional behavior?
- 4) Other?

- 1) The LLLT Board has set up rules of professional conduct and a disciplinary system for LLLTs, as well as requiring LLLTs to carry malpractice insurance and conform to the same rules as lawyers regarding IOLTA accounts.
- 2) The LLLT Board has worked to promote LLLTs in the legal community and educate all legal professionals about the permitted scope and models for LLLT practice, as well as highlighting the ways in which collaboration with LLLTs can contribute to the efficiency and accessibility of any legal practice.
- 3) N/A
- 4) N/A

Please report how this committee/board is integrating new and young lawyers into its work:

- 1) How have you brought new and young lawyers into your decision making process? 2) Has the committee/board supported new and young lawyers by (for example) helping to find and prepare them for employment, assisting with debt management, building community, and providing leadership opportunities? 3) Other?

- 1) All WSBA members are invited to provide comments on rules and new practice area suggestions and development, including new and young lawyers.
- 2) N/A
- 3) N/A

From: [Gary Morean](#)
To: [Limited License Legal Technician](#)
Subject: [Possible Spam] LLLT
Date: Thursday, July 05, 2018 5:13:31 PM
Importance: Low

Dear LLLT Board,

Do **not** expand this monster into any other areas of law. It should never have been created in the first place. Please kill this expensive, ugly beast.

Gary A. Morean
WSBA #12052

Gary A. Morean, *Partner*
Attorney at Law
INGRAM, ZELASKO & GOODWIN, LLP
120 East First Street | Aberdeen, WA 98520
360.533.2865 (phone) | 360.538.1511 (fax)
Email: gmorean@izglaw.com
Website: www.izglaw.com

From: [Matt Purcell](#)
To: [Limited License Legal Technician](#)
Subject: Against expanding the LLLT program
Date: Tuesday, May 29, 2018 10:57:31 AM
Attachments: [image001.png](#)

The program has ZERO data that it has remotely met the original goals under family law. It is asinine to expand at this time and seriously calls into question the sanity of those running the program. The way this is being run is so offensive it's not even funny at this point...

Happy to talk about how to make the program better but no one asks (certainly not anyone from the eastside of the state where all these LLLTs were allegedly going to help low income and rural communities...).

Truly,

MATHEW M. PURCELL
Attorney



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Richland, WA 99352
Phone: (509) 783-7885
Fax: (509) 783-7886

Please be aware that Domestic Court is held Monday morning, Tuesday all day and Wednesday morning each week; my ability to respond to email is limited during those days/times.

Heather Martinez: HM@PurcellFamilyLaw.com
Maria Diaz: MD@PurcellFamilyLaw.com
Mark Von Weber: MV@PurcellFamilyLaw.com

Office Hours: Monday-Thursday from 9:00 a.m. to 5:00 p.m. Friday from 9:00 a.m. to 4:00 p.m.
Closed for lunch from 12:00 p.m. – 1:00 p.m.

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From: [Bonnie Sterken](#)
To: [Limited License Legal Technician](#)
Cc: [Paula Littlewood](#); [Diana Singleton](#); geoff.revelle@FisherBroyles.com; steve@crosslandlaw.net
Subject: ATJ Board Comments for LLLT Board
Date: Monday, July 16, 2018 11:17:51 AM
Attachments: [ATJ Board letter to LLLT Board 7.16.2018.pdf](#)
[image001.png](#)

Good morning,

Attached, please find the ATJ Board's letter in response to the new proposed practice area.

Thank you!



Bonnie Middleton Sterken | Justice Programs Specialist

Washington State Bar Association | 206.727.8293 | bonnies@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

Pronouns: She/Her

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THE ALLIANCE
for Equal Justice

MEMBER

July 16, 2018

Steve Crossland
Limited License Legal Technician Board
1325 4th Ave, #600
Seattle, Washington 98101
Sent by email: LLLT@wsba.org

RE: LLLT Proposed New Practice Area

Dear Steve:

The ATJ Board has reviewed the "Draft for Discussion and Comment: Consumer, Money, and Debt Law Proposed New Practice Areas for Limited License Legal Technicians." We understand that this is just that – a draft proposal and this appears to be a broad outline of a proposal to us where the specifics are still being considered.

We understand that 36 people have graduated from the LLLT program since it began and of those 36, 33 are in practice. We also understand that three LLLTs are practicing in Eastern Washington while the rest practice in Western Washington.

It is our understanding that none of the 33 LLLTs are employed by a civil legal aid provider. (To our understanding one LLLT has a contract with the Chelan-Douglas County Volunteer Attorney Services – how much of her time is involved with that contract is unknown.)

It is also our understanding that the LLLT Board does not know the amount LLLT's are charging for their services. Without that basic information it is difficult to conclude how much of the population would gain access to the justice system if this newest proposal were to be adopted. For purposes of this letter the ATJ Board is assuming that the proposed expansion would provide greater access to the segment of the population that can pay some amount for legal services.

We are aware that your Board is looking for feedback before July 16, 2018, so we will provide some general comments at this point in time.

In order to further access to the justice system, the expansion into the scope of practice that the LLLT Board is recommending should be limited. Your proposal should not allow LLLTs to represent any corporate entity, partnership, or person in connection with the business of debt collection, debt buying, or money lending. Without this restriction your proposal would not expand access to the justice system for those who need it but instead only allow another avenue for those who already have the means to access the justice system.

As an overarching concern, the ATJ Board will want to see how this new proposal would promote access to the justice system. If the overwhelming majority of LLLTs are charging for their services then this proposal will not promote access to the justice system for those who have no ability to pay. It may, however, promote access to the justice system for those who have the ability to pay some amount, i.e., those of moderate means. At this point in time the ATJ Board does not have sufficient information to make that determination.

As I stated throughout this letter our comments are general in nature. The ATJ Board may have concerns about specifics of the proposal as they become clarified.

We look forward to receiving the information that we requested.

Sincerely,

A handwritten signature in cursive script that reads "Geoffrey S. Revelle".

Geoffrey Revelle, Chair
Access to Justice Board

From: [Kylie Purves](#)
To: [Limited License Legal Technician](#)
Subject: Comment on Proposed Consumer, Money, and Debt Law LLLT Practice Area
Date: Tuesday, May 15, 2018 12:39:28 PM

I think there is a weak nexus between the evidence of unmet need and some of the proposed practice areas.

For example, I do not believe these two areas are appropriately under the heading of Consumer, Money, and Debt Law:

Small Claims Proposed Permitted Actions: Assistance preparing the Notice of Small Claim, Certificate of Service, Response to Small Claim, Small Claims Orders, Small Claims Judgment, and counterclaims Preparation for mediation and trial Obtaining and organizing exhibits.

Protection Orders Proposed Actions: Selecting and completing pleadings for Protection Orders for domestic violence, stalking, sexual assault, extreme risk, adult protection, harassment, and no contact orders in criminal cases.

Small claims is broad and could include matters outside of the consumer, bankruptcy, and credit related issues cited in the section entitled Evidence of Unmet Need. The inclusion of protection orders is not supported at all by the evidence provided.

Inclusion of extra practice areas in a call for comments on Consumer, Money, and Debt Law is also potentially misleading because people who have an interest in commenting on something like no contact orders in criminal cases might disregard a call for comments on a seemingly unrelated topic.

Kylie J. Purves

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From: [Ryan Santini](#)
To: [Limited License Legal Technician](#)
Subject: Comment re New Practice Area
Date: Wednesday, June 20, 2018 10:18:56 AM

Hello,

I am writing you today to voice support for the addition of the practice area Consumer, Money, and Debt. When it comes to access to justice, it should come as no surprise that those who are priced out would have need of legal services related to debt. This proposed practice area is of great interest to me personally as someone with a background in working for a local credit union. Everyday I worked with the under-served members of my community; I am thrilled to think I might be able to continue doing this and draw on some of my financial industry knowledge. I am currently studying for my Associates in Paralegal Studies at Whatcom Community College.

Thank you for your time,

--

Ryan Santini
(808) 457-6063
237 W. Kellogg Rd
Bellingham, WA
98226

From: [Edgar Hall](#)
To: [Limited License Legal Technician](#)
Subject: Commentary on LLLT including money, debt, and consumer law
Date: Monday, May 07, 2018 8:33:27 PM

My name is Edgar Hall. My practice, Washington Debt Law, is entirely focused on all three areas to includes resolution of debt issues via settlement, litigation, and bankruptcy. I have practiced in this area for the last ten years as both debtor and creditor attorney. I believe that I am well situated to discuss these issues.

I will break down my analysis by the anticipated scope of services as presented on pages 4-6.

1. Assisting with LFOs & reducing interest on them

- simple motion, well within LLLT ability
- very supportive of all proposed activities

2. Small Claims

- limited amount in controversy, opposing party likely not represented behind the scenes by serious legal rep, fast and efficient forum
- very supportive of all proposed activities

3. Student Loans

- Often times huge sums, up to 35% mark up under the higher education act, requires deep level understanding of accounting and review of accounting over life of loan, understanding of securitization and how loans are originated, stored, sold and transferred necessary, understanding of state law and federal remedies, understanding of bankruptcy, etc
- Absolutely, 100% against all proposed activities. There are no statute of limitations on federal loans generally, large attorney fees on the other side could be racked up by inarticulate litigation, LLLT licensed in WA cannot practice bankruptcy (often a necessary component to successful defense), LLLT would need to be able to give advice on federal statutes and federal law, LLLT would need to be able to argue administrative law before ALJ's potentially to appeal federal garnishments, etc. If poor advice is given regarding consolidation, it can impact access to income based repayment and other programs. Settling without understanding the threat of bankruptcy, hardship discharge, and deeper level accounting and consumer protection errors would be weak. I could go on and on but essentially LLLT's likely could not obtain proper licenses to give the necessary advice to productively assist clients.

4. Debt Collection Defense and Assistance

- I am mixed on this one. Generally there are three ways to handle a debt: settlement, counterclaims, and bankruptcy. LLLT's cannot practice or advise on bankruptcy matters and that threat is a huge part of the defense and necessary leverage proper settlements. FDCPA is federal law, along with FCRA, TCPA, TILA, etc. Can LLLT advise on federal law and the

strategy of the collection industry would be to just remove every case to escape the free help and magnify fees at the same time, relying on attorney fee clauses and fee shifting statutes to force debtors to pay even more for this trouble. Frivolous, unsuccessful, or missed counterclaims would likely be a problem. The only reason I am mixed is purely based on need and some combination of form discovery and help could be useful. Some matters are straightforward enough that some small portion could be helped.

-I would HESITATINGLY say that these activities would be allowed with the reservations below

- a) negotiation of debt
- b) filling out answers but NOT counter claims unless they associate with someone licensed in federal court as the claim will just get removed and additional attorney fees added
- c) reporting statutory violations to regulatory agencies

-Given the very close interaction of debt defense with bankruptcy, it is very hard to consider anyone not familiar with bankruptcy laws as being competent to render debt defense advice on a gestalt level

-I believe allowing LLLT's to file counterclaims will lead to an increase in additional attorney fees and likely against the debtor

If I had an ideal world, there would be some sort of mandatory BK screen, counter claim screen, and either of those being flagged and a referral given to the client. LLLT's can help with basic notices of appearance, limited discovery, perhaps a review of the accounting with proper background/training, and basic negotiation.

5. Garnishment

To short cut, I support everything stated and would only add that a referral to a BK attorney or a screen would be useful and should be mandatory.

6. Identity Theft

I support as drafted

7. Wage Complaints & Defense

Essentially I will reiterate my objections as listed in section 4 above. I do not know much about the employment side of things, but there are state and federal laws to consider and only being able to handle half the book is problematic at best. Likewise, in fee shifting perspective, this is opening up the employee to some pretty large counterclaims that will mandate their bankruptcy should they fail. But if they are not working, at least they qualify.

8. Loan Modification & Foreclosure Defense

I have worked as a creditor attorney on this side of things at a mortgage default servicing firm and as a consumer atty defending against judicial and non-judicial foreclosures.

Loan modification is fine. The bank is going to do a net present value, determine if its more profitable to foreclose or not, and will basically act accordingly. The only problem here is the

LLLT could mistakenly take away standing arguments by shooting for modification when it should be litigated. That can be the difference between a valid defense and/or a free house. The malpractice the LLLT might have in this market could not cover the amount lost. I would recommend requiring a much higher policy as a minimum to practice here.

As far as foreclosure defense, I am absolutely against it. Defense generally (aside from modification) consists of litigation, possible class action, understanding of numerous federal laws in addition to state laws, understanding of securitization, understanding of how mortgage accounting works and loan processing. I cannot begin to describe the harm that I have seen licensed attorneys without foreclosure experience have harmed files, I shudder to think of what someone with limited licensure and experience could do. Keep in mind, there are fee shifting statutes in all of the contracts, deeds of trust, promissory notes, and most consumer protection statutes that are relevant.

Making a distinction between judicial and non-judicial foreclosures seems like a true distinction, it is not. Here is why. To stop a non-judicial sale, you file a TRO and claims and then essentially you have turned it into a judicial FC because you are alleging all the same issues, just with an additional bond required by RCW 61.24. Do you know what they are going to do? Just start everything as a judicial, ramping up costs and not waiving deficiency. This will compel more bankruptcies. What makes the non-judicial nice is the deficiency is waived, if a slew of LLLTs pop onto the market and the defense knows they are not allowed to work judicial cases, what do you think will happen from a game theory perspective? More judicial foreclosures, more fees, fewer waivers of deficiencies, more bankruptcies, and more bad outcomes.

This is not family law where each side bears their own fees unless they are in contempt, violate a parenting plan, or do something to compel that outcome. These are banks which are always represented by experienced firms and in many instances national/multinational white shoe firms.

I support loan mod assistance, I do not support foreclosure defense other than perhaps through the foreclosure mediation program, RCW 61.24.163.

9. Protection Orders

Not sure how this is debt related but I like it as written

10. Bankruptcy awareness and advice

Support as written

ADDITIONAL OBSERVATIONS

If you really want to help with all of these debt issues. Require more precision of process servers. 90% of my clients claim they are not served. White, black, old, young, religious, non-religious, educated, uneducated, etc- the only pattern is consistency of claims of not being served and legitimate surprise and anger. It is so easy for a process server to sewer serve it is beyond ridiculous. Drive by, see the lights on, and say it happened. A statute should be added making statutory punishments for servers and process serving companies for

fibbing about service as well as higher bonds or insurance.

I actually advise my clients to install drop cams and in several instances the process server can be seen tossing the papers at the door or nothing at all. I do so many motions to vacate it makes me dizzy. A constant stream of false service. I had one recently claim to serve someone at a youth hostel they had not been to in over 10 years because likely it came up on the skip trace at some point.

Further, we need more protective garnishment laws. We need less than 25% of wages to be garnished and more exemptions. Throwing gobs of LLLT's is not the solution, the solution is systemic protections and better process. Imagine how many fewer attorneys and LLLT's would be necessary if only 10% of your income were taken, inline with many other states.

We should reintroduce the old fraud provision of the deed of trust act instead of this victim blaming RCW 61.24.127 that we have instead.

We can require more in the initial complaint than some vague statement that money is owed two or three paragraphs long. Most of my clients actually think its a scam when combined with no case number its so vague. We can make stronger case law that sets judgment interest as the measure rather than hit and miss case law that allows a higher contract rate without necessary TILA disclosures. We can make stronger prove up that service was made.

In any case, this is a topic near and dear to my heart and I would be happy to give more input upon request. I hope this assists.

-Edgar Hall

Edgar I. Hall, Attorney
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From: [Paula Plumer](#)
To: [Limited License Legal Technician](#)
Subject: Comments - new practice area
Date: Tuesday, July 03, 2018 10:38:25 AM

I don't think this expansion is useful and I disagree with watering down the law license to add this or the other practice areas.

/paula plumer

From: [Minh Tran](#)
To: [Limited License Legal Technician](#)
Subject: Comments on "Consumer, Money and Debt Law"
Date: Tuesday, May 15, 2018 3:58:58 PM

Hello,

I have been practicing since 2009. When I started practicing, my focus was on consumer bankruptcy law (Ch 7 and Ch 13). I worked at one of those firms that filed thousands of cases per year. We often charged around \$800-1,200 attorney's fee to file a simple case. I believe the going rate still hasn't changed. What was mind boggling to me back then, and now, is that some people will pay \$500 to an unlicensed bankruptcy document preparer to draft their *pro se* bankruptcy petition. Sure, the cost savings is huge for someone who is completely out of cash, but most of my Ch 7 clients were all in the same boat. We found a way to make it work. After leaving the firm, I started my own practice where I expanded my practice to alternative means of debt resolution--which sometimes include litigation. I have litigated against insurance companies on subrogation claims, against big banks for wrongful foreclosure tactics, and I have also negotiated settlements with creditors and then pursued contribution claims against ex-spouses. I don't find what I do in my practice as "simple", and I wouldn't trust any of my paralegals to advise clients or work on cases without my supervision (for the sake of the client). I find it troubling that the workgroup would trust LLLTs with this role.

I read over the proposed practice area and for the most part, I think the proposal creates a situation where some desperate debtors will end up being more harmed than helped due to advice from untrained "litigators". It should be noted that debt collection is a very broad area, and it could involve other areas such a debtor being sued for an automobile subrogation claim, car accident without insurance, breach of lease agreement, a breach of credit card contract, or even for a tortious action. These are all ordinary lawsuits where the end results is a judgment and garnishment if the defendant loses. To simplify it down to simply a debt collection matter ignores all the complexities of litigation.

The proposal goes beyond simply helping debtors understand their rights and completing forms; it would allow LLLT to draft motions, directly negotiate with opposing parties, coming up with counter claims and affirmative defenses, "accompanying and assisting in court", and advising on bankruptcy matters. All of these actions require both experience and knowledge in litigation strategies. And what's the worst thing that can happen to a desperate debtor who was sold on using a LLLT due to cost savings? Well, the debtor could lose his/her home, waive a statute of limitations defense or other waivable defenses, or be liable for massive amount of attorney's fee due to fee shifting clause in a contract.

I also want to remind the workgroup of United States v. Tally, Western District of Washington CR18-0082-RJB, where a lady ran a business called "Driving Dirty" to help people get their drivers license back. One thing she did was she assisted folks in filing frivolous bankruptcy petitions *pro se* to get their license back. The U.S. Trustee got an injunction against her and eventually she was prosecuted for a felony for lying at a 2004 examination (where she was asked if she ever advised people to file bankruptcy). Although her intentions were good, helping folks who can't afford attorneys get relief, her advice and strategy harmed creditors and wasted public resources. She obviously did not have all the tools to fulfill her goal with her limited knowledge.

While I think LLLT can provide valuable service to family law practice, where the court has developed forms and advice for filers, "debt collection" is too broad of an area. A simple motion to vacate a default judgment so that a summary judgment can later be entered could mean additional attorney's fee assessed against the debtor. Defending and prosecuting "debt collection" requires some litigation experience because every case requires strategy.

While some debtors may benefit from having LLLTs in this area, the risk to others is not worth it. I hope that the workgroup will reconsider LLLT's role in consumer, money, and debt law.

--

MINH T. TRAN

Attorney | Admitted to practice law in Washington and Oregon

Arrow Law Group, PLLC | 12826 SE 40th Ln, Ste A11 · Bellevue, WA 98006 | Ph. [\(425\) 531-7946](tel:4255317946)

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From: vlaparker@aol.com
To: [Limited License Legal Technician](#)
Subject: comments
Date: Tuesday, May 15, 2018 2:04:35 PM

Dear Steve,

I think a true analysis of this "program" needs to be performed BEFORE expansion. It needs to be analyzed in terms of whether or not it is meeting the original purpose and evaluation of the unforeseen consequences.

No one evaluated the actual billings of an attorney throughout the state in the areas "served" before implementing this. Has anyone checked the billings of these fake attorneys? Probably not.

Has anyone checked the numbers of these non-attorneys who have violated the rules and the numbers who depart from their practice?

There are so many questions and NO answers.

Call this what it is -- another "feel good" program -- not a solution.

As you look to expand, consider the reality of the need to go beyond approved forms. Review the problems associated with LPO involved in real estate. I have had to correct many problems created by LPOs.

As an attorney who works with Wills and Probates, I can tell you that there is no such thing as a simple Will or Probate. Not only that but the broadly touted living trusts in which an attorney was a front man for a business in which trusts were churned out by non-attorneys using forms for all sorts of situations. One huge problem was the conflict created as the bits and pieces were selected.

I hate that attorneys are being dismissed by the claim that a person with a little training can adequately do out jobs. The ones who suffer are the clients. This is truly shameful.

I know this will probably circular file but I speak again because someone MUST voice the truth.

Thank you,

Vicki Lee Anne Parker,
Attorney at Law

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PARKER by telephone at 360-491-2757 to arrange for disposition of the original documents.

From: antimony9@gmail.com on behalf of [Vanessa Shaughnessy](#)
To: [Limited License Legal Technician](#)
Subject: Consumer Money and Debt Law
Date: Sunday, July 08, 2018 3:57:09 PM

I'm writing you to strongly support the addition of the new LLLT practice area. I'm intending to become a LLLT and am currently volunteering at an organization that provides legal aid for tenants and those who have past financial issues that are keeping them from getting housing. From that vantage point, I can say that our state absolutely needs more accessible legal resources to help people with their financial issues.

I do hope the scope of the practice area will include settling judgments, as this a crucial need for people trying to get their lives back on track. My family needed this kind of legal help when we purchased our home, and it cost us \$8,000 on top of the existing financial burden of the old judgement. It nearly cost us our chance at homeownership, and we would have jumped at the opportunity to use a moderately priced alternative.

I hope that the new practice area will go forward with a wide enough scope to provide meaningful, coherent help for people.

All the best,
Vanessa Shaughnessy

From: [d.hein](#)
To: [Limited License Legal Technician](#)
Subject: Consumer, Money and Debt law- proposal
Date: Tuesday, May 15, 2018 2:16:23 PM

Dear Ms. Ivarinen and LLLT Board:

Thank you for allowing bar members to comment upon this proposed area of practice.

In short, there are currently plenty of providers for the services that were listed as being considered possibly appropriate as LLLT practice areas. Consumer counseling services are readily available at various price points. In addition, identity theft is usually handled more than adequately with one's Bank and the three major reporting credit bureaus.

A recent LLLT experience:

My husband and I, both lawyers in the state of Washington, sold a house in Washington last month and dealt with a licensed LLLT as the closing officer. Her employer claimed she had been a real estate closing officer for more than 15 years. She was unable to answer questions of any sort including the most basic type, gave unasked-for advice which I believed was unnecessary in the circumstances, and claimed that she had no authority to modify any of the forms she utilized. One form in question was defective on its face, requiring modifications in order to be accurate. When she informed me she could not change the form I had to ask to speak to house counsel. No one knew the name of her supervising attorney. Her service was unsatisfactory, to say the least. Our closing was completed only because I ensured that it was. I cannot imagine what non-lawyers must endure in order to effect a real estate transaction.

This anecdote is not a stand alone, unfortunately. Instead of expanding the powers and authority of LLLTs in the name of serving the public, my recommendation is that we clean up the standards and the competencies of the current group of LLLTs. It is a disservice to the public for us to do anything else.

I believe that LLLTs can and do serve the public. I am a former paralegal educator and am aware of the good that can be done for clients in terms of simple, repetitive tasks. This would not include, for example, much in the areas of debt or loan counselling. But in our hurry to put LLLTs to work quality and standards should not be compromised.

Thank you for this opportunity to raise a red flag.

Dana Hein

From: [Crawford, Sarah \(DOL\)](#)
To: [Limited License Legal Technician](#)
Subject: Consumer, Money, and Debt Law
Date: Friday, July 13, 2018 3:21:03 PM
Attachments: [image2018-07-13-145625.pdf](#)

Good Afternoon,

Please find attached comments submitted on behalf of the Washington State Collection Agency Board.

Thank you,

Sarah Crawford

Washington State Department of Licensing
Board Support Supervisor
Regulatory Boards Section
Mailing: P.O. Box 9012, Olympia WA 98507
State Mailstop: 48049

WC: 360.819.0620 | 📞 360.664.1567 | ✉️ scrawford@dol.wa.gov



STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9020 • Olympia, Washington 98507-9020

July 13, 2018

Washington State Bar Association
LLLT Board
LLLT@wsba.org

Re: Consumer, Money, and Debt Law
Public Comment from the Washington State, Collection Agency Board

Mr. Chairman Crossland and Members of the Board:

Please accept these comments of the Washington State, Collection Agency Board concerning the proposed new practice area for LLLTs in Consumer, Money and Debt Law.

The Washington State Collection Agency Board ("CAB") is a state regulatory board created by statute, RCW 19.16.280, to advise and assist the Department of Licensing (Department) with enforcement of the Washington State Collection Agency Act, RCW 91.16. *et. seq.*, and with the power to adopt rules and regulations, investigate collection agency complaints, impose discipline and grant or deny collection agency licenses. See RCW 18.235.030. The board is comprised of five members, two public and two industry representatives appointed by the Governor, and one member of the Department of Licensing appointed by its director.

The purpose of this letter is to neither support nor oppose the Consumer, Money, and Debt Law LLLT proposal (LLLT Proposal), but rather to request that the CAB be included and consulted as a stakeholder with respect to certain portions of the proposal which may overlap or interfere with the DOL's current regulatory function. The CAB would like to avoid any unintended consequences created by the interplay and potential conflict between the Consumer LLLT proposal and CAB's regulatory duties.

Currently, CAB is concerned by the following services listed in the LLLT proposal, which potentially fit within the definition of a "collection agency activities" under RCW 19.16.100(4)(b):

- Small Claims: "Assistance preparing the Notice of Small Claim ... Small Claims Judgment, and counterclaims."
- Debt Collection Defense and Assistance: "Assistance filling out complaints"; and
- Garnishment: "Assistance filling out forms (Application for Writ of Garnishment, Continuing Lien of Earnings, Return of Service, Notice of Exemption Claim, Release of Writ of Garnishment, Motion and Cert. for Default Answer to Writ of Garnishment, Application for Judgment, Motion/Order Discharging Garnishee, and Satisfaction of Judgment)."

CAB is concerned that by including the activities listed above, LLLTs who perform them could be required to be licensed as collection agencies, or conversely, that their inclusion could cause those activities to fall under the purview of the practice of law, requiring collection agencies to be licensed by the WSBA.

It is the hope of the Board that any LLLT Proposal adopted will account for the Departments function or avoid the potential licensing conflicts identified above. In any case, the CAB would appreciate being included as a stakeholder going forward.

The CAB would like to request that the Washington State Bar Association conduct additional outreach to various stakeholders of the industry and the CAB would like to propose the deadline for comment on this topic be extended past the original July 16, 2018 deadline, to allow for various stakeholders to provide comment that were not included in the original outreach from the Washington State Bar Association and the LLLT Board.



Tami Dohrman, Chair



Date

From: [Matt Crane](#)
To: [Limited License Legal Technician](#)
Subject: Consumer, Money, and Debt Law proposal
Date: Monday, May 21, 2018 6:32:52 AM
Attachments: [image001.png](#)

Dear Mr. Crossland—

I am in favor of the proposed LLLT practice area for consumer, money and debt law. It makes sense to me that trained LLLT practitioners be allowed to provide limited legal services in this area to help fill an unmet need.

Matthew C. Crane, WSBA 18003
Direct | 206.905.3223
Email | mccrane@bmjlaw.com



From: [Cameron Fleury](#)
To: [Limited License Legal Technician](#)
Subject: Do not expand (or keep) the LLLT program
Date: Tuesday, May 15, 2018 4:34:30 PM

To Whom it May Concern:

Thank you for requesting input from Members.

First, by way of full disclosure, let me say that I am opposed to the entire LLLT program. While it may have been well-intentioned to start, the reality is that the LLLT's are not providing a stop-gap for low income persons to avoid being Pro Se. They are competing directly with, and at the same rates, as attorneys and we are being forced to subsidize them with our Dues. The entire program was "sold" as providing low income assistance, which was almost immediately dropped. Then it was "sold" as being a test that once substantial data had been collected and analyzed, if the program was a "success" then it would be considered to be expanded. The truth is that there has not been anything near enough data to support any conclusions (even whether they are harmful) at this time.

Barreling forward at breakneck speed to expand into as many areas of practice as possible is helping Community Colleges and the WSBA Staff dedicated to the LLLT program. It is not assisting the target market (low income persons with access to justice issues), it is in direct competition with those of us who paid our dues in schooling, testing, CLE requirements and disciplinary supervision if/when needed.

That said, I strongly believe that before even considering whether to expand the LLLT program, it should at least be in existence long enough to support a reliable conclusion it is 1) a benefit to the public, 2) does not financially harm attorneys, and 3) does not harm the public (failure to properly distribute retirements, calculate support deviations, address various consequences of different distributions of a marital estate, etc. etc. etc.).

I do not practice debtor/creditor law, but I can envision many issues with allowing under-trained LLLT's into the area and the potential harm to the public.

Regards,
Cameron J. Fleury
WSBA #23422

From: [Kathy Rall](#)
To: [Limited License Legal Technician](#)
Subject: expansion of LLLT program
Date: Tuesday, May 15, 2018 1:05:07 PM

Why don't you just open every area to the practice by LLLT's and all the lawyers can quit their jobs and go do something fun with their time? How to solve problems such as these? Earn more if possible, but more importantly, SPEND LESS and SPEND WISELY. This is an educational process, but my parents taught me that I was entitled to something when I could afford to pay for it. No one is entitled to have expensive TVs, new cars, expensive toys, new clothes every season etc. Each of us is entitled, to have that for which we can pay. As Mom and Dad used to say....."you don't get what you want until you can afford to pay for it" and "you need to decide to purchase that which you need, not what you want". If more people would keep Mr. Visa or Mr. Debit Card, or Mr. contract" etc. in his or her pocket then some of these issues would go away. Call me old fashioned, but if we started here, then perhaps not all of these services would be necessary

--

Kathy J Rall
kjrall8@gmail.com
C: 206-604-4193



Virus-free. www.avg.com

From: [N. Smith \(Smitty\) Hagopian](#)
To: [Limited License Legal Technician](#)
Subject: full speed ahead
Date: Tuesday, May 15, 2018 1:55:45 PM

Hi Board/Steve: This is an area that needs to be filled and an LLLT is the right move for our times. I trust you/your Board will be cautious in drafting the parameters and wish you well.

My two cents.

Thanks,

Smitty Hagopian

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'Sinner' and 'saint' are waves of differing size and magnitude on the surface of the same sea. Each is a natural outcome of forces in the universe; each is governed by time and causation. Nobody is utterly lost, and nobody need despair.

From: [Bar Leaders](#)
To: [Limited License Legal Technician](#)
Subject: FW: LLLT in creditor/debtor practice
Date: Tuesday, July 17, 2018 10:58:04 AM

-----Original Message-----

From: Mark Kaiman [<mailto:mark@lustick.com>]
Sent: Tuesday, July 17, 2018 8:31 AM
To: Bar Leaders
Subject: LLLT in creditor/debtor practice

Why did I bother going to law school? Why did I even bother getting a Bachelor's degree? The WSBA seems determined to allow community college graduates with a few hours of supplemental training to practice law. What practice area is next on your agenda? Which group of lawyers who have worked hard for years to build successful practices are you going to undermine by allowing LLLT's to move in and steal their business? Maybe the WSBA is going to start recommending that LLLT's sit as judges. Why not? You can pay them less than judges who are actually qualified. It sounds absurd, but it is no more absurd than allowing unqualified people to practice family law or creditor/debtor law.

The Bar Association does not represent my interests. Instead of helping hard working attorneys and clearing a path for us to serve our clients and build our practices, the WSBA continually thinks of ways to place roadblocks and obstacles in front of us. LLLT's have should not even be practicing family law. I am extremely disappointed that the Bar Association would even consider allowing LLLT's to move beyond the family law area.

Mark A. Kaiman
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From: [Bar Leaders](#)
To: [Limited License Legal Technician](#)
Subject: FW: Opposition to Allowing LLLTs to Practice Debtor/Creditor Law
Date: Tuesday, July 17, 2018 10:58:25 AM

-----Original Message-----

From: jwchessell@rockisland.com [<mailto:jwchessell@rockisland.com>]
Sent: Monday, July 16, 2018 3:17 PM
To: Bar Leaders
Subject: Opposition to Allowing LLLTs to Practice Debtor/Creditor Law

Monday July 16, 2018

To: Washington State Bar Assn
Seattle, WA 98101

RE: Opposition to Allowing Limited License Legal Technicians to
practice Debtor/Creditor law

Dear WSBA:

I am opposed to allowing Limited License Legal Technicians to practice Debtor/Creditor law. This is a complicated field that embraces many other areas of law, such as contracts, agency, residency, standing, bankruptcy, criminal law, constitutional law, equity, remedies, commercial paper, evidence, and on-and-on.

The proposal does not well-serve the community, but rather allows persons with a limited knowledge of law and a limited experience in practicing law to represent clients who may make their choice of representation based solely on price.

The proposal is a mistake and should be shelved.

Very Truly Yours,

John Chessell Bar # 19370
San Juan Island, WA
jwchessell@rockisland.com

From: [Rick Bartholomew](#)
To: [Limited License Legal Technician](#)
Subject: Input regarding LLLT program
Date: Wednesday, May 16, 2018 12:13:44 PM

I am a retired family law attorney, although I still do GAL work and mediation.

I do not believe the LLLT program should be expanded. I was involved when the original proposal came up years ago. The first (and primary) justification for the program was that there was an unmet need for legal services for those who could not afford attorneys. LLLT's now charge rates comparable to those of attorneys, and indicate that they cannot afford to provide services for less. In addition, there are very few LLLT's. We do not have enough information to know how this program will work.

LLLT's have smaller bar dues than do attorneys. I assume the justification for that is that they were expected to charge lower fees, which they do not do. In other words, attorneys are subsidizing direct competitors.

So LLLT's were supposed to help low income folks, which they do not do. We were told that they would not be allowed to represent clients in court, which they are now asking to be able to do. If the program is to be expanded, it should go back to its original purpose (providing low income clients with legal help), and we should have more information on how well they are doing.

In the past, I had clients come to me to fix problems created by non-attorneys who helped them with their legal work. Sometimes I could do so, although the cost was higher than it would have been for me to represent them in the first place. Sometimes it was too late to do anything. This is why we need time to gather information regarding the effectiveness, and, frankly, competence, of LLLT's, before we expand the program.

Rick Bartholomew
WSBA #3107
Guardian ad Litem and Mediator
1800 Cooper Pt. Rd. SW, Bldg. 14
Olympia, WA 98502

Kinickinic50@gmail.com
360-701-5257

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I HANDLE GUARDIAN AD LITEM CASES AND MEDIATIONS, BUT I HAVE RETIRED FROM THE PRIVATE PRACTICE OF LAW, MEANING I NO LONGER ACCEPT PRIVATE CLIENTS. I DO MEDIATIONS IN CASES IN WHICH BOTH PARTIES ARE REPRESENTED BY COUNSEL.

From: [Steven Palmer](#)
To: [Limited License Legal Technician](#)
Subject: Letter in opposition to the formation of a Consumer, Money and Debt Law LLLT
Date: Friday, May 25, 2018 3:23:55 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)

Dear WSBA,

The practice of law surrounding debt can be extremely complex, impacting practically every substantive area of the law. It is also one of the most impactful areas of the law on individuals. If someone misses a deadline, a house can be in jeopardy, a bank account can be attached or wages can be garnished. There are enough qualified unemployed members of the bar to pick up the slack in this area of the law. Perhaps the WSBA could act as an advocate for these unemployed attorneys and train them to help the people that this LLLT group would serve.

The average student debt of a newly graduated attorney in Washington state was \$140,616 in 2012. Between 31 and 51% of law school grads do not have long term employment requiring a law license after graduation from Washington law schools. Source – American Bar Association. There are still law school grads that do not have jobs and the subject matter here is too sensitive to leave to non-lawyers to try to figure out.

I can imagine situation after situation where an LLLT would end up inadvertently or purposefully advising clients on the merits of bankruptcy as an alternative. This single scenario would run the LLLT in violation of the bankruptcy code. Further, it would potentially put the assisted person's vulnerable assets at risk.

We do not need another LLLT practice area.

Sincerely,



Steven M. Palmer
ATTORNEY

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We are a debt relief agency. We help file for bankruptcy relief under the Bankruptcy Code.

From: [Eric Theile](#)
To: [Limited License Legal Technician](#)
Subject: LLLT - Consumer, Money, and Debt Law
Date: Tuesday, May 15, 2018 1:19:25 PM
Attachments: [image003.jpg](#)

Dear Mr. Crossland and Ms. De Carvalho Garcia,

I was formerly a collection attorney in Washington and Arizona, and ran my firm's Washington office. I have filed thousands of collection lawsuits. I now very often represent debtors against those same types of claims.

I think the expansion of the LLLT program to this area is a fantastic idea. I would strongly caution that LLLT's be thoroughly trained on how to provide value and assistance to consumers.

99.9% of debtors owe the accounts and balances being sought by their creditors. And unfortunately, most of those debts provide for default interest rates and attorney's fees. Debtors certainly should not roll over when they don't believe they owe an alleged debt, but any collection attorney will tell you stories of \$2,000 turning into \$5,000 after contested hearings, interest and judgment enforcement.

My point is: as attorneys we are counselors. And while the LLLT program may not mirror all of the duties and obligations of an attorney, their role inevitably will be (and should be) to counsel their clients. Understanding when to fight a debt, and when to seek favorable settlement terms is crucial to providing value to the debtor. Availing oneself of an LLLT in order to file answers or objections is wonderful for people who are intimidated or unable to act on their own. The flip side is that very often, the best result is achieved by picking up the phone and seeing what can be agreed to outside of court.

I welcome the opportunity to speak further with anyone on this issue. Godspeed.

Kind regards,

Eric M. Theile - WSBA 44397

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From: [Malena Pinkham](#)
To: [Limited License Legal Technician](#)
Subject: LLLT - New Practice Area
Date: Tuesday, May 15, 2018 2:45:58 PM

Expanding the LLLT program to additional practice areas is a terrible idea. The entire LLLT program is bad for the citizens of Washington. The answer to limited legal services is not to provide people with sub-standard advice from non-lawyers. Why do the less fortunate deserve lesser quality services? I continue to be amazed and embarrassed that this program was ever started. Expanding it is naïve, dangerous and unfair to the vulnerable people receiving, and making major life decisions based on, the advice and issue-spotting ability of these “technicians.”

Absurd.

Malena F. Pinkham
Staff Attorney
The Confederated Tribes of the Umatilla Indian Reservation
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MalenaPinkham@ctuir.org

From: [Kirk Davis](#)
To: [Limited License Legal Technician](#)
Subject: LLLT
Date: Tuesday, May 15, 2018 2:01:41 PM
Attachments: [LOGO for email.jpg](#)

My concern is the continued expansion of the LLLT and licensing of same by the Bar. I think the continued pushing of LLLT into other areas is a bad idea for the bar and for the public. The public will think they are getting the same service from an LLLT that they would be from an attorney as this activity is sanctioned by the Bar. Of course, this assumption is incorrect.

Kind regards,

Kirk C. Davis
Attorney



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From: [Mark McClain](#)
To: [Limited License Legal Technician](#)
Subject: LLLT
Date: Tuesday, May 15, 2018 1:25:32 PM

This is really disappointing. While I appreciate there are needs for many, we continue to fund them through things like NWJP, yet fail to demand they actually serve these needs. If you are going to take away opportunity from your members with this area of law, you should first reduce the cost for your membership.

From: [Chris Van Vechten](#)
To: [Limited License Legal Technician](#)
Subject: LLLT Consumer & Debt Law
Date: Tuesday, May 15, 2018 7:24:56 PM

Greetings,

While the idea of the LLLT is well meaning, in practice, it strikes me as ineffective and ignorant of the realities on the ground people living in poverty face. I'm primarily a criminal defense attorney (hopefully the Constitution will, in 10 years, still be interpreted to entitle defendants to an attorney and not a LLLT) and the vast majority of people I represent are the sort of people who these programs are targeted to address.

I have often worked for people at rates that work out to less than \$40 an hour, but poverty tends to be the result of compounding problems that often exceed the financial bandwidth of the client. I do not believe that an LLLT could realistically assume the multiple roles an attorney does for less than \$40 an hour, without sacrificing significant quality.

I understand pro ses are frustrating for judges, but I suspect they are also inevitable. I have yet to find a member of my profession who supports this program and other than some super law firms who turn their paralegals into LLLTs to charge additional fees, I rarely confront them in my practice. The program should be scrapped.

--

Chris Van Vechten
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From: [Donna Person Smith](#)
To: [Limited License Legal Technician](#)
Subject: LLLT Expansion
Date: Friday, May 25, 2018 2:14:17 PM

Good Afternoon:

I understand the board is working on a new LLLT practice area — consumer, money and debt law. I am opposed to any expansion of the LLLT program. I am also opposed to any expansion of the role of LLLTs in family law matters. I am appalled that there is now a push for them to be able to appear in court. There are plenty of attorneys willing to work with low income clients by offering their services pro bono or on a reduced fee schedule.

Donna Person-Smith
Managing Attorney
Law Office of Donna Person Smith, PLLC
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Puyallup, Washington 98373
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(253) 465-5929-fax

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From: [stewart law](#)
To: [Limited License Legal Technician](#)
Subject: LLLT expansion
Date: Friday, May 25, 2018 4:37:07 PM

This letter is intended to respond to the call for input on the expansion of LLT's area of practice.

LLLTs were not, are not and will not be a good thing for the WSBA, its members or the public they ostensibly were intended to serve.

Hurting the current and future dues-paying, licensed, educated Attorney members of the WSBA by allowing LLLTs to compete with us, at our expense is an affront. The idea is so obviously contrary to the core function of any professional organization, it remains a mystery how it was initially approved.

No expansion of the areas of practice and allowed functions of LLTs should be made. A complete review of the program and the funding spent by WSBA should be undertaken.

William J. Stewart, Attorney at Law

From: [Carter Hick](#)
To: [Limited License Legal Technician](#)
Subject: LLLT Feedback
Date: Friday, May 25, 2018 1:18:00 PM
Attachments: [image001.png](#)

Hello,

Per your 5/25 e-newsletter, I want to provide feedback on the LLLT program and its possible expansion.

The entire program is a waste. If the WSBA, law schools and state government want lawyers to provide affordable legal services, then efforts should be made at making law school affordable. Tuition at 30k a year, 40k a year . . . and higher for law school? How can you expect a recent grad to work in public service, provide affordable services, or engage in pro bono work if she is saddled with 100k plus in student loan debt?

The solution is to great a LLLT program? Really?

Sad for us and any other person that is not independently wealthy and chooses to go to law school, but I guess it is good for the law schools – they can start collecting LLLT tuition on top of the law school tuition. Oh yeah, lenders will benefit, too. The public? You tell me. How is the LLLT program working so far? How many do we have now in the state?

Carter Hick

[HICK LOGO color-no logo-logo](#)



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From: [Anita Redline](#)
To: [Limited License Legal Technician](#)
Subject: LLLT new fields of law REALLY?
Date: Sunday, May 20, 2018 11:32:20 PM
Attachments: [image001.gif](#)
[image004.jpg](#)

Hello, Just my 0.2

Has there been a study as to whether the needs were actually unmet in these additional legal fields of law?

If the needs of the majority were met but there exists a minority whose needs were unmet, why? Only financial? Many attorneys offer a payment plan, a discount upon an initial sizeable payment, or the attorney's paralegal can handle the matter under supervision of the attorney.

Were the individuals unable to understand how to use the WSBA Directory, unable to find the law group, unable to use various websites like AVVO, etc.?

Many attorneys are not charging the high rates anymore and not charging for every email or phone call. But if LLLTs enter into some of these legal fields filled with new attorneys trying to make a living, those attorneys will leave for other legal fields but those other fields are already filled to the brim with attorneys too. LLLTs are becoming like balloons: you squeeze one end and the other end pops out. We have just too many legal representatives, three law schools, numerous students graduating into the legal fields, we're over capacity to maintain financial supports of these various levels of legal expertise.

Once LLLTs are in another legal field, attorneys struggle to meet their bottom line because attorneys are far more in debt than LLLTs for their education.

LLLTs are undercutting paralegals who work already under supervision by their attorneys. Attorneys graduating in the last 5 years are still struggling.

The real motive for LLLTs is not to help the common person but to help law

schools that are suffering from decreasing students.

The real challenges in the world of law: A law education is so expensive, complexities of law have greatly increased, law schools inadequately prepare potential attorney, rules and regulations continually change, too many experienced attorneys, too many newly graduated law students - how can LLLTs make it?

How are new attorneys suppose to get any experience when LLLTs jump in? These legal fields listed in the report are the types of fields new attorneys use to get their experience. It's like taking away the wetlands from baby salmon. Leave the environment alone so that new attorneys can grow and become great attorneys. (notice I didn't say expensive)

I am so glad that I am not a new attorney!

Very truly yours, Anita Redline

The "secret" to caring *for* the client is caring *about* the client.



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From: [Rich Davis](#)
To: [Limited License Legal Technician](#)
Subject: LLLT Question
Date: Friday, May 18, 2018 4:35:54 PM

Is the proposal likely to be an expansion of existing licensing authority, or a separate license in the area of consumer debt? I think the former is a good idea, the latter a mistake. I can expand my comment depending on your answer.

This area of practice is full of land mines. The big creditors have a lot of influence in the law, the credit reporting bureaus seem to require a deposition order to begin communicating, and some of the federally required credit resolution processes for credit card companies are not working. I have found a good solution; I use very little credit. However, even the three credit cards I use and pay fully each month cause me trepidation. I also order on-line from very few vendors: Amazon, Southwest Airlines, and two antique car providers is almost a complete list. It is a fright out there.

Thank you,

Richard J. Davis
WSBA 12481

From: [Donald Ferrell](#)
To: [Limited License Legal Technician](#)
Subject: Illt was conjured up by the incompetent idiots at WSBA and so called "supreme court". Family law was first and proved to be a bust. Why keep repeating your errors?
Date: Wednesday, June 20, 2018 10:29:07 AM

Donald W. Ferrell Honorary WSBA 1973
Sent from [Mail](#) for Windows 10

From: [Jennifer R. Smith](#)
To: [Limited License Legal Technician](#)
Subject: LLLT
Date: Tuesday, May 15, 2018 9:52:51 PM

I hate to be so frank but this program is a complete disaster! I practice family law in Thurston County. The documents I have received from LLLTs are not done correctly. Parties will use LLLT to draft and give legal advice but they use the LLLT as a bar to negotiations because they cannot negotiate on the client's behalf. Then what I find absolutely shocking is the amount of money the LLLTs are charging. It is the same amount as many attorneys. This program was to reduce costs. It has done quite the opposite after an attorney has to come in and do clean up.

This program should be discontinued. Complete insult to the legal profession.

Very truly yours,

Jennifer R. Smith

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From: [MICHAEL GOLDENKRANZ](#)
To: [Limited License Legal Technician](#)
Subject: LLT expansion into consumer debt
Date: Tuesday, May 15, 2018 1:46:00 PM

Great idea- keep expanding into more areas and providing the education venues and programs to train LLT's.

Why not have them help with actual bankruptcy filing?

And, while I think the protection order help is essential, confusing that it got folded into consumer debt expansion.

Kudos

Michael Goldenkranz (pro bono attorney)

From: [Steve Lovekin](#)
To: [Limited License Legal Technician](#)
Subject: LLT New Practice Area
Date: Tuesday, May 15, 2018 2:50:03 PM

I strongly object to the addition of new practice areas for the LLT's. It was inevitable when the LLT system started that, like all good bureaucracies it was seek to expand its reach. From what I've seen LLT's often charge a fairly high hourly rate, taking business away from lawyers who are just starting out and who want to charge less than the big established firms in order to gain business. LLT's are also appearing in court in family law cases, which they should not be doing. Court appearances are a quintessentially legal activity that should be reserved for lawyers who have spent the time, energy, and money to attend three years of law school, usually with at least one trial practice course under their belt. If one can essentially practice law without going to law school, why would one even bother going? This expansion of non-lawyers into the practice of law demeans the profession and should be eliminated.

Osgood S. Lovekin

Law Office of Osgood S. Lovekin
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From: [David Mott](#)
To: [Limited License Legal Technician](#)
Subject: Lt to WSBA -LLLT
Date: Friday, July 06, 2018 4:59:09 PM
Attachments: [Lt to WSBA -LLLT.doc](#)

The MOTT LawFirm

David C. Mott

also admitted in Ohio and Illinois

July 17, 2018

TO: LLLT Board via email to LLLT@wsba.org

RE: Proposed Consumer, Money, and Debt Law LLLT Practice Area
Scope Proposed Permitted Actions & Proposed Limitations

LLLTs should be licensed to assist clients with issues related to legal financial obligations, debt collection and garnishment defense, identity theft, preparing for small claims court, and filing protection orders.

I strongly support the expansion of LLLT's service into this area of practice based on (1) my 49 years of law practice during which I have provided defense services to my clients in this practice area and (2) a successful history of collaborating with an LLLT to provide family law services to mutual clients. In addition, I have extensive experience in the foreclosure defense and mediation practice area.

This debt-collection area of the law is fraught with traps often initiated against unsuspecting consumers. In the consumer debt-collecting defense area, I typically begin my representation of a client by having my client fill out an extensive questionnaire that is designed to establish creditor-collector violations of the debt collection statutes. In almost every case, there is a violation. More recently, there are a lot of statute of limitation violations by collectors. In some cases, the collector does not have a Washington state license to engage in collection services. In almost every case, I conclude such services with a very satisfied client.

If the matter is in litigation, sending an extensive subpoena duces tecum and scheduling a deposition often results in favorable results for my client.

Most often, I do this work at a very minimal fee but it often concludes with most of my services being provided pro bono. I do this because I was raised in a very poor, large family wherein I experienced the devastating adverse effects perpetrated against my parents by bill collectors.

Based on my experience of working collaboratively with an LLLT in the family law area, I can envision an equally successful collaborative practice with LLLTs in this expanded practice area.

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OFFICE AT: Professional Services Center, Smokey Point Dr., Arlington, WA 98223
PHONE/VOICE MAIL: 360-435-5656 ♦ **FAX:** 360-435-4742 ♦ **EMAIL:**
mott@mottlaw net

I would strongly support the proposed scope of Permitted Actions & Proposed Limitations with one recommendation: that is, that the LLLT be permitted to review with prospective client the requirements for qualifying for Chapter 7 & Chapter 13 relief under the Bankruptcy statutes.

Very truly yours,

The MOTT LawFirm

By /s/ David C. Mott
David C. Mott

DCM/jem

MAIL ONLY TO: 16821 Smokey Point Blvd, # 811, ARLINGTON, WA 98223
OFFICE AT: Professional Services Center, Smokey Point Dr., Arlington, WA 98223
PHONE/VOICE MAIL: 360-435-5656 ♦ **FAX:** 360-435-4742 ♦ **EMAIL:**
mott@mottlaw.net

From: [Inez "Ine" Petersen](#)
To: [Limited License Legal Technician](#)
Cc: [Bill Pickett](#)
Subject: My comment: The LLLT Board is developing a new practice area and wants to hear from you
Date: Tuesday, May 15, 2018 1:22:08 PM

Dear LLLT Board:

I recommend that your Board be disbanded immediately.

Is the WSBA undermining its members or representing them? It looks like the former to me.

This is the most absurd idea since mandatory professional liability insurance. And it shows that the Bar has just too much money laying around and must seek ways to spend it no matter how it hurts the attorneys they allegedly represent.

I don't want the WSBA taking action that reduces my chances of making a living. I want the WSBA to facilitate my career, not undermine it!

WHAT ARE YOU THINKING? WHO IS REALLY BEHIND THIS?

This shows that there is a real need for voting to occur at the member level on everything with a greatly reduced staff. All the committees, boards, and huge number of in-house employees seem to be working on projects that are not in the best interest of the attorneys. This is just another one.

A voluntary bar association would nip this problem in the bud or would it? The Titanic needs a new captain, one with eyes to see the icebergs. I look at the WSBA as a professional union; I want that union to plug the holes in the life boats, not create more holes.

Sincerely,
Inez Petersen
WSBA #46213

----- Forwarded message -----

From: **Washington State Bar Association** <noreply@wsba.org>
Date: Tue, May 15, 2018 at 11:46 AM
Subject: The LLLT Board is developing a new practice area and wants to hear from you
To: inezpetersenjd@gmail.com

Washington State Bar Association



The LLLT Board is working on developing a new LLLT licensed practice area—**Consumer, Money, and Debt Law**—and would like your feedback. A [draft outline of the proposed practice area](#) is under development. The LLLT Board is seeking comments through July 16.

There are several ways you can help shape and be involved in the process, and we hope you will be. Please consider reviewing the draft and being involved in the next steps by:

- Providing feedback on the initial draft and subsequent versions,
- Attending the [LLLTT Board meetings](#), which are open to the public, and
- If the new practice area is approved by the Washington Supreme Court, assisting the LLLT Board with writing the rule, regulations, and exam for this practice area.

Please submit comments, questions, or concerns to lllt@wsba.org.

The LLLT Board looks forward to hearing from you.

Sincerely,

Stephen R. Crossland

Chair, LLLT Board

Renata de Carvalho Garcia

WSBA Staff Liaison to the LLLT Board

[WSBA seal](#)



Washington State Bar Association

[1325 Fourth Ave., Suite 600](#)

[Seattle, WA 98101](#)-2539 | [Map](#)

Toll-free: 800-945-9722

Local: 206-443-9722



Official WSBA communication

All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications



From: [Lynn Clare](#)
To: [Limited License Legal Technician](#)
Subject: New licensing area
Date: Tuesday, May 15, 2018 2:23:19 PM

Reader:

Originally when the reason for the existence of the LLLT was given as "a way for low income folks to receive legal help", I supported the idea of a limited license. Now however, I hear that is no longer the justification. In my opinion, it was the only reason that justified the existence of this class of license to practice law.

Therefore, not only should this class of license to practice law NOT be extended to Consumer, Money, and Debt -- it's existence to practice any other area of law should be revoked. I am angry and appalled that the WSBA -- which should be defending my license that I worked so hard to obtain -- is, in fact ready and willing to extend this serious dilution of the quality of the legal profession in the state of Washington.

Lynn C. Clare
Clare Law Firm, PLLC
Office: 206-223-8591
Direct: 253-444-4058

From: [Kyle Hills](#)
To: [Limited License Legal Technician](#)
Cc: [Mimi Wagner](#)
Subject: New LLLT Licensed Practice Area - Consumer, Money, and Debt Law
Date: Monday, July 16, 2018 2:40:14 PM
Attachments: [18WSBA-LLLT0716.pdf](#)

Dear Sir/Madam:

Enclosed is a letter from Attorney Mimi M. Wagner in regards to expanding the LLLT practice areas to include consumer, money, and debt law. Please let me know if you have any difficulty opening the attachment.

Sincerely,

Kyle Hills
Legal Assistant
Wagner Law Offices P.C.
kyle@sanjuanlaw.com
Phone (360) 378-6234
Fax (360) 378-6244
www.sanjuanlaw.com

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FRIDAY HARBOR, WASHINGTON 98250
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MIMI M. WAGNER
ALSO MEMBER OF COLORADO BAR
MIMI@SANJUANLAW.COM

July 16, 2018

Via email to: lllt@wsba.org
Washington State Bar Association
Limited License Legal Technician Board

Re: New LLLT Licensed Practice Area – Consumer, Money, and Debt Law

Dear LLLT Board Members:

I am opposed to the further expansion of the LLLT practice areas to “Consumer, Money, and Debt Law.” In general, I believe the LLLT programs are expanding rapidly without adequate evidence that they are a benefit to the public, do not financially harm attorneys, and do not harm the public. I urge the Board to act with care and consideration in its administration of the program.

Consumer, money, and debt law is enormously complicated, with implications in other bodies of law, and allowing LLLTs to practice in this area is very concerning.

I am also opposed to allowing LLLTs appear in court in this practice area, and in any other practice area for that matter. Attorneys are required to undergo years of training to appear in court, and it is an enormous responsibility to appear in court on behalf of a client. LLLTs need not have a four-year college degree. I expect that LLLTs in general may lack the perspective and appreciation for legal complexities that are borne out of law school, studying for the Bar, and practicing law as a licensed attorney.

I am also opposed to the Bar’s dramatic amounts of money being spent on this program for a limited number of LLLTs. The last information I received was \$1.7 million has been spent on 36 LLLTs. That is over \$47,200 per LLLT. The Bar’s money comes entirely or almost entirely from its members, yet the Bar members are unfairly forced to subsidize the LLLTs.

Thank you for your consideration of my comments.

Very truly yours,



Mimi M. Wagner

From: Kelly.Boodell@faa.gov
To: [Limited License Legal Technician](#)
Subject: New practice areas
Date: Wednesday, May 16, 2018 5:02:57 PM

I am a huge fan of the LLLT program! I used an LLLT for a family law matter and now have renewed faith in our legal system as a result. While access to our legal system is critical to communities who are under represented and have limited economic means, there are many who may not meet that criteria and still can't afford the prohibitive costs of attorneys.

Please continue to expand the LLLT program into all areas of practice that may touch individuals with legal needs.

Respectfully,

Kelly A. Boodell
Director, Civil Rights
Western Service Area

We have moved! Our new address is [2200 S. 216th Street, Des Moines, WA. 98198.](#)

e-mail: Kelly.Boodell@faa.gov
office: (206) 231-2044
cell: [\(425\) 495-4544](tel:(425)495-4544)

From: [Ashley Lauber](#)
To: [Limited License Legal Technician](#)
Subject: Objection to Expansion into Debt Law
Date: Thursday, July 05, 2018 4:47:16 PM

Pursuant to the request for comments, please see my statement as follows:

I've been a bankruptcy and debt settlement practitioner for five years. In the time I have been practicing, I have watched my filing rates and caseload diminish by 15-20% year over year and is now down to the bottom quarter of my overall revenue. Take this from a firm who had a presence in every conceivable advertising channel for debt issues including having run a television commercial for two years on Fox 13. We have done everything possible to sustain our business while providing exceptional services, using sliding scale fees even providing pro bono representation at certain points. We have had to make the decision two years ago to expand into family law, an area which is being undercut by the existing LLLT family law program, and if we hadn't chosen to make that expansion my firm would be out of business. I take great pride in having been a partner of a woman-owned firm this long that provides debt services, but we are far from thriving. It is personally insulting to me that the bar association who happily takes nearly \$500 a year from its members promptly turns its backs on us and spends dues to encourage our competition in the marketplace. It is unconscionable.

There is NO SHORTAGE of affordable legal representation in this practice area. I voice my strong objection to its implementation.

--

Ashley Lauber
Partner, Attorney at Law
Lauber Dancey PLLC
2817 Wetmore Ave, Suite B
Everett, WA 98201
Phone (425) 312-7956
Fax (866) 497-7028
alauber@lauberdancey.com
www.lauberdancey.com
www.startfreshnw.com

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From: jwchessell@rockisland.com
To: [Limited License Legal Technician](#)
Subject: Opposition to Allowing LLLTs to Practice Debtor/Creditor Law
Date: Monday, July 16, 2018 3:24:06 PM

Monday July 16, 2018

To: Washington State Bar Assn
Seattle, WA 98101

RE: Opposition to Allowing Limited License Legal Technicians to
practice Debtor/Creditor law

Dear WSBA:

I am opposed to allowing Limited License Legal Technicians to practice Debtor/Creditor law. This is a complicated field that embraces many other areas of law, such as contracts, agency, residency, standing, bankruptcy, criminal law, constitutional law, equity, remedies, commercial paper, evidence, and on-and-on.

The proposal does not well-serve the community, but rather allows persons with a limited knowledge of law and a limited experience in practicing law to represent clients who may make their choice of representation based solely on price.

The proposal is a mistake and should be shelved.

Very Truly Yours,

John Chessell Bar # 19370
San Juan Island, WA
jwchessell@rockisland.com

From: [Daggett, Teresa](#)
To: [Limited License Legal Technician](#)
Subject: Opposition to proposed new LLLT practice area
Date: Friday, May 25, 2018 12:48:11 PM
Attachments: [image001.png](#)

Please register my opposition to expanding the LLLT program. With only 33 active participants, expanding the program is not reasonable.

Teresa Daggett

[Attorney at Law](#)

[Gordon Thomas Honeywell LLP](#)



One Union Square Building
600 University Street, Suite 2100
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From: [Law Office of Reed Speir](#)
To: [Limited License Legal Technician](#)
Subject: Please stop taking work from lawyers
Date: Wednesday, June 20, 2018 3:34:50 PM

It is bad enough that LLLTs are taking work away from lawyers in the areas of family law. Please do not take more work away from lawyers by invading another area where lawyers can earn a living. There are sliding scale and low-income options all over the State that have been available to low-income individuals for years. LLLTs undercut small firms and solo practitioners and put them out of business. Why am I paying dues to an organization that is actively working to decrease my client base? I see lots of concern for making sure that LLLTs can have a practice that thrives, but what about the lawyers who are losing clients and going out of business because of LLLTs? Seattle is an aberration. Lawyers all over the State are struggling to make ends meet and the WSBA is promoting a program to take away more clients from those struggling lawyers. The WSBA is not serving its membership at all by pushing LLLTs.

Reed Speir

From: [Kerry Lawrence](#)
To: [Limited License Legal Technician](#)
Subject: Proposed new LLLT for consumer, debt, etc.
Date: Friday, May 25, 2018 12:51:48 PM

I think this is a great area for LLLT's.

One question I have is whether the forms they are allowed to fill out would include mechanic's lien forms, RCW 60.04?

Individual workers and small businesses need help in this area, and there definitely is a demand for these services as demonstrated by the number of lien services that already offer these services.

The lien services are of varying quality, but overall I think they do better than the majority of the liens and related documents I see that lawyers have prepared and recorded. Having an LLLT course would help improve the quality of what those services provide, and benefit a lot of individual workers and very small businesses.

Kerry Lawrence
WSBA #8479

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Kerry C. Lawrence
Pillar Law PLLC
1420 Fifth Avenue, Suite 3369
Seattle, WA 98101
Phone: 425-941-6887
kerry@pillar-law.com

From: REDACTED
To: [Limited License Legal Technician](#)
Cc: REDACTED
Subject: RE: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you
Date: Tuesday, May 15, 2018 1:07:12 PM

Abolish the LLLT board entirely. They hurt attorneys and hurt litigants who are not getting the best legal representation possible by people without law degrees.

Thank you,
REDACTED

From: Washington State Bar Association [mailto:noreply@wsba.org]
Sent: Tuesday, May 15, 2018 1:05 PM
To: REDACTED
Subject: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you

[Washington State Bar Association](#)



The LLLT Board is working on developing a new LLLT licensed practice area—**Consumer, Money, and Debt Law**—and would like your feedback. A [draft outline of the proposed practice area](#) is under development. The LLLT Board is seeking comments through July 16.

There are several ways you can help shape and be involved in the process, and we hope you will be. Please consider reviewing the draft and being involved in the next steps by:

- Providing feedback on the initial draft and subsequent versions,
- Attending the [LLL T Board meetings](#), which are open to the public, and
- If the new practice area is approved by the Washington Supreme Court, assisting the LLLT Board with writing the rule, regulations, and exam for this practice area.

Please submit comments, questions, or concerns to lllt@wsba.org.

The LLLT Board looks forward to hearing from you.

Sincerely,

Stephen R. Crossland
Chair, LLLT Board

Renata de Carvalho Garcia

WSBA Staff Liaison to the LLLT Board

Washington State Bar Association

1325 Fourth Ave., Suite 600

Seattle, WA 98101-2539 | [Map](#)

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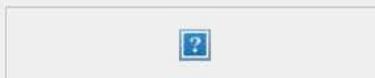
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From: REDACTED
To: [Limited License Legal Technician](#)
Subject: RE: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you
Date: Wednesday, May 23, 2018 2:45:39 PM

In light that you will consider all comments, please add the following to my additional comment:

I speak as a member of the WSBA since 2009, but also as a former low-income customer of paralegal services for a divorce with children in the early 2000's in Lakewood, Washington. These paralegals caused so many problems for me that I had to pay a real, licensed attorney several years later to undo all of the issues (major modification) that they could not foresee due to their limited training. Thus, these paralegals, specializing in family and equivalent to the LLLT program, caused nothing but heartache, frustration, and economic loss for the people they are allegedly serving. I will never refer anyone to a paralegal for legal services, regardless of the alleged training differences. They are simply not trained enough (as only law school gives this training) to handle the complex issues that lower income folks tend to present in family law cases. Period.

Thank you kindly,

REDACTED

From: Limited License Legal Technician [mailto:LLLT@wsba.org]
Sent: Wednesday, May 23, 2018 2:40 PM
To: REDACTED
Subject: RE: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you

REDACT

Thank you for your input regarding the new proposed Limited License Legal Technician (LLLT) practice area, Consumer, Money, and Debt Law.

WSBA staff members are compiling all comments, which will be provided to the LLLT Board for consideration in deciding next steps. In the meantime, we appreciate all feedback as we work toward fulfilling our mandate by the Washington Supreme Court under [APR 28](#) to continue to recommend and develop practice areas of law for LLLTs.

At the end of the comment period in July, the LLLT Board will carefully review all comments and input. LLLT Board members may modify the proposed practice area based on the comments, issues discovered during the drafting of regulations, and issues that arise during the law schools' development of the curriculum.

From: REDACTED
Sent: Tuesday, May 15, 2018 1:07 PM
To: Limited License Legal Technician
Cc: REDACTED
Subject: RE: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you

Abolish the LLLT board entirely. They hurt attorneys and hurt litigants who are not getting the best legal

representation possible by people without law degrees.

Thank you,

REDACTED

From: Washington State Bar Association [<mailto:noreply@wsba.org>]

Sent: Tuesday, May 15, 2018 1:05 PM

To: REDACTED

Subject: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you

[Washington State Bar Association](#)



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Please submit comments, questions, or concerns to lllt@wsba.org.

The LLLT Board looks forward to hearing from you.

Sincerely,

Stephen R. Crossland
Chair, LLLT Board

Renata de Carvalho Garcia
WSBA Staff Liaison to the LLLT Board

Washington State Bar Association

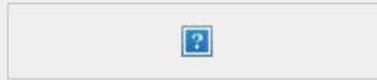
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From: [Scott M. Kinkley](#)
To: [Limited License Legal Technician](#)
Cc: [César Torres](#)
Subject: RE: Consumer, Money, and Debt Law - comments from the Northwest Justice Project
Date: Friday, June 29, 2018 1:20:49 PM
Attachments: [Revised NJP Response to Proposed Expansion of LLLT Program To Consumer Law 6-29-18 smk.pdf](#)

Mr. Chairman,

Please accept the revised Northwest Justice Project letter, concerning the LLLT Board's Consumer, Money and Debt Law proposal. The revision removes my bio reference to my position on the state Collection Agency Board. Please discard the prior proposal and substitute it for this. The content is otherwise the same. Thank you.

Scott M. Kinkley
Staff Attorney
Northwest Justice Project
1702 W. Broadway
Spokane, WA 99201
(509) 324-9128
scottk@nwjustice.org

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From: Limited License Legal Technician [mailto:LLLT@wsba.org]
Sent: Thursday, June 14, 2018 8:34 AM
To: Scott M. Kinkley <ScottK@nwjustice.org>; Limited License Legal Technician <LLLT@wsba.org>
Cc: César Torres <Cesart@nwjustice.org>
Subject: RE: Consumer, Money, and Debt Law - comments from the Northwest Justice Project

Hi Scott,

Thank you for your input regarding the new proposed Limited License Legal Technician (LLLT) practice area, Consumer, Money, and Debt Law.

WSBA staff members are compiling all comments, which will be provided to the LLLT Board for consideration in deciding next steps. In the meantime, we appreciate all feedback as we work toward fulfilling our mandate by the Washington Supreme Court under [APR 28](#) to continue to recommend and develop practice areas of law for LLLTs.

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and input. LLLT Board members may modify the proposed practice area based on the comments, issues discovered during the drafting of regulations, and issues that arise during the law schools' development of the curriculum.

From: Scott M. Kinkley [<mailto:ScottK@nwjustice.org>]
Sent: Wednesday, June 13, 2018 11:20 AM
To: Limited License Legal Technician
Cc: César Torres
Subject: Consumer, Money, and Debt Law - comments from the Northwest Justice Project

Mr. Chairman Crossland and Members of the Board,

Please accept the attached letter from the Northwest Justice Project, concerning the LLLT Board's Consumer, Money and Debt Law proposal. Thank you.

Scott M. Kinkley
Staff Attorney
Northwest Justice Project
1702 W. Broadway
Spokane, WA 99201
(509) 324-9128
scotk@nwjustice.org

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Northwest Justice Project

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Toll Free 1-888-201-1019
www.nwjustice.org

César E. Torres
Executive Director

June 29, 2018

Washington State Bar Association
LLLT Board
LLLT@wsba.org

Re: Consumer, Money, and Debt Law
Public Comment From The Northwest Justice Project

Mr. Chairman Crossland and Members of the Board:

Please accept these comments of the Northwest Justice Project concerning the proposed new practice area for LLLTs in Consumer, Money and Debt Law.

A. ABOUT THE NORTHWEST JUSTICE PROJECT

The Northwest Justice Project (NJP) is a dynamic statewide law firm providing low income legal advice and representation, community partnerships, and education to empower low income clients and combat injustice in all its forms.

NJP also maintains WashingtonLawHelp.org, the public website referenced in your proposal which contains an extensive library of legal resources and self-help materials including necessary court forms in areas of law needed most by low income people, the great majority of whom are forced to appear in court unrepresented. In addition, NJP is an integral member of, and provides support for, the Alliance for Equal Justice, Washington's coordinated statewide civil legal aid delivery system which brings together a network of volunteer attorney programs, specialty legal aid providers, and supporters working to ensure equal justice for all low-income communities in Washington. It was largely through this network, and through the work of NJP staff and attorneys, that the Civil Legal Needs Study was conducted.

In response to the Civil Legal Needs Study, NJP re-organized its Strategic Advocacy Focus (SAF) and dedicated roughly one third of its resources to addressing consumer debt, legal financial obligations and landlord tenant debt. There is without a doubt an expanding need for representation in these areas. However, NJP has significant concerns with aspects of the proposal but is in support of others. More specifically,



the proposal to permit LLLTs to negotiate consumer debt would likely revive the predatory debt settlement industry. In addition, the Board's proposal to permit LLLTs to engage in debt collection, including garnishments, supplements the competitive debt collection industry, a result directly averse to the Board's mandate and the findings of the Civil Legal Needs Study.

Ancillary to NJP's primary concerns, the Board's proposal does not recognize or address the various legislative statutes and executive enforcement bodies that already regulate the majority of privileges the Board proposes to grant to LLLTs. In other words, the Board's proposal creates a secondary licensing system over non-legal professionals already engaging in many of the activities the Board intends to license. This is a concern that was not relevant to the debate over granting LLLTs the right to practice of family law, which is an exclusive domain of attorneys. Consumer law, by contrast, is substantially intertwined with market participants, statutory regulation and for profit non-lawyer services; many of which are historically predatory. For example, permitting an LLLT to "negotiate" debts would immediately subject LLLTs to regulation as a "debt adjuster" under the Debt Adjustment Act. LLLTs permitted by the WSBA to commence garnishments or prepare a debt collection complaint, would fall squarely within federal regulation as "debt collectors" under the Fair Debt Collection Practices Act, 15 USC § 1692a(5) and as "collection agencies" under Washington Collection Agency Act, RCW 19.16.100(4)(a). Moreover, the Board has not addressed the significant question of what the impact would be of creating a secondary licensing system under Washington's judicial branch of government regulating and licensing existing businesses already subject to statutory regulation and executive agency oversight.

Notwithstanding these concerns, with appropriate training and oversight, permitting LLLTs to engage in limited form based practices and non-adversarial proceedings (such as preparing answers to civil lawsuits, exemption claims to bank garnishments, and assisting with driver's relicensing and legal financial obligation waivers, restoration of civil rights etc.), and with training to identify and appropriately refer cases of unfair and abusive conduct to consumer attorneys or regulatory bodies, might positively serve the public and meet the Board's mission.

B. DEBT ADJUSTING

The proposal permits Consumer LLLTs to provide "Debt Collection Defense and Assistance" through "negotiation of debt or payment plans, loan modifications, loan forgiveness and debt relief discharge." NJP has grave concerns that these activities will increase the number of people operating as "Debt Adjusters" in Washington.

Debt adjusting is a highly regulated profession in this state. The Debt Adjusting Act was enacted in 1978, in response to rampant abuse and victimization of low income people struggling with debt collectors. The profession is defined by statute, and

clearly includes the activities proposed for LLLTs.¹ The licensing proposal also overlaps and interferes with federal bankruptcy law permitting non-lawyers to engage in credit counseling. See 11 U.S. Code § 111.

With respect to debt adjusting, Washington's Supreme Court observed that the Debt Adjuster Act was passed in response to "deep-seated concern about the abuses inherent in the debt adjusting industry." The Court found, "the lack of industry regulation, and the frequently unsophisticated and/or desperate client seeking relief from bill collectors' harassment, gave rise to numerous unfair and deceptive practices." *Carles v. Global Client Solutions*, 171 Wn.2d 486, P.3d 321 (2011) quoting *Performance Audit: Debt Adjusting Licensing and Regulatory Activities*, Report no. 77-13, Jan. 20, 1978, at 7 (on file with the Wn. State Archives, H.B. 86 (1979) at 7).

"Debt Adjusting," or selling services to negotiate settlement of debt with creditors, is an existing private industry that does not require either a full or limited license to practice law. However, people licensed as LLLTs who engage in debt negotiation will also meet the statutory definition of a "Debt Adjusters" and be separately regulated by that Act. This fact produces at least two truths in opposition to the proposed rule. First, requiring licensing as a LLLT merely supplements the existing legislative and executive regulatory framework of the debt adjusting profession with a licensing requirement governed by the judicial branch of government (raising separation of power concerns). More importantly, the proposal fails to achieve the purpose of fulfilling an "unmet need" where it merely supplements an existing, often predatory, highly regulated, non-legal profession.

The Board's current proposal also ignores the hard-learned lessons of the past. For example, NJP attorneys know from their clients' experiences that operators in the debt settlement industry often take consumers' money and fail to provide meaningful service, leaving the consumer with no benefit, and depleted resources to offer creditors. In response, many debt collectors have adopted policies to accelerate collection efforts and immediately sue debtors when a debt adjuster appears on their behalf in a race to collect depleting resources since the consumer has demonstrated an ability to pay something by hiring the service. In these instances, consumers are often betrayed by a false sense of security and allowed default judgments to be entered on the assumption the debt adjuster they hired is providing meaningful relief. Debt adjusters, as well as the putative Consumer LLLTs, cannot provide meaningful representation; Northwest Justice Project attorneys repeatedly expend substantial effort to vacate, when possible, default judgments resulting from this practice. The

¹ "Debt Adjusting means the managing, counseling, settling, adjusting, prorating, or liquidating of the indebtedness of a debtor, or receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor." RCW 18.28.010(2).

proposal does not offer any protection or solution, and NJP anticipates this portion of the LLLT proposal will lead to similar harm to low income debtors.

Further, fully licensed attorneys are subject to regulation under the Debt Adjustment Act, and it is axiomatic that LLLTs will be as well. See *Bronzich v. Persels & Assocs., LLC*, No. CV-10-0364-EFS, 2011 WL 2119372, at *6 (E.D. Wash. May 27, 2011) (“Even if the Attorney Defendants are licensed to practice in Washington and therefore can seek reliance on the services-solely-incidental-to-legal-practice exemption, the Court determines this exemption does not apply to an attorney or law firm specializing in debt adjustment”).

Permitting LLLTs to engage in a business already available to non-lawyers, but subject to existing regulation, creates a confusing overlap of WSBA licensing policies with pre-existing state industry regulations. Worse, the licensing of LLLTs to specifically engage in debt settlement encourages a false perception that existing regulation is inapplicable to LLLT licensees. This perception is likely to lead to temporary growth in a predatory industry; it will likely be up to NJP and private consumer attorneys to bring consumer protection litigation against LLLTs unfamiliar with Washington’s extensive consumer protection regulations to counter regulatory transgressions and generally unfair and deceptive practices that are part and parcel with this industry.

NJP encourages the Board to strike the provisions of the proposal that authorizes Consumer LLLTs to engage in any activities classified as “Debt Adjusting”, debt settlement, credit counseling, or the like.

C. WASHINGTON STATE COLLECTION AGENCY ACT AND THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT

By allowing LLLTs to provide debt collection services, such as garnishments or ghost writing collection complaints, the Board’s current proposal also infringes on existing state and federal regulatory statutes and unnecessarily supplements a competitive industry in derogation of the LLLTs mandate to meet unmet civil legal needs.² Similarly, the proposed licensing requirement to allow certain debt collection activity places the putative LLLTs squarely within existing state and federal debt collection regulation.

The FDCPA prohibits debt collectors from engaging in various abusive and unfair practices. *McCullough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 947–48 (9th Cir. 2011) (internal citations omitted). “The statute was enacted to eliminate abusive debt collection practices; to ensure debt collectors who abstain from such

² On March 27, 2018, 1,524 entities had an active collection agency licensed issued by the Department of Licensing, representing a growth of 35 licensees since the fall of 2017.

practices are not competitively disadvantaged; and to promote consistent state action to protect consumers.” *Id.*; 15 U.S.C. § 1692(e). The statute defines a “debt collector” as one who “regularly collects ... debts owed or due or asserted to be owed or due another,” 15 U.S.C. § 1692a(6), and covers lawyers who regularly collect debts through litigation, *Heintz*, 514 U.S. at 293–94, 115 S.Ct. 1489. Consumer LLLTs licensed to garnish, draft collection complaints or participate in collection cases in Small Claims Court meet this definition and will be regulated by the FDCPA.

Similarly, the Washington State Collection Agency Act, chapter 19.16 RCW, enacted in 1971, requires collection agencies to obtain a license, follow certain internal procedures, and adhere to a code of conduct. Washington has a strong public policy underlying the state and federal laws regulating the practice of debt collection. *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 54, 204 P.3d 885, 897 (2009) (“the business of debt collection affects the public interest, and collection agencies are subject to strict regulation to ensure they deal fairly and honestly with alleged debtors”). Consumer LLLTs licensed to garnish, draft collection complaints or participate in collection cases in small claims courts meet this definition, are regulated by the WCAA and must be separately licensed by the Department of Licensing.

What is confusing about the LLLT proposal, is these “services” are already widely available by regulated non-lawyer businesses (i.e. collection agencies) which also happen to be the antithesis of consumer protection law.

The Board must seriously consider whether licensing LLLTs to engage in these activities serves any unmet need identified in the Civil Legal Needs Study. It must also seriously give weight to the fact that the proposal will extend WSBA regulatory authority over thousands of non-lawyers legally performing the function the LLLT Board intends to license.

D. CONCLUSION

Finally, it is concerning that the initial Consumer LLLT proposal was developed without seeking input from Washington’s consumer protection community or legal services organizations. Consumer lawyers in this state are highly self-organized both as a subgroup of the National Association of Consumer Advocates, via participation in Washington based restricted email listservs, in person CLEs and galvanized together by the common experience of difficult litigation against well organized and well-funded corporate opponents. When the proposal was revealed, it came as a complete surprise to this community of consumer attorneys. It is regrettable that this wealth of experience and knowledge was not consulted in the development of this proposal. There is real and ongoing harm to low income consumer and debtor’s in this state; there are not enough consumer attorneys helping them to enforce their rights. But while the proposal has some promising features for our client base, our experience predicts it will, as currently drafted, be largely ineffective and in several ways harmful to consumers with unmet legal needs. Moreover, the licensing proposal cuts both

ways: LLLTs will be able to represent creditors as well as debtors thereby increasing access to justice for creditors – the unintended consequence of this rule. The unintended consequence is not theoretical given the financial resources available to hire LLLTs are greater for creditors than for debtors.

Consumer LLLTs may have a role in the quest to combat predatory practices and inform the public, but the proposed rule as drafted seems ineffective to serve that purpose. Significant modifications should be made. NJP would like to see the proposal revised to focus more on helping consumers with form based or non-adversarial proceedings, and not grant any authority to engage debt collection or to engage directly with debt collectors on a consumer's behalf.

Therefore, NJP recommends that the LLLT Board:

1. **Abandon** the proposed permitted actions of:
 - a. Negotiation of debt;
 - b. Assistance filling out complaints and counterclaims;
 - c. All actions related to garnishment except assistance with exemption claims;
 - d. All actions related to loan modification and foreclosure defense and assistance; and
 - e. Representation in court and at depositions.
2. **Consider** revising the scope of the proposed permitted actions of:
 - a. Activity involving student loan debt by permitting LLLTs to assist a debtor only with *federal* student loan repayment options;
 - b. Reporting unfair acts, deceptive practices, and consumer statutory violations to consumer protection attorneys and/or a legal services agency in addition to regulatory authorities;
 - c. Providing bankruptcy advice in a manner that conforms with and does not overlap with 11 U.S. Code § 111 (creating non-lawyer credit counseling) and fulfills an identified legal need or supplements a need not already met by “credit counselors”; and
 - d. Reducing the level of participation permitted in Small Claims Court cases to not exceed the participation restrictions in place against fully licensed attorneys. In addition, a strict prohibition against LLLTs assisting creditors in small claims litigation or engaging in other conduct

meeting the definition of “debt collector” under the FDCPA or a “collection agency” under WCAA.

3. **Adopt** the proposed permitted actions of:

- a. Assistance with waiving legal financial obligations or interest on legal financial obligations;
- b. Preparing answers to debt collection lawsuits, including helping consumers apply for Charity Care from hospitals where appropriate;
- c. Providing advice regarding identity theft, including assistance with filing police reports and filling out necessary forms from government entities or private creditors;
- d. Educate consumers on identity theft issues, best practices and provide resources (i.e. www.washingtonlawhelp.org);
- e. Assisting consumers with wage complaints to Labor and Industries, assistance with negotiation and administrative hearing in wage complaints cases, advice and reporting under the Minimum Wage Act and Fair Labor Standards Act, and referral to private attorneys or legal services of claims and statutory rights enforcement that requires civil litigation; and
- f. Assisting consumer with billing disputes with original creditors that are not in litigation, which may include preparing complaints to local, state and/or federal agencies.

4. **Add** proposed permitted actions of:

- a. Assisting consumers in obtaining relief in abbreviated or form based procedures in addition to applying for legal financial obligation (LFOs) interest waivers such as:
 - i. Waiver of LFOs (or a limited waiver of LFO interest);
 - ii. Exemption claims in garnishment;
 - iii. Relicensing programs;
 - iv. Expungement or sealing of criminal records;
 - v. Restoration of civil rights (voting);

- vi. GR 34 waiver of Court fees;
 - vii. Other appropriate form based or non-adversarial proceedings.
- b. Assisting and advising consumers with pre-unlawful detainer landlord tenant disputes, such as documenting the condition of the property, habitability rights, applications for subsidized housing, education and resources.

Sincerely,

NORTHWEST JUSTICE PROJECT

Scott M. Kinkley³
Attorney at Law

smk/np

cc Cesar E. Torres, NJP Executive Director

³ Presenter at twenty-two WSBA accredited CLEs on debt collection defense and related issues, author of the WSAJ's Consumer Protection Handbook chapters on the Fair Debt Collection Practices Act and the Washington Collection Agency Act, , and 10-year member of the National Association of Consumer Advocates.

From: [Inez "Ine" Petersen](#)
To: [Limited License Legal Technician](#)
Subject: Re: My comment: The LLLT Board is developing a new practice area and wants to hear from you
Date: Wednesday, May 23, 2018 4:17:21 PM

Dear LLLT Board:

Did it ever occur to you that you should be lobbying the State Supreme Court to change APR 28 instead of undermining the very jobs of the attorneys to whom you owe a duty of loyalty of the first order?

Mission creep needs to stop with the goal to reduce dues by 40%. Now that is a goal I believe the majority of members of the Bar could support.

Perhaps you are too close to the problem to see that you have a problem.

Sincerely,
Inez Petersen, WSBA #46213

On Wed, May 23, 2018 at 3:08 PM, Limited License Legal Technician
<LLLT@wsba.org> wrote:

Inez,

Thank you for your input regarding the new proposed Limited License Legal Technician (LLLT) practice area, Consumer, Money, and Debt Law.

WSBA staff members are compiling all comments, which will be provided to the LLLT Board for consideration in deciding next steps. In the meantime, we appreciate all feedback as we work toward fulfilling our mandate by the Washington Supreme Court under [APR 28](#) to continue to recommend and develop practice areas of law for LLLTs.

At the end of the comment period in July, the LLLT Board will carefully review all comments and input. LLLT Board members may modify the proposed practice area based on the comments, issues discovered during the drafting of regulations, and issues that arise during the law schools' development of the curriculum.

From: Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]
Sent: Tuesday, May 15, 2018 1:21 PM
To: Limited License Legal Technician

Cc: Bill Pickett

Subject: My comment: The LLLT Board is developing a new practice area and wants to hear from you

Dear LLLT Board:

I recommend that your Board be disbanded immediately.

Is the WSBA undermining its members or representing them? It looks like the former to me.

This is the most absurd idea since mandatory professional liability insurance. And it shows that the Bar has just too much money laying around and must seek ways to spend it no matter how it hurts the attorneys they allegedly represent.

I don't want the WSBA taking action that reduces my chances of making a living. I want the WSBA to facilitate my career, not undermine it!

WHAT ARE YOU THINKING? WHO IS REALLY BEHIND THIS?

This shows that there is a real need for voting to occur at the member level on everything with a greatly reduced staff. All the committees, boards, and huge number of in-house employees seem to be working on projects that are not in the best interest of the attorneys. This is just another one.

A voluntary bar association would nip this problem in the bud or would it? The Titanic needs a new captain, one with eyes to see the icebergs. I look at the WSBA as a professional union; I want that union to plug the holes in the life boats, not create more holes.

Sincerely,

Inez Petersen

WSBA #46213

----- Forwarded message -----

From: **Washington State Bar Association** <noreply@wsba.org>

Date: Tue, May 15, 2018 at 11:46 AM

Subject: The LLLT Board is developing a new practice area and wants to hear from you

To: inezpetersenjd@gmail.com

Washington State Bar Association



The LLLT Board is working on developing a new LLLT licensed practice area—**Consumer, Money, and Debt Law**—and would like your feedback. A [draft outline of the proposed practice area](#) is under development. The LLLT Board is seeking comments through July 16.

There are several ways you can help shape and be involved in the process, and we hope you will be. Please consider reviewing the draft and being involved in the next steps by:

- Providing feedback on the initial draft and subsequent versions,
- Attending the [LLL T Board meetings](#), which are open to the public, and
- If the new practice area is approved by the Washington Supreme Court, assisting the LLLT Board with writing the rule, regulations, and exam for this practice area.

Please submit comments, questions, or concerns to lllt@wsba.org.

The LLLT Board looks forward to hearing from you.

Sincerely,

Stephen R. Crossland
Chair, LLLT Board

Renata de Carvalho Garcia
WSBA Staff Liaison to the LLLT Board

WSBA seal



**Washington State Bar
Association**

[1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539](#) | [Map](#)

Toll-free: 800-945-9722

Local: 206-443-9722



Official WSBA communication

All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications



From: [susanne.rodriguez](#)
To: [Limited License Legal Technician](#)
Subject: Re: proposed consumer LLLT
Date: Wednesday, May 16, 2018 10:52:04 AM
Attachments: [image001.png](#)

Looks good. I'm a bankruptcy attorney and I think it's a great idea to have LLLTs available.

thx,
Susanne

On Wed, May 16, 2018 at 8:07 AM, Limited License Legal Technician <LLLT@wsba.org> wrote:

Hi Susanne,

You can read the draft here:

https://www.wsba.org/docs/default-source/legal-community/committees/llt-board/consumer-money-and-debt---draft-for-discussion-and-comment.pdf?sfvrsn=a86007f1_4



Laura Sommer | Interim Limited License Legal Technician Program Lead

Washington State Bar Association | 206.727.8289 | laura.sommer@wsba.org

[1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539](#) | www.wsba.org

The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact barbarao@wsba.org.

From: susanne rodriguez [mailto:lacamaslegal@gmail.com]
Sent: Tuesday, May 15, 2018 2:38 PM
To: Limited License Legal Technician
Subject: proposed consumer LLLT

Is there a link to the draft somewhere?

thanks,
Susanne

--

Susanne Ruiz Rodriguez, Esq., M.S.

Attorney & Counselor at Law

[532 NE 3rd #101](#)

[Camas WA 98607](#)

(360) 835-0457

--

Susanne Ruiz Rodriguez, Esq., M.S.

Attorney & Counselor at Law
532 NE 3rd #101
Camas WA 98607
(360) 835-0457

From: vlaparker@aol.com
To: [Limited License Legal Technician](#)
Subject: specific comment
Date: Wednesday, May 16, 2018 8:40:01 AM

As stated in the documents regarding the specific expansion, people do not know about existing services. So, why not advertise those existing services. They were designed to help.

Also, the research is biased. The groups used to gather information have incomplete information and are looking to reduce their load and not truly serve people (see first paragraph).

Vicki Lee Anne Parker,
Attorney at Law

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Creditor/Debtor Section
Executive Committee
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, Washington 98101

August 13, 2018

LLLT Board
Attn: Stephen Crossland, Chair
LLLT@wsba.org

Re: Expansion of Services by LLLTs

Dear Stephen:

The undersigned are the Chair and the Chair-Elect of the Creditor-Debtor Section of the Washington State Bar Association (“CD”). We are writing with regards to concerns CD has with the proposed expansion of the Limited License Legal Technician (“LLLT”) program into the area of Consumer, Money, and Debt law. The proposed expansion was a topic of conversation at a recent CD Executive Board meeting (the “Meeting”) that you attended. This letter is to memorialize our concerns and suggested recommendations with respect to the proposal for expansion of the LLLT program into the creditor/debtor area, as well as several suggestions to better tailor any expansion of the LLLT program into this area from the perspective of practitioners already offering services in this area.

Currently there are 1,045 Washington licensed attorneys who list Creditor-Debtor as an area of practice, 815 attorneys who list consumer law as an area of practice, and 1,094 attorneys who list bankruptcy as an area of practice. These practitioners are on the front line working with low income homes to address the issues that prompted the proposed expansion of the LLLT Program. As the number of attorneys indicates, there is already a substantial number of professionals who stand ready, willing, and able to render assistance the proposed expansion would include. While access for low income families is an important issue, the lack of access to justice does not appear to be an issue stemming from lack of sufficient assistance being available.

CD has formed a subcommittee tasked with responding to the proposed expansion in an effort to help the proposed expansion target the constituencies it purports to assist based on the practical knowledge the day to day practice in these areas entails. The subcommittee was comprised of attorneys who represent both creditors and debtors, a mix of attorneys handling large corporate Creditor-Debtor cases and attorneys handling smaller consumer related cases, from varying firms by both size and location, and a Federal Bankruptcy Judge. The subcommittee is still reviewing the empirical evidence the proposed expansion relies on, and we may be submitting additional comments after the review of the data is complete.

CD is supportive of actions to increase access to legal services for low income individuals. This response refers only to low income individuals as middle income is never defined in the studies relied upon, and that constituency is currently served by consumer creditor

or debtor practitioners in the State of Washington. CD believes the proposed expansion will not achieve increased access to legal services for low income individuals because:

1. The proposed expansion fails to address concerns that would arise from existing federal and state regulations of this area of law;
2. The proposed expansion is not tailored to address the identified need for legal services;
3. The proposed expansion fails to acknowledge alternative avenues to address the problems that already exist, or changes that could be made to the existing system to meet the need of the targeted constituency.

THE EXISTING REGULATORY STRUCTURE UNDER STATE AND FEDERAL LAW

Regulations at both the state and federal level make the proposed expansion difficult absent some legislative coordination with the expansion. For example, limitations imposed under federal law as it relates to bankruptcy filings are presumably the reason proposed allowed bankruptcy services from LLLTs are quite limited. However, the Bankruptcy Code is not the only federal law covering the areas the proposed expansion would cover. For example, the Credit Repair Organizations Act, 15 U.S.C. §§1679-1679 would apply to LLLTs practicing in the areas under the proposed expansion, and would prohibit LLLTs from certain actions, compel disclosures, and impose restrictions on a LLLT's ability to enter into contracts with potential clients. Under state law, Debt Adjusting, RCW 18.28.010-900, Collection Agencies, RCW 19.16.100-960, and Credit Services Organizations Act, RCW 19.134.010-900, would all be applicable to LLLTs. The above-referenced statutes would impose additional compliance overhead, and create the potential for exposure to personal liability for failure to comply with the various statutory regimes, for LLLTs working in the proposed expansion areas. This would increase the cost LLLTs would have to charge for their services because they would not have the benefit of the exemption for attorneys created in the various statutes. This is not necessarily an exhaustive list of statutes that are implicated in the proposed expansion, and there are additional federal and state regulations that are potentially implicated as well.

While the LLLT Board considered some regulator schemes, such as the Fair Debt Collection Practices Act, it does not appear to have addressed the impact of several of the various statutory regimes that would be applicable, absent a statutory exception similar to the exemption for attorneys. In order to address these issues, the LLLT Workgroup needs to consider further refinements to the authorized scope, and the need for legislative enactments before proceeding with the proposed expansion to avoid unintended consequences for LLLTs.

SCOPE OF PROPOSAL TOO BROAD

While the asserted aim of the proposed expansion embraces a goal all interested parties would like to accomplish (increasing access to justice for low income individuals), the proposal is unlikely to meet this need based on the potential problems identified in this letter. CD also believes the proposed expansion will have unintended consequences harming attorneys because of a lack of a system to pre-qualify individuals seeking to utilize these services, and the use of an inflated cap on the amount that can be in controversy for an LLLT to assist.

One concern that was addressed at the Meeting was the lack of any means testing to qualify individuals for representation by LLLTs in order to justify the proposed expansion of the LLLT practice areas. Without a means testing requirement, the stated goal of the proposed expansion rings hollow. LLLTs will simply be a lower cost alternative to lawyers for anyone seeking legal guidance, not just low income individuals who is supposed to be the targeted population.

Another concern raised at the Meeting was the proposed dollar limitation of \$100,000.00. This amount is, in almost all situations, well over the dollar amount low income individuals have in a single obligation (student loans and mortgages notwithstanding). A more workable limitation would be to utilize the \$5,000.00 jurisdiction amount of small claims courts or an amount that is at least close to that amount.

Furthermore, the method of determining what the “value” of a debt is should be clearly delineated. The proposed expansion does not indicate whether this amount is based on the principal, a combination of principal with accrued unpaid interest and fees, or the amount in controversy (which may include additional amounts for attorney’s fees and costs) or for each debt or the total multiple debts for which assistance is being sought. Any finalized proposal must contain explicit instructions on calculating the dollar cap LLLTs can assist with. It is also important to note that on the creditors’ side, debt collection is more complex than many would think. LLLTs acting to collect debt would, like lawyers, be subject to provisions of the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and state consumer protections in these areas. Compliance with these legal requirements is fraught with perils even for seasoned lawyers.

ALTERNATIVES ALREADY EXIST TO MEET THE IDENTIFIED NEED

As described in the empirical evidence in the proposed expansion, and discussed at the Meeting, there are already services available to low income individuals for services in this area. For example, the Washington State Bar Association (Low Bono Section) and the King County Bar Association already provide moderate means programs for low income individuals. For example, the King County Bar Association already operates legal clinics to address the concerns used to justify the LLLT expansion. The Spokane County Bar Association has a volunteer lawyers program that can provide many of the services proposed to be provided by LLLTs, without cost. There are also several federal and state government agencies and approved non-profit agencies that will assist consumers in loan modifications and budgeting services at no charge. These services are in addition to the services the LLLT Board identifies in the proposed expansion, and the legal clinics at all three of the ABA approved law schools in Washington State. While there is no disputing the need for additional access to justice for low income individuals, there is no evidence or analysis to support the conclusion that expanding the LLLTs practice to include services that are already available would provide any meaningful additional relief for the issues the proposed expansion alleges to target. This conclusion is buttressed by the conclusion by the LLLT proposal identifying that one of the largest hurdles to individuals seeking legal assistance with consumer related issues are either not knowing services exist or lack of trust in the entities providing such services. Nothing in the proposed expansion adequately addresses why LLLTs would be any different than those services already available.

Additionally, the limitations on LLLTs ability to consult in various areas of law that may be related to the issues a client is facing raises the specter that LLLTs would be unwilling or unable to effectively refer matters to attorneys if the attorney could provide better assistance to the LLLT's client.

Furthermore, consumer creditor-debtor attorneys have the ability to serve the need the proposed expansion seeks to address. Most consumer bankruptcy attorneys, for example, provide free initial consultations of between 30 minutes and an hour for prospective clients, and all have relatively modest hourly rates, and reasonably priced flat fee products for more routine matters. These practitioners could also assist in achieving the goal of expanding access to justice for low income individuals if WSBA focused on revising the Rules of Professional Conduct ("RPC") regulations for advertising of services to bring costs down for practitioners and clients. The RPC limitations on advertising their services is nearly identical to LLLT Rules of Professional Conduct (LLLT RPC"), as noted in official comment [1] to LLLT RPB 7.1. These very limitations on advertising are part of the identified issue with low income individuals' ignorance of available assistance which call into doubt the efficacy of the proposed expansion.

Another change to the RPCs that would allow attorneys in this area the ability to more cost-effectively assist in this area is more leeway in "unbundling" services under the RPCs. While the LLLT RPCs explicitly limit the scope of representation to specific areas, the RPCs applicable to attorneys take a different approach by limiting what services an attorney can unbundle from representation. By affording additional latitude for attorneys to unbundle service, the identified need for low income individuals could better be met by decreasing the cost of services attorneys could offer for simple cases, while ensuring a client has the same quality of representation, without the interim step of retaining the LLLT.

With respect to the area of bankruptcy, the primary service proposed to be provided by LLLTs would be initial counseling and then referral to a bankruptcy attorney. Currently, the vast majority of debtors' attorneys provide the initial counseling free of charge. Thus, the LLLTs would be charging clients for services that the clients could receive free of charge. This is antithetical to the goals of the Board's proposal. More education of consumers regarding bankruptcy services that are already available would seem to be more effective. Furthermore, practice in the area of bankruptcy by non-lawyers is specifically addressed in the Bankruptcy Code, and would therefore preempt any authorization by the WSBA for LLLTs to practice in the bankruptcy area.

RECOMMENDED REVISIONS TO PROPOSAL

While CD has significant reservations about the expansion of the LLLT program into the Consumer, Money, and Debt Law, we recognize the need for additional access to justice for low income individuals. If LLLTs are going to be authorized to practice in this area of law, for the reasons set forth above, CD recommends the following be incorporated into any final rules permitting such practice:

1. Potential clients should be subject to some form of means testing to ensure the goal of the expansion is met. CD believes the appropriate amount is 200% of the poverty level.
2. LLLTs should only be authorized to assist with debts within the same dollar limitations applicable to claims in small claims court or an amount close to that.
3. LLLTs should only be authorized to represent natural persons, and not business entities.
4. LLLTs representation should be limited only to debtors.
5. Undertake a review of the RPC to consider changes that would allow more flexibility for attorneys to address the identified needs through the relaxation of rules on the unbundling of services and/or advertising to enact changes in concert with the potential expansion of the LLLT program.
6. Revision of the proposal, in consultation with CD, to address the various statutory and regulatory regimes applicable to the proposed expansion practice area.
7. Removal of the Bankruptcy Awareness and Advice area from proposal in any final proposed expansion.

In addition to the matters cited above, there are some practice areas included in the Board's proposal that do not neatly mesh with the money and debt areas proposed. For instance, the proposal includes personal restraint matters and the like. Most creditor debtor attorneys do not also practice in these areas, and thus, the Board's proposal would create LLLT practitioners engaged in incongruent practices. We have concerns about the breadth of practice by individuals who do not have formal law school training. It seems to us that the more focused the LLLTs can be, the more value they will have to their clients.

/s/ Thomas S. Linde
Thomas S. Linde; Chair
WSBA Creditor-Debtor Executive
Committee

/s/ Kevin D. O'Rourke
Kevin D. O'Rourke; Chair-Elect
WSBA Creditor-Debtor Executive
Committee

Cc: WSBA Board of Governors
c/o Margaret Shane
margarets@wsba.org

Draft for Discussion and Comment:

Consumer, Money, and Debt Law **Proposed New Practice Area for Limited License Legal Technicians**

Summary

The Limited License Legal Technician (LLLT) Board invites comment on a proposed new practice area: Consumer, Money, and Debt Law. This new practice area is designed to provide economic protection for the public and to provide legal assistance for certain financial matters, with a focus on consumer debt issues and other problems which contribute to consumer credit problems. For example, LLLTs licensed in this practice area would be able to assist clients with issues related to legal financial obligations, debt collection and garnishment defense, identity theft, preparing for small claims court, and filing protection orders.

Introduction

The practice area was developed by a New Practice Area Committee of the LLLT Board in a workgroup chaired by LLLT Board member Nancy Ivarinen. The workgroup is requesting input from other interested parties prior to formalizing the request to the Supreme Court.

While researching new practice areas for LLLTs, the workgroup considered:

- whether the new practice area would increase access to justice for potential clients with moderate or low incomes;
- whether there is a demonstrable unmet legal need in that area;
- whether it's possible to include consumer/client protection for those who use LLLTs;
- whether the new area would provide a viable practice so LLLTs can afford to maintain a business;
- whether the substantive practice area classes can be developed and taught by the law schools in a three-class series, one per quarter, for five credits each; and
- whether there are experts available to help develop the curriculum and teach the classes.

In order to appropriately vet the potential new practice areas, the workgroup considered:

- statistics and reports discussing the legal need;
- comments by invited subject matter experts who explained what the practice areas entail;
- comments by these experts on what the LLLT could potentially do;
- committee discussion about the LLLT being properly trained in a limited scope within the practice area; and
- whether the practice area could be regulated appropriately so that the needs of the clients would be met, while also assuring that the clients would be protected.

The Better Business Bureau (BBB), the Attorney General’s Consumer Protection Division, the Federal Trade Commission, and some organizations funded by United Way offer services related to consumer debt, such as debt management, debt renegotiation; and changing the behavior of businesses that prey upon low and moderate income consumers.

These services have been in existence for decades, and yet the demonstrated need in the Civil Legal Needs Study clearly shows that consumers with debt related legal issues are unaware of these services, do not believe these organizations can or will help them, have not been helped when using these services, or have needs that exceed the scope of the services these organizations can provide.

The proposed practice area is intended to help meet these significant unmet legal needs while giving LLLTs additional practice area options for expanding their businesses.

Evidence of Unmet Need

The starting point of the workgroup’s analysis was identifying the unmet need that could be addressed by LLLTs licensed in a consumer law practice area. The workgroup found convincing evidence supporting the existing legal need for consumer law assistance in studies conducted at both the state and national levels. The workgroup also looked at statistics received from county-based volunteer legal services providers and the statewide Moderate Means Program, which demonstrated a consistent legal need in the consumer law area among low and moderate income people.

Statistics from State and Federal Studies

- The 2003 (Statewide 0-400% of Federal Poverty Level) and 2015 (Statewide, 0-200% of Federal Poverty Level) Civil Legal Needs Studies identified Consumer, Financial Services, and Credit among the three most prevalent problems that people experience and seek legal help to address. There was an increase in legal need in this area from 27% to 37.6% between 2003 and 2014.
- The Legal Services Corporation June 2017 Report: The Justice Gap (National, 0-125% of Federal Poverty Level) identified consumer issues as the second highest problem area for people at this income level.

Moderate Means Program Data

- The WSBA Moderate Means Program (Statewide, 200-400% of Federal Poverty Level) identified consumer issues as the second highest problem area. In addition, data provided by the program showed that consumer law represented 10% of the 2,321 requests for service from October 26, 2016 to October 27, 2017. Of the 233 consumer law requests, 74 related to bankruptcy or debtor relief and 71 were in collections, repossession, and garnishment.
- Data from the Moderate Means Program on requests for service from January 1, 2015 through May 1, 2017, show 523 of 3,062 requests for service in consumer law matters, about 17% of the total requests over that 28 month period.

Statistics from Volunteer Legal Service Providers

- The King County Bar Association's Neighborhood Legal Clinics 2016 data showed that 15% (1,298 of 8,259) of legal issues addressed at the clinic were consumer law related.
- From 2012-2017 the King County based Northwest Consumer Law Center received 2,499 requests for service, all directly related to consumer law needs.
- Over the last three years, the Tacoma-Pierce County Bar Association Volunteer Legal Services had an average of 160 clients per year visit their Bankruptcy Clinic and an average of about 43 clients per year attend the Foreclosure – Home Justice Clinic.

How LLLTs Can Meet the Legal Need

When reviewing the Civil Legal Needs Studies, the workgroup noted that it was unclear whether or not legal assistance would materially address the consumer law problems the subjects were reporting, and if so, whether that assistance could be provided through some method other than direct representation exclusively by a lawyer.

The workgroup discussed many examples of consumer legal problems that may not have a legal remedy, such as a debt collection lawsuit where the money is owed. While discussing each example, the workgroup saw advantages to providing the consumer with legal advice, even if there did not appear to be a legal resolution to the issue. For example, in a debt collection lawsuit, the statute of limitations on collection of the debt may have passed, so the debtor may not be obligated to pay even though the debt is owed. For those debtors who do have defenses or where collection agencies are attempting to collect a legitimate debt in an unfair or illegal manner, a LLLT could be a valuable consumer protection tool. Even for consumers who have no defense to a lawfully pursued debt collection lawsuit, having the assistance of a LLLT throughout the process of responding to a lawsuit would speed judicial efficiency, as the defendant would understand the procedures and be able to respond in an appropriate and strategic way.

The extensive collection of self-help resources offered on washingtonlawhelp.org regarding consumer debt confirms that many consumers already face this issue pro se, and would undoubtedly benefit from consulting with an affordable provider of legal services in this area.

The workgroup enlisted the advice of practitioners and other experts in the various areas of law to identify the legal work which could be effectively performed by LLLTs and provide an economically sustainable practice area. The workgroup identified that Consumer, Money and Debt Law LLLTs should be able to:

- offer advice regarding all identified topics
- fill out certain forms
- engage in limited negotiation in regard to particular issues
- attend specific hearings to advise the client and assist in answering procedural questions

- attend depositions
- prepare paperwork for mediation, and
- attend any administrative proceeding related to the practice area.

The workgroup carefully weighed the pros and cons of each of the above actions and determined that allowing this range of actions would greatly increase the quality of service that LLLTs could provide to their clients.

Target Clients and Scope

The target clients of this practice area are moderate and low income people with consumer debt or credit problems, or those to whom a small amount of debt is owed. The workgroup narrowly prescribed the focus of the recommended scope in order to provide a maximum benefit to these clients. The workgroup also identified limitations designed to ensure that LLLTs will provide service to consumers who currently do not have resources in this area.

The *2015 Civil Legal Needs Study* noted that the average number of legal problems per household has increased from 3.3 in 2003 to 9.3 in 2014. In addition, the legal problems that low-income people experience are interconnected in complex ways. Consumer debt, for example, can be exacerbated by landlord/tenant issues, divorce, identity theft, lack of access to benefits, problems with an employer, lack of exposure to options such as bankruptcy, and domestic violence and other protection orders.

The workgroup thought holistically about this range of issues which often go hand in hand with consumer debt and credit problems and identified a range of actions which could appropriately be performed by a LLLT in the areas of protection orders, bankruptcy education, wage theft, and identity theft. Including these areas as part of the consumer law relief a LLLT will be able to provide will allow LLLTs to proactively help their clients to break the cycle of debt creation.

Proposed Consumer, Money, and Debt Law LLLT Practice Area

Scope	Proposed Permitted Actions & Proposed Limitations
Legal Financial Obligations (LFOs)	Proposed Permitted Actions: Assistance filling out forms (e.g., Motion for Order Waiving or Reducing Interest on LFO, Order to Waive or Reduce Interest on LFO)
Small Claims	Proposed Permitted Actions: Assistance preparing the Notice of Small Claim, Certificate of Service, Response to Small Claim, Small Claims Orders, Small Claims Judgment, and counterclaims Preparation for mediation and trial Obtaining and organizing exhibits

Student Loans	<p>Proposed Permitted Actions: Negotiation of debt or payment plans Modifications, loan forgiveness and debt relief Discharge</p>
Debt Collection Defense and Assistance	<p>Proposed Permitted Actions: Negotiation of debt Assistance filling out Complaints, Answers and Counterclaims Affirmative Defenses including Statute of Limitations defenses Reporting Fair Debt Collection Act violations, including statute of limitations and state collection agency statute violations Reporting to Regulatory Agencies</p> <p>Proposed Limitations: LLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court (\$100,000)</p>
Garnishment	<p>Proposed Permitted Actions: Negotiation Voluntary Wage Assignments Assistance filling out forms (Application for Writ of Garnishment, Continuing Lien on Earnings, Return of Service, Notice Exemption Claim, Release of Writ of Garnishment, Motion and Cert. for Default Answer to Writ of Garnishment, Application for Judgment, Motion/Order Discharging Garnishee, Satisfaction of Judgment) Exemption Claims, including assistance at court hearings</p> <p>Proposed Limitations: LLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court (usually \$100,000) LLTs may render legal services for debt collection only when there is a direct relationship with the original creditor and may not act as or render legal services for collection agencies or debt buyers as defined under RCW 19.16. No prejudgment attachments No executions on judgments</p>

Identity Theft	<p>Proposed Permitted Actions: Advise regarding identity theft Best practices for protecting information Contacting credit bureaus Reporting to law enforcement and other agencies such as Federal Trade Commission</p>
Wage complaints and Defenses	<p>Proposed Permitted Actions: Representation in negotiations or hearings with Labor and Industries Accompany and assist in court Advice and reporting regarding Minimum Wage Act Advice and reporting regarding Fair Labor Standards Act Actions permitted under RCW 49.48 (Wages-Payment-Collection) Actions permitted under RCW 49.52 (Wages-Deductions-Contributions-Rebates)</p> <p>Proposed Limitations: LLLTs may not represent clients in wage claims which exceed the jurisdictional limit set by the District Court (\$100,000)</p>
Loan Modification & Foreclosure Defense and Assistance	<p>Proposed Permitted Actions: Accompany and advise in mandatory mediation process Assist with non-judicial foreclosure actions and defenses under RCW 61.24.040 Advise regarding power of sale clauses and the Notice of Sale Right of Redemption</p> <p>Proposed Limitations: LLLTs would be prohibited from assisting with non-judicial foreclosures if the LLLT does not meet the requirements of RCW 61.24.010. No judicial foreclosures</p>
Protection Orders	<p>Proposed Actions: Selecting and completing pleadings for Protection Orders for domestic violence, stalking, sexual assault, extreme risk, adult protection, harassment, and no contact orders in criminal cases</p>
Bankruptcy Awareness and Advice	<p>Proposed Actions: Explain the options, alternatives, and procedures as well as advantages and disadvantages Refer to budget & counseling agency Refer to bankruptcy attorney</p> <p>Proposed Limitation: No assistance with bankruptcy filing in court</p>

The LLLT Board will coordinate with the Washington law schools in the development of the practice area curriculum and ensure that appropriate faculty is available to teach the curriculum. The LLLT Board may modify the proposed practice area based on:

1. consideration of public comments;
2. issues discovered during the drafting of new practice area regulations; and
3. issues that arise during the law schools' development of the practice area curriculum.

Please provide comments to the LLLT Board via email to LLL@wsba.org by July 16, 2018.

Jaimie Patneau

From: Damian Mendez <mendezlaw@gmail.com>
Sent: Tuesday, August 07, 2018 7:54 PM
To: Limited License Legal Technician
Subject: Comment on proposed LLT practice area of wage Complaints and Defenses

Follow Up Flag: Follow up
Flag Status: Completed

Dear LLT Board,

On July's issue of NW Lawyer I was surprised to find out that the LLLT Board is planning to create a practice area for Licensed Technicians to practice in the area of wage complaints. My understanding is that the Board was identifying areas of the law where people were underserved because attorneys did not take those cases. The area of wage claims, especially wage claims with values of less than \$100,000, is an area in which I have for years routinely represented people that were not paid what they were owed. Many times I have represented several employees at the same time. The cases are hard fought and I have taken them all the way to **jury trial**. I know several attorneys that practice in this area and with cases that fall in the \$100,000 range. Wage claims are a complex area of the law that involves strategies that need an attorney to also have knowledge of other areas of the law to ensure that his/her clients are paid.

Many of these cases that appear to have small value are also litigated as class actions. I know of many attorneys that also practice in that area.

I don't believe that many of the WSBA member that practice in this area are aware of the proposal. I myself only found out by chance while browsing NW lawyer. I oppose the creating of an LLLT in that area and would like to have the opportunity to give a live presentation to the Board and perhaps talk to other attorneys that share my opinion. If the WSBA has identified a large underserved population perhaps is a matter of advising people that there are attorneys that can represent people with small wage cases, not to create a situation where technicians, without in depth knowledge of collateral areas of the law, are practicing at a substandard level and competing with WSBA members. Furthermore, I was for years part of the King Count Bar referral service and I never received referrals for small wage cases. I would like to see what specific wage cases were identified as being part of an underserved area of the law.

Please let me know about how I can attend a meeting of the board that I can expand on my view of the proposal.

Thank you.

--

Damian Mendez
Attorney
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Jaimie Patneau

From: Jonathan Baner <jonathan@banerbaner.com>
Sent: Tuesday, August 14, 2018 2:20 PM
To: Limited License Legal Technician
Subject: Expanded practice area LLT for consumer/debt law

Follow Up Flag: Follow up
Flag Status: Completed

I note that there is an ongoing discussion.

About me:

I represent hundreds of consumer debtors at a firm I am of-counsel with. Mostly we look for errors from creditor counsel and try to settle the debts. Lots of client counseling. On the other side of it I represent individual and corporate creditors in collection matters including post-judgment enforcement. Routinely other attorneys hire me to assist in judgment enforcement.

My concern about LLT for or against collection is the FDCPA, FCRA, Bankruptcy, and state collection law all interact in not at all clear ways. Many an LLT can find themselves subject to FDCPA as collectors. That's some training that LLT should need.

As far as state collection go in the form of garnishment: it isn't complicated. I don't know that attorneys are charging high rates for doing them as it isn't really complicated and the statute provides for award of \$300 in attorney fees (thus I think most of us just charge \$300 flat). A garnishment often leads to motion to vacate when a default judgment is involved (and it frequently is). Such a motion will come up quickly, so my only real concern would be that a LLT might end up having a client trusting them to handle interest or defenses when they probably cannot do so.

I believe there is some discussion about LLT handling BK advice. This is just a no-go. This is federal law of immense complexity with more pitfalls than coherent paths.

--

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Jaimie Patneau

From: Vanessa Zink <vanessa.zink@gmail.com>
Sent: Tuesday, August 14, 2018 3:23 PM
To: Limited License Legal Technician
Subject: LLLT Practice Areas for Consumer, Money & Debt law

I fully support the Creditor/Debtor Section Executive Committee's response and proposal regarding proposed expanded practice areas for LLT's in the area of Consumer, Money & Debt Law. In particular, I feel that any areas that touch on federal law would be sorely under-represented by an LLT potentially leaving the most vulnerable clients unprotected/facing unforeseen liabilities. Personally I believe allowing such representation by LLT's would be grossly negligent and far from the best interest of the consumer.

Vanessa Zink
Attorney at Law

Zink Law Offices, PLLC
(509) 464-2884

Jaimie Patneau

From: Barry Meyers <barry@elderlaw-nw.com>
Sent: Thursday, August 09, 2018 12:42 PM
To: Limited License Legal Technician
Subject: Proposed Consumer, Money and Debt Law LLLT Practice Area

Follow Up Flag: Follow up
Flag Status: Completed

My comments are directed to adult protection orders under the Proposed Actions for Protection Orders of this proposal.

First, you need to distinguish who is the petitioner: the victim or an interested third party. Will an LLLT represent either? Do Court Facilitators already offer some assistance with these orders?

I have participated in numerous contested adult protection order matters under RCW 74.34 and other sections of the code. Most of these are initiated by interested third parties. Many of these matters require numerous court hearings, gathering of evidence, calling lay or professional witnesses and examining them (or cross examining witnesses) before a judge or commissioner, and, crafting orders or relief (to name a few) that require expertise that an LLLT may not have.

I would be very careful in allowing LLLTs to undertake such representation. Good intentions may result in bad outcomes.

Barry M. Meyers, CELA
Elder Law Offices of Barry M. Meyers, P.S.
Certified since 2003 as an Elder Law Attorney
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Jaimie Patneau

From: Edgar Hall <edgar@wadebtlaw.com>
Sent: Tuesday, August 14, 2018 9:20 AM
To: Creditor Debtor Section
Cc: Limited License Legal Technician
Subject: Request for comments on new LLLT practice area for Consumer, Money, & Debt Law

Follow Up Flag: Follow up
Flag Status: Completed

Listmates,

If you have an opportunity, please submit any comments (for or against) regarding this new LLLT practice area for Consumer, Money, and Debt Law. The email for comments is:

llt@wsba.org

There are numerous areas that are state law specific, low chance for serious malpractice, and low levels of controversy that (in my opinion) absolutely make sense as proposed. I sincerely hope that if this practice area is approved, that Washington residents can get help in these areas as it is desperately needed.

- Assistance on LFO's (particularly reduction of interest)
- Small Claims
- Garnishment
- ID Theft
- Protection Orders

There are, though, numerous areas so integrated with federal law or so tightly intertwined as a mix of state and federal law, that I do not believe the LLLT program limitations can provide for the proper advice and representation of Washington citizens. This includes:

- **Bankruptcy Awareness & Advice** (How can you advise about something you cannot advise about? The best here is a handout without analysis, this is dangerous at best)
- **Debt Collection Defense** (could not advise on federal claims like FDCPA, FCRA, TCPA, etc, bankruptcy options, etc)
- **Foreclosure Defense** (an area ripe with federal issues, securitization issues, FDCPA, bankruptcy, etc).
- **Loan Modifications** (same as foreclosure)
- **Student Loans** (could not advise on bankruptcy options, hardship discharge options, issues under the Higher Education Act, FDCPA actions, FCRA actions, servicing violation, securitization issues, etc)
- **Wage Complaints** (I lack the knowledge of this area personally, but I am fairly certain a good amount of federal claims are involved potentially)

As a debt defense attorney (and I mean more than bankruptcy but actually filing RCW 19.16, FDCPA, and other claims), I know debt defense is far more than state law allows and if properly done is an amalgam of knowing bankruptcy options, threat of federal and state litigation, using those threats as leverage in a settlement, and knowledge of other options.

My issue is the LLLT program and WA state have the right to authorize whoever they want to practice state law. But the inability to practice federal law is near fatal and given the nature of compulsory counterclaims, tight statutes of limitation windows on most federal claims, and the sheer amount on the line of the value of houses or large debts, it is an almost impermissibly high risk of malpractice. I am concerned that the solution may cause more harm than good.

There are other ways to assist.

- Require debt collectors to prove up their debt much like eviction show cause hearings do that you have a prima facie case. Just saying John Doe owes \$5k is at the absolute outer boundary of notice pleading. I cannot count the number of clients who call to make sure the complaint is real and not a scam.
- Enhanced service of process requirements on debt collection or statutory penalties for sewer service and higher bond for process servers. About 80% of my clients claim to have not been served. I frequently see ancient addresses from date of application rather than a realistic address derived from a proper skip trace being used. The problem typically is a combo of sewer service and the difficulty/expense of vacating a default judgment. Throwing a horde of LLLT's doesn't solve the problem, it just grinds the sausage meat even faster.
- More pro bono dollars and programs, like NWJP or NWCLC, neighborhood legal clinics, etc.

I know as a former creditor attorney, I would be salivating that this would pass as two thirds of the defenses I would fear most (FDCPA claims and bankruptcy discharge) would be off the table and outside of the toolbox for advice or representation of a LLLT opposing.

In any case, you don't have to agree with me and feel free to tell me off if you don't. Just get the WSBA your comments so hopefully concerns (or praise) are heard from those who actually practice in this area. I have a sense that in an echo chamber, this new practice area seems fantastic. In reality, I do not believe that some aspects of this can be pulled off without the ability to advise on federal law or practice in federal courts. This does not even address malpractice concerns for LLLT's operating in this area.

-Edgar

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July 16, 2018

Cindy Phillips
Judicial Administrative Assistant to
Chief Justice Mary E. Fairhurst
Washington State Supreme Court

Re: LLLT Expansion Proposal

Dear Ms. Phillips:

Please provide this letter to the Justices of the Washington Supreme Court for their consideration.

At the time that I started to be active in the Family Law section and started attending meetings of the WSBA Board of Governors, the Family Law section's opposition to the LLLT program was well-known. Detailed comments had been submitted by individuals and the section executive committee for several years. Nonetheless, I approached the subject with an open mind. I write today as an individual member and not as a representative of the Family Law Section. It is a continuing concern that issues are raised without adequate time for Section Executive Committee's to discuss and formulate detailed responses. This letter has not been reviewed nor approved by the Family Law section; I speak only for myself.

I comment today against the proposed expansion of the LLLT program into debt issues or any other subject area. The presently considered expansion seems truly ill-advised. As another attorney stated in a listserv email recently "the fact that many lawyers don't know how to do this stuff and/or do it badly is not an argument that other people who don't have a law school education should be taught it so they can represent people." Another said with regard to the LLLT program, "the cost was incredibly high for the number of people who are licensed, and I can't believe that anyone would want to replicate that result with other disciplines...FDCPA stuff is so insanely complicated that very few lawyers really understand it..."

While there are consumer and/or debt issues that the low income public struggles with, the LLLT program that is being considered is clearly headed for failure. The LLLT Board itself said that "it was unclear whether or not legal assistance would materially address the consumer law problems ... and whether that assistance could be provided through some method other than direct representation exclusively by a lawyer." The LLLT Board also reported that significant advice already exists through the Northwest Justice Project site washingtonlawhelp.org. Yet the recommendation continued to be pushed forward.

The LLLT Board recommendation is that LLLTs be able to assist with RCW 10.82 Motions re Interest in LFOs. These apply to convicts trying to integrate into society. I didn't see that the LLLT Board provided any number of the people seeking help in this matter. There is a recommendation that LLLTs help with small claims court matters. There are numerous websites and materials available to help pro se parties with these small claims. Certainly paying a LLLT is not a likely priority when a person is trying to get someone to pay them \$500 that is owed. The recommendation is that LLLTs can help with debt collection not involving collection agencies. In fact, in this day and age, most collection actions involve collection agencies. There is a recommendation that LLLTs help with garnishments. Very few consumers initiate garnishment actions and there are limits on reimbursable "legal" fees. There are rarely court hearings. Packets of forms and instructions are generally available in every county and are also part of the legal forms available through the Administrator of the Courts. The recommendation regarding identity theft is also ill-advised. This information is available through the Attorney General's office at no cost. The recommendation regarding loan modifications is also somewhat laughable. These programs are very complicated and there are attorneys that specialize in it. These loan modifications are rarely granted and adding LLLTs to the mix will not improve that. LLLTs are not needed with regard to protection orders since each county is required to have people at the courthouse to help provide forms. It is not explained how they would help get no contact orders in criminal cases; this is routinely done by prosecutors at initial criminal hearings. LLLTs cannot provide meaningful help in bankruptcy issues since federal laws govern the debt counseling that consumers must obtain. The program is simply designed for failure; hundreds of thousands of dollars will be spent and any LLLT eventually trained will have few clients, if any, able to pay his/her fees.

The LLLT program is not being forthright with the WSBA membership and, perhaps, the Washington Supreme Court. The program seems to be exploring expansion into numerous fields and, is now doing so without any meaningful oversight. I have reviewed the LLLT Board meeting minutes, as much as are available. This can be difficult since I have sometimes had to prompt staff to get the minutes online. Of course, I do not know if the LLLT board is not providing their minutes to the staff on a timely basis. Most recently, the LLLT Board cancelled its April and June 2018 meetings so no minutes are available. The May 2018 draft minutes are not available either. See attached email of July 9, 2018 from Renata Garcia.

The minutes of the New Practice Area sub-committee which explores subject expansion used to be on-line. That is no longer the case. In fact, I was informed this morning that I would have to submit a public records request to get them. See the attached email of July 16, 2018 from Margaret Shane.

My review of LLLT board minutes and the New Practice Area Committee have been

revealing and startling, particularly with regard to a previously planned expansion into immigration law. The April 2018 minutes state that the LLLT program is expanding into immigration law and that they had already contacted Governor Inslee to get his support for legislation to try and “preempt” the federal law to allow local LLLTs to practice in the immigration field. This action by the LLLT program seems to have been done without the permission of the Washington Supreme Court or the WSBA Board of Governors. This attempted expansion is ill-advised and should not be encouraged or permitted. The Washington State Immigration Services page on the Attorney General website calls immigration law “one of the most complicated areas in the legal field.” ... [and] specialized training” is required...[and] the lawyer/expert must be “authorized under federal law to provide immigration services.” While it seems that this attempted expansion has been dropped, the LLLT board seemed to have acted improperly by going to the Washington State Governor without the support of the BOG or the Supreme Court.

I also ask the Washington Supreme Court to demand some answers from the LLLT board. Such answers should be in writing and made available to WSBA members. How many LLLTs are presently in practice and whom are they representing? What are they charging? While their fees may not be controlled under anti-trust considerations, the fees can certainly be used to determine whether this program is meeting the needs of low-income people. What is the goal of the LLLT program?

I am concerned that the LLLT program seems to be operating without true and objective oversight or administration. The meeting with the Governor’s office involving the Executive Director, Paula Littlewood, is a prime example. It is troubling that this action was not disclosed in her monthly activity reports. She apparently had two BOG members with her but this action was not reported in their monthly activity reports provided to the BOG and the membership. The Executive Director report of January 12, 2018 makes no mention of LLLT issues at all. Steve Crossland’s report to the Board of Governors of January 4, 2018 discusses proposed expansion of the LLLT Family Law work and needed amendments to APR 28 and RPCs but no mention of immigration or consumer debt expansion.

How was it acceptable for these people to go to the Governor to lobby for changes in the law? Sections are not allowed to make any public statements without approval of the WSBA yet a meeting was apparently conducted with the Governor of this state without any such prior approval. Making public statements on the LLLT program and potential expansion without any report of the meeting to the BOG means that the BOG and the membership is being denied information that it should have.

I have another concern about the LLLT program and its administration. The program is marketed enthusiastically by Paula Littlewood and Steve Crossland. It is an open secret that they are involved in a personal relationship. This is a delicate issue that seems to be ignored. I do not easily raise this issue; it should be personal and private. But, it cannot be ignored in this circumstance. I do not see how the program can be administered by the WSBA appropriately under those circumstances. Paula and Steve travel to various other states and countries together “wearing WSBA hats” to talk up the LLLT program concept. I am concerned about the direct and indirect costs of their joint travel to various locales, including Hawaii and Canada. I am concerned about the appearance to the membership. It would certainly seem that the WSBA and the WSC are leaving themselves open to public criticism.

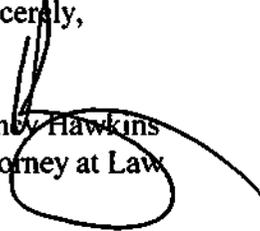
The lack of independent and objective analysis and administration by Littlewood is also clear if the WSBA website is reviewed. The website lauds the LLLT program as a way to practice law without going to law school. It is excited and enthusiastic about the program. Contrast this with the website with regard to lawyers. There is no reference to the long and distinguished role of lawyers in civil rights, or in helping people access the justice system. There is instead a dry description of the costs and burdens of becoming an attorney (fees, testing, etc.) The legal directory now lists LLLTs and lawyers in the same directory. Not only are the lines being blurred, the preference for LLLTs by the Executive Director is obvious.

It also seems that the LLLT program is described by Crossland and Littlewood in their various travels as a “success.” This seems to be an inaccurate description of the program. After years of funding, the program continues to operate at a substantial loss and has very few people working in the field. There is no proof that the program is truly meeting the needs of low-income people and, in fact, the anecdotal information conveyed at meetings is that LLLTs are charging significant rates for their work, generally comparable to attorneys. The Washington Supreme Court should require that Crossland and Littlewood provide transcripts of any speeches and copies of any written materials that either has provided with regard to the LLLT program. Their representations must be accurate and complete so that the reputation of this state bar association and the Washington Supreme Court is not harmed.

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I think it is time for the Washington Supreme Court to take another good hard look at the LLLT program and its purpose and structure. It is time for a plan for reasonable administration. It is also time for the Washington Supreme Court to demand that the WSBA administration enthusiastically support and applaud the work of lawyers.

Sincerely,


Nancy Hawkins
Attorney at Law

cc. LLLT Board

Nancy Hawkins

From: Margaret Shane <Margarets@wsba.org>
Sent: Monday, July 16, 2018 11:10 AM
To: Nancy Hawkins
Subject: RE: LLLT New Practice Area Committee minutes

Hi Nancy –

Since minutes for LLLT committee and work group meetings are not posted on the website, it has been determined that the information you are looking for needs to be obtained through a Public Records Request. To request Bar records, please send your request to WSBA's public records officer at PublicRecords@wsba.org. Under Washington General Rule 12.4(e)(1), requests must be made in writing to WSBA's public records officer, and may not be made to other Bar staff.

Best,
Margaret



Margaret Shane | Executive Assistant

Washington State Bar Association | 206.727.8244 | fax 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact karar@wsba.org.

From: Nancy Hawkins [<mailto:nhawkins@seanet.com>]
Sent: Friday, July 13, 2018 2:10 PM
To: Margaret Shane
Subject: LLLT New Practice Area Committee minutes

These used to be on the website. Are they somewhere else now?

Nancy Hawkins
Attorney at Law
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nhawkins@seanet.com

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Nancy Hawkins

From: Renata Garcia <renatag@wsba.org>
Sent: Monday, July 09, 2018 2:55 PM
To: Margaret Shane; Nancy Hawkins
Subject: RE: LLLT Board minutes

Hi Nancy –



The LLLT Board April meeting was cancelled. The June meeting was also cancelled which means that the May meeting minutes have not yet been approved.

The meeting materials are posted on the website. Here is one way to access them:

1. <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/LLLT-board>
2. Click on WSBA Event Calendar

Meeting Materials

NB: Starting October 2017 meeting materials are linked to the meeting event item in the [WSBA Event Calendar](#). This static list will not be updated.

January 2017
February 2017
March 2017

3. Select Limited License Legal Technician Board

HOME | EVENTS CALENDAR



Updated: June 9, 2018

Enter Email

Today	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Agenda	
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																								

4. Select the month and click on the event
5. Click on the link under "Agenda"

Add to:

- Outlook
- iCal
- Google Calendar

The Limited License Legal Technician (LLLT) Board

Agenda:

LLLT Board Meeting Materials - March 2018

Let me know if you have any other questions.

Thank you,
Renata



Renata de Carvalho Garcia | Innovative Licensing Programs Manager
Washington State Bar Association | 206.733.5912 | renatag@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
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From: Margaret Shane
Sent: Friday, July 06, 2018 1:49 PM
To: Nancy Hawkins
Cc: Renata Garcia
Subject: RE: LLLT Board minutes

Hi Nancy –

Renata Garcia is the person to contact for LLLT matters, but she is out of the office today. I have copied her on this email so she can contact you when she returns to the office next week.

Please let me know if you need anything further at this time.

Best,
Margaret



Margaret Shane | Executive Assistant
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From: Nancy Hawkins [<mailto:nhawkins@seanet.com>]
Sent: Friday, July 06, 2018 10:32 AM
To: Margaret Shane
Subject: RE: LLLT Board minutes

I also don't see any board meeting materials for the past year or so on the website.

Nancy

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From: Nancy Hawkins [<mailto:nhawkins@seanet.com>]
Sent: Friday, July 06, 2018 10:30 AM
To: 'Margaret Shane'
Subject: LLLT Board minutes

Do you have minutes for their April, May and June board meetings?
Nancy

Nancy Hawkins
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NANCY HAWKINS
ATTORNEY AT LAW

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SEATTLE WA 98103
(206) 781-2570
FAX (206) 781-7014

September 14, 2018

Cindy Phillips
Judicial Administrative Assistant to
Chief Justice Mary E. Fairhurst
Washington State Supreme Court

Re: LLLT Expansion Proposal

Dear Ms. Phillips:

Please provide this letter to the Justices of the Washington Supreme Court for their consideration.

I am a 36 year member of the Washington State Bar Association. I am a proud family law attorney. I practice law in Seattle, Washington, and am a sole practitioner. Almost all of my practice is family law.

I graduated from the University of Puget Sound Law School in 1981 and was admitted to the Washington State Bar in 1982. I am also admitted to practice in the Federal courts in the State of Washington. In addition to being a member of the family law sections of the Washington State Bar Association and the King County Bar Association, I am a former chair of the King County Bar Association's Family Law Section's Legislative Committee and a former chair of the King County Bar Association's Family Law Section. I have spoken at numerous continuing legal education seminars on the subject of family law. I am a chapter author for the Washington State Bar Association's Family Law Deskbook. I have received awards for my work from the Greater Seattle Business Association as well as the King County Bar Association Access to Justice Award, and the WSBA Family Law Section Attorney of the Year award for 2017. I coordinate a neighborhood family law clinic in King County and have performed hundreds of hours of pro bono work.

Over the past two years, I have studied the LLLT situation and I write today after learning more disturbing information about the program. I urge the Washington Supreme Court to reject any expansion of the program in Consumer, Money and Debt Law, reject any expansion of the Family Law Program and, instead, examine this entire program in detail and determine its future.

Program training.

The training provided to prospective LLLTs is clearly inadequate since, according to information provided at the July WSBA Board of Governors meeting, more than 50% of the

persons taking the test fail. No information was given as to the results of those who passed. It would be appropriate to know how many barely pass, solidly pass or sail through with flying colors. It appears that the training is not being improved but, instead, the qualifications of the trainers is being reduced down. There is no indication that the LLLT Board is concerned in any way about the low passage rate and the apparent inadequacy of the training provided to date.

With such a poor passage rate, it is inconceivable to me that it would be appropriate that there would be an increase in the curriculum/program in the areas of family law to be taught. As has been demonstrated by prior submissions from the Family Law Section, family law is an extremely complex area covering a broad gamut of legal issues. Adding subjects is far more likely to further reduce the passage rate. This seems grossly ill-advised at this time.

There has been no objective determination that the LLLT program is a success in family law. After years of efforts and hundreds of thousands of dollars, there are a minimal number of independently practicing LLLTs. There has been no determination of the number of low income people actually helped by the program. In fact, it seems that most of the LLLTs work as paralegals just as they were doing prior to any certification or licensing at a LLLT. With the poor passage rate and the lack of success of the LLLT program with regard to family law, it seems further ill-advised to add any new subject area or any expansion of the existing subject area. Without objective analysis and determination of the flaws in the curriculum design, teaching methods and training overall in the family law program, the flaws are likely to be repeated in a new or expanded subject area. Expansion into a new subject area is premature, at best.

The choice of Consumer, Money and Debt Law for expansion is particularly ill-advised.

Expansion into Consumer, Money and Debt Law.

I comment again against the proposed expansion of the LLLT program into debt issues or any other subject area. The presently considered expansion seems truly inappropriate. As another attorney stated in a list serve email recently “the fact that many lawyers don’t know how to do this stuff and/or do it badly is not an argument that other people who don’t have a law school education should be taught it so they can represent people.” Another said with regard to the LLLT program, “the cost was incredibly high for the number of people who are licensed, and I can’t believe that anyone would want to replicate that result with other disciplines...FDCPA stuff is so insanely complicated that very few lawyers really understand it....”

While there are certainly consumer and/or debt issues that the low income public struggles with, the LLLT program that is being considered is clearly knowingly headed for failure. The LLLT Board itself said that “it was unclear whether or not legal assistance would materially address the consumer law problems ... and whether that assistance could be provided through some method other than direct representation exclusively by a lawyer.” The LLLT Board also reported that significant advice already exists through the Northwest Justice Project site washingtonlawhelp.org. Yet the expansion recommendation continued to be pushed

forward.

The LLLT Board recommendation is that LLLTs be able to assist with RCW 10.82 Motions re Interest in LFOs. These motions apply to convicts trying to integrate into society. I didn't see that the LLLT Board provided any number of the people actually seeking help in this matter. In my 36 years of practice, including work with convicted criminals, no one has ever sought help with this kind of matter. I wouldn't think that this is a population with the funds to hire a LLLT.

There is a recommendation that LLLTs help with small claims court matters. There are numerous websites and materials available to help pro se parties with these small claims. Certainly paying a LLLT is not a likely priority when a person is trying to get someone to pay them \$500.

The LLLT Board recommendation is that LLLTs can help with debt collection not involving collection agencies. In fact, in this day and age, most collection actions involve collection agencies. If they don't initially, they surely will shortly.

There is a recommendation that LLLTs help with garnishments. Very few consumers initiate garnishment actions and there are limits on reimbursable "legal" fees. Packets of forms and instructions are generally available in every county and are also part of the legal forms available through the Administrator of the Courts.

The recommendation regarding identity theft is also ill-advised. This information is available through the Attorney General's office at no cost.

The recommendation regarding loan modifications is also somewhat laughable. These programs are very complicated and there are attorneys that specialize in it. These loan modifications are rarely granted and adding LLLTs to the mix will not improve that.

LLLTs are not needed with regard to protection orders since each county is required to have people at the courthouse to help provide forms. It is not explained how LLLTs would help get no contact orders in criminal cases; this is routinely done by prosecutors at initial criminal hearings.

LLLTs cannot provide meaningful help in bankruptcy issues since federal laws govern the debt counseling that consumers must obtain.

This proposed expansion of the LLLT program is simply designed for failure. If it is approved by the Washington Supreme Court, hundreds of thousands of dollars will be spent by the WSBA and any LLLT eventually trained and licenses will have few clients, if any, able to pay his/her fees.

LLLT family law program costs.

The Washington Supreme Court mandated the existing LLLT program and required the Washington State Bar Association to pay its costs. But, the Court also anticipated that the program would be self-sufficient in a reasonable period of time. In fact, the Court required that it do so in its Order: "[t]he Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership." June 15, 2012 Order by the Washington Supreme Court, page 11. Despite the Court's good intentions, this confidence has not been borne out.

At this point, it is six years since that order by the Court. Not only is the program not self-sufficient, it is operating at a greater loss year after year. In 2017, the program sustained a loss of \$189,508.00. It was budgeted to lose \$262,022 in 2018. The draft budget for 2019 projects a loss of \$240,000 but this figure is misleading in that it does not reflect the total cost of the program. It is my understanding that many of the costs for the program are now included in other portions of the WSBA budget so this \$240,000 appears to be artificially lowered. See page 48 of the materials for the July 2018 BOG meeting, attached hereto. I am making a request for the data necessary to determine the cost of those other line items not included in the \$240,000 (see the footnote to that same page 48). It is concerning to note that the LLLT Board claimed that its expenses, direct and indirect, for 2018 were \$17,000 and \$92,636 (see page 433 of the materials for the July 2018 BOG meeting, attached hereto.) These significant costs seem to be in addition to the \$240,000. Additional data for those expenses has also been requested.

Time for a limit.

The lawyers of Washington State pay a significant sum in license fees. Many object to the amount of fees. Many sought to hold a referendum on the amount of fees but were not allowed to do so when the Court issued an order that the fee increase that had been imposed was "reasonable." Unhappiness with the fee increase and the inability to register an opinion with the referendum still resonates with many. This is made more concerning to many when the fees paid are used to pay for unpopular and unsuccessful programs such as the LLLT program. The BOG seems to feel that they are powerless to control costs in this program since the Court has mandated the program. But, the Court did not mandate a program that would be funded at the present extent by the lawyers of the WSBA or that the program would operate at such a loss. At this point, it seems this annual substantial financial loss seems to be permanent. This concern is not abated by the July 2018 fee development. As the Court likely knows, at its July 2018 meeting, the Board of Governors recommended that the LLLT license fees be increased to that of lawyers. That increase, even if approved by the Washington Supreme Court, would not make the present program self-sufficient. There would need to be over 500 LLLTs to even come close to paying for the program for one year. There is no realistic expectation that this will ever happen, let alone happen before another \$2,000,000-\$3,000,000 in WSBA losses occur.

The LLLT program simply shows no promise whatsoever that it will EVER be self-sufficient. Its budgeted costs are approximately 35% higher for 2019 than for 2018. This cannot be sustained for even another year or two without hurting other more successful WSBA programs, a further increase in fees or staff reductions. Yet the LLLT Board and the Executive Director do not seem to be concerned about this in any way.

In the June 15, 2012 order which established the program, it was clear that the program was not necessarily permanent but that it would be "a sound opportunity to determine whether and, if so, to what degree the involvement of effectively trained, licensed and regulated non-attorneys may help expand access to necessary legal help in what that serve the justice system and protect the public. June 15, 2012 Order by the Washington Supreme Court, page 11-12. That objective analysis has never been done.

Time for a program assessment.

The LLLT program was designed to meeting the needs of low income Washingtonians. The program has provided no substantive analysis demonstrating that this goal has been met. The hourly rate charged by LLLTs is, quite simply, beyond the ability of low income people. The rates are also beyond the ability of almost all moderate income people.

After over five years of work, there are only 38 active LLLTs. I have reviewed the information available via the internet and/or the WSBA website. Most work in law firms and it is reasonable to assume that their work is little changed from that of an employed paralegal. It is likely that each of those LLLTs are being billed out at a significant rate. My review concludes that about half or less of the LLLTs are independently employed.

The needed type of assessment of the LLLT program must be done objectively. It is not reasonable to expect the Executive Director or staff under her control to conduct this objective analysis since, in fact, they have not done so. In the past several years, there have been no flags raised over the low number of active LLLTs given the funds spent and the hours of work, no flags raised over the increasing cost of the program, no flags raised over the dismal passage rate, etc. If the LLLT Board or the Executive Director have not done so by now, and given the conflict of interest posed by the personal relationship between the LLLT Board President and the WSBA Executive Director, the Court must provide a mechanism for this kind of objective analysis. Frankly, I believe that the available information should be sufficient to determine that the program is an utter failure already without any further analysis.

Lack of transparency.

I am also concerned about the large gaps in transparency about this program. The April, June, July and September 2018 LLLT Board meetings were cancelled. Without minutes from meetings, it is not possible to review the work of that Board during that time. The meetings of

the sub-committee that considers new subject areas used to be announced on the WSBA website with minutes available for review but are not any longer. My request for the minutes of the sub-committee working on new subject areas was denied. I was told I needed to make a public records request. This lack of transparency is quite troubling, particularly given the funds being expended and the demonstrably poor decision-making by the Board and the Sub-Committee from my perspective (and that of many others).

My review of the materials for the August LLLT Board meeting were troubling. The Board supposedly was given all of the comments about the program expansion but, upon review, my own prior comments were not included in the material provided. I don't know how many comments from others were withheld from the Board. The Board also commented about a letter favorable to the expansion and suggested that the author be invited to a meeting to elaborate. There seems to be little concern that the majority of responses were negative to the expansion idea.

It was also disturbing to see that the LLLT Board seems to be planning on offering scholarships to LLLTs. With a program operating hundreds of thousands of dollars in the red, even consideration of a program scholarship is inappropriate.

My review of the available LLLT board minutes and the New Practice Area Committee raise more concerns, particularly with regard to a previously planned expansion into immigration law. The April 2018 minutes state that the LLLT program is expanding into immigration law and that they had already contacted Governor Inslee to get his support for legislation to try and, in effect, "preempt" the federal law to allow local LLLTs to practice in the immigration field. This action by the LLLT program seems to have been done without the permission of the Washington Supreme Court or the WSBA Board of Governors. That attempted expansion was also ill-advised and should not be encouraged or permitted. The Washington State Immigration Services page on the Attorney General website calls immigration law "one of the most complicated areas in the legal field." ... [and] specialized training" is required...[and] the lawyer/expert must be "authorized under federal law to provide immigration services." While it seems that this attempted expansion is not presently being pursued, the LLLT board seemed to have acted improperly by going to the Washington State Governor without the support of the BOG or the Supreme Court.

The Washington Supreme Court should demand some answers from the LLLT board and the Executive Director. Such answers should be in writing and made available to WSBA members. How many LLLTs are presently in practice and whom are they representing? What are they charging? While their fees may not be controlled under anti-trust considerations, the fees can certainly be analyzed to determine whether this program is meeting the needs of low-income or moderate means people. After all, this was the intent of the LLLT program. It is odd that the Executive Director and the LLLT Board are quick to say that they cannot/will not look at the fees charged by LLLTs while allowing LLLTs to advertise that they charge one-third of that

of a lawyer. How do they make that assertion without a factual basis for it?

I am concerned that the LLLT program seems to be operating without true and objective oversight or administration. The meeting with the Governor's office involving the Executive Director, Paula Littlewood, is a prime example. It is troubling that this action was not disclosed in her monthly activity reports. She apparently had two BOG members with her but this action was not reported in their monthly activity reports either. The Executive Director report of January 12, 2018 makes no mention of LLLT issues at all. Steve Crossland's report to the Board of Governors of January 4, 2018 discusses proposed expansion of the LLLT Family Law work and needed amendments to APR 28 and RPCs but no mention of immigration or consumer debt expansion.

How was it acceptable for these people to go to the Governor to lobby for changes in the law? Sections are supposedly not allowed to make any public statements without approval of the WSBA yet a meeting was apparently conducted with the Governor of this state without any such prior approval. Making public statements on the LLLT program and potential expansion without any advance consideration of the BOG or a subsequent report of the meeting to the BOG means that the BOG and the membership is being denied information that it should have.

Promotion of the program as a success.

I am particularly concerned about the promotion of the LLLT program to other states as a success. This program has 35 people working in the field, only some of which work independently. The others work in law firms and it seems that their work is that of a normal paralegal.

This program has cost the WSBA over \$1,000,000 since its inception. It operates at a considerable loss and that loss is increasing each year. This is not a success. The program should not be "sold" to other states as a success. Doing so will only serve to lower our standing with those states when they, too, suffer such losses and failures. It is distressing that our funds are being spent by Paula Underwood and Steve Crossland to visit various other states and countries "wearing WSBA hats" to talk up the LLLT program concept. I am concerned about the direct and indirect costs of their joint travel to various locales, including Hawaii and Canada. While I have been told that their "travel costs" are not paid by the WSBA, I do not know the status of their other costs. But, even if the costs are out of the picture, I am concerned about the appearance to the membership of this joint travel. It would certainly seem that the WSBA and the Washington Supreme Court are leaving themselves open to public criticism.

WSBA approach to LLLT program.

The present Executive Director's unbalanced and unobjective support for the LLLT program compared with her tepid or non-existent support for actual lawyers is disturbingly clear

Washington Supreme Court
LLLT Expansion Program
September 14, 2018
Page 8

when the new website is examined. I am proud to be a lawyer. From my childhood spent reading and watching Perry Mason and other legal shows, I have always wanted to be a lawyer. This was solidified as I became an active feminist starting at age 16 or so and has continuing for the last 46 years. I followed and studied a civil rights movement that included landmark legal cases regarding education, public facilities, marriage (interracial and gay), sexuality, privacy and many others. None of that glorious history is reflected in the WSBA website, not even a reference to Thurgood Marshall, Ruth Bader Ginsburg or, even, our own William O. Douglas. Not a mention of any landmark cases which have resulted in improved lives for millions of Americans. In fact, the website page which describes becoming a lawyer is a dry recitation of the costs and burdens of being a lawyer.

By contrast, the website pages which describe becoming a LLLT is enthusiastic and glowing and makes broad promises about a career as a LLLT.

Conclusion.

I think it is time for the Washington Supreme Court to take another good hard look at the LLLT program and its purpose and structure. If it is to continue, it is time for reasonable and unbiased administration. It is also time for the Washington Supreme Court to demand that the WSBA administration enthusiastically support and applaud the work of lawyers.

If the Court agrees with my concerns, it is likely time to end this failed program. The 35 people that are presently licensed would likely just continue as well-paid paralegals.

Sincerely,


Nancy Hawkins, a proud lawyer.

cc. LLLT Board (with enclosures)

Washington State Bar Association
Budget Comparison Report
For the Period from October 1, 2018 to September 30, 2019

LIMITED LICENSE LEGAL TECHNICIAN	FISCAL 2018 BUDGET	FISCAL 2019 BUDGET	\$ CHANGE IN BUDGET	% CHANGE IN BUDGET
REVENUE:				
TOTAL REVENUE:	-	-	-	
DIRECT EXPENSES:				
LLT BOARD	17,000.00	17,000.00	-	0%
LLT OUTREACH	8,000.00	8,000.00	-	
STAFF TRAVEL/PARKING	600.00	600.00	-	0%
TOTAL DIRECT EXPENSES:	25,600.00	25,600.00	-	0%
INDIRECT EXPENSES:				
FTE	1.70	1.55	(0.15)	-9%
SALARY EXPENSE	142,602.00	135,526.00	(7,076.00)	-5%
BENEFIT EXPENSE	49,304.00	41,592.00	(7,712.00)	-16%
OVERHEAD	42,495.00	38,095.00	(4,400.00)	-10%
TOTAL INDIRECT EXPENSES:	234,401.00	215,213.00	(19,188.00)	-8%
TOTAL ALL EXPENSES:	260,001.00	240,813.00	(19,188.00)	-7%
NET INCOME (LOSS):	(260,001.00)	(240,813.00)	19,188.00	

The Limited License Legal Technician (LLLT) license type (APR 28), was created by the Supreme Court and delegated to WSBA in 2012. In the past, this cost center was used to track all revenues and expenses associated with the "LLLT Program". LLLTs are now WSBA members, and consistent with the WSBA Bylaws and the Washington Supreme Court Admission and Practice Rules, the administration and regulation of these member license types has been consolidated within existing work groups and cost centers that already perform these functions for lawyers, including Admissions, License and Membership Records, and MCLE (although it continues to be possible to determine these costs separately by member type if needed). For FY19, this cost center is used primarily to track staffing and expenses related to the LLLT Board, which by court rule oversees the license.

WSBA COMMITTEE/BOARD ANNUAL REPORT – FY18

<p>Limited License Legal Technician (LLLT) Board</p> <p>Chair: Steve Crossland</p> <p>Staff Liaison: Renata Garcia</p> <p>BOG Liaison: Dan Clark</p>	<p>Size of Committee: 15</p> <p>Number of FY19 Applicants: 6</p> <p>FY18 direct expenses: \$17,000</p> <p>FY18 indirect expenses: \$92,636</p>
<p>FY18 Demographics:</p> <ul style="list-style-type: none"> • Gender (Female: Male: Not Listed): 12:2:0 (0 did not answer) • Number of members self-identified with a racial/ethnic under-represented group: 3 (0 did not answer) • Number of members self-identified as having a disability: 2 (0 did not answer) • Number of members self-identified as LGBT: 2 (0 did not answer) 	
<p>Background & Purpose:</p> <p>The Limited License Legal Technician (LLLT) Board derives its authority from the Washington Supreme Court under Rule 28 of the Admission to Practice Rules (APR), adopted effective September 1, 2012. By order of the Court, the WSBA is to administer and fund the LLLT Board and the program.</p> <p>APR 28 authorizes persons who meet certain educational and licensing requirements to advise clients on specific areas of law. The only currently approved practice area is domestic relations. The Supreme Court established the LLLT Board to oversee the LLLT license.</p>	
<p>Strategy to Fulfill Purpose:</p> <p>From 2013-2016, the LLLT Board concentrated on creating the operational details for the LLLT license; the LLLT Board is now focusing on the promotion, expansion, and development of the license.</p>	
<p>2017-2018 Accomplishments and Work in Progress:</p> <ol style="list-style-type: none"> 1) In February 2018, the LLLT Board submitted suggested amendments to APR 28, the LLLT RPC and the RPC for lawyers for consideration by the Washington Supreme Court. These amendments would enhance the scope of the current family law practice area. The Court recently published the suggested amendments for comment. Comments are due by no later than September 14, 2018. 2) The LLLT Board is currently circulating a new proposed practice area, Consumer, Money, and Debt, for comment before taking further action, i.e., developing curriculum requirements, seeking approval by the Court, etc. The LLLT Board hopes to engage as many subject matter experts as possible in the development of this and any future proposed practice areas. 	

- 3) The LLLT Board recently approved the University of Washington Continuum College Paralegal Studies Program to teach the LLLT core curriculum.
- 4) The LLLT Board has been engaging in discussions to explore ways in which LLLT students may qualify for financial aid.

2018-2019 Goals:

- 1) The LLLT Board will continue to consider and recommend new practice areas for approval by Supreme Court.
- 2) If the family law enhancements are approved by the Court, the LLLT Board will develop the required training for currently licensed LLLTs.
- 3) The LLLT Board also plans to expand the accessibility of the LLLT core curriculum across the state by continuing to approve core class programs at additional community colleges.
- 4) The LLLT Board will continue to engage in outreach efforts, including working with the WSBA communication team to expand outreach to a diverse pool of LLLT candidates, including college and high school students.
- 5) The LLLT Board also plans to advance its efforts to provide access to financial aid for students in the LLLT practice area classes.

Please report how this committee/board is addressing diversity:

1) Are you using any of the tools provided by WSBA and if so, how? 2) Have you sought out training or consultation from the Inclusion and Equity Specialist? 3) How have you elicited input from a variety of perspectives in your decision-making? 4) What have you done to promote a culture of inclusion within the board or committee? 5) What has your committee/board done to promote equitable conditions for members from historically underrepresented backgrounds to enter, stay, thrive, and eventually lead the profession? 6) Other?

- 1) The LLLT Board seeks members from different backgrounds and experiences who work together to foster a positive work environment in concert with WSBA's commitment to diversity and inclusion.
- 2) The LLLT Board will schedule training with WSBA's Inclusion and Equity Specialist.
- 3) The LLLT Board seeks input from all WSBA members as well as the legal community in general when making important decisions such as developing a new practice area.
- 4) APR 28 has been amended at the request of the LLLT Board to allow LLLTs and LPOs as well as attorneys with judicial and emeritus pro bono status to serve as Board members.
- 5) The core curriculum educational approval process reflects the LLLT Board's commitment to diversity in that it requires any institution offering the core curriculum to have diversity, inclusion, and equal access policies and practices in place. The LLLT Board also sought to increase diversity within the LLLT profession by extending the limited time waiver (see APR 28 Regulation 4) to 2023 in order to allow a group of candidates qualified by work experience rather than by education to enroll in the practice area classes. The ongoing effort to provide a pathway to financial aid for the practice area classes also aims to provide more opportunities to join the LLLT profession to prospective applicants from diverse socio-economic backgrounds.
- 6) N/A

Please report how this committee/board is addressing professionalism:

- 1) Does the committee/board's work promote respect and civility within the legal community?
- 2) Does it seek to improve relationships between and among lawyers, judges, staff and clients?
- 3) Does it raise awareness about the causes and/or consequences of unprofessional behavior?
- 4) Other?

- 1) The LLLT Board has set up rules of professional conduct and a disciplinary system for LLLTs, as well as requiring LLLTs to carry malpractice insurance and conform to the same rules as lawyers regarding IOLTA accounts.
- 2) The LLLT Board has worked to promote LLLTs in the legal community and educate all legal professionals about the permitted scope and models for LLLT practice, as well as highlighting the ways in which collaboration with LLLTs can contribute to the efficiency and accessibility of any legal practice.
- 3) N/A
- 4) N/A

Please report how this committee/board is integrating new and young lawyers into its work:

- 1) How have you brought new and young lawyers into your decision making process? 2) Has the committee/board supported new and young lawyers by (for example) helping to find and prepare them for employment, assisting with debt management, building community, and providing leadership opportunities? 3) Other?

- 1) All WSBA members are invited to provide comments on rules and new practice area suggestions and development, including new and young lawyers.
- 2) N/A
- 3) N/A

September 7, 2018

Supreme Court of the State of Washington
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Transmitted via email

Re: Comment on Proposal Regarding Addition of Practice Area for Limited License Legal Technicians

Dear Justices of the Washington Supreme Court:

I am writing to support the addition of Consumer, Money & Debt as the next practice area available in the Limited License Legal Technician program. I am commenting in my personal capacity, not as a representative of my employer, LAW Advocates, the volunteer lawyer program for Whatcom County. However, my opinion is informed by my three years of experience as full-time executive director of that organization as well as my prior 24 years as a private practice civil lawyer in this community.

I am surprised to hear comments that sufficient resources already exist to assist individuals with legal difficulties involving finances. That is certainly not the case in our community. Although our county's population now exceeds 200,000, we have perhaps a half-dozen private attorneys in the county who handle consumer debt cases. And those practitioners' practices are geared mostly toward bankruptcy filings, where assets usually exist to support an attorney fee. Obviously, it is economically unfeasible for attorneys to take cases where clients have so few assets that attorney fees are out of the question. This leaves most of this work to someone other than experienced creditor/debtor attorneys.

A few for-profit and nonprofit organizations provide various levels of education and general advice on debt and credit issues, but they do not provide legal representation. Ours is the only organization in our county that provides that service. (Northwest Justice Project has an office in Bellingham, but it does virtually no creditor/debtor work other than occasionally as a supplemental service to an existing client.) But while we accept consumer debt cases, all we are able to do in most instances is refer the clients to one particular attorney who has agreed to take a limited number of such cases pro bono. We have been unable to find an attorney to provide a more comprehensive debt clinic as we have done at times in the past. Also, the cases we take must meet our financial qualifications, which restrict our services to those whose income is less than 200 percent of the federal poverty guideline. Individuals with income above that—who often are still low-income by any reasonable definition--have nowhere to turn for legal assistance. Sadly, if we see those individuals again it is usually after they have become entirely indigent and show up in our Homeless Disability or Street Law programs.

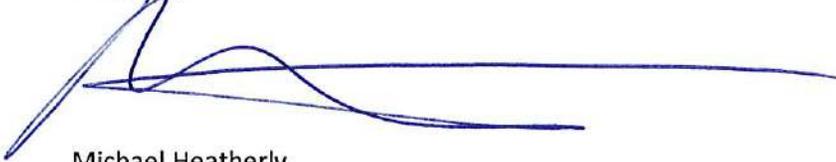
We have only one licensed LLLT in our community. Fortunately, she has provided considerable volunteer work for us. She regularly serves at our Street Law clinic, where she is able to answer family law questions within the authority of her license. She sometimes supplements the work of a family law attorney at the clinic and other times is the only family law specialist available. As our community also faces a dramatic shortage of family law attorneys, having a LLLT available in that legal field is extremely valuable for our

organization. A LLLT who was licensed to do similar work in the Consumer, Money & Debt field would be a godsend.

Even before I became executive director of a legal aid organization I believed that innovations such as the LLLT program were essential in providing legal assistance to the vast number of individuals who cannot afford to hire a lawyer in the conventional fashion. I am even more convinced of that from what I see every day at LAW Advocates, where we serve over 1,000 clients per year but are unable to help many times more who need it. We constantly field questions from elderly people struggling with medical debt, young families with exorbitant credit card balances because of home or auto repair, and recent college graduates unable to keep up with student loans. Consumer, Money & Debt is one of the highest areas of demand for services and one of the areas with the lowest supply of attorneys. That is undoubtedly true in our county and I suspect it is true statewide, especially in more rural areas that have even fewer attorneys and other social services available.

I enthusiastically encourage the court to approve Consumer, Money & Debt as the next practice area for the LLLT program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Heatherly", with a long horizontal flourish extending to the right.

Michael Heatherly
WSBA #20803

Comment on proposal – p. 2

Signing Authority on Trust Accounts

The Committee on Professional Ethics (CPE) reviewed the LLLT RPCs and has a question about LLLT signing authority on trust accounts. The language in question appears in the lawyer and LLLT RPC 1.15A(h)(9):

Only an LLLT or a lawyer admitted to practice law may be an authorized signatory on the account. If an LLLT is associated in a practice with one or more lawyers, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

The CPE notes this language 1) makes it so a LLLT who is a member of a law firm cannot sign a trust account check for that firm, however, 2) a LLLT who is not a member of a law firm could be a signatory on the firm's trust account. This could happen if a solo practitioner wanted to have an independent LLLT be a signatory on the lawyer's trust account as a "back-up" in the event the lawyer became disabled or died. The CPE wonders if this result was intended.

Doug Ende reviewed the question and noted that the LLLT Board's RPC Committee drafted this provision with the first in mind but not necessarily the second. On point 1, the Committee considered that a LLLT should not be the sole signatory on a trust account at a firm jointly owned with a lawyer because the LLLT could become responsible for disposition of funds in situations requiring the delivery of legal services beyond the scope of the LLLT license. There was also a concern that it could put the LLLT in the position of being assigned to administer the trust account in order for the ethical risk of trust account errors to be borne by the LLLT alone rather than lawyers at a firm.

The intent was not to permit a non-firm LLLT to be a signatory on an otherwise lawyer-only trust account.

If the LLLT Board wants to revisit the language and allow a LLLT to be the sole signatory on trust accounts for firms that include lawyers, 1.15A(h)(9) can be deleted. If the LLLT Board wants to retain the prohibition, the language could be amended to make clear that a LLLT, whether associated in practice with a lawyer or not, cannot be the sole signatory on a trust account for a firm that includes lawyers. Amended language could read:

Only an LLLT or a lawyer admitted to practice law may be an authorized signatory on the account. If an LLLT is associated in a practice with one or more lawyers, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

A LLLT cannot be the sole signatory on a trust account for a firm that includes lawyers.

Background

July 31, 2017 – Memo from the CPE to the LLLT Board regarding RPC 1.15A(h)(9) and LLLT RPC 1.15A(h)(9). See attached.

August 28, 2017 – The CPE asked for feedback from the LLLT Board regarding RPC and LLLT RPC language related to signing authority on trust accounts.

March 15, 2018 – Doug Ende attended the LLLT Board meeting and discussed trust account signatory permissions. Doug explained that if a lawyer and an LLLT are in business together, the lawyer must sign all trust account checks. The board discussed concerns about a LLLT's ethical responsibilities being thwarted by a lawyer's delay in action or failure to act. A motion to reconsider this was presented (seven for, four opposed) and passed. The Board also appointed a committee to look at this issue and bring suggestions to the next board meeting (April 19, 2018).

April, June, and July LLLT Board meetings were cancelled.

August 29, 2018 – Jeanne Marie Clavere informed the CPE that she was advised that this topic is on the agenda for the October 8, 2018 meeting.

September 24, 2018 - The Committee sent an email to LLLTs asking for their feedback on the issue.

MEMORANDUM

To: Limited License Legal Technician Board
From: Committee on Professional Ethics
Date: July 31, 2017
Re: RPC 1.15A(h)(9) and LLLT RPC 1.15A(h)(9)

The Committee on Professional Ethics received an inquiry about whether a lawyer who is not on active status may sign trust account checks. In considering this inquiry, the subcommittee noticed what appears to be a mistake in the second sentence of RPC 1.15A(h)(9). That sentence states, "If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm." This means that if a law firm has an LLLT who is not part of the firm as a signatory on its trust account, the LLLT would be able to sign a check alone, while an LLLT who is part of that firm would not be permitted to do so. Although it would be uncommon for a firm to have an LLLT who is not part of the firm as a signatory on its trust account, it is conceivable that a sole practitioner might do so to have someone available to sign trust account checks in the event of death or disability. We were informed by Doug Ende that this was not the intent of that sentence.

Because fixing that sentence affects LLLTs, we would like to obtain feedback from the LLLT Board. The subcommittee has recommended that the sentence be stricken for the reasons noted in the attached memo. We welcome your comments on that proposal.

Attachment: Trust Account Signatory Subcommittee Memo dated April 14, 2017

FROM Trust Account Signatory Subcommittee (Colin Folawn, Anne Seidel, Ted Stiles)
TO: CPE
RE: Retired lawyer signing trust account checks (proposed rule change)
DATE: April 14, 2017

As discussed in our August 18, 2016 memo, our subcommittee concluded that the RPCs are not clear about whether a lawyer who is not on active status can sign a trust account check. We are therefore proposing a rule change to clarify this. We are also proposing a rule change to address an incongruity in the second sentence of RPC 1.15A(h)(9) regarding LLLTs.

Background of RPC 1.15A(h)(9)

RPC 1.15A(h)(9) states:

(h) A lawyer must comply with the following for all trust accounts:

...

(9) Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the account. If a lawyer is associated in a practice with one or more LLLTs, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

Before the 2006 RPC amendments, anyone could be a signatory on a trust account and law firms frequently had bookkeepers or other nonlawyer staff as signatories. Ethics 2003 proposed that RPC 1.15A restrict signatories to lawyers to protect against theft by nonlawyers employed at a law firm. There is no discussion in the legislative history of what is meant by “lawyer admitted to practice.”

Proposed rule change regarding lawyers as signatories on trust accounts

The following proposal simply removes the requirement that a lawyer be “admitted to practice law” to be a signatory on a trust account. The proposal would make RPC 1.15A consistent with ELC 14.2. That rule prohibits suspended and disbarred lawyers, as well as those who have resigned in lieu or been transferred to disability inactive status, from continuing to practice law. However, ELC 14.2(b) states that the prohibition “does not preclude [such a lawyer] from disbursing assets held by the lawyer to clients.” If the ELC does not preclude a suspended or disbarred lawyer from disbursing trust account funds to clients, RPC 1.15A should similarly permit lawyers not on active status to sign trust account checks.

This change would mean that lawyers and LLLTs are treated the same as far as their ability to be signatories on a trust account. As currently written, an LLLT does not need to be “admitted” to be a signatory on a trust account.

The proposed change is as follows:

(h) A lawyer must comply with the following for all trust accounts:

...

(9) Only a lawyer ~~admitted to practice law~~ or an LLLT may be an authorized signatory on the account. . . .

Additional comment:

Only a lawyer or LLLT on active status may open a trust account. A lawyer or LLLT may continue to be an authorized signatory on a trust account even if no longer on active status. However, a lawyer who is not on active status may not engage in the unauthorized practice of law and may not use the trust account if under the particular circumstances doing so would imply that the lawyer is authorized to practice law. *See* RPC 5.5(a), (b)(2).

Ted has the following concerns about the second sentence of the proposed comment, which he would like the full committee to discuss at the next meeting:

As drafted, the comment would appear to permit an inactive lawyer to maintain a trust account for an indefinite period of time. In the case of an L&I attorney who collects contingent fees from periodic payments, and who retires while the payment stream is running, the comment would allow the inactive lawyer to continue to maintain the account for years, if not a decade or more, considering that a pension award may run for the life of the pensioner, and in some circumstances for the life of the pensioner's spouse. The Association apparently is not set up to monitor or audit trust accounts after a lawyer becomes inactive. Should we endorse the type of situation in which an inactive lawyer is handling funds belonging to others, but is free from Association audit oversight? Also questions regarding the IOLTA requirements—applicable to inactive lawyers? Will banks agree to let inactive lawyers maintain IOLTA accounts?

Proposed rule change regarding LLLTs as signatories on trust accounts

The second sentence of RPC 1.15A(h)(9) reads, "If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm." This means that an LLLT who is not part of a law firm would be able to sign a check alone, while an LLLT who is part of that firm would not be permitted to do so. According to Doug Ende, this was not the intent of that sentence.

Our subcommittee considered whether to propose rewording this provision to prevent all LLLTs from signing trust account checks without a lawyer's additional signature. We do not believe that is necessary. LLLTs are licensed law professionals, so an LLLT who stole from a trust account would be subject to discipline. We therefore do not believe permitting LLLTs to sign trust account checks presents the same risk as permitting nonlawyers to do so.

In addition, banks process checks electronically, so it is extremely unlikely that a bank would be able to enforce a two-signature requirement. So if an LLLT is listed as a signatory, the bank would process a check signed by the LLLT alone. The two signature requirement is only an internal control. As such, it would not prevent an LLLT from stealing from the trust account.

Our subcommittee considered whether to limit an LLLT's authority to sign trust account checks to those relating to cases within the LLLT's license. We do not believe such a limitation would be helpful. First, as mentioned above, a bank would not be able to enforce such a restriction so it would not prevent theft from the account. Second, if the LLLT did not handle the trust account appropriately, the LLLT could be subject to discipline (although the current LLLT RPCs could be clearer in that regard if the misconduct is merely recordkeeping). Third, permitting LLLTs to be signatories on lawyer trust accounts will make LLLTs more attractive to law firms and help integrate them into the profession. Finally, allowing LLLTs to issue trust account checks for all matters is consistent with RPC 5.9(a)(1), which permits LLLTs to share fees from cases that are outside their limited licenses.

We recommend that the second sentence of RPC 1.15A(h)(9) be struck. With the two proposed changes, that subsection would read as follows:

(9) Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the account. ~~If a lawyer is associated in a practice with one or more LLLTs, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.~~

Courthouse Facilitator Requirement

Issue Summary

It was brought to our attention that, in some counties, pro se litigants are being asked to go through the court facilitator's office to have their paperwork reviewed before presenting final orders to the court (even if they were prepared by an LLLT). It was also mentioned that they charge a small fee. It looks like in King County the fee to meet with a facilitator is \$30. We couldn't find anything in the King County local rules so maybe it is not a formal requirement but rather a preference. We are doing some research and will provide an update at the next LLLT Board meeting.

Question regarding courthouse facilitator requirement (email received on 8/9/2017):

"When parties are going through their divorce pro se, they are required to meet with a Family Law Facilitator to ensure their papers are in order. If a LLLT has prepared the documents for them, are they still required to do this?"

LLLT Board Decision (9/21/2017 meeting):

The LLLT Board reviewed the question above at its meeting on September 21, 2017 and determined that it needed additional information in order to provide direction. The Board requested that WSBA staff look into how court facilitators work across the counties and what the various local rules say.

Research in progress. Staff will provide an update at the LLLT Board meeting.

Questions regarding courthouse facilitator requirement (email received on 8/28/2018):

A LLLT emailed WSBA after receiving a call from her client who was unable to enter final documents because the commissioner required her to schedule an appointment with the courthouse facilitator to have the documents reviewed. The concern is that courthouse facilitators, who are not licensed to practice law, are reviewing documents prepared by LLLTs. The LLLT also mentioned that there might be a small fee involved.

Questions raised in the email:

- Is there anything that can be done about the requirement in Snohomish County? (King County was also mentioned)
- Is there a way to bring this to the courts' attention?
- Should a LLLT send a letter to the Court Administrator?

**Comments submitted
to the Washington
Supreme Court
regarding APR 28 and
APR 28 Appendix Regs
2 and 3**

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 14, 2018 8:08 AM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: Comment Regarding Legal Technician Changes

From: Alicia Kelly [mailto:alicia.kelly9@gmail.com]
Sent: Thursday, September 13, 2018 9:32 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: LTDivision Admin <admin@ltdivision.com>
Subject: Comment Regarding Legal Technician Changes

Re: Regarding Important Changes that permit **Legal Technicians** to Assist Their Clients

To the Supreme Court,

I am receiving assistance from an LLLT division regarding a revision in my parenting plan and child support.

I have already gone through the process of mediation. I was not able to have the LLLT who was assisting me come to mediation. I had to call and ask questions, and the LLLT was not there to speak or negotiate for me. My ex-husband had brought an attorney to represent and speak for him.

I had to do my best in this negotiation process without legal representation physically present, and had to make phone calls to my LLLT to ask for advice. I had to decide what to do while his lawyer was pressuring me to settle on certain terms, when it would have been very helpful to have my LLLT right there to speak for me.

Legal technicians have passed the Bar exam for attorneys in order to practice. They have much knowledge and could well represent their clients. **They should be able to communicate on behalf of their clients, negotiate for them, appear in varying court proceedings and at mediation for them. With their knowledge and expertise, they should be able to assist with major parenting plan modifications, and up to adequate cause hearings.**

We should allow LLLTs these rights to practice under. If it weren't for this new field, my husband and I wouldn't be able to afford any legal help. We would have to face my ex-husband with his attorney, and try to navigate the legal world without any help.

Lawyers are extremely expensive, and many cannot afford to hire one. Many citizens who can't afford them often suffer without any legal representation. The LLLT is a wonderful, more affordable solution. They are very competent, knowledgeable, and well able to assist clients in varying legal issues.

I am asking the Supreme Court to allow these changes as it will benefit many who could otherwise not afford legal assistance and representation.

Sincerely,

Alicia Kelly



GOLDBERG & JONES, PLLC
1200 WESTLAKE AVE. N. SUITE 700 SEATTLE, WA 98109
206 448 1010 *Tel* 206 448 0736 *Fax*
WWW.GOLDBERGJONES-WA.COM

September 14, 2018

Washington Supreme Court
415 12th Street W
Olympia, WA 98504

RE: Proposed Expansion of LLLT Program

Dear Honorable Justices,

As we are all well aware the typical lawyer answer is, "it depends". However, the pending issue before the Court is easy. The answer is no. It is disappointing to know the Washington State Bar Association is attacking their own. It is equally frustrating to know that the Bar Association would be so willing to abdicate its responsibility to its members and the public. The inevitable result of the decision to expand the LLLT scope would be disastrous for the following reasons:

1. LLLTs are only required to have an associate's degree. There is a reason why attorneys attend law school. It provides a rigorous and demanding curriculum designed to rewire an individual's brain, so they know how to properly analyze the law and identify important issues; among other important skills. The minimal education that LLLTs have received is no substitute for the education of an attorney. It is a disservice to the public to enable less qualified individuals to assist them in important legal matters that will have serious ramifications upon their lives.
2. Other state bar associations have already rejected similar proposals. The primary reasoning is that more information is needed to determine the efficacy of the LLLT program. That is the situation in Washington. Rather than jump right into expanding the LLLT scope, more data should be required to determine the impact to the public and attorneys in the state.
3. If the concern is improved access to the legal system for low income individuals, there are better options beyond giving LLLTs de facto attorney status. Compulsory pro bono work may be an option, as would increasing funding for legal aid associations.

The WSBA should be an organization that supports attorneys while protecting the public through licensing and discipline, versus an association that protects the public from attorneys. The bottom line is that this is a half-baked idea that will have potentially disastrous consequences for the public and licensed attorneys in this state.

Sincerely,

Amanda N. Gamble
WSBA #52982

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 14, 2018 4:47 PM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: Expansion of LLLT Program
Attachments: Signed LLLT Letter .pdf

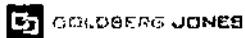
From: Amanda Gamble [mailto:agamble@goldbergjones.com]
Sent: Friday, September 14, 2018 4:42 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Expansion of LLLT Program

Honorable Justices,

Please see my attached letter in response to the comment period for the expansion of the LLLT program.

Thank you.

Amanda N. Gamble
ATTORNEY AT LAW



1200 Westlake Ave. N. Suite 700
Seattle, WA 98109
Phone: (206) 448 -1010
Fax: (206) 448-0736

www.goldbergjones-wa.com

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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, September 12, 2018 3:29 PM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: Enhancements to APR 28

From: Ann Vetter-Hansen [mailto:ann@whatcomfamilylaw.com]
Sent: Wednesday, September 12, 2018 2:57 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Enhancements to APR 28

Good afternoon:

My name is Ann Vetter-Hansen and I am a Bellingham, Washington family law attorney. I have also been fortunate to serve a term on the Practice of Law Board.

The GR 9 Cover Sheet provides ample justification for the proposed enhancements to APR 28, the LLLT rule. Many of the proposed enhancements were recommended by the law professors who teach the family law class to the LLLTs and who have followed up on the implementation of the program.

The LLLT rule is the result of GR 25. The concept of a legal technician was developed by the Practice of Law Board, organized in 2002. The members of the POLB and the LLLT Board are thoughtful volunteers, like me, who have donated thousands of uncompensated hours to the vision and implementation of the program. The Court gave these good thoughtful people a task and the Court should trust their monumental effort and approve the enhancements as proposed by LLLT Board. This is a necessary step to make a modest but meaningful improvement to access to justice in our state.

Ann Vetter-Hansen

Philip Vetter-Hansen, PLLC
1200 Old Fairhaven Pkwy., Suite 203
Bellingham, WA 98225
(360) 392-3988

Tracy, Mary

From: Jennings, Cindy
Sent: Wednesday, September 5, 2018 2:29 PM
To: Hinchcliffe, Shannon
Subject: FW: N. Hawkins Letter of July 16, 2018 Re LLLT Expansion

From: Bill Pickett [mailto:Bill@wdpickett-law.com]
Sent: Tuesday, July 17, 2018 8:16 PM
To: Fairhurst, Justice Mary <Mary.Fairhurst@courts.wa.gov>; Madsen, Justice Barbara A. <J_B.Madsen@courts.wa.gov>; Johnson, Justice Charles W. <Charles.Johnson@courts.wa.gov>; Wiggins, Justice Charles <Charles.Wiggins@courts.wa.gov>; Stephens, Justice Debra L. <Debra.Stephens@courts.wa.gov>; Fairhurst, Justice Mary <Mary.Fairhurst@courts.wa.gov>; Yu, Justice Mary <Mary.Yu@courts.wa.gov>; Gonzalez, Steve <J_S.Gonzalez@courts.wa.gov>; Owens, Justice Susan <Susan.Owens@courts.wa.gov>; Gordon McCloud, Justice Sheryl <J_S.GordonMcCloud@courts.wa.gov>
Cc: Paula Littlewood <PaulaL@wsba.org>; Steve Crossland <steve@crosslandlaw.net>; Nancy Hawkins <nhawkins@seanet.com>
Subject: N. Hawkins Letter of July 16, 2018 Re LLLT Expansion

Dear Chief Justice and Justices of the Washington Supreme Court,

I am compelled to respond to attorney Nancy Hawkins' letter to you regarding enhancements for the Limited License Legal Technician (LLLT) license, dated July 16, 2018. While much of the letter is based on Ms. Hawkins' personal opinion about the enhancements, I want to set the record straight on several points:

- The March 7 meeting with Governor Inslee was the annual meeting that the Executive Director, WSBA President, and WSBA President-Elect hold with the Governor in conjunction with the board's yearly meeting in Olympia. The full board is informed about the meeting and what is discussed. The first issue Gov. Inslee raised this year was immigration and the legal profession's role in finding solutions; as the Court is aware, immigration has been discussed as a possible practice area for LLLTs since the early 2000s.
- With respect to Executive Director Littlewood and Washington Supreme Court LLLT Board Chair Steve Crossland, travel to other jurisdictions and organizations to speak about the LLLT license were by invitation, and no WSBA funds were used to pay for travel.

Please let me know if you would like additional information on anything noted in Ms. Hawkins' letter.

Peace,
Bill Pickett, WSBA President

Bill Pickett
Trial Lawyer
The Pickett Law Firm
917 Triple Crown Way, Suite 100
Yakima, WA. 98908
Phone: 509-972-1825
Fax: 509-972-1826

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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, August 30, 2018 4:37 PM
To: Tracy, Mary
Subject: FW: Comment on APR 28 - Limited Practice Rule Suggested Amendments

Forwarding

From: Rachel Brooks [mailto:rachel@guardianship-law.com]
Sent: Thursday, August 30, 2018 4:33 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on APR 28 - Limited Practice Rule Suggested Amendments

I am writing to comment on the suggested amendment to enhance the scope of the LLLT domestic relations practice area.

I support this amendment.

I do not practice family law. However, I am on the Board of the Clark County Law Library, and our librarians frequently field questions from unrepresented persons seeking information on family law questions. Fortunately, Clark County has a Family Law Facilitator which can assist many low-income clients, but our Clerk's Office has proposed to eliminate the facilitator program. Even if it preserved, it is inadequate to meet the needs of the public.

The proposed amendment will be useful to our community and helpful to our court system.

Thank you for allowing me to comment.

Rachel Brooks

I accept service by email from Guardians ad Litem.

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Rachel Anne Brooks

Attorney at Law

1014 Franklin Street, Library Suite

Vancouver, WA 98660

Tel. (360) 699-5801

Fax. (360) 699-5802

rachel@guardianship-law.com

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, August 29, 2018 12:33 PM
To: Hinchcliffe, Shannon; Jennings, Cindy
Subject: FW: LLLT Rule changes comments

Forwarding

From: Cameron Fleury [mailto:CJF@mcgavick.com]
Sent: Wednesday, August 29, 2018 12:31 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: LLLT Rule changes comments

Justices,

I am writing to ask that you do not further expand any LLLT rights to represent parties. I have been a Family Law practitioner since admitted to the WSBA in December 1993. I was a member of the FLEC of the WSBA when the LLLT program was being championed by Ms. Littlewood and Mr. Crossland. I resigned from the FLEC, in part, over the manner that program was being pursued and implemented, over the crystal clear and virtually unanimous voice of the attorneys in Washington. In fact, the only attorneys that supported were in support because the program was being touted as "Access to Justice" for low income parties. Further, it was to be "an experiment" and only expanded after data supported such an expansion. As you will recall, before the program was even implemented the income limit was removed and virtually immediately the program was expanded and it continuing to be expanded despite NO DATA supporting an expansion.

I believe it is clear that the Justices only supported the program because they were not made aware of the vast amount of negative input all across the State during Paula and Steve's "Town Hall style meetings". In fact, I believe a major reason for the WSBA Membership's current anti-WSBA (see the recent "reform" movement to take the BOG back over, etc.) is the unethical and egregious manner in which the WSBA has created the LLLT program, the "dues rollback Petition" that received the requisite number of signatures to put it to the membership for a vote, but that being refused by the Supreme Court's Order after Ex Parte input from Paula making the referendum "moot", and the recent Bylaw Amendment debacle.

Before considering expanding the LLLT program, I urge you each to contact some (attorney) members of the Bar and hear their feelings and opinions and NOT take what the ED of the WSBA tells you at face value.

Respectfully,
Cameron J. Fleury
WSBA 23422

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 14, 2018 12:54 PM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: Enhancements to LLLT License

From: Camille Walton [mailto:camillew1092@gmail.com]
Sent: Friday, September 14, 2018 12:48 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Enhancements to LLLT License

To whom it may concern,

I am writing regarding the possible enhancements to the LLLT license. Personally when faced with my divorce I wasn't sure how I could afford a lawyer to help me. When I learned about what a LLLT could offer I was very pleased I would be able to afford my divorce more easily. While working with an LLLT I feel as though they are just as knowledgeable as a lawyer would be. I am so glad I went this route but the only drawback for me is that if I do end up having to go to court my LLLT will not be there with me to represent me. The prospect of facing court and my ex and his lawyer without anyone there representing me is very terrifying. I have no legal background and it would mean so much to me if a LLLT would be able to be there with me so I wouldn't have to go through it alone. Please consider adding to the scope of the LLLT license. I know it would positively impact myself and many others as well.

Thank you for your time

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, August 27, 2018 8:16 AM
To: Hinchcliffe, Shannon; Jennings, Cindy
Subject: FW: Family Law Enhancements - LLLT Rule, Statement in support of suggested amendments

Forwarding

From: Deborah Ellen Baker [mailto:Bakerwa1@outlook.com]
Sent: Saturday, August 25, 2018 1:08 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RE: Family Law Enhancements - LLLT Rule, Statement in support of suggested amendments

August 25, 2018

Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Subject: Family Law Enhancements
Statement in Support of LLLT Rule, Suggested Amendments
ADMISSION AND PRACTICE RULES (APR) 28
Sections C, D, and Regulation 3

Dear Reviewer(s),

I live in rural Whatcom County and I see that not having enough money to hire a lawyer has a disparate impact on women. Often the men in the rural areas have jobs that pay very well – refineries, logging, heavy equipment operator, construction; while women are either stay-at-home moms or work for minimum wage in service industry jobs. Access to the legal system is impaired by the economics of gender and obstructed by a person's lack of sophistication and disabilities.

The proposed enhancements to the LLLT practice would expand the ability of the LLLTs to provide better access to the courts. I support adding the ability to divide real estate. Frequently the only asset of any value (besides the pickup truck) is some minimal amount of equity in the family home. Many people do not know how to understand and write up the division of equity in the home or to provide remedies when the agreed division is not followed.

I also support the idea that a LLLT can go to court with the client. Even with the proper paperwork, self-represented litigants are terrified of going to court. People have mental health problems, literacy issues or cognitive impairments but still need a divorce. Having a support person who is also a legal resource will make the court experience better for everyone.

Thank you for your consideration of these amendments with significant potential to tangibly improve equitable access to the legal system.

Very truly yours,

D. Ellen Baker

P.O. Box 5149
Glacier, WA 98244-5149
(360) 599-2544

Cc: 42nd District Representatives Vincent Buys and Luanne VanWerven, State Sen. Doug Ericksen

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 14, 2018 8:04 AM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: LLLT Consideration

From: David Brown [mailto:david@neo1seo.com]
Sent: Thursday, September 13, 2018 5:13 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: LLLT Consideration

Hi there,

I'd like to drop a quick note to let you know how much my LLLT has helped me these last few months. My divorce came at me from out of the blue and I definitely did not have an extra 10k sitting around for a retainer. It would be extremely helpful if my LLLT was able to accompany me to mediation and even talk to my wife via phone, email, or some other medium. I'd like to say thanks for the LLLT's in the first place, as I'd be out of luck otherwise.

Best,

DB

--

David Brown - [@neoblog](#) | [db Consulting](#)
"I can rank you, or your competition... Your call!"

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Please consider the environment before printing this email or any attachments.

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 7, 2018 2:42 PM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: Do Not Expand the LLLT Program

From: Dayna Ducey [mailto:dayna.ducey@gmail.com]
Sent: Friday, September 7, 2018 2:40 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: re: Do Not Expand the LLLT Program

Good Afternoon,

As a WSBA attorney (who previously practiced in Canada), I have serious concerns about the proposed expansions to the LLLT program (and the LLLT program as a whole).

I am a family law attorney and executive committee member of the Low Bono Section. Along with the majority of family law attorneys in the state, I am disappointed that unqualified practitioners are being invited to assist the most vulnerable of populations. Family law practitioners are so frustrated that many of them are distancing themselves from the WSBA. In fact, some 500 family law attorneys joined the non-WSBA affiliated and *attorney only* DRAW group (Domestic Relations Attorneys of Washington).

WSBA's website says, "The Washington Supreme Court directed the WSBA to develop and administer the LLLT license as part of the effort to make legal services more available for people with low or moderate incomes." What low bono attorneys are seeing is that many LLLTs charge close to (or more!) than what we as low bono *attorneys* charge.

I'm concerned that we are supporting LLLTs *to the detriment of new and young lawyers*. As a young attorney, I know of many peers (attorneys) who are struggling to find employment. All while they must pay off student debt. We should be supporting young attorneys, not unqualified LLLTs. It is also frustrating that attorneys are paying for the LLLT program.

I urge you to think of the clients who are being poorly served by unqualified LLLTs. Family law is not an area to be dabbled in by inexperienced, unqualified non-lawyers.

Dayna Ducey
51533

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, September 10, 2018 8:03 AM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: Proposed changes to the LLLT practice areas

From: Genissa Richardson [mailto:Genissa@lawadvocates.org]
Sent: Sunday, September 9, 2018 6:25 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Jen Petersen <jen@saalawoffice.com>
Subject: Proposed changes to the LLLT practice areas

To: Washington State Supreme Court
From: Genissa Richardson, APR 6 Law Clerk and Licensed Legal Intern, LAW Advocates, Bellingham, WA

September 9, 2018

Dear Honorable Justices of the Washington State Supreme Court,

I am contacting you regarding the proposed changes to the LLLT practice area. Next July, I will complete the APR 6 Law Clerk Program. I have worked at LAW Advocates, in Bellingham, since October of last year. Much of my work involves helping clients in our Dissolution and Parenting Plan clinic – designed specifically to assist victims of domestic violence. I also counsel tenants on a weekly basis at our Landlord-Tenant Clinic. The issues I assist with range from unlawful detainers to orders of limited dissemination, and more minor issues that never go to court, such as damage deposits.

All of our clients are indigent, and a good portion of them are homeless. I see firsthand how many civil legal issues the citizens of Whatcom County have – issues that most cannot afford to retain an attorney for. My family law clients have concerns about their housing, their employment rights, and their debts. And my tenant law clients have concerns about keeping their housing and employment, or clearing their rental history and money judgments against them, so they can regain housing.

I, our staff attorney, David Henken, and our contract family law attorney, Catherine O’Connell, cannot meet the needs of nearly everyone who seeks our assistance. We have many additional programs, including Street Law, yet we turn away potential clients, who qualify for our services, every day.

We have a nationwide access to justice crisis on our hands. This is evident from the day to day experiences of legal professionals such as myself, and from in-depth studies, such as the Office of Civil Legal Aid’s 2015 Civil Legal Needs Study Update.

The answer to this crisis is to empower more legal professionals to assist those who are low income and indigent. Access to legal services must not continue to be available only for the affluent. Kirsten Barron, a colleague whom I have much respect for, regularly reminds our local bar that “it’s not justice if it’s not equal.” I couldn’t agree more. I have the means to hire an attorney if need be. The vast majority of Washington State residents do not have the means to do so.

I am at a loss for why so many people oppose the proposed changes to the LLLT practice areas. The volunteer lawyer programs and other non-profit agencies cannot meet the demand for free or reduced-cost legal services. There is no harm in expanding the LLLT Family Law practice area to include allocation of

retirement accounts. The exclusion of QDRO's is understandable. These are so complicated that experienced attorneys shudder at the mere mention of a QDRO. There is no harm in allowing LLLTs to attend court with their clients, with the caveat that they only answer questions of fact from the bench. Any potential risks of expanding the LLLT practice areas are overshadowed by the benefits that will result and by the Bar's regulation of the profession.

Another concern I have is the claims being made that LLLTs are not volunteering and/or providing reduced cost services. These claims are false. Our local LLLT, Jen Peterson, regularly volunteers at Street Law, and her services are provided at a very reasonable rate. I have heard from colleagues in other parts of the state that they know LLLTs who also are committed to volunteerism.

The arguments against expanding the LLLT Family Law practice area and against licensing LLLTs in the area of Consumer, Money & Debt fail to recognize the fragile state of justice in Washington. We have a local attorney, Lee Grochmal, who graciously volunteers her time to assist many of our clients with bankruptcy matters. Yet, we have no attorneys who assist with creditor/debtor issues before bankruptcy is necessary. The lack of available legal advice further perpetuates poverty. Licensing LLLTs for this practice area can bring nothing but positive results to this crisis.

Many attorneys are not willing to work *pro bono* or at a reduced rate. Yet many attorneys seem to think that LLLTs will take all of their clients. This is ridiculous. There is no shortage of clients to go around. In Whatcom County, someone who can afford to pay full-price for an attorney can scarcely find a family law attorney to take a case right now. There aren't enough attorneys practicing family law. How does someone in a low-income bracket stand a chance at retaining legal counsel? The reality is that not everyone can pay \$200-300 an hour for an attorney. LLLTs can play a large role in solving this crisis. We need more regulated and educated legal professionals who are dedicated to serving the public – including the lower and middle classes.

I sincerely hope the proposed changes to the LLLT Family Law practice area are approved, and that the practice area continues to expand with time. I also sincerely hope the Consumer, Money and Debt practice area is approved. These changes alone will not solve our State's access to justice problem. They signal significant progress, however, and bring hope for a more just and balanced future for all of our citizens.

Sincerely,

Genissa Sygitowicz Richardson

APR 6 Law Clerk, APR 9 Licensed Legal Intern #9281085

LAW Advocates in partnership with the Volunteer Lawyer Program of Island County

Phone (360)-671-6079 Ext. 14 / Fax (360)-671-6082

Genissa@LAWadvocates.org

www.lawadvocates.org

www.facebook.com/LAW-Advocates-154954291280272/

<https://www.instagram.com/lawadvocates1987/>



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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, September 5, 2018 1:48 PM
To: Tracy, Mary
Subject: FW: Comment re: Expansion of LLLT Program

For you?

From: Denise Diskin [mailto:Denise@stellerlaw.com]
Sent: Wednesday, September 5, 2018 1:47 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment re: Expansion of LLLT Program

Dear Justices:

I am writing to express my support for limiting the reach of WSBA's existing LLLT Program to advising and undisputed matters, and to ask that the Court oppose any expansion of the program, for a period of time measured in years, to allow its current iteration to be tested.

I appreciate the need for low-cost legal assistance more than most, having served as a volunteer legal clinic attorney, Moderate Means attorney, and solo/small firm attorney for the entirety of my career. I am familiar with the statistics regarding the dire need low-income people have for attorneys. However, I do not believe an expansion of the LLLT program is the answer that the public in Washington need. While I have no doubt that LLLTs are smart, dedicated, and careful people who have every desire to serve their clients well, there is no substitute for the intense legal training, and bar exam study and passage, held by lawyers.

While introduction of LLLTs into areas of law where there is particular need, such as family law, is no doubt helpful, allowing LLLTs to represent family law clients in court hearings and disputed matters reflects a lack of understanding on WSBA's part as to how complicated that area of law is. As a solo attorney almost 10 years ago, I began taking on family cases thinking they would be emotionally complicated but procedurally and legally simple. How complicated can it be to calculate child support when all those forms exist to help pro se parties, right? Wrong. Family law has proven to be more complicated by far than any other area of law I have learned, and it is made only more complicated by the web of rules and procedures (including both the state and local court rules) meant to account for the large number of pro se parties trying to navigate the court system. These are not simply ten-minute child custody or parenting plan hearings – they are legal proceedings which touch on every aspect of a family's logistical and financial life and which can carry serious consequences if orders are not followed. I regret now the cavalier attitude I began taking these cases with, and I cannot imagine leaving these cases in the hands of people lacking a complete legal education.

There is no doubt that legal services need to get cheaper. I think most attorneys would agree. But they are expensive for reasons that are tied to the complexity of the work and the industry's reliance on price points fitting large corporate law firms, not a shortage of people willing to do the work. If my firm could charge our clients less, but still pay office rent, staff and attorney salaries (which are modest, particularly for Seattle – I am eligible for income-based repayment of my six-figure student loans, for example), bar dues, CLE fees, Westlaw accounts, and other necessary overhead costs, we would. If I could afford to still be a solo attorney and still pay my student loans, my child's daycare, my health insurance, and my rent, I likely would. But the economics of our industry are such that firms like mine cannot stay afloat if we only charged what our clients could pay. We have to bridge that gap – but sending non-attorneys out to the public to provide those services is not the answer. Being an attorney is a humbling, challenging job, and WSBA needs to spend its energy making our industry more affordable so that the public has equal access, regardless of class, to trained and skilled and certified attorneys.

Thank you for your consideration.

Respectfully,

J. Denise Diskin, Attorney
Teller and Associates, PLLC
1139 34th Avenue, Suite B
Seattle, WA 98122
206-324-8969 fax 206-860-3172
www.stellerlaw.com

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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, September 12, 2018 3:33 PM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: APR 28 LLLT enhancements

From: jujupotterwa@gmail.com [mailto:jujupotterwa@gmail.com]
Sent: Wednesday, September 12, 2018 3:33 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: APR 28 LLLT enhancements

Dear Supreme Court:

I am a concerned citizen for those who do not have access to affordable legal help.

The proposed enhancements to APR 28 should be enacted. Self-represented clients do not have the money to hire attorneys. The local pro bono attorneys and Northwest Justice Project take on very few divorce clients. The courthouse facilitators help with forms, but cannot give legal advice. People are confused and overwhelmed by the forms and the process. Having the LLLT help them and go with them to court would be welcome by the clients and assist the judges if they have questions.

There is a critical need for having LLLTs provide assistance with non-parental custody actions - either as agreed by the parties or through the adequate cause hearing. Most often it is grandparents, relatives and friends who take on the task of caring for children when the parents cannot. Often the child's caregiver has limited means and cannot navigate the legal system. It is critically important to have someone help the caregivers get legal status to obtain medical and educational decision making for the children in their care.

The court should implement all of the proposed LLLT enhancements.

Thank you for your consideration regarding a solution for this important issue.

Judith Potter



August 31, 2018

Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: June 2018 Proposed Rules Published for Comment
RPC 1.0B, 1.17, 4.3, 5.8, 8.1
APR 28 and APR 28 Appendix
LLLT RPCs

Dear Supreme Court Justices:

We, the undersigned, hereby submit this letter to support the proposed changes to the rules mentioned above (hereafter "LLLT rule changes"). We do so on behalf of the University of Washington School of Law, which has developed and taught the LLLT Family Law curriculum for the last five years, and on behalf of ourselves, two members of the Family Law advisory committee that spent 18 months developing these rule changes.

The Limited License Legal Technician program has been a grand and successful experiment in Washington State. Contrary to the fears that it would somehow topple the provision of family law services to clients, it has in fact provided more competent providers than the typical law school curriculum can provide, where students may take one or two courses in family law, but not nearly at the level of detail that a practitioner would need. The LLLT students take 3 courses solely on family law practice. Our students have been extremely engaged and somewhere between 35 and 40 are now licensed.

The issue that the LLLT rule changes seeks to address is to re-balance some of the initial trade-offs when the program was first created. In order to balance the authority given to LLLTs and the supervision by attorneys, the rules were initially drawn narrowly. We have learned over these five years that the rules are actually too narrow, that they do not allow for the LLLTs to develop a full breadth of the family law practice, and hence, will not lead to a sustainable business model. The LLLT rule changes will allow for expanded authority by the practitioners but still within very defined limits. They will, appropriately, allow for the LLLTs to handle the fullness of their clients' matters.

As you may be aware, the Legislature this year passed and the Governor signed SB 5213, which will permit the court to order respondents to pay LLLTs fees in domestic violence cases. What is notable about this bill is that there was no negative testimony. That the bill sailed

through with no amendments and no controversy demonstrates how LLLTs have become integral and accepted in the family law practice field.

We have seen over these five years that the program is working, the training is working, and most importantly, the civil legal needs of the clients are getting met. The LLLT rule changes will make some well considered changes to the scope of practice. We encourage the Court to adopt these changes.

Please feel free to contact us if we can answer any questions or provide additional information.

Sincerely,



Professor Patricia Kuszler
Charles I. Stone Professor of Law



Terry J. Price
Director, LLLT Education

Comments on Suggested Amendments to
Admission and Practice Rules (APR) 28 and
Limited Practice Rules for Limited License Legal Technicians (LLLTs)

Comment: There seems to be discord between proposed changes to APR 28(G)(4) and LLLT RPC 1.16.

The amendment to APR 28(G)(4) would preserve LLLTs' obligation to sign documents and pleadings they prepare while allowing an exception for LLLTs assisting a client or a third party in preparing a declaration or sworn statement.

However, the amendment to LLLT RPC 1.16, Declining or Termination Representation, clarifies that LLLTs represent pro se clients and, accordingly, LLLTs would not file a notice of appearance.

How would the court know an LLLT should have signed documents if the court doesn't know the LLLT represents the client?

Comment: The proposed changes are a step in the right direction, but they fall short when it comes to case-type restrictions. Restrictions on Major Modifications and Non-Parental Custody cases only through Adequate Cause have the effect of requiring LLLTs to withdraw all assistance at the most crucial steps in the court process.

From my experience as a supervising attorney, LLLTs do not need additional training or education to assist with Major Modifications cases. In contrast, Non-Parental Custody cases would require a CLE to provide LLLTs the necessary training. This is a small hurdle LLLTs would gladly leap in order to eliminate the restriction.

General Comment: The current restrictions on LLLTs' license to practice continue to limit, not level, the playing field for LLLTs' pro se clients. The burdens are disproportionate on LLLTs compared to attorneys when attempting to provide meaningful representation without running afoul of court rules or the law.

WSBA asks LLLTs to accomplish a nearly impossible task: Provide representation without much ability to represent the client when the client needs it the most, in court and at depositions.

WSBA and the attorney population must embrace LLLTs for the gaps they fill and the services they can and want to provide. Just as physician assistants and advanced registered nurse practitioners have become indispensable in the medical field, so will LLLTs. Washington could and should be a progressive leader in this field.

General Comment: Doesn't it make sense to extend LLLTs' representation to clients wanting adoptions, since the WSBA already intends to let LLLTs handle non-parental custody actions?

Comments submitted by:

Lori Preuss
WSBA #33045
1554 Amethyst St SE
Olympia, WA 98501

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 14, 2018 8:06 AM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: Comments on proposed amendments
Attachments: LLLT comments 9.13.18.docx

From: Lori PREUSS [mailto:lori012@msn.com]
Sent: Thursday, September 13, 2018 8:43 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on proposed amendments

Hello. Attached are my comments to proposed amendments to Admission and Practice Rules (APR) 28 and Limited Practice Rules for Limited License Legal Technicians (LLLTs).

Thank you.

Lori Preuss
WSBA #33045
Lori012@mns.com

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, July 23, 2018 4:04 PM
To: Hinchcliffe, Shannon; Jennings, Cindy
Subject: FW: Expansion of LLLT functions

Forwarding.

From: Lynn Clare [mailto:lynncclare@clarelawfirm.com]
Sent: Monday, July 23, 2018 3:54 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Expansion of LLLT functions

To the members of the Washington Supreme Court:

Regarding the recent proposal to extend the practices of LLLT's to negotiating procedural matters, I wish to strenuously object to ANY addition to the substantive legal work LLLT's may perform.

LLLT's are not attorneys. They do not have a legal education. They do not have licenses to practice law. Their ostensible reason for existing was to provide scrivener-like services to modest-means clients. When it was presented in that way, I was actually a fan of the idea.

No more, for I now wish that the problematic LLLT program had never been authorized. The LLLT license has mushroomed into something very different from how it was originally presented to us, and I foresee substantial potential for harm to clients and my profession. Allowing "negotiation of procedural issues" creeps uncomfortably close to practicing law without a license. I urge the Court not to approve this change to the license.

Lynn Clare
Clare Law Firm, PLLC
WSBA #47867

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, August 30, 2018 9:28 AM
To: Hinchcliffe, Shannon; Jennings, Cindy
Subject: FW: Expansion of LLLT functions

Forwarding

From: Lynn Clare [mailto:lynnclare@clarelawfirm.com]
Sent: Thursday, August 30, 2018 9:26 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Expansion of LLLT functions

To the members of the Washington Supreme Court:

I was just informed that my previous comment on this issue might not receive attention as it may not have been received during the official comment period. In an abundance of caution, and because I want my opinion in this matter to count, I am re-sending my previous comment.

Regarding the recent proposal to extend the practices of LLLT's to negotiating procedural matters, I wish to strenuously object to ANY addition to the substantive legal work LLLT's may perform.

LLLT's are not attorneys. They do not have a legal education. They do not have licenses to practice law. Their ostensible reason for existing was to provide scrivener-like services to modest-means clients. When it was presented in that way, I was a fan of the idea.

No more, for I now wish that the problematic LLLT program had never been authorized. The LLLT license has mushroomed into something very different from how it was originally presented to us, and I foresee substantial potential for harm to clients and my profession. Allowing "negotiation of procedural issues" creeps uncomfortably close to practicing law without a license. I urge the Court not to approve this change to the license.

Lynn C. Clare
Clare Law Firm, PLLC
Office: 206-223-8591
Direct: 253-444-4058

September 4, 2018

Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: June 2018 Proposed Rules Published for Comment
RPC 1.0B, 1.17, 4.3, 5.8, 8.1
APR 28 and APR 28 Appendix
LLLT RPCs

Dear Supreme Court Justices:

I write to echo the letter from two of our faculty members that support adoption of the June 2018 proposed rules (RPC 1.0B, 1.17, 4.3, 5.8, 8.1; APR 28 and APR 28 Appendix LLLT RPCs). These rules clarify and slightly expand the scope of practice for Limited License Legal Technicians (LLLT).

The University of Washington School of Law has worked in cooperation with the Washington State Bar Association on the LLLT program since its inception. Several of our faculty members have been involved in the educational components of the program, from design of the curriculum through actual teaching of the material. We wholeheartedly support the aim of the LLLT program, which is to provide underserved populations better access to family law assistance.

Our experience with the program suggests that a number of areas were prescribed too narrowly to allow for both practicality and a viable practice arena. As detailed in the letter from our faculty members, the proposed changes will remedy and clarify the scope of practice, while maintaining the overall restricted scope of practice for LLLTs.

Although I am new to University of Washington School of Law, I am fully committed to the access to justice aims that are a hallmark of our law school's culture. The LLLT program is fully consistent with those aims. We fully support the proposed limited expansion to the LLLT scope of practice and urge the Court to adopt the proposed changes.

Thank you for your consideration,

Sincerely,



Mario L. Barnes
Toni Rembe Dean & Professor of Law

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, September 6, 2018 12:07 PM
To: Tracy, Mary
Subject: FW: June 2018 Proposed Rules Published for Comment/RPC 1.0B, 1.17, 4.3, 5.8, 8.1/APR 28 and APR 28 Appendix/LLLT RPCs
Attachments: LLT LTR 2018_Supreme Court Justices.pdf

From: Dawn M. Bell [mailto:belld3@uw.edu]
Sent: Thursday, September 6, 2018 12:06 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RE: June 2018 Proposed Rules Published for Comment/RPC 1.0B, 1.17, 4.3, 5.8, 8.1/APR 28 and APR 28 Appendix/LLLT RPCs

Dear Clerk of the Washington Supreme,

I am sending you this letter on behalf of Dean Mario Barnes. Kindly let me know if you have any questions.

Best,
Dawn

Dawn Bell

Pronouns: She/Her

Assistant to the Dean
Washington Leadership Institute Coordinator
William H. Gates Hall | 371
Box 353020 | Seattle, WA | 98195
P: 206.543.2586 F: 206.616.5305
belld3@uw.edu

W SCHOOL OF LAW
UNIVERSITY of WASHINGTON
Leaders for the Global Common Good™

The track record of the Limited License Legal Technician Program does not warrant expansion at this point. While the program was motivated by good intentions, the program does not appreciably help those with low income, the costs outweigh the benefits, and interest is dwindling.

Although the stated objective of the LLLT program is to increase access to justice for low and moderate-income persons¹, no requirement limits their fees nor their clients' incomes. The savings due to reduced hourly fees have long been available through appropriate use of paralegals, who at least are subject to the supervision of an attorney.

At the 2/15/17 WSBA town hall meeting, one of the first questions raised from the floor was from a Superior Court judge, who asked how the LLLT program can be evaluated. LLLT Board Chair Stephen Crossland said that an evaluation was being conducted, and that its preliminary findings were very positive and that steps were being taken to address the shortcomings. The evaluation was published in March 2017, after evidently being circulated earlier to the LLLT Board, judging by Mr. Crossland's reference to it a month before.

The March 2017 Preliminary Evaluation of the Washington State Limited License Legal Technician Program, funded by the American Bar Foundation, is available online.² It appears that its primary sources for information were the LLLT Board and the WSBA Executive Director. The LLLT Board Chair and WSBA Executive Director have stumped the country to paint glowing pictures of the LLLT program's success in self-justifying efforts to have other jurisdictions adopt similar programs.

Mr. Crossland's 9/15/17 letter responding to Chief Justice Fairhurst's 4/3/17 concerns (*If there are no additional subject matter areas, can the program continue?*) stated:

As the LLLT profession has evolved, four realities are presented. While they are not determinative of the continuance of the profession, they cannot be ignored. First, the LLLT Board's outreach to community colleges reveals that those students who are not interested in Family Law may be interested in other practice areas. Second, classes taught

¹ The first line on the WSBA website about LLLTs still claims: "Washington is the first state in the country to offer an affordable legal services option to help meet the needs of those unable to afford the services of a lawyer."

² Clarke, Thomas M. and Sandefur, Rebecca L., *Preliminary Evaluation of the Washington State Limited License Legal Technician Program*, March 2017, available online at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwits_6rIoDWAhVkwVQKHZoNDAsQFggoMAA&url=http%3A%2F%2Fwww.americanbarfoundation.org%2Fuploads%2Fcms%2Fdocuments%2Fpreliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf&usg=AFQjCNFkkXtoM5aRpojT2nXXNUa4VO3NTw, p. 3. Note: the role of LLLTs surveyed didn't include the pending amendments to APR 28, which would allow LLLTs to help their clients in court, to negotiate with opposing parties and counsel, and to appear at mediations and arbitrations.

through the University of Washington Law School must reach a sustainable level in order for the School to financially afford to teach LLLT classes. Third, the Washington State Bar Association is currently underwriting the LLLT profession in its initial stages. In order to offset the start-up costs and continuing costs of the license, the population of LLLT practitioners must expand. Fourth, and most importantly, there is a significant unmet need in areas beyond Family Law. We simply can't put off trying to meet the painful and significant unmet needs in other areas of the practice of law.

Fallacies:

- A. The statement that community college students who are not interested in family law "may be" interested in other practice areas is speculation.
- B. There is no indication whether such students are interested in the areas of greatest unmet need.
- C. The fees which LLLTs can charge are not regulated and probably can't be, due to antitrust issues, so there is no showing that low income needs will be met.
- D. Nothing indicates that their numbers would be sufficient to make the LLLT Program economically viable.

The program costs outweigh the benefits. For fiscal year 2016, the LLLT Program deficit was \$216,358. For fiscal year 2017, the budgeted deficit was \$221,664. Subsequent costs are more difficult to identify, because WSBA combined LLLT program costs with other WSBA costs starting in FY 2018. The March 2017 evaluation findings noted that the UW law school must *subsidize* the LLLT program at current student levels, while Seattle University and Gonzaga law schools are struggling financially and felt unable to subsidize a new program like the LLLTs (though Gonzaga contributed faculty to the courses at UW law school.) The study further found that, though it's not clear how much student levels would need to increase for the law school to break even on the program, rough estimates ranged from 30 to 60 students per year.³

I attended the LLLT Board's 4/4/18 annual meeting with the Supreme Court, and heard Mr. Crossland assure the court that the LLLT program had an estimated 100-200 "in the pipeline". That phrase rang a bell. I remember him using similar words over a year earlier at the WSBA town hall meeting on 2/15/17. After six years (four years of exams), there are only 35 active LLLTs since the Washington Supreme Court authorized LLLT practice through APR 28 on June 15, 2012. Many of that number essentially grandfathered in, using their multiple years of family law paralegal experience. The numbers aren't escalating. Despite the glowing reports and predictions to the Supreme Court, only 3 passed the February 2018 LLLT exam, mirroring the 3 in spring 2017.

So where are those hundreds "in the pipeline"? The ABA Foundation's Findings in the March 2017 Preliminary Report found that:

³ Clarke and Sandefur, at p. 8

While it may be difficult to estimate what number of new licensed practitioners per year would be required to achieve a breakeven point for operating the program with precision, presumably the WSBA could do so for various enrollment and certification scenarios.

The WSBA estimates that such a breakeven point may be achieved in five to seven years, which would include paying back the startup costs, but does not indicate what level of licenses would be needed to do so. *It does estimate that up to 200 people may be currently enrolled in its core programs.* If so, the WSBA can determine when the breakeven point will be achieved at least approximately. *Community colleges know how many students are in their paralegal programs, but not how many of those students might go on to become licensed LLLTs. Previous estimates of LLLT cohorts have consistently proven to be too optimistic,* but that may change as the program becomes better known and gathers momentum with a track record. (p. 10)(emphasis added)

Apart from the LLLT Program's generally failing to serve low income needs, costs outweighing benefits, and minimal interest, the proposed APR 28 rule changes were not appreciably altered in response to the detailed criticism provided by the King County Bar Association's Family Law Section and others. In Mr. Crossland's summary of input efforts, notable by its absence was any reference to WSBA's Family Law Section, the American Academy of Matrimonial Lawyers, or the Domestic Relations Attorneys of Washington.

There should be no expansion ("enhancement" is marketing spin), either to new areas of family law or to new legal fields. Before embarking on areas of new practice, the court should wait and determine whether the unmet legal needs of the public are being significantly met by this program, and whether the benefits justify the costs. Rather than continuing the LLLT Board as a large standing committee of the Supreme Court, incurring triple-digit deficits annually, it makes more sense to have it convene only periodically to evaluate progress and identify whether expansion is warranted.⁴

The foregoing represents my opinion, and not that of any bar association or section.

Mark Alexander

⁴ For example, the Child Support Schedule Workgroup convenes every four years to make recommended changes to the Legislature.

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, September 6, 2018 4:29 PM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: Comments on APR 28 changes re: LLLTs
Attachments: LLLT ltr Supreme Ct 2018-09-06-1535.docx

From: Mark [mailto:mark@seattledivorceservices.com]
Sent: Thursday, September 6, 2018 4:27 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on APR 28 changes re: LLLTs

I respectfully submit my attached comments about the proposed rule changes to APR 28.

Mark Alexander
Seattle Divorce Services
2317 NW Market Street
Seattle, WA 98107
(206) 784-3049

NANCY HAWKINS
ATTORNEY AT LAW

6814 GREENWOOD AVE. N.
SEATTLE WA 98103
(206) 781-2570
FAX (206) 781-7014

July 16, 2018

Cindy Phillips
Judicial Administrative Assistant to
Chief Justice Mary E. Fairhurst
Washington State Supreme Court

Re: LLLT Expansion Proposal

Dear Ms. Phillips:

Please provide this letter to the Justices of the Washington Supreme Court for their consideration.

At the time that I started to be active in the Family Law section and started attending meetings of the WSBA Board of Governors, the Family Law section's opposition to the LLLT program was well-known. Detailed comments had been submitted by individuals and the section executive committee for several years. Nonetheless, I approached the subject with an open mind. I write today as an individual member and not as a representative of the Family Law Section. It is a continuing concern that issues are raised without adequate time for Section Executive Committee's to discuss and formulate detailed responses. This letter has not been reviewed nor approved by the Family Law section; I speak only for myself.

I comment today against the proposed expansion of the LLLT program into debt issues or any other subject area. The presently considered expansion seems truly ill-advised. As another attorney stated in a listserv email recently "the fact that many lawyers don't know how to do this stuff and/or do it badly is not an argument that other people who don't have a law school education should be taught it so they can represent people." Another said with regard to the LLLT program, "the cost was incredibly high for the number of people who are licensed, and I can't believe that anyone would want to replicate that result with other disciplines...FDCPA stuff is so insanely complicated that very few lawyers really understand it..."

While there are consumer and/or debt issues that the low income public struggles with, the LLLT program that is being considered is clearly headed for failure. The LLLT Board itself said that "it was unclear whether or not legal assistance would materially address the consumer law problems ... and whether that assistance could be provided through some method other than direct representation exclusively by a lawyer." The LLLT Board also reported that significant advice already exists through the Northwest Justice Project site washingtonlawhelp.org. Yet the recommendation continued to be pushed forward.

The LLLT Board recommendation is that LLLTs be able to assist with RCW 10.82 Motions re Interest in LFOs. These apply to convicts trying to integrate into society. I didn't see that the LLLT Board provided any number of the people seeking help in this matter. There is a recommendation that LLLTs help with small claims court matters. There are numerous websites and materials available to help pro se parties with these small claims. Certainly paying a LLLT is not a likely priority when a person is trying to get someone to pay them \$500 that is owed. The recommendation is that LLLTs can help with debt collection not involving collection agencies. In fact, in this day and age, most collection actions involve collection agencies. There is a recommendation that LLLTs help with garnishments. Very few consumers initiate garnishment actions and there are limits on reimbursable "legal" fees. There are rarely court hearings. Packets of forms and instructions are generally available in every county and are also part of the legal forms available through the Administrator of the Courts. The recommendation regarding identity theft is also ill-advised. This information is available through the Attorney General's office at no cost. The recommendation regarding loan modifications is also somewhat laughable. These programs are very complicated and there are attorneys that specialize in it. These loan modifications are rarely granted and adding LLLTs to the mix will not improve that. LLLTs are not needed with regard to protection orders since each county is required to have people at the courthouse to help provide forms. It is not explained how they would help get no contact orders in criminal cases; this is routinely done by prosecutors at initial criminal hearings. LLLTs cannot provide meaningful help in bankruptcy issues since federal laws govern the debt counseling that consumers must obtain. The program is simply designed for failure; hundreds of thousands of dollars will be spent and any LLLT eventually trained will have few clients, if any, able to pay his/her fees.

The LLLT program is not being forthright with the WSBA membership and, perhaps, the Washington Supreme Court. The program seems to be exploring expansion into numerous fields and, is now doing so without any meaningful oversight. I have reviewed the LLLT Board meeting minutes, as much as are available. This can be difficult since I have sometimes had to prompt staff to get the minutes online. Of course, I do not know if the LLLT board is not providing their minutes to the staff on a timely basis. Most recently, the LLLT Board cancelled its April and June 2018 meetings so no minutes are available. The May 2018 draft minutes are not available either. See attached email of July 9, 2018 from Renata Garcia.

The minutes of the New Practice Area sub-committee which explores subject expansion used to be on-line. That is no longer the case. In fact, I was informed this morning that I would have to submit a public records request to get them. See the attached email of July 16, 2018 from Margaret Shane.

My review of LLLT board minutes and the New Practice Area Committee have been

revealing and startling, particularly with regard to a previously planned expansion into immigration law. The April 2018 minutes state that the LLLT program is expanding into immigration law and that they had already contacted Governor Inslee to get his support for legislation to try and “preempt” the federal law to allow local LLLTs to practice in the immigration field. This action by the LLLT program seems to have been done without the permission of the Washington Supreme Court or the WSBA Board of Governors. This attempted expansion is ill-advised and should not be encouraged or permitted. The Washington State Immigration Services page on the Attorney General website calls immigration law “one of the most complicated areas in the legal field.” ... [and] specialized training” is required...[and] the lawyer/expert must be “authorized under federal law to provide immigration services.” While it seems that this attempted expansion has been dropped, the LLLT board seemed to have acted improperly by going to the Washington State Governor without the support of the BOG or the Supreme Court.

I also ask the Washington Supreme Court to demand some answers from the LLLT board. Such answers should be in writing and made available to WSBA members. How many LLLTs are presently in practice and whom are they representing? What are they charging? While their fees may not be controlled under anti-trust considerations, the fees can certainly be used to determine whether this program is meeting the needs of low-income people. What is the goal of the LLLT program?

I am concerned that the LLLT program seems to be operating without true and objective oversight or administration. The meeting with the Governor’s office involving the Executive Director, Paula Littlewood, is a prime example. It is troubling that this action was not disclosed in her monthly activity reports. She apparently had two BOG members with her but this action was not reported in their monthly activity reports provided to the BOG and the membership. The Executive Director report of January 12, 2018 makes no mention of LLLT issues at all. Steve Crossland’s report to the Board of Governors of January 4, 2018 discusses proposed expansion of the LLLT Family Law work and needed amendments to APR 28 and RPCs but no mention of immigration or consumer debt expansion.

How was it acceptable for these people to go to the Governor to lobby for changes in the law? Sections are not allowed to make any public statements without approval of the WSBA yet a meeting was apparently conducted with the Governor of this state without any such prior approval. Making public statements on the LLLT program and potential expansion without any report of the meeting to the BOG means that the BOG and the membership is being denied information that it should have.

I have another concern about the LLLT program and its administration. The program is marketed enthusiastically by Paula Littlewood and Steve Crossland. It is an open secret that they are involved in a personal relationship. This is a delicate issue that seems to be ignored. I do not easily raise this issue; it should be personal and private. But, it cannot be ignored in this circumstance. I do not see how the program can be administered by the WSBA appropriately under those circumstances. Paula and Steve travel to various other states and countries together “wearing WSBA hats” to talk up the LLLT program concept. I am concerned about the direct and indirect costs of their joint travel to various locales, including Hawaii and Canada. I am concerned about the appearance to the membership. It would certainly seem that the WSBA and the WSC are leaving themselves open to public criticism.

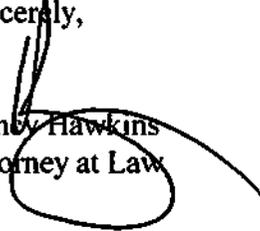
The lack of independent and objective analysis and administration by Littlewood is also clear if the WSBA website is reviewed. The website lauds the LLLT program as a way to practice law without going to law school. It is excited and enthusiastic about the program. Contrast this with the website with regard to lawyers. There is no reference to the long and distinguished role of lawyers in civil rights, or in helping people access the justice system. There is instead a dry description of the costs and burdens of becoming an attorney (fees, testing, etc.) The legal directory now lists LLLTs and lawyers in the same directory. Not only are the lines being blurred, the preference for LLLTs by the Executive Director is obvious.

It also seems that the LLLT program is described by Crossland and Littlewood in their various travels as a “success.” This seems to be an inaccurate description of the program. After years of funding, the program continues to operate at a substantial loss and has very few people working in the field. There is no proof that the program is truly meeting the needs of low-income people and, in fact, the anecdotal information conveyed at meetings is that LLLTs are charging significant rates for their work, generally comparable to attorneys. The Washington Supreme Court should require that Crossland and Littlewood provide transcripts of any speeches and copies of any written materials that either has provided with regard to the LLLT program. Their representations must be accurate and complete so that the reputation of this state bar association and the Washington Supreme Court is not harmed.

Washington Supreme Court
LLLT Expansion Program
July 16, 2018
Page 5

I think it is time for the Washington Supreme Court to take another good hard look at the LLLT program and its purpose and structure. It is time for a plan for reasonable administration. It is also time for the Washington Supreme Court to demand that the WSBA administration enthusiastically support and applaud the work of lawyers.

Sincerely,


Nancy Hawkins
Attorney at Law

cc. LLLT Board

Nancy Hawkins

From: Margaret Shane <Margarets@wsba.org>
Sent: Monday, July 16, 2018 11:10 AM
To: Nancy Hawkins
Subject: RE: LLLT New Practice Area Committee minutes

Hi Nancy –

Since minutes for LLLT committee and work group meetings are not posted on the website, it has been determined that the information you are looking for needs to be obtained through a Public Records Request. To request Bar records, please send your request to WSBA's public records officer at PublicRecords@wsba.org. Under Washington General Rule 12.4(e)(1), requests must be made in writing to WSBA's public records officer, and may not be made to other Bar staff.

Best,
Margaret



Margaret Shane | Executive Assistant

Washington State Bar Association | 206.727.8244 | fax 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact karar@wsba.org.

From: Nancy Hawkins [<mailto:nhawkins@seanet.com>]
Sent: Friday, July 13, 2018 2:10 PM
To: Margaret Shane
Subject: LLLT New Practice Area Committee minutes

These used to be on the website. Are they somewhere else now?

Nancy Hawkins
Attorney at Law
6814 Greenwood Avenue North
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nhawkins@seanet.com

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Nancy Hawkins

From: Renata Garcia <renatag@wsba.org>
Sent: Monday, July 09, 2018 2:55 PM
To: Margaret Shane; Nancy Hawkins
Subject: RE: LLLT Board minutes

Hi Nancy –



The LLLT Board April meeting was cancelled. The June meeting was also cancelled which means that the May meeting minutes have not yet been approved.

The meeting materials are posted on the website. Here is one way to access them:

1. <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/LLLT-board>
2. Click on WSBA Event Calendar

Meeting Materials

WSBA Event Calendar Meeting Materials including agendas meeting minutes
NB: Starting October 2017 meeting materials are linked to the meeting event item in the [WSBA Event Calendar](#). This static list will not be updated.

January 2017
February 2017
March 2017

3. Select Limited License Legal Technician Board

Home | EVENTS CALENDAR



Updated: June 9, 2018

Enter Email

Today	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Agenda
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																							

4. Select the month and click on the event
5. Click on the link under "Agenda"

Add to:

- Outlook
- iCal
- Google Calendar

The Limited License Legal Technician (LLLT) Board

Agenda:

LLLT Board Meeting Materials - March 2018

Let me know if you have any other questions.

Thank you,
Renata



Renata de Carvalho Garcia | Innovative Licensing Programs Manager
Washington State Bar Association | 206.733.5912 | renatag@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
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From: Margaret Shane
Sent: Friday, July 06, 2018 1:49 PM
To: Nancy Hawkins
Cc: Renata Garcia
Subject: RE: LLLT Board minutes

Hi Nancy –

Renata Garcia is the person to contact for LLLT matters, but she is out of the office today. I have copied her on this email so she can contact you when she returns to the office next week.

Please let me know if you need anything further at this time.

Best,
Margaret



Margaret Shane | Executive Assistant
Washington State Bar Association | 206.727.8244 | fax 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
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From: Nancy Hawkins [<mailto:nhawkins@seanet.com>]
Sent: Friday, July 06, 2018 10:32 AM
To: Margaret Shane
Subject: RE: LLLT Board minutes

I also don't see any board meeting materials for the past year or so on the website.

Nancy

Nancy Hawkins
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From: Nancy Hawkins [<mailto:nhawkins@seanet.com>]
Sent: Friday, July 06, 2018 10:30 AM
To: 'Margaret Shane'
Subject: LLLT Board minutes

Do you have minutes for their April, May and June board meetings?
Nancy

Nancy Hawkins
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6814 Greenwood Avenue North
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NANCY HAWKINS
ATTORNEY AT LAW
6814 GREENWOOD AVE. N.
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(206) 781-2570
FAX (206) 781-7014

September 14, 2018

Cindy Phillips
Judicial Administrative Assistant to
Chief Justice Mary E. Fairhurst
Washington State Supreme Court

Re: LLLT Expansion Proposal

Dear Ms. Phillips:

Please provide this letter to the Justices of the Washington Supreme Court for their consideration.

I am a 36 year member of the Washington State Bar Association. I am a proud family law attorney. I practice law in Seattle, Washington, and am a sole practitioner. Almost all of my practice is family law.

I graduated from the University of Puget Sound Law School in 1981 and was admitted to the Washington State Bar in 1982. I am also admitted to practice in the Federal courts in the State of Washington. In addition to being a member of the family law sections of the Washington State Bar Association and the King County Bar Association, I am a former chair of the King County Bar Association's Family Law Section's Legislative Committee and a former chair of the King County Bar Association's Family Law Section. I have spoken at numerous continuing legal education seminars on the subject of family law. I am a chapter author for the Washington State Bar Association's Family Law Deskbook. I have received awards for my work from the Greater Seattle Business Association as well as the King County Bar Association Access to Justice Award, and the WSBA Family Law Section Attorney of the Year award for 2017. I coordinate a neighborhood family law clinic in King County and have performed hundreds of hours of pro bono work.

Over the past two years, I have studied the LLLT situation and I write today after learning more disturbing information about the program. I urge the Washington Supreme Court to reject any expansion of the program in Consumer, Money and Debt Law, reject any expansion of the Family Law Program and, instead, examine this entire program in detail and determine its future.

Program training.

The training provided to prospective LLLTs is clearly inadequate since, according to information provided at the July WSBA Board of Governors meeting, more than 50% of the

persons taking the test fail. No information was given as to the results of those who passed. It would be appropriate to know how many barely pass, solidly pass or sail through with flying colors. It appears that the training is not being improved but, instead, the qualifications of the trainers is being reduced down. There is no indication that the LLLT Board is concerned in any way about the low passage rate and the apparent inadequacy of the training provided to date.

With such a poor passage rate, it is inconceivable to me that it would be appropriate that there would be an increase in the curriculum/program in the areas of family law to be taught. As has been demonstrated by prior submissions from the Family Law Section, family law is an extremely complex area covering a broad gamut of legal issues. Adding subjects is far more likely to further reduce the passage rate. This seems grossly ill-advised at this time.

There has been no objective determination that the LLLT program is a success in family law. After years of efforts and hundreds of thousands of dollars, there are a minimal number of independently practicing LLLTs. There has been no determination of the number of low income people actually helped by the program. In fact, it seems that most of the LLLTs work as paralegals just as they were doing prior to any certification or licensing at a LLLT. With the poor passage rate and the lack of success of the LLLT program with regard to family law, it seems further ill-advised to add any new subject area or any expansion of the existing subject area. Without objective analysis and determination of the flaws in the curriculum design, teaching methods and training overall in the family law program, the flaws are likely to be repeated in a new or expanded subject area. Expansion into a new subject area is premature, at best.

The choice of Consumer, Money and Debt Law for expansion is particularly ill-advised.

Expansion into Consumer, Money and Debt Law.

I comment again against the proposed expansion of the LLLT program into debt issues or any other subject area. The presently considered expansion seems truly inappropriate. As another attorney stated in a list serve email recently "the fact that many lawyers don't know how to do this stuff and/or do it badly is not an argument that other people who don't have a law school education should be taught it so they can represent people." Another said with regard to the LLLT program, "the cost was incredibly high for the number of people who are licensed, and I can't believe that anyone would want to replicate that result with other disciplines...FDCPA stuff is so insanely complicated that very few lawyers really understand it..."

While there are certainly consumer and/or debt issues that the low income public struggles with, the LLLT program that is being considered is clearly knowingly headed for failure. The LLLT Board itself said that "it was unclear whether or not legal assistance would materially address the consumer law problems ... and whether that assistance could be provided through some method other than direct representation exclusively by a lawyer." The LLLT Board also reported that significant advice already exists through the Northwest Justice Project site washingtonlawhelp.org. Yet the expansion recommendation continued to be pushed

forward.

The LLLT Board recommendation is that LLLTs be able to assist with RCW 10.82 Motions re Interest in LFOs. These motions apply to convicts trying to integrate into society. I didn't see that the LLLT Board provided any number of the people actually seeking help in this matter. In my 36 years of practice, including work with convicted criminals, no one has ever sought help with this kind of matter. I wouldn't think that this is a population with the funds to hire a LLLT.

There is a recommendation that LLLTs help with small claims court matters. There are numerous websites and materials available to help pro se parties with these small claims. Certainly paying a LLLT is not a likely priority when a person is trying to get someone to pay them \$500.

The LLLT Board recommendation is that LLLTs can help with debt collection not involving collection agencies. In fact, in this day and age, most collection actions involve collection agencies. If they don't initially, they surely will shortly.

There is a recommendation that LLLTs help with garnishments. Very few consumers initiate garnishment actions and there are limits on reimbursable "legal" fees. Packets of forms and instructions are generally available in every county and are also part of the legal forms available through the Administrator of the Courts.

The recommendation regarding identity theft is also ill-advised. This information is available through the Attorney General's office at no cost.

The recommendation regarding loan modifications is also somewhat laughable. These programs are very complicated and there are attorneys that specialize in it. These loan modifications are rarely granted and adding LLLTs to the mix will not improve that.

LLLTs are not needed with regard to protection orders since each county is required to have people at the courthouse to help provide forms. It is not explained how LLLTs would help get no contact orders in criminal cases; this is routinely done by prosecutors at initial criminal hearings.

LLLTs cannot provide meaningful help in bankruptcy issues since federal laws govern the debt counseling that consumers must obtain.

This proposed expansion of the LLLT program is simply designed for failure. If it is approved by the Washington Supreme Court, hundreds of thousands of dollars will be spent by the WSBA and any LLLT eventually trained and licenses will have few clients, if any, able to pay his/her fees.

LLLT family law program costs.

The Washington Supreme Court mandated the existing LLLT program and required the Washington State Bar Association to pay its costs. But, the Court also anticipated that the program would be self-sufficient in a reasonable period of time. In fact, the Court required that it do so in its Order: "[t]he Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership." June 15, 2012 Order by the Washington Supreme Court, page 11. Despite the Court's good intentions, this confidence has not been borne out.

At this point, it is six years since that order by the Court. Not only is the program not self-sufficient, it is operating at a greater loss year after year. In 2017, the program sustained a loss of \$189,508.00. It was budgeted to lose \$262,022 in 2018. The draft budget for 2019 projects a loss of \$240,000 but this figure is misleading in that it does not reflect the total cost of the program. It is my understanding that many of the costs for the program are now included in other portions of the WSBA budget so this \$240,000 appears to be artificially lowered. See page 48 of the materials for the July 2018 BOG meeting, attached hereto. I am making a request for the data necessary to determine the cost of those other line items not included in the \$240,000 (see the footnote to that same page 48). It is concerning to note that the LLLT Board claimed that its expenses, direct and indirect, for 2018 were \$17,000 and \$92,636 (see page 433 of the materials for the July 2018 BOG meeting, attached hereto.) These significant costs seem to be in addition to the \$240,000. Additional data for those expenses has also been requested.

Time for a limit.

The lawyers of Washington State pay a significant sum in license fees. Many object to the amount of fees. Many sought to hold a referendum on the amount of fees but were not allowed to do so when the Court issued an order that the fee increase that had been imposed was "reasonable." Unhappiness with the fee increase and the inability to register an opinion with the referendum still resonates with many. This is made more concerning to many when the fees paid are used to pay for unpopular and unsuccessful programs such as the LLLT program. The BOG seems to feel that they are powerless to control costs in this program since the Court has mandated the program. But, the Court did not mandate a program that would be funded at the present extent by the lawyers of the WSBA or that the program would operate at such a loss. At this point, it seems this annual substantial financial loss seems to be permanent. This concern is not abated by the July 2018 fee development. As the Court likely knows, at its July 2018 meeting, the Board of Governors recommended that the LLLT license fees be increased to that of lawyers. That increase, even if approved by the Washington Supreme Court, would not make the present program self-sufficient. There would need to be over 500 LLLTs to even come close to paying for the program for one year. There is no realistic expectation that this will ever happen, let alone happen before another \$2,000,000-\$3,000,000 in WSBA losses occur.

The LLLT program simply shows no promise whatsoever that it will EVER be self-sufficient. Its budgeted costs are approximately 35% higher for 2019 than for 2018. This cannot be sustained for even another year or two without hurting other more successful WSBA programs, a further increase in fees or staff reductions. Yet the LLLT Board and the Executive Director do not seem to be concerned about this in any way.

In the June 15, 2012 order which established the program, it was clear that the program was not necessarily permanent but that it would be "a sound opportunity to determine whether and, if so, to what degree the involvement of effectively trained, licensed and regulated non-attorneys may help expand access to necessary legal help in what that serve the justice system and protect the public. June 15, 2012 Order by the Washington Supreme Court, page 11-12. That objective analysis has never been done.

Time for a program assessment.

The LLLT program was designed to meeting the needs of low income Washingtonians. The program has provided no substantive analysis demonstrating that this goal has been met. The hourly rate charged by LLLTs is, quite simply, beyond the ability of low income people. The rates are also beyond the ability of almost all moderate income people.

After over five years of work, there are only 38 active LLLTs. I have reviewed the information available via the internet and/or the WSBA website. Most work in law firms and it is reasonable to assume that their work is little changed from that of an employed paralegal. It is likely that each of those LLLTs are being billed out at a significant rate. My review concludes that about half or less of the LLLTs are independently employed.

The needed type of assessment of the LLLT program must be done objectively. It is not reasonable to expect the Executive Director or staff under her control to conduct this objective analysis since, in fact, they have not done so. In the past several years, there have been no flags raised over the low number of active LLLTs given the funds spent and the hours of work, no flags raised over the increasing cost of the program, no flags raised over the dismal passage rate, etc. If the LLLT Board or the Executive Director have not done so by now, and given the conflict of interest posed by the personal relationship between the LLLT Board President and the WSBA Executive Director, the Court must provide a mechanism for this kind of objective analysis. Frankly, I believe that the available information should be sufficient to determine that the program is an utter failure already without any further analysis.

Lack of transparency.

I am also concerned about the large gaps in transparency about this program. The April, June, July and September 2018 LLLT Board meetings were cancelled. Without minutes from meetings, it is not possible to review the work of that Board during that time. The meetings of

the sub-committee that considers new subject areas used to be announced on the WSBA website with minutes available for review but are not any longer. My request for the minutes of the sub-committee working on new subject areas was denied. I was told I needed to make a public records request. This lack of transparency is quite troubling, particularly given the funds being expended and the demonstrably poor decision-making by the Board and the Sub-Committee from my perspective (and that of many others).

My review of the materials for the August LLLT Board meeting were troubling. The Board supposedly was given all of the comments about the program expansion but, upon review, my own prior comments were not included in the material provided. I don't know how many comments from others were withheld from the Board. The Board also commented about a letter favorable to the expansion and suggested that the author be invited to a meeting to elaborate. There seems to be little concern that the majority of responses were negative to the expansion idea.

It was also disturbing to see that the LLLT Board seems to be planning on offering scholarships to LLLTs. With a program operating hundreds of thousands of dollars in the red, even consideration of a program scholarship is inappropriate.

My review of the available LLLT board minutes and the New Practice Area Committee raise more concerns, particularly with regard to a previously planned expansion into immigration law. The April 2018 minutes state that the LLLT program is expanding into immigration law and that they had already contacted Governor Inslee to get his support for legislation to try and, in effect, "preempt" the federal law to allow local LLLTs to practice in the immigration field. This action by the LLLT program seems to have been done without the permission of the Washington Supreme Court or the WSBA Board of Governors. That attempted expansion was also ill-advised and should not be encouraged or permitted. The Washington State Immigration Services page on the Attorney General website calls immigration law "one of the most complicated areas in the legal field." ... [and] specialized training" is required...[and] the lawyer/expert must be "authorized under federal law to provide immigration services." While it seems that this attempted expansion is not presently being pursued, the LLLT board seemed to have acted improperly by going to the Washington State Governor without the support of the BOG or the Supreme Court.

The Washington Supreme Court should demand some answers from the LLLT board and the Executive Director. Such answers should be in writing and made available to WSBA members. How many LLLTs are presently in practice and whom are they representing? What are they charging? While their fees may not be controlled under anti-trust considerations, the fees can certainly be analyzed to determine whether this program is meeting the needs of low-income or moderate means people. After all, this was the intent of the LLLT program. It is odd that the Executive Director and the LLLT Board are quick to say that they cannot/will not look at the fees charged by LLLTs while allowing LLLTs to advertise that they charge one-third of that

of a lawyer. How do they make that assertion without a factual basis for it?

I am concerned that the LLLT program seems to be operating without true and objective oversight or administration. The meeting with the Governor's office involving the Executive Director, Paula Littlewood, is a prime example. It is troubling that this action was not disclosed in her monthly activity reports. She apparently had two BOG members with her but this action was not reported in their monthly activity reports either. The Executive Director report of January 12, 2018 makes no mention of LLLT issues at all. Steve Crossland's report to the Board of Governors of January 4, 2018 discusses proposed expansion of the LLLT Family Law work and needed amendments to APR 28 and RPCs but no mention of immigration or consumer debt expansion.

How was it acceptable for these people to go to the Governor to lobby for changes in the law? Sections are supposedly not allowed to make any public statements without approval of the WSBA yet a meeting was apparently conducted with the Governor of this state without any such prior approval. Making public statements on the LLLT program and potential expansion without any advance consideration of the BOG or a subsequent report of the meeting to the BOG means that the BOG and the membership is being denied information that it should have.

Promotion of the program as a success.

I am particularly concerned about the promotion of the LLLT program to other states as a success. This program has 35 people working in the field, only some of which work independently. The others work in law firms and it seems that their work is that of a normal paralegal.

This program has cost the WSBA over \$1,000,000 since its inception. It operates at a considerable loss and that loss is increasing each year. This is not a success. The program should not be "sold" to other states as a success. Doing so will only serve to lower our standing with those states when they, too, suffer such losses and failures. It is distressing that our funds are being spent by Paula Underwood and Steve Crossland to visit various other states and countries "wearing WSBA hats" to talk up the LLLT program concept. I am concerned about the direct and indirect costs of their joint travel to various locales, including Hawaii and Canada. While I have been told that their "travel costs" are not paid by the WSBA, I do not know the status of their other costs. But, even if the costs are out of the picture, I am concerned about the appearance to the membership of this joint travel. It would certainly seem that the WSBA and the Washington Supreme Court are leaving themselves open to public criticism.

WSBA approach to LLLT program.

The present Executive Director's unbalanced and unobjective support for the LLLT program compared with her tepid or non-existent support for actual lawyers is disturbingly clear

Washington Supreme Court
LLLT Expansion Program
September 14, 2018
Page 8

when the new website is examined. I am proud to be a lawyer. From my childhood spent reading and watching Perry Mason and other legal shows, I have always wanted to be a lawyer. This was solidified as I became an active feminist starting at age 16 or so and has continuing for the last 46 years. I followed and studied a civil rights movement that included landmark legal cases regarding education, public facilities, marriage (interracial and gay), sexuality, privacy and many others. None of that glorious history is reflected in the WSBA website, not even a reference to Thurgood Marshall, Ruth Bader Ginsburg or, even, our own William O. Douglas. Not a mention of any landmark cases which have resulted in improved lives for millions of Americans. In fact, the website page which describes becoming a lawyer is a dry recitation of the costs and burdens of being a lawyer.

By contrast, the website pages which describe becoming a LLLT is enthusiastic and glowing and makes broad promises about a career as a LLLT.

Conclusion.

I think it is time for the Washington Supreme Court to take another good hard look at the LLLT program and its purpose and structure. If it is to continue, it is time for reasonable and unbiased administration. It is also time for the Washington Supreme Court to demand that the WSBA administration enthusiastically support and applaud the work of lawyers.

If the Court agrees with my concerns, it is likely time to end this failed program. The 35 people that are presently licensed would likely just continue as well-paid paralegals.

Sincerely,


Nancy Hawkins, a proud lawyer.

cc. LLLT Board (with enclosures)

Washington State Bar Association
Budget Comparison Report
For the Period from October 1, 2018 to September 30, 2019

LIMITED LICENSE LEGAL TECHNICIAN	FISCAL 2018 BUDGET	FISCAL 2019 BUDGET	\$ CHANGE IN BUDGET	% CHANGE IN BUDGET
REVENUE:				
TOTAL REVENUE:	<u>-</u>	<u>-</u>	<u>-</u>	
DIRECT EXPENSES:				
LLT BOARD	17,000.00	17,000.00	-	0%
LLT OUTREACH	8,000.00	8,000.00	-	
STAFF TRAVEL/PARKING	600.00	600.00	-	0%
TOTAL DIRECT EXPENSES:	<u>25,600.00</u>	<u>25,600.00</u>	<u>-</u>	<u>0%</u>
INDIRECT EXPENSES:				
FTE	1.70	1.55	(0.15)	-9%
SALARY EXPENSE	142,602.00	135,526.00	(7,076.00)	-5%
BENEFIT EXPENSE	49,304.00	41,592.00	(7,712.00)	-16%
OVERHEAD	42,495.00	38,095.00	(4,400.00)	-10%
TOTAL INDIRECT EXPENSES:	<u>234,401.00</u>	<u>215,213.00</u>	<u>(19,188.00)</u>	<u>-8%</u>
TOTAL ALL EXPENSES:	<u>260,001.00</u>	<u>240,813.00</u>	<u>(19,188.00)</u>	<u>-7%</u>
NET INCOME (LOSS):	<u>(260,001.00)</u>	<u>(240,813.00)</u>	<u>19,188.00</u>	

The Limited License Legal Technician (LLT) license type (APR 28), was created by the Supreme Court and delegated to WSBA in 2012. In the past, this cost center was used to track all revenues and expenses associated with the "LLT Program". LLTs are now WSBA members, and consistent with the WSBA Bylaws and the Washington Supreme Court Admission and Practice Rules, the administration and regulation of these member license types has been consolidated within existing work groups and cost centers that already perform these functions for lawyers, including Admissions, License and Membership Records, and MCLE (although it continues to be possible to determine these costs separately by member type if needed). For FY19, this cost center is used primarily to track staffing and expenses related to the LLT Board, which by court rule oversees the license.

WSBA COMMITTEE/BOARD ANNUAL REPORT – FY18

<p>Limited License Legal Technician (LLLT) Board</p> <p>Chair: Steve Crossland</p> <p>Staff Liaison: Renata Garcia</p> <p>BOG Liaison: Dan Clark</p>	<p>Size of Committee: 15</p> <p>Number of FY19 Applicants: 6</p> <p>FY18 direct expenses: \$17,000</p> <p>FY18 Indirect expenses: \$92,636</p>
<p>FY18 Demographics:</p> <ul style="list-style-type: none"> • Gender (Female: Male: Not Listed): 12:2:0 (0 did not answer) • Number of members self-identified with a racial/ethnic under-represented group: 3 (0 did not answer) • Number of members self-identified as having a disability: 2 (0 did not answer) • Number of members self-identified as LGBT: 2 (0 did not answer) 	
<p>Background & Purpose:</p> <p>The Limited License Legal Technician (LLLT) Board derives its authority from the Washington Supreme Court under Rule 28 of the Admission to Practice Rules (APR), adopted effective September 1, 2012. By order of the Court, the WSBA is to administer and fund the LLLT Board and the program.</p> <p>APR 28 authorizes persons who meet certain educational and licensing requirements to advise clients on specific areas of law. The only currently approved practice area is domestic relations. The Supreme Court established the LLLT Board to oversee the LLLT license.</p>	
<p>Strategy to Fulfill Purpose:</p> <p>From 2013-2016, the LLLT Board concentrated on creating the operational details for the LLLT license; the LLLT Board is now focusing on the promotion, expansion, and development of the license.</p>	
<p>2017-2018 Accomplishments and Work in Progress:</p> <ol style="list-style-type: none"> 1) In February 2018, the LLLT Board submitted suggested amendments to APR 28, the LLLT RPC and the RPC for lawyers for consideration by the Washington Supreme Court. These amendments would enhance the scope of the current family law practice area. The Court recently published the suggested amendments for comment. Comments are due by no later than September 14, 2018. 2) The LLLT Board is currently circulating a new proposed practice area, Consumer, Money, and Debt, for comment before taking further action, i.e., developing curriculum requirements, seeking approval by the Court, etc. The LLLT Board hopes to engage as many subject matter experts as possible in the development of this and any future proposed practice areas. 	

- 3) The LLLT Board recently approved the University of Washington Continuum College Paralegal Studies Program to teach the LLLT core curriculum.
- 4) The LLLT Board has been engaging in discussions to explore ways in which LLLT students may qualify for financial aid.

2018-2019 Goals:

- 1) The LLLT Board will continue to consider and recommend new practice areas for approval by Supreme Court.
- 2) If the family law enhancements are approved by the Court, the LLLT Board will develop the required training for currently licensed LLLTs.
- 3) The LLLT Board also plans to expand the accessibility of the LLLT core curriculum across the state by continuing to approve core class programs at additional community colleges.
- 4) The LLLT Board will continue to engage in outreach efforts, including working with the WSBA communication team to expand outreach to a diverse pool of LLLT candidates, including college and high school students.
- 5) The LLLT Board also plans to advance its efforts to provide access to financial aid for students in the LLLT practice area classes.

Please report how this committee/board is addressing diversity:

1) Are you using any of the tools provided by WSBA and if so, how? 2) Have you sought out training or consultation from the Inclusion and Equity Specialist? 3) How have you elicited input from a variety of perspectives in your decision-making? 4) What have you done to promote a culture of inclusion within the board or committee? 5) What has your committee/board done to promote equitable conditions for members from historically underrepresented backgrounds to enter, stay, thrive, and eventually lead the profession? 6) Other?

- 1) The LLLT Board seeks members from different backgrounds and experiences who work together to foster a positive work environment in concert with WSBA's commitment to diversity and inclusion.
- 2) The LLLT Board will schedule training with WSBA's Inclusion and Equity Specialist.
- 3) The LLLT Board seeks input from all WSBA members as well as the legal community in general when making important decisions such as developing a new practice area.
- 4) APR 28 has been amended at the request of the LLLT Board to allow LLLTs and LPOs as well as attorneys with judicial and emeritus pro bono status to serve as Board members.
- 5) The core curriculum educational approval process reflects the LLLT Board's commitment to diversity in that it requires any institution offering the core curriculum to have diversity, inclusion, and equal access policies and practices in place. The LLLT Board also sought to increase diversity within the LLLT profession by extending the limited time waiver (see APR 28 Regulation 4) to 2023 in order to allow a group of candidates qualified by work experience rather than by education to enroll in the practice area classes. The ongoing effort to provide a pathway to financial aid for the practice area classes also aims to provide more opportunities to join the LLLT profession to prospective applicants from diverse socio-economic backgrounds.
- 6) N/A

Please report how this committee/board is addressing professionalism:

- 1) Does the committee/board's work promote respect and civility within the legal community?
- 2) Does it seek to improve relationships between and among lawyers, judges, staff and clients?
- 3) Does it raise awareness about the causes and/or consequences of unprofessional behavior?
- 4) Other?

1) The LLLT Board has set up rules of professional conduct and a disciplinary system for LLLTs, as well as requiring LLLTs to carry malpractice insurance and conform to the same rules as lawyers regarding IOLTA accounts.

2) The LLLT Board has worked to promote LLLTs in the legal community and educate all legal professionals about the permitted scope and models for LLLT practice, as well as highlighting the ways in which collaboration with LLLTs can contribute to the efficiency and accessibility of any legal practice.

3) N/A

4) N/A

Please report how this committee/board is integrating new and young lawyers into its work:

- 1) How have you brought new and young lawyers into your decision making process?
- 2) Has the committee/board supported new and young lawyers by (for example) helping to find and prepare them for employment, assisting with debt management, building community, and providing leadership opportunities?
- 3) Other?

1) All WSBA members are invited to provide comments on rules and new practice area suggestions and development, including new and young lawyers.

2) N/A

3) N/A

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 14, 2018 4:26 PM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: LLLT program
Attachments: 9-14-18 Phillips Letter.pdf

From: Nancy Hawkins [mailto:nhawkins@seanet.com]
Sent: Friday, September 14, 2018 4:08 PM
To: Phillips, Cindy <Cindy.Phillips@courts.wa.gov>; OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>;
LLL@wsba.org
Subject: LLLT program

See attached. Hard copy to follow by mail to the Washington Supreme Court.
Nancy Hawkins

Nancy Hawkins
Attorney at Law
6814 Greenwood Avenue North
Seattle, WA 98103
(206) 781-2570
Fax: (206) 781-7014
nhawkins@seanet.com

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September 14, 2018

Washington Supreme Court
415 12th Street W
Olympia, WA 98504

RE: Proposed LLLT Rule Change

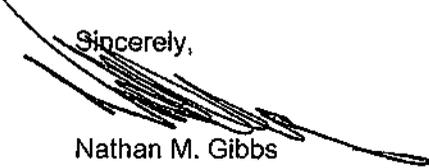
Dear Justices,

I was shocked and disappointed when I heard that the WSBA was considering changes to expand the scope of LLLTs. It is frustrating to know that the Bar Association would be so willing to abdicate its responsibility to its members and the public. The inevitable result of the decision to expand the LLLT scope would be disastrous for the following reasons:

1. LLLTs are only required to have a college degree. There is a reason why attorneys attend law school. It provides a rigorous and demanding curriculum designed to rewire an individual's brain so they know how to properly analyze the law and identify important issues; among other important skills. The minimal education that LLLTs have received is no substitute for the education of an attorney. It is a disservice to the public to enable less qualified individuals to assist them in important legal matters that will have serious ramifications upon their lives.
2. Other state bar associations have already rejected similar proposals. The primary reasoning is that more information is needed to determine the efficacy of the LLLT program. That is the situation in Washington. Rather than jump right into expanding the LLLT scope, more study should be authorized to determine the impact to the public and attorneys in the state.
3. If the concern is improved access to the legal system for low income individuals, there are better options beyond giving LLLTs de facto attorney status. Compulsory pro bono work may be an option, as would increased funding for legal aid societies.

The bottom line is that this is a half baked idea that will have potentially disastrous consequences for the public and licensed attorneys in this state. At a minimum, more study is needed before the Bar decides to expand the LLLT scope.

Sincerely,



Nathan M. Gibbs
WSBA #43594

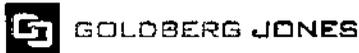
Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 14, 2018 3:10 PM
To: Tracy, Mary
Subject: FW: Comment on LLLT Proposal
Attachments: Against LLLT Proposal.pdf

From: Nathan Gibbs [mailto:ngibbs@goldbergjones.com]
Sent: Friday, September 14, 2018 3:02 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on LLLT Proposal

Please see attached. Thank you.

Nathan M. Gibbs
ATTORNEY AT LAW



1200 Westlake Ave. N. Suite 700
Seattle, WA 98109
Phone: (206) 448 -1010
Fax: (206) 448-0736

www.goldbergjones-wa.com



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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, August 17, 2018 3:55 PM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy
Subject: FW: LLLT changes

Forwarding.

-----Original Message-----

From: Nicole Gitts [mailto:ms.nicolegitts@gmail.com]
Sent: Friday, August 17, 2018 3:53 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: LLLT changes

Hello,

The proposed LLLT enhancements are needed and appropriate. Family law clients cannot find good reasonably priced attorneys for their family law cases. There are on-line and unlicensed paralegals providing expensive and wrong advice and form preparation. Going to court alone is scary. Having a LLLT to accompany a self-represented person is not much different than having a domestic violence advocate or even just a friend to offer support. Please enact the proposed expansion to the rules.

Nicole Gitts spaur
360-318-6687

Sent from my iPhone

August 23, 2018

Chief Justice Mary Fairhurst
Washington State Supreme Court
415 12th Street W.
Olympia, WA 98504

Dear Chief Justice Fairhurst,

I have enclosed a Resolution unanimously adopted by the Practice of Law Board at its August 16, 2018 meeting. The Resolution expresses the Board's strong support for the LLLT license adopted by the Court to protect the public and expand access to legal services and the legal system. The Resolution also expresses the Board's strong support for Court action directing the WSBA Board of Governors to expeditiously comply with the Court's January 4, 2018 order adding an LLLT/LPO member and two community representatives to the Board of Governors. Please share this letter and the enclosed Resolution with all of the Supreme Court Justices.

Very Truly Yours,



Hon. Paul Bastine (ret.)
Practice of Law Board Chair

Enclosure

cc: William D. Pickett, President, WSBA
Paula C. Littlewood, Executive Director, WSBA
Steven Crossland, Chair, LLLT Board
Governor Dan Bridges, Co-Chair, Addition of New Governors Work Group
Governor Alec Stephens, Co-Chair, Addition of New Governors Work Group



RESOLUTION

Adopted unanimously by the Practice of Law Board
August 16, 2018

WHEREAS the Washington Supreme Court has stated that the purposes of the Practice of Law Board include “to promote expanded access to affordable and reliable legal and law-related services, expand public confidence in the administration of justice, and make recommendations regarding the circumstances under which nonlawyers may be involved in the delivery of certain types of legal and law-related services”; and

WHEREAS, in the course of performing its functions, the Practice of Law Board recommended the development of what is now called the Limited License Legal Technician license in order to expand access to legal services and the legal system through the licensing of people other than lawyers to offer some legal services; and

WHEREAS the LLLT license has been developed and is currently being administered by the WSBA and LLLTs currently are providing legal services within the scope of their licenses; and

WHEREAS the Board of Governors in September 2016 amended the WSBA Bylaws to add a seat to the BOG specifically for either an LLLT or an LPO member, as well as to add two seats to the BOG for “public” members; and

WHEREAS the Washington Supreme Court entered an order on January 4, 2018, directing the BOG to add the additional seats to the BOG as described in the WSBA Bylaws; and

WHEREAS the Practice of Law Board believes that adding these seats to the BOG would be beneficial to expanding access to affordable and reliable legal and law-related services and would expand public confidence in the administration of justice;

The Practice of Law Board hereby **RESOLVES**

- 1) That it strongly supports the administration of the LLLT license in a manner that allows for the robust development of this type of legal services provider; and
- 2) That it strongly supports LLLTs in their provision of legal services to the public in order to expand access to legal services and the legal system; and

- 3) That it strongly supports the lifting by the BOG of any BOG "stay" on filling the three new seats; and
- 4) That it strongly supports the Supreme Court taking action to direct the BOG to expeditiously comply with the Court's January 4, 2018 order as issued.

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, August 28, 2018 2:56 PM
To: Hinchcliffe, Shannon; Jennings, Cindy
Subject: FW: LLLT proposed enhancements/rules

Forwarding

From: Penny Henderson [mailto:pennyhenderson2008@gmail.com]
Sent: Tuesday, August 28, 2018 2:55 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: LLLT proposed enhancements/rules

Dear Ms./Sir:

I write to you regarding the LLLT program and recently proposed enhancements. As an attorney working a monthly clinic for kinship caregivers, I have worked closely with our resident LLLT, Jennifer Petersen, and I have heard and seen what she has been able to accomplish, not only in our clinic but in other areas.

I lend my support to LLLTs being able to draft retirement provisions in final dissolution documents, save the actual preparation of a QDRO. Frankly, I don't know any attorney doing a QDRO in-house anymore, and there are reasons for that. Allowing the LLLT to designate proportions of benefits in a decree make sense to me, and would be a great benefit. Otherwise, would that portion of the paperwork be farmed out to an attorney? Why?

As to appearing in court, I agree that LLLTs should not be arguing cases in the place of a client, but to appear in court as an advocate or support is not only reasonable but assures access to justice for these folks in a palpable, understandable way. DV advocates are able to appear in court, why not LLLTs? In addition, if the Court has basic factual questions about the documents, the LLLT is there to answer them.

In my experience, many middle-income folks are not served by pro bono or low bono programs, and fall through the cracks. The demand for self-help or moderately priced legal help is great and largely unaddressed. It has been my honor and privilege to help develop programs in my community to address some of these needs, and those clinics are wildly successful.

Please feel free to contact me if you would like further information.

Thank you,
Penny Henderson
Guardian ad Litem/Attorney
WSBA 28408
103 E. Holly, Suite 509
Bellingham, WA 98225
360.733.8180

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GOLDBERG & JONES, PLLC
1200 WESTLAKE AVE. N. SUITE 700 SEATTLE, WA 98109
206 448 1010 *Tel* 206 448 0736 *Fax*
WWW.GOLDBERGJONES-WA.COM



September 14, 2018

Washington Supreme Court
415 12th Street W
Olympia, WA 98504

RE: Proposed LLLT Rule Changes

Dear Justices,

I was nonplussed when I heard that the WSBA is considering expanding the scope of LLLT practice. The WSBA should not abdicate responsibility to its members and the public in this way. The inevitable result would be undesirable for the following reasons:

1. LLLTs would be authorized to talk about the facts in court but not the law. That makes no sense, particularly if court rules are law, e.g. the rules of evidence. Confronted with an LLLT in court, I could simply object to everything he says and he could not argue the objections because he cannot talk about evidence rules. What is more, how would the LLLT know what facts are relevant to the extent that the law determines the same?
2. Even a lousy family lawyer will have an outsized advantage against any LLLT, and the LLLTs' clients will bear the cost of that advantage. That equates to access to justice with guaranteed bad results. To put it differently, you get what you pay for.

Other state bar associations have already rejected similar proposals. Their reasoning is that more information is needed to determine the efficacy of an LLLT program. I doubt this because the call can be made at first blush – “No way.” The bottom line is that this is a half baked idea that will have undesirable consequences for the public and some of my clients who have to pay me to clean up LLLT messes.

Sincerely,



Robert C. Bennett
WSBA #28385

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, September 5, 2018 3:38 PM
To: Hinchcliffe, Shannon; Jennings, Cindy
Cc: Tracy, Mary
Subject: FW: Objection to LLLT program & non-elected additions to the BOG

Forwarding

From: Sandra E. Johnston [mailto:sej@tacomatrialwarrior.com]
Sent: Wednesday, September 5, 2018 3:31 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Objection to LLLT program & non-elected additions to the BOG

Dear Honorable Justices;

I am writing to you as a 20+ year family law, criminal defense, and general trial practice lawyer. I have had a solo practice since 1997. The reason for this email is to share my strong objections to the LLLT program and any expansion thereof. I feel like what started out as a sincere idea to provide greater legal coverage to the general population has morphed into a program that does far more harm than good. It is my understanding that this program was to be "an experiment" to see if it would work. Yet the reality is that the LLLTs are charging the same amount for legal advice that a new lawyer would charge. The same overhead remains, but the person giving the advice has woefully less education for how the law works.

Often I have had occasion in my practice to have litigants call me for help after "We the People" (a group of paralegals providing "guidance" for do-it-yourself divorces) had made a complete mess of things. It is very difficult to undo these scenarios after they are already a mess. I cannot imagine this bloodbath being imposed on other areas of practice. Shall they draft wills? I don't even do that because I have done probate litigation and it is not an uncomplicated area of the law. Would you have a LLLT draft a will for your loved one? Not only is an expansion a horrible idea from a knowledge perspective, this program is consuming a lot of Bar resources. Why are attorneys being made to pay for LLLTs. This makes no sense to me. Further, because of all this upheaval in how the Bar is running itself, the Family Law Section has broken off of the Bar and formed its own organization. It saddens me that such draconian measures are necessary. It seems like the Bar Association is dissolving before my eyes, even if the original premise was well meaning.

As for Family Law cases, those are largely decided at a motion for temporary orders. Not because the facts are so compelling early on, but because most litigants do not have the time or inclination to go to trial. I have had several occasions where the trial results were quite different from the orders entered after a quick look by a Commissioner, but it is the rare client that can hang in for what is often years of litigation. Temporary Orders is such a crucial stage of litigation, you really need an actual Family Law practitioner advise the clients before, during and after this stage. Giving a parent more time with a child, does not make that parent a better parent to the child. On more than one occasion, I have had the Court give more time to a parent (usually the mom) than that which the parent had ever actually spent with the child during the marriage. Unfortunately, not all moms are good moms. Knowing what to present to a Commissioner is often key in getting a sensible outcome, that eventually leads to settlement in most cases. I submit to you that LLLTs will never be able to practice at this level, not to mention what legal work must be done to get a case ready for trial.

As for the proposed non-elected non-lawyer additions to the BOG, I offer you this. (I was in Commissioner's Court in Ex Parte the other day and mentioned, "did you know that the Bar wants to put regular citizens and an LLLT on the BOG?" The response was a big eye roll. That's pretty much the reaction from every lawyer with whom I have spoken. America's regular citizenry has spoken out in an unprecedented manner in the age of Trump and what they have to say is pretty scary. I am absolutely against non-lawyers being made a part of our BOG and would like to see the Executive Director take a much less active role in our governance than elected members of the BOG. This is our Bar Association. Let's please keep it that way.

Warm Regards,

Sandra E. Johnston

Attorney At Law

The Law Office of Sandra E. Johnston

705 S. 9th Street, Suite #104

Tacoma, Washington 98405

Office: 253-272-0566

Fax: 253-572-4137

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Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 14, 2018 9:43 AM
To: Tracy, Mary
Subject: FW: Proposed Amendments to APR 28 - Comments

From: Virginia Tucker [mailto:virginia.tucker@sjsu.edu]
Sent: Friday, September 14, 2018 9:43 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Amendments to APR 28 - Comments

To: Washington State Supreme Court Rules Committee (supreme@courts.wa.gov)
Re: Proposed Amendments to APR 28

The court should amend APR 28 as requested by the LLLT Board and the University of Washington law professors. The suggested enhancements are well researched and reasoned, and they will provide better access to justice for people of moderate means.

My support for the APR 28 amendments is based on my experiences working directly with people representing themselves in civil matters due to the inability to hire legal representation. For eleven years, I was the County Law Librarian for Whatcom County in Bellingham, WA. Over 75 percent of the inquiries I helped with were from private citizens with no legal experience who were pro se out of economic necessity. I was able to help them with their legal questions by assisting them through the basic processes of legal research and teaching them about legal resources and the processes of the court system. I also did much to alleviate anxiety and the paralysis of where-to-begin, because a person facing a legal matter who is wracked with legal questions typically needs the guidance of an information professional to formulate the question itself. However, because, as a non-attorney I was prohibited from providing legal advice, I regularly recommended to library patrons that they sit in and observe in court hearings that were open to the public before their own hearings were held. In this way, they could fully listen and observe, without the angst of being a party in the case being heard, and could learn how matters are conducted in the courtroom, even with the variations from one case to the next. People often came back to the Law Library to thank me, both for the help with legal research and court forms and also for what they had learned about courtroom processes. I often wished they could have someone in the courtroom with them to explain in real time the questions that arose for their specific case and, at the same time, to help streamline the court's efforts for justice.

I know that the LLLTs for family law are making immense contributions to these goals. Now this same contribution can be made for non-parental custody matters through the proposed amendments to APR 28. Non-parental custody actions can be critical to children with dysfunctional parents. Frequently it is grandparents or other relatives stepping in to help the parents who are unable or unwilling to care for the children. And, complicating the situation for these uprooted children, the relatives caring for the children often do not have enough money to afford an attorney. Very few attorneys will take on non-parental custody cases, and if they do, the retainers are over \$3,000 in our local community, an amount out of reach for most families, particularly when at the same time taking additional children into their homes. Having the LLLT to provide the initial paperwork and to accompany people to court would be a great help and would improve the lives of many children.

To sum up, I believe the Court should implement all of the proposed LLLT enhancements, including non-parental custody, major modifications, the proposed limited division of retirement assets and real estate, and allowing LLLTs to accompany a client in negotiations, alternative dispute resolution, and court.

Sincerely,

Virginia Tucker, PhD, MLS

Former County Law Librarian, Whatcom County, Bellingham WA

Author, *Finding the Answers to Legal Questions, 2nd edition* (ALA Editions, 2018)

"Highly recommended for public, academic, and law libraries" --Booklist *Starred Review

Virginia M. Tucker, PhD, MLS Assistant Professor
Associate Coordinator, Gateway PhD Program
School of Information, San José State University
<http://ischoolapps.sjsu.edu/facultypages/view.php?fac=tuckerv>

**Comments submitted
to the Washington
Supreme Court
regarding LLLT RPCs**



August 31, 2018

Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: June 2018 Proposed Rules Published for Comment
RPC 1.0B, 1.17, 4.3, 5.8, 8.1
APR 28 and APR 28 Appendix
LLLT RPCs

Dear Supreme Court Justices:

We, the undersigned, hereby submit this letter to support the proposed changes to the rules mentioned above (hereafter "LLLT rule changes"). We do so on behalf of the University of Washington School of Law, which has developed and taught the LLLT Family Law curriculum for the last five years, and on behalf of ourselves, two members of the Family Law advisory committee that spent 18 months developing these rule changes.

The Limited License Legal Technician program has been a grand and successful experiment in Washington State. Contrary to the fears that it would somehow topple the provision of family law services to clients, it has in fact provided more competent providers than the typical law school curriculum can provide, where students may take one or two courses in family law, but not nearly at the level of detail that a practitioner would need. The LLLT students take 3 courses solely on family law practice. Our students have been extremely engaged and somewhere between 35 and 40 are now licensed.

The issue that the LLLT rule changes seeks to address is to re-balance some of the initial trade-offs when the program was first created. In order to balance the authority given to LLLTs and the supervision by attorneys, the rules were initially drawn narrowly. We have learned over these five years that the rules are actually too narrow, that they do not allow for the LLLTs to develop a full breadth of the family law practice, and hence, will not lead to a sustainable business model. The LLLT rule changes will allow for expanded authority by the practitioners but still within very defined limits. They will, appropriately, allow for the LLLTs to handle the fullness of their clients' matters.

As you may be aware, the Legislature this year passed and the Governor signed SB 5213, which will permit the court to order respondents to pay LLLTs fees in domestic violence cases. What is notable about this bill is that there was no negative testimony. That the bill sailed

through with no amendments and no controversy demonstrates how LLLTs have become integral and accepted in the family law practice field.

We have seen over these five years that the program is working, the training is working, and most importantly, the civil legal needs of the clients are getting met. The LLLT rule changes will make some well considered changes to the scope of practice. We encourage the Court to adopt these changes.

Please feel free to contact us if we can answer any questions or provide additional information.

Sincerely,



Professor Patricia Kuszler
Charles I. Stone Professor of Law



Terry J. Price
Director, LLLT Education

Comments on Suggested Amendments to
Admission and Practice Rules (APR) 28 and
Limited Practice Rules for Limited License Legal Technicians (LLLTs)

Comment: There seems to be discord between proposed changes to APR 28(G)(4) and LLLT RPC 1.16.

The amendment to APR 28(G)(4) would preserve LLLTs' obligation to sign documents and pleadings they prepare while allowing an exception for LLLTs assisting a client or a third party in preparing a declaration or sworn statement.

However, the amendment to LLLT RPC 1.16, Declining or Termination Representation, clarifies that LLLTs represent pro se clients and, accordingly, LLLTs would not file a notice of appearance.

How would the court know an LLLT should have signed documents if the court doesn't know the LLLT represents the client?

Comment: The proposed changes are a step in the right direction, but they fall short when it comes to case-type restrictions. Restrictions on Major Modifications and Non-Parental Custody cases only through Adequate Cause have the effect of requiring LLLTs to withdraw all assistance at the most crucial steps in the court process.

From my experience as a supervising attorney, LLLTs do not need additional training or education to assist with Major Modifications cases. In contrast, Non-Parental Custody cases would require a CLE to provide LLLTs the necessary training. This is a small hurdle LLLTs would gladly leap in order to eliminate the restriction.

General Comment: The current restrictions on LLLTs' license to practice continue to limit, not level, the playing field for LLLTs' pro se clients. The burdens are disproportionate on LLLTs compared to attorneys when attempting to provide meaningful representation without running afoul of court rules or the law.

WSBA asks LLLTs to accomplish a nearly impossible task: Provide representation without much ability to represent the client when the client needs it the most, in court and at depositions.

WSBA and the attorney population must embrace LLLTs for the gaps they fill and the services they can and want to provide. Just as physician assistants and advanced registered nurse practitioners have become indispensable in the medical field, so will LLLTs. Washington could and should be a progressive leader in this field.

General Comment: Doesn't it make sense to extend LLLTs' representation to clients wanting adoptions, since the WSBA already intends to let LLLTs handle non-parental custody actions?

Comments submitted by:

Lori Preuss
WSBA #33045
1554 Amethyst St SE
Olympia, WA 98501

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 14, 2018 8:06 AM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: Comments on proposed amendments
Attachments: LLLT comments 9.13.18.docx

From: Lori PREUSS [mailto:lori012@msn.com]
Sent: Thursday, September 13, 2018 8:43 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on proposed amendments

Hello. Attached are my comments to proposed amendments to Admission and Practice Rules (APR) 28 and Limited Practice Rules for Limited License Legal Technicians (LLLTs).

Thank you.

Lori Preuss
WSBA #33045
Lori012@mns.com

September 4, 2018

Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: June 2018 Proposed Rules Published for Comment
RPC 1.0B, 1.17, 4.3, 5.8, 8.1
APR 28 and APR 28 Appendix
LLLT RPCs

Dear Supreme Court Justices:

I write to echo the letter from two of our faculty members that support adoption of the June 2018 proposed rules (RPC 1.0B, 1.17, 4.3, 5.8, 8.1; APR 28 and APR 28 Appendix LLLT RPCs). These rules clarify and slightly expand the scope of practice for Limited License Legal Technicians (LLLT).

The University of Washington School of Law has worked in cooperation with the Washington State Bar Association on the LLLT program since its inception. Several of our faculty members have been involved in the educational components of the program, from design of the curriculum through actual teaching of the material. We wholeheartedly support the aim of the LLLT program, which is to provide underserved populations better access to family law assistance.

Our experience with the program suggests that a number of areas were prescribed too narrowly to allow for both practicality and a viable practice arena. As detailed in the letter from our faculty members, the proposed changes will remedy and clarify the scope of practice, while maintaining the overall restricted scope of practice for LLLTs.

Although I am new to University of Washington School of Law, I am fully committed to the access to justice aims that are a hallmark of our law school's culture. The LLLT program is fully consistent with those aims. We fully support the proposed limited expansion to the LLLT scope of practice and urge the Court to adopt the proposed changes.

Thank you for your consideration,

Sincerely,



Mario L. Barnes
Toni Rembe Dean & Professor of Law

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, September 6, 2018 12:07 PM
To: Tracy, Mary
Subject: FW: June 2018 Proposed Rules Published for Comment/RPC 1.0B, 1.17, 4.3, 5.8, 8.1/APR 28 and APR 28 Appendix/LLLT RPCs
Attachments: LLT LTR 2018_Supreme Court Justices.pdf

From: Dawn M. Bell [mailto:belld3@uw.edu]
Sent: Thursday, September 6, 2018 12:06 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RE: June 2018 Proposed Rules Published for Comment/RPC 1.0B, 1.17, 4.3, 5.8, 8.1/APR 28 and APR 28 Appendix/LLLT RPCs

Dear Clerk of the Washington Supreme,

I am sending you this letter on behalf of Dean Mario Barnes. Kindly let me know if you have any questions.

Best,
Dawn

Dawn Bell

Pronouns: She/Her

Assistant to the Dean
Washington Leadership Institute Coordinator
William H. Gates Hall | 371
Box 353020 | Seattle, WA | 98195
P: 206.543.2586 F: 206.616.5305
belld3@uw.edu

W SCHOOL OF LAW
UNIVERSITY of WASHINGTON
Leaders for the Global Common Good™

Consumer, Money, and Debt FAQ

What do Limited License Legal Technicians (LLLTs) do?

Like lawyers, LLLTs can provide clients with legal advice and complete court documents, but their scope of practice is limited. Think of them as being similar to a nurse practitioner who can treat patients and prescribe medication independently but do not do everything a doctor can. LLLTs currently practice in family law only.

Why was the LLLT license created?

The Washington Supreme Court approved the LLLT license in 2012 in response to a Civil Legal Needs Study showing the overwhelming amount of legal needs of the consuming public are currently not being met. WSBA operates under the delegated authority of the Court to oversee the license and develop new practice areas.

What type of education and training do LLLTs have?

[LLLTs receive extensive education and training](#), including:

- An associate's degree or higher;
- 45 credits at an ABA or LLLT Board-approved school;
- Three quarters of practice area education (currently being taught at the [University of Washington School of Law](#));
- Three examinations (Paralegal Core Competency Exam, practice area and professional responsibility exams); and
- At least 3,000 hours of substantive law-related work experience as a paralegal or legal assistant supervised by a lawyer.

How much do LLLTs charge?

The Bar does not ask, suggest, or control how much licensed legal professionals (LLLTs, lawyers, and LPOs) charge for their services. Anecdotally, LLLTs charge between a quarter to one-third of what lawyers charge.

Why is the LLLT Board pursuing Consumer Law as the potential new practice area for LLLTs?

The Court has determined that unmet legal need is one of the primary thresholds for developing new practice areas for the LLLT license. The new practice area workgroup reviewed statistics from county-based volunteer legal-services providers and the statewide Moderate Means Program as well as studies such as the [Civil Legal Needs Study](#), and found significant unmet legal need in the consumer-law area among low- and moderate-income people. The [2003](#) (Statewide 0-400% of Federal Poverty Level) and [2015](#) (Statewide, 0-200% of Federal Poverty Level) Civil Legal Needs Studies identified Consumer, Financial Services, and Credit among the three most prevalent problems that people experience and seek legal help to address. There was an increase in legal need in this area from 27% to 37.6% between 2003 and 2014. [The Legal Services Corporation June 2017 Report: The Justice Gap](#) (National, 0-125% of Federal Poverty Level) identified consumer issues as the second highest problem area for people at this income level.

What happens next?

The LLLT Board is in the process of carefully reviewing all comments and input received so far. The LLLT Board has also extended invitations to people who have provided substantive comments to attend future committee meetings and participate in the development process. LLLT Board members may modify the proposed practice area based on the comments, issues discovered during the drafting of regulations, and issues that arise during the law schools' development of the curriculum.

Jaimie Patneau

From: Sarah Bove <sarah@ltdivision.com>
Sent: Monday, October 08, 2018 1:04 PM
To: Jaimie Patneau
Subject: Fwd: LLLT Board Subcommittee - Request for Comment

----- Forwarded message -----

From: **Sarah Bove** <sarah@ltdivision.com>
Date: Mon, Sep 24, 2018 at 3:41 PM
Subject: LLLT Board Subcommittee - Request for Comment
To: <washingtonllts@googlegroups.com>

Dear LLLTs:

A subcommittee of the LLLT Board is making a recommendation regarding the signing of trust account checks when LLLTs and attorneys associate in a practice. Here is the current rule:

RPC 1.15A(h)(9)/LLLT RPC 1.15A(h)(9)

Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the [IOLTA] account. If a lawyer is associated in a practice with one or more LLLTs, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

A question about the rule was brought to the LLLT Board's by the Committee on Professional Responsibility (CPE) during a review of attorney RPCs. The LLLT Board discussed issues regarding clarity, enforceability, and intent, as banks do not recognize 2-signature restrictions any more.

The LLLT Board originally drafted the rule to protect LLLTs. The concern was that LLLTs could be pressured by lawyers into signing trust account checks for matters they were not involved in, or familiar with; thus increasing the potential for trust account mismanagement and theft.

The Board thought the rule requiring a lawyer's signature in addition to the LLLT's signature would protect the LLLT from such pressure.

Some board members believe the rule should be changed to allow LLLTs associated in a practice with a lawyer to sign trust account checks (without the associated lawyer's signature) in matters in which the LLLT is licensed. Other board members don't agree, and think there should be a flat restriction from LLLTs signing trust account checks when the LLLT is associated with lawyers.

This subcommittee would like to get your feedback as to whether/how this rule should be changed. Please know this would require a rule change, a lengthy process including review by multiple bodies at the WSBA, before it is presented to the Supreme Court.

This subcommittee is comprised of Jeanne Dawes, Sarah Bové and Andrea Jarmon, and they will be making a recommendation to the LLLT Board on 10/8/2018.

LLLTs can email their feedback directly to committee members with the subject line **Trust Account Subcommittee**, but it would be most helpful if the LLLTs as a group come up with a consensus about how this matter should be resolved and email the collective position to the subcommittee.

Deadline for comments is Friday, September 28th at 4:00 pm.

Subcommittee email addresses: jjdawes@goregrewe.com, andrea@jarmonlawgroup.com, sarah@ltdivision.com

Thank you for your consideration.

Jeanne Dawes, Trust Account Subcommittee Chair

Andrea Jarmon, Trust Account Subcommittee Member

Sarah Bové, Trust Account Subcommittee Member

--

Sarah Cates Bové, LLLT | Legal Technician Division, PLLC

sarah@LTDivision.com | P: (866) 432-6529 ext. 700

Family Law Legal Technicians (LLLTs) are licensed and trained to counsel and assist people going through divorce, child custody and other family-law matters in Washington.

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--

Sarah Cates Bové, LLLT | Legal Technician Division, PLLC

sarah@LTDivision.com | P: (866) 432-6529 ext. 700

Family Law Legal Technicians (LLLTs) are licensed and trained to counsel and assist people going through divorce, child custody and other family-law matters in Washington.

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Comments from LLLTs

I don't have a recommendation for your subcommittee. I defer to those LLLTs who are in practice with attorneys.

Kim Lancaster

I agree that "... the rule should be changed to allow LLLTs associated in a practice with a lawyer to sign trust account checks (without the associated lawyer's signature) in matters in which the LLLT is licensed. "

Without such a rule, an LLLT is potentially subject to malpractice for mismanagement of client funds. For example, a client requests the return of funds held in trust, but, because the attorney associated with the LLLT is unavailable for an extended period, the LLLT does not return those funds to the client in a timely manner. Because a LLLT is responsible for the management of her/his client funds, it is important the LLLT maintains control over those funds, regardless of whether an attorney is associated in practice with the LLLT or not.

I firmly believe the LLLT must retain the ability to sign checks for funds held in trust for the LLLT's client regardless of the structure of the LLLT's practice.

Jennifer Ortega

I agree with Jennifer Ortega. LLLT is not protected with the current rule. The LLLT should be able to manage their client's funds, solely.

Sherri Farr

Sorry - I haven't had the opportunity to weigh in but as an LT in this exact position, I completely agree with Jennifer's statement. I think I voiced this pretty clearly at a Board meeting but if I need to write something up beyond I completely concur w/ Jennifer - I can tomorrow (I hope - not for lack you of interest just time)!

Jen Peterson

I agree with Jennifer & Jen.

Angela Wright

Proposed changes to RPC 1.15A (h)(9)

(9) Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the account. If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

(9) Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the account. If

a lawyer is associated in a practice with one or more LLLT's, or an LLLT is associated with one or more LLLT's, the LLLT is only authorized to sign ~~any~~ checks or other instruments involving practice areas for which they are licensed. requiring

a signature must be signed by a signatory lawyer in the firm.

MEMORANDUM

To: WSBA LLLT Board
From: Christy Carpenter, LLLT
Date: October 8, 2018
RE: Reporting of LLLT Client and Practice Information to
WA State Supreme Court

The Limited License Legal Technician profession was authorized by the Washington State Supreme Court with the intent that the LLLT profession would expand “access to justice” by permitting the provision of legal services by legal professionals other than attorneys. Given that goal, I propose that the LLLT Board consider how to go about reporting LLLT client demographics and LLLT practice information to the Supreme Court that would help to show how the profession has successfully expanded access to justice.

I have spoken with Danna Moore, a researcher who worked on the Civil Legal Needs Study. She is the Associate Director of the Social and Economic Sciences Research Center at WSU. I also spoke with Jim Bamberger of the Office of Civil Legal Aid. Some information I gleaned from these conversations were:

- 1) Where the data is “housed” is extremely important. An individual name should not be attached to where the data is as there would be too much liability on that person. An organization should store and present the data. The data should be stored as encrypted files, and access should be limited.
- 2) There should be a policy on how long the data will be stored, and when it will be destroyed.
- 3) The biggest risk in collecting the data is if we use “personal identifiers” such as names, birth dates, social security numbers, etc. We are not doing that, however the more data we collect per each survey, the easier it would be to figure out who that person is, so it is advisable to identify the information that is important for our reporting, and not gather any more. “Need to know” vs. “nice to know.” For every survey question, what purpose does it serve?
- 4) She advised to never use a service like Survey Monkey, because there is no control over where that data is stored. She also advised to not transmit survey information by email. The best option would be to go to a link, where the data input would be housed on an encrypted server.
- 5) There needs to be disclosure to and voluntary agreement by the client that their personal data may be collected, the purpose of the collection, the benefit of the collection, and what will happen to the info (stored, compiled

into reports, deleted at the time the annual report is complete). I have added a checkbox on my LSA with this information, and have the client check it and initial if they agree.

Some questions to consider:

- How to get funding (WSBF?)
- What questions will provide relevant information to Supreme Court?
- Length of study?
- How to get highest participate rate - survey LLLTs, or survey clients directly
- Should we convene a workgroup?
- Anything else?

SUGGESTED QUESTIONS (WITH DROPDOWN MENUS)

Gender:

- Female
- Male
- Other

Age:

- 18-24 years old
- 25-34 years old
- 35-44 years old
- 45-54 years old
- 55-64 years old
- 65-74 years old
- 75 years or older

Number of Members in your Household:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 8+

Gross Monthly Household Income Per Number of Household Members:

- Less than 100% of Federal Poverty Level
- 100% - 200% of FPL
- 200% - 400% of FPL
- Over 400% of FPL

1 <ul style="list-style-type: none"> • Less than \$1,005 • \$1,006 - \$2,010 • \$2,011 - \$4,020 • Over \$4,020 	2 <ul style="list-style-type: none"> • Less than \$1,353 • \$1,354 - \$2,707 • \$2,708 - \$5,413 • Over \$5,413 	3 <ul style="list-style-type: none"> • Less than \$1,702 • \$1,703 - \$3,403 • \$3,404 - \$6,807 • Over \$6,807 	4 <ul style="list-style-type: none"> • Less than \$2,050 • \$2,051 - \$4,100 • \$4,101 - \$8,200 • Over \$8,200
5 <ul style="list-style-type: none"> • Less than \$2,398 • \$2,399 - \$4,797 • \$4,798 - \$9,594 • Over \$9,594 	6 <ul style="list-style-type: none"> • Less than \$2,747 • \$2,748 - \$5,493 • \$5,494 - \$10,987 • Over \$10,987 	7 <ul style="list-style-type: none"> • Less than \$3,095 • \$3,096 - \$6,190 • \$6,191 - \$12,380 • Over \$12,380 	8 <ul style="list-style-type: none"> • Less than \$3,443 • \$3,444 - \$6,887 • \$6,888 - \$13,773 • Over \$13,773

Ethnicity:

- White /Caucasian
- Hispanic / Latino
- Black / African American
- Native American
- Asian / Pacific Islander
- African
- Arabic
- Other

Primary language:

- English
- Spanish
- Russian/Ukrainian
- Chinese
- Korean
- Vietnamese
- Somali
- Tagalog
- Arabic
- Other

Are you a US citizen?

- Yes
- No

Education Level:

- No schooling completed
- Nursery school to 8th grade

- Some high school, no diploma
- High school graduate, diploma or the equivalent (for example: GED)
- Some college credit, no degree
- Trade/technical/vocational training
- Associate degree
- Bachelor's degree
- Master's degree
- Professional degree
- Doctorate degree

Employment status:

- Employed for wages
- Self-employed
- Out of work and looking for work
- Out of work but not currently looking for work
- Homemaker / Stay-at-home mother
- Student
- Military
- Retired
- Unable to work / Disabled

Type of case:

- Divorce with children
- Divorce without children
- Child support modification
- Minor parenting plan modification
- Relocation notice
- Motion - Moving party or responding party
 - Immediate restraining order/temporary order
 - Temporary order
 - Contempt of child support or parenting plan
 - Reconsideration or revision of a commissioner's order
 - Adjust child support
 - Modify or vacate order
 - Other: _____
- Consultation to review completed papers/seek advice on same
- Discovery (Propound or Respond)
- Mediation Preparation
- Trial Preparation
- Other: _____

Amount paid for LLLT services, not including court fees and other costs:

- Less than \$400
- \$400 - \$800

- \$800 - \$1,200
- \$1,200 - \$1,600
- \$1,600 - \$2,000
- Over \$2,000



APPENDIX
ATTACHMENT 17

April 14, 2018

Contact: Jennifer Olegario, WSBA Communications Manager
206-727-8212; jennifero@wsba.org

156 Candidates Pass 2018 Winter Bar Exam

SEATTLE — The Washington State Bar Association is pleased to announce that 156 candidates passed the Uniform Bar Exam administered in February 2018. Administered over a two-day period, the exam is a substantive law exam for those interested in becoming licensed in Washington to practice law as a lawyer.

The exam includes multiple choice, essay, and performance questions. The other required component of the Washington Bar Exam is an exam on professional responsibility known as the Multistate Professional Responsibility Exam. Completion of a separate online educational component with accompanying online exam addressing specific areas of Washington law (the Washington Law Component) is also required to qualify for admission.

The WSBA will recommend successful candidates who also have passed a character and fitness review and completed other pre-licensing requirements to the Washington Supreme Court for entry of an order admitting them to the practice of law in Washington as a lawyer.

See the full pass list on our website at www.wsba.org/bar-exam-results

Winter 2018 Washington State Bar Exam Statistics

Overall Pass Rates

Applicant Type	Pass	Fail	Total	Pass Rate
ABA-JD	110	109	219	50.2%
APR 6 Law Clerk	2	9	11	18.2%
U.S. Attorneys	30	4	34	88.2%
Foreign/LLM Graduate	12	28	40	30.0%
Foreign Common Law Attorney	1	7	8	12.5%
Non-ABA JD/ABA LLM	1	4	5	20.0%
Total	156	161	317	49.2%



First Time

Applicant Type	Pass	Fail	Total	Pass Rate
ABA-JD	65	39	104	62.5%
APR 6 Law Clerk	2	1	3	66.7%
U.S. Attorneys	24	2	26	92.3%
Foreign/LLM Graduate	10	13	23	43.5%
Foreign Common Law Attorney	1	0	1	100.0%
Non-ABA JD/ABA LLM	1	3	4	25.0%
Total	103	59	161	64.0%

Repeaters

Applicant Type	Pass	Fail	Total	Pass Rate
ABA-JD	45	70	115	39.1%
APR 6 Law Clerk	0	8	8	0.0%
U.S. Attorneys	6	2	8	75.0%
Foreign/LLM Graduate	2	15	17	11.8%
Foreign Common Law Attorney	0	7	7	0.0%
Non-ABA JD/ABA LLM	0	1	1	0.0%
Total	53	103	156	34.0%

The average UBE score total was 270.16; the required passing score was 270.

About the Washington State Bar Association

The WSBA is part of the judicial branch and is authorized by the Washington Supreme Court to license the state's 38,739 lawyers and over 1,000 other legal professionals. In furtherance of its obligation to protect and serve the public, the WSBA both regulates lawyers and other licensed legal professionals under the authority of the Court and serves its members as a professional association — all without public funding. The WSBA's mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.





APPENDIX
ATTACHMENT 18

The Supreme Court
State of Washington

BARBARA A. MADSEN
JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929



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June 5, 2020

Stephen R. Crossland, Chair
Limited License Legal Technician Board
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Rajeev Majumdar, President
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Terra Nevitt, Interim Executive Director
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Re: Washington Supreme Court Votes to Sunset the Limited License Legal
Technicians Program

Dear Mr. Crossland, Mr. Majumdar, and Ms. Nevitt:

Today, the court issued a letter announcing its vote to “sunset” the Limited License Legal Technician (LLLT) “program.” Despite these benign words, let there be no mistake about the nature of the court’s action: the elimination of an independent legal *license*. What’s more, the court did so at a single meeting, without question or comment from LLLT license holders, legal practitioners, or the public at large. What took over a decade of toil to create, this court erased in an afternoon. I passionately disagree with the court’s vote as well as the way in which it was carried out.

Unlike the opaque process governing the court’s June 4, 2020 vote, I believe it is useful to review the history of the LLLT “program”—to use the court’s preferred terminology—before opining on its future. First, as a matter of definitions, limited legal technicians are those qualified by education, training, and work experience who are authorized to engage in the limited practice of law in specific subject areas. APR 28(B)(4). Turning to history, the LLLT license did not spring fully formed from the head of Zeus. Rather, it is the work of thousands upon thousands of hours dedicated to rectifying a simple truth: that access to

justice in this country is not equal. The Civil Legal Needs Survey of 2003 confirmed that almost 80 percent of low income and nearly 50 percent of moderate income Americans cannot access or afford legal services.^[1] Critically important to addressing this disparity was protecting the public from the unauthorized practice of law. The solution to both was expanding the options for providing legal services. Thus, APR 28 was approved and the limited legal technician license was born.

The creation of the LLLT was by no means the end of our labors. In many ways it was only the beginning. Since 2012, stakeholders have crafted and this court has approved the contours of the LLLT license: educational requirements, scope of practice, and governing ethical rules. *E.g.*, APR 28; Order (July 12, 2013) (setting out educational requirements and scope of practice for LLLT, among other things); Order (Aug. 8, 2013) (establishing the admission and licensing requirements for LLLT applicants); Order (March 23, 2015) (adopting changes to Rules of Professional Conduct for Lawyers to coordinate those rules with the LLLT Rules of Professional Conduct); WASHINGTON LLLT EDUCATIONAL PROGRAM APPROVAL STANDARDS, WASHINGTON STATE BAR ASS'N (June 10, 2019). Throughout this rule-making process, we have heard from interested parties, students, legal professionals, and members of the public. The questions and comments from all sides have formed and shaped the LLLT from an ambitious plan into a concrete professional license. Make no mistake, LLLT is a new professional license.

2014 marked the first class of LLLT candidates and more have added to these ranks. THOMAS M. CLARKE & REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 5 (March 2017), http://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf. The Public Welfare Foundation studied this new legal practice after its creation and found it was significant in helping create access to justice and was replicable. *See id.* at 14. As a testament to this, other states are considering adopting similar licenses: efforts are underway in states such as Utah, California, Oregon, Colorado, New Mexico, Minnesota, Massachusetts, and Connecticut; and in Canada, British Columbia. Simply put, countless individuals have contributed

^[1] The dire need for affordable legal services has not decreased. In 2017, 86 percent of litigants in civil cases received inadequate or no legal help. *2017 Justice Gap Report: Measuring the Civil Legal Needs of Low-income Americans*, Legal Services Corporation, June 2017, <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

thousands of hours of their time and energy to devise, bring about, grow, and support the LLLT practice. Not to mention the men and women who have taken on the challenge of trailblazing this innovative, new profession in our state.

I recall this history in order to illustrate the depth of the court's misunderstanding in eliminating the LLLT license. Not only is the LLLT not simply a "program" that was easily created, and just as easily paused and canceled as budgets—or attitudes—permit, the LLLT is an independent legal license. As such, it warrants the respect of time and consideration before alteration, let alone total elimination. With yesterday's vote, the court *sua sponte* ended a completely viable licensing category that the public can draw on. There was no process. No questions. No comments. The public was not consulted. This is not how an institution should go about changing or dismantling such a bold initiative. In no other professional area would a regulated license be so summarily erased with so little thought given to those who will be most affected.

Not only was yesterday's vote a disservice to the stakeholders, current and aspiring LLLT license holders, and to the people of Washington, it stands in stark contrast to the way in which the LLLT license was crafted and directed for over a decade. The primary reason offered by the Washington State Bar Association Board of Governors for eliminating the LLLT "program" is cost: it is too expensive to maintain and lawyers should not have to underwrite the cost. This ignores the fact that the cost of growing and maintaining this group of licensed professionals is less than 1 percent of the Association's budget. It also ignores the many thousands of dollars the Bar expends every year investigating *lawyer* misconduct and does not acknowledge the lack of grievances against LLLT practitioners. I find the Board of Governors' cost rationale a hollow one. While current LLLT license holders are "grandfathered in" and allowed to continue practicing, there has been no evaluation offered about the cost of this decision and whether there would be any appreciable change in the cost of administering the LLLT license. As a fiscal matter, the silence on this point speaks loudly, as does the lack of deliberation on other options to address concerns expressed by the Bar while maintaining this professional license and the valuable services it provides in the pursuit of access to justice.

Today's decision also resonates on another level, both abstract and imminently tangible. Just this week, my colleagues and I authored a letter examining the systemic racism that has plagued our country since its inception. We accepted the role judges and the legal community at large have played in maintaining this reality, and recommitted our efforts to ending racial disparity in our governmental, community, and social institutions. The elimination of the

Dissent to Sunset of LLLT

June 5, 2020

Page 4

LLLT license, which was created to address access to justice across income and race, is a step backward in this critical work. It is not the time for closing the doors to justice but, instead, for opening them wider.

With these considerations in mind, I respectfully dissent.

Sincerely,

A handwritten signature in black ink that reads "Barbara Madsen". The signature is written in a cursive, flowing style.

Barbara A. Madsen
Justice



APPENDIX
ATTACHMENT 19

**Preliminary
Evaluation of the
Washington State
Limited License Legal
Technician Program**

March 2017

*Prepared by Thomas M. Clarke, National Center for State
Courts, and Rebecca L. Sandefur, American Bar Foundation,
with support from the
Public Welfare Foundation*

Public Welfare
Foundation

ABF American Bar Foundation
EXPANDING KNOWLEDGE • ADVANCING JUSTICE



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2017

Executive Summary

The Washington State Supreme Court and the Washington State Bar Association created an innovative program to expand the provision of legal services. Limited Licensed Legal Technicians (LLLTs) represent a new legal role that builds on the capabilities of traditional paralegals and operates without supervision by lawyers. LLLTs primarily help customers fill out legal forms and understand legal procedures. The program started with the family law practice area, but Washington State plans to expand to additional practice areas in the near future. A small number of LLLTs have been certified and are currently practicing.

The evaluation shows that the program has been appropriately designed to provide legal services to those who cannot afford a lawyer but still wish or need assistance. The training program prepares LLLTs to perform their role competently while keeping within the legal scope of that role. Customers have found their legal assistance to be valuable and well worth the cost. The legitimacy of the role appears to be widely accepted in spite of its short track record.

There are some questions about how best to scale up the program. The biggest current bottleneck is the required year of training with the University of Washington (UW) Law School. Washington State is actively pursuing other ways to mitigate that constraint. The regulatory costs of the program are not yet close to breaking even, but scaling up the program significantly would resolve that issue. LLLTs would greatly benefit from additional training on business management and marketing, but several of the first LLLTs are successfully running a full-time LLLT practice.

The example of the LLLT program in Washington State has already encouraged a second state to create a similar program. Utah is currently designing its Paralegal Practitioner program along the lines of the Washington State program. Several of the recently approved program changes in Washington State were incorporated immediately into the Utah program design.

The LLLT program suggests that new legal roles with costs lower than traditional lawyers are a potentially significant strategy for meeting the legal needs of many people who now are dealing with their legal problems unassisted. Creating similar programs in other states would clearly improve access to justice for a broad section of the public.

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Research Summary and Recommendations

Introduction

The Washington Supreme Court's Practice of Law Board started considering the possibility of creating new legal roles almost fifteen years ago. After many years of debate and discussion, the Washington Supreme Court adopted Admission and Practice Rule (APR) 28 authorizing the creation of the Limited License Legal Technician (LLLT) role in June 2012. APR 28 created the Limited License Legal Technician Board, which was tasked with developing and implementing the new license. The Washington State Bar Association (WSBA) staffs and funds the LLLT Board and regulates the LLLTs under delegated authority from the Washington Supreme Court.

After several years of work to create the regulations, training, and administrative mechanisms to do so, the first LLLT candidates entered their practice-area education classes in 2014. Three further classes have begun the practice-area courses since then with many more students completing their core education requirements at the community college level. In 2015, the first LLLTs were licensed by the Washington Supreme Court. At the time research for this evaluation was conducted, there were fifteen (15) licensed LLLTs. Since then, that number has slowly continued to grow.¹

A number of other states have expressed interest in the possibility of starting similar programs. Given that interest, the Public Welfare Foundation (PWF) decided to fund an independent academic evaluation of the LLLT program. Because of its more general interest in new legal roles, the PWF also funded an evaluation of the New York City Navigator program by the same research team.

Evaluation Approach

Since it was likely that states would create both similar new roles and other kinds of new legal roles, the research team first created an evaluation framework that was flexible enough to encompass a broad range of possible new legal roles.² The framework was also intended to support a variety of performance and evaluation measures. Given different program objectives, a particular program evaluation might utilize only a subset of the available evaluation dimensions, but at least the approach would be roughly consistent across program types and evaluator teams.

The framework identifies three broad evaluation categories at the highest level: appropriateness, efficacy, and sustainability. Essentially, researchers want to know if a program does the right thing, does it effectively, and is capable of doing it into the future. To know if the program is doing the right thing, it is necessary to see if the tasks performed by the new role align with the problems that are to be solved or the desired new services. It is also necessary to determine if the persons in the new role will be trained to perform those tasks.

¹ For an excellent summary of the history, scope, and current status of the LLLT program, see "Report of the Limited License Legal Technician Program to the Washington Supreme Court: the first three years," February 2016, Washington State Bar Association.

² INCREASING ACCESS TO JUSTICE THROUGH EXPANDED 'ROLES BEYOND LAWYERS': PRELIMINARY EVALUATION AND CLASSIFICATION FRAMEWORKS, Rebecca L. Sandefur and Thomas M. Clarke, American Bar Foundation and National Center for State Courts, Chicago, IL and Williamsburg, VA, March 2015.

To be effective, researchers must see if the identified tasks are being performed competently by those in the new role and that, when they do so, the impacts on the targeted problems are positive and beneficial.

Finally, the sustainability of the program requires positive answers to three different kinds of questions. Does the regulatory regime, including training, have a stable basis? Does the business model for the new role have a stable basis? Do customers, clients, and colleagues of the new role attribute to it enough legitimacy to provide a stable clientele?

At the time of this evaluation the LLLT program was about 15 months old. The small number of certified LLLTs did not permit a rigorous statistical evaluation. As a result, the researchers opted for a more ethnographic approach using structured interviews. Thus, this evaluation must be considered preliminary and provides first impressions of how the program is progressing. More definitive results must await a larger number of certified LLLTs.

The researchers interviewed 13 of the 15 then certified LLLTs, mostly by telephone.³ They also interviewed four clients, several colleagues of various types, and representatives of both the regulatory office at the WSBA and the training schools at several state community colleges and the UW School of Law.

Program Appropriateness

The stated objective of the LLLT program is to increase access to justice for low and moderate-income persons while protecting the public by ensuring the provision of quality legal services. This broad objective could not be pursued all at once. Instead the LLLT Board and the WSBA envisioned a more incremental approach to the new role. APR 28 was designed to have LLLTs licensed in specific practice areas, with the number of practice areas approved by the Supreme Court to grow over time. Prospective LLLTs would meet the qualifications and become licensed in each practice area separately. As practice areas were added, already licensed LLLTs could decide in which of any additional practice areas they wanted to become licensed.

The scope of the LLLT's authority was limited to be consistent with the training and testing requisite of a limited license. For example, LLLTs were barred from representing clients in talks or negotiations with lawyers or other parties. They also could not go into court hearings with their clients and assist them there. These restrictions still enabled LLLTs to provide process assistance and forms assistance. In the first practice area of family law, LLLTs can assist in these ways on a wide range of family law matters.

Training on these tasks followed a three-pronged approach. First, candidates had to receive, at a minimum, an associate level degree with 45 of the credits defined in the LLLT regulations. The courses were to be completed in an ABA-approved paralegal program. Upon the completion of this "core education," candidates then complete 15 credits in family law through a curriculum developed by an ABA-approved law school. Currently, the courses are offered through the UW School of Law, with Gonzaga University law professors helping to teach the courses. Concurrent with the education, candidates spend 3,000 hours working under the supervision of a licensed lawyer. In addition to these requirements, candidates must pass three exams: one at the completion of the core education (the

³ The researchers interviewed LLLTs, WSBA staff, lawyers, clients, and educators.

Paralegal Core Competency (PCC) Exam), an exam on the LLLT Rules of Professional Conduct, and a subject area exam.⁴

In order to facilitate a faster “ramp up” of the new program, the Court approved a waiver path to the license recommended by the LLLT Board. The waiver is allowed for existing paralegals who have spent at least ten years performing substantive legal work under the supervision of an attorney and have current national certification with one of the national paralegal association. If these requirements are met, the LLLT candidate can proceed directly to the practice-area education and the requisite exams required for licensure. This waiver was initially put in place until the end of 2016, but the LLLT Board was considering an extension as this study was being done. In fact, most of the current LLLTs satisfied their core education requirement in this way, while a few of the newest LLLTs went through the complete education cycle.

Discussion:

Although most of the waived LLLTs gained most of their experience in family law, the experience requirement does not require practice in family law matters. This suggests that the experience requirement is intended to provide general familiarity with legal procedures and processes, rather than specific expertise in family law. This means that the formal training curriculum must provide all required content for the family law practice area.

Not all of the community colleges in Washington State that provide paralegal programs are ABA-approved. That means that certain areas of the state are not conveniently served for that portion of the training requirements. The Supreme Court subsequently approved teaching the core courses at all LLLT Board approved community colleges, mitigating the problem of geographical access significantly. In contrast to the community college approach, the law school year of training is done entirely online, making it easy for candidates from all areas of the state to participate.

The law school had no precedent for this kind of training, so essentially it had to create both a new business process and a new business model for the LLLT program. The new process is able to take advantage of some of the services offered to regular law students, but not others. In particular, prospective LLLTs cannot avail themselves of any financial aid opportunities at the law school.

The UW School of Law originally expected much larger numbers of prospective LLLTs to matriculate. The much smaller initial numbers of students enabled the University of Washington law school to more easily revise its original approach as it learned what worked best. The annual cohorts of students will still need to increase significantly if the university is to achieve a breakeven point on the economics of the program and provide appropriate management. Estimates of the desired cohort size were rough and ranged from 25 to 100 students. It is also not clear if the law school can provide enough faculty to support student cohorts of this size. In short, the economics of the law school training business model are still somewhat uncertain.

Representatives of the community colleges with non-ABA-approved paralegal programs expressed a strong interest in becoming approved LLLT training programs. More broadly, representatives of the

⁴ The 2016 WSBA report describes these education requirements as: “At a minimum possess an associate level degree; complete 45 credits of core curriculum in paralegal studies as defined in the regulations; complete 15 credits of practice area course work; have 3,000 hours of work experience under the supervision of a licensed Washington attorney; pass a rigorous core curriculum examination; pass a rigorous practice area examination; and pass a rigorous professional responsibility examination.”

community colleges expressed a strong interest in the possibility of teaching the entire training curriculum, including the year that is now taught at the law school.

Findings:

- The law school must subsidize the LLLT program at current student levels.
- It is not clear how much the student levels would need to increase for the law school to break even on the program. Rough estimates ranged from 30 to 60 students per year. Upcoming cohorts from the community colleges may be growing already, but if so it will not be visible yet.
- It is not clear to what extent staffing and other bottlenecks at the law school would constrain student numbers if they increased significantly.
- Participating community colleges are currently unable to reliably identify which of their paralegal students intend to become LLLTs.
- Teaching the practice area classes at community colleges using remote law professors, community college professors, or adjunct faculty would be one way to mitigate the possible bottleneck at the law school.
- The Seattle University and Gonzaga University law schools are struggling financially and felt unable to subsidize a new program like the LLLTs. Gonzaga University has contributed faculty to the courses at the UW School of Law.
- The inability of the UW School of Law to provide any kind of financial aid is a significant economic deterrent to prospective students.
- Allowing non-ABA-approved paralegal programs to qualify as part of the LLLT training program would significantly improve geographical convenience for students. [A recommendation to make this change has been subsequently proposed and approved by the Washington State Supreme Court.]

Program Efficacy

The LLLT program is designed to provide assistance with the legal process and the preparation of legal forms. Program designers believe that consumers find these kinds of processes to be significant barriers to access when they cannot afford the assistance of a full-service lawyer. Thus, it was hoped that LLLTs would competently provide such services at a significantly lower cost to consumers and by doing so constitute an effective solution to this access problem.

If LLLTs are to benefit consumers in this way, it must be true that they can competently help with these kinds of tasks. It must also be true that consumers trust LLLTs to perform these tasks for them. Finally, competent assistance should result in better legal outcomes and may also improve perceived procedural justice.

Discussion:

Licensed LLLTs with education waivers uniformly felt competent to provide appropriate assistance in family law matters according to the defined scope of the role. This opinion was partly supported by LLLTs without family law experience, who did not feel they could provide assistance efficiently enough to charge their desired prices until they had more experience. It will be interesting to see how these opinions and perceptions change as more LLLTs go through the program without the long years of prior family experience as paralegals.

Clients were sometimes confused about exactly what LLLTs could and could not do. Because the line between allowable and forbidden types of assistance followed the complexity of legal tasks and not the typical tasks in types of family law actions, clients were sometimes forced to do things by themselves that they wanted LLLTs to do or were required to contract with lawyers for unbundled assistance when it was available. These distinctions made no sense to them as lay persons.

From a process viewpoint, LLLTs walked clients through the engagement agreement and explained their scope in detail. Some LLLTs made referrals to lawyers when they were unable to perform a task that a client needed. Conversely, some lawyers made referrals to LLLTs when tasks were within their scope and clients could not afford a lawyer.

Findings:

- Family law task competence was strongly ascribed to specific family law experience as a paralegal.
- At the same time, the training curriculum was deemed appropriate and adequate for the family law practice area.
- LLLTs suggested that the current training program be expanded to include a greater emphasis on practical completion of forms.
- LLLTs thought the 3,000 hours of experience required was about right.
- LLLTs also suggested that a subset of the experience hours should be dedicated to family law matters. Proposed ranges of dedicated experience hours ranged 500 to 1,000 hours out of a total of 3,000 hours.
- Some, but not all, of the small group of licensed LLLTs that went through the entire training sequence felt that they lacked enough specific family law experience to be fully competent at the beginning of their practice.
- Clients uniformly reported that LLLTs provided competent assistance.
- Clients reported that their legal outcomes were improved by utilizing the services of LLLTs.
- Clients were unable to articulate in what way procedural justice was improved for them, but they did frequently report reductions in stress, fear, and confusion.
- Some clients expressed a desire for LLLTs to provide similar assistance for excluded family law matters.
- Some clients expressed a desire for LLLTs to be able to represent them in conversations or negotiations with opposing lawyers and parties.
- Some clients expressed a desire for LLLTs to accompany them into court and at least assist them in answering questions during court hearings.
- Clients often did not understand the legal nuances of what tasks a LLLT could perform, even though LLLTs provided correct and detailed explanations.
- Clients did follow the advice of LLLTs on what legal assistance they could provide and when they needed to seek the help of an attorney.

Program Sustainability

Sustainability requires the program business models to work for both the participants in the new role and the organizations providing training and regulation. Separately, the new role must be performed well enough for the public to view it as legitimate and effective in an on-going way. Both of these aspects of sustainability are critical to the long-term success of the program and the new role.

As noted in the LLLT Board's report to the Supreme Court, the typical total cost of all education required to become certified is \$14,440.⁵ Licensed LLLTs must discover and attract sufficient numbers of clients and revenue to make an operational profit that provides a livable income and amortize the initial investment over a reasonable period of time. At the time of this evaluation, most LLLTs were not practicing full-time. Instead, they worked part-time as traditional paralegals or solely as a part-time job.

A couple of LLLTs did work full-time. These LLLTs understood very well the costs of specific tasks and managed the scope of their cases carefully. They had analyzed their tasks in enough detail to charge fees for discrete tasks, rather than charging hourly rates. They understood their business models well enough to know if they were achieving a practical standard of living or not.

Also per the LLLT Board report, the regulatory costs to date total \$473,405 and the fees collected in 2015 total \$11,188.⁶ So, the WSBA has provided a large subsidy to date to operate the program. Many of the regulatory costs are relatively fixed startup costs that will not be incurred to the same extent as the number of participants increases. Startup costs should be smaller as new practice areas are added, since several aspects of the regulatory machinery will not need significant modification. Unfortunately, the WSBA does not break out one-time startup costs and on-going operating costs, but they should not be significantly different from the current operating costs in that regulatory area. It also has not estimated the cost of adding new practice areas, but they may be minimized by mostly using the current LLLT Board and committee members. While it may be difficult to estimate what number of new licensed practitioners per year would be required to achieve a breakeven point for operating the program with precision, presumably the WSBA could do so for various enrollment and certification scenarios.

The WSBA estimates that such a breakeven point may be achieved in five to seven years, which would include paying back the startup costs, but does not indicate what level of licenses would be needed to do so. It does estimate that up to 200 people may be currently enrolled in its core programs. If so, the WSBA can determine when the breakeven point will be achieved at least approximately. Community colleges know how many students are in their paralegal programs, but not how many of those students might go on to become licensed LLLTs. Previous estimates of LLLT cohorts have consistently proven to be too optimistic, but that may change as the program becomes better known and gathers momentum with a track record.

If the Supreme Court decides to accept training provided by community colleges with programs that are not ABA-certified, it appears that the community colleges collectively provide enough throughput to support a much larger number of LLLTs. No special subsidies would be required, since paralegal students train within the standard business model of the community colleges. The number of classes can be ramped up or down according to demand without significant disruption or change to the usual business processes.

As previously mentioned, the same is not true for the law schools. Although attempts have been made to actively involve all three law schools in the state, only the University of Washington had the resources to support the required training cycles. Gonzaga University contributed faculty in a small way, but nothing else. Even then, the University of Washington law school currently loses money on the program and must subsidize it. The first three cohorts through the law school curriculum were 17, 23, and 19 students respectively. The law school was initially expecting significantly larger cohorts, and they would still like to scale up cohort sizes significantly to make the program more economic. In particular, the law school wants a full-time administrator for the program, which would require cohorts of at least 25 to 28 students

⁵ See 2016 WSBA report.

⁶ See 2016 WSBA report.

consistently. Larger cohorts might make the establishment of special financial aid and scholarship funds possible from an administrative funding point of view, but rules regarding financial aid would still have to be changed or finessed. On the other hand, larger cohorts might also create a faculty bottleneck according to the law school staff.

Aside from these issues, the law school supports the addition of business management and marketing content to the curriculum, but that would almost certainly lengthen the period of training and the associated costs for LLLTs. More positively, the law school thinks it could support revisions of the curriculum on court appearances and negotiations if the LLLT Board and the Supreme Court were to support those changes in LLLT scope. Washington State should know very soon if the Supreme Court is supportive. History suggests that it will be.

The law school still operates the year of LLLT training using a special and abnormal business process, because their normal process is uneconomic for LLLT training. It is run as a Continuing Legal Education (CLE) program with a large tuition break. That avoids \$480 a quarter in fees and reduces the cost per quarter to \$1,250. The law school and the LLLT Board are still working creatively with the community colleges to overcome the inability of the law school to offer financial aid to LLLTs. Because of the special process, LLLTs also do not have access to on-site university services, disability services, or career development services. Of those issues, the availability of financial aid is most important for prospective LLLTs.

It is also the only law school program that uses a synchronous online training method. Although not originally planned, that approach has worked well for LLLTs and the law school has been able to provide a quality educational experience. Both the law school teaching staff and the current group of licensed LLLTs consider the curriculum to be generally good, although the LLLTs consistently expressed a preference for additional practical training on forms. On the other hand, synchronous training is harder to scale and may experience problems attracting sufficient faculty in the future. An asynchronous approach would scale more easily. Perhaps a training model based on a broader provision of services by community colleges could overcome some of these issues.

The community colleges would definitely welcome an expansion of the program beyond the current ABA-certified colleges (and it has subsequently been approved). This expansion would definitely help expand the annual cohorts of LLLTs, since students noted both travel constraints and a desire to access the curriculum online when possible (which the ABA partially restricts now for certification). Providing online training is still a relatively new approach for most community colleges and not yet a core part of their education approach, but they expressed a willingness to expand those capabilities in the future.

Finally, the community colleges would agree to take on the entire curriculum, including the year that is currently provided only through the law school, if the LLLT Board and the Supreme Court would allow them to do so. That change in program design would potentially improve the sustainability of the LLLT program by solving a number of issues with the economic viability of the training program, including the financial aid issue.

The experience of licensed LLLTs to date has not been especially encouraging in terms of viable business models when operating as a pure full-time LLLT practice, but the evidence suggests that viable business models are possible under the right conditions. Two Yale University researchers describe three conceptual business models that LLLTs might implement: solo practice, semi-solo practice, and firm employee.⁷ Of the currently licensed LLLTs, most are using either the semi-solo practice or the firm employee. Only a

⁷ "Pathway to Success," Jie Min and Bethany Hill, unpublished.

couple of LLLTs are attempting a true solo practice at this point, but that is very likely to change as the program grows.

The few LLLTs practicing full-time had very carefully analyzed their services and their related costs. They conducted their practices according to well-structured business models. The part-time LLLTs approached their businesses in a more unstructured way and charged hourly rates instead of fixed fees. Working for law firms as paralegals provided an economic safety net that made it less necessary to work out a more explicit and detailed business plan. Partly because the services offered by LLLTs are so new and limited in ways that are not obvious to the public, marketing and public education are important issues for attracting a viable volume of clients. Support by local bars and law firms clearly helped by providing cross referrals of clients, but more attention to fundamental business marketing is clearly needed. A growing number of county bars are accepting LLLTs as members and the WSBA made LLLTs members in January 2017.

Many of the practicing LLLTs cited revenue uncertainties as their motivation for selecting the semi-solo or firm employee business models. In most cases, both models took the form of relationships with existing law firms. In several cases the LLLTs had previously worked for those firms as paralegals and simply continued those relationships in a different way. Aside from revenue concerns, a close connection to a law firm also supported appropriate referrals both to and from the LLLT, which was beneficial for both business parties.

The Yale paper goes on to lay out in simple terms a standard approach to writing a good business plan. Like many new small businesses, LLLTs often lack basic skills in business management and are at high risk of business failure if they attempt a solo practice. That risk is not reduced by the obvious value that LLLTs provide to their clients. It is rather a normal function of being a new small business. Those risks include being under-capitalized and lacking an effective marketing plan. Again, the WSBA and LLLT Board are working to mitigate these issues.⁸ Several of the Yale paper recommendations parallel recommendations made later in this evaluation.

Discussion:

Both the regulatory oversight and the law school training use unsustainable business models right now. With increased volumes of LLLTs both could potentially become sustainable, but the likelihood of sufficient volumes is an open question. Similarly, only a couple of the currently licensed LLLTs appear to be making a living solely as LLLTs. The rest are using mixed business models and working significant amounts as traditional paralegals for law firms to ensure sufficient incomes.

Effective marketing is perhaps the critical link for business success at this point. Many LLLTs are unable to attract a sufficient number of clients to run a viable business even though the evidence for a sufficient pool of potential clients is strong. With any new service that is not well known or understood by the public, it is difficult for potential clients to literally discover the existence of the new role and understand when it might make sense to use the services of a LLLT. When local law firms support the LLLT role and provide appropriate referrals, that behavior partially mitigates these concerns. Conversely, when the local bar is actively hostile, it makes the marketing issue much more difficult to solve. Fortunately, this problem seems to be dwindling as county bars gain experience working with LLLTs.

Findings:

⁸ “Suggestions for the LLLT Program,” Jie Min and Bethany Hill, unpublished.

- The regulatory business model requires significant subsidies to operate to date.
- The law school business model also requires a subsidy to operate at current volumes.
- Most licensed paralegals work at least part-time for law firms as traditional paralegals.
- Even when LLLTs work for law firms as LLLTs, they sometimes receive a fixed salary rather than a proportion of the revenue they earn.
- Most LLLTs struggle to attract enough clients to sustain a viable business.
- When LLLTs understand their business well enough to charge flat fees without undue risk, they are better able to manage their business and market to potential clients.
- Many LLLTs could benefit from targeted training on business management and marketing.
- A hypothetical business model that charges fees between those of a paralegal and a lawyer seems viable, but current actual fees are mostly the same as a traditional paralegal. Where the LLLTs are operating a pure LLLT practice, their fees tend to be moderately higher than that of paralegals.
- Limited scope fixed fees can be charged for most or all current tasks, but most current LLLTs prefer to charge by the hour to mitigate risk.

Conclusions

In many ways the current LLLT program is a success. It is appropriate, efficacious, and at least potentially sustainable. It meets a significant need and is viewed as a legitimate legal role. For a new kind of program designed “from scratch” to be so successful is quite impressive. Clearly a lot of careful thought went into program design.

Several of the concerns identified in this evaluation report may be mitigated or eliminated by program modifications being considered by the LLLT Board (and several of them have now been approved by the Board). These proposals include the addition of a new practice area that targets a broad and known need, the ability to draft legal letters, and the ability to help clients fill out legal forms not in the approved practice areas.⁹ The Board considered and approved proposals to permit appearances in court, participation in legal negotiations, partial elimination of the real property exclusion from the family practice area, and an indefinite extension of the time waiver. These proposals are now before the state supreme court, except for the last one which has already been approved by that body.

The WSBA regulates the LLLT program very much after the model of the traditional bar with lawyers. This model is a fairly costly regulatory approach that is viable with lawyers because of the scale at which it operates. Fortunately, the bulk of the regulatory costs are incurred at the beginning of the program. Still, the use of LLLTs will either have to scale up significantly or a more lightweight regulatory approach will be needed. Balancing consumer protection with regulatory costs may require innovative strategies.¹⁰

Recommendations

Several of the recommendations mirror proposed changes to the current LLLT program and the LLLT Board is already acting to implement several other recommendations.

- 1. Require a dedicated subset of the experience hours to be in the specific practice area.*
- 2. Expand the training devoted to practical document assembly tasks.*
- 3. Allow community colleges without ABA certification to qualify as trainers (now approved).*
- 4. Consider shifting the law school training to the community colleges.*
- 5. Provide more training and practical advice on business management.*
- 6. Provide practical advice and assistance on marketing.*

⁹ In late 2016 the WSBA Board of Governors (BOG) passed a resolution supporting the exploration of a new practice area, expanding the tools LLLTs may use with clients, and voted to make LLLTs (and LPOs) members of the bar and be allocated one seat (either a LLLT or a Limited Practice Officer or LPO) on the BOG.

¹⁰ For a discussion of other possible regulatory approaches, see “How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering,” Gillian Hadfield and Deborah Rhode, *Hastings Law Review* Vol. 67 (June 2016): pgs. 1191-1223.

7. *Accelerate adoption of the scope modifications for the current practice area.*
 - a. *Allow LLLTs to interact with opposing parties and their legal representatives.*
 - b. *Allow LLLTs to appear in court with their clients and clarify matters of fact during hearings.*
8. *Accelerate provision of new practice areas for future and existing LLLTs.*
9. *Consider the use of innovative regulatory approaches to reduce regulatory costs while continuing to adequately protect consumers.*

The Bottom Line

The LLLT program offers an innovative way to extend affordable legal services to a potentially large segment of the public that cannot afford traditional lawyers. While the scope of the role is limited and will not be the answer for every legal problem, LLLTs definitely can provide quality legal services to those who need it and also significantly reduce the stress of navigating a foreign process that is complex and daunting.

The LLLT program also offers the possibility of improving the quality of filings in court cases involving self-represented litigants and thus reducing the time and cost required for courts to deal with such cases. The Washington State example suggests that LLLTs and lawyers may form mutually advantageous business relationships, making referrals to each other as appropriate. Since LLLTs appear to assist customers who could not afford lawyers, they do not compete directly with lawyers.

This program should be replicated in other states to improve access to justice. As experience is gained and its program design is optimized, affordable legal services should become widely available to those with needs in areas where the public typically must now use self-representation. By offering low cost legal services, state bar associations will be able to compete directly with for profit businesses operating outside the regulatory umbrella of state justice systems. By doing so, they can ensure that the public has access to quality legal services.

Appendix A. Acknowledgments

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Any errors or omissions that remain are the sole responsibility of the study's authors.



APPENDIX
ATTACHMENT 20

LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A. Purpose. The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribe the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.

B. Definitions. For purposes of this rule, the following definitions will apply:

- (1) “APR” means the Supreme Court’s Admission to Practice Rules.
- (2) “LLLT Board” means the Limited License Legal Technician Board.
- (3) “Lawyer” means a person licensed as a lawyer and eligible to practice law in any United States jurisdiction.
- (4) “Limited License Legal Technician” (LLLT) means a person qualified by education, training, and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations.
- (5) “Paralegal/legal assistant” means a person qualified by education, training, or work experience; who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity; and who performs specifically delegated substantive law-related work for which a lawyer is responsible.
- (6) “Reviewed and approved by a Washington lawyer” means that a Washington lawyer has personally supervised the legal work and documented that supervision by the Washington lawyer’s signature and bar number.
- (7) “Substantive law-related work” means work that requires knowledge of legal concepts and is customarily, but not necessarily, performed by a lawyer.
- (8) “Supervised” means a lawyer personally directs, approves, and has responsibility for work performed by the Limited License Legal Technician.
- (9) “Washington lawyer” means a person licensed and eligible to practice law in Washington and who is an active or emeritus pro bono lawyer member of the Bar.
- (10) Words of authority:
 - (a) “May” means “has discretion to,” “has a right to,” or “is permitted to.”
 - (b) “Must” or “shall” means “is required to.”
 - (c) “Should” means “recommended but not required.”

C. Limited License Legal Technician Board

(1) *Establishment.* There is hereby established a Limited License Legal Technician Board (LLLT Board). The LLLT Board shall consist of 15 voting members appointed by the Supreme

Court, and one nonvoting ex officio member who is a representative of the Washington State Board of Community and Technical Colleges. At least 11 members shall be Washington lawyers, LLLTs, or LPOs. Of those 11 members, at least 9 shall be active lawyers or LLLTs, and no more than 2 may be LPOs, or judicial or emeritus pro bono lawyers or LLLTs. Four members of the LLLT Board shall be Washington residents who do not have a license to practice law. Appointments shall be for staggered three year terms. No member may serve more than two consecutive full three year terms. The validity of the Board's actions is not affected if the Board's makeup differs from the stated constitution due to a temporary vacancy in any of the specified positions.

(2) *LLLTT Board Responsibilities.* The LLLT Board shall be responsible for the following:

(a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;

(b) Working with the Bar and other appropriate entities to select, create, maintain, and grade the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to LLLTs, rules relating to the attorney-client privilege, procedural rules, and substantive law issues related to approved practice areas;

(c) Approving education and experience requirements for licensure in approved practice areas;

(d) Establishing and overseeing committees and tenure of members;

(e) Establishing and maintaining criteria for approval of educational programs that offer LLLT core curriculum; and

(f) Such other activities and functions as are expressly provided for in this rule.

(3) *Rules and Regulations.* The LLLT Board shall propose rules, regulations and amendments to these rules and regulations, to implement and carry out the provisions of this rule, for adoption by the Supreme Court.

(4) *Administration.* The Bar shall provide reasonably necessary administrative support for the LLLT Board. All notices and filings required by these Rules, including applications for admission as an LLLT, shall be sent to the headquarters of the Bar.

(5) *Expenses of the LLLT Board.* Members of the LLLT Board shall not be compensated for their services but shall be reimbursed for actual reasonable and necessary expenses incurred in the performance of their duties according to the Bar's expense policies.

D. [Reserved.]

E. [Reserved.]

F. Scope of Practice Authorized by Limited Practice Rule. The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not render any legal assistance on this issue and shall advise the client to seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may render the following limited legal assistance to a pro se client:

(1) Obtain relevant facts, and explain the relevancy of such information to the client;

(2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;

(3) Inform the client of and assist with applicable procedures for proper service of process and filing of legal documents;

(4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the LLLT Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;

(5) Review documents or exhibits that the client has received and explain them to the client;

(6) Select, complete, file, and effect service of forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the LLLT Board; and advise the client of the significance of the selected forms to the client's case;

(7) Perform legal research;

(8) Draft letters setting forth legal opinions that are intended to be read by persons other than the client;

(9) Draft documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a Washington lawyer;

(10) Advise the client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case;

(11) Assist the client in obtaining necessary records, such as birth, death, or marriage certificates.

(12) Communicate and negotiate with the opposing party or the party's representative regarding procedural matters, such as setting court hearings or other ministerial or civil procedure matters;

(13) Negotiate the client's legal rights or responsibilities, provided that the client has given written consent defining the parameters of the negotiation prior to the onset of the negotiation; and

(14) Render other types of legal assistance when specifically authorized by the scope of practice regulations for the approved practice area in which the LLLT is licensed.

G. Conditions Under Which A Limited License Legal Technician May Provide Services

(1) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a nonlicensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation services;

(2) Prior to the performance of the services for a fee, the Limited License Legal Technician

shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician that includes the following provisions:

(a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b) or specifically authorized by the scope of practice regulations for the approved practice area in which the LLLT is licensed;

(b) Identification of all fees and costs to be charged to the client for the services to be performed;

(c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;

(d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the first page of the contract in minimum twelve-point bold type print;

(e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;

(f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and

(g) Any other conditions required by the rules and regulations of the LLLT Board.

(3) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client should seek the services of a lawyer.

(4) A document prepared by an LLLT shall include the LLLT's name, signature, and license number beneath the signature of the client. LLLTs do not need to sign sworn statements or declarations of the client or a third party, and do not need to sign documents that do not require a signature by the client, such as information sheets.

H. Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

(1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;

(2) Retain any fees or costs for services not performed;

(3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client;

(4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician

possesses professional legal skills beyond those authorized by the license held by the Limited License Legal Technician;

(5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24 or specifically authorized by the scope of practice regulations for the approved practice area in which the LLLT is licensed;

(6) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client;

(7) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;

(8) Conduct or defend a deposition;

(9) Initiate or respond to an appeal to an appellate court; and

(10) Otherwise violate the Limited License Legal Technician Rules of Professional Conduct.

I. Continuing Licensing Requirements

(1) *Continuing Education Requirements.* Each active Limited License Legal Technician must complete a minimum number of credit hours of approved or accredited education, as prescribed by APR 11.

(2) *Financial Responsibility.* Each LLLT shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 28 by:

(a) submitting an individual professional liability insurance policy in the amount of at least \$100,000 per claim and a \$300,000 annual aggregate limit;

(b) submitting a professional liability insurance policy of the employer or the parent company of the employer who has agreed to provide coverage for the LLLT's ability to respond in damages in the amount of at least \$100,000 per claim and a \$300,000 annual aggregate limit; or

(c) submitting proof of indemnification by the LLLT's government employer.

(3) *License Fees and Assessments.* Each Limited License Legal Technician must pay the annual license fee established by the Board of Governors, subject to review by the Supreme Court, and any mandatory assessments as ordered by the Supreme Court. Provisions in the Bar's Bylaws regarding procedures for assessing and collecting lawyer license fees and late fees, and regarding deadlines, rebates, apportionment, fee reductions, and exemptions, and any other issues relating to fees and assessments, shall also apply to LLLT license fees and late fees. Failure to pay may result in suspension from practice pursuant to APR 17.

(4) *Trust Account.* Each active Limited License Legal Technician shall annually certify compliance with Rules 1.15A and 1.15B of the LLLT Rules of Professional Conduct. Such certification shall be filed in a form and manner as prescribed by the Bar and shall include the bank where each account is held and the account number. Failure to certify may result in suspension from practice pursuant to APR 17.

J. Existing Law Unchanged. This rule shall in no way modify existing law prohibiting the unauthorized practice of law.

K. Professional Responsibility and Limited License Legal Technician-Client Relationship

(1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.

(2) Limited License Legal Technicians shall be held to the ethical standards of the Limited License Legal Technician Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.

(3) The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.

L. Confidentiality and Public Records. GR 12.4 shall apply to access to LLLT Board records.

M. Inactive Status. An LLLT may request transfer to inactive status after being admitted. An LLLT on inactive status is required to pay an annual license fee as established by the Board of Governors and approved by the Supreme Court.

N. Reinstatement to Active Status. An LLLT on inactive status may return to active status by filing an application and complying with the procedures set forth for lawyer members of the Bar in the Bar's Bylaws.

O. Voluntary Resignation. Any Limited License Legal Technician may request to voluntarily resign the LLLT license by notifying the Bar in such form and manner as the Bar may prescribe. If there is a disciplinary investigation or proceeding then pending against the LLLT, or if the LLLT has knowledge that the filing of a grievance of substance against such LLLT is imminent, resignation is permitted only under the provisions of the applicable disciplinary rules. An LLLT who resigns the LLLT license cannot practice law in Washington in any manner, unless they are otherwise licensed or authorized to do so by the Supreme Court.

[Adopted effective September 1, 2012; Amended effective August 20, 2013; February 3, 2015; June 21, 2016; September 1, 2017, June 4, 2019.]

REGULATION 1. [Reserved.]

**REGULATION 2. APPROVED PRACTICE AREAS—SCOPE OF PRACTICE
AUTHORIZED BY LIMITED LICENSE LEGAL TECHNICIAN RULE**

In each practice area in which an LLLT is licensed, the LLLT shall comply with the provisions defining the scope of practice as found in APR 28 and as described herein.

A. Issues Beyond the Scope of Authorized Practice.

An LLLT has an affirmative duty under APR 28(F) to inform clients when issues arise that are beyond the authorized scope of the LLLT's practice. When an affirmative duty under APR 28(F) arises, then the LLLT shall inform the client in writing that:

1. the issue may exist, describing in general terms the nature of the issue;
2. the LLLT is not authorized to advise or assist on this issue;
3. the failure to obtain a lawyer's advice could be adverse to the client's interests; and
4. the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's interests.

After an issue beyond the LLLT's scope of practice has been identified, if the client engages a lawyer with respect to the issue, then an LLLT may prepare a document related to the issue only if a lawyer acting on behalf of the client has provided appropriate documents and written instructions for the LLLT as to whether and how to proceed with respect to the issue. If the client does not engage a lawyer with respect to the issue, then the LLLT may prepare documents that relate to the issue if

the client informs the LLLT how the issue is to be determined and instructs the LLLT how to complete the relevant portions of the document, and

above the LLLT's signature at the end of the document, the LLLT inserts a statement to the effect that the LLLT did not advise the client with respect to any issue outside of the LLLT's scope of practice and completed any portions of the document with respect to any such issues at the direction of the client.

B. Domestic Relations.

1. *Domestic Relations, Defined.* For the purposes of these Regulations, domestic relations shall include only the following actions: (a) divorce and dissolution, (b) parenting and support, (c) parentage or paternity, (d) child support modification, (e) parenting plan modification, (f) domestic violence protection orders, (g) committed intimate relationships only as they pertain to parenting and support issues, (h) legal separation, (i) nonparental and third party custody, (j) other protection or restraining orders arising from a domestic relations case, and (k) relocation.

2. *Scope of Practice for LLLT's—Domestic Relations.* LLLTs licensed in domestic relations may render legal services to clients as provided in APR 28(F) and this regulation, except as prohibited by APR 28(H) and Regulation 2(B).

(a) Unless an issue beyond the scope arises or a prohibited act would be required, LLLTs may advise and assist clients with initiating and responding to actions and related motions, discovery, trial preparation, temporary and final orders, and modifications of orders.

(b) LLLT legal services regarding the division of real property shall be limited to matters where the real property is a single family residential dwelling with owner equity less than or equal to twice the homestead exemption (*see* RCW 6.13.030). LLLTs shall use the form for real property division as approved by the LLLT Board.

(c) LLLTs may advise as to the allocation of retirement assets for defined contribution plans with a value less than the homestead exemption, and as provided in United States Internal Revenue Code (IRC) sections 401a; 401k; 403b; 457; and Individual Retirement Accounts as set forth in IRC section 408.

(d) LLLTs may include language in a decree of dissolution awarding retirement assets as described in APR 28 Regulation 2(B)(2)(c) when the respondent defaults, when the parties agree on the award, or when the court awards the assets following trial. The award language in the decree shall identify (1) the party responsible for having the qualified domestic relations order (QDRO) or supplemental order prepared and by whom, (2) how the cost of the QDRO or supplemental order preparation is to be paid, (3) by what date the QDRO or supplemental order must be prepared, and (4) the remedy for failure to follow through with preparation of the QDRO or supplemental order.

(e) LLLTs may prepare paper work and accompany and assist clients in dispute resolution proceedings including mediation, arbitration, and settlement conferences where not prohibited by the rules and procedures of the forum.

(f) LLLTs, when accompanying their clients, may assist and confer with their pro se clients at depositions.

(g) LLLTs may present to a court agreed orders, uncontested orders, default orders, and accompanying documents.

(h) LLLTs, when accompanying their clients, may assist and confer with their pro se clients and respond to direct questions from the court or tribunal regarding factual and procedural issues at the hearings listed below:

i. domestic violence protection orders and other protection or restraining orders arising from a domestic relations case;

ii. motions for temporary orders, including but not limited to temporary parenting plans, child support, maintenance, and orders to show cause;

iii. enforcement of domestic relations orders;

iv. administrative child support;

v. modification of child support;

vi. adequate cause hearings for nonparental custody or parenting plan modifications;

vii. reconsiderations or revisions;

viii. trial setting calendar proceedings with or without the client when the LLLT has confirmed the available dates of the client in writing in advance of the proceeding.

3. *Prohibited Acts.* In addition to the prohibitions set forth in APR 28(H), in the course of rendering legal services to clients or prospective clients, LLLTs licensed to practice in domestic relations:

a. shall not render legal services to more than one party in any domestic relations matter;

b. shall not render legal services in:

i. defacto parentage actions;

ii. actions that involve 25 U.S.C. chapter 21, the Indian Child Welfare Act of 1978, or chapter 13.38 RCW, the Washington State Indian Child Welfare Act;

iii. division or conveyance of formal business entities, commercial property, or residential real property except as permitted by Regulation 2(B);

iv. preparation of QDROs and supplemental orders dividing retirement assets beyond what is prescribed in Regulation 2(B)(2)(d);

v. any retirement assets whereby the decree effectuates the division or the implementation of the division of the asset;

vi. bankruptcy, including obtaining a stay from bankruptcy;

vii. disposition of debts and assets, if one party is in bankruptcy or files a bankruptcy during the pendency of the proceeding, unless: (a) the LLLT's client has retained a lawyer to represent him/her in the bankruptcy, (b) the client has consulted with a lawyer and the lawyer has provided written instructions for the LLLT as to whether and how to proceed regarding the division of debts and assets in the domestic relations proceeding, or (c) the bankruptcy has been discharged;

viii. property issues in committed intimate relationship actions;

ix. major parenting plan modifications and nonparental custody actions beyond the adequate cause hearing unless the terms are agreed to by the parties or one party defaults;

x. the determination of Uniform Child Custody Jurisdiction and Enforcement Act issues under chapter 26.27 RCW or Uniform Interstate Family Support Act issues under chapter 26.21A RCW unless and until jurisdiction has been resolved;

xi. objections or responses in contested relocation actions; and

xii. final revised parenting plans in relocation actions except in the event of default or where the terms have been agreed to by the parties.

REGULATION 3. EDUCATION REQUIREMENTS FOR LLLT APPLICANTS AND APPROVAL OF EDUCATIONAL PROGRAMS

An applicant for admission as an LLLT shall satisfy the following education requirements:

A. Core Curriculum.

1. *Credit Requirements.* An applicant for licensure shall have earned 45 credit hours as required by APR 3. The core curriculum must include the following required subject matters with minimum credit hours earned as indicated:

1. Civil Procedure, minimum 8 credit hours;
2. Contracts, minimum 3 credit hours;
3. Interviewing and Investigation Techniques, minimum 3 credit hours;
4. Introduction to Law and Legal Process, minimum 3 credit hours;
5. Law Office Procedures and Technology, minimum 3 credit hours;
6. Legal Research, Writing and Analysis, minimum 8 credit hours; and
7. Professional Responsibility, minimum 3 credit hours.

The core curriculum courses in which credit for the foregoing subject matters is earned shall satisfy the curricular requirements approved by the LLLT Board and published by the Bar. If the required courses completed by the applicant do not total 45 credit hours, then the applicant may earn the remaining credit hours by taking legal or paralegal elective courses. All core curriculum course credit hours must be earned at an ABA approved law school, an educational institution with an ABA approved paralegal program, or at an educational institution with an LLLT core curriculum program approved by the LLLT Board under the Washington State LLLT Educational Program Approval Standards.

For purposes of satisfying APR 3(e)(2), one credit hour shall be equivalent to 450 minutes of instruction.

2. *LLLT Educational Program Approval Requirements for Programs Not Approved by the ABA.* The LLLT Board shall be responsible for establishing and maintaining standards, to be published by the Association, for approving LLLT educational programs that are not otherwise approved by the ABA. Educational programs complying with the LLLT Board's standards shall be approved by the LLLT Board and qualified to teach the LLLT core curriculum.

B. Practice Area Curriculum. An applicant for licensure in a defined practice area shall have completed the prescribed curriculum and earned course credits for that defined practice area, as set forth below and in APR 3(e). Each practice area curriculum course shall satisfy the curricular requirements approved by the LLLT Board and published by the Bar.

1. *Domestic Relations.*

a. *Prerequisites:* Prior to enrolling in the domestic relations practice area courses, applicants shall complete the following core courses: Civil Procedure; Interviewing and Investigation Techniques; Introduction to Law and Legal Process; Legal Research, Writing, and Analysis; and Professional Responsibility.

b. *Credit Requirements:* Applicants shall complete 5 credit hours in basic domestic relations subjects and 10 credit hours in advanced and Washington specific domestic relations subjects.

C. Required Supplemental Education. The LLLT Board has discretion to require all LLLTs to complete supplemental education in order to maintain their licenses due to changes in the permitted scope of practice for LLLTs. The LLLT Board shall provide notice to LLLTs of the supplemental education requirement and the deadline for completion of the requirement, allowing at least 12 months to complete the required supplemental education. LLLTs may be administratively suspended pursuant to the procedures set forth in APR 17 if they fail to comply with the supplemental education requirements by the stated deadline.

REGULATION 4. LIMITED TIME WAIVERS

A. Limited Time Waiver, Defined. For the limited time between the date the Board begins to accept applications and December 31, 2023, the LLLT Board shall grant a waiver of the minimum associate-level degree requirement and/or the core curriculum education requirement set forth in APR 3 if an applicant meets the requirements set forth in Regulation 4(B). The LLLT Board shall not grant waivers for applications filed after December 31, 2023. The LLLT Board shall not waive the practice area curriculum requirement. The limited time waiver application will be separate from the application process for admission set forth in these regulations.

B. Waiver Requirements and Applications. To qualify for the limited time waiver, an applicant shall pay the required fee, submit the required waiver application form and, provide proof, in such form and manner as the Bar requires, that he/she has:

1. Passed an LLLT Board approved national paralegal certification examination;
2. Active certification from an LLLT Board approved national paralegal certification organization; and
3. Completed 10 years of substantive law-related experience supervised by a licensed lawyer within the 15 years preceding the application for the waiver. Proof of 10 years of substantive-law related experience supervised by a licensed lawyer shall include the following:
 - a. the name and bar number of the supervising lawyer(s),
 - b. certification by the lawyer that the work experience meets the definition of substantive law-related work experience as defined in APR 28, and
 - c. the dates of employment or service.

C. Review of Limited Time Waiver Application. The Bar shall review each limited time waiver application to determine if the application meets the waiver requirements. Any application that does not meet the limited time waiver requirements as established by this Regulation shall be denied by the Bar on administrative grounds, with a written statement of the reason(s) for denial.

D. Review of Denial. An applicant whose application for waiver has been denied by the Bar may request review by the LLLT Board chair. Such request shall be filed with the Bar within 14 days of the date of the notification of denial. The applicant shall be provided with written notification of the chair's decision, which is not subject to review.

E. Expiration of Limited Time Waiver Approval. Approval of the limited time waiver application shall expire December 31, 2025. After expiration of the approval, any subsequent

application for licensure by the applicant shall meet all of the standard requirements for admission without waiver.

REGULATION 5. [Reserved.]

REGULATION 6. [Reserved.]

REGULATION 7. [Reserved.]

REGULATION 8. [Reserved.]

REGULATION 9. SUBSTANTIVE LAW-RELATED WORK EXPERIENCE REQUIREMENT

Each applicant for licensure as a limited license legal technician shall show proof of having completed 3,000 hours of substantive law-related work experience supervised by a licensed lawyer as required by APR 5(c). The experience requirement shall be completed no more than three years before and 40 months after the date of the LLLT practice area examination that the applicant passed. The proof shall be provided in such form as the Bar requires, but shall include at a minimum:

1. the name and bar number of the supervising lawyer;
2. certification that the work experience meets the definition of substantive law-related work experience as defined in APR 28;
3. the total number of hours of substantive law-related work experience performed under the supervising lawyer; and
4. certification that the requisite work experience was acquired within the time period required by this regulation.

REGULATION 10. ADDITIONAL PRACTICE AREAS

A. Application for Additional Practice Area. An LLLT seeking admission in an additional practice area must complete and file with the Bar:

1. a completed practice area application in a form and manner prescribed by the Bar;
2. evidence in a form and manner prescribed by the Bar demonstrating completion of the practice area curriculum required under Regulation 3(B); and
3. a signed and notarized Authorization, Release, and Affidavit of Applicant.

B. Additional Practice Area Prelicensure Requirements. An LLLT who is seeking licensure in an additional practice area shall:

1. take and pass the additional practice area examination;
2. pay the annual license fee as stated in the fee schedule; and
3. file any and all licensing forms required for active LLLTs.

The requirements above shall be completed within one year of the date the applicant is notified of the practice area examination results. If an LLLT fails to satisfy all the requirements for licensure in an additional practice area within this period, the LLLT shall not be eligible for licensure in the additional practice area without submitting a new application and retaking the practice area examination.

C. Order Admitting LLLT to Limited Practice in Additional Practice Area. After examining the recommendation and accompanying documents transmitted by the Bar, the Supreme Court may enter such order in each case as it deems advisable. For those LLLTs it deems qualified, the Supreme Court shall enter an order admitting them to limited practice in the additional practice area.

D. Voluntary Termination of Single Practice Area License. An LLLT licensed in two or more practice areas may request to voluntarily terminate a single practice area by notifying the Bar in writing. After terminating the practice area license, the LLLT shall not accept any new clients or engage in work as an LLLT in any matter in the terminated practice area. The Bar will notify the LLLT of the effective date of the termination.

REGULATION 11. [Reserved.]

REGULATION 12. [Reserved.]

REGULATION 13. [Reserved.]

REGULATION 14. [Reserved.]

REGULATION 15. [Reserved.]

REGULATION 16. [Reserved.]

REGULATION 17. [Reserved.]

REGULATION 18. [Reserved.]

REGULATION 19. [Reserved.]

REGULATION 20. AMENDMENT AND BOARD POLICIES

These Regulations may be altered, amended, or repealed by vote of the LLLT Board on approval of the Supreme Court. The LLLT Board has ongoing authority to adopt policies for the administration of the LLLT program consistent with APR 28 and these Regulations.

[Adopted effective August 20, 2013; Amended effective September 3, 2013; March 31, 2015; June 21, 2016; November 22, 2016; September 1, 2017; June 4, 2019.]



APPENDIX
ATTACHMENT 21

Rule 14-802. Authorization to practice law.

(a) **Application.** Except as set forth in paragraphs (c) and (d), only persons who are active, licensed Bar members in good standing may engage in the practice of law in Utah.

(b) **Definitions.** For purposes of this rule:

(1) "Practice of law" means representing the interests of another person by informing, counseling, advising, assisting, advocating for, or drafting documents for that person through applying the law and associated legal principles to that person's facts and circumstances.

(2) "Law" means the collective body of declarations by governmental authorities that establish a person's rights, duties, constraints, and freedoms and includes:

(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations, and similarly enacted declarations; and

(B) decisions, orders, and deliberations of adjudicative, legislative, and executive bodies of government that have authority to interpret, prescribe, and determine a person's rights, duties, constraints, and freedoms.

(3) "Person" includes the plural as well as the singular and legal entities as well as natural persons.

(c) **Licensed Paralegal Practitioners.** A person may be licensed to engage in the limited practice of law in the area or areas of (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support; (2) forcible entry and detainer; and (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases.

(1) Within a practice area or areas in which a Licensed Paralegal Practitioner is licensed, a Licensed Paralegal Practitioner who is in good standing may represent the interests of a natural person who is not represented by a lawyer unaffiliated with the Licensed Paralegal Practitioner by:

(A) establishing a contractual relationship with the client;

(B) interviewing the client to understand the client's objectives and obtaining facts relevant to achieving that objective;

- (C) completing forms approved by the Judicial Council;
- (D) informing, counseling, advising, and assisting in determining which form to use and giving advice on how to complete the form;
- (E) signing, filing, and completing service of the form;
- (F) obtaining, explaining, and filing any document needed to support the form;
- (G) reviewing documents of another party and explaining them;
- (H) informing, counseling, assisting and advocating for a client in mediated negotiations;
- (I) filling in, signing, filing, and completing service of a written settlement agreement form in conformity with the negotiated agreement;
- (J) communicating with another party or the party's representative regarding the relevant form and matters reasonably related thereto; and
- (K) explaining a court order that affects the client's rights and obligations.

(d) **Exceptions and Exclusions.** Whether or not it constitutes the practice of law, the following activity by a nonlawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

- (1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.
- (2) Providing general legal information, opinions, or recommendations about possible legal rights, remedies, defenses, procedures, options, or strategies, but not specific advice related to another person's facts or circumstances.
- (3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in Utah when no fee is charged to do so.
- (4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

- (5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.
- (6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.
- (7) Representing a party in any mediation proceeding.
- (8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.
- (9) Serving in a neutral capacity as a mediator, arbitrator, or conciliator.
- (10) Participating in labor negotiations, arbitrations, or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.
- (11) Lobbying governmental bodies as an agent or representative of others.
- (12) Advising or preparing documents for others in the following described circumstances and by the following described persons:
 - (A) A real estate agent or broker licensed in Utah may complete state-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.
 - (B) An abstractor or title insurance agent licensed in Utah may issue real estate title opinions and title reports and prepare deeds for customers.
 - (C) Financial institutions and securities brokers and dealers licensed in Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities, and other investments.
 - (D) Insurance companies and agents licensed in Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.
 - (E) Health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

(13) Representing an Indian tribe that has formally intervened in a proceeding subject to the Indian Child Welfare Act of 1978, 25 U.S.C. sections 1901–63. Before a nonlawyer may represent a tribe, the tribe must designate the nonlawyer representative by filing a written authorization. If the tribe changes its designated representative or if the representative withdraws, the tribe must file a written substitution of representation or withdrawal.

(14) Providing legal services under Utah Supreme Court Standing Order No. 15.

Effective September 1, 2020

Advisory Committee Comment:

Paragraph (a).

“Active” in this paragraph refers to the formal status of a lawyer, as determined by the Bar. Among other things, an active lawyer must comply with the Bar’s requirements for continuing legal education.

Paragraph (b).

The practice of law defined in paragraph (b)(1) includes: giving advice or counsel to another person as to that person’s legal rights or responsibilities with respect to that person’s facts and circumstances; selecting, drafting, or completing legal documents that affect the legal rights or responsibilities of another person; representing another person before an adjudicative, legislative, or executive body, including preparing or filing documents and conducting discovery; and negotiating legal rights or responsibilities on behalf of another person.

Because representing oneself does not involve another person, it is not technically the “practice of law.” Thus, any natural person may represent oneself as an individual in any legal context. To the same effect is Article 1, Rule 14-111 Integration and Management: “Nothing in this article shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person’s own interests in a cause to which the person is a party in his or her own right and not as assignee.”

Similarly, an employee of a business entity is not engaged in “the representation of the interest of another person” when activities involving the law are a part of the employee’s duties solely in connection with the internal business operations of the entity and do not involve providing legal advice to another person. Further, a person acting in an official capacity as an employee of a government agency that has administrative authority to determine the rights of persons under the law is also not representing the interests of another person.

As defined in paragraph (b)(2), “the law” is a comprehensive term that includes not only the black-letter law set forth in constitutions, treaties, statutes, ordinances, administrative and court rules and regulations, and similar enactments of governmental authorities, but the entire fabric of its development, enforcement, application, and interpretation.

Laws duly enacted by the electorate by initiative and referendum under constitutional authority are included under paragraph (b)(2)(A).

Paragraph (b)(2)(B) is intended to incorporate the breadth of decisional law, as well as the background, such as committee hearings, floor discussions, and other legislative history, that often accompanies the written law of legislatures and other law- and rule-making bodies. Reference to adjudicative bodies in this paragraph includes courts and similar tribunals, arbitrators, administrative agencies, and other bodies that render judgments or opinions involving a person’s interests.

Paragraph (c).

The exceptions for Licensed Paralegal Practitioners arise from the November 18, 2015 Report and Recommendation of the Utah Supreme Court Task Force to Examine Limited Legal Licensing. The Task Force was created to make recommendations to address the large number of litigants who are unrepresented or forgo access to the Utah judicial system because of the high cost of retaining a lawyer. The Task Force recommended that the Utah Supreme Court exercise its constitutional authority to govern the practice of law to create a subset of discreet legal services in the practice areas of: (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support; (2) unlawful detainer and forcible entry and detainer; and (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases. The Task Force determined that these three practice areas have the highest number of unrepresented litigants in need of low-cost legal assistance. Based on the Task Force’s recommendations, the Utah

Supreme Court authorized Licensed Paralegal Practitioners to provide limited legal services as prescribed in this rule and in accordance with the Supreme Court Rules of Professional Practice.

Paragraph (c)(1)(E).

A Licensed Paralegal Practitioner may complete forms that are approved by the Judicial Council and that are related to the limited scope of practice of law described in paragraph (c). The Judicial Council approves forms for the Online Consumer Assistance Program and for use by the public. The forms approved by the Judicial Council may be found at <https://www.utcourts.gov/ocap/> and <https://www.utcourts.gov/selfhelp/>.

Paragraph (d).

To the extent not already addressed by the requirement that the practice of law involves the representation of others, paragraph (d)(2) permits the direct and indirect dissemination of legal information in an educational context, such as legal teaching and lectures.

Paragraph (d)(3) permits assistance provided by employees of the courts and legal-aid and similar organizations that do not charge for providing these services.

Paragraph (d)(7) applies only to the procedures directly related to parties' involvement before a neutral third-party mediator; it does not extend to any related judicial proceedings unless otherwise provided for under this rule (e.g., under paragraph (d)(5)).



APPENDIX
ATTACHMENT 22

Rule 15-703. Qualifications for Licensure as a Licensed Paralegal Practitioner.

(a) **Requirements of Licensed Paralegal Practitioner Applicants.** The burden of proof is on the Applicant to establish by clear and convincing evidence that she or he:

(a)(1) has paid the prescribed application fees;

(a)(2) has either been granted a Limited Time Waiver under Rule 15-705 or has timely filed the required Complete Application for a Licensed Paralegal Practitioner Applicant in accordance with Rule 15-707;

(a)(3) is at least 21 years old;

(a)(4) has graduated with either:

(a)(4)(A) a First Professional Degree in law from an Approved Law School; or,

(a)(4)(B) an Associate Degree in paralegal studies from an Accredited School or Accredited Program; or

(a)(4)(C) a Bachelor's Degree in paralegal studies from an Accredited School or Accredited Program; or

(a)(4)(D) a Bachelor's Degree in any field from an Accredited School, plus a Paralegal Certificate or 15 credit hours of paralegal studies from an Accredited Program;

(a)(5) if the applicant does not have a First Professional Degree from an Approved Law School, the applicant must have 1500 hours of Substantive Law-Related Experience within the last 3 years, including 500 hours of Substantive Law-Related Experience in temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change if the Applicant is to be licensed in that area, or 100 hours of Substantive Law-Related Experience in forcible entry and detainer or debt collection if the Applicant is to be licensed in those areas.

(a)(6) has successfully passed the Licensed Paralegal Practitioner Ethics Examination;

(a)(7) has successfully passed the Licensed Paralegal Practitioner Examination(s) for the practice area(s) in which the Applicant seeks licensure;

(a)(8) is of good moral character and satisfies the requirements of Rule 15-708;

(a)(9) has a proven record of ethical, civil and professional behavior; and

- (a)(10) complies with the provisions of Rule 15-716 concerning licensing and enrollment fees.
- (b) If the Applicant has not graduated with a First Professional Degree in law from an approved law school, the Applicant must:
- (b)(1) have taken a specialized course of instruction approved by the Board in professional ethics for Licensed Paralegal Practitioners;
 - (b)(2) have taken a specialized course of instruction approved by the Board in each specialty area in which the Applicant seeks to be licensed; and
 - (b)(3) have obtained either the Certified Paralegal (CP or CLA) credential from the National Association of Legal Assistants (NALA); the Professional Paralegal (PP) credential from the National Association of Legal Professionals (NALS); or the Registered Paralegal (RP) credential from the National Federation of Paralegal Associations (NFPA).
- (c) An individual who has been disbarred or suspended in any jurisdiction may not apply for licensure as a Paralegal Practitioner.

Effective December 18, 2019



APPENDIX
ATTACHMENT 23

Rule 15-705. Limited time waiver.

(a) Limited Time Waiver. For the limited time of three years from the date the Bar initially begins to accept LPP applications for licensure, the Bar may grant a waiver of the minimum educational requirements set forth in Rule 15-703 if, within two years from the time the waiver request is submitted, an applicant has established by clear and convincing evidence that the applicant:

(a)(1) has paid the prescribed fees and filed the required Application for a Limited Time Waiver;

(a)(2) is at least 21 years old;

(a)(3) has completed 7 years of Full-time Substantive Law-Related Experience as a Paralegal within the 10 years preceding the application for the waiver, including experience for the practice area in which the Applicant seeks licensure, including 500 hours of Substantive Law-Related Experience in temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support if the Applicant is to be licensed in that area, or 100 hours of Substantive Law-Related Experience in forcible entry and detainer and unlawful detainer or debt collection if the Applicant is to be licensed in those areas. Proof of 7 years of Full-time Substantive Law-Related Experience and the required number of hours in the practice area in which the Applicant seeks licensure shall be certified by the supervising lawyer(s) and shall include the following:

(a)(3)(A) the name and Bar number of the supervising lawyer(s) or supervising Licensed Paralegal Practitioner(s);

(a)(3)(B) certification by the lawyer or Licensed Paralegal Practitioner that the work experience meets the definition of Substantive Law-Related Experience in the practice area in which Applicant will be licensed as defined in Rule 15-701; and

(a)(3)(C) the dates of the applicant's employment by or service with the lawyer(s) or Licensed Paralegal Practitioner(s);

(a)(4) has successfully passed the Licensed Paralegal Practitioner Ethics Examination approved by the Board;

(a)(5) has successfully passed the Licensed Paralegal Practitioner Examination(s) for the practice area(s) in which the Applicant will be licensed;

(a)(6) is of good moral character and satisfies the requirements of Rule 15-708; and

(a)(7) has a proven record of ethical, civil and professional behavior.

Effective November 1, 2018



APPENDIX
ATTACHMENT 24

2018

Access to Justice Through Limited Legal Assistance

Deborah L. Rhode

Kevin Eaton

Anna Porto

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Access to Justice Through Limited Legal Assistance

Deborah L. Rhode,^{*} Kevin Eaton,^{} and Anna Porto^{***}**

This article describes an empirical survey of a limited legal assistance program designed to assist low-income individuals with family law matters. It begins by exploring the need for such research, given the nation's shameful level of unmet legal needs, and the lack of rigorous evaluation of strategies designed to address those needs. The article discussion then describes the methodology of a survey of Alaska Legal Services' limited legal assistance program, and the survey's major findings. Among the most critical conclusions are that limited assistance is a cost-effective use of resources, but that more effort should center on provision of hands-on assistance in form completion. A final section of the article places these findings in the context of broader strategies to increase access to justice for those who need it most.

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INTRODUCTION

For a nation with one of the world's highest concentrations of lawyers, the United States does a shamefully inadequate job of making legal services available to individuals who need those services most.¹ According to the World Justice Project, the United States ranks 94th of 113 countries in the accessibility and affordability of civil justice.² One response to this justice gap has been limited legal assistance programs, which provide services to individuals short of full representation. Although such programs have become the dominant form of civil aid to the poor in the United States, relatively little research has assessed their effectiveness. The study described in this article aims to add to that literature. At the request of the federal Legal Services Corporation [LSC], Stanford law school researchers evaluated the limited legal assistance program for family law cases at one of the legal services offices that the LSC funded. The discussion that follows details the study's findings and recommendations, and places them in the context of other research on limited legal assistance.

That discussion proceeds in four parts. Part I explores the challenges of securing access to justice in the United States, and limited legal assistance as one commonly proposed response. Part II describes the methodology of the survey that we conducted to evaluate one representative limited legal assistance program for the poor. Part III summarizes findings from that survey. Among the most important findings are that limited legal assistance programs can often be cost-effective means by which to secure legal services for low-income individuals, and that some forms of assistance, such as hands-on help with form completion, are more successful than others. Based on these results, Part IV concludes with recommendations for the structure of limited legal assistance initiatives and for further research on their effectiveness.

I. THE CHALLENGE OF ACCESS TO JUSTICE AND THE ROLE OF LIMITED LEGAL ASSISTANCE

A. *The Justice Gap*

The exact extent of unmet legal need in the United States is unknown, but estimates suggest that the numbers are staggering. A 2013 American Bar Foundation survey found that two-thirds of adults had experienced at least one "civil justice situation" in the previous eighteen months.³ These situations included basic human needs, such as those involving debt, housing, and children, and they resulted in significant negative consequences nearly half the time.⁴ Unsurprisingly, poor people were the most likely group to report these situations and their

¹DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* 30 (2015). The United States has the world's second highest per capita number of lawyers, second only to Israel. The American per capita count is created by comparing the ABA's lawyer count with the census count for U.S. citizens. See 'Lawyer Population Survey' (n.1); United States Census Bureau, 'Population Estimates' <www.census.gov/popest/data/historical/>. On Israel, see Drew Combs, *The Global Legal Market: By the Numbers*, AM. LAW., Oct. 23, 2014, at 2, LEXISNEXIS LNSDUID-ALM-AMLAWR-1202671042330).

²U.S. Rank On Access To Civil Justice In Rule Of Law Index Drops To 94th Out Of 113 Countries, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL (Oct. 27, 2016), http://civilrighttocounsel.org/major_developments/217; See AGRAST ET AL., *THE WORLD JUSTICE PROJECT, RULE OF LAW INDEX* 175 (2016).

³REBECCA L. SANDEFUR, AM. BAR FOUND., *ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY* 3, 7 (2014).

⁴*Id.*

accompanying negative consequences but the least likely to resolve them through the legal system.⁵ Of course, just because a problem has not been resolved legally does not mean it has gone unaddressed.⁶ However, other data paint a sobering portrait. Surveys by the federal Legal Services Corporation, for example, have suggested that over four-fifths of the poor's legal needs are unmet, a number that has held steady for more than a decade.⁷ These unresolved legal issues often result in severe hardship to individuals and negative consequences to society at large.⁸ In the context of family law alone, which is the focus of our empirical research here, failure to address unmet legal needs may put at lives at risk through domestic violence, and result in loss of child custody by deserving parents, children left in physically dangerous, psychologically traumatic, or financially inadequate family settings, and related problems.⁹ Taxpayers also pay a price for these broken lives through increased crime, incarceration, emergency medical care and so forth. It is a dispiriting irony that a country that prides itself on its rule of law does so little to make it accessible to those who need it the most.

Part of the problem is that most individuals who encounter the legal system either by choice or by necessity lack legal representation. In state courts, at least one party is without an attorney in more than two thirds of cases.¹⁰ For family law matters, the focus of our study, this number is much higher, with at least one party appearing *pro se* almost eighty percent of the time.¹¹ A variety of factors have contributed to the spike in self-represented litigants. Federal funding for legal services has dramatically decreased over the past three decades, while the availability and need for self-help assistance has dramatically increased.¹² Increased divorce rates, and individuals' desire to maintain control over sensitive personal issues have also

⁵ Russell Engler, *And Justice For All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 *FORDHAM L. REV.* 1987, 2047 n.263 (1999); Sarah Sternberg Greene, *Race, Class and Access to Civil Justice*, 101 *IOWA L. REV.* 1263, 1266 (2016) (citing surveys).

⁶ See Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 *S.C. L. REV.* 443, 451 (2016) (“People are perfectly capable of handling some situations on their own without understanding the legal aspects of those problems, in the sense that the problem is resolved in a way that is roughly consistent with the law but without reference to it or contact with it.”).

⁷ LEGAL SERVICES CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW INCOME AMERICANS* 6 (estimating that eighty-six percent of the civil legal problems reported by low –income Americans in the past year received inadequate or no legal help); See also *LSC Releases Report On Justice Gap In America*, Legal Services Corp., <https://www.lsc.gov/media-center/press-releases/2011/lsc-releases-report-justice-gap-america> (Oct. 17, 2005) (“[A]t least 80% of the civil legal needs of low-income Americans are not being met.”).

⁸ See PASCOE PLEASANCE ET AL., *Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems*, in *TRANSFORMING LIVES: LAW AND SOCIAL PROCESS* 67, 79, 83-85 (2006); Sandefur, *supra* note 6, at 457; Deborah L. Rhode & Scott L. Cummings, *Access to Justice: Looking Back, Thinking Ahead*, 30 *GEO. J LEG. ETHICS* 485, 488 (2017); PASCOE PLEASANCE ET AL., *supra* note 8 at 79, 83-85; Sandefur, *supra* note 6, at 457.

⁹ See DEBORAH L. RHODE, *ACCESS TO JUSTICE* 3 (2004).

¹⁰ Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 *GEO. J. POVERTY L. & POL'Y* 453, 459 (2011); Jed S. Rakoff, *Why You Won't Get Your Day in Court*, *N. Y. REV. BOOKS*, Nov. 24, 2016, at 4.

¹¹ See Michele N. Struffolino, *Taking Limited Representation to the Limits: The Efficacy of Using Unbundled Legal Services in Domestic-Relations Matters Involving Litigation*, 2 *ST. MARY'S J. LEGAL MALPRACTICE & ETHICS* 166, 203 (2012) (“In some states, as many as 80% of cases in family court involve at least one unrepresented party.”).

¹² The federal legal services budget has declined almost 40% over the last three decades. The 1986 budget for the Legal Services Corporation was, in 2014 dollars, \$631,504. LEGAL SERVICES CORP., *LSC BY THE NUMBERS: THE DATA UNDERLYING LEGAL AID PROGRAMS* 3 (2014). The 2016 budget was \$385 million. LEGAL SERVICES CORP., *FISCAL YEAR 2017 BUDGET REQUEST 1*. For access to self-help materials, see BENJAMIN H. BARTON, *GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION* 88-103 (2015).

contributed to the increase in unrepresented parties.¹³ Predictably, a disproportionate number of these family-law litigants are poor people and people of color.¹⁴ Although commentators have labeled the influx of unrepresented litigants a “*pro se* crisis,” it is in fact the new “reality in today’s justice system.”¹⁵

In our view, the appropriate response to these unmet needs is not necessarily to increase the number of lawyers available to provide full legal representation to people of limited means. Rather, the solution lies in finding the most cost-effective way to address their underlying problems. As we will argue later, limited legal assistance, whether available through licensed members of the bar, or other non-law providers and online information services, is part of the answer. But we need additional research to determine what strategies are most effective and efficient in addressing particular needs. This article aims to supply some of the data that are necessary.

B. Strategies for Increasing Access to Justice and the Potential of Limited Legal Assistance

Strategies for addressing the justice gap are not in short supply. They include:

- recognition of a right to counsel in civil cases where fundamental interests are at issue and a lawyer’s assistance is critical to ensure basic fairness (Civil Gideon);¹⁶
- increased pro bono representation by private lawyers;¹⁷
- increased requirements of pro bono services for applicants to the bar;¹⁸
- increased reliance on trained non-lawyers to provide routine legal services;¹⁹

¹³ See, e.g., Russell Engler, *Pursuing Access to Justice and Civil Right to Counsel in a Time of Economic Crisis*, 15 ROGER WILLIAMS U. L. REV. 472 (2010).

¹⁴ Russell Engler, *Reflections On A Civil Right To Counsel And Drawing Lines: When Does Access To Justice Mean Full Representation By Counsel, And When Might Less Assistance Suffice?* 9 SEATTLE J. SOC. JUST. 97, 99 (2011).

¹⁵ Marsha M. Mansfield, *Litigants Without Lawyers: Measuring Success in Family Court*, 67 HASTINGS L.J. 1389, 1392 (2016). Indeed, legal aid offices and pro bono organizations recognized the prevalence of pro se litigants “decades ago.” D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Philip Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 911 (2013). In 2000, the Conference of State Court Administrators concluded that “the recent surge in self-represented litigation is unprecedented and shows no signs of abating.”

¹⁶ For discussion of the origins of and limitations of a right to counsel, see Rhode, *supra* note 1, at 51; see also Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 FORDHAM URB. L.J. 37, 43 (2010). The American Bar Association has supported a resolution in favor of appointing counsel in areas of “basic human need,” defined as shelter, sustenance, safety, health, and child custody. AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES 13 (2006).

¹⁷ Only a third of lawyers report meeting the ABA’s aspirational standard of 50 hours a year. AM. BAR ASS’N, SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS VI (2013); MODEL RULES OF PROF’L CONDUCT r. 6.1 (AM. BAR ASS’N 2015). See also Deborah L. Rhode, *Equal Justice Under Law: Connecting Principle to Practice*, 12 WASH. U. J.L. & POL’Y 47, 62 (2003) (“It is a professional disgrace that pro bono service occupies less than one percent of lawyers’ working hours.”).

¹⁸ For instance, New York currently requires applicants for admission to the New York bar to have completed 50 hours of pro bono services. 22 NYCRR 520.16 (2015) (Pro bono requirement for bar admission). California has considered adding a similar requirement.

www.abajournal.com/news/article/following_new_yorks_lead_california_bar_officials_plan_to_require_pro_bono/.

¹⁹ See RHODE, *supra* note 1, at 40 (noting that “from the standpoint of the public, the objective is more access to justice, not necessarily to lawyers”).

- technological innovations that enable individuals to more readily access legal forms and assistance online;²⁰ and
- online dispute resolution, which allows litigants to resolve problems outside of the courtroom using web-based programs powered by algorithms.²¹

The organized bar, however, has been hostile to many of the strategies involving technology and non-lawyers that undercut its market for legal services.²²

One critical strategy for increasing access to justice has involved limited “unbundled” legal assistance that provides less than full representation to clients.²³ These services include providing brief advice, drafting letters and complaints, helping complete forms, making telephone calls, or some combination of these. State courts, ethical authorities, and bar associations have generally embraced such assistance as a way not only to help *pro se* litigants but also to reduce the burden that they place on the judicial system.²⁴ In 2002, the American Bar Association (ABA) amended its Model Rules of Professional Conduct to explicitly authorize unbundled legal services.²⁵ States have also altered other ethical rules to address potential dilemmas arising from limited representation.²⁶

Given the resource constraints facing legal aid offices, and the bar’s growing acceptance of limited legal services, they are now the primary form of assistance at these offices across the country.²⁷ Currently, nearly every state has at least one formal program offering unbundled legal assistance, and limited legal services are also offered at clinics, and through hotlines and websites.²⁸ Most commonly, unbundled *pro se* assistance is available at court-based self-help centers, which give “in-person advice, document assistance and web-based information” to nearly 3.7 million people each year.²⁹ Family law, child support, and domestic violence cases are the primary cases in which self-help centers offer assistance.³⁰

The LSC, the primary funder of legal services for low-income individuals, has also embraced *pro se* assistance.³¹ Such assistance is the primary offering at LSC grantee offices. In 2014, LSC attorneys provided “counsel and advice” in sixty percent of cases, but offered

²⁰ RHODE & CUMMINGS, *supra* note 8, at 490.

²¹ For example, new “apps” help low-income individuals navigate legal proceedings and connect them with free or low-cost lawyers. Joe Dysart, *20 Apps to Help Provide Easier Access to Legal Help*, A.B.A. J. (Apr. 1, 2015), http://www.abajournal.com/magazine/article/20_apps_providing_easier_access_to_legal_help.

²² See Benjamin H. Barton & Deborah Rhode, *Legal Services Regulation in the United States: A Tale of Two Models*, in INTERNATIONAL PERSPECTIVES ON THE REGULATION OF LAWYERS AND LEGAL SERVICES, 27 (Andrew Boone ed., 2017); Deborah L. Rhode & Lucy Ricca, *Unauthorized Practice Enforcement: Protection of the Public or the Profession*, 82 FORDHAM L. REV. 2587, 2588 (2014); Richard Zorza & David Udell, *New Roles for Non-Lawyers to Increase Access to Justice*, 41 FORDHAM URB. L.J. 1259, 1278 (2014).

²³ *Pro se* assistance may include providing a client advice, drafting a single court document, or representing a client in a specific proceeding. These limited actions comprise the “entire lawyering relationship,” and the client proceeds *pro se* the rest of the action. See Steinberg, *supra* note 10, at 461.

²⁴ Greiner et al., *supra* note 15, at 912.

²⁵ Struffolino, *supra* note 11, at 215.

²⁶ Greiner et al., *supra* note 15, at 912.

²⁷ See generally Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L.Q. 421 (1994).

²⁸ See JOHN M. GREACEN, MICH. ST. BAR FOUND., RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE “STATE OF THE ART” 44 (2011).

²⁹ Mansfield, *supra* note 15, at 1393-94.

³⁰ AM. BAR ASS’N, THE SELF-HELP CENTER CENSUS: A NATIONAL SURVEY 15 (2014).

³¹ The Legal Services Corporation supports 812 offices across the country. LEGAL SERVICES CORP., LSC BY THE NUMBERS: THE DATA UNDERLYING LEGAL AID PROGRAMS 1 (2015).

“extensive services” in less than four percent of cases.³² LSC hotlines are a common way that this brief advice is available to low-income clients.³³ Operated in nearly every state, these hotlines allow clients to receive answers to legal questions from attorneys and paralegals, and provide referrals to other lawyers for fuller assistance.³⁴

Limited legal services have obvious appeal. Maximizing the numbers of individuals who receive assistance appears to be an efficient way of allocating limited funds. It enabled LSC grant recipients to serve nearly 1.9 million people in 2014 while spending only about \$5.40 per eligible client.³⁵ Given that an increase in government funding for legal services appears unlikely in today’s political climate, offering limited services seems better than offering nothing at all to the vast majority of people in need of assistance.³⁶

Yet the proliferation of limited legal services raises important questions about how effectively they address the justice gap. Some criticize limited legal services for low-income people as institutionalizing a system that fails to advance their collective interests and the need for societal reforms.³⁷ Programs that assist individuals in responding to an eviction notice or filling out divorce forms will not bring structural changes that address systemic poverty. A second concern is that limited services institutionalize apartheid justice: partial services for the poor and full representation for those who can afford it.³⁸

These are legitimate concerns. But the question is always, compared to what? The problems to which limited service programs respond involve fundamental, urgent needs. Unrepresented parties in family law cases may forfeit vital resources such as maintenance and child support, and may have difficulty securing essential protection from domestic violence.³⁹ It is by no means clear that the poor would be better off if the resources now invested in limited assistance for hundreds of thousands of individual legal needs were diverted to more social impact litigation. With respect to the second concern involving the effectiveness of such assistance, we lack sufficient well-designed research that speaks to the issue, as the following discussion indicates.

³² *Id.* at 16.

³³ *Id.* at i.

³⁴ Steinberg, *supra* note 10, at 463.

³⁵ LEGAL SERVICES CORP., *supra* note 7 at 2, 9.

³⁶ Greiner et al., *supra* note 15, at 912.

³⁷ *See, e.g.*, Colleen F. Shanahan, Anna E. Carpenter & Alyx Mark, *Can a Little Representation Be a Dangerous Thing?*, 67 HASTINGS L.J. 1367, 1376 (2016).

³⁸ Similar criticisms have been raised about allowing non lawyers to perform legal tasks. *See, e.g.*, *Washington Supreme Court Adopts Limited Practice Rule for “Legal Technicians”*, ATJ WEB (July 16, 2012), <http://www.atjweb.org/washington-supreme-court-adopts-limited-practice-rule-for-legal-technicians/> (noting that a Washington state rule allowing non-lawyers to provide services “may create a ‘two-tiered’ system of justice, where only people of financial means have access to comprehensive legal assistance, while poorer individuals are ‘relegated to a system that does not provide the full measure of service and justice to which all should be entitled’”); Rita L. Bender & Paul A. Bastine, *Legal Technicians: Myths and Facts*, 62 WASH. ST. BAR NEWS 23, 25 (June 2008) (arguing non-lawyers would provide “second-class representation” because “they cannot appear in court or negotiate a case”).

³⁹ Mansfield, *supra* note 15, at 1392; Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U.J. GENDER SOC. POL’Y & L. 499, 511-12 (2003). *See* the discussion in the text accompanying notes *infra*.

C. Prior Research on the Effectiveness of Limited Legal Services

Although limited legal services have become increasingly prevalent, research assessing their effectiveness remains sparse. The few studies that have evaluated such assistance for *pro se* parties have significant methodological limitations. Often, the studies do not randomly assign participants to receive limited legal assistance (rather than full-representation or no representation).⁴⁰ As a result, the research does not control for characteristics that may lead a client to seek assistance and influence its outcome. Moreover, these non-randomized studies do not account for the merits of a client's case, which may affect the likelihood that an individual will seek and secure assistance in the first place.⁴¹ However, despite these limitations, such studies provide some data about parties' objective outcomes and subjective experiences. Accordingly, we review both non-randomized and randomized studies that bear on the effectiveness of legal representation in general and limited services in particular.

Non-randomized studies have reached mixed results, but those involving family law matters suggest that full legal representation significantly improves outcomes.⁴² For example, a 1992 study of California families found that whether a client was represented influenced legal custody arrangements.⁴³ A 2006 Maryland study similarly found that representation affected the type of custody granted, especially in contested cases.⁴⁴ Mothers were awarded sole custody in 54.8% of cases where they were the *only* represented party, but were awarded sole custody in only 13.4% of cases where the fathers had representation and the mothers did not.⁴⁵ Research on domestic violence cases suggests that representation has an even more extreme impact on outcomes. Women with lawyers had an 83% success rate in obtaining a protective order, while women without lawyers received protective orders only 32% of the time.⁴⁶

Non-randomized studies on the satisfaction of legal aid recipients across multiple substantive areas yield conflicting results. A 2016 study of self-represented family law litigants in Wisconsin compared two groups of family law cases: one where neither party was represented by counsel, and another where self-represented parties received legal assistance from students at a family court clinic.⁴⁷ Litigants who had student-provided aid reported that they were more likely to successfully complete their legal actions and these litigants also expressed greater satisfaction with the legal process.⁴⁸ By contrast, other non-randomized studies have found that

⁴⁰ Engler, *supra* note 16, at 85-86.

⁴¹ *Id.*

⁴² Because our empirical study involved family law assistance, our review of research here also focuses on family cases. However, some studies in other substantive areas reach similar results. Non-randomized studies of tenants in housing court, for example, suggest that representation can decrease rates of eviction. *See id.* at 46-66. In small claims court cases, whether a party was represented was critical to the party's favorable judgment and the size of the award. *Id.*

⁴³ *See generally* ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* (1992).

⁴⁴ WOMEN'S LAW CTR. OF MD., *FAMILIES IN TRANSITION: A FOLLOW-UP STUDY EXPLORING FAMILY LAW ISSUES IN MARYLAND* 48 (2006).

⁴⁵ *Id.*

⁴⁶ Murphy, *supra* note 39, at 511-12. Presumably the individuals without lawyers did not receive other legal assistance, but the study does not discuss the possibility.

⁴⁷ Mansfield, *supra* note 15, at 1391.

⁴⁸ *Id.* at 1416.

limited assistance had no impact on case outcomes.⁴⁹ A UCLA study evaluated the effectiveness of a self-help center in a Los Angeles county courthouse.⁵⁰ The study compared outcomes of tenants who had received limited assistance from the center with tenants who had received no legal assistance. The study found that clients receiving aid “fare[d] no better (and no worse)” than housing court litigants in the general population.⁵¹ A 2009 study in a California county court reached a similar conclusion.⁵² It found that “recipients of unbundled aid fared no better than their unassisted counterparts in ultimate outcomes,” while those who received full representation fared substantially better.⁵³

The few existing randomized studies of full legal representation also have mixed findings but generally suggest that having a lawyer improves outcomes.⁵⁴ One study of New York City’s Housing Court compared a group of low-income tenants who were represented by legal counsel with a control group of tenants who proceeded *pro se* and found that legal representation had a strong, positive effect on the tenants’ outcomes: only 22% of represented tenants had final judgments entered against them, compared to 51% of unrepresented tenants.⁵⁵ The researchers attributed this discrepancy “solely to the presence of legal counsel,” and because the study was randomized, they concluded the results were “independent of the merits of the case.”⁵⁶

Only two randomized studies have evaluated the effect of limited legal services on client outcomes, and their results are less conclusive. In the first study (“District Court Study”), Massachusetts tenants seeking legal assistance in housing litigation were randomly assigned to two groups. The first group received limited help from a clinic that assisted clients in filling out

⁴⁹ For other examples of observational studies evaluating the effectiveness of unbundled legal assistance, see SHOSHABBA ERLICH & LANAE DAVIS, AARP, LEGAL HOTLINES CLIENT OUTCOME STUDY (2006), available at <http://legalaidresearch.org/wp-content/uploads/aarp-legal-hotlines-client-outcome-study-2006.pdf>; BONNIE ROSE HOUGH, EVALUATION OF INNOVATIONS DESIGNED TO INCREASE ACCESS TO JUSTICE FOR SELF-REPRESENTED LITIGANTS, available at <https://www.srln.org/system/files/attachments/Evaluation%20of%20Innovations%20Designed%20to%20Increase%20Access%20to%20Justice.pdf>; FERN A. FISHER ET AL., VOLUNTEER LAWYER FOR A DAY PROJECT REPORT: A TEST OF UNBUNDLED LEGAL SERVICES IN THE NEW YORK CITY HOUSING COURT (2008), available at https://www.nycourts.gov/courts/nyc/housing/pdfs/vlfdreport_0208.pdf.

⁵⁰ EMPIRICAL RESEARCH GROUP, UCLA SCHOOL OF LAW, EVALUATION OF VAN NUYS LEGAL SELF-HELP CENTER, FINAL REPORT (2001).

⁵¹ *Id.* at 3.

⁵² Steinberg, *supra* note 10, at 482.

⁵³ *Id.* Tenants who received unbundled aid did significantly outperform unassisted tenants in “evading default judgment and in asserting valid, doctrinally cognizable defenses to their eviction,” although this did not ultimately produce better substantive results.

⁵⁴ One study comparing represented and unrepresented individuals in unemployment proceedings found that those who were represented had worse outcomes than those who were not. D. James Greiner & Cassandra Wollos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118, 2125 (2012). A study of attorneys’ impact in American juvenile cases found that in one city, the presence of an attorney had “a profound impact on the outcomes of cases,” while in another city, “no significant differences appear between the adjudicative results reached in the experimental and control groups.” W. VAUGHAN STAPLETON & LEE E. TEITELBAUM, IN DEFENSE OF YOUTH: A STUDY OF THE ROLE OF COUNSEL IN AMERICAN JUVENILE COURTS 67 (1972).

⁵⁵ Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment*, 35 L. & SOC’Y REV. 419 (2001).

⁵⁶ *Id.* at 429. Critics, however, have questioned the extent to which the findings can be generalized, given certain limitations in the study’s methodology. See John Pollock & Michael Greco, *It’s not Triage if the Patient Bleeds Out*, 161 U. PENN. L.R. 40, 47, n.40 (2012); Jeffrey Selbin et al., *Service Delivery, Resource Allocation, and Access to Justice: Greiner and Pattanayak and the Research Imperative*, 122 YALE L.J. ONLINE 45, 51 (2012).

answer and discovery request forms, while the second received full legal representation. The study found that the first group fared substantially *worse* than the fully-represented group, both in terms of retaining possession of their units and achieving positive financial outcomes.⁵⁷

The second study (“Housing Court Study”) randomly divided tenants in a Massachusetts housing court into two groups: one receiving full representation and one receiving limited assistance.⁵⁸ This study found that full representation did not affect the outcome of the case: the individuals who received limited assistance achieved roughly the same results in terms of financial outcome and retaining possession of their housing as those who received full representation.⁵⁹

How to interpret these findings is not self-evident. One possibility is that limited assistance was as effective as full representation. Another possibility is that neither the limited assistance program nor the one offering full representation was particularly effective. This second explanation is bolstered by the fact that the success rate for both groups was far lower than the success rate for the full representation group in the District Court Study.⁶⁰ The authors of the Housing Court Study attribute its low success rate for clients with attorneys to those attorneys’ “non-confrontational style.”⁶¹ This litigation approach may have been insufficiently assertive to protect the clients’ rights.⁶²

The most definitive conclusion from this body of research is the need for more rigorous studies. The conflicting outcomes, methodological limitations, and competing explanations of prior work underscore the need for more data. Even non-randomized studies, however, can provide valuable insights into parties’ experience with limited legal assistance, which affects the legitimacy of the justice system.

II. METHODOLOGY

To gain a better understanding of the effectiveness of limited legal assistance for low-income individuals, we wanted to find a legal services office that operated such a program and was interested in cooperating with researchers. James Sandman, President of the Legal Services Corporation, put us in touch with Alaska Legal Services Corporation (ALSC). ALSC provided an ideal research forum because it was very receptive to our interests and interested in improving the provision of legal services in their state. In addition, Alaska was an ideal forum for our study given that “[it] is the geographically largest, least densely populated, and most ethnically diverse state in the U.S.”⁶³ ALSC’s director, Nikole Nelson, agreed to provide us with contact information for individuals who sought assistance regarding family law matters in 2014 and 2015 and who either received limited services or no services at all. A randomized survey was not possible because ALSC uses merit-related criteria to determine who receives limited legal assistance and who does not. Because of limited resources, ALSC considers not only income, but

⁵⁷ Greiner et al., *supra* note 15 at 912.

⁵⁸ D. James Greiner et al., *How Effective are Limited Legal Assistance Programs? A Randomized Experiment in Massachusetts Housing Court* (Sept. 1, 2012) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1880078.

⁵⁹ *Id.* at 1.

⁶⁰ John Pollack, *Recent Studies Compare Full Representation to Limited Assistance in Eviction Cases*, 42 NAT’L HOUSING L. BULL. 72, 75 (2012).

⁶¹ Greiner et. al., *supra* note 58, at 47.

⁶² *Id.* at 48.

⁶³ Stacey Marz, Mara Kimmel, & Miguel Willis, *Alaska’s Justice Ecosystem, Building a Partnership of Providers*, www.courtrecords.alaska.gov/webdocs/jfa/docs/plan.pdf.

also other criteria, including the merits of the case and whether the office has classified the matter at issue as a high, medium, or low priority.⁶⁴

We chose to study family law because it is an area of huge unmet need, often involving concerns of enormous personal significance, and is an area where limited assistance is common. For example, recent statistics from Alaska indicate that family law cases have constituted “nearly 25% of the caseload of judges for a number of years, and over 75% of these cases have involved self-represented litigants.”⁶⁵ The large number of *pro se* parties helps explain in part why limited assistance is becoming more common in family law cases, and why a focus on this area seemed appropriate.

Between 2015 and 2016, Stanford students enrolled in a policy lab course attempted to conduct telephone interviews with enough individuals to generate a sample of at least one hundred respondents.⁶⁶ Jonathan Berry-Smith, Robert Curran, Kevin Eaton, Akiva Friedlin, Cindy Garcia, Zach Glubiak, Anna Porto, Lauren Schneider, Laura Vittet-Adamson, and Tamar Weinstock succeeded in reaching that goal. The final sample consisted of 112 individuals: 71 had received limited legal assistance (LLA recipients) and 41 received no services.⁶⁷ Seventy-percent were female, 47% were white, 81% had incomes below 150% of the federal poverty line, 32% were American Indian or Native Alaskan, 8% were African-American, 5% were Hispanic, and 4% were Asian/Pacific Islander.⁶⁸

This Stanford study was limited by a number of factors. No interviews were conducted with unrepresented parties who did not receive aid. Nor did the study directly compare individual outcomes of those assisted by the clinic with those that were unrepresented, because some unrepresented litigants opposed represented parties, who were excluded from the data. Furthermore, some individuals that sought the clinic’s assistance did not proceed with a court action, but were simply looking for advice. Still, the study provides useful insights into the effectiveness of limited advice services and strategies that could improve them.

⁶⁴ See *Eligibility*, ALASKA LEGAL SERV. CORP., <http://www.alsc-law.org/eligibility> (specific office priority checklists, classifying a range of issues as high, medium, or low priority, is available on request) (last visited Mar. 4, 2018).

⁶⁵ Stacey Marz, *Early Resolution for Family Law Cases in Alaska’s Courts*, 31 ALASKA JUSTI. F. 13 (2014).

⁶⁶ Stanford Law School offers over twenty policy practicums that enable students to work on pressing issues for actual clients in a wide variety of substantive areas. See *Law & Policy Lab*, STAN. L. SCH., <https://law.stanford.edu/education/only-at-sls/law-policy-lab> (last visited Mar. 4, 2018).

⁶⁷ Deborah Rhode et al., *Measuring and Improving Limited Legal Advice* (Aug. 2016), available at <https://law.stanford.edu/wp-content/uploads/2017/03/ALSC-Briefing-Paper-Final.pdf> [hereinafter *Measuring and Improving Limited Legal Advice Report*]. In acquiring the sample pool, students made multiple efforts to reach individuals, and ultimately were able to contact about a quarter of those who had sought aid from ALSC. Of the individuals contacted, 90% agreed to be interviewed.

⁶⁸ *Id.* at 17. One percent of the sample reported being multiracial and four percent did not report race.

The Nature and Effectiveness of Limited Assistance Programs

As Table 1 indicates, respondents sought assistance on an array of family matters, with custody and visitation constituting almost half (49%) of all of the cases. Many sought aid on multiple issues.

Table 1: Distribution of Case Types

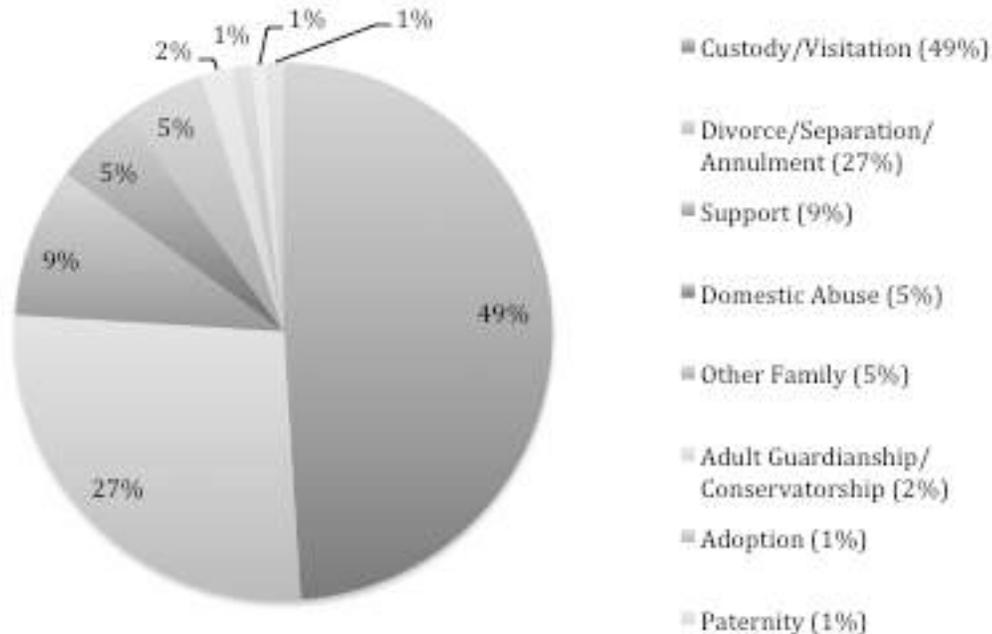


Table 1: Breakdown by type of case: Custody/Visitation (55 cases, 49% of respondents); Divorce/Separation/Annulment (30 cases, 27% of respondents); Support (10 cases, 9% of respondents); Domestic Abuse (6 cases, 5% of respondents); Other Family (6 cases, 5% of respondents); Adult Guardianship/Conservatorship (2 cases, 2% of respondents); Adoption (1 case, 1% of respondents); Paternity (1 case, 1% of respondents); Other (1 case, 1% of respondents).

One-third of respondents did not have any other source of legal help: 29% of those receiving limited legal assistance and 41% of those who received no assistance from Alaska Legal Services Corporation were in this group of no help.⁶⁹ The primary additional or alternative source of assistance was the Internet (21%), followed by another legal services organization (19%), a private lawyer (17%) and the Alaska Family Law Self Help Center (7%).⁷⁰

The most common form of limited legal assistance provided by Alaska Legal Services Corporation was legal advice, which almost three quarters (71%) of LLA respondents indicated receiving, and the other most frequent type of help involved assistance with forms.⁷¹ ALSC lawyers and staff either directed the individual to the correct forms (21%) or helped them

⁶⁹ *Id.* at 20-21.

⁷⁰ *Id.* at 22.

⁷¹ *Id.*

complete those forms (18%).⁷² Over 85% of the individuals who received advice understood it and nearly 71% reported following it.⁷³ Some respondents decided to pursue their case despite advice not to. For example, two of these individuals advanced custody claims that ALSC lawyers thought unlikely to succeed. Other respondents failed to follow advice because they became overwhelmed, encountered other difficulties (such as medical problems), or were confused or unable to remember what to do next.⁷⁴

Although most limited assistance involved advice and identification of the right forms, the aid that respondents found most useful was hands-on-help in filling out the forms. Throughout the study, and especially in the divorce and custody cases, respondents consistently rated highly assistance with legal forms (selection, completion, and filing).⁷⁵ Less than a quarter (22%) listed any part of the assistance provided by ALSC as unhelpful, and the vast majority of individuals who did so indicated that their displeasure was not with ALSC itself, but rather with the fact that they ultimately did not achieve the outcome they sought.⁷⁶

By contrast, recipients of other forms of limited assistance, such as oral advice, had nearly double the rate of negative perceptions of the help they received compared with recipients of assistance in form completion (44% versus 22%).⁷⁷ Some respondents expressed frustration because they had followed ALSC advice to retain an attorney, but that individual was unable to resolve their case.⁷⁸

Another striking difference between individuals who received concrete assistance with forms and other limited service recipients was in the rates of follow-through and reported positive outcomes. Tables 2 and 3 show the comparison in these rates between the general population of limited legal assistance respondents and those respondents who received help filling out forms.

⁷² *Id.* Trained paralegals provided some of this assistance completing forms. However, ALSC only has four paralegals on staff statewide, so most of the assistance in completing forms came from ALSC attorneys.

⁷³ *Id.* at 24.

⁷⁴ *Id.* at 38-40.

⁷⁵ *Id.* at 47.

⁷⁶ See Deborah Rhode et al., Data on Improving Limited Legal Advice, 2015-2016 [hereinafter ALSC Data Set] (unpublished data set) (on file with authors). A number of respondents expressed gratitude for the aid they received in filling out forms that they found complicated; some noted that staff had even helped type the forms. Other respondents reported benefitting from ALSC's periodic group workshops where attorneys guided several individuals through the same process (i.e. filling out an application for a temporary restraining order).

⁷⁷ *Id.*

⁷⁸ See Measuring and Improving Limited Legal Advice Report, *supra* note 67, at 45.

Table 2: Correlation between Type of Assistance and Outcome

		Ask client: "It sounds to me from what you are saying that overall, the outcome was ..." [In...]			Total
		Positive	Negative	"Not much has changed"	
What did happen when you contacted Alaska Legal Services?	Advice	24	10	15	49
	Gave me forms	18	6	4	28
	Helped complete forms	18	4	2	22
	Wrote letter(s)	2	1	0	3
	Made phone calls	5	2	1	8
	Referral	3	1	0	4
	Other	2	3	4	9
	Total	33	16	19	68

Table 3: Outcome Rates

	Follow-Through on ALSC Advice	Reported Positive Outcome
LLA Respondents (General)	75%	47%
LLA Respondents (Forms)	95%	72%

Comparison of Follow-Through and Case Outcome Rates for General LLA Respondents and LLA Respondents who obtained help in the form of filling out forms.

For many respondents, general legal advice about what to do and what forms to fill out was only minimally helpful. As one individual put it, “legal advice was just advice;” she was hoping for more “hands-on help with filling out the forms.”⁷⁹ Other respondents indicated that merely identifying which form to fill out was not much use because the forms themselves were complicated and involved legal jargon that they could not understand. About 15% could not understand the advice that they received, and about 30% lacked the ability to follow through on advice.⁸⁰ As one respondent explained, Alaska Legal Services staff “did everything they could. But, the issue that they helped most on was just the tip of the iceberg.”⁸¹

The individuals who found legal advice most helpful tended to be those who had experienced domestic violence. Respondents indicated particular appreciation that Alaska Legal

⁷⁹ Telephone Interview with participant (Fall 2015).

⁸⁰ See Measuring and Improving Limited Legal Advice Report, *supra* note 67, at 25-26.

⁸¹ Telephone Interview with participant (Fall 2015).

Services staff did not “make them feel less than” [others] because of their life experiences,” and one respondent noted that their help “provided a needed level of moral support” and the knowledge that they could “call someone for help.”⁸² Another survivor noted that the aid from ALSC gave her the confidence to “push forward [a claim] for custody at a time when [she] was emotionally vulnerable.”⁸³ For many of those respondents, having an attorney listen to them with compassion and insight provided benefits regardless of the outcome of their legal case.

For other individuals, however, advice was not enough. The disparity between understanding the advice received and following through on that advice was particularly pronounced for certain demographic groups and for certain types of cases. For instance, of those individuals who had been a victim of domestic violence, almost all (96%) reported understanding the advice they received, but just over three quarters of them actually followed through.⁸⁴ Others were hesitant to pursue action out of fear of retaliation.

This disparity between understanding and pursuing advice was also pronounced in divorce cases. Although every respondent seeking a divorce case reported understanding the legal advice provided, only two-thirds followed through on that advice. Of those who did not, almost all explained that they were “not really ready for divorce.”⁸⁵

Alaska’s rural population also encountered particular difficulties when advice only was available. ALSC only has permanent divisions in major population centers such as Fairbanks and Juneau. As a consequence, rural residents had less access to the hands-on form-related assistance that was most likely to be useful. Although rural and non-rural respondents reported receiving general legal advice at similar rates, only 20% of rural respondents reported getting help filling out forms compared to 33% of other LLA recipients.⁸⁶ The vast majority of rural recipients of LLA reported that their primary forms of assistance were information about what the legal process was going to be like and/or what issues would be most important (70%) and what forms to fill out (40%).⁸⁷ Moreover, because of their geographical isolation, rural respondents received most of their assistance by phone, rather than in person, which increased their difficulties in understanding the advice received. Although 89% of non-rural respondents reported understanding the advice they received, only 78% of rural respondents had that same understanding of the advice that they received.⁸⁸

Compounding this problem was the inaccessibility of other forms of reliable legal assistance for rural residents. Table 4 compares the kind of legal help apart from Alaska legal services between rural and non-rural limited legal assistance respondents.

Table 4: Outside Help For Rural and Non-Rural Residents

Source of Outside Help	Non-Rural LLA	Rural LLA
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⁸² Telephone Interview with participant (Fall 2015).

⁸³ Telephone Interview with participant (Fall 2015).

⁸⁴ See ALSC Data Set, *supra* note 76.

⁸⁵ Telephone Interview with participant (Fall 2015).

⁸⁶ See ALSC Data Set, *supra* note 76.

⁸⁷ Deborah Rhode et al., *Measuring and Improving Limited Legal Advice* (Aug. 2016) 29-30, available at <https://law.stanford.edu/wp-content/uploads/2017/03/ALSC-Briefing-Paper-Final.pdf>.

⁸⁸ *Id.*

Another Legal Services Organization	27%	12.5%
Private Lawyer	22%	12.5%
Internet	22%	25%
Court Officials	11%	25%
Friends or Family	11%	25%
NONE	24%	63%

Comparison of Outside Help Rates between Rural and Non-Rural LLA Respondents. Percentages in each column will exceed 100% because respondents, naturally, indicated in many cases that they received outside help from more than one source.

As Table 4 shows, rural respondents were less likely to seek additional help than their non-rural counterparts and were less likely to get the most reliable forms of assistance, such as aid from another legal service organization or a private attorney.

From the limited data available in our sample, race was generally not a particularly significant factor in determining the effectiveness of limited legal assistance except with respect to the small number of African-Americans in the sample.⁸⁹ As Tables 5 and 6 indicate, whites and non-whites had somewhat different rates of understanding (91% versus 81%) and following advice (66% and 76%). However, the cross-tabulations below were not statistically significant and the disparity that was observed was smaller between whites and non-whites than between other groups such as rural and non-rural respondents.⁹⁰

Table 5: Correlation Between Race and Ethnicity and Comprehension

		Client Ethnicity [As indicated on the intake form]							Total
		Not Reported	Multiple	White	Hispanic	African American	Native American	Pacific Islander	
Did you understand the advice you received?	Yes	2	0	29	2	1	19	2	55
	No	0	0	3	0	1	4	0	8
Total		2	0	32	2	2	23	2	63

⁸⁹ *Id.* at 32. Only four of the respondents were African American.

⁹⁰ *Id.* at 29-30, 32. Moreover, caution is warranted in reading too much into the disparity observed between whites and non-whites because the non-white sample includes six racial and ethnic groups and is much smaller than the sample of white respondents.

Table 6: Correlation Between Race and Ethnicity and Following Advice

		Client Ethnicity [As indicated on the intake form]							Total
		Not Reported	Multiple	White	Hispanic	African American	Native American	Pacific Islander	
Did you follow the advice you received? Did you do what Alaska Legal Services suggested?	Yes	2	0	21	2	1	16	1	43
	No	0	0	11	0	0	6	1	18
	Total	2	0	32	2	1	22	2	61

However, as Table 7 indicates, positive outcomes were somewhat greater for whites than non-whites (52% versus 44%). All African-American respondents reported negative outcomes. Given their small number, it is impossible to generalize about whether the reasons are idiosyncratic or whether this group faces special challenges. Further research will be necessary to clarify this issue.

Table 7: Correlation Between Race and Ethnicity and Outcome

		Client Ethnicity [As indicated on the intake form]							Total
		Not Reported	Multiple	White	Hispanic	African American	Native American	Pacific Islander	
Ask client: "It sounds to me from what you are saying that overall, the outcome was..." [In...]	Positive	3	0	17	2	0	10	1	33
	Negative	0	0	5	0	4	6	1	16
	"Not much has changed"	0	0	11	0	0	7	1	19
	Total	3	0	33	2	4	23	3	68

Because the objective of our partnership with Alaska Legal Services Corporation was to help the organization evaluate and improve its limited legal assistance program, we focused most of our attention on respondents who had received such aid. However, we did ask some questions of the respondents who received no services at all, and a brief comparison between the two groups bears mention.

The greatest disparity between the recipients who had received aid and those who had not is the frequency and source of outside help. Table 8 compares the rates of assistance from sources other than Alaska Legal Services Corporation between these respondents.

Table 8: Outside Help for Recipients of Limited Legal Assistance or No Assistance

Source of Outside Help	Limited Assistance	No Assistance
Court Officials	13%	11%
Family or Friends	13%	0%
Another Legal Services Organization	22%	14%
Private Lawyer	20%	14%
Internet	22%	19%
None	29%	41%

Respondents who received no services from Alaska Legal Services were also less likely to receive any additional legal assistance from other sources. Although this was the group presumably most in need of outside help, almost half did not obtain it.

Not surprisingly, the difference in case outcomes between these two groups also varied. Of respondents who received limited legal services from ALSC, 48% reported favorable outcomes, 28% said that not much had changed, and only 27% reported negative outcomes.⁹¹ By comparison, only 23% of respondents who received no services from ALSC reported favorable outcomes.⁹² Even among that group, perceptions of the outcome were not as satisfactory as among those respondents who received limited legal services. For instance, one respondent noted that “other means were expensive, but eventually [the case] was resolved, I guess, after several thousands of dollars and lots of time.”⁹³ Other respondents reported deciding not to pursue the matter, or indicated that their cases were partially resolved or still ongoing. Individuals who had received no help from Alaska Legal Services also expressed more negative perceptions about the legal process (46.3%) than those who had obtained limited legal assistance (8.69%).⁹⁴

Of course, some of these differences may reflect the merit-based criteria used to select who gets limited assistance. As noted earlier, those who have stronger cases are more likely to receive aid, so their more favorable outcomes may purely be due to the skewed nature of the sample rather than the quality of the assistance. More research using randomized samples is necessary to test the degree to which limited legal assistance matters. Still, based on the data here, as well as other studies noted earlier, having access to help will matter to some of those at risk. As one respondent summed up the situation: “I wish that [Alaska Legal Services] had the

⁹¹ *Id.* at 23.

⁹² See ALSC Data Set, *supra* note 76.

⁹³ Telephone interview with participant (Spring 2016).

⁹⁴ See ALSC Data Set, *supra* note 76.

resources to help when people need it. It really sucks that the kids are gone and I don't have any help getting them back. They need to come home, and I can't do it all by myself."⁹⁵

III. RECOMMENDATIONS

Our survey findings suggest several lessons about limited legal assistance programs for poor people. The first is that these programs appear to be a cost-effective use of resources. Most recipients are able to understand and follow the advice received and are more likely to obtain positive outcomes than those who receive no assistance. However, it is clear that advice alone is of limited help, and programs that want to maximize effectiveness should focus more resources on providing direct contact with staff for hands-on assistance in completing forms. Funding constraints will, of course, limit how much individualized attention legal services offices can provide. But workshop settings in which lawyers or trained non-lawyers guide multiple individuals through the process of completing their forms is likely to provide many of the benefits of individualized attention while minimizing the cost.

The same is true of self-help online services and publications that provide examples of correctly filled out forms, explanations of legal processes and deadlines, and/or automated form completion tools.⁹⁶ The most basic level of online help is forms that come with instructions. These are common in almost every state.⁹⁷ For example, Alaska has a selection of forms and instructions online, as well as a toll-free "helpline" for users who need assistance with the forms or procedures.⁹⁸ Other examples for family law matters include the Texas Supreme Court's online E-filing system for divorces⁹⁹ and Los Angeles's JusticeCorps online forms for paternity and custody.¹⁰⁰

Online videos explaining forms and court processes are also becoming more common. For example, California has its own YouTube Channel for legal self-help.¹⁰¹ It provides guided interviews and forms based on A2J Author, a free online platform that State Supreme Courts, Legal Aid Societies, Law School Clinics, Pro Bono Projects, and others have used to automate self-help.¹⁰² A2J Author is online in 38 States and has produced over 3 million legal documents

⁹⁵ Telephone interview with participant (Spring 2016).

⁹⁶ One program, funded through the Legal Services Corporation's LawHelp Interactive, uses "technology to improve the legal form and document preparation process for low-income people and the attorneys who assist them." It is currently in use in 40 states. *Technology Initiative Grant Highlights and Impact*, LEGAL SERVICES. CORP., <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/technology-initiative-grant-program/technology> (last visited Mar. 4, 2018).

⁹⁷ See *Forms and Document Assembly*, NAT'L CTR. FOR ST. CTS., <http://www.ncsc.org/sitecore/content/microsites/access-to-justice/home/Topics/Forms-and-Documents-Assembly.aspx> (last visited Mar. 4, 2018) ("Nearly every state has some type of court form online. Some of these forms are combined with instructions, information, or document assembly software that make them more useful to the self-represented litigant. Nearly 40 states have some kind of self-help website that complements the online forms.").

⁹⁸ See *Self Help Center: Family Law*, ALASKA CT. SYS., <http://www.courts.alaska.gov/shc/family/selfhelp.htm> (last visited Mar. 4, 2018).

⁹⁹ See *Interactive Forms – Texas Supreme Court Approved Divorce Form Kit*, LAWHELP.ORG, <http://texaslawhelp.org/resource/commonly-used-fill-in-forms-online> (last visited Mar. 4, 2018).

¹⁰⁰ See *Forms & Rules*, CAL. CTS., <http://www.courts.ca.gov/justicecorps-about.htm> (last visited Mar. 4, 2018).

¹⁰¹ CaliforniaCourts SelfHelp, *Introduction to Legal Self Help*, YOUTUBE (Mar. 4, 2018), <https://www.youtube.com/californiacourtselfhelp>.

¹⁰² See A2J Author, *History of A2J Author*, <http://www.a2jauthor.org/content/history-a2j-author> (last visited Jan. 20, 2017).

for unrepresented individuals.¹⁰³

Such online services would be particularly useful for rural populations who lack ready access to workshops and personalized assistance. Efforts by the organized bar to curtail such assistance require reassessment; these efforts serve professional rather than public interests.¹⁰⁴

Courts could also facilitate access to justice by allowing trained non-lawyers to provide limited legal assistance on matters such as routine form preparation. As some of us have argued elsewhere, rules governing unauthorized practice of law should be interpreted to permit such assistance where the benefits to consumers outweigh the risks.¹⁰⁵ Judges should follow the lead of courts that have weighed the public interest in determining whether to ban non-lawyer assistance. For example, the Colorado Supreme Court upheld a system enabling non-lawyers to represent claimants in unemployment proceedings; the Court reasoned that lay representation had been accepted by the public for fifty years and “poses no threat to the People of the State of Colorado. Nor is it interfering with the proper administration of justice. No evidence was presented to the contrary.”¹⁰⁶ Similarly, the Washington State Supreme Court, after considering factors such as cost, availability of services, and consumer convenience, concluded that it was in the public interest to allow licensed real estate brokers to fill in standard form agreements.¹⁰⁷ Such a consumer-oriented approach would make for a more socially defensible regulatory structure than conventional bans on non-lawyer practice irrespective of its quality and cost-effectiveness.

Research on contexts permitting non-lawyers to provide legal advice and assist with routine documents does not suggest that their performance has been inadequate.¹⁰⁸ In a study comparing outcomes for low-income clients in the United Kingdom on matters such as welfare benefits, housing, and employment, non-lawyers generally outperformed lawyers in terms of concrete results and client satisfaction.¹⁰⁹ After reviewing their own and other empirical studies, the authors of that study concluded that “it is specialization, not professional status, which appears to be the best predictor of quality.”¹¹⁰ Ontario also allows licensed paralegals to represent individuals in minor court cases and administrative tribunal proceedings, and a five-year review reported “solid levels of [public] satisfaction with the services received.”¹¹¹ In the United States, research on lay specialists who provide legal representation in bankruptcy and

¹⁰³ *Id.*

¹⁰⁴ For a critical analysis of the bar’s efforts, see Deborah L. Rhode & Benjamin H. Barton, *Legal Services for Routine Needs: AVVO Meets Bar Regulators* (unpublished article; on file with law review or SSRN cite); Deborah L. Rhode & Benjamin H. Barton, *Rethinking Self-Regulation: Antitrust Perspectives on Bar Governance*, 20 CHAP. L. REV. 267, 268 (2017).

¹⁰⁵ RHODE, *supra* note 1, at 49; Rhode & Ricca, *supra* note 22 at 2608.

¹⁰⁶ Supreme Court of Colorado v. Emp’rs. Unity, 716 P.2d 460, 463 (Col. 1986).

¹⁰⁷ Cultum v. Heritage House Realtors, 694 P. 2d 630 (Wash. 1985).

¹⁰⁸ See Deborah L. Rhode, Access to Justice: Again, Still, 73 Fordham L. Rev. 1013 (2004); Julian Lonbay, *Assessing the European Market for Legal Services: Developments in the Free Movement of Lawyers in the European Union*, 33 FORDHAM INT’L L. J. 1629, 1636 (2011) (discussing Swedish legal advice providers); Herbert Kritzer, *Rethinking Barriers to Legal Practice*, 81 (JUDICATURE 100), (1997) (discussing English Citizen’s Advice Bureaus with trained non lawyer volunteers).

¹⁰⁹ Richard Moorhead, Alan Paterson & Avrom Sherr, *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 L. & SOC’Y REV. 765, 785-87 (2003). For further discussion, see Deborah J. Cantrell, *The Obligation of Legal Aid Lawyers to Champion Practice by Nonlawyers*, 73 FORDHAM L. REV. 883, 888-90 (2004).

¹¹⁰ Moorhead, Paterson & Sherr, *supra* note 109, at 795.

¹¹¹ DAVID B. MORRIS, REPORT TO THE ATTORNEY GENERAL OF ONTARIO 12 (Nov. 2012).

administrative agency hearings finds that they generally perform as well or better than attorneys.¹¹² Extensive formal training is less critical than daily experience for effective advocacy.¹¹³

States should build on this research and develop licensing systems that would enable qualified non-lawyers to offer limited legal assistance on routine matters. Consumer protections could be required concerning qualifications, disclaimers, ethical standards, malpractice insurance, and discipline.¹¹⁴ “Under their inherent powers, courts could oversee the development of such licensing systems or could approve legislatively authorized structures as consistent with the public interest.”¹¹⁵ More states should follow the lead of Washington and New York, which have already taken steps in this direction. Washington has developed a system of limited license legal technicians in family law, although overly restrictive qualifications may limit its usefulness in closing the justice gap.¹¹⁶ New York has adopted a pilot program allowing non-lawyer “navigators” to assist pro se litigants in selected courts.¹¹⁷

Finally, we recommend more research focusing on limited legal assistance, particularly to poor people who need help most. Randomized studies across a range of substantive areas could help identify contexts in which limited assistance is most cost effective. Additional research should also target groups for whom positive outcomes appear least likely; our study suggests that African Americans and rural communities merit further inquiry. Finally, researchers should monitor the effectiveness of new limited legal assistance initiatives in terms of recipients’ subjective experiences and objective outcomes. Asking clients what, if anything, staff could have done better given resource constraints may yield illuminating suggestions. It may also remind us all of the grim insight one of our respondents offered: “ALSC could not have improved in any way but . . . they need a lighter caseload because they do things correctly but are simply overwhelmed.”

IV. CONCLUSION

The United States urgently requires more effective systems for delivering legal aid to those who need it most. Limited legal assistance programs are one of the most promising strategies. In the wake of cutbacks in federal support for civil legal aid, many offices have relied on these brief advice and form completion initiatives to assist the vast majority of applicants. Our findings confirm that these efforts are a cost-effective strategy, but suggest that more resources should focus on personalized assistance with completing forms. That assistance need not come from lawyers. Trained non-lawyer providers can provide the same quality services, and judicial doctrine on unauthorized practice of law should recognize as much. Technological improvements in on-line assistance should also be a priority and the bar should be aiding, not obstructing, that effort.¹¹⁸

¹¹² HERBERT KRITZER, *LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK* 76, 108, 148, 190, 201 (1998).

¹¹³ *Id.* at 76, 149, 201; Kritzer, *supra* note 108, at 101; Emily A. Unger, *Solving Immigration Consultant Fraud Through Expanded Federal Accreditation*, 29 *LAW & INEQ.* 425, 448 (2011).

¹¹⁴ Steven Gillers, *How to Make Rules for Lawyers*, 40 *PEPP. L. REV.* 365, 417 (2013).

¹¹⁵ Deborah L. Rhode, *What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers*, 67 *S. CAR. L. REV.* 429, 438 (2016); RHODE, *supra* note 1, at 48-51; Zorza & Udell, *supra* note 22, at 1306.

¹¹⁶ Wash. Ct. APR 28 (2015), For a critique of the unduly restrictive requirements that the state bar developed for these technicians, see Gillian K. Hadfield and Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 *HASTINGS L. J.* 1191, 1222 (2016).

¹¹⁷ CHIEF JUDGE’S COMMITTEE ON NONLAWYERS AND THE JUSTICE GAP, *NEW YORK STATE COURT NAVIGATOR PROGRAM, NAVIGATOR SNAPSHOT REPORT* (Dec. 2014).

¹¹⁸ See Rhode & Barton, *supra* note 104.

We also urgently need more comprehensive research evaluating these efforts. More partnerships between scholars and service providers will be critical in narrowing the justice gap, particularly given the frequent inability of cash-strapped legal aid programs to evaluate their initiatives without outside support. Only through such collaborations are we likely to reduce barriers to justice that are now a national disgrace.



APPENDIX
ATTACHMENT 25



A 108% Return on Investment:

The Economic Impact to the State of North Carolina of Civil Legal Services in 2012



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This report is available at www.ncequalaccesstojustice.org.

Photos on the cover are actual clients of North Carolina legal aid providers.

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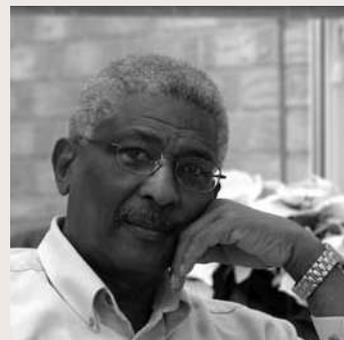
Introduction

THROUGH THEIR CLIENT ADVOCACY, legal aid providers contribute significantly to the North Carolina economy. Legal aid providers offer free legal representation in civil matters to low income North Carolinians who could not otherwise afford such services from a private attorney. Legal assistance is not provided to individuals for the purpose of stimulating the economy but rather to provide access to the civil justice system regardless of ability to pay. However, in serving the civil legal needs of low-income individuals, legal aid providers obtain millions of dollars for their clients. Often these are federal benefits which flow into North Carolina, thus strengthening the state and local economies. In many cases, benefits obtained also reduce the financial burden on the state to provide for the needy and give some modicum of financial stability for households and neighborhoods.

The North Carolina Equal Access to Justice Commission, a state commission created by the North Carolina Supreme Court with the charge of expanding access to civil legal representation, commissioned a study on the economic impact of free civil legal services in North Carolina. In light of the legislative defunding of nonprofit services broadly as well as specific cuts to the legal services sector, an assessment of the return on investment is timely. This report attempts to better understand the direct and indirect economic impact of the work of three North Carolina legal aid providers: Legal Aid of North Carolina (LANC), Legal Services of Southern Piedmont (LSSP), and Pisgah Legal Services (PLS). The three providers compiled data about the economic benefit associated with their representation.

Relying on data compiled by the providers, this report totals the economic benefit of provided legal assistance including: (1) federal dollars obtained in the areas of food stamps, supplemental security and social security disability, temporary welfare assistance, and tax-related awards; (2) other financial awards won in the areas of child support and housing; and (3) cost savings attained in the areas of homelessness and domestic violence prevention.

While the work of legal aid providers has many positive economic impacts, only some of this economic benefit is easily captured. For example, obtaining expunctions for adults with a criminal record, thus better positioning them



This report attempts to better understand the direct and indirect economic impact of the work of three North Carolina legal aid providers: Legal Aid of North Carolina (LANC), Legal Services of Southern Piedmont (LSSP), and Pisgah Legal Services (PLS).

to secure self-supporting employment, results in a clear economic benefit to the individual and community, though not one which can be plainly calculated at the completion of representation.

What this report captures is the direct economic impact in a few discrete practice areas to the local and state economies. Additionally, the report provides a projection of the indirect economic impact and costs savings generated by provided legal assistance, presenting an economic perspective on the investment in free legal services. In doing so, this report seeks to inform policymakers, foundations, and other stakeholders of the economic benefit of legal services, not just for low-income individuals but for the entire state of North Carolina.

A family of four with an annual income of \$29,437 or less qualifies for legal aid services.

Background

1 Fact Sheet on the Legal Services Corporation, Legal Services Corporation, <http://www.lsc.gov/about/what-is-lsc> (last visited Oct. 16, 2013).

2 National Archives and Records Administration, Federal Register, "Annual Update of the HHS Poverty Guidelines," 2013 Poverty Guidelines for the 48 Contiguous States and District of Columbia 5183 (Jan. 24, 2013), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2013-01-24/pdf/2013-01422.pdf>.

3 "Fact Sheet."

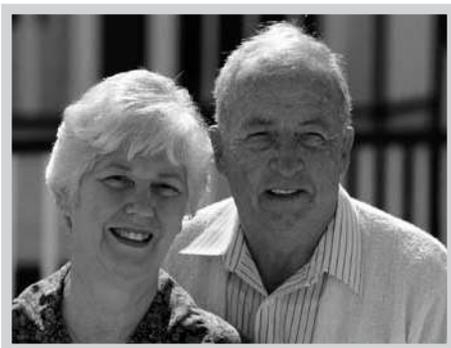
4 45 C.F.R. § 1626.10(a) (2011), *available at* <https://www.federalregister.gov/a/E7-18194>.

5 Legal Services Corporation, "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans" (Sept. 2009), *available at* http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

6 Legal Aid of North Carolina, "2011-2012 Annual Report" 4, *available at* <https://www.legalaidnc.org/public/legal-aid-of-north-carolina-2011-2012-annual-report.pdf>.

The Legal Services Corporation (LSC) was formed in 1974 to provide funding and other support to states for the provision of legal services to individuals with incomes at or below 125% of the federal poverty guidelines.¹ In 2013, an individual who makes \$14,363 or less each year, or a family of four with an income of \$29,437 or less, qualifies for services from local legal aid providers.² LSC-funded programs provide free civil legal services to eligible individuals in a variety of areas including but not limited to housing, consumer, employment, family, and benefits law, particularly gaining access to Medicaid, food stamps, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI). Programs also serve victims of domestic violence and seniors.³ LSC-funded programs are generally only able to provide representation to natural born or naturalized citizens, although certain non-citizens may be eligible.⁴

While LSC funds provide for legal representation of many individuals who would have otherwise been unable to hire an attorney, the need far surpasses the limited capacity. LSC estimates that for every client served by LSC-funded programs, there is at least one eligible person seeking legal assistance who will be turned away due to insufficient resources.⁵ In 2012, LSC's appropriation from Congress was cut drastically, a reduction of 17% from 2010 appropriations.⁶ Given these federal cuts, pressed state budgets, increasing poverty rates across the country, and other challenges (for example the lack of knowledge of legal services offered or inability to access due to geographic distance), it is quite likely the unmet need is even greater than cited estimates.



In 2012, LSC's appropriation from Congress was cut 17%.

23.8% of the population is eligible for free legal services.

Background

In North Carolina, current Census numbers indicate that 18% of North Carolinians are living below the poverty line.⁷ With an overall population of nearly 9.5 million, this is more than 1,710,000 persons. This includes 10% of seniors or more than 130,000 impoverished people over the age of 65, and 26% of children, more than 580,000 poor young people. Presently, under LSC guidelines, approximately 2,265,242 North Carolinians, 23.8% of the population, are eligible for free legal services.⁸ Additionally, individuals 60 and older, regardless of income, are eligible to receive LSC-funded services.

In North Carolina, LSC funds are distributed to Legal Aid of North Carolina. In 2011–2012, Legal Aid received \$10,053,803 from LSC. LANC has 18 offices in locations across the state, as well as seven statewide projects to address legal needs in specific areas of law and other regional projects, including several medical-legal partnerships. In the recent economic climate, LANC has experienced decreasing appropriations from the state despite the increased population of eligible individuals.⁹

Other non-LSC funded organizations also serve state residents in need of legal assistance. Pisgah Legal Services, serving Western North Carolina, has offices in Asheville, Hendersonville, and Spindale. Serving more than 13,000 individuals each year, PLS also has targeted programs focused on representing children, people with disabilities, seniors, families facing impending homelessness, immigrants, and victims of domestic violence. Legal Services of Southern Piedmont (LSSP) is located in Charlotte and serves the Charlotte metropolitan area and Western North Carolina. LSSP provides a range of civil legal assistance, notably serving the elderly, veterans, and immigrants, as well as providing tax assistance to low-income individuals.

⁷ American Community Survey 2012 1-year Estimates, U.S. Census Bureau, www.census.gov (last visited on January 15, 2014).

⁸ *Id.*

⁹ "2011–2012 Annual Report."



26% of North Carolina's children live below the poverty line.

Methodology

This report analyzes data to calculate the total direct economic benefit resulting from legal services as well as estimates of indirect economic impact and cost savings. The direct economic benefit is the total amount of funds obtained for clients through legal advocacy, for example in new federal benefits or other financial awards. All data used in this calculation was compiled by the three service providers. Each of the providers track the outcomes of all of their cases and any financial awards obtained for their own operational purposes using case management software. Outcomes are inputted upon occurrence or, at the latest, prior to the closure of a case file.

The three providers compiled data in the spring of 2013 for all cases where a financial benefit was obtained during calendar year 2012 in the follow-

ing areas: Supplemental Nutritional Assistance Program (SNAP), Supplemental Security Income/Social Security Disability Insurance (SSI/SSDI), Temporary Assistance to Needy Families (TANF), tax-related recovery, child support, and housing-related awards. Each also provided additional demographic data about their cases, including the total number of cases in various substantive areas and the frequency of specific outcomes (for example, the numbers of foreclosures prevented and domestic violence protective orders granted).

In each section, the standard method for calculating the benefit obtained is described. The calculation usually includes the sum of back benefits or funds awarded to the client as well as the anticipated future benefit.

The indirect economic impact is an estimate of what occurs when new federal revenue enters and flows

through the state and local economies, namely changes in employment, wages, or business outputs within local industries on account of the introduction of new spending into the market. This report uses the total direct benefits obtained from federal sources—funds which likely would not have come into the state absent legal representation—to assess the broader economic impact to the community. In each section, the method of calculating the indirect economic impact is described.

The cost savings is an estimate of the avoided costs to the local and state economies on account of the legal advocacy of the providers. In particular, this report focuses on advocacy in the areas of domestic violence, foreclosure, and eviction. Here, legal representation prevents the expenditure of state and local government funds in response to increased domestic violence and homelessness.

Limitations of this Report

First, at the risk of understating the actual effect of legal representation, the report makes a conscious effort to utilize a conservative approach to calculating the indirect economic impact and cost savings, even where more generous calculators are available. Where available, the report uses economic impact methodology and cost savings calculations offered by federal government agencies. Further, the cost savings calculations err on the side of being cautious by utilizing small multipliers and proportions of impacted populations where more specific data is lacking, necessitating certain assumptions about impact.

Secondly, some important contributions of the providers are not included

in the economic impact estimates. In compiling the report, it became clear that certain categories of legal representation did not provide sufficient data for an analysis of economic impact. For example, while legal aid providers do provide representation in Medicaid cases and unemployment law cases and there is a clear economic benefit to the client, this representation is a smaller percentage of overall cases and thus did not provide adequate data.

Lastly, in other practice areas of the providers, the economic benefit is not easily captured. For example, obtaining expunctions for adults with a criminal record better positions them to secure self-supporting employment. This results in a clear economic benefit to the individual and com-

munity, though not one which can be plainly calculated at the completion of representation. Similarly, legal aid providers represent children and seniors who require access to health care. This important work results in a direct benefit to the client of improved health care, but it is difficult to quantify the impact on North Carolina's economy.

Because of the data limitations present and conservative approach taken to generating estimates within the report, the full economic impact of the work of legal aid providers across the state is undoubtedly much larger than even the significant figures presented here indicate.

\$48,775,276

The total economic impact of legal aid services in North Carolina in 2012 was \$48,775,276.

Summary of Findings

This report estimates that the legal representation provided by Legal Aid of North Carolina, Legal Services of Southern Piedmont, and Pisgah Legal Services during 2012 resulted in more than **\$9.2 million in new federal revenue** directed into the state of North Carolina, with an **additional \$8.8 million** from other sources. **The overall direct economic impact in these two areas totals \$18,024,411.**

The indirect economic impact is the economic boost to the state and local economies through increases in employment, wages, and business outputs. **The indirect economic impact totals \$13,893,362.** Additionally, through representation of clients, the legal aid providers generated **\$16,857,503 in cost savings**, including domestic violence prevention, eviction prevention, and foreclosure prevention. The chart below details the amounts in each category.

The total economic impact, including direct, indirect, and cost savings, of the provision of legal services by providers across the state is **\$48,775,276.** That is, for every dollar spent to provide legal services from all funding sources in 2012, **\$2.08 is put into the economy.** More specifically, for every dollar spent by the state to provide legal services, **nearly \$10 flows into the economy.** The return on the state's investment in legal services made to the three providers is **108%.**

For every \$1 North Carolina spends on legal services, nearly \$10 flows into the economy.

The state's ROI on legal aid services is 108%.

The chart below details economic impact in each category analyzed.

FEDERAL BENEFITS OBTAINED IN 2012

Source	Direct Benefit	Indirect Impact ¹⁰
Supplemental Nutritional Assistance Program (SNAP)	\$166,536	\$299,765
Supplemental Security Income/Social Security Disability Insurance (SSI/SSDI)	\$9,034,668	\$13,552,002
Temporary Assistance to Needy Families (TANF)	\$19,178	\$28,767
Tax-related federal refunds including the Earned Income Tax Credit	\$8,552	\$12,828
Total Federal Benefits	\$9,228,934	\$13,893,362

OTHER DIRECT AWARDS OBTAINED IN 2012

Source	Direct Benefit
Child support awards	\$115,682
Housing-related awards	\$8,679,795
Total Other Awards	\$8,795,477

COST SAVINGS FROM 2012 REPRESENTATION

Source	Cost Savings
Domestic violence advocacy	\$1,004,963
Foreclosure prevention	
Cost to local government	\$209,840
Cost to neighboring homeowners	\$11,297,200
Eviction prevention	\$4,345,500
Total Cost Savings	\$16,857,503

TOTAL

Direct Economic Benefit	\$18,024,411
Indirect Economic Impact	\$13,893,362
Cost Savings	\$16,857,503
Total	\$48,775,276

¹⁰ In the absence of direct research on the economic impact of new federal revenue other than SNAP, namely SSI/SSDI, TANF, and tax-related funds, this report calculates economic impact using the multiplier proposed by the Council of Economic Advisors for the impact of income support payments under the American Recovery and Reinvestment Act of 2009, specifically a multiplier of 1.5. Executive Office of the President, Council of Economic Advisors, "The Economic Impact of the American Recovery and Reinvestment Act of 2009 Fifth Quarterly Report," (Nov. 18, 2010), available at http://www.whitehouse.gov/sites/default/files/cea_5th_arra_report.pdf.



\$9

For every \$5 of new SNAP benefits, community spending of \$9 is generated.

Federal Funds

Supplemental Nutritional Assistance Program (SNAP)

Assistance provided by North Carolina's legal services programs resulted in an **additional \$166,536 of Supplemental Nutritional Assistance Program (SNAP) benefits coming into the state in 2012**. Service providers closed 385 cases involving 838 individuals regarding the acquisition or maintenance of SNAP benefits. Providers calculated total SNAP benefits by adding back benefits due to the client plus the monthly benefit obtained in the case multiplied by 12 months, the expected length of the receipt of the benefit over one year.

For many low-income individuals, SNAP benefits, formerly known as food stamps, may serve as a family's only source of income. According to data collected by *The New York Times* in 2010, 18% of food stamp recipients receive no income in addition to food stamps each month. Approximately six million Americans live in a cashless society, subsisting on SNAP benefits alone.¹¹ Based on this estimate, as many as 304,025 North Carolinians have no other income besides the SNAP benefits they receive.¹²

According to the USDA, every additional dollar's worth of SNAP benefits leads to between 17 and 47 cents of additional spending on food items by families who are receiving SNAP when compared to low-income families not receiving SNAP.¹³ The average benefit received per household via SNAP participation is \$290, money which is in turn spent at local retailers that accept SNAP customers like food marts, grocery stores, farmers' markets, and convenience stores.¹⁴ The USDA estimates that for every \$5 of new SNAP benefits, community spending of \$9 is generated. Other impacts of SNAP participation for local communities include increased worker productivity and fewer missed days of work for SNAP families, as well boosting employment opportunities at local food retailers and farms.¹⁵

Using the USDA's estimate stated above, the **\$166,536 of new SNAP benefits generated by legal aid providers resulted in \$299,765 of additional community spending**.

11 Jason DeParle and Robert M. Gebeloff, "Living on Nothing but Food Stamps," *N.Y. Times*, Jan. 2, 2010, available at http://www.nytimes.com/2010/01/03/us/03foodstamps.html?pagewanted=all&_r=0.

12 Based on the average 2012 North Carolina caseload, 1,689,028. As obtained from monthly participation data provided by the Food Research and Action Center, available at <http://frac.org/reports-and-resources/snapfood-stamp-monthly-participation-data/>.

13 U.S. Department of Agriculture, Food and Nutrition Services, "The Benefits of the Supplemental Nutrition Assistance Program (SNAP)" (Aug. 2011), available at http://www.fns.usda.gov/snap/outreach/pdfs/bc_benefits.pdf.

14 *Id.*

15 *Id.*

\$9 million

More than \$9 million is the amount legal aid providers secured in additional SSDI/SSI benefits.

Federal Funds

Supplemental Security Income/ Social Security Disability Insurance (SSI/SSDI)

Advocacy by North Carolina's legal aid providers **secured more than \$9 million in additional Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits in 2012.** Providers calculated total SSI/SSDI benefits by adding back benefits due to the client plus the monthly benefit obtained in the case multiplied by 120 months, the expected length of the receipt of the benefit.

16 Umar Moulta-Ali, Congressional Research Service, "Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)" (June 11, 2013), available at http://digital-commons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2152&context=key_workplace.

17 Anne DeCesaro and Jeff Hemmeter, Social Security Administration, Office of Research, Evaluation and Statistics, "Characteristics of Noninstitutionalized DI and SSI Program Participants, Research and Statistics Note No. 2008-02" (Jan. 2008), available at <http://www.ssa.gov/policy/docs/rsnotes/rsn2008-02.html>.

18 *Id.*

19 Shawn Fremstad and Rebecca Vallas, Center for American Progress, "The Facts on Social Security Disability Insurance and Supplemental Security Income for Workers with Disabilities" (May 30, 2013), available at <http://www.americanprogress.org/issues/poverty/report/2013/05/30/64681/the-facts-on-social-security-disability-insurance-and-supplemental-security-income-for-workers-with-disabilities/>.

20 *Id.*

21 *Id.*

SSDI and SSI provide a monthly cash benefit to individuals who have a physical or mental disability that impairs their ability to work; in some cases, benefits are provided to their dependents as well.¹⁶ SSI is a needs-based program whose eligible recipients must have very limited income. Unlike SSI, eligible SSDI recipients are not required to meet income requirements; however, studies have found that the majority of SSDI recipients have family income below 200% of the poverty threshold.¹⁷

The average monthly SSDI payment for an individual is \$1,129.63 and the average monthly SSI payment for an individual is \$527.95.¹⁸ For many recipients, disability benefits serve as a major source of income. Seventy-one percent of SSDI beneficiaries receive more than half of their income from disability benefits; more than half of beneficiaries receive 90% of their income from such benefits.¹⁹

The lengthy process of obtaining benefits requires evidence in the form of medical records and other documentation that many poor, disabled individuals may not have on account of poor access to healthcare and other barriers.²⁰ Ultimately only about 40% of applicants receive disability benefits.²¹ Legal aid providers play a crucial role in navigating the process and assisting applicants in meeting the standard necessary to receive benefits.



293,408

293,408 North Carolinians were kept out of poverty by the Earned Income Tax Credit.

Federal Funds

22 North Carolina Department of Health and Human Services, Division of Social Services, "Temporary Assistance for Needy Families State Plan 2010-2013," available at <http://www.ncdhhs.gov/dss/workfirst/docs/NC%20TANF%20State%20Plan%202010-2013%20web%20posting.pdf>.

23 *Id.*

24 Program Statistics and Reviews, North Carolina Department of Health and Human Services, Division of Social Services, <http://www.ncdhhs.gov/dss/stats/wf.htm> (last visited Oct. 16, 2013).

25 Working Families Kept Out of Poverty by the EITC and CTC, 2009-2011, Tax Credits for Working Families, <http://www.taxcreditsfor-workingfamilies.org/working-families-poverty-eitc-ctc-state/> (last visited on Oct. 18, 2013).

26 Center on Budget and Policy Priorities, "Policy Basics: the Earned Income Tax Credit" (February 2013), available at <http://www.cbpp.org/files/policybasics-eitc.pdf>.

27 Executive Office of the President, Council of Economic Advisors, "The Economic Impact of the American Recovery and Reinvestment Act of 2009 Fifth Quarterly Report," (Nov. 18, 2010), available at http://www.whitehouse.gov/sites/default/files/cea_5th_arra_report.pdf.

In the absence of direct research on the economic impact of tax refunds and awards in tax controversies, this report calculates economic impact using the multiplier proposed by the Council of Economic Advisors for the impact of income support payments under the American Recovery and Reinvestment Act of 2009, specifically a multiplier of 1.5.

Temporary Assistance for Needy Families (TANF)

In 2012, providers attained \$19,178 in Temporary Assistance to Needy Families (TANF) benefits for low-income clients. Providers calculated total TANF benefits by adding back benefits due to the client plus the monthly benefit obtained in the case multiplied by six months, the expected length of the receipt of the benefit.

In order to be eligible for cash assistance under North Carolina's TANF program, Work First, families must be "needy," which North Carolina defines for a family of three as income not exceeding \$544 per month.²² The monthly maximum benefit for the same family is \$272.²³ In 2012, the number of active Work First cases averaged 22,623, and the number of individuals on active Work First cases averaged 44,671.²⁴

Tax-related recovery and refunds including Earned Income Tax Credit (EITC)

Legal Services of Southern Piedmont (LSSP) is the only program that receives funding from the Internal Revenue Service to provide advocacy to low-income individuals in tax matters. Their assistance includes representation of individuals in tax controversies to reduce their tax liability as well as assistance with preparation of tax returns in order to obtain federal tax refunds, including the Earned Income Tax Credit. **In 2012, LSSP obtained \$8,552 in federal refunds for taxpayers through their Low-Income Taxpayer Clinic. They also helped reduce clients' tax liability by \$366,642.**

Reports indicate that 293,408 North Carolinians, including 145,769 children, were kept out of poverty by the Earned Income Tax Credit.²⁵ Perhaps unsurprisingly, most families spend their Earned Income Tax Credit, on average \$2,805 for families with children and \$282 for families without children, on basic necessities including clothing and home and car repairs.²⁶ Using the multiplier proposed by the Council of Economic Advisors for income support payments, **the \$8,552 obtained in refunds for clients by the legal aid providers resulted in \$12,828 of indirect economic impact.**²⁷

\$8,679,795 is the amount legal aid providers secured in housing-related awards.

Other Awards

Child support awards

Representation in family law cases by the three providers grossed **child support awards to which custodial parents were entitled totaling \$115,681.88.**²⁸

In addition to providing an economic boost to the local community of funds that custodial parents in turn spend to obtain shelter, food, clothing, and other necessities for their children, child support awards reduce the dependency of low-income families on the state for support.

Housing-related awards

The state's three legal aid providers, in large part due to Legal Aid of North Carolina's extensive housing representation, assisted in **ensuring housing benefits, rent abatements, and other awards totaling \$8,679,795.15.**²⁹

The work of legal aid providers in this area protects low-income families from losing crucial housing subsidies. In North Carolina, more than 136,700 low-income households rely on rental assistance programs, including public housing, vouchers, Section 8 project-based rental assistance, and other federal programs which make access to housing affordable.³⁰ Seventy percent of those with federal rental assistance are considered extremely low-income, meaning their income is below 30% of the Area Median Income limits set by the Department of Housing and Urban Development.³¹

In addition to the federal housing benefits secured or maintained through representation, legal services attorneys also represent low-income households in private landlord/tenant cases and obtain funds or rent abatement owed to the client. In 2011, the median, monthly housing cost for renter-occupied housing units was \$744 per month.³² In order to afford \$744 per month, an individual must make \$14.31 per hour, a figure well above the minimum wage.³³ As 287,600 low-income households in North Carolina spend more than half of their monthly net income on housing costs,³⁴ awards such as rent abatement due to inhabitability, receipt of funds owed like security deposits, and landlord charges avoided allow individuals to put their limited funds toward other basic necessities. Further, housing representation in these cases may allow individuals to stay in their homes, saving the state potential costs due to homelessness, as outlined in more detail below.

28 Providers calculated total child support awards by multiplying the monthly child support amount obtained by 12 months, the expected length of the receipt of the award over a one-year period. Where a specific monthly award was not ordered, the amount was calculated under the child support guidelines.

29 Housing awards may include the amount of rent saved by securing a public housing benefit, rent abatement obtained due to problems with the condition of the housing unit, return of a client's security deposit, or avoided charges by the landlord. Rent saved is calculated using the HUD Fair Market Rent subtracting any amount the client pays multiplied by 12 months.

30 Center on Budget and Policy Priorities, "North Carolina: Federal Rental Assistance Facts," (Dec. 19, 2012) available at <http://www.cbpp.org/files/4-13-11hous-NC.pdf>.

31 *Id.*

32 American Community Survey 2007–2011, U.S. Census Bureau, <http://www.census.gov> (last visited on Sept. 2, 2013).

33 Housing Wage Calculator, National Low Income Housing Coalition, <http://nlihc.org/library/wagecalc> (last visited Oct. 16, 2013).

34 "North Carolina: Federal Rental Assistance Facts."



122

In 2012, 122 domestic violence related homicides occurred in North Carolina.

Cost Savings

Domestic violence advocacy

In 2012, Legal Aid of North Carolina, Legal Services of Southern Piedmont, and Pisgah Legal Services **obtained 1,974 protective orders on behalf of clients**. Further, in 2012, the agencies closed 4,709 domestic violence cases with household members totaling 12,036 people. Services include assisting victims in obtaining and enforcing protective orders in court, renewing an order entered previously, counseling victims about safety and other concerns, and providing information and/or assistance on a range of other issues including child support, child custody, divorce, division of marital property, and housing and consumer issues.

Nationally, nearly one in three women and one in four men have experienced some form of violence (including rape, physical violence, and stalking) by an intimate partner.³⁵ The impacts of such violence are harmful and vast: being fearful or concerned for safety; sustaining injuries (including severe injuries necessitating medical attention); symptoms of post-traumatic stress disorder; needing housing, advocacy, or legal services; and missing work or school, resulting in lost income.³⁶

There is no reason to believe that North Carolina is any exception to national statistics. In 2012, 122 domestic violence related homicides occurred in North Carolina.³⁷ A yearly average of 114 domestic violence related homicides have been committed over the past five years.³⁸ Further, in 2010–2011, the more than 100 domestic violence programs funded by the North Carolina Council for Women served a total of 61,283 clients by providing emergency or transitional housing assistance; offering information, referrals, advocacy, transportation, and counseling; supporting the children of victims; and offering other services.³⁹

While most clients who were provided legal services in a domestic violence case do not receive a direct economic benefit, with the exception of those who are granted child support for their children within the order, indirect economic benefits flow to the state on account of costs saved by preventing violence.

35 Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, "National Intimate Partner and Sexual Violence Survey, 2010 Summary Report" 39 (Nov. 2011), available at http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

36 *Id.* at 54.

37 North Carolina Department of Justice, "Report on Domestic Violence Related Homicides Occurring in 2012" 2 (Apr. 9, 2013), available at <http://www.ncdoj.gov/getdoc/4105e22f-f094-4903-89d1-c1354ebc5958/2013DVRReport.aspx>.

38 *Id.*

39 Cynthia Hess, Institute for Women's Policy Research, "The Status of Women in North Carolina" 55 (Jan. 2013), available at <http://www.iwpr.org/publications/pubs/the-status-of-women-in-north-carolina>.

\$1 million

More than \$1 million is the annual savings from the prevention of domestic violence in avoided medical costs alone.

Cost Savings

By preventing violence, legal providers can mitigate the high cost of medical and mental health care expenses for victims and families. A study from the Centers for Disease Control and Prevention found that women who were the victims of physical assault in the past 12 months experienced an average of 3.4 separate assaults.⁴⁰ Victims were injured in 41.5% of assaults⁴¹, and 28.1% of those received some form of medical care.⁴² **On average, the cost of medical and mental health services per physical assault was \$816 when the study was authored in 2003, a cost of more than \$1,000 dollars today.**⁴³ In addition to the productivity loss of victims, other potential costs include the cost of sheltering victims and families and the use of police and law enforcement resources in response to continued violence.

If legal representation prevents one assault in half of the cases where domestic violence protective orders were obtained, **the annual savings from the prevention of domestic violence by calculating the avoided medical costs alone is \$1,004,963.**⁴⁴

Homelessness prevention

Each year, the legal aid providers in this study generate cost savings for the state of North Carolina and local government units by preventing homelessness of individuals through their advocacy in foreclosure and eviction proceedings.

In 2012, Legal Aid of North Carolina, Legal Services of Southern Piedmont, and Pisgah Legal Services **prevented 488 foreclosures across North Carolina, impacting 1,264 household members.**

North Carolina has not been spared in the foreclosure crisis which has plagued the country. In 2012, 54,735 foreclosures were filed across the state, down from the peak of 66,279 filings in 2010.⁴⁵ Families, the surrounding community, and local governments all suffer when foreclosures persist. For families experiencing foreclosure, displacement from their home and lost equity and personal savings

40 Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, "Costs of Intimate Partner Violence Against Women in the United States" 14 (Mar. 2003), available at www.cdc.gov/ncipc/pub-res/ipv_cost/ipvbook-final-feb18.pdf.

41 *Id.*

42 *Id.* at 15.

43 CPI Inflation Calculator, Department of Labor, Bureau of Labor Statistics, http://www.bls.gov/data/inflation_calculator.htm. According to the calculator, \$816 in 2003 has the same buying power as \$1,018.20 in 2012 (the time period on which this study focuses).

44 Cost savings was calculated by multiplying the 2012 cost of medical services following a domestic violence assault, \$1,018.20, by one-half of the total number of domestic violence protective orders obtained, 987.

45 Statistics, The North Carolina Court System, Civil Case with a Home or Business Foreclosure (Fore) Filing by Filing Date, compiled Aug. 12, 2013, <http://www.nccourts.org/Citizens/SR-Planning/Statistics/Default.asp>.



488

488 is the number of foreclosures prevented across North Carolina in 2012.

Cost Savings

46 Debbie Gruenstein Bocian, Peter Smith, and Wei Li, Center for Responsible Lending, "Collateral Damage: The Spillover Costs of Foreclosure" 3 (Oct. 24, 2012), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/collateral-damage.pdf>.

47 *Id.*

48 Michael Bess, "Assessing the Impact of Home Foreclosures in Charlotte Neighborhoods," *Geography & Public Safety*, Volume 1, Issue 3, Oct. 2008, available at <http://www.nij.gov/pubs-sum/gps-bulletin-v1i3.htm>.

49 G. Thomas Kingsley, Robin Smith, and David Price, The Urban Institute, "The Impacts of Foreclosures on Families and Communities" 15–19 (May 2009), available at <http://www.urban.org/publications/411909.html>.

50 Center for Responsible Lending, "2013 Update: The Spillover Effects of Foreclosures" (Aug. 19, 2013), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/2013-crl-research-update-foreclosure-spillover-effects-final-aug-19-docx.pdf>.

51 Cost savings due to foreclosure prevention in the form of nearby home value which was not impacted by the foreclosure was calculated by multiplying the average loss per homeowner by the number of foreclosures prevented. This estimate conservatively accounts for only one neighboring homeowner that would have been impacted per threatened foreclosure.

52 Kingsley at 19–20.

53 *Id.*

54 Cost savings due to foreclosure prevention was calculated by multiplying the number of foreclosures prevented by the most conservative estimate of the cost of each foreclosure to the local government.

55 State Home Foreclosure Prevention Project, North Carolina Prevention Fund, <http://ncforeclosureprevention.gov/shfpp.aspx> (last visited Oct. 18, 2013).

take a huge toll on their present stability.⁴⁶ Long term, families struggle with the damage to their credit and inability to access home equity for education or business investment.⁴⁷

Reports estimate the broader economic impact of foreclosure on communities. A study conducted by the Charlotte Police Department found that the rate of violent crime rose consistently in high foreclosure neighborhoods⁴⁸ and was significantly higher than the violent crime rate in low foreclosure neighborhoods. Another economic impact on the community is lost value of other area properties and reduction in tax funding to local governments.⁴⁹ According to the Center for Responsible Lending, homeowners impacted by nearby foreclosures in their community on average experience a loss of \$23,150 as a result of their close proximity to foreclosures in their community.⁵⁰ Even if only one such neighboring home had been impacted by each threatened foreclosure, **prevention of 488 foreclosures resulted in \$11,297,200 of saved home value.**⁵¹ In addition to the lost tax funds due to home value decreases, other local government costs may include court costs, unpaid property taxes, unpaid utility taxes and other fees, and cost of fire and police involvement.⁵² Costs to the community range from \$430 for a vacant and secured foreclosure to \$5,358 if the municipality needs to secure the property to more than \$34,000 for an abandoned foreclosure where a fire occurs.⁵³ **With the prevention of 488 foreclosures across North Carolina in 2012, under the most conservative estimate, legal providers saved local governments at least \$209,840.**⁵⁴

The three North Carolina service providers in this report, among others, receive funding through the State Home Foreclosure Prevention Project, a program of the North Carolina Housing Finance Agency that was established by the General Assembly in 2008 to reduce the number of foreclosures by providing resources and assistance to homeowners facing foreclosure.⁵⁵

The three providers studied in this report also **halted 895 evictions in 2012, impacting 2,506 household members.**

Representation in eviction proceedings which prevent or delay eviction help low-income families avoid homelessness by allowing families to stay in their home and search for new housing if necessary. Advocates assist clients to oppose

\$11,297,200

\$11,297,200 is the amount of home value saved as a result of prevented foreclosures.

Cost Savings

eviction where landlords have not followed the proper process for lawfully evicting tenants or where they do not have grounds to evict the tenant.

In the absence of advocacy, some clients would undoubtedly become homeless, seeking temporary or extended housing at a homeless shelter or living unsheltered. Further, once individuals have been evicted, finding new housing in the future may be more difficult, leading to a greater chance of becoming or remaining homeless following an initial eviction.

Estimates of the cost of homelessness vary. Research in Los Angeles indicates the average monthly per person cost of homeless persons is \$2,897 or \$34,764 per year, including the costs of public health, mental health, emergency medical treatment, police, social services, and other public services, compared to the \$605 average per month cost for similarly situated persons who are in supportive housing.⁵⁶ The monthly per person cost ranged from \$405 to \$5,038 based on attributes like disability, age, criminal history, and substance abuse or mental health background.⁵⁷ A more recent study of six locations conducted by the Department of Housing and Urban Development found average costs of sheltering the first-time homeless to be between \$1,634 to \$2,308 for individuals and between \$3,184 to \$20,301 for families.⁵⁸

56 Daniel Flaming, Patrick Burns, and Michael Matsunaga, Economic Roundtable, "Where We Sleep: Costs When Homeless and Housed in Los Angeles" 25 (2009), available at http://www.economicrt.org/summaries/Where_We_Sleep.html.

57 *Id.* at 1.

58 U.S. Department of Housing and Urban Development, Office of Policy Development and Research, "Costs Associated with First-Time Homelessness for Families and Individuals" ES-7-ES-8 (March 2010), available at http://www.huduser.org/publications/pdf/Costs_Homeless.pdf.

59 Cost savings due to eviction prevention was calculated by multiplying the average monthly per person cost of homeless persons of \$2,897 by 12 months by 125 people, or 5% of those who might have been evicted without legal aid representation.

60 Shambhavi Manglik, National Low Income Housing Coalition, "Renters in Foreclosure: A Fresh Look at an Ongoing Problem" 1 (September 2012), available at http://nlihc.org/sites/default/files/Renters_in_Foreclosure_2012.pdf.

In the absence of good estimates of the percentage of people that would likely become homeless following eviction, this cost savings calculation conservatively assumes that only 5% would have become homeless if evicted and calculates the cost for one year of homelessness. Even if only 5% of those who might have been evicted from their housing without legal representation eventually became homeless, **the yearly cost savings to the state and local government totals \$4,345,500.**⁵⁹

Some of the renters experiencing eviction may be impacted due to foreclosure of the property they are renting. According to a report produced by the National Low Income Housing Coalition, 20% of home foreclosures involve rental properties.⁶⁰



Conclusion

In 2012, representation by the three legal aid providers in North Carolina resulted in:

\$18,024,411 of direct benefit;

\$13,893,362 of indirect estimated economic impact;

\$16,857,503 in cost savings; and

A total economic impact of \$48,775,276 in our state.

\$48,775,276

About The NC Equal Access to Justice Commission

The NC Equal Access to Justice Commission was established in November 2005 by order of the North Carolina Supreme Court and is chaired by Chief Justice Sarah Parker. The Commission was established in recognition of the need to expand civil legal representation for people of low income and modest means in North Carolina. Among the purposes of the commission are unmet legal needs assessment, statewide strategic planning, coordination of efforts between the legal aid organizations and other legal and non-legal organizations, resource development, and expanding civil access to justice.

NC Equal Access to Justice
COMMISSION

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APPENDIX
ATTACHMENT 26

Costs of Intimate Partner Violence Against Women in the United States

Department of Health and Human Services
Centers for Disease Control and Prevention
National Center for Injury Prevention and Control

Atlanta, Georgia

March 2003

Costs of Intimate Partner Violence Against Women in the United States is a publication of the National Center for Injury Prevention and Control, part of the Centers for Disease Control and Prevention.

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Intimate Partner Violence

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Costs of Intimate Partner Violence Against Women in the United States: Executive Summary

Background

Although most people believe intimate partner violence (IPV) is a substantial public health problem in the United States, few agree on its magnitude. Recognizing the need to better measure both the scope of the problem of IPV as well as resulting economic costs—in particular, those related to health care—Congress funded the Centers for Disease Control and Prevention (CDC) to conduct a study to obtain national estimates of the occurrence of IPV-related injuries, to estimate their costs to the health care system, and to recommend strategies to prevent IPV and its consequences.

This report—

- Describes briefly the development of the requested study;
- Presents findings for the estimated incidence, prevalence, and costs of nonfatal and fatal IPV;
- Identifies future research needs;
- Highlights CDC's research priorities for IPV prevention.

Incidence, Prevalence, and Consequences of Intimate Partner Violence Against Women in the United States

Data about nonfatal IPV victimizations and resulting health care service use were collected through the National Violence Against Women Survey (NVAWS), funded by the National Institute of Justice and CDC. Based on NVAWS data, an estimated 5.3 million IPV victimizations occur among U.S. women ages 18 and older each year. This violence results in nearly 2.0 million injuries, more than 550,000 of which require medical attention. In addition, IPV victims also lose a total of nearly 8.0 million days of paid work—the equivalent of more than 32,000 full-time jobs—and nearly 5.6 million days of household productivity as a result of the violence.

Data about IPV homicides were obtained from the Federal Bureau of Investigation's Uniform Crime Reports Supplementary Homicide Reports. According to this source, 1,252 women ages 18 and older were killed by an intimate partner in 1995, the same year as incidence data reported in the NVAWS.

Intimate Partner Violence

Costs of Intimate Partner Violence in the United States

The costs of intimate partner rape, physical assault, and stalking exceed \$5.8 billion each year, nearly \$4.1 billion of which is for direct medical and mental health care services. The total costs of IPV also include nearly \$0.9 billion in lost productivity from paid work and household chores for victims of nonfatal IPV and \$0.9 billion in lifetime earnings lost by victims of IPV homicide. The largest proportion of the costs is derived from physical assault victimization because that type of IPV is the most prevalent. The largest component of IPV-related costs is health care, which accounts for more than two-thirds of the total costs.

Discussion

Due to exclusions of several cost components about which data were unavailable or insufficient (e.g., certain medical services, social services, criminal justice services), the costs presented in this report likely underestimate the problem of IPV in the U.S. Additionally, because of these omissions, the cost figures here are not comprehensive and should not be used for benefit-cost ratios in analyses of interventions to prevent IPV. However, they can be used to calculate the economic cost savings from reducing IPV and associated injuries, to demonstrate the economic magnitude of IPV, and to evaluate the impact of IPV on a specific sub-sector of the economy, such as consumption of medical resources.

More qualitative and quantitative data are needed to better determine the full magnitude of IPV and associated human and economic costs. There is also a need for primary prevention—preventing IPV from occurring in the first place—rather than focusing only on treating victims and rehabilitating perpetrators after abuse has occurred.

CDC, in its *Injury Research Agenda*, has identified several key areas of research for IPV prevention. These areas include learning how to change social norms that accept intimate partner violence; developing programs for perpetrators and potential perpetrators; increasing our understanding of how violent behaviors toward intimate partners develop; improving collection of data about IPV and its health effects; developing and evaluating training programs for health professionals; and disseminating strategies that work to prevent IPV.

Significant resources for research are needed to better understand the causes and risk factors for IPV and to develop and disseminate effective primary prevention strategies. Until we reduce the incidence of IPV in the United States, we will not reduce the economic and social burden of this problem.

Introduction

Violence against women is a substantial public health problem in the United States. According to data from the criminal justice system, hospital and medical records, mental health records, social services, and surveys, thousands of women are injured or killed each year as a result of violence, many by someone they are involved with or were involved with intimately. Nearly one-third of female homicide victims reported in police records are killed by an intimate partner (Federal Bureau of Investigation 2001).

Intimate partner violence—or IPV—is violence committed by a spouse, ex-spouse, or current or former boyfriend or girlfriend. It occurs among both heterosexual and same-sex couples and is often a repeated offense. Both men and women are victims of IPV, but the literature indicates that women are much more likely than men to suffer physical, and probably psychological, injuries from IPV (Brush 1990; Gelles 1997; Rand and Strom 1997; Rennison and Welchans 2000).

IPV results in physical injury, psychological trauma, and sometimes death (Gelles 1997; Kernic, Wolf and Holt 2000; Rennison and Welchans 2000; Sorenson and Saftlas 1994). The consequences of IPV can last a lifetime. Abused women experience more physical health problems and have a higher occurrence of depression, drug and alcohol abuse, and suicide attempts than do women who are not abused (Golding 1996; Campbell, Sullivan and Davidson 1995; Kessler et al. 1994; Kaslow et al. 1998; Moscicki 1989). They also use health care services more often (Miller, Cohen and Rossman 1993).

A growing body of evidence demonstrates the health consequences of intimate partner violence against women (Coker, Smith, Bethea, King and McKeown 2000; Kernic, Wolf and Holt 2000). However, the economic costs of IPV remain largely unknown. Previous cost estimates range from \$1.7 billion to \$10 billion annually (Straus 1986; Gelles and Straus 1990; Meyer 1992), but they are believed to underestimate the true economic impact of this type of violence (Institute for Women's Policy Research 1995). Researchers have recommended developing national cost estimates for IPV-related medical care, mental health care, police services, social services, and legal services (Gelles and Straus 1990; Straus 1986; Straus and Gelles 1987). However, a recent

Intimate Partner Violence

Intimate partner violence—also called domestic violence, battering, or spouse abuse—is violence committed by a spouse, ex-spouse, or current or former boyfriend or girlfriend. It can occur among heterosexual or same-sex couples.

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literature review (Finlayson, Saltzman, Sheridan and Taylor 1999) found only one U.S. study that derived national cost estimates for violence among intimate partners (Miller, Cohen and Wiersema 1996).

Recognizing the need to better measure the magnitude of IPV and resulting economic costs—in particular, those related to health care—the U.S. Congress funded the Centers for Disease Control and Prevention (CDC) to conduct a study to obtain national estimates of the incidence of injuries resulting from IPV, to estimate the costs of injuries to health care facilities, and to recommend strategies to reduce IPV-related injuries and associated costs. Language related to this funding was included in the Violence Against Women Act provisions of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103–322).

Given the greater number of IPV-related injuries that occur among women and the instability of cost estimates based on the small numbers of IPV-related injuries among men, this report focuses only on the costs of IPV against women ages 18 and older. Although Congress called only for costs of IPV-related injuries, it was important to include the costs of lost productivity resulting from IPV and to determine the economic costs of lives lost to IPV homicide. These costs contribute significantly to the economic burden of IPV.

This report describes the development of the requested study; presents findings for the estimated incidence, prevalence, and costs of IPV among U.S. adult women; identifies future research needs; and highlights some of CDC’s activities related to IPV prevention.

The Need to Estimate the Costs of Intimate Partner Violence

Cost estimates can serve important purposes. For example, they help demonstrate the impact a problem has on society and can shape the attitudes of people who develop public policy and allocate limited funds (Miller, Cohen and Wiersema 1996; Phillips 1987; Snively 1994). They can also help assess the benefit or effectiveness of violence intervention strategies or programs (Haddix, Teutsch, Shaffer and Dunet 1996; Teutsch 1992), which may, in turn, lead to resource allocation to specific programs (Mercy and O’Carroll 1988).

The Need for National Estimates of Intimate Partner Violence

To estimate the costs of IPV, one must first estimate its incidence. While most people acknowledge IPV as a substantial public health problem, few seem to agree on its magnitude (Crowell and Burgess 1996). Several surveys (e.g., Bachman and Saltzman 1995; Rennison and Welchans 2000; Straus and Gelles 1990) have attempted to determine the extent of violence against women, but methods and findings vary considerably,

arousing some debate. Many people contend that the magnitude of violence against women—including violence by intimate partners—is underestimated, while others believe it is exaggerated.

Why has the scope of intimate partner violence been so difficult to measure?

Lack of consensus about terminology. Researchers have been unable to agree on a definition of intimate partner violence. In some studies, IPV includes only acts that may cause pain or injury, while ignoring behaviors designed to control or intimidate, such as stalking, humiliation, verbal abuse, imprisonment, and denial of access to money, shelter, or services.

Much of the debate about the number of women affected by intimate partner violence results from this lack of consensus. For example, a researcher who defines IPV more broadly—including stalking and other forms of psychological abuse, as well as physical and sexual violence—will produce a larger estimate than a researcher who uses a more narrow definition that includes physical and sexual violence only (DeKeseredy 2000). A definition that separately measures component types of violence—physical, sexual, and emotional—will also likely produce different measurements than one that combines all types of violence (Gordon 2000).

Variations in survey methodology. Sampling strategies and how the purpose of a survey is explained may affect how participants answer survey questions. For example, a respondent on the National Crime Victimization Survey may not acknowledge being the victim of IPV if he or she does not believe IPV is a crime. However, the same respondent might disclose IPV victimization on a survey about family conflict.

Gaps in data collection. Because no national system exists for ongoing collection of data about IPV against women, estimates are often drawn from data gathered for other purposes. For example, hospitals collect information about victims to provide patient care and for billing purposes; they may record few details about the violence itself or about the perpetrator and his or her relationship to the victim. In contrast, police collect data that will aid in apprehending the perpetrator, and thus may collect little information about the victim.

Different time frames. Studies of IPV have used different time frames to study victimization. Some measure lifetime victimization, while others measure annual victimization. These differences are not always well understood and have sometimes resulted in inappropriate comparisons being drawn between studies that are not in fact comparable.

Reluctance to report victimization. Many victims do not want to report IPV because they may fear, love, depend on, or wish to protect the perpetrator. When medical care is required, women may attribute their injuries to other causes.

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Repetitive nature of IPV. Often, IPV involves repetitive behavior, rather than a single incident. However, reports about IPV do not always clearly indicate whether data refer to the number of IPV incidents or the number of victims.

Limited populations. Previous studies have focused either on married or cohabiting couples or on dating relationships. Although a few studies have looked at violence among same-sex couples, most research has examined only heterosexual relationships. Few studies have examined IPV among the population overall.

Survey limitations. Many data about IPV have been collected through surveys, which rely on self-reports by victims. These self-reports may not accurately reflect the magnitude of the problem, if respondents do not answer questions truthfully or do not accurately recall events. Additionally, despite carefully worded questions and efforts to ensure that participants understand what is being asked, respondents may interpret terms differently.

Because methodological differences such as those described here can affect the findings of a survey or study, researchers must explain the choice of a particular methodology, define terms used, and clearly explain how information was gathered (CDC 2000). This information allows others to examine findings in the context in which data were collected and can help readers understand how the findings compare with those of other surveys or studies. In keeping with this practice, this report specifies the methodology employed and the definitions used.

The National Violence Against Women Survey

When Congress requested a study about the costs of IPV, no existing survey or study had a large enough sample to reliably estimate the occurrence of IPV-related injuries in the U.S. population. Nor did any existing survey or study include enough information about the nature and extent of injuries and their treatment to make the national projections Congress had requested. A new study was needed to fill gaps in knowledge about the magnitude of IPV.

Developing and Implementing the National Violence Against Women Survey

CDC learned that the National Institute of Justice (NIJ), the research arm of the U.S. Department of Justice, had funded Patricia Tjaden and Nancy Thoennes of the Center for Policy Research in Denver to develop the National Violence Against Women Survey—or NVAWS. The NVAWS was to generate information about the incidence, prevalence, characteristics, and consequences of physical assault, rape, and stalking perpetrated against U.S. women ages 18 and older by all types of perpetrators, including intimate partners.

Rather than duplicating efforts, CDC approached NIJ about supplementing its grant to Tjaden and Thoennes to broaden the size and scope of the survey by increasing the sample size, conducting a companion survey of male respondents, and adding questions about violence in same-sex intimate relationships. The broader survey could then be used as the basis for calculating more reliable cost estimates of IPV and other forms of violence. Both NIJ and the Center for Policy Research agreed to delay the survey to accommodate a supplemental award and make CDC's proposed changes.

The supplemental funds expanded the survey population to a number large enough to provide reliable national estimates of the incidence and prevalence of forcible rapes, physical assault, and stalking; related injuries and health care costs, including those for mental health care services; and indirect costs due to lost productivity of paid work and household chores.

CDC and the office of the Assistant Secretary for Planning and Evaluation, another component of HHS, contracted with Wendy Max, Dorothy Rice, Jacqueline Golding, and Howard Pinderhughes at the University of California, San Francisco, to use the methodology they had developed earlier (Rice et al. 1996) to review draft survey questions and to recommend changes that would enable cost data to be collected with the NVAWS. The survey questions sought to detail the type of violence; the circumstances surrounding the violence; the relationship between victim and perpetrator; and consequences to the victim, including injuries sustained, use of medical and mental health care services, contact with the criminal justice system, and time lost from usual activities.

From November 1995 to May 1996, a national probability sample of 8,000 women and 8,000 men ages 18 and older were surveyed via telephone using a computer-assisted interviewing system. Female interviewers surveyed female respondents. A Spanish-language version of the survey was used with Spanish-speaking respondents.

In addition to the 8,000 completed interviews, the women's survey contacts included 4,829 ineligible households; 4,608 eligible households that refused to participate; and 351 interviews that were terminated before completion. The women's response rate was 71.0%.

Analyzing NVAWS Data and Estimating the Costs of Intimate Partner Violence

Tjaden and Thoennes (1999) used the NVAWS data and U.S. Census figures for the population of women ages 18 and older to generate national estimates of the incidence and prevalence of IPV-related injuries among women.¹ Cost estimates were to be derived from these estimates. Max and colleagues (1999) applied their previously developed methodology for estimating the costs of intimate partner violence to the NVAWS incidence data and data from other sources (Rice, Max, Golding and Pinderhughes 1996).

¹This report used only the data about violence committed against women by intimate partners. However, NVAWS data have also provided insight into other areas of violence, including a comparison of women's and men's experiences as victims of rape, physical assault, and stalking by all types of perpetrators.

Intimate Partner Violence

CDC funded Research Triangle Institute International (RTI) to derive measures of reliability for the incidence, prevalence, and cost estimates. Additionally, Max and colleagues and RTI developed estimates of the present value of lifetime earnings for fatal IPV by combining economic data with IPV homicide data from the Federal Bureau of Investigation.

The report that follows reflects CDC's integration of the work by Tjaden and Thoennes, Max and colleagues, and RTI.

Definitions Used in the NVAWS and this Report

Throughout this report, one will read about intimate partner violence (IPV) and specific types of violent behaviors, as well as about incidence, prevalence, and victimization rates of IPV. As stated earlier, there is a lack of consensus about IPV-related terminology. Therefore, it is important to define those terms as they were used in the NVAWS to ensure that readers have a consistent understanding of what they mean and to allow readers to compare findings presented in this report with those of other studies.

Intimate partner violence (IPV) against women includes rape, physical assault, and stalking perpetrated by a current or former date, boyfriend, husband, or cohabiting partner, with cohabiting meaning living together as a couple. Both same-sex and opposite-sex cohabitants are included in the definition. This definition of IPV resembles the one developed by CDC (Saltzman et al. 1999); however, it also includes stalking because of the high level of fear that stalking generally provokes in women and the associated costs that may result.

Rape is the use of force, without the victim's consent, or threat of force to penetrate the victim's vagina or anus by penis, tongue, fingers, or object, or the victim's mouth by penis. The definition includes both attempted and completed acts. This definition is similar to that used in the National Women's Study (National Victim Center and Crime Victims Research and Treatment Center 1992) and is roughly equivalent to what the justice system refers to as rape or attempted rape.

Physical assault is any behavior that inflicts physical harm or threatens or attempts to do so. Specific behaviors include throwing something at the victim; pushing, grabbing, or shoving; pulling hair; slapping, hitting, kicking, or biting; choking or trying to drown; hitting with an object; beating up the victim; threatening with a gun or knife; and shooting or stabbing the victim. This definition is similar to that used in the National Family Violence Survey (Straus and Gelles 1986) and the Canadian Violence Against Women Survey (Johnson 1996), and it is roughly equivalent to what the justice system refers to as simple and aggravated assault.

Stalking is repeated visual or physical proximity, non-consensual communication, and/or verbal, written, or implied threats directed at a specific individual that would arouse fear in a reasonable person. The stalker need not make a credible threat of violence against the victim, but the victim must experience a high level of fear or feel that they or someone close to them will be harmed or killed by the stalker. This definition is similar to that used in the model anti-stalking legislation developed for states by NIJ (National Criminal Justice Association 1993).

Prevalence is the number of U.S. women ages 18 and older who have been victimized by an intimate partner at some point during their lifetimes (lifetime prevalence) or during the 12 months preceding the NVAWS (past 12 months prevalence). In this report, prevalence refers to past 12 months prevalence unless otherwise specified.

Incidence is the number of separate episodes of IPV that occurred among U.S. women ages 18 and older during the 12 months preceding the survey. For IPV, incidence frequently exceeds prevalence because IPV is often repeated. In other words, one victim (who is counted once under the prevalence definition) may experience several victimizations over the course of 12 months (each of which contributes to the incidence count).

Victimization rate is the number of IPV victimizations involving U.S. women ages 18 and older per 1,000 women in that population. The population estimate used in this report is the U.S. Census Bureau's projection of 100,697,000 women ages 18 and older in 1995.

A Note About Annual Estimates

This report presents annual data about IPV and its costs, generalized from data about the incidence of intimate partner violence in a given year (1995) and the costs associated with those victimizations. CDC acknowledges that the health care costs, value of lost productivity, and present value of lifetime earnings among IPV murder victims may be different today than in 1995. However, this report reflects the most appropriate, reliable data currently available about the costs associated with IPV.

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Incidence, Prevalence, and Consequences of Intimate Partner Violence Against Women in the United States

Before estimating the costs of intimate partner violence, one needs to know how many women were injured nonfatally as a result of IPV; how many women used medical and mental health care services after IPV victimization; and how many women lost time from paid work and household chores after IPV. The National Violence Against Women Survey (NVAWS) provided that information. One also needs to know how many women died as a result of IPV. This information was obtained from the FBI's Uniform Crime Reports Supplementary Homicide Reports (Fox 2000).

This chapter describes the findings of the NVAWS, along with the national estimates calculated from those findings. It also presents estimates of the number of IPV homicides. The data presented reflect the incidence of IPV and related health care service use in 1995; these data are the most appropriate, reliable data currently available about the health care costs associated with IPV.

Incidence and Prevalence of Nonfatal Intimate Partner Rape, Physical Assault, and Stalking

The NVAWS asked the 8,000 U.S. women ages 18 and older if they had been victims of IPV at any time in their lives or within the 12 months preceding the survey.

Intimate partner rape. Of the female NVAWS respondents, 7.7% had been raped by an intimate partner at some point in their lifetimes; 0.2% reported intimate partner rape in the past 12 months.¹ Extrapolating these percentages to U.S. Census population data, nearly 7.8 million women have been raped by an intimate partner at some time in their lives, and an estimated 201,394 women are raped by an intimate partner each year (Table 1).

Because some respondents reported multiple intimate partner rapes in the 12 months preceding the survey, the incidence of rape exceeded the prevalence. Women who were raped in that year experienced an average of 1.6 victimizations. This calculates to an

¹ Only 16 women participating in the NVAWS reported IPV rape in the 12 months preceding the survey. Estimates based on this small number are marginally stable and should be viewed with caution.

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estimated 322,230 rapes by intimate partners each year, an annual victimization rate of 3.2 intimate partner rapes per 1,000 women [322,230 rapes / 100,697,000 women = 0.0032 or 3.2 per 1000] (Table 2).

Intimate partner physical assault. The NVAWS found that 22.1% of women had been physically assaulted by an intimate partner at some time in their lives, and 1.3% reported such an event in the 12 months preceding the survey. Thus, an estimated 1.3 million women are victims of physical assault by an intimate partner each year (Table 1).

Women who were physically assaulted by an intimate partner in the previous 12 months experienced an average of 3.4 separate assaults. Using these data, an estimated 4.5 million IPV physical assaults occur annually, a victimization rate of 44.2 per 1,000 (Table 2).

Intimate partner stalking. The survey found that 4.8% of women reported being stalked by an intimate partner at some time in their lives. One-half percent of women had been stalked in the 12 months preceding the survey, which equates to an estimated 503,485 women stalked by intimate partners each year (Table 1).

Because stalking, by definition, involves repeated acts of harassment and intimidation, and because no woman in the NVAWS reported being stalked by more than one intimate partner in the 12 months preceding the survey, the incidence and prevalence of intimate partner stalking are identical. Thus, the annual victimization rate for intimate partner stalking among women is 5.0 per 1,000 (Table 2).

Injuries Among Victims of Intimate Partner Violence

To explore the extent and nature of injuries associated with intimate partner violence, respondents disclosing rape or physical assault were asked whether they were injured during their most recent victimization, and if so, what types of injuries they sustained. Victims of stalking were not asked about injuries because the NVAWS definition of stalking does not include behaviors that inflict physical harm.

The NVAWS found that 36.2% of the women who were raped by an intimate partner sustained an injury (other than the rape itself) during their most recent victimization (Figure 1), and 41.5% of physical assault victims were injured (Figure 2). The majority of women who were injured during the most recent IPV episode sustained relatively minor injuries, such as scratches, bruises, and welts. Relatively few women sustained more serious types of injuries, such as lacerations, broken bones, dislocated joints, head or spinal cord injuries, chipped or broken teeth, or internal injuries.²

²For information about specific injuries, see Tjaden P, Thoennes N. *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*. Washington (DC): U.S. Department of Justice, Office of Justice Programs, National Institute of Justice; 2000. NCJ 181867.

Victims' Use of Medical Care Services

Respondents who were injured were asked if they received medical treatment and, if so, what type of care.³

NVAWS Findings

Of the women injured during their most recent intimate partner rape, 31.0% received some type of medical care, such as ambulance/paramedic services, treatment in a hospital emergency department (ED), or physical therapy (Figure 1). A comparable proportion (28.1%) of IPV physical assault victims who were injured received some type of medical care (Figure 2).

More than three-quarters of the rape and physical assault victims who received medical care were treated in a hospital setting (79.6% and 78.6%, respectively). Among women seeking medical care, 51.3% of rape victims and 59.1% of physical assault victims were treated in an ED, while 30.8% of rape victims and 24.2% of physical assault victims received some other type of outpatient service. Of those who were treated in a hospital, 43.6% of rape and 32.6% of physical assault victims were admitted and spent one or more nights in the hospital (Figures 1 and 2).

National Estimates of Medical Care Service Use

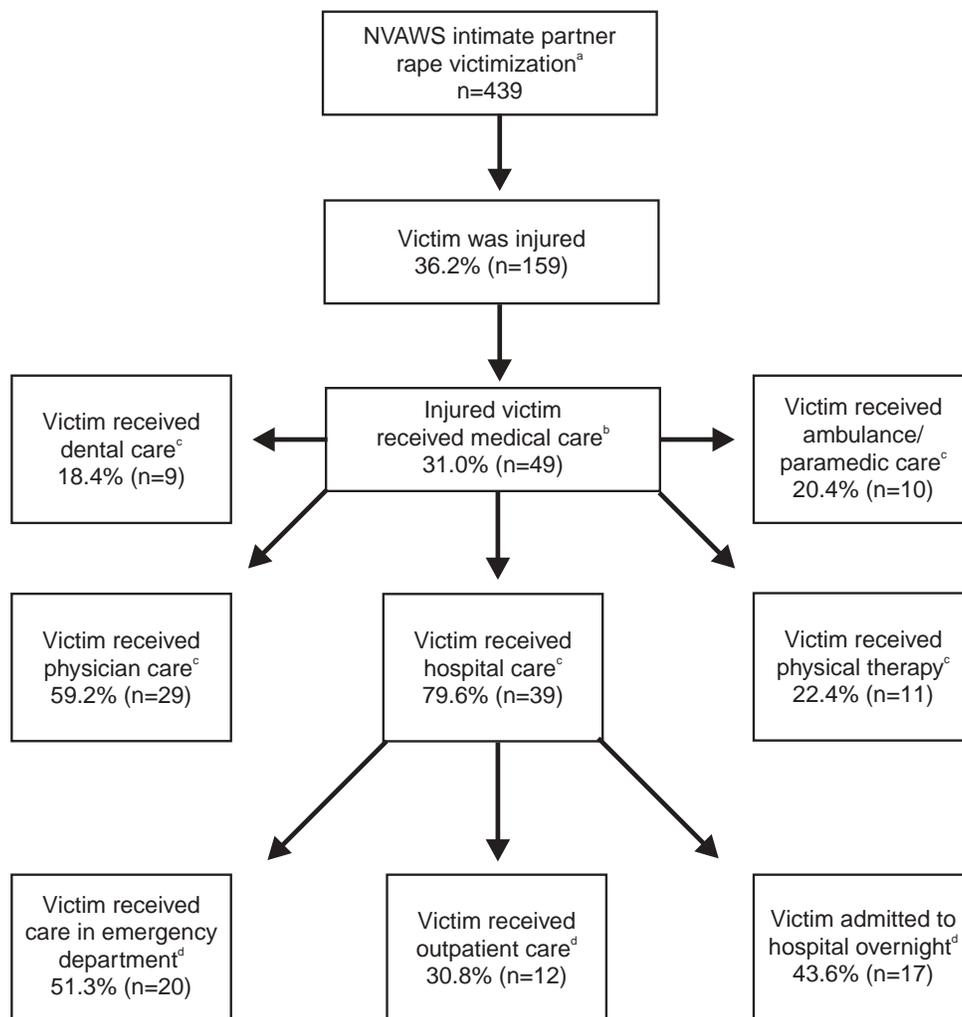
Of the estimated 322,230 intimate partner rapes each year, 116,647 result in injuries (other than the rape itself), 36,161 of which require medical care. And of the nearly 4.5 million physical assault victimizations, more than 1.8 million cause injuries, 519,031 of which require medical care. Nearly 15,000 rape victimizations and more than 240,000 physical assault victimizations result in hospital ED visits (Table 3).

Multiple medical care visits are often required for each IPV victimization. For example, victims of both rape and physical assault averaged 1.9 hospital ED visits per victimization, resulting in an estimated 486,151 visits each year to hospital EDs resulting from rape and physical assault victimizations (Table 4). Consequently, the total number of medical service uses exceeds the total number of victimizations resulting in medical care.

³To yield more reliable estimates for service use, all most-recent IPV victimizations reported in the NVAWS—including those that occurred more than 12 months before the interview—were used to establish use patterns.

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Figure 1.
Percentage Distributions of U.S. Adult Female Victims of Intimate Partner Rape by Medical Care Service Use, 1995



^a Estimates are based on the most recent intimate partner victimization since the age of 18.

^b The percentage of victims who received medical care is based on 158 responses from victims who were injured, excluding one "don't know" response.

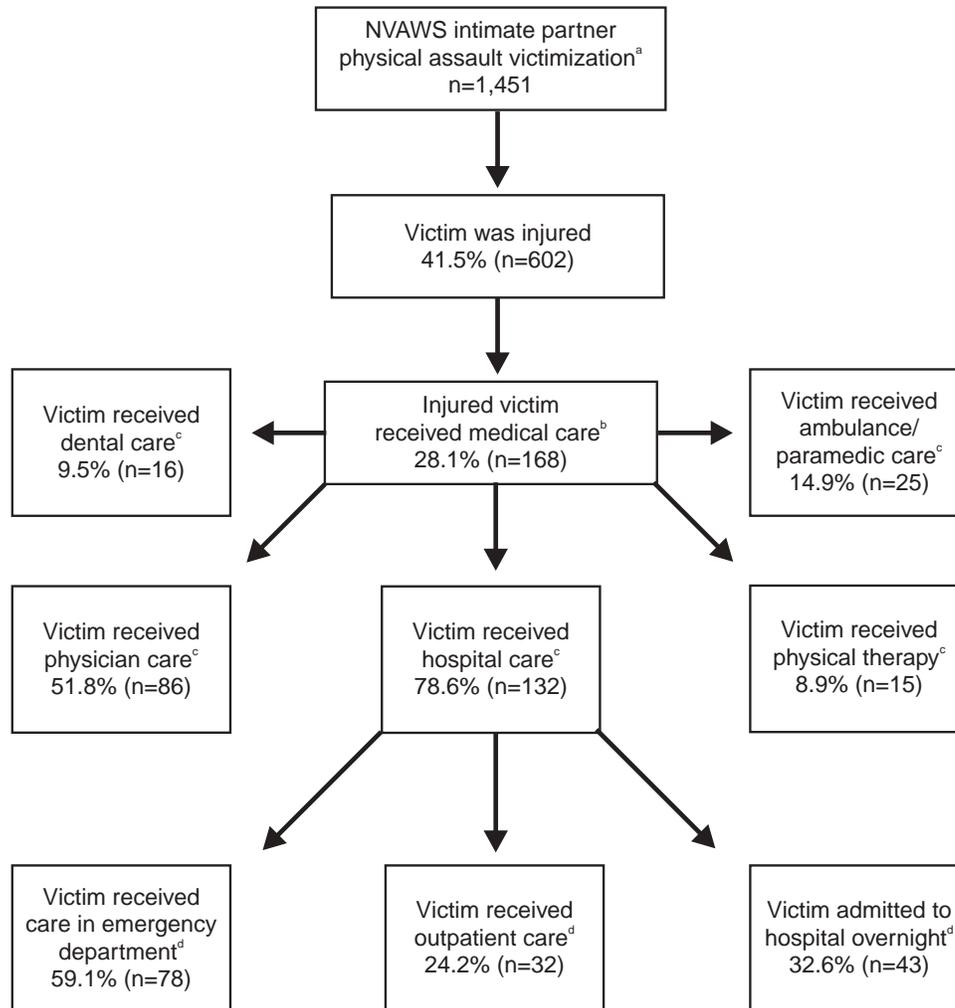
^c Estimates are based on responses from victims who received medical care.

^d Estimates are based on responses from victims who received hospital care.

Note: Total percentages for type of medical and hospital care received exceed 100 because some victims had multiple forms of medical/hospital care.

Sources: Tjaden and Thoennes 2000; Bardwell Consulting, Ltd. (unpublished data) 2001.

Figure 2.
Percentage Distributions of U.S. Adult Female Victims of Intimate Partner Physical Assault by Medical Care Service Use, 1995



^a Estimates are based on the most recent intimate partner victimization since the age of 18.

^b The percentage of victims who received medical care is based on 598 responses from victims who were injured, excluding 4 “don’t know” responses.

^c Estimates are based on 168 responses from victims who received medical care, although the percentage of victims who received physician care is based on 166 respondents, excluding 2 “don’t know” responses.

^d Estimates are based on responses from victims who received hospital care.

Note: Total percentages for type of medical and hospital care received exceed 100 because some victims had multiple forms of medical/hospital care.

Sources: Tjaden and Thoennes 2000; Bardwell Consulting, Ltd. (unpublished data) 2001.

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Victims' Use of Mental Health Care Services

NVAWS respondents who were victimized by an intimate partner were asked whether they talked to a psychologist, psychiatrist, or other type of mental health professional about their most recent victimization, and if so, how many times.

NVAWS Findings

One-third of female rape victims, 26.4% of physical assault victims, and 42.6% of stalking victims said they talked to a mental health professional, most of them multiple times. Among these women, rape victims averaged 12.4 visits, physical assault victims averaged 12.9 visits, and stalking victims averaged 9.6 visits (Table 5).

National Estimates of Mental Health Care Service Use

Of the estimated 5.3 million rapes, physical assaults, or stalking incidents by intimate partners each year, nearly 1.5 million result in some type of mental health counseling. The total number of mental health care visits by female IPV victims each year is estimated to be more than 18.5 million (Table 5).

Victims' Lost Productivity

The NVAWS asked IPV victims whether their most recent victimization caused them to lose time from routine activities, including employment, household chores, and childcare. Victims who lost time from employment and household chores were asked how many days they lost from these activities. This information was then applied to the estimated number of women victimized each year by intimate partners to produce annual estimates of total lost productivity.

NVAWS Findings

Of adult female IPV victims, 35.3% who were stalked, 21.5% who were raped, and 17.5% who were physically assaulted lost time from paid work (Table 6). Women stalked by an intimate partner averaged the largest number of days lost from paid work (10.1). Women raped by an intimate partner lost an average 8.1 days from paid work, and victims of IPV physical assault lost 7.2 days on average per victimization (Table 7).

Among IPV stalking victims, 17.5% lost days from household chores; IPV rape and physical assault victims lost 13.5% and 10.3% respectively (Table 6). Victims of IPV rape lost the largest average number of days from household chores (13.5), followed by stalking (12.7) and physical assault (8.4) victims (Table 7).

National Estimates of Lost Productivity

According to NVAWS estimates, U.S. women lose nearly 8.0 million days of paid work each year because of violence perpetrated against them by current or former husbands, cohabitants, dates, and boyfriends. This is the equivalent of 32,114 full-time jobs each year. An additional 5.6 million days are lost from household chores (Table 7).

Intimate Partner Homicides Among Women

Data about fatal IPV were obtained from the Federal Bureau of Investigation's Uniform Crime Reports (UCR) Supplementary Homicide Reports. Data in the UCR are submitted to the FBI by nearly 17,000 law enforcement agencies nationwide. In 1995, the same year as data from the NVAWS, 1,252 U.S. women ages 18 and older were killed by intimate partners.

Summary

Nearly 5.3 million intimate partner victimizations occur among U.S. women ages 18 and older each year. This violence results in nearly 2.0 million injuries and nearly 1,300 deaths. Of the IPV injuries, more than 555,000 require medical attention, and more than 145,000 are serious enough to warrant hospitalization for one or more nights. IPV also results in more than 18.5 million mental health care visits each year. Add to that the 13.6 million days of lost productivity from paid work and household chores among IPV survivors and the value of IPV murder victims' expected lifetime earnings, and it is clear to see that intimate partner violence against women places a significant burden on society.

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Table 1. Percentage of NVAWS Respondents and Estimated Number of U.S. Adult Women Nonfatally Victimized by an Intimate Partner in Their Lifetimes and in the Previous 12 Months, by Type of Victimization, 1995

<u>Type of Victimization</u>	<u>In Lifetime</u>		<u>In Previous 12 Months</u>	
	<u>Percent in NVAWS^a</u>	<u>Estimated No. Women^b</u>	<u>Percent in NVAWS^a</u>	<u>Estimated No. Women^b</u>
Rape	7.7	7,753,669	0.2 ^c	201,394
Physical assault	22.1	22,254,037	1.3	1,309,061
Stalking	4.8	4,833,456	0.5	503,485
TOTAL Victimized^d	25.5	25,677,735	1.8	1,812,546

^aPercentage of respondents is based on NVAWS interviews with 8,000 U.S. women ages 18 and older.

^bEstimated number of women is calculated by applying the NVAWS percentage to the 1995 projected population estimate of women ages 18 and older in the U.S. (100,697,000).

^cOnly 16 women participating in the NVAWS reported IPV rape in the 12 months preceding the survey. Estimates based on this small number are marginally stable and should be viewed with caution.

^dThe individual types of victimizations do not sum to the total number of women victimized because some victims reported multiple types of victimization.

Sources: Tjaden and Thoennes 2000; Wetrogen 1988.

Table 2. Estimated Number of Nonfatal Intimate Partner Rape, Physical Assault, and Stalking Victimization Against U.S. Adult Women, 1995

<u>Type of Victimization</u>	<u>No. of Victims</u>	<u>Average No. of Victimization Per Victim^a</u>	<u>Total No. of Victimization</u>	<u>Annual Rate of Victimization Per 1,000 Women</u>
Rape	201,394	1.6	322,230 ^b	3.2 ^b
Physical assault	1,309,061	3.4	4,450,807	44.2
Stalking	503,485	1.0	503,485	5.0

^aThe average number of victimizations per victim is based on the previous 12 months. Because stalking by definition means repeated acts, and because no woman was stalked by more than one intimate partner in the 12 months preceding the survey, the number of stalking victimizations was imputed to be the same as the number of stalking victims. Thus, the average number of stalking victimizations per victim is 1.0.

^bRelative standard error exceeds 30 percent. Based on 16 women who reported intimate partner rape in the previous 12 months, this estimate is unstable and used only as part of intermediate calculations to determine the total costs associated with IPV.

Sources: Tjaden and Thoennes 2000; Bardwell Consulting, Ltd. (unpublished data) 2001.

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Table 3. Estimated Victimization Outcomes and Medical Care Service Use by U.S. Adult Female Victims of Nonfatal Intimate Partner Rape and Physical Assault, 1995

Victimization Outcomes and Medical Services Used	Rape	Physical Assault	Total
Victimizations	322,230	4,450,807	4,773,037
Victimization resulting in injury ^a	116,647	1,847,085	1,963,732
Victimization resulting in some type of medical care ^b	36,161	519,031	555,192
Victimization resulting in:			
Hospital care ^c	28,784	407,958	436,742
Physician care ^c	21,407	268,858	290,265
Dental care ^c	6,654	49,308	55,962
Ambulance/paramedic care ^c	7,377	77,336	84,713
Physical therapy ^c	8,100	46,194	54,294
Victimization resulting in hospital:			
ED care ^d	14,766	241,103	255,869
Outpatient care ^d	8,865	98,726	107,591
Overnight care ^d	12,550	132,994	145,544

^aDerived by applying the injury percentages (Figures 1 and 2) to the total number of victimizations.

^bDerived by applying the medical care percentages (Figures 1 and 2) to the number of victimizations resulting in injury.

^cThe number of victimizations resulting in each particular type of medical care (e.g., physician care) was derived by applying the percentage of victimizations resulting in that particular service (Figures 1 and 2) to the overall number of victimizations resulting in some type of medical care.

^dThe number of victimizations resulting in each particular type of hospital care (e.g., ED care) was derived by applying the percentage of victimizations resulting in that particular type of care (Figures 1 and 2) to the overall number of victimizations resulting in hospital care.

Sources: Tjaden and Thoennes 2000; Bardwell Consulting, Ltd. (unpublished data) 2001; Max, Rice, Golding and Pinderhughes (unpublished data) 1999.

Table 4. Estimated Average and Total Number of Medical Care Service Uses by U.S. Adult Female Victims of Nonfatal Intimate Partner Rape and Physical Assault, 1995

Type of Medical Service	Rape		Physical Assault		Rape and Physical Assault
	Average No. of Uses	Total No. of Uses ^a	Average No. of Uses	Total No. of Uses ^a	Total No. of Uses
ED visits	1.9	28,055	1.9	458,096	486,151
Outpatient visits	1.6	14,184	3.1	306,051	320,235
Hospital overnights	3.9	48,945	5.7	758,066	807,011
Physician visits	5.2	111,316	3.2	860,346	971,662
Dental visits	2.3	15,304	4.4	216,955	232,259
Ambulance/paramedic services	1.3	9,950	1.1	85,070	95,020
Physical therapy visits	13.4	108,540	21.1	974,693	1,083,233

^aThe total number of uses for each type of medical care service for rape and physical assault victimizations was derived by multiplying the total number of victimizations resulting in that medical care service (Table 3) by the average number of uses of that service.

NOTE: Estimates were derived separately for each type of victimization. Overall totals for service use were subsequently derived by summing the respective estimates across victimization types. Consequently, the overall average number of medical care service uses was not derived.

Sources: Tjaden and Thoennes 2000; Bardwell Consulting, Ltd. (unpublished data) 2001; Max, Rice, Golding and Pinderhughes (unpublished data) 1999.

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Table 5. Estimates of Mental Health Care Service Use by U.S. Adult Female Victims of Intimate Partner Violence by Victimization Type, 1995

<u>Victimization and Mental Health Use Estimates</u>	<u>Rape</u>	<u>Physical Assault</u>	<u>Stalking</u>	<u>Total</u>
Total number of victimizations	322,230	4,450,807	503,485	5,276,522
Percent of victimizations resulting in mental health care services	33.0%	26.4%	42.6%	N/A
Number of victimizations resulting in mental health care services	106,336	1,175,013	214,485	1,495,834
Average number of mental health care visits per victimization	12.4	12.9	9.6	N/A
TOTAL number of mental health care visits	1,318,566	15,157,668	2,059,056	18,535,290

NOTE: Estimates were derived separately for each type of victimization. Overall totals for victimizations and mental health care visits were subsequently derived by summing the respective estimates across victimization types. Consequently, the overall percentage receiving mental health care services and overall average number of mental health care visits per victimization were not derived.

Sources: Tjaden and Thoennes 2000; Bardwell Consulting, Ltd. (unpublished data) 2001; Max, Rice, Golding and Pinderhughes (unpublished data) 1999.

Table 6. Estimated Percentage of Victims and Number of Nonfatal Victimization of Intimate Partner Rape, Physical Assault, and Stalking Against U.S. Adult Women, by Time Lost from Paid Work and Household Chores, 1995^a

<u>Victimization Type</u>	<u>Activity</u>	<u>Percent Victims</u>	<u>Number of Victimization</u>
Rape	Paid Work	21.5	69,279
	Household Chores	13.5	43,501
Physical assault	Paid Work	17.5	778,891
	Household Chores	10.3	458,433
Stalking	Paid Work	35.3	177,730
	Household Chores	17.5	88,110
TOTAL	Paid Work	N/A	1,025,900
	Household Chores	N/A	590,044

^aEstimates are derived from the NVAWS based on the most recent intimate partner victimization since age 18.

NOTE: Victimization estimates of time lost from both paid work and household chores were derived separately for each victimization type. The total number of victimizations was subsequently derived by summing the respective estimates across victimization types. Consequently, the overall percentages of victims reporting time lost from paid work and household chores were not derived.

NOTE: See Appendix A for calculations of lost productivity and related values.

Sources: Tjaden and Thoennes (unpublished data) 1999; Bardwell Consulting, Ltd. (unpublished data) 2001.

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Table 7. Estimated Lost Productivity Among U.S. Adult Female Victims of Nonfatal Intimate Partner Violence, by Victimization Type and by Time Lost from Paid Work and Household Chores, 1995^a

Victimization Type	Activity	Days Lost		Lost Full-Time Job Equivalent ^b
		Average	Total	
Rape	Paid Work	8.1	561,160	2,263
	Household Chores	13.5	587,264	N/A
Physical assault	Paid Work	7.2	5,608,015	22,613
	Household Chores	8.4	3,850,837	N/A
Stalking	Paid Work	10.1	1,795,073	7,238
	Household Chores	12.7	1,118,997	N/A
TOTAL	Paid Work	N/A	7,964,248	32,114
	Household Chores	N/A	5,557,098	N/A

^aEstimates are derived from the NVAWS based on the most recent intimate partner victimization since age 18.

^bThe estimates of lost full-time job equivalents for paid work conservatively assume 248 work days per year.

NOTE: Victimization estimates of the average and total number of days lost from both paid work and household chores were derived separately for each victimization type. The overall total number of days lost was subsequently derived by summing the respective estimates across victimization types. Consequently, the overall average number of days lost from paid work and household chores were not derived.

NOTE: See Appendix A for illustrations of calculations of lost productivity and related values.

Sources: Tjaden and Thoennes (unpublished data) 1999; Bardwell Consulting, Ltd. (unpublished data) 2001.

Costs of Intimate Partner Violence in the United States

Understanding the economic costs of intimate partner violence (IPV) can aid policy-makers in allocating resources more effectively and efficiently. This chapter provides the estimated annual costs of medical care, mental health care, lost productivity, and present value of lifetime earnings associated with IPV against U.S. adult women. The data presented reflect costs associated with IPV victimizations that occurred in 1995; these data are the most appropriate, reliable data currently available. It should be noted, however, that costs related to victimization in a given year are not always incurred in that year. For instance, mental health care visits related to IPV could continue for years after victimization. Therefore, estimated costs for victimization in a given year may underestimate the total costs of an incident of IPV victimization.

Calculating the Costs of Intimate Partner Violence

The economic costs of IPV are divided into two components—direct and indirect costs.

- **Direct costs** are the actual dollar expenditures related to IPV. They include spending for health care–related services such as emergency department (ED) visits; hospitalizations; outpatient clinic visits; services of physicians, dentists, physical therapists, and mental health professionals; ambulance transport; and paramedic assistance. To calculate the total costs of each medical and mental health care service, the unit cost of a particular service was multiplied by the number of times that service was used (Bardwell 2001).
- **Indirect costs** of IPV represent the value of lost productivity from both paid work and household chores for injured victims and the present value of lifetime earnings for victims of fatal IPV. Lost productivity was measured by the number of days victims were unable to perform paid work and/or household chores (including household chores and childcare for women not employed outside the home) because of illness, injury, or disability related to IPV victimization. The value of lost productivity was calculated using the mean daily values of work and household production, which are based on data from the U.S. Bureau of Labor Statistics (1996; 1999), Miller (1997), and the U.S. Bureau of the Census (1996). The present value of lifetime earnings was calculated by multiplying the number of IPV homicides for each age group by the average present value of the anticipated

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future earnings of women in those age groups. These calculations account for differential life expectancy by age group, labor force earning patterns and participation rates at successive ages, and imputed household production values for women in the labor force and women not in the labor force (Rice, Max, Golding and Pinderhughes 1997).

To yield more reliable estimates for service use and lost productivity, all most-recent IPV victimizations reported in the NVAWS—including those that occurred more than 12 months before the interview—were used to establish patterns of service use and lost productivity.

Data Sources Used to Calculate Costs of Intimate Partner Violence

As discussed previously, the National Violence Against Women Survey (NVAWS) and Uniform Crime Reports Supplementary Homicide Report were used to measure the incidence of fatal and nonfatal IPV, incidence of IPV-related health care service use among survivors, and lost productivity. Additionally, the following sources were used to calculate the health care costs of IPV:

- **Medical Expenditure Panel Survey (MEPS), 1996.** This survey by the Agency for Healthcare Research and Quality lists expenditures for medical care in the U.S. The MEPS is the main data source for unit costs of health care presented in this report. These unit costs were deflated to 1995 dollars using the appropriate health care components of the Consumer Price Index.
- **Medicare 5% Sample Beneficiary Standard Analytic Files.** This data source, which reflects physician/supplier claims, was used to calculate expenditures for ambulance and paramedic services, which are not available in MEPS.

Health Care Costs

In this report, service use estimates were restricted to services required as a result of the most recent victimizations by intimate partners, as derived from the NVAWS. In the NVAWS, only women who were injured as a result of IPV were asked about their use of medical care services. In contrast, all women who were victimized, regardless of injury, were asked about their use of mental health care services. Unit costs of medical and mental health care services for rape and physical assault victims were derived from the MEPS using medical and mental health visits related to injuries for women ages 18 and older. The unit costs of mental health care services for stalking victims were based on MEPS using mental health visits for women ages 18 and older who did not also sustain physical injuries.

Medical Care Costs

Medical care costs include ambulance transport and paramedic care; ED care; physician, physical therapy, and dental visits; inpatient hospitalizations; and outpatient clinic visits. Victims seeking medical care often received more than one service. We estimated the medical care costs of rape and physical assault separately. Rapes that involved physical assault were classified as rape only to avoid counting victimizations twice. No medical care costs were associated with stalking.

Rape. According to estimates from the NVAWS, 322,230 IPV rapes occur among women each year. Slightly more than one-third of these rapes (36.2%) result in physical injuries, 31.0% of which require medical care. In all, 36,161 IPV rapes result in women receiving medical care for injuries. Table 8 presents the number of times IPV rape victims use each medical care service, along with the unit costs of those services.

The mean medical care cost per IPV rape is about \$516. The mean medical care cost per rape among victims who actually receive treatment is \$2,084 per victimization. Not all victims who reported receiving medical care used all types of medical services. Therefore, the average cost of medical care for victims receiving treatment reflects variations in service use; it does not equal the total of each of the individual service costs per rape.

Nearly half of the medical care costs associated with IPV rape are paid by private or group insurance; victims pay more than one-quarter of the costs (Table 9).

Physical Assault. Based on NVAWS estimates, 4,450,807 IPV physical assaults occur against women annually; 41.5% of these assaults cause injuries. Medical care for injuries is required in 519,031 incidents (28.1% of those injured). Table 10 presents the number of times physical assault victims use medical care services and the unit costs of those services.

The mean medical care cost per incident of IPV physical assault is \$548. The mean medical care cost per physical assault among victims who actually receive treatment is \$2,665. Not all victims who reported receiving medical care used all types of medical services. Therefore, the average cost of medical care for victims receiving treatment reflects variations in service use; it does not equal the total of each of the individual service costs per physical assault.

As with IPV rape, private or group insurance pays for nearly half of medical care costs for IPV physical assaults; victims pay more than one-quarter of the costs (Table 9).

Mental Health Care Costs

All women in the NVAWS who reported IPV were asked if they used mental health care services. Because mental health care often requires multiple visits over a long period of time, the cost of these services is substantial.

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Rape. According to NVAWS estimates, one-third (33.0%) of IPV rapes result in the victim's speaking with a psychologist, psychiatrist, or other mental health professional about the incident. On average, each incident requires 12.4 mental health care visits, for a total of 1.3 million mental health visits per year, at a mean cost of \$78.86 per visit. The mean mental health care cost per incident of IPV rape is \$323; the mean cost per IPV rape among victims who actually receive treatment is \$978. Victims pay for more than one-third of mental health care services; private health insurers pay only slightly more than victims (Table 11).

Physical Assault. More than one-quarter (26.4%) of IPV physical assaults result in the victim's speaking with a psychologist, psychiatrist, or other mental health professional, according to NVAWS estimates. On average, each incident requires 12.9 visits, for a total of 15.2 million visits annually, at a mean cost of \$78.86 per visit. The mean mental health care cost per incident of IPV physical assault, is \$269; among victims who actually receive treatment, the mean cost per incident is \$1,017. Victims pay for approximately one-third of the costs (Table 11).

Stalking. NVAWS estimates indicate that more than half a million women are stalked by intimate partners each year. Forty-three percent of these victims seek mental health care services, at an average of 9.6 visits per person. That's a total of nearly 2.1 million mental health care visits related to IPV stalking annually at a mean cost of \$71.87 per visit. The mean mental health care cost per stalking incident by an intimate partner is \$294; the mean cost per stalking incident among victims who actually receive treatment is \$690. Private insurance pays for 34.7% of this mental health care; victims pay for 32.0% (Table 11).

Total Health Care Costs

The estimated total health care costs of IPV each year, including medical and mental health care services, is nearly \$4.1 billion (Table 12). Of these costs, 89.7% are attributable to intimate partner physical assaults due to the large number of victimizations: 4,450,807 physical assaults compared with 322,230 rapes (6.7% of costs) and 503,485 stalking victimizations (3.7% of costs). The total medical and mental health care cost per victimization by an intimate partner was \$838 per rape, \$816 per physical assault, and \$294 per stalking (Table 13).

Lost Productivity

Victims of IPV lose time from their regular activities due to injury and mental health issues. They may also be at greater risk for other health problems, such as chronic pain and sleep disturbances, which can interfere with or limit daily functioning (McCauley et al. 1995).

Rape. Among IPV rape victims, mean daily earnings lost are \$69, and the mean daily value of household chores lost is \$19.¹ According to NVAWS estimates, more than one-fifth (21.5%) of the women raped by an intimate partner report losing time from paid work, and 13.5% lose time from household chores (Table 14). Rape victims lose an estimated 1.1 million days of activity each year, which is equivalent to 3,872 person-years.

Physical assault. Among IPV physical assault victims, mean daily earnings lost are \$93, and the mean daily value of household chores lost is \$24. Approximately one in six (17.5%) victims report time lost from paid work, and 10.3% report lost time from household chores (Table 14). Victims of IPV physical assault lose an estimated 9.5 million days of activity each year; that equals 33,163 person-years of lost productivity.

Stalking. Among IPV stalking victims, mean daily earnings lost are \$93, and the mean daily value of household chores lost is \$24. More than one-third (35.3%) of stalking victims report time lost from paid work, according to NVAWS estimates; 17.5% report time lost from household chores (Table 14). Stalking victims lose an estimated 2.9 million days of productivity—or 10,304 person-years—annually.

Total Lost Productivity

As shown in Table 12, the estimated total value of days lost from employment and household chores is \$858.6 million. The value of lost productivity from employment is \$727.8 million, representing 84.8% of the total; the value of lost productivity from household chores is \$130.8 million. More than 13.5 million total days are lost from job and housework productivity, which is equivalent to 47,339 person-years. Nearly three-quarters (71.6%) of lost productivity is due to physical assault; 22.6% of lost productivity is due to stalking.

Present Value of Lifetime Earnings

The present value of lifetime earnings (PVLE) measures the expected value of lost earnings that IPV homicide victims would have otherwise contributed to society had they been able to live out their full life expectancies. An estimated 1,252 women are killed by an intimate partner each year. The PVLE for these victims is an estimated \$892.7 million—an average of more than \$713,000 per fatality. (See Appendix B for PVLE by age group.)

¹See Appendix A for calculations of lost productivity and related values as illustrated for rape estimates.

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Summary: Total Costs of Intimate Partner Violence

The costs of IPV against women exceed an estimated \$5.8 billion (Table 12). These costs include nearly \$4.1 billion in the direct costs of medical care and mental health care and nearly \$1.8 billion in the indirect costs of lost productivity and PVLE. Statistically, the overall total cost estimate of \$5.8 billion varies from more than \$3.9 billion to more than \$7.6 billion, as indicated by the 95% confidence interval for the total costs (Table 12).

The largest proportion of the costs is derived from physical assault victimizations because that type of IPV is the most prevalent (Figure 3). The largest component of IPV costs is health care, accounting for nearly \$4.1 billion—more than two-thirds of the total costs (Figure 4).

Figure 3.
Percentage of Costs of Intimate Partner Violence Against U.S. Adult Women by Victimization Type, 1995

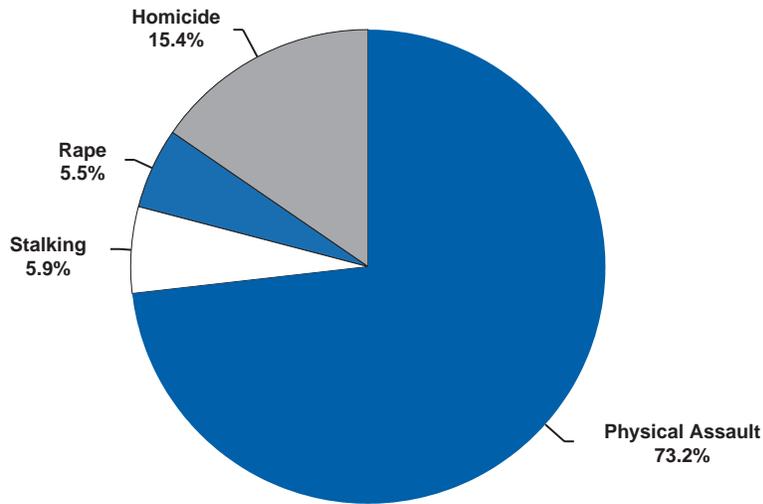
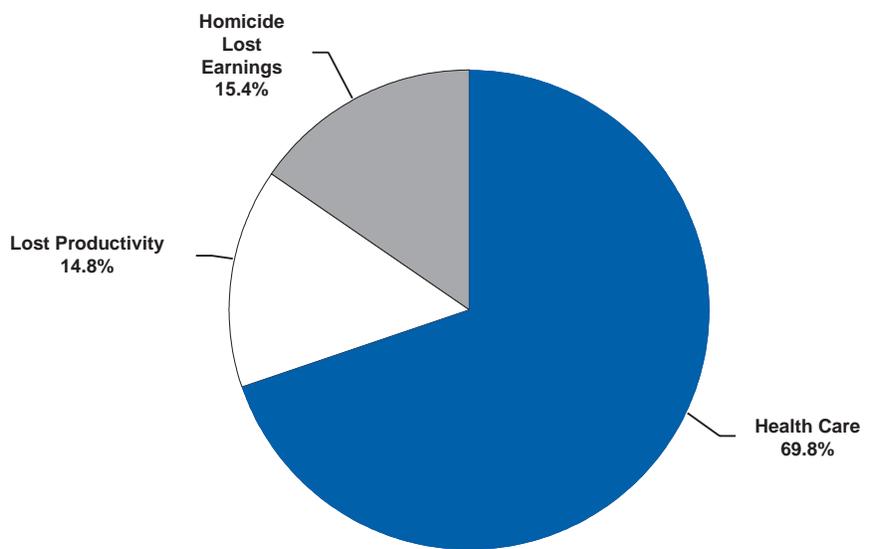


Figure 4.
Percentage of Costs of Intimate Partner Violence Against U.S. Adult Women by Cost Type, 1995



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Table 8. Estimated Medical Care Service Use and Unit Costs for Nonfatal Intimate Partner Rape Against U.S. Adult Women, 1995

Type of Medical Service	No. of Rapes Requiring Medical Care	Average No. of Uses Per Rape	Total Uses	Unit Cost for Service	Cost Per Rape	
					All Rapes ^a	Rapes Requiring Medical Care
ED visits	14,766	1.9	28,055	\$ 346.73	\$ 30.19	\$ 658.79
Outpatient visits	8,865	1.6	14,184	347.59	15.30	556.14
Hospital overnights	12,550	3.9	48,945	2,519.90 ^b	382.76	9,827.61
Physician visits	21,407	5.2	111,316	112.21	38.76	583.49
Dental visits	6,654	2.3	15,304	308.90 ^b	14.67	710.46
Ambulance/paramedic services	7,377	1.3	9,590	121.13	3.60	157.46
Physical therapy visits	8,100	13.4	108,540	89.74	30.23	1,202.52

^aTo determine the cost per rape across all rapes, the total cost associated with each medical care service is divided by the estimated total number of intimate partner rapes (322,230), whether or not the victim was injured.

^bThe unit cost estimates of hospital overnights and dental visits are unstable and are used only as part of intermediate calculations.

Sources: Max, Rice, Golding and Pinderhughes 1999; Research Triangle Institute International 2001; Bardwell Consulting, Ltd. (unpublished data) 2001; Tjaden and Thoennes 2000.

Table 9. Distribution of Primary Source of Payment for Medical Care Resulting from Nonfatal Intimate Partner Rape and Physical Assault Against U.S. Adult Women, 1995

Payer	Rape Victims (Percent Paid)	Physical Assault Victims (Percent Paid)
Medicare	N/A ^a	3.0
Medicaid	12.5	11.0
Private or group insurance	45.8	48.3
Out of pocket	29.2	28.6
Free or low-income clinics	2.1	1.8
Other public sources	10.4	6.1
Some other source	N/A ^a	1.2
TOTAL	100.0	100.0

^aAmong the reported rape cases in the NVAWS that resulted in injury and medical care, no payments were made by Medicare or “some other source.” However, analysts assume that among the total rapes resulting in injury and treatment in the U.S., these payment categories are not actually 0%. Therefore, the estimates are considered unavailable. To determine the percentage distribution of the remaining payment categories, the categories with unavailable estimates were ignored.

Source: Tjaden and Thoennes (unpublished data) 1999.

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Table 10. Estimated Medical Care Service Use and Unit Costs for Nonfatal Intimate Partner Physical Assault Against U.S. Adult Women, 1995

Type of Service	No. of Physical Assaults Requiring Medical Care	Average No. of Uses Per Assault	No. of Uses	Unit Cost for Service	Cost Per Physical Assault	
					All Physical Assaults ^a	Physical Assaults Requiring Medical Care
ED visits	241,103	1.9	458,096	\$ 346.73	\$ 35.69	\$ 658.79
Outpatient visits	98,726	3.1	306,051	347.59	23.90	1,077.53
Hospital overnights	132,994	5.7	758,066	2,519.90	429.19	14,363.43
Physician visits	268,858	3.2	860,346	112.21	21.69	359.07
Dental visits	49,308	4.4	216,955	308.90	15.06	1,359.16
Ambulance/paramedic services	77,336	1.1	85,070	121.13	2.32	133.24
Physical therapy visits	46,194	21.1	974,693	89.74	19.65	1,893.51

^aTo determine the cost per physical assault across all physical assaults, the total cost associated with each medical care service is divided by the estimated total number of intimate partner physical assault victimizations (4,450,807), whether or not the victim was injured.

Sources: Max, Rice, Golding and Pinderhughes 1999; Research Triangle Institute International 2001; Bardwell Consulting, Ltd. (unpublished data) 2001; Tjaden and Thoennes 2000.

Table 11. Distribution of Primary Source of Payment for Mental Health Care Resulting from Intimate Partner Rape, Physical Assault, and Stalking Against U.S. Adult Women, 1995

<u>Payer</u>	<u>Rape Victims (Percent Paid)</u>	<u>Physical Assault Victims (Percent Paid)</u>	<u>Stalking Victims (Percent Paid)</u>
Medicare	2.1	1.9	2.8
Medicaid	10.5	6.9	11.1
Private or group insurance	37.1	43.1	34.7
Out-of-Pocket	33.6	32.0	32.0
Free or low-income clinics	10.5	11.6	15.3
Some other source	2.8	1.6	N/A ^a
Other public sources	3.5	2.9	4.2
TOTAL^b	100.0	100.0	100.0

^aAmong the victimizations of stalking in the NVAWS that resulted in mental health care, no payments were made by “some other source.” However, analysts assume that among the total stalking victimizations resulting in mental health care in the U.S., this payment category is not actually 0%. Therefore, the estimate is considered unavailable. To determine the percentage distribution of the remaining payment categories, the “some other source” category estimate was ignored.

^bColumns may not sum due to rounding.

Source: Tjaden and Thoennes (unpublished data) 1999.

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Table 12. Estimated Total Costs of intimate Partner Violence Against U.S. Adult Women, 1995

Type of Cost	Estimated Total Cost (in Thousands)	Total Cost 95% Confidence interval (in Thousands)	
		Lower Limit	Upper Limit
Health care ^a	\$ 4,050,211	\$ 2,207,491	\$ 5,892,931
Lost productivity	\$ 858,618	\$ 596,058	\$ 1,121,178
Paid work	\$ 727,831	\$ 470,435	\$ 985,227
Household chores ^b	\$ 130,787	\$ 78,969	\$ 182,605
Present value of lifetime earnings	\$ 892,733	\$ 839,723	\$ 945,743
TOTAL COSTS (Direct + Indirect)	\$ 5,801,561	\$ 3,939,475	\$ 7,633,648

^aHealth care costs include mental health and medical care costs. In turn, medical care costs include outpatient clinic visits; emergency department visits; ambulance transport or paramedic care; physician, physical therapy, and dental visits; and inpatient hospitalization.

^bThe productivity value for household chores was discounted for victims who also worked at a job for pay. Due to the uncertain labor force status of victims who reported only lost productivity from household chores, one cannot assume that these victims were necessarily out of the labor force. Consequently, the value assigned to all lost productivity from household chores was discounted.

NOTE: The Estimated Total Cost column does not sum to Total Costs due to rounding.

Sources: CDC, NCIPC, Office of Statistics and Programming (unpublished data) 2002; Bardwell 2001; Bardwell Consulting, Ltd. (unpublished data) 2001; Max, Rice, Golding and Pinderhughes 1999; Research Triangle Institute International 2001.

Table 13. Estimated Average Health Care Costs per Nonfatal Intimate Partner Rape, Physical Assault, and Stalking Victimization Against U.S. Adult Women, 1995

<u>Health Care Costs</u>	<u>Rape^a</u>	<u>Physical Assault^a</u>	<u>Stalking^a</u>
Medical Care, Total^b	\$ 515.51	\$ 547.50	N/A
ED visits	30.19	35.69	N/A
Outpatient visits	15.30	23.90	N/A
Hospital overnights	382.76	429.19	N/A
Physician visits	38.76	21.69	N/A
Dental visits	14.67	15.06	N/A
Ambulance/paramedic services	3.60	2.32	N/A
Physical therapy visits	30.23	19.65	N/A
Mental Health Care, Total	\$ 322.70	\$ 268.57	\$ 293.92
TOTAL	\$ 838.21	\$ 816.07	\$ 293.92

^aEstimates are based on 322,230 rapes, 4,450,807 physical assaults, and 503,485 stalking incidents.

^bNo medical care costs are associated with stalking.

Sources: Max, Rice, Golding and Pinderhughes 1999; Research Triangle Institute International 2001; Tjaden and Thoennes 2000.

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Table 14. Estimated Lost Productivity Due to Intimate Partner Rape, Physical Assault, and Stalking Against U.S. Adult Women by Victimization Type, 1995

<u>Victimization Type</u>	<u>Paid Work</u>	<u>Household Chores</u>	<u>Total</u>
Rape			
Percentage of victims reporting days lost	21.5	13.5	N/A
Mean number of days lost per rape ^a	8.1	13.5	N/A
Total Days Lost^a	561,000	587,000	1,148,000
Physical Assault			
Percentage of victims reporting days lost	17.5	10.3	N/A
Mean number of days lost per physical assault ^a	7.2	8.4	N/A
Total Days Lost^a	5,608,000	3,851,000	9,459,000
Stalking			
Percentage of victims reporting days lost	35.3	17.5	N/A
Mean number of days lost per stalking ^a	10.1	12.7	N/A
Total Days Lost^a	1,795,000	1,119,000	2,914,000

^aAmong victims who returned to the reported activity.

NOTE: The estimated total number of victimizations for rape is 322,230; for physical assault, 4,450,807; and for stalking, 503,485.

NOTE: For each type of victimization, the percentage of victims reporting days lost and the mean number of days lost per victimization differ between those victims who lost time from paid work and those victims who lost time from household chores. Consequently, the number of days lost from paid work and household chores must be determined separately, then totaled to obtain the total of days lost for each victimization type. As a result, the total or overall percentage of victims reporting days lost and the overall mean number of days lost per victimization were not calculated.

NOTE: See Appendix A for illustrations of calculations of lost productivity and related values.

Sources: Max, Rice, Golding and Pinderhughes 1999; Research Triangle Institute International 2001; Tjaden and Thoennes (unpublished data) 1999.

Discussion

This report presents estimates of the incidence, prevalence, and costs of intimate partner violence against U.S. women ages 18 and older. In addition to data about IPV fatalities obtained from existing FBI sources, it uses data from the first large-scale survey to collect information about injuries IPV victims sustained, the medical and mental health care services victims used, and the time victims lost from paid work and household chores. The report reflects the most appropriate, reliable data currently available about the costs associated with IPV. Standard public health methods were applied to recent data on IPV-related injuries to estimate their incidence, estimate resulting health care costs and lost productivity, and to review strategies for reducing the incidence of IPV.

As reported in previous chapters, nearly 5.3 million intimate partner victimizations occur each year among U.S. women ages 18 and older, and nearly 1,300 women lose their lives as a result of IPV. Based on these estimates, such violence costs our nation more than an estimated \$5.8 billion dollars annually—nearly \$4.1 billion for medical and mental health care, \$0.9 billion in lost productivity, and \$0.9 billion in homicide lost earnings. These figures are believed to underestimate the problem of IPV for many reasons, and additional efforts are needed to better determine the costs of IPV against women in the U.S.

Using the Cost Figures in this Report

The cost estimates presented in this report can be used to—

- Calculate the economic cost savings from reducing a given number of injuries resulting from IPV;
- Demonstrate the economic magnitude of IPV in the U.S.;
- Evaluate the impact of IPV on a specific sub-sector of the economy, such as consumption of medical resources or effects on employers.

However, because of some limitations in the data—the discussion of which follows—these estimates are not comprehensive. Therefore, the estimates in this report should not be used in direct comparisons with the costs of reducing IPV, namely to produce benefit-cost ratios in analyses of interventions to prevent IPV.

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Data Limitations

The cost estimates presented in this report have several limitations, the most obvious of which is the fact that 1995 incidence data were used to generate annual estimates. CDC recognizes that direct costs, value of lost productivity, and present value of lifetime earnings resulting from IPV today may differ from that of IPV that occurred in 1995. However, this report reflects the most appropriate, reliable data available to date about the costs associated with IPV. Other limitations involve the exclusion of certain costs potentially associated with IPV and the use of average rather than actual medical care costs.

Excluded Costs

Several cost components were excluded from this report because data were unavailable or insufficient. Perhaps the largest omission is criminal justice costs. NVAWS data indicate that an estimated 1.5 million intimate partner rape, physical assault, or stalking victimizations result in police reports each year; nearly 79,000 of these victimizations result in a jail or prison sentence. While IPV-related criminal justice service use is significant, current data about unit costs do not allow for reliable, nationally representative cost estimates associated with these services.

Some medical care costs, including home care visits, treatment for sexually transmitted diseases (STDs), and terminated pregnancies were excluded because there were too few victimizations resulting in these outcomes reported in the NVAWS to generate reliable cost estimates. Also excluded were cost components for which either no data were available or only incidence data were available: social services such as women's shelters and counseling clinics; shelter, moral support, and financial assistance from IPV victims' friends and family; medical or mental health costs of treating children who witness IPV; foster care for children as a result of IPV; and the value of time lost from volunteer work, school, and social and recreational activities.

Although the mental health care costs associated with IPV were calculated, it was not possible to estimate the intangible costs of pain and suffering associated with IPV that did not result in a mental health care visit, or that did not result in a visit where IPV was identified as associated with the suffering. Because costs of this type may be quite high, this report should be viewed as presenting very conservative estimates, or as the lower limit of the costs related to IPV.

Because the NVAWS reports on the survivors of IPV, data about victims' use of medical and mental health services were collected only for victims of nonfatal IPV. No data were collected about the health care costs associated with treating victims who ultimately die as a result of IPV.

Limitations of the Medical Care Data

Health care service use resulting from IPV is not always readily reported. Therefore, the health care costs in this report are underestimates and should be viewed as lower limits of the magnitude of the problem.

Evidence has shown that victims of IPV manifest a wide range of physical symptoms that are not directly related to abuse. These can include headaches, reproductive health problems, chronic pain, digestive problems, and sleep disturbances (McCauley et al. 1995). To the extent that medical care service use associated with indirect physical symptoms of IPV was not reported by victims, related costs are excluded from the health care estimates in this report.

Limitations of the Mental Health Care Data

Data about mental health–related costs of IPV are limited for several reasons. First, incidence estimates derived from the NVAWS are based on the response to a question about whether or not the victim spoke to a mental health professional. As no definition of mental health professional was given, this question was subject to the interpretation of the respondent. Furthermore, mental health professionals are not the only individuals from whom victims may seek mental health care.

Second, respondents were asked only about mental health care providers with whom they discussed their experience of IPV victimization. Some women may have sought care for mental health problems but not identified that it was related to past experiences of IPV.

Finally, the cost of unmet mental health needs is not estimated. This is a critical gap in IPV research because the violence itself may limit women’s use of needed services. That is, men who physically abuse their partners are also likely to control and coerce them (Wilson, Johnson and Daly 1995), including restricting their access to mental health care (Walker 1984).

Underestimate of a Particular Type of Victimization

Although some incidents involved more than one type of victimization (e.g., a woman whose former husband stalks and then rapes her), the NVAWS counted each incident only once and classified it according to the severity of abuse. Rape was considered more severe than physical assault, and physical assault more severe than stalking. Women who sustained injuries during incidents involving more than one type of victimization were asked to report services used as a result of these injuries for the most severe type of victimization involved in these incidents. They were asked not to report service use for

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the same injuries when asked about the less severe type(s) of victimization involved in the particular incident. These procedures prevented double-counting of both service use and associated costs resulting from these incidents. However, these procedures likely resulted in an underestimate of health care costs resulting from physical assault, because some costs are included under rape. Likewise, some stalking costs are likely included under physical assault and rape.

Conservative Cost Estimation

The cost estimates of IPV in this report are generally conservative for several reasons. First, the NVAWS estimates of IPV victimization among women are lower than estimates in other studies. Second, the estimates presented in this report are based on services that victims of IPV reported using. Some NVAWS respondents may not have reported IPV due to embarrassment or shame. Consequently, any services used as a result of these victimizations also went unreported.

Finally, the estimate of present value of lifetime earnings relies on criminal homicide data that include the relationship between victim and perpetrator and the victim's age. The relationship between victim and perpetrator was not known for all homicide cases, which likely results in an undercounting of IPV homicides. Additionally, about 1% of homicide cases determined to be the result of IPV did not report victim's age. The present value of lifetime earnings could not be calculated for those cases, thus resulting in a conservative estimate.

A Need for More Data

This report is an important step in understanding the current knowledge about intimate partner violence in the U.S. However, it highlights a need for more data to fully appreciate the economic and human costs of this problem. Obtaining these data will involve creating standard definitions of IPV, expanding quantitative data collection efforts, and employing methods to gather qualitative data.

Standardizing the Definition of Intimate Partner Violence

Definitions of intimate partner violence vary among agencies collecting data. For example, some definitions include same sex partners, and some do not. Some consider IPV among both current and former intimate partners, some do not. Because of these variations, survey data also vary, making it difficult to firmly state the magnitude of IPV.

To address problems posed by varying definitions, CDC recently facilitated a national process to develop standard definitions of IPV (Saltzman et al. 1999). At the same time, CDC funded several states to develop IPV surveillance systems that use these definitions to gather data from the health care, social service, and criminal justice systems. This project serves as a pilot test of the IPV definitions and the feasibility of developing statewide public health surveillance to estimate the magnitude of the problem.

Improving Quantitative Data

The information about service use provided in this report includes medical and mental health care obtained from the traditional medical care system. Many survivors of IPV do not seek out these health care providers, especially for mental health care. Instead, they may go to support groups and rape crisis centers or contact crisis hotlines. Researchers should find ways to gather data from such service providers. Additionally, many women experience repeated IPV victimizations, yet little is known about the cumulative effects of such repeat abuse on service use.

One area for which costs of IPV may be substantial is criminal justice services. The NVAWS asked survivors about their involvement with the criminal justice system, but inadequate unit cost data exist to allow for generating unbiased estimates of the costs of those services. In fact, only one county at the time of the survey had unit cost data. Nationally representative data about the costs of individual criminal justice services—police reports, arrests and detainment, legal and judicial services, incarceration, probation—are needed.

While health system data about IPV, primarily derived from hospital discharge and emergency department records, have improved in recent years, future efforts will allow for even better data collection. The clinical modification of ICD-10 (ICD-10 CM) will provide information about abuse, neglect, abandonment, and the perpetrator's relationship to the victim. This will enable better IPV data collection from health sources.

Collecting Qualitative Data

Perhaps more compelling than the economic costs are data about the human costs. But how do you quantify pain, suffering, and decreased quality of life associated with intimate partner violence, both on survivors and on children exposed to such violence? Data are needed to assess the long-term, psychosocial effects of IPV and to demonstrate more clearly the social burden of this problem. Researchers should explore methods for collecting data about indirect or intangible costs of IPV, such as using in-depth interviews with survivors and service providers.

Intimate Partner Violence

A Need for Primary Prevention of Intimate Partner Violence

To reduce both the economic and human costs of intimate partner violence against women, we must focus on primary prevention—finding ways to stop such violence before it ever occurs—rather than only treating victims and rehabilitating perpetrators. To that end, CDC has identified several priorities to address IPV prevention. These priorities, set forth in CDC's *Injury Research Agenda*, represent the research issues that warrant the greatest attention and extramural and intramural research from CDC for the next three to five years. (The agenda can be viewed online at: www.cdc.gov/ncipc/pub-res/research_agenda/agenda.htm.)

One key area of CDC's IPV research is social norms. Social norms—what a community views as acceptable behaviors for its citizens—can profoundly affect efforts to prevent public health problems. In October 2000, CDC began exploring how social norms affect intimate partner violence. Findings are guiding development of a campaign to change social norms that accept or promote IPV against women. The campaign will target boys in sixth through eighth grades, a population in which strong social norms are developing quickly and in which we can effect lasting changes. It will focus on the characteristics of healthy relationships, in which violence is unacceptable.

CDC is also working to find ways to intervene with individuals, families, and communities in ways that stop violence before it happens. Its research agenda calls for developing programs and policies that provide counseling for batterers and prevent dating violence as means of intervening with perpetrators and potential perpetrators. The agenda also sets a priority to better understand how violent behavior toward intimate partners develops, so that researchers can implement strategies to reduce factors that increase the risk of IPV perpetration.

Other areas of research about preventing intimate partner violence include developing and evaluating training programs about IPV detection and prevention for health professionals, evaluating the health consequences of IPV across the life span, developing and evaluating surveillance methods to better collect data about incidence and prevalence of IPV, and disseminating information about IPV prevention strategies that work.

Conclusion

With an estimated economic cost of \$5.8 billion, and the untold intangible costs, intimate partner violence against women is a substantial public health problem that must be addressed. Significant resources for research are needed to better understand the magnitude, causes, and risk factors of IPV and to develop and disseminate effective primary prevention strategies. Until we reduce the incidence of IPV in the United States, we will not reduce the economic and social burden of this problem.

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Intimate Partner Violence

Appendix A

Calculating Lost Productivity and Related Values

Total Days Lost from Paid Work and Household Chores

To determine the total days lost from paid work and household chores for each victimization type, we first determined the total number of victimizations that resulted in days lost from each of those activities:

$$\frac{\text{Percent victimizations resulting in days lost X}}{\text{Total number of victimizations}} = \text{Total number of victimizations resulting in days lost.}$$

For example, to determine the number IPV rape victimizations that resulted in lost paid work:

$$\begin{aligned} &21.5\% \text{ of rapes resulting in days lost from paid work X} \\ &322,230 \text{ total rape victimizations} = \\ &69,279 \text{ rapes resulting in days lost from paid work.} \end{aligned}$$

Next, multiply the number of victimizations resulting in lost days of a given activity by the mean number of days lost from that activity per victimization. For example, to determine the total number of paid work days lost for rape victimizations:

$$\begin{aligned} &69,279 \text{ rapes resulting in lost paid work days X} \\ &8.1 \text{ mean number of days lost from paid work per rape} = \\ &\text{Approximately } 561,000 \text{ total days lost} \\ &\text{from paid work due to rape victimization.} \end{aligned}$$

Intimate Partner Violence

Person-Years Lost from Paid Work and Household Chores

Total time lost may also be expressed in person-years lost. For paid work, these calculations assumed 248 work days per year; for household chores, 365 days per year. To calculate person-years:

$$\frac{\text{Total number of days lost for a given activity for a given victimization type}}{\text{Number of productivity days per year}} = \text{Total person-years lost for that victimization type.}$$

For example, to calculate person-years of household chores lost for rape victimizations:

$$\frac{561,000 \text{ total days lost}}{365 \text{ days of household chores}} = 2,262 \text{ person-years lost.}$$

NOTE: Total person-years presented here may be slightly different than those presented elsewhere in this report; rounded figures are used here, but unrounded estimates were used elsewhere.

Mean Daily Values and Total Value of Lost Productivity

To estimate the total value of lost productivity for each victimization type, we need to first estimate the respective mean daily value of earnings from work. Mean daily values of earnings are based on the mean age of women at the time of victimization. For rape, the mean age at the time of victimization is 24.5 years; for physical assault, 27.5 years; and for stalking, 26.5 years (Max, Rice, Golding and Pinderhughes 1999). For each victimization type, the mean daily value of earnings is, in turn, based on the respective mean annual earnings for women of the mean victimization age group (U.S. Bureau of Census 1996; U.S. Bureau of Labor Statistics 1996).

To calculate the mean daily value of earnings for each victimization type:

$$\frac{\text{Mean annual earnings of the mean victimization age group}}{\text{Number of paid work days per year}} = \text{Mean daily value of earnings.}$$

For example, to calculate the mean daily value of earnings for rape victims:

$$\frac{\$17,058 \text{ (mean annual earnings for mean victimization age)}}{248 \text{ paid work days per year}} = \$68.78 \text{ daily value.}$$

To calculate the total value of lost days from paid work:

$$\frac{\text{Mean daily value of earnings} \times \text{total days of earnings lost}}{\text{Total value of lost days}} =$$

For example, for rape victimizations:

$$\frac{\$68.78 \times 561,000 \text{ total days of earnings lost due to rape}}{\text{Approximately } \$38,600,000} =$$

Follow the same calculations to determine the total value of days lost from household chores.

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Intimate Partner Violence

Appendix B

Calculating Age Group–Specific Present Value of Lifetime Earnings Estimates

Present Value of Lifetime Earnings (PVLE) Among Adult Female Victims of Intimate Partner Homicide by Age Group, U.S., 1995

<u>Age Group</u>	<u>No. of Homicides</u>	<u>Mean PVLE</u>	<u>Total PVLE</u>
18–19	50	\$ 938,545	\$ 46,927,268
20–24	176	958,434	168,684,384
25–29	182	924,842	168,321,244
30–34	217	852,312	184,951,704
35–39	207	754,284	156,136,788
40–44	148	637,849	94,401,652
45–49	73	509,876	37,220,948
50–54	58	380,019	22,041,102
55–59	26	257,641	6,698,666
60–64	23	156,178	3,592,094
65–69	24	86,713	2,081,112
70–74	22	45,029	990,638
75–79	25	21,336	533,400
80–84	16	8,682	138,912
85 and older	5	2,557	12,785
OVERALL TOTAL	1,252	N/A	\$ 892,732,697

NOTE: The mean PVLE for each age group was multiplied by the number of intimate partner homicides in that age group to arrive at the total PVLE for that group. Then, all age group–specific PVLEs were added to arrive at the overall total PVLE.



APPENDIX
ATTACHMENT 27

Costs Associated With First-Time Homelessness for Families and Individuals



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Costs Associated With First-Time Homelessness for Families and Individuals

Prepared for:

U.S. Department of Housing and Urban Development
Office of Policy Development and Research
Office of Special Needs Assistance Programs

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The contents of this report are the views of the contractor and do not necessarily reflect the views or policies of the U.S. Department of Housing and Urban Development or the U.S. Government.

Preface

This study examines costs associated with the use of homeless and mainstream service delivery systems by families and individuals experiencing homelessness for the first time in six study communities. Assigning costs to public programs is a first step toward developing measures of the value of public interventions compared to the public costs incurred by ignoring or avoiding the problems those interventions are intended to address. The study finds that the experience of homelessness is diverse and the associated costs vary tremendously depending on the pattern of homelessness and family or individual status. It is not, however, a study of either cost-effectiveness or quality of care, but rather a calculation of costs associated with homelessness.

Homeless Program Costs

The study examines average costs per month across sites for emergency shelter, transitional housing, and permanent supportive housing. It finds that:

- For individuals, overnight emergency shelter has the lowest cost per day (and provides the fewest services and often limited hours).
- For individuals, transitional housing proves more expensive than permanent supportive housing, since services for transitional housing were usually offered directly by the homeless system rather than by mainstream service providers.
- For families, emergency shelters are usually equally or more expensive than transitional housing and permanent supportive housing, because families are often given private rooms or apartments. Emergency shelters for families are also likely to be open 24-hours, provide supportive services, and have fewer units, yielding higher fixed costs.
- In almost all cases, the costs associated with providing housing for individuals and families who are homeless within a program exceeds the Fair Market Rent cost of providing rental assistance *without supportive services*.
- Homeless system and mainstream service costs were difficult to calculate, largely due to challenges in accessing local administrative data.

Costs Associated with First-Time Homelessness

Average homeless system costs for individuals (\$1,634 to \$2,308) are much lower than those for families (\$3,184 to \$20,031), who usually have higher daily costs and stay much longer. The 50 percent of individuals with the lowest homeless system costs incurred only 2 to 3 percent of the total system costs; whereas the 10 percent of individuals with the highest daily costs incurred up to 83 percent of total costs. The distribution of costs for families is also quite skewed, though less so than for individuals.

The emergency shelter system may be an “adequate” response to an immediate housing crisis for most individuals, but is an expensive solution to family homelessness. More than half of individuals studied used only emergency shelters, yet the costs of this facility type represent less than one-third of total costs for individuals.

Individuals and families who remain in homeless programs for extended periods incur the highest percentage of costs, presenting the greatest opportunity for homeless system cost savings. Cost savings may be realized if permanent supportive housing were more readily available to these households. Permanent supportive housing tends to be less expensive to the homeless system than transitional housing because most service costs are borne by mainstream systems.

Individuals and families who use homeless programs multiple times with long gaps between stays represent less than one-fifth of those studied. Although costs for this group are proportionately smaller than for those with extended uses of homeless programs, the episodic homelessness of these households indicates that resources currently may not be used effectively. These individuals and families tend to have high levels of interaction with the criminal justice system (though gaps were not explained exclusively by incarceration), and a majority of families with long gaps also experience changes in household composition between stays.

Demographics

Nearly three-quarters of first-time homeless individuals in the communities studied were male. Per-person costs for first-time homeless women are 97 percent higher than for men, due largely to greater privacy arrangements in female emergency shelters and a higher proportion of women in transitional or permanent supportive housing. Women also stay in homeless programs 74 percent longer than men (this is controlled for in the cost differential above). In all sites but one, African-Americans are over-represented among first-time homeless individuals in comparison to the general population of people in poverty.

The first time homeless family in the study most frequently has one adult member (usually female) and an average of 3 to 3.5 members. Homeless families headed by younger persons tend to use less expensive program types, stay for shorter periods, and, consequently, incur lower costs than those headed by older persons.

Patterns of First-Time Homelessness

The majority of households studied, 50 to 65 percent of individuals and 58 to 72 percent of families, stayed in a homeless program only one time during the 18-month period the study covered. Families cycled less in and out of homeless facilities, but remained in programs longer. Extended stays were associated with escalating costs; each additional month in a program is associated with 35 percent higher costs for individuals and 22 percent higher costs for families.

Mainstream System Costs

The question of whether mainstream service costs can be offset by appropriate housing interventions is left open by this study. However, consistent with past research, significant mainstream system cost savings may be achieved by targeting individuals or families with high levels of involvement in mainstream systems prior to homelessness. Most first-time homeless individuals in the study do not have high involvement in mainstream systems, and less than 10 percent received care in these systems during the period of homelessness. At two sites, criminal justice and mental health involvement increased substantially immediately before first-time individual homelessness. This finding suggests a need for discharge planning to ensure that individuals leave mainstream programs, such as inpatient treatment or jails, with adequate housing. In contrast, first-time homeless families had very high enrollment in Medicaid and low to moderate use of other mainstream systems.

Conclusions

The study concludes that communities should explore strategies to:

- Avoid extensive use of high-cost homeless programs (i.e., transitional housing) for individuals or families who primarily need permanent housing without supports or those whose service needs can be met by mainstream systems.
- Alter the way that homeless assistance systems respond to households that are unable to remain stably housed and face repeated instances of homelessness. Communities could consider models such as Homeless Prevention and Rapid Re-Housing.

- Work with mainstream systems (especially criminal justice, mental health, and substance abuse systems) to design appropriate discharge planning strategies and ways to identify clients at-risk of homelessness to prevent homelessness.

Acknowledgments

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We are especially grateful to the individuals who assisted us in the six study sites: Des Moines, Iowa; Houston, Texas; Jacksonville, Florida; Kalamazoo, Michigan; Upstate South Carolina; and Washington, DC. These individuals—leaders and members of the Continua of Care (CoC); Homeless Management Information System administrators; program and administrative staff of homeless service providers; mainstream agency staff; and other local champions—contributed their time, data and ideas to make this study possible. In particular, we would like to highlight the contributions of Julie Eberbach, Eileen Mitchell, and David Eberbach, Des Moines, Iowa; Tuan Nguyen, Clarissa Stephens, Anthony Love, Cathy Crouch, Julia Thompson, Buddy Grantham, Brandon LeBlanc, Horace Robinson, Houston, Texas; Molly Petersen, Melissa Pociask, Thomas Shull, and David Anderson, Kalamazoo, Michigan and Barbara Ritter, Michigan Coalition for the Homeless; Wanda Lanier, Bob Arnold, Stephen Caravella and Diane Gilbert, Jacksonville, Florida and Dr. Annette Christy and Kristen Turner, University of South Florida; Michael Chesser and Kay Perry, Upstate South Carolina CoC and Diana Tester and Charles Bradberry, State of South Carolina; and Darlene Mathews, Sue Marshall, Steve Cleghorn and Laura Zeilenger, Washington, DC.

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At Abt Associates, a number of staff members played important roles in designing the study and in collecting, assembling, analyzing, and interpreting the data and writing the report. The authors of this study are Brooke Spellman, Jill Khadduri, Brian Sokol, and Josh Leopold. Dr. Jill Khadduri was the Principal Investigator, and Brooke Spellman was the Project Director for the study; both were involved in all aspects of the study. Dr. Larry Buron, Project Quality Advisor, provided thoughtful and constructive input throughout all phases of the research. Brian Sokol led the HMIS and mainstream data analysis, with analytical support from Josh Leopold and Evan Volgas. Ken Lam conducted the multivariate cluster analysis of the study cohort and regression analysis of cost and cohort data. Megan Tiano and Nichole Fiore assisted with document review and cross-checking the data. Eileen Fahey and Katheleen Linton provided production support. Jill Khadduri, Josh Leopold, Pedram Mahdavi, Louise Rothschild, Matt White, and Erin Wilson were responsible for collecting the programmatic and cost data on the homeless systems for each of the sites and writing portions of the case studies, with support from subcontractors and consultants, Martha Burt, Kat Freeman, Ann Oliva and Daria Zvetina. Consultants Eric Jahn and Heidi Burbage played significant roles in researching and coordinating access to mainstream data.

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Executive Summary

This study measures costs associated with first-time homeless families and individuals incurred by homeless and mainstream service delivery systems in six study communities. Unaccompanied individuals were studied in Des Moines, Iowa; Houston, Texas; and Jacksonville, Florida. Families were studied in Houston, Texas; Kalamazoo, Michigan; Upstate South Carolina; and Washington, DC.

Past research has primarily documented costs associated with homelessness for individuals with chronic patterns of homelessness or severe mental illness. Newer work has been published on the costs incurred within the homeless system for families experiencing first-time homelessness. This study provides additional findings that help to improve our understanding of homelessness and its associated costs. It presents ideas about opportunities for cost savings, and it advances an approach for measuring costs that, coupled with other evaluation methods, can help communities understand the cost-effectiveness of different homelessness interventions.

The study demonstrates that the experience of homelessness is diverse and the associated costs vary tremendously depending on the pattern of homelessness. Across the six sites, the study identifies three primary patterns of first-time homelessness. Most first-time individuals and families experience homelessness only once or twice and use emergency shelter for a limited period of time at fairly low cost. Some experience much longer stays, usually in transitional housing, and some have very high associated costs. A third group uses the system sporadically, moving in and out of homeless programs multiple times during long periods. We recommend that communities consider specific responses to homelessness that target the needs of those who use the system in different ways.

We also identified certain demographic characteristics and limited patterns of first-time homelessness that were associated with greater mainstream system involvement, but the analysis did not identify clear opportunities for cost savings in the mainstream systems through the implementation of alternative responses to homelessness. However, the results also do not eliminate the possibility of mainstream system cost savings. Analysis of more comprehensive client-level data may yield more conclusive findings in this area.

The study does not attempt to isolate which of the mainstream costs are attributable to homelessness, and it does not compare the benefits of different programs with the costs of their use. Thus, the study is not a cost-effectiveness study and is most accurately characterized as a study to measure homeless and mainstream costs *associated* with homelessness.

The findings from these communities are not intended to be nationally representative. In fact, findings presented in this report show that the community in which individuals and families received services frequently had a strong effect on both their length of stay and costs. Thus, local factors and particular Continuum and program-level decisions can have a large effect on patterns of homelessness and associated homeless system costs. Despite these local differences, the study finds trends that cut across communities. We hope that policymakers will review these findings and consider whether similar conclusions can be drawn about their own communities. Policymakers can also use similar methods to help assess: how people who are homeless use homeless and mainstream systems in their communities; whether these patterns of use are appropriate; whether their homelessness systems are

efficient in achieving positive outcomes for people who become homeless; and whether there are opportunities for cost savings through alternative program models.

After a brief summary of the methodology used for the study, the remainder of the executive summary highlights the key results and policy implications of this research. All of these findings are discussed in detail in the main body of the report.

Methodology

This study breaks new ground methodologically in homelessness research in the following areas:

- rigorously calculating the costs of providing a family or individual with a day of shelter in specific residential programs for homeless people;
- incorporating distinctions among program types and their housing models (e.g., facility-based transitional housing) into our analysis of both patterns and costs of first-time homelessness; and
- analyzing both individuals and families, as well as vastly different types of communities or geographic areas, using the same research design, facilitating direct comparisons.

For purposes of this study, persons were considered homeless if they used a street outreach or residential homeless program that is represented in the site's homeless management information system (HMIS) data. People were considered first-time homeless if they did not have a recorded encounter with an outreach program or stay in a residential homeless program in the HMIS at any point prior to the study enrollment period. Periods in which persons were precariously housed, doubled up, or staying in a non-participating program are not represented as "during homelessness," with one exception. If study subjects had more than one stay in residential homeless programs during the study period, then the time between stays, referred to in the study as a "gap," is also considered "during homelessness." Homeless system costs are based on the actual days stayed in programs, but mainstream costs incurred during "gaps" are counted in the "during homeless" period.

Homeless systems are limited to programs within a community that are designed and dedicated to providing housing and services to people who are homeless. The homeless programs accounted for in this study are: outreach programs, emergency shelters, transitional housing, and permanent supportive housing. Programs that only provide supportive services to homeless people are not included.

Mainstream service systems are those that are not dedicated exclusively to serving people who are homeless, yet provide services that are needed and often used by them. Mainstream system cost data examined for this study include: Medicaid primary healthcare, mental healthcare and substance abuse treatment; state-funded mental healthcare and substance abuse treatment; law enforcement and criminal justice; and income supports.

Using telephone outreach and in-person site visits, we collected information about the homeless system within each community. From this information we developed a homeless program typology, which sometimes differed from local definitions of homeless program types, as a framework for the study. We also derived daily costs for a sample of homeless programs of each type. The homeless program costs account for operational and agency overhead costs associated with each program, in addition to services that are provided as part of the program. Capital costs of facilities owned by programs or donated to them also are included in daily costs per unit for programs in Jacksonville,

Des Moines, and Upstate South Carolina. To account for programs from which we did not collect costs directly, we calculated weighted averages for each type of homeless program within each site.

For each community, we analyzed Homeless Management Information System (HMIS) data to identify the individuals and families who accessed homeless programs for the first-time during the 12-month period between July 1, 2004 and June 30, 2005.¹ We also used HMIS data to examine homeless program use for each household in the 18 months (30 months in DC) following the day each household (or a member of the household) first accessed a homeless program. Using multivariate cluster analysis, we analyzed four aspects of each household's pattern of homeless system use to derive "path groups," that is groups of households with similar homeless system use, for each community. The variables used to define path groups are: total number of days each household stayed in homeless programs during the 18-month period in which we analyzed homelessness (across all program stays); number of distinct homeless program stays within the 18-month period; types and sequences of homeless programs used; and total number of days between all homeless program stays, also referred to as total number of "gap" days.

Combining homeless program usage and daily cost data, we calculated estimated homeless system costs for each individual or family household in the study. When possible, we also acquired and analyzed utilization data for mainstream systems in order to measure how mainstream systems interact with people who are homeless and to estimate the costs associated with the use of mainstream systems by first-time homeless people. Finally, we analyzed homeless and mainstream costs, using regression analysis to understand the demographic characteristics, homelessness patterns, and path groups associated with lower and higher costs.

Homeless Program Costs

Among homeless programs serving individuals, overnight emergency shelter for individuals has the lowest costs per day, typically offers the fewest services in the least private settings, and is often open only during evening hours. Transitional housing is the most expensive model for individuals and frequently offers private settings and a range of supportive services. Permanent supportive housing also generally offers private living space and supportive services. Permanent supportive housing providers indicate that residents are offered services equivalent in intensity to or even greater than services offered in transitional housing; however, the types of services provided may differ. In most cases, we found that permanent supportive housing programs arrange for residents to receive the "support" piece of the supportive housing directly from mainstream systems, and in fact many residents of the permanent supportive housing projects we examined are believed to be clients of mainstream programs prior to being placed in the housing.² Services paid directly by permanent supportive housing programs appear to be limited to housing-focused services and basic case management. As a result of this structure, permanent supportive housing programs do not have to secure resources to fund these services directly, and the costs are on average comparable to the less expensive 24-hour emergency shelter programs from the perspective of the homeless system.

¹ In Kalamazoo, we studied families who became homeless for the first-time in calendar year 2005.

² Because these clients receive services that they would otherwise be eligible for and could continue to receive these services if they moved to alternative housing, we did not include this cost as part of the housing program. Services paid for with the program budget and those dedicated to the project are accounted for in the program daily costs, when possible.

In contrast, emergency shelters for families are as expensive, if not more expensive, than transitional housing and permanent supportive housing offered in the four communities in which we studied homeless families. This is because families often get private rooms or apartments in emergency shelter; the programs are small and have few units over which to prorate fixed costs; and emergency shelters for families are likely to be open 24-hours and provide supportive services. Permanent supportive housing for families is generally less expensive than emergency shelter from the perspective of the homeless system.

More expensive programs typically have higher costs across all major budget categories: housing operations, services, agency overhead, and the daily cost equivalent of capital investments. Higher overall costs may reflect more supervision, more services, increased private space, or lower program capacity (e.g., decreased economies of scale).

Exhibit 1 shows the average cost per month incurred by the homeless system for each program type in each community in relation to HUD’s Fair Market Rents (FMRs) for a private market unit in the same community. The FMR is a way to quantify the value of a rental subsidy for a month and therefore to compare the costs associated with providing housing for persons who are homeless within a homeless program with the cost of providing rental assistance without supportive services in the private market. Except for overnight emergency shelters in Jacksonville and permanent supportive housing in Des Moines, the FMR is lower than the average monthly cost of all types of homeless residential programs in all six of the communities in which we studied homelessness.

Exhibit 1: Average Cost Per Household Per Month for Homeless Program Types^a				
Individual Sites	Emergency Shelter	Transitional Housing	Permanent Supportive Housing	2006 Fair Market Rent for One-bedroom Unit^b
Des Moines	\$581	\$1,018 – \$1,492	\$537	\$549
Houston	\$853 - \$1,817	\$1,654	\$664 – \$1,757	\$612
Jacksonville	\$408 - \$962	\$870	\$882	\$643
Family Sites	Emergency Shelter	Transitional Housing	Permanent Supportive Housing	2006 Fair Market Rent for Two-bedroom Unit^b
District of Columbia	\$2,496 - \$3,698	\$2,146 - \$2,188	\$1,251	\$1,225
Houston	\$1,391	\$1,940 – \$4,482	\$799	\$743
Kalamazoo	\$1,614	\$813	\$881	\$612
Upstate South Carolina	\$2,269	\$1,209	\$661	\$599 (Greenville MSA)

Note: All costs reported in 2006 dollars.

^a *Costs shown reflect weighted averages by program type. Ranges represent the averages of different housing models within a program type. Costs only represent homeless system costs and do not include the value of mainstream system costs that may be incurred while individuals or families reside in these programs.*

^b *Source: (HUD, 2005)*

Chapter 3 of this report describes each program type, the costs associated with providing each type, and the extent to which programs are providing both shelter and supportive services to clients—in contrast to the Fair Market Rents, which represent only the cost of housing. Since rental subsidies are often permanent or long-term, it may not be realistic to assume that a community would provide a single month of rental assistance; whereas, it is very common for a household to use emergency shelter for only one month. It also would be important to assess whether people using rental subsidies use mainstream systems to a greater or lesser extent and cost than people who use residential programs for homeless people either during or after their period of homelessness. Such an examination is outside the scope of this study..

Characteristics of First-time Homeless Individuals and Families in this Study and Costs to the Homeless Services System

Among the three sites in which we studied single adult homelessness, we identified 7,502 individuals as first-time homeless, with the majority in Houston, Texas. The total number of unduplicated families who experienced first-time homelessness across the four family sites was 1,374 households. Exhibit 2 includes descriptive information about the individuals and families we studied, focusing in particular on demographic characteristics associated with costs.

Exhibit 2: Study Cohort Characteristics ^a							
	Individual Sites			Family Sites			
	Des Moines	Jacksonville	Houston	Houston	Kalamazoo	Upstate SC	Washington, DC
Total Households	1,124	1,972	4,406	477	342	145	410
Male Adults	73%	81%	74%	13%	15%	10%	18%
African American	21%	48%	57%	65%	60%	49%	97%
Average Age of Adults at First Entry	39 yrs	41 yrs	41 yrs	32 yrs	30 yrs	31 yrs	32 yrs
Adults over 40	47%	54%	53%	16%	12%	12%	20%
Household Size				3.2 people	3.2 people	3.0 people	3.5 people
One Adult Household				88%	89%	88%	80%
Household Change ^b				25%	13%	17%	34%

^a Null demographic values are excluded from percentage calculations.

^b Household change reflects a change in household membership from one program entry to another. Household change usually occurs across multiple program stays. However, household change can also occur when a new member joins a family already staying in a program.

The first-time homeless individuals in the communities we studied were predominantly male (73 to 81 percent) and had an average age of 39 to 41 years at program entry. With the exception of Jacksonville, African-Americans are over-represented among first-time homeless individuals in comparison to the general population of individuals in poverty. Multivariate analysis showed that among individuals, single women had fewer stays but used homeless programs 74 percent longer than single men. And women dominate groups with certain patterns of homelessness, such as those who use more expensive types of programs.³ Even when controlling for length of stay, program type, and

³ Data from victim service providers, such as domestic violence shelters, were not available for this study, so these findings are for other type of homeless residential services.

other demographic characteristics, multivariate analysis shows that single women have 97 percent higher costs than men. Relatively older adults have longer lengths of stay than younger adults, and when controlling for other factors, costs for individuals older than 40 are 10 percent higher than for those between 31 and 40 years. African-American individuals are more likely to spend longer cumulative periods of time homeless, have a greater number of stays, and to incur 19 percent higher homeless system costs than white individuals.

The first-time homeless families in the study primarily had only one adult member (80 to 89 percent), were comprised of female adults accompanied by children (82 to 90 percent), and had on average 3 to 3.5 members. On average, adults were 30 to 32 years old when they first used a homeless program, and 41 to 50 percent of the children were 6 years old or younger. While the majority of families in the study cohort at each site had constant membership, a very high percentage of those who used more than one program experienced a change in their household membership from one program stay to another.

Homeless families headed by people between 18 and 24 use less expensive program types, stay for shorter periods, and, consequently, incur costs that are approximately one-third less than those headed by 31 to 40 year olds. Unlike results for individuals, African-American families are likely to spend shorter periods of time in homeless programs and to be associated with lower costs than white families. Families with household change are associated with 35 percent greater homeless system costs than those with stable membership, even when controlling for other factors.

These findings show that different types of first-time homeless individuals and families use homeless system resources differently, which suggests opportunities for communities to develop specific strategies to meet the needs of each of these types of individuals and families. For example, communities may want to reevaluate their systems for serving single women rather than serving them primarily in programs alongside families with children. Communities should also explore prioritizing African-American families for prevention and rapid rehousing interventions that address housing and income issues with less focus on services for non-economic issues, since our analysis suggests that a large portion of African-American families may be homeless primarily due to extreme poverty rather than issues related to mental illness or substance abuse. Finally, we recommend strategies to identify and refer households with greater needs to lower-cost interventions, such as permanent supportive housing for individuals, transitional housing for families, or even alternative program types that have not yet been developed.

Patterns of First-time Homelessness for Individuals and Families in this Study

The majority of households we studied, 50 to 65 percent of the first-time homeless single adults and 58 to 72 percent of families, stayed in a homeless program only one time during the 18-month period in which we studied homelessness (30 months in DC). However, individuals who used homeless programs more than once used them frequently; individuals in the study had an average of three distinct program stays. The average for individuals was more than double the average number of stays for families. Although families had fewer stays, they stayed in programs for longer than individuals. Individuals averaged 5 to 10 weeks in a homeless program, whereas families averaged 3 to 10 months. For both, the median number of days spent in homeless programs was well below the average number of days. This means that half of the individuals and families stayed for much shorter

periods than the average, and that a small number of individuals and families had very long stays that substantially increased the average for each group as a whole. Households in the study also had gaps averaging 25 to 75 days between all homeless programs stays. Since the majority of households had only one stay, this statistic really means that those with multiple program stays had quite lengthy gaps between all homeless program stays. Exhibit 3 provides some basic information about the patterns of homelessness for the individuals and families within each community.

Exhibit 3: Homelessness System Utilization							
	Individual Sites			Family Sites			
	Des Moines	Jacksonville	Houston	Houston	Kalamazoo	Upstate SC	Washington, DC ^a
Households with only one stay	53%	50%	65%	72%	68%	65%	58%
Average Number of <u>Stays</u>	3.0 stays	3.3 stays	3.0 stays	1.4 stays	1.5 stays	1.4 stays	1.2 stays
<u>Average</u> Days In Homeless Programs	73 days	57 days	39 days	113 days	94 days	186 days	309 days
<u>Median</u> Days In Homeless Programs	24 days	10 days	22 days	49 days	31 days	103 days	258 days
Average "Gap" Days Between Stays	63 days	75 days	44 days	31 days	61 days	25 days	73 days

^a Homeless system utilization was analyzed over a 30-month period for the DC case study.

Greater length of time in homeless programs and (to a lesser extent) longer periods between stays in homeless programs are associated with greater homeless costs for first-time homeless individuals and families. Controlling for other household characteristics and for the type of program used, each additional month in a homeless program is associated with 35 percent higher costs for individuals and 22 percent higher costs for families. The type of program used has an even greater impact on homeless system costs, as will be discussed later in this summary.

Costs Associated with First-time Homelessness

The average homeless system costs incurred for individuals and families in the communities are provided in Exhibit 4. The average costs for individuals (\$1,634 to \$2,308) are much lower than those for families (\$3,184 to \$20,031). The difference in costs between individuals and families is not surprising, since the average daily costs for programs serving individuals are generally much lower than for those serving families (Exhibit 1), and the average length of stay for first-time homeless individuals is much shorter than for first-time homeless families (Exhibit 3).

Exhibit 4: Average Homeless System Cost per Household

	Individual Sites			Family Sites			
	Jacksonville	Houston	Des Moines	Kalamazoo	Upstate South Carolina	Houston	Washington, DC ^a
Average Cost per Household	\$1,634	\$2,257	\$2,308	\$3,184	\$9,663	\$11,627	\$20,031

Note: All costs reported in 2006 dollars.

^a *The DC cost per family does not include families who used only the Community Care Grants program. Including such families would drop the average cost per family in DC to \$17,962.*

Average costs offer a general picture of the costs associated with homelessness, but they obscure important information about the wide variation in costs associated with first-time homelessness. Only a small group of households incurred high costs at each site, while the majority had minimal or more moderate costs. For individuals, the 50 percent of individuals with the lowest homeless system costs incurred only 2 to 3 percent of the total homeless system costs; whereas the highest-cost 10 percent of the cohort incurred 62 percent of the homeless system costs in Jacksonville, 70 percent in Des Moines, and 83 percent in Houston. Transitional housing for individuals is more expensive per day on average than other program types, and programmatic factors also encourage longer lengths of stay, which also drive up costs. Thus, it is not surprising that the cost to the homeless services system of the most expensive 10 percent of individuals in the study cohort at each site generally reflects continuous use of expensive transitional housing programs for much or all of the 18-month observation period.

The distribution of costs for families is also quite skewed, but not to the same extent as for individuals. In the four sites in which we studied first-time homeless families, the lowest-cost half of families accounts for less than one-seventh of the total cost incurred by the community for first-time homeless families. The proportion ranges from 13 percent in Upstate South Carolina to 5 percent in Houston. In Upstate South Carolina, the highest-cost 10 percent of the study cohort accounts for 32 percent of the total cost to the system, while in Houston the 10 percent highest-cost group accounts for 57 percent of the total homeless system costs for first-time homeless families.

Costs for Groups of Households with Common Patterns of System Utilization

The study defined “path groups” as a way to group people who use the homeless system in similar ways, that is, those who follow similar “paths” through the homeless system. Although path groups were derived separately for each community in the study, several broad patterns of use were present across all six communities: households that use only emergency shelter for brief periods, households that used homeless programs for extended periods, and households that use homeless programs multiple times with long gaps between stays.

Households that Use Only Emergency Shelters for Brief Periods

Households that use only emergency shelter for brief periods represent the majority of all first-time homeless households in the study, although their costs represent less than one-third of total costs

incurred by first-time homeless households, as shown in Exhibit 5. On average, “short-stayer” individuals used emergency shelter programs for only 1 to 3 weeks at an average cost per household of \$321 to \$686. The stays for families were on average longer than those of the individuals we studied. One group of short-stayer families in South Carolina remained in shelters for only 9 days on average, but other short-stayer families in all four communities stayed an average of one to three months. The average costs per short-stayer family ranged from less than \$1,000 to almost \$9,000, depending on the average number of days spent in programs and the relative cost of the programs used.

Exhibit 5: Households that Use Only Emergency Shelter for Brief Periods				
Population	Utilization description	% of Each Study Cohort^a	Average Homeless System Costs Per Household^b	% of Homeless Costs Represented by Path Group Within Each Site
Individuals	Emergency shelter only, for 1 or 2 brief stays totaling 1 to 3 weeks.	57% - 69%	\$321 - \$686	8% - 28%
Families	Emergency shelter only, for 1 or 2 brief stays totaling 10 days to 3 months.	33% – 66%	\$784 - \$8,890	9% - 30%

Note: All costs reported in 2006 dollars.

^a *In this table, the universe of individuals excludes individuals in Houston who were only contacted by street outreach. And the universe of families in DC excludes families who participated only in the Community Care Grant program.*

^b *Ranges in this column represent distinct path groups within each site.*

These short-stayers all had much lower costs than other groups of first-time homeless individuals and families. We suggest that the emergency shelter system may be an “adequate” response to an immediate housing crisis for most individuals and a place in which individuals who are not able to quickly resolve their housing crisis can be referred to more intensive interventions. It would be very difficult to fund a prevention response at such low cost, and it would be difficult to identify up front which of the individuals’ homelessness could be prevented with minimal assistance.

In contrast, we found that emergency shelter is an expensive solution to family homelessness, in comparison to transitional housing, permanent supportive housing, and traditional rental subsidies. As an alternative, we suggest that communities consider three approaches: 1) offering shelter diversion or rapid-rehousing interventions that optimize the use of resources to get families back into housing, rather than shelter; 2) examining the cost structure of current emergency shelter programs to determine if the environment and services offered can be scaled back and still meet the needs of those who are using them; and 3) referring more quickly those who need intensive assistance to transitional housing (facility-based or scattered site), permanent supportive housing, or other new interventions.

Households Who Remain in Homeless Programs for Extended Periods

Up to one-quarter of first-time homeless individuals and a larger portion of first-time homeless families used homeless programs for extended periods at substantial cost per household (Exhibit 6). Cumulatively, individuals with extended stays incurred 40 to 73 percent of homeless system costs associated with first-time homelessness for individuals. Families with extended use of homeless programs incurred 47 to 82 percent of costs associated with first-time family homelessness.

Therefore, the greatest opportunities for homeless system cost savings lie with the individuals and families who remain in homeless programs for extended periods. Most often, this long-term, high-cost use of the homeless system reflects extended use of transitional housing either alone or in combination with other programs, which is consistent with the fact that transitional housing is typically designed for long lengths of stay.

For individuals, extended use of homeless programs costs an average of \$9,000 to \$14,000 per person, with the exception of a group with average costs of \$3,103 for use of a low-cost form of shared transitional housing in Des Moines. For families, heavy use of transitional housing costs an average of \$15,500 to \$38,800 per family, with the exception of costs for families in Kalamazoo, which were \$6,574 on average.

Exhibit 6: Households that Use Homeless Programs for Extended Periods				
Population	Utilization description	% of Each Study Cohort^a	Average Homeless System Costs Per Household^b	% of Homeless Costs Represented by Path Group Within Each Site
Individuals	Used emergency shelter, transitional housing, or permanent supportive housing exclusively or in combination for average of 4 to 12 months.	7% - 25%	\$3,103 – \$14,418	40% - 73%
Families	Used transitional housing exclusively or in combination with emergency shelter or permanent supportive housing for average of 8 to 18 months.	24% – 42%	\$6,574 - \$38,742	47% - 82%

Note: All costs reported in 2006 dollars.

^a The universe of individuals in this table excludes individuals in Houston who were only contacted by street outreach, and the universe of families in DC excludes families who participated only in the Community Care Grant program.

^b Ranges in this column represent distinct path groups within each site.

In all cases, the costs to house individuals and families in homeless programs for extended periods are significantly higher than rental subsidies based on Fair Market Rents for an equivalent period. Strategies for identifying cost-savings, include examining: 1) whether patterns of extended use or transitional housing or other program types are cost-effective and whether there are opportunities to reduce costs without diminishing client outcomes; 2) whether some households are using transitional housing as a form of subsidized permanent housing, in which case actual rent subsidies without extensive services would be a more cost-effective approach; 3) whether some households should be referred more aggressively to permanent supportive housing to address long-term needs at lower costs; and 4) whether the permanent supportive housing model of leveraging services from mainstream systems could be used to deliver transitional housing at lower cost to the homeless system.

Households Who Use Homeless Programs Multiple Times with Long Gaps Between Stays

Our analysis also identified a small group of first-time homeless individuals and families who return multiple times for homeless assistance but have long gaps between stays. Their patterns suggest that the assistance they receive from the homeless system the first and even second or third time is not

sufficient to help them regain stable housing. These households sometimes only use emergency shelter and sometimes use a combination of program types. As shown in Exhibit 7, costs for individuals who repeatedly used homeless programs with long gaps between stays averaged approximately \$1,000 for groups that only used emergency shelter to as high as \$10,705 for a group of individuals in Houston who used a range of program types. Costs for families averaged from \$3,295 in Kalamazoo for a group that used only emergency shelter for an average of 38 days across all stays to \$17,314 for a group in DC that spent an average of 9 months in a range of program types.

Exhibit 7: Households that Use Homeless Programs Multiple Times with Long Gaps Between Stays

Population	Utilization description	% of Each Study Cohort ^a	Average Homeless System Costs Per Household ^b	% of Homeless Costs Represented by Path Group Within Each Site
Individuals	Used emergency shelter only or used a range of programs, returning to emergency shelter after using transitional or permanent supportive housing. Average gaps between all stays total 6 months to a year.	12% - 18%	\$910 - \$10,705	14% - 24%
Families	Repeated use of homeless programs with long gaps between stays totaling 4 to 17 months.	5% - 16%	\$3,293 - \$12,475	2% - 20%

Note: All costs reported in 2006 dollars.

^a *The universe of individuals in this table excludes individuals in Houston who were only contacted by street outreach, and the universe of families in DC excludes families who participated only in the Community Care Grant program.*

^b *Ranges in this column represent distinct path groups within each site.*

Although costs are proportionately not as large for these households as for those with extended use of homeless programs, the current system does not appear to be working well and therefore, resources currently used to serve these households may not be used effectively. In addition, our analysis of mainstream costs shows that these individuals and families had high levels of interaction with criminal justice systems. In Jacksonville, Kalamazoo, and Upstate South Carolina, rates of arrest or incarceration were above 60 percent for individuals and families with long gaps between homeless stays. The criminal justice involvement occurred across all time periods relative to homelessness - before the first homeless stay, between stays, and in the period following the last homeless stay. By comparing the number of days between homeless stays and the number of days spent in jail during those same times, we know these households are not exclusively staying in jail between homeless stays. We surmise that they spent time in many different types of places, including living on their own, living doubled up with others, staying on the streets, or in other residential facilities. The high rates of arrest and incarceration coupled with high levels of housing instability suggest that the individuals and families in this group would benefit from targeted assistance to secure and maintain housing and reduce criminal justice recidivism.

A significant percentage (53 to 92 percent) of families with long gaps also had changes in household composition from one program stay to the next. These high rates of household change are evidence of household instability and may also suggest high involvement in child welfare systems. This theory is supported by statistics from DC, the only site in which we obtained rates of child welfare involvement, that show that 55 percent of the group with long gaps had child welfare involvement at

some point during the study period. The significant housing and family instability experienced by this group suggests that neither homeless nor mainstream systems are addressing sufficiently the needs of these families and that targeted interventions may be needed to achieve positive housing and family-related outcomes. Communities should explore whether funds currently used to serve these households over repeated stays, in addition to resources from the criminal justice and possibly the child welfare system, could be used to fund alternative interventions to meet the specific needs of these households.

Costs Associated with Mainstream System Use By First-time Homeless Individuals and Families

The question of whether mainstream system costs can be offset by appropriate housing interventions is left open by this study. Our analysis suggests that there are few opportunities for mainstream cost reductions when targeting groups based on their patterns of homelessness. However, consistent with past research, significant mainstream system cost reductions may be achievable when targeting individuals or families with high levels of involvement in mainstream systems prior to homelessness.

Most first-time homeless individuals do not have high involvement in mainstream systems. This means that there is only a small group of individuals with the possibility of cost offsets. For instance, only a quarter of individuals in Jacksonville received publicly funded mental healthcare, only 22 percent received substance abuse treatment, and only 20 percent had Medicaid physical healthcare claims at any point in the approximately three-year period for which we collected cost data. And less than 10 percent received healthcare in any of these domains *during* the period of homelessness. Exhibit 8 shows that the total per person costs of mainstream involvement in each domain during homelessness for first-time homeless individuals, totaling approximately \$1,000 in Jacksonville and approximately \$500 in Houston. However, when looking only at the costs per person for those who were involved in each mainstream domain, costs increase substantially per person as do opportunities for cost savings. The difference in average costs for mainstream users and the cohort average illustrates why narrowly targeted interventions to reduce or shift use by those who are involved with each system have the greatest potential to yield cost savings, whereas broadly targeted interventions are not likely to realize substantial savings.

Exhibit 8: Average Mainstream System Costs per Person Incurred “During” Homelessness

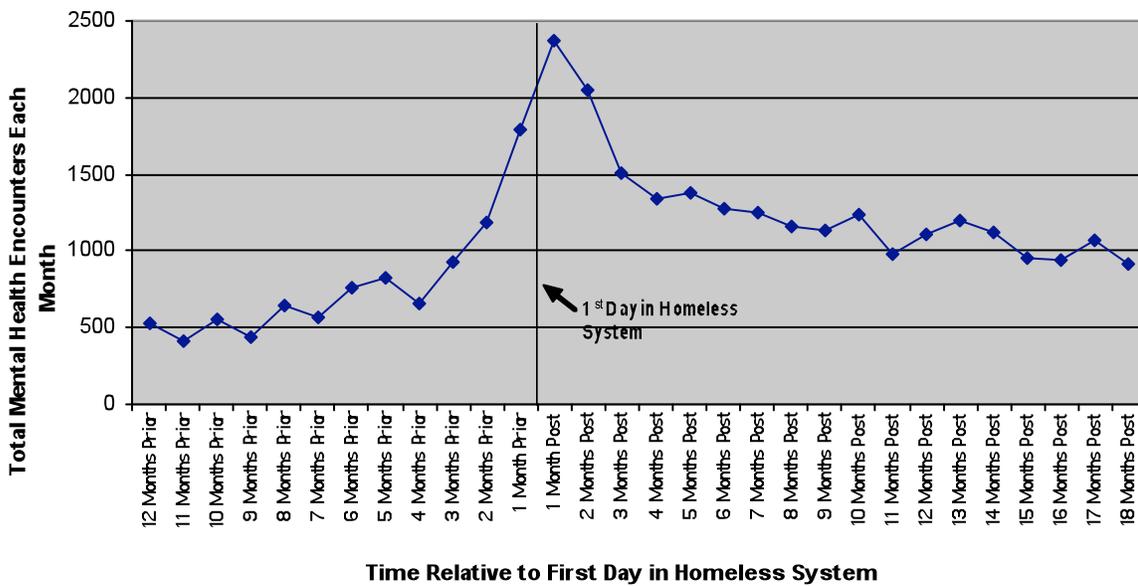
Jacksonville			Houston		
<i>% of Cohort involved in this Domain</i>	<i>Average Costs During Homelessness Per Person Involved in this Domain</i>	<i>Average Costs During Homelessness Per Person in Cohort</i>	<i>% of Cohort involved in this Domain</i>	<i>Average Costs During Homelessness Per Person Involved in this Domain</i>	<i>Average Costs During Homelessness Per Person in Cohort</i>

Medicaid Primary Health	9%	\$2,436	\$219			
Mental Health	8%	\$1,318	\$106	9%	\$4,157	\$391
Substance Abuse	7%	\$2,265	\$158			
Criminal Justice	13%	\$3,057	\$397	2%	\$6,520	\$157
Income Supports	22%	\$627	\$138			

We also found that criminal justice and mental health involvement in Jacksonville and Houston increased substantially immediately before first-time homelessness, peaking in the period just after the individual entered the residential homeless system.⁴ Nine percent of the individuals we studied in Houston received services from the mental health system at some time in the 12 months prior to homelessness or the 18 months following the first day the individual entered a homeless program. The total encounters are graphed in Exhibit 9, with the total number of encounters for all of those who received services during each month shown in the y axis and the month relative to the start of homelessness shown on the x-axis. The exhibit shows that the highest number of encounters occurred in the month following the day these individuals became homeless for the first time, followed by the second month after that day. These individuals also had a high number of encounters in the month immediately prior to homelessness. This finding suggests a need for discharge planning to ensure that individuals leave mainstream programs, such as inpatient treatment or jails, with adequate housing. It also suggests that mainstream systems may be able to help identify risk of homelessness for their clients and that targeted alternative interventions could avoid costly homeless system use. We also conclude that homeless systems should use emergency shelter to proactively identify individuals with severe mental illness who would benefit from permanent supportive housing before they experience long-term homelessness.

⁴ Other research analyzing rates of homelessness among ex-offenders found that individuals released from state prisons or jails have a greater risk of homelessness than individuals with similar characteristics who have not been recently incarcerated. In the communities studied, risk of homelessness among ex-offenders was higher for individuals with certain demographic characteristics. The same research also found that longer periods of incarceration were associated with greater risks of homelessness after release. (Graham, D., Locke, G., Bass Rubenstein, D. & Carlson, K., unpublished) This finding supports the conclusion above that discharge planning strategies targeting the ex-offenders most at risk of homelessness, based on gender, race, age, and length of incarceration, may be effective in preventing homelessness for this group.

Exhibit 9: Total Mental Health Encounters Each Month by First-time Homeless Individuals in Houston Shown Relative to First Day of Homelessness



In contrast, first-time homeless families in the communities for which we obtained mainstream data had very high enrollment in Medicaid (over 90 percent) and low to moderate use of other mainstream systems across the entire period for which we collected costs. Medicaid costs across the entire study period totaled \$21,770 per family in Kalamazoo and \$15,615 per family in Upstate South Carolina, as compared with mental health costs in Houston of \$722 per family and criminal justice costs of \$175 to \$597 per family. Average monthly mainstream costs per family were highest during periods of homelessness, as shown in Exhibit 10.

Exhibit 10: Rate of Mainstream System Involvement and Costs Per Family Per Month

	Mental Health	Medicaid	Criminal Justice	Financial Assistance	Food Stamps
Kalamazoo					
Rate of Involvement ^a		94%	42%	> 39% ^b	
Pre-Homelessness		\$657.58	\$13.33	\$5.18	
During Homelessness		\$929.59	\$12.99	\$22.05	
Post-Homelessness		\$471.90	\$19.36	\$21.55	
South Carolina					
Rate of Involvement ^a		> 90% ^b	34%		92%
Pre-Homelessness		\$319.66	\$4.65		\$187.30
During Homelessness		\$433.70	\$4.70		\$229.34
Post-Homelessness		\$493.28	\$4.86		\$190.78
Houston					
Rate of Involvement ^a	16%		8%		
Pre-Homelessness	\$13.01		\$6.55		
During Homelessness	\$32.87		\$1.57		
Post-Homelessness	\$20.67		\$16.36		

^a Percentage of the families studied who were involved in the mainstream domain at any point from 12-months prior to the first day of homelessness through December 31, 2006 (June 30, 2007).

^b De-duplicated data across types of involvement with this domain were not available.

As with individuals, we surmise that families interact with mainstream systems on an ongoing basis, but that use rises immediately preceding homelessness and peaks immediately following homelessness. Some of the increased Medicaid costs may reflect health crises related to homelessness or use of expensive acute care systems for routine medical needs during homelessness. Increased coordination between homeless and mainstream systems, and potentially some interventions targeted to specific high-users of mainstream services, could result in more appropriate use of mainstream services and potential cost savings.

Aside from the observations about criminal justice and potential child welfare involvement for households with long gaps between homeless stays, we did not find sufficient relationships between patterns of homelessness for families and mainstream costs to warrant recommendations related to targeting households based on their homeless system use in order to achieve mainstream cost savings. It is possible that more complete data would identify additional cost saving opportunities.

Conclusion

This study does not show which homelessness interventions are cost-effective or indicate whether mainstream systems are appropriately used during periods of homelessness. However, it does illuminate the diverse patterns and costs of homeless and mainstream system use that are essential to answer two critical policy questions. Are high-cost interventions an appropriate response to homelessness for specific subgroups? Are there more efficient and effective ways of meeting people's needs?

In brief, we conclude that communities should explore strategies to 1) prevent homelessness for the majority of families facing first-time homelessness, 2) avoid extensive use of high-cost homeless

programs for individuals or families who primarily need permanent housing without supports or those whose service needs can be met by mainstream systems, 3) alter the way their homeless assistance systems respond to households that are unable to remain stably housed and face repeated instances of homelessness, 4) work with mainstream systems to design appropriate discharge planning strategies and ways to identify clients at-risk of homelessness so their homelessness can be prevented.

This research also raises a number of additional questions that should be the focus of new research. These questions center around understanding the cost-effectiveness of different types of homeless programs, identifying program features that drive costs and therefore present opportunities for reducing costs, and identifying client-level indicators associated with high costs that can be used to predict and avoid unnecessary or ineffective high cost system use.

1. Introduction

This study measures costs associated with first-time homeless families and individuals incurred by homeless and mainstream service delivery systems in six study communities. Unaccompanied homeless individuals were studied in Des Moines, Iowa; Houston, Texas, and Jacksonville, Florida. Homeless families were studied in Houston, Texas, Kalamazoo, Michigan; Upstate South Carolina; and Washington, DC.

Past research has primarily documented costs associated with homelessness for individuals with chronic patterns of homelessness or severe mental illness. Newer work has been published on the costs incurred within the homeless system for families experiencing first-time homelessness. The emerging body of research on homelessness piqued the interest of many. It also raised additional questions about the comparability of these findings to individuals and families with different characteristics or patterns of homelessness and about opportunities for savings through alternative responses to homelessness.

This study was designed to allow policy makers at the national and community levels to have a better understanding of:

- the comparative costs of different types of homeless programs;
- the wide-ranging experience of homelessness among individuals and families and the costs associated distinct patterns of homelessness;
- some of the mainstream costs that can be associated with homeless individuals or families during the periods before, during, and after their period of homelessness
- characteristics of first-time homeless individuals and families that are related to higher or lower homeless or mainstream system costs; and
- the implications of these findings for homeless policy and planning.

Homeless systems include programs within a community that are designed and dedicated to providing housing and services to people who are homeless. The homeless programs accounted for in this study are outreach programs, emergency shelters, transitional housing, and permanent supportive housing for homeless people with disabilities. Programs that only provide supportive services to homeless people are not included in this study.

Mainstream service systems are those that are not dedicated exclusively to serving people who are homeless, yet provide services that are needed and often used by them. Mainstream system cost data examined for this study include: Medicaid primary healthcare, mental healthcare and substance abuse treatment; other state-funded behavioral health care; law enforcement and criminal justice; and income supports.

In each site, we examined the system of homeless service provision, patterns of homelessness for a cohort of homeless families or individuals based on analysis of Homeless Management Information System (HMIS) data, and the costs associated with the use of homeless programs by the study cohort based on cost data collected directly from homeless programs. We also acquired and analyzed utilization data for mainstream systems in order to measure how mainstream systems interact with

people who are homeless and to estimate the costs associated with the use of mainstream systems by homeless people. Finally, we analyzed homeless and mainstream costs together.

We follow a growing body of literature in identifying groups of people who experience similar patterns of homelessness and analyzing homeless and mainstream service utilization and costs based on these patterns. However, this study breaks new ground methodologically in homelessness research in the following areas:

- rigorously calculating the costs of providing a family or individual with a day of shelter in specific residential programs for homeless people;
- incorporating distinctions among program types and their housing models (e.g., facility-based transitional housing) into our analysis of both patterns and costs of first-time homelessness; and
- analyzing both individuals and families, as well as vastly different types of communities or geographic areas using the same research design, facilitating direct comparisons.

The study does not attempt to isolate which of the mainstream costs are attributable to homelessness, and it does not compare the benefits of different programs with the costs of their use. Thus, the study is not a cost-effectiveness study and is most accurately characterized as a study to measure the costs associated with homelessness, rather than the costs of homelessness.

The study does not attempt to measure the broader costs of homelessness to individuals who become homeless or to society as a whole. For example, we do not attempt to measure the costs of increased morbidity or mortality for individuals who become homeless, nor do we measure the costs to businesses and property owners that may result from concentrations of sheltered or unsheltered homeless individuals in cities or neighborhoods. And to the extent that the data we used are not comprehensive of all homeless program utilization or all relevant mainstream systems, the findings somewhat underrepresent the costs for some first-time individuals and families.

Yet even with its limitations, we anticipate that this information will prompt future research and policy discussions on whether resources are being used efficiently to provide services to people who are homeless and whether better outcomes might be achieved by triaging clients to specific paths or by examining current strategies and designing targeted interventions to serve specific subpopulations.

Chapter 2 of this report continues with an overview of the research questions and methodology used to conduct the study. Chapter 3 discusses the range of unit costs (that is, costs per day for each individual or family) associated with various types of residential homeless programs within each site. Chapter 4 analyzes costs associated with first-time homeless individuals across the three individual study sites, and Chapter 5 analyzes costs associated with first time homeless families across the four family study sites. Chapters 4 and 5 begin with a discussion of previous research and a discussion of the characteristics of the cohort at each site. The chapters continue with an analysis of the patterns and costs of homeless system utilization, followed by a discussion of mainstream system costs. Each of these chapters concludes with a discussion of policy implications and areas for future research. Chapter 6 provides summary conclusions that encompass both families and individuals.

Appendix A is a standalone case study for Jacksonville, which is the site where we obtained and analyzed data covering the most comprehensive set of mainstream programs. Appendix B contains data tables for the Jacksonville case study. Appendix C contains detailed data for the individual study sites. Appendix D contains detailed data for the family study sites. Appendix C and Appendix D both include summary data for each study site and the results of cross-site multivariate regression analyses.

Aside from Jacksonville, complete case studies for each site are not included in this document. However, stand-alone case studies for the six sites are available, along with comprehensive data tables, on www.huduser.org.

2. Methodological Framework for Analysis of Costs Associated with Homelessness

This chapter covers the methodological framework for the Costs of Homelessness study. It presents the research questions for the study, our approach to answering these questions, the key domains of costs that were measured in each community, and some of the methodological challenges that we encountered.¹

2.1. Research Questions

The primary research questions for the study are: **What are the combined homeless and mainstream system costs for people who become homeless for the first-time? How do these costs vary across patterns of homeless system use?**

We pursued the following six specific research questions to help us understand the primary research questions.

1. How do people who become homeless use homeless and mainstream systems?
2. Are there common patterns of homelessness system utilization (homeless paths) that can be used to group people who access homeless services?
3. Do people who use homeless system resources in similar ways share characteristics that can be used to describe each group?
4. What is the cost of the homeless and mainstream system service use associated with first-time homelessness and the periods immediately before and after it? How do these costs vary by path group?
5. What is the total cost associated with the period of homelessness for the study population?
6. How do mainstream system costs change when a person becomes homeless and in the period after homelessness?

Exhibit 2.1 shows the data that we generated to answer each question.

¹ This methodology applies to this report as well as to each of the six individual case studies.

Exhibit 2.1: Research Questions and Outputs for the Study

Research Questions	What this study reports.
How do people who become homeless use homeless and mainstream systems?	<ul style="list-style-type: none"> Number, type, and sequence of homeless and mainstream service encounters and lengths of stay (or number of service units) during the study period. Use of systems is reported separately for types of programs that comprise the residential homeless services system, and for each mainstream system studied.
Are there common patterns of homelessness system utilization (homeless paths) that can be used to group people who access homeless services?	<ul style="list-style-type: none"> Description of groups of homeless families or individuals following different paths is based on cluster analysis of the number of homeless program enrollments, the types of programs used, the sequence of program types, the durations of program stays, and the overall length of the period of homelessness. Percent of clients that fall into each path group. Similar path groups generated at the site level are grouped together for overall analysis.
Do people who use homeless system resources in similar ways share characteristics that can be used to define each group?	<ul style="list-style-type: none"> Analysis of demographic characteristics and special needs (defined by service use) of persons in each path.
What is the cost of the homeless and mainstream system service use associated with first-time homelessness and the periods immediately before and after it? How do these costs vary by path group?	<ul style="list-style-type: none"> Costs incurred by the homeless system for outreach, emergency shelters, transitional programs, and permanent supportive housing Costs incurred by selected mainstream service systems reported separately for time periods before, during, and after homelessness. Analysis of each of these costs for different path groups.
What is the total cost associated with the period of homelessness for the study population?	<ul style="list-style-type: none"> Total estimated homeless and mainstream system costs for the study population. Analysis of costs by demographic characteristics and path groups.
How do mainstream system costs change in relation to homelessness?	<ul style="list-style-type: none"> Comparison of mainstream system costs for the periods before, during and after homelessness.

2.2. Research Domains

At the start of the study, we convened an expert panel of homelessness researchers and economists to advise us on the design of the study. In preparation for the panel meeting, we conducted a literature review on previous attempts to analyze costs associated with homelessness and methods that have been used to measure costs of homeless and mainstream service systems. We also explored methods to measure indirect costs of homelessness, such as costs associated with premature morbidity and mortality and indirect costs to businesses that are located near spots inhabited by persons living “on the streets.” After discussing extensively the priorities among cost domains, available methods for analyzing different domains, and the feasibility of implementing the methods, we decided to focus this study on the direct costs associated with the homeless system and the following mainstream systems: mental health, substance abuse, and primary health care treatment; criminal justice; child welfare; and Food Stamps and Temporary Assistance to Needy Families (TANF).

2.3. Study Sites, Period, and Population

2.3.1 Site Selection

We based our data collection strategy on administrative records whenever possible. For the homeless services system, this meant using local homeless management information system (HMIS) data to understand the utilization of homeless assistance programs. However, these administrative data sources did not include information on the costs incurred by these programs, so we collected cost data directly from a sample of homeless programs to develop unit costs for various types of homeless programs. For mainstream systems, we used local or state administrative data systems to analyze service utilization and to measure actual tracked costs. When actual tracked costs were not available, we consulted with local officials to derive an average unit cost for each service type within each system. These research design decisions influenced our site selection, as we had to select sites where these sources of data were available.

The criteria used to select sites were: HMIS data coverage of at least 75 percent of homeless system beds serving homeless families or 75 percent of beds serving individuals; high quality HMIS data for client identifiers, basic demographic characteristics, and program utilization or services received; a strong likelihood we could obtain mainstream client data, based on local relationships between the homeless services system and mainstream systems or on the existence of a data repository; and the site's willingness to participate in the study. In addition to these criteria, efforts were also made to select an equal number of sites where we would study families and sites where we would study individuals and to achieve a mix of different community types and geographic locations. Site selection was based on analysis of HUD's Housing Inventory Charts for homeless programs, data on HMIS participation rates and data quality, and telephone interviews with CoC staff and homeless providers in potential study sites.

Through this process, we selected six communities to participate in this study: Des Moines, Iowa; Houston, Texas; Jacksonville, Florida; Kalamazoo, Michigan; Upstate South Carolina; and Washington, DC. We also attempted to include Sacramento, California in the study, but were unable to secure access to the required client-level HMIS data due to local interpretation of California State privacy laws. Based on the availability and quality of HMIS data, we chose to study either homeless individuals or homeless families in each community. In Houston we studied both individuals and families, because the HMIS data met our criteria for both populations. The study population for each site is shown in Exhibit 2.2.

Exhibit 2.2: Case Study Sites and Study Population

#	Case Study Site	Case Study Population
1	Des Moines, Iowa	Single Individuals
2	Jacksonville, Florida	Single Individuals
3	Houston, Texas	Single Individuals Families
4	Kalamazoo, Michigan	Families
5	Upstate South Carolina	Families
6	Washington, D.C.	Families

We first analyzed each site independently and drafted six distinct case studies. We then analyzed overarching patterns as well as distinctions that emerged across each of the six sites. This report provides the overall findings across all six sites. In addition, each of the six distinct case studies produced as a result of this research is available as a stand-alone report.²

2.3.2 Study Period and Study Population

This study examined the costs associated with a cohort of individuals or families (depending on the case study) who became homeless for the first time between July 1, 2004 and June 30, 2005.³ For purposes of this study, an individual or family was considered homeless if the household stayed in a residential homeless program or was served by a street outreach program. The length of time the household was homeless was also defined based on use of these programs, as documented in local HMIS databases. Individuals and families were considered to be homeless for the first-time if they did not appear in the community's HMIS at any point prior to the study enrollment period.

Periods in which members of the study cohort were precariously housed, doubled up, or staying in a program that did not report to the HMIS are not included in the homeless system costs estimated by this study. However, if the studied family or individual had more than one stay in a residential homeless program during the study period, then the time between stays is also considered “during homelessness” when we analyze patterns of homelessness or analyze time-adjusted costs to the homeless services system. The period of homelessness is considered to begin on the first day of a program entry and to end on the date of the last program exit.

As will be discussed in more detail in Section 2.4, we followed each individual or family's homeless service utilization for eighteen months from the household's point of entry into the homeless system. In Washington, D.C, we followed families for thirty months. To the extent that data were available, we measured the individual or family's mainstream service utilization for twelve months prior to and for at least eighteen months after the household's point of entry into the homeless system.

To identify the study population, a single individual was defined as a homeless adult who was served within our study timeframe and was unaccompanied by any other persons at any point during the study period. A homeless family was defined as at least one adult and at least one child (under 18 years at first program entry) who used residential services together at some point during our study period. If a member of a family also used homeless programs as a single individual, we included those stays as part of the family's homeless utilization patterns and costs.

Because of federal law related to HMIS data, the study was not able to analyze services provided to people who are homeless by providers of services for victims of domestic violence. Since the study aimed to capture the complete costs associated with individuals or families who become homeless, households that included a person who was served by a victim services provider at any point preceding or during the study period, as determined by HMIS records, were excluded from the study population. In addition, unaccompanied youth under age 18 were excluded from the study.

² A “Bibliography of Cost of Homelessness Case Studies” appears at the end of this report.

³ Kalamazoo is the only site for which we used a different study enrollment period. We identified people for the Kalamazoo study cohort based on first entry into the homeless system between January 1, 2005 and December 31, 2005, because homeless system utilization data for 2004 were incomplete.

2.4. Data Sources

The study relies primarily on three types of data:

1. HMIS data maintained by the local Continuum of Care (CoC);
2. Homeless program cost data collected directly by the study team; and
3. Mainstream system administrative data maintained by a data warehouse or by local or state agency administrators.

Each data source and the process for obtaining the data are described in the subsections that follow.

2.4.1 Homeless Management Information Systems Data

HMIS data are longitudinal, client-level data that record demographic details and program utilization for all persons served by agencies participating in the HMIS at each study site. We used HMIS data to identify the study population, to identify each individual or family household's period of homelessness, and to follow each household's homeless system utilization for eighteen months from the date the household's homelessness first began.⁴

HMIS data are maintained by a local HMIS Lead Agency, which acts on behalf of the CoC to manage community data on homelessness. In 2004, HUD published HMIS Data and Technical Standards that outline data collection, privacy and security requirements for HMIS (Housing and Urban Development [HUD], 2004). As a result of the 2004 Standards, HMIS databases across the country store client-level data uniformly, so that we knew the types of data on homeless clients that we would be able to obtain and were able to use a common data analysis strategy across all of our study sites. We purposely selected communities with high levels of residential homeless provider participation in HMIS to ensure that we could get a comprehensive picture of who became homeless within each study site during the study's enrollment period and could understand the types of programs people used and their patterns of use.⁵

As part of site selection, we examined the level of HMIS participation (which is an indicator of how well HMIS data represent the homeless service system) for each community, indicators of data quality, and whether the community had authorized the use and disclosure of client data for research purposes in its privacy policies. We chose only sites with high residential program coverage rates, good quality data, and authority to release their data for research purposes. Thus, we were confident that we could obtain access to the client-level HMIS data for each of our selected study sites. Once sites were selected, we began negotiating with the HMIS Lead Agency to obtain access to the data. We developed data use agreements that were executed between Abt Associates Inc., and each HMIS Lead Agency and that specified the terms of our access, protection, use, and further disclosure of the data. The process and timeline for negotiating access to HMIS data varied by site, depending primarily on the extent to which the process of granting access to data for research purposes already

⁴ The period was thirty months in Washington, D.C.

⁵ We also attempted to include sites with strong participation from homeless programs that provide supportive services only. As we analyzed the HMIS data, we determined that most such programs did not enter service utilization data sufficient to support a cost analysis; therefore, we did not include costs associated with use of supportive service programs.

had been defined by local policies and procedures. In most cases, time delays were associated with administrative reviews or approval processes rather than with substantive local concerns. We were able to secure direct access to HMIS data for all six study sites.

2.4.2 Homeless Program Cost Data

This study includes homeless system costs associated with the use of residential homeless programs for all programs that report client utilization data to the HMIS. While HMIS provides information on client use of homeless programs, HMIS does not record costs associated with each program. Within the industry of providers of homeless services, there are no standardized unit costs based on funding reimbursements or other estimates. Therefore, we collected program costs directly from a sample of programs within each community and used these data to derive estimates of daily costs of residential programs (and in some cases costs per outreach encounter) for each program type at each site. The daily costs represent all aspects of each residential program's costs: operating, leasing, services provided as part of the residential program, administration, and, in some cases, the capital costs of the program's facility. This process is described in detail in Section 2.5.2. Chapter 3 contains a detailed discussion of our findings related to homeless program costs

2.4.3 Mainstream System Administrative Data

The third primary data source used for this study was administrative data from mainstream service systems. Mainstream systems are those that do not exclusively target people who are homeless. The primary mainstream systems that we attempted to include in the study were:

- primary health care;
- mental health care;
- substance abuse treatment;
- law enforcement and criminal justice;
- child welfare (including financial support, foster care, and protective services); and
- Food Stamps and TANF entitlements.

We were able to obtain mainstream cost data from at least one site for each of these systems, except child welfare. However, in Washington, D.C., we obtained and used data on whether each family in the study cohort had at least one encounter with the child welfare system over a five-year period.

We used the mainstream administrative data to track mainstream utilization and estimate the costs associated with that utilization for the twelve months prior to each household's homelessness, for each household's period of homelessness, and for the period following homelessness through December 31, 2006 (or June 30, 2007 for Kalamazoo).

In contrast to homeless services, mainstream system administrative data can be used to estimate both utilization and costs. Mainstream services, such as those funded by Medicaid or state health resources, are frequently funded based on standard state reimbursement rates. Mainstream income support systems such as Food Stamps or TANF provide assistance that is quantified at the household level. Other systems, such as local jails, track actual utilization, and their administrators have estimated nightly costs or arrest costs for budgetary or reimbursement purposes, so that the estimated costs of these mainstream systems can be estimated. We also determined through discussions with the expert panel that obtaining data on mainstream utilization from client case files or self-reports

would not be as accurate or comprehensive as administrative data and that using administrative data would be much less expensive than primary data collection.

We found that the largest challenge inherent in using mainstream administrative data systems was negotiating access to them. First, we had to identify all of the appropriate local or state administering agencies that maintained data on primary healthcare, mental healthcare, substance abuse treatment, police and/or sheriff arrests, police and/or sheriff jail incarcerations, Food Stamps benefits, TANF benefits, and other relevant mainstream assistance provided to the individuals or families studied at each site.

Once we identified the agencies and began discussions with appropriate staff, we had to convince the agencies to provide data for the study. We offered numerous analytical methods to ease the burden of participation, ranging from the agency sending us their complete identifiable client-level dataset for the study period to the agency conducting all of the analysis and sending only aggregate, tabulated data in table shells defined by the study team. While a formal commitment to participate in the study was an important benchmark, we experienced many delays after that point—for example, in securing formal legal approval to exchange client-level data. Therefore, agreement to obtain the necessary data was not considered complete until we had a signed, data use agreement in hand. Once we had such an agreement, we worked with the information technology staff at the mainstream agency to link records and analyze the utilization data according to our study specifications. This phase of the process was the least complicated, but still yielded many opportunities for project delays.

These steps had to occur for each separate mainstream administering agency within each community. We tried to achieve economies of scale by approaching state agencies that consolidated data across multiple service providers within a community, but in many cases we were not able to penetrate the appropriate bureaucracy at the state level. To support this process, we prepared a Mainstream Data Analysis Guide that we shared with mainstream administrators in advance to explain the process, options, and final table shells. At all sites, the success of accessing mainstream data depended on the motivation of our CoC and mainstream agency contacts. In communities where the mainstream contact was motivated and invested in the study, we had much greater responsiveness.

For each mainstream domain, Exhibit 2.3 lists the case study sites in which we were able to successfully access and incorporate cost data.

Exhibit 2.3: Mainstream Domains included in the Study

Mainstream Domains	Jacksonville	South Carolina	Kalamazoo	Houston (Individuals and Families)	Washington DC	Des Moines
Primary health care	✓	✓	✓		**	
Mental health care	✓	*	*	✓	**	
Substance abuse treatment	✓	*	*		**	
Law enforcement and criminal justice	✓	✓	✓	✓		
Child welfare					**	
Food Stamps and TANF	✓	✓ (FS)				
Other mainstream data			✓		**	

* Included if funded by Medicaid.

** Data on whether there was any system utilization, but not types of services, extent of utilization, or costs.

2.5. Data Analysis Approach for Case Studies

The data analysis repeated for each distinct case study had five major components:

1. analyzing HMIS data to identify the study population and measure the use of homeless services;
2. developing homeless program typologies, calculating homeless unit costs for each program type, and deriving homeless system costs for each person;
3. identifying common groups of homeless system users, i.e. those with common “paths”;
4. extracting mainstream service data to measure mainstream costs associated with the study population; and
5. analyzing homeless and mainstream costs by path groups and other variables.

Each of these components is described below. Each section provides a discussion of the data sources, filtering and analysis that occurred, and the output that was used as a basis for the case study findings.

Analyzing HMIS Data to Identify the Study Population and Measure Homeless Service Use (HMIS Analysis)

Measurement of homeless service utilization was based on analysis of HMIS data to determine each homeless individual or family’s length of stay within each program. In some cases, we were able to obtain data on program utilization maintained outside of the HMIS by specific agencies and to merge it with the HMIS data. We also attempted to measure costs associated with supportive services that were provided outside a residential program. However, these unit costs were difficult to quantify, and we determined that most service programs reported only partial information on service utilization to

the HMIS. Therefore, the estimates of total homeless program costs do not reflect stand-alone homeless supportive service program utilization unless otherwise noted.

The three steps in the process of analyzing HMIS data to identify the study population and measure homeless service use were:

1. de-duplicate client records and create a Master Household ID;
2. identify the study population; and
3. calculate the length of each program stay.

Each step is detailed below.

Step One: De-duplicate client records and create master household ID

First, we compiled personal identifiers and basic demographic characteristics, such as HMIS Client ID, first, middle, and last names, social security number, date of birth, gender, ethnicity, race, and household IDs. We used The-Link-King software⁶ to de-duplicate client records within the HMIS and merged client records if the same individual was associated with multiple HMIS Client IDs. We did not rely on the de-duplication procedures of the HMIS itself.

Most HMIS databases allow persons to be associated with multiple household IDs. This reflects the reality that people sometimes enter a program for homeless people alone and sometimes enter a program with various combinations of other adults and children. This phenomenon made it very challenging to count the number of distinct households served within the study sites during the study period and to follow particular households over time. We defined our study population according to household composition: for example, a single adult must never be accompanied by other persons; a person in a family is sometimes if not always accompanied by at least one other person and must at some point be accompanied by a child. Therefore, we had to be able to determine each household's composition throughout the study period and, once categorized as a single member household or a family household, to measure its total utilization of homeless services and patterns of use over time. For family households that changed composition during the period of homelessness, this meant that we had to identify utilization of homeless programs (and associated costs) by each member of the household at any time during the study period.

To accomplish this goal, we created master household IDs—one Master Household ID for each household—that are shared by all persons who were ever in the same household or had a household member in common in any program within our study period.⁷ For example, if a mother and two children entered a program together, in the HMIS they may have been referred to as HMIS Household ID 1. For purposes of this study, we assigned them Master Household 1. If they later went to another program and were joined by a third child, they may have been assigned HMIS Household ID 2. By contrast, for this study, all four persons (the mother and all three children) were then considered part of Master Household 1. If two of the children left and joined their father in a different program, the children and their father were then also considered part of Master Household 1. The master household approach may in some sense undercount the number of households or merge costs of

⁶ The Link King tool is designed for de-duplication and matching of client data for research purposes using both probabilistic and deterministic record linkage algorithms.

⁷ For single individuals, the Master Household ID is the same as the Client ID.

households that purposely separated. However, other options would have over-counted households and suggested lower costs per household. Also, our approach allowed us to track change in household composition over time, which turned out to be an important variable in the study.

Step Two: Identify the study population

The selection criteria for the study population required the member of the study cohort (individual or family) to be served by a residential homeless program for the first time during the study “enrollment” period. After examining household associations to group persons by Master Household IDs and select only individuals or groups of people that met our definition of family, we analyzed program entry dates to determine whether the individual or any family member had been in the homeless services system before the enrollment period. Households were excluded if any member of the household was ever homeless prior to the enrollment period.

For family sites, once a Master Household was determined to be part of the study cohort, then all members of the family who were housed in a residential homeless program at any time during the complete study period, including after the one year-enrollment period, were included as part of the family cohort for analyzing use of homeless programs and measuring costs.

Step Three: Calculate Length of each Program Stay

A key building block of homeless system costs is homeless program utilization, which can be described in terms of the number of days stayed in a residential program.

We calculated the length of each program stay, chronologically sequenced and tallied program stays for each household, cleaned the program stay data to merge concurrent stays and truncate overlapping stays, and assigned Program Stay IDs. We defined all program stays associated with a master household and the gaps in time between these stays as that household’s homeless “path.” The first program entry date for each household’s first program stay was designated as that household’s “Household Start Date,” and the program exit date of the household’s last program stay was designated as that household’s “Household Exit Date.” For program stays that did not have valid exit dates, we assumed that the household exited a residential program on the day it started another residential program. In cases where there was no exit date for the final stay, we imputed exit dates using a “hot deck” imputation approach based on the length of stay for other client records within the same program type. Finally, if a household was still enrolled in a program as of the end of the eighteen-month follow-up period, the length of stay was truncated to the maximum client end date based on 548 days (18 months)⁸ from the household start date. These lengths of stay were used to calculate homeless program costs for each household and to group individuals or families into similar patterns of homeless system use.

Developing Homeless Program Typologies and Deriving Homeless Unit Costs for Each Program Type

To determine the unit cost for each program used by a member of the study cohort (usually a cost per day), we inventoried all homeless programs within the system at each site (HUD-funded and not HUD-funded), interviewed CoC and program staff to learn more about each program, and developed homeless program typologies for each site. The typology’s primary purpose was to identify like programs for which unit costs derived from a sample of the group would reasonably represent the

⁸ The period was thirty months (913 days) in Washington, D.C.

costs of the full group. Thus, the typology was based on key cost drivers, including: whether a residential program was operated in a facility or scattered-site environment, the extent of privacy afforded, the level of supervision, and the nature and intensity of services provided as part of the program. In addition to these cost drivers, we also considered the role of the program within the homeless assistance system and time limits for participants. The resulting typologies were tailored to each site. This means that some program types appear in more than one case study, and some appear in only one.

To derive homeless unit costs by program type within each site, we:

1. selected a sample of programs within each type from which to collect unit costs directly;
2. used on-site interviews, review of financial documentation, and extensive follow-up to document total costs for each program, calculated separately for housing operations (including rent, where applicable), supportive services provided as part of the program, administration, and the capital costs associated with facilities owned by the program or donated to the program rather than rented;
3. calculated unit costs (household nightly costs for family programs and bed night costs for single programs) for each program, with and without capital costs included;
4. calculated average unit costs for each program type, weighted by the number of occupied units or beds, and assigned a cost code to each program designating whether its unit costs should be represented by its own actual costs, the costs of another program within the same type that was substantially similar, or the weighted average unit costs of the program type.

Cost Data Collection Strategy

During visits to each of the study sites, we attempted to collect all costs for each sampled homeless program and, sometimes, all homeless programs of a particular type. Costs were collected using a standard data collection instrument that guided probes for information in various cost categories to ensure that all aspects of program operations, services provided as part of the residential program, and program administration were included. We collected information on sources of funding and made sure that the sources and costs balanced, as a check on the total costs. As described in more detail in the section that follows, we also spent extensive effort collecting costs on capital expenditures for program facilities that were paid for or donated to the agency and, therefore, do not appear in the program's operating budget. All homeless costs are based on 2006 program budgets or actual expenses; therefore all homeless program costs are expressed in 2006 dollars.

We collected comprehensive data on costs of programs providing supportive services only while we were on site. We intended to divide the total program figures by appropriate units to derive average unit costs that could be multiplied by each person's actual program utilization. This effort was confounded by two issues—our ability to accurately define units that represented the various types of services offered by each program, and our ability to accurately track individual client-level utilization of service units.

- We found that programs that offered a uniform type of service, such as outreach services, could generally be valued in terms of a contact or hour of client-staff interaction. But multi-service programs, such as drop-in centers, might provide a \$2 bus token, utility assistance, case management, healthcare, medication, employment support, or a shower.

Therefore, it was virtually impossible to estimate the value of administering each service type without conducting a thorough time-study of the program.

- Even when we could define units of service and measure their costs, we found that most programs providing only social services did not accurately record service utilization in the community HMIS.

Ultimately, we included only the costs of outreach contacts and only for two case studies, Jacksonville and Houston. Thus, the homeless system costs reported in the case studies should be interpreted as residential homeless program costs. Fortunately, the work we did to inventory programs and collect their costs at each site suggests that there are very few non-residential service programs targeted to homeless people at our study sites and that many of the programs provide modest levels of service. In each case study, we provide information about the extent of missing costs to the homeless services system that may result from not including stand-alone homeless supportive services programs.

Capital Costs

We consider it important to include capital costs for the buildings in which the homeless programs operate as part of the total cost of providing residential services to homeless individuals and families. When facilities are leased in the private market, we can assume that the costs associated with prior or future capital investments are included as part of the lease rate. If the agencies own or are donated the use of the facility, operating costs do not include rent and, therefore, we would capture only part of the facility cost if we did not find another sources of capital cost information.

We collected two types of information on capital costs:

- Costs incurred to construct and rehabilitate buildings, based on administrative records and interviews. We found it very difficult to find complete information, as many of the facilities did not have the records associated with a mortgage loan (e.g., a pro forma). Some were built several decades ago, some were government property, and some were gifts from individuals. In addition to the difficulty of determining original development costs, we found that records of property rehabilitation not reflected in annual operating budgets were difficult for many providers to assemble.
- 2006 property values from tax assessment data. We decided that this was a more consistent and comprehensive way of determining capital costs than historical data on capital expenditures. However, not all communities systematically record the values of tax-exempt properties. We converted all costs to 2006 dollars using the Consumer Price Index less Shelter for the MSA or appropriate region and amortized the total investment over a 30-year period with a three percent inflation rate.

We prorated the resulting capital values to calculate a daily per unit capital cost. However, we found some property values and resulting estimates of daily costs that were not easily explained by the property's size, location, and other characteristics. The scope of the study did not accommodate further econometric analysis to explain and validate the reasonableness of the capital cost component of estimates of daily unit costs.

In this report, we have included capital costs in the daily unit costs for the three sites for which we are most confident about the validity of the cost estimates, either because many of the programs pay

market rents for the facilities they use or because of the quality of the tax assessment data. For Jacksonville, Upstate South Carolina, and Des Moines, our cost analysis incorporates estimates of all capital costs in the costs reported for the homeless services system.

Homeless System Costs for Each Household in the Study

Homeless system costs were calculated for each household in the study sample based on the following formula, where LOS represents that household’s length of stay in the specified program:

$$\begin{array}{l}
 \text{Homeless System Costs for} \\
 \text{each Household} =
 \end{array}
 \begin{array}{r}
 \text{Program Stay 1 LOS} \times \text{Program 1 Unit Cost} \\
 + \\
 \text{Program Stay 2 LOS} \times \text{Program 2 Unit Cost} \\
 + \\
 \text{Program Stay n LOS} \times \text{Program n Unit Cost}
 \end{array}$$

We calculated utilization statistics and total, mean, and percentile values of homeless system costs for the study cohort and for selected subgroups within the cohort. Thus, these costs reflect the actual costs associated with participation of the study cohort in residential homeless programs. The costs are represented in the case studies as homeless system costs “during homelessness,” although it is important to note that the costs may be spread across an extended period in which there are days or months during which the individual or family was not being served by residential homeless programs, which we refer to as “gaps.” Some of these gaps may result from incomplete HMIS data, but, since we deliberately targeted communities with high rates of HMIS participation, they most probably represent the intermittent use of homeless residential services by many individuals and families. More extensive discussion on the time periods used to present the findings is provided in Section 2.5.4.

Identifying Common Groups of Homeless System Users (Path Groups) and Calculating their Costs and Characteristics

Analysis of “path” groups, or groups of users who share similar patterns of homelessness, is an area in which this study breaks new ground. For each of the case studies, we analyzed the pattern of program stays for individual households and used cluster analysis to group households with similar patterns of homeless system utilization. We refer to this process as the path group analysis.

We based the path group analysis on four types of information about the person’s homeless system use:

- types and sequence of homeless programs used (sequence categories);
- number of program stays;
- duration of Program Stays (cumulative days across all stays); and
- gaps between programs stays (cumulative days across all gaps).

To develop the sequence categories we created a sequence analysis file, which reports the program type sequences used by each client and aggregates like sequences. Three or four members of the study team independently grouped the sequences into similar “sequence categories” and then worked together to develop consensus sequence categories. The sequence categories became one variable used in the multivariate cluster analysis. We then applied multivariate cluster analysis to derive the

path groups based on the four variables listed above.⁹ We did not determine in advance the number of path groups desired. For each site, we reviewed various analytical outputs, and chose the model that resulted in the most coherent clusters with sufficiently sized path groups. Thus, the number of clusters varied across sites. Finally, we assigned a Path Group ID to each of the client records in our research database to make possible the analysis of costs and demographics by path group.

Extracting Mainstream Service Utilization Data for the Study Population

We used the mainstream data to estimate the mainstream system costs associated with our study population that were incurred anytime from 12 months prior to each household's homelessness (Household Start Date) through December 31, 2006. In Kalamazoo, the study period began and ended six months later, so mainstream data collection ended on June 30, 2007. We analyzed mainstream costs for three time periods:

- *Prior to Homelessness*: 12 months prior to Household Start Date through Household End Date
- *During Homelessness*: Household Start Date through Household End Date
- *Following Homelessness*: Household End Date through December 31, 2006 (June 30, 2007, in Kalamazoo).

For example, if someone experienced homelessness from July 15, 2004 through November 30, 2004, the time periods for the mainstream service utilization were:

- Prior to homelessness: July 15, 2003 – July 14, 2004
- During homelessness: July 15, 2004 – November 30, 2004
- Following homelessness: December 1, 2004 – December 31, 2006
- Full period: July 15, 2003 – December 31, 2006

Costs following homelessness represent mainstream costs incurred after the household's last exit from the homeless system during the 18-month period in which we tracked homelessness and any costs incurred after the 18-month period. Mainstream costs were calculated for each timeframe for each individual and summed into master household totals.¹⁰

The steps used to match HMIS data with mainstream service data and calculate mainstream costs were:

1. **Finder File.** We produced a finder file for each study site that we provided to each agency to use to identify people in our study who used the mainstream system.
2. **Agency Services Information.** We worked with the mainstream system administrator or mainstream agency contacts to document general agency information, types of agency services provided, and the unit or costs of client services and allocated client benefits.

⁹ The study team used a cluster analysis algorithm that can handle both continuous and categorical variables (Chiu, Fang, Chen, Wang & Jeris, 2001; Zhang, Ramakrishnon & Livny, 1996).

¹⁰ In Washington, D.C. we only received information on whether households received any services in specified domains at any time. The time period for these results was from July 2003 through July 2008.

3. **Matching Client Records.** Either Abt or the mainstream system administrator matched client records in the mainstream database(s) to clients in the finder file. Once shared records were identified, mainstream records associated with these individuals were extracted for the full study period.
4. **Client Service Utilization.** Depending on whether client-level data could be released to Abt, either Abt or the mainstream system administrator analyzed mainstream service utilization data and generated standard mainstream table shells for pre-, during, and post-homelessness and the full study period by path group and by specified demographics and household variables. These were used as the basis for the case study reports.

Analyzing Homeless and Mainstream Costs

To calculate total costs associated with homelessness in each site, we started by summing homeless and mainstream costs for each individual or family for each period and then aggregated the costs across time periods and households to convey the costs associated with a particular group of homeless individuals or families in the study cohort.

*Costs associated with
Homelessness =*

*Total Costs incurred by the Homeless System
+
Total Costs incurred by Mainstream Systems*

Most of the analysis reported in the case studies shows household medians and averages and total costs for specific domains during the periods before, during, and following homelessness. However, members of the study cohorts spent varying amounts of time homeless and, therefore, had shorter or longer periods following homelessness, as well as varying amounts of time homeless, and this can make the cost estimates misleading. For example, if Medicaid costs are lower for the study population during homelessness than after homelessness, one might assume that people become disconnected with mainstream medical care during homelessness. However, if the period of homelessness averages three months and the period after homelessness averages fifteen months, the difference in costs may just reflect that the households had longer time period in which to incur costs following homelessness. We addressed this issue by calculating time-adjusted average monthly household costs for each period and group to allow for meaningful comparison of costs associated with different time periods and across groups that may have varying lengths of homelessness.

Multivariate Analysis of Determinants of Costs

To examine how demographic characteristics and patterns of homelessness are related to costs, the study team used a multivariate analysis technique called multiple regressions. Multivariate analysis is useful because it allows us to identify the *independent* impact or effect of each variable of interest on costs, while holding all other variables constant. This analysis helps us to answer questions, such as:

- Which demographic factors are associated with higher costs, after controlling for the duration of homelessness and path groups?
- Everything else being equal, what is the relationship between the duration of homelessness and total costs incurred? What is the relationship between the duration of homelessness and total mainstream costs?

- Which path group tends to incur the highest costs, holding the demographic variables constant? Which path group tends to incur the lowest costs?
- Is there a correlation between mainstream system costs and homeless costs?

To conduct the multivariate analysis, we developed regression models to explain homeless system costs. The explanatory variables used in the models included:

- homeless path group or path group constituent variables (length of stay, number of stays, and length of gaps);
- gender (individuals sites only);
- race (individuals sites only);
- age (individuals sites only);
- number of adults (family sites only);
- number of children (family sites only); and
- changes in household composition (family sites only).

A central research question for this study is the relationship between homeless paths (e.g. groups of people who use the system in similar ways) and costs. Thus, homeless path group was used as an explanatory variable. However, we were also interested in gaining a more nuanced understanding of the impact of cumulative length of homeless stays, number of homeless stays, length of gaps between stays, and types of programs used. These two analyses could not be done in the same model, since the path group variable was derived from the variables on homeless patterns. Thus we ran two families of models related to homeless costs, one set using the path group variable itself, and another using the three independent variables related to patterns of homelessness.¹¹ Within each family of models, we layered different combinations of the independent variables to understand their relative influence.

For Houston and Jacksonville, the sites in which we had access to client-level mainstream data, regression models were also developed to explain the variations in total homeless system and mainstream costs per household. Separate models were estimated for the following categories of costs:¹²

- total costs (total homeless costs + total mainstream costs);
- total homeless costs;
- total mainstream costs;
- specific mainstream costs

¹¹ A fourth variable used in the cluster analysis, program sequences, was not included.

¹² The study team used the logarithm (log) scale of the costs as the dependent variable. The log specification is commonly used in the cost modeling literature. It has a number of appealing characteristics. First, the estimated model coefficients can be interpreted as percentage changes in the dependent variable for a 1-unit change in the explanatory variable. Second, it implies non-linearity and joint determination of the cost level by all the explanatory variables in the model. Third, the specification mitigates a common form of heteroskedasticity in the model's error term (Wooldridge, 2001). One exception is that, for regression models developed for the mainstream domain costs in Jacksonville, we used the cost amounts in their original metric.

To measure the relationship between these categories of costs and homelessness, three families of models were developed to separately test independent variables for 1) homeless path group, 2) the four variables related to patterns of homelessness, and 3) homeless system costs as an independent variable and excluding path group variable and the four variables related to patterns of homelessness. The models also included versions with and without covariates for involvement in mainstream domains. For instance, the model for criminal justice measured whether people who had received mental health treatment (as well as the other mainstream systems) were associated with higher criminal justice costs, when controlling for the other independent variables.

2.6. Cross-Site Analysis

The cross-site findings presented in this report are the result of two analytical approaches. First, we synthesized the findings from the separate case studies and identified common themes as well as salient differences that emerged among the various sites. Second, we integrated data across sites into a combined cross-site cohort dataset and analyzed the records using multivariate regression analysis, adding a dummy site variable to model the influence of site differences. In some cases, we also had to standardize the variables that diverged across sites prior to creating the cross-site dataset. The latter analytical approach was only possible for analysis of the homeless system patterns and costs, which were gathered consistently across all sites. It was not possible to conduct a similar analysis of mainstream costs, since we were unable to collect client-level mainstream costs in most sites and since the mainstream domains obtained differed from one site to another.

The steps for the cross-site multivariate analysis are described in more detail below.

Standardization of Variables

While an important part of the case studies was to generate both program and path typologies that were tailored to the site and household type, for the cross-site analysis, we re-categorized these typologies using the generic groupings of emergency shelter, transitional housing, permanent supportive housing, and non-residential program types. For example, in Houston, we originally categorized individual emergency shelters as either short-term shelter or extended stay shelters. In Jacksonville, the distinction between overnight shelters and 24-hour shelters was a more important typological distinction. For the cross-site analysis, these programs were all re-categorized as “Emergency Shelter.” The “non-residential type included outreach programs as well as programs that were involved in direct placement of clients into mainstream housing with a short rental subsidy and case management.

For each individual or family, we then created a program type use variable, based solely on which of these general program types the household used. The basic groupings created were as follows:

- cohort members using emergency shelter only;
- cohort members using transitional housing only;
- cohort members using emergency shelter and transitional housing only; and
- cohort members using any other combination of program types.

The last combination included households that were served by non-residential programs as well as those served by permanent supportive housing. Unlike the path groups used in the case studies, these

groupings were not based on cluster analysis and did not account for length of stay, number of stays, or gaps, or the sequence in which households used the particular programs. However, these other factors (except sequence) were re-introduced as variables in the cross-site multivariate regressions.

Finally, we ensured that the data were comparable across sites. This was particularly necessary for Washington D.C., which used a 30-month study period instead of an 18-month study period. In order to compare Washington, D.C. data directly to the other sites, we re-analyzed the patterns of the Washington, D.C. cohort, and incorporated only the data on costs, length of stay, number of stays, and gaps that were incurred during each family's first 18-months.¹³ In addition, the Washington D.C. cohort included 87 families that only used a program that placed families into mainstream housing. These families were excluded from the cross-site analysis, since they were never literally homeless, and this program did not have equivalents in other sites.

Cross-site Multivariate Analysis

We conducted two sets of additional regressions to support the cross-site analysis. One set of analyses was conducted for the four family sites, and another set of analyses was conducted for the three individual sites. Models were developed to explain two outcome variables: length of homelessness and homeless system costs.

These regressions used the same variables that were used to understand site-specific correlations (see section 2.5.5), with the exception of homeless path group, which was not comparable across sites. Instead, the models included the new program type use variable, as well as the length of stay, number of stays, and gap days. Each model in the cross-site regressions also included a variable for the site to control for differences in program costs across communities. Also, the family sites incorporated demographic data that were not used on the case study level, including gender of adults in households, race of head of household, age of head of household, and age of youngest child. Follow-up analyses were also conducted to address additional questions that arose:

- For families, we modeled the relative risks of households falling into one or other of our program type use categories, based on the explanatory variables.
- For individuals, we modeled the impact of the explanatory variables on number of stays, and another model to explain the cumulative length of gaps between homeless stays.

2.7. Limitations of the Study

Although this study of the costs associated with homelessness paves new ground and provides important findings in many areas, the results of this study also have several limitations.

Perhaps most importantly, the study does not attempt to isolate which of the mainstream costs are caused by homelessness, and it does not compare the benefits of different programs with the costs of their use. Thus, the study is not a cost-effectiveness study and is most accurately characterized as a study to measure the costs associated with homelessness, rather than the costs of homelessness.

¹³ We did not re-generate information on changes in household composition, which might have occurred after the first 18 months.

Specific limitations of our methodology include the following:

1. The study does not include homeless or mainstream system costs associated with individuals or families who may have experienced homelessness but who were not entered into the HMIS.
2. The study explicitly excludes households that were served by residential domestic violence providers at any point during their homelessness.
3. The estimates of costs to the homeless system do not reflect costs associated with the programs that do not report data to the HMIS.
4. Some capital costs are missing, as noted in Section 2.5.2.
5. Mainstream costs are limited to the domains for each case study listed in Section 2.4.3.

For all of these reasons, the estimates in this study may underrepresent costs associated with homelessness in our study sites.

Further, real world data is “messy.” The reliance on administrative data rather than direct data collection requires both trusting in the validity of the data entered by local system users and confronting inevitable gaps in data completeness. The actual data includes numerous data fields that were left blank and others that were inaccurate. Missing or inaccurate information in identifying fields, such as name, social security number and date of birth, inhibited our ability to match records within the HMIS itself in order to construct a complete homeless path or even to determine whether a client met the basic criteria for inclusion in the cohort. It also hampered our ability to match data with mainstream domains. Missing program exit dates was a frequent occurrence and affected our ability to precisely calculate length of stay, which is a critical part of determining homeless system costs as well as establishing the period of homelessness itself.

While we used state-of-the-art tools and statistical techniques to compensate for data entry shortcomings, such as using probabilistic record matching to link client records and hot-deck imputation to fill in missing exit dates, these techniques are only as accurate as the original input and decline in validity as the proportion of available data declines in relation to the missing data. Finally, not all of the data administrators of mainstream systems were able to use Link-King, which supports advance record-matching algorithm. In these cases, a more direct, deterministic record matching approach was used, which may have led to an undercount in the number of matches found.

3. Homeless Program Costs

This chapter reports on the costs of residential programs for homeless people across the six study communities. Little has been documented nationally about the program budgets or daily costs of providing different types of homeless programs. Estimates for homeless programs used in other studies of the costs of homelessness have been based primarily on levels of reimbursement available from public agencies. For this study, homeless program costs are based on actual budgets collected from examples of different types of residential programs in each of the case study sites.¹ Using actual program costs provides a more detailed understanding of the variation in costs across homeless programs. It also provides insight on the main cost components of homeless residential programs: operations, services, administration, and in some cases capital investments in facilities owned by programs.²

This chapter discusses daily program costs by program type within our study sites, starting with program costs for individuals and followed by a discussion of program costs for families. Within each section, the costs per person per day are discussed in two different ways:

1. *Community costs*: average daily costs for all programs types in the community for which we collected cost data, ***weighted by program size***; and
2. *Cohort costs*: average daily costs for the program types ***as they were used by the study cohort***.

The distinction is subtle but important. The average costs per day weighted by program size represent the costs of the sample of programs for which we collected costs at each site weighted by the typical number of individuals or families using the program each day.³ These average costs fulfill the interest in the field in understanding the cost per day of different types of homeless programs. They also allow us to compare the variability of costs from one community to another. However, community weighted averages do not reflect the way the study cohort used the various programs. Averages weighted by program size assume that households use each program in proportion to its size.⁴ In contrast, the average cost per day for members of the study cohort reflects the actual levels of use of each program by the cohort. For example, if the study cohort used more expensive

¹ Daily unit costs were calculated by taking a program's 2006 annual budget, divided by 365 days to get the average daily cost of the program and then divided by the average number of occupied units per day to arrive at the average daily cost per unit. See Section 2.5.2 for a detailed discussion of the methodology. Homeless program costs are expressed in 2006 dollars.

² To explore the relative value and influence of capital costs for programs that owned their own properties (and therefore invested real or in-kind resources to build, acquire and/or rehabilitate them), capital daily cost estimates were developed for the Des Moines, Jacksonville, and Upstate South Carolina case studies.

³ The sample was selected to achieve an understanding of the costs of each homeless program type operated in each community; however, the average costs are not statistically representative of all homeless programs within each the community.

⁴ For example, assume that a community has one 10-unit and one 90-unit emergency shelter. The weighted average assumes that if the cohort spends ten days in emergency shelter, one day will be spent in the 10-unit program and nine days will be spent in the 90-unit program. In practice, members of the study cohorts did not use programs according to these proportions.

emergency shelter programs extensively, then the cohort’s average costs per day are higher than the weighted averages for all programs for which we collected data, and vice-versa.⁵

As we discuss throughout this report, the cost findings illustrate the powerful influence of variation in costs among particular programs, as well as variations in costs among types of programs.

3.1. Homeless Program Costs for Individuals

We identified three primary types of homeless residential programs for individuals in Des Moines, Houston, and Jacksonville: emergency shelter, transitional housing, and permanent supportive housing. Sometimes we went beyond this three-part classification and created further categorizations based on the “housing model”—the type of residential space provided or amount of time an individual was expected to spend in the program.

The average cost per day is shown for each program type within each site in Exhibit 3.1. Overnight emergency shelter has the lowest cost per day, typically offers the fewest services in the least private settings, and is often open only during evening and nighttime hours. Transitional housing is generally an expensive model and frequently offers individual room or apartment settings and a range of supportive services. In Houston, Extended Stay Emergency Shelter, in many respects very similar to transitional housing but with shorter intended lengths of stay, has slightly higher costs than transitional housing. Permanent supportive housing also generally offers private living space and supportive services. Providers who operate it indicate that residents are offered services equivalent in intensity to or even greater than services offered in transitional housing; however, in most cases, we found that permanent housing programs arrange for residents to receive services directly from mainstream systems.⁶ Services paid for by permanent supportive housing programs directly appear to be limited to housing-focused services and basic case management. As a result of this structure, permanent supportive housing programs do not have to secure resources to fund these services directly, and the costs are on average comparable to the less expensive 24-hour emergency shelter programs *from the perspective of the homeless system*. Scattered Site Permanent Supportive Housing has higher costs than transitional housing in Houston primarily due to the costs of leasing private apartments.⁷

⁵ If we did not directly collect costs from a program, we used the costs of another program within the same type that was substantially similar. If there was no substantially similar program, we used the weighted average costs of the program type.

⁶ Because these clients receive services that they would otherwise be eligible for and could continue to receive these services if they moved to alternative housing, we did not include this cost as part of the housing program. Although the resident may be enrolled in this service as a direct result of being accepted into the housing, anecdotally we heard that clients moving into PSH are already enrolled in mainstream care and may even be referred to the permanent supportive housing by their mainstream providers. Our analysis of PSH client enrollment in mainstream services, reported in Chapter 4, is consistent with this assertion. Services paid for with the program budget and those dedicated to the project are accounted for in the program daily costs, when possible.

⁷ The Houston site does not include the daily equivalent value of capital investments. Therefore, the daily costs of facility-based programs may under-represent the housing operations costs in comparison to programs that lease space in the private market.

Exhibit 3.1 also presents the proportion of costs spent for housing operations, services, agency overhead, and the daily cost equivalent of capital investments for programs that are operated in a facility owned by the agency. When facilities or individual housing units are leased, the capital costs are reflected in the housing operations budget.

Exhibit 3.1: Average Cost Per Person Per Day of Homeless Residential Programs Serving Individuals by Program Type and Site^a						
Site – Program Type	Housing Model	Average Cost Per Person Per Day^b	Housing Operations	Supportive Services	Agency Overhead	Capital Costs^c
Des Moines						
Emergency Shelter	Congregate	\$19	\$8 (42%)	\$9 (44%)	\$2 (9%)	\$1 (5%)
Transitional Housing	Shared Rooms	\$34	\$11 (33%)	\$14 (43%)	\$7 (20%)	\$1 (4%)
Transitional Housing	Individual Rooms	\$50	\$17 (34%)	\$11 (21%)	\$7 (13%)	\$16 (31%)
Permanent Supportive Housing	Shelter Plus Care	\$18	\$17 (94%)	< \$1 (2%)	< \$1 (4%)	\$0 (0%)
Houston						
Emergency Shelter	Short Stay	\$28	\$7 (25%)	\$17 (60%)	\$4 (15%)	
Emergency Shelter	Extended Stay	\$61	\$14 (23%)	\$27 (44%)	\$20 (33%)	
Transitional Housing	Facility-based	\$55	\$16 (29%)	\$30 (55%)	\$9 (16%)	
Permanent Supportive Housing	Facility-based	\$22	\$14 (64%)	\$5 (25%)	\$3 (12%)	
Permanent Supportive Housing	Scattered Site	\$59	\$31 (52%)	\$18 (31%)	\$10 (17%)	
Jacksonville						
Emergency Shelter	Overnight	\$14	\$7 (54%)	\$3 (25%)	\$1 (8%)	\$2 (13%)
Emergency Shelter	24-hour Shelter	\$32	\$22 (70%)	\$5 (16%)	\$5 (14%)	\$0 (0%)
Transitional Housing	Facility-based and Scattered Site	\$29	\$13 (46%)	\$11 (37%)	\$4 (15%)	< \$1 (2%)
Permanent Supportive Housing	SRO, Facility-based and Scattered Site	\$29	\$14 (48%)	\$9 (30%)	\$2 (7%)	\$4 (14%)

^a Costs represent the average across programs within each type, weighted by the typical number of individuals served in each program each day. Costs only represent homeless system costs and do not include the value of mainstream system costs that may be incurred while individuals or families reside in these programs.

^b Total weighted daily unit cost may not equal the sum of the budget component estimates due to rounding.

^c Capital costs were available for Jacksonville and Des Moines, but not for Houston.

More expensive programs generally have higher costs across all budget categories. Higher costs of housing operations may reflect more supervision when comparing an overnight program to a 24-hour program, or increased private space and smaller program capacity (i.e., decreased economies of scale) when comparing transitional and permanent supportive housing programs to emergency shelters. Often more expensive programs provide more services to clients, in the form of either lower case loads or a broader range of services. Agency overhead costs frequently are higher in more expensive programs, again in part due to smaller program capacity and associated decreases in economies of scale. It also appears that many of the more costly programs have higher management and overhead expenses and may be operated by agencies that have a professional management structure. As the

break-down of costs in Exhibit 3.1 shows, the higher cost of transitional housing is generally driven by higher costs across all areas: housing operations, services, overhead, and capital costs.

Often cost differences reflect idiosyncratic features of particular programs. Nonetheless, there are trends in costs by program type that appear to be tied to the programmatic and physical requirements of the different program types. As we discuss in Chapter 4, transitional housing that is used by the study cohort of homeless individuals is consistently more expensive than emergency shelter used by the cohort. Multivariate analysis that controls for other cost drivers shows that individuals who use transitional housing, or transitional housing in combination with emergency shelter, have costs more than double costs of individuals who only use emergency shelters.

3.1.1 Monthly Program Costs and Local Costs of Housing

Exhibit 3.2 shows the average costs per month for each program type in each community compared to HUD’s Fair Market Rents (FMRs) for a one-bedroom unit in the same community. The FMR is one way to quantify the value of a rental subsidy for a month.

Exhibit 3.2: Average Cost Per Person Per Month for each Homeless Program Type for Individuals and FY2006 One-Bedroom Fair Market Rents^a				
	Emergency Shelter	Transitional Housing	Permanent Supportive Housing	2006 Fair Market Rent for One-bedroom Unit^b
Des Moines	\$581	\$1,018 – \$1,492	\$537	\$549
Houston	\$853 - \$1,817	\$1,654	\$664 – \$1,757	\$612
Jacksonville	\$408 - \$962	\$870	\$882	\$643

^a Costs shown reflect weighted averages by program type. Ranges represent the averages of different housing models within a program type, also shown as daily costs in Exhibit 3.1.

^b FMR Source: HUD, 2005. The FMR does not include the monthly fee paid to a public housing agency for administering the voucher program, which was approximately \$58 per unit per month in these three communities. (HUD, 2007)

In Chapter 4 we discuss average and median lengths of homeless program stays and report that the majority of individuals who become homeless in each of the three study sites use homeless programs for considerably less than one month. However, for individuals who do use homeless programs for longer than one month, the monthly figures provide a way to compare the cost of the assistance that is being provided by these programs to a rent subsidy. The FMRs are much more similar across the three sites than the average homeless program costs per month, reflecting in part the great variability from site to site in what is provided within each homeless program type and how it is provided. Except for overnight emergency shelters in Jacksonville and permanent supportive housing in Des Moines, the FMR is lower than the monthly costs of all types of homeless residential programs in these communities. The sections below describe each program type, the costs associated with providing it, and the extent to which programs are providing both shelter and supportive services to clients—in contrast to the Fair Market Rents, which represent only the cost of housing.

3.1.2 Emergency Shelters for Individuals

All three sites provide emergency shelter for individuals, primarily in large facilities with congregate sleeping arrangements, communal meals, and short expected lengths of stay. Jacksonville has two

models of shelter: overnight shelter and 24-hour shelter. The overnight facilities offer minimal assistance (a hot meal, a cot, and chapel services) and often limit the number of consecutive nights clients can stay. For example, one overnight shelter allows three free nights per month and then charges \$5 per night. Although overnight shelters are not very large, they serve more people than other program types because they have the highest turnover rates. Jacksonville’s 24-hour emergency shelter has continual supervision, on-site supportive services, and no explicit limits on length of stay. Des Moines’ emergency shelter beds are similar to Jacksonville’s 24-hour shelter model. Houston also has two models of shelter, referred to in this study as Short-Stay Emergency Shelter and Extended Stay Emergency Shelter. The short-stay programs serve either single men only or single women alongside women with children. Short-stay shelters offer beds, food, and assistance in moving clients back into housing as quickly as possible. The shelters for men are overnight shelters. One of them allows clients to stay for free for up to 8 nights a month and then begins charging a nightly fee. The women’s short-stay shelters have 24-hour staffing and allow stays of up to 90 days.

The category that we refer to as Extended Stay Emergency Shelters offers a rich variety of supportive services and accommodates stays of 3 to 6 months. Extended stay shelters provide clients a greater level of privacy and have a wider array of services than the shorter-stay model, in many ways paralleling the environment and programming provided at a transitional housing program but with the expectation of shorter stays. Programs in this category are primarily targeted to women with a history of substance abuse.

Exhibit 3.3 reports the average cost per person per day, the range of costs per day across programs within each program type at each site, and the average cost per day of each program type as it was actually used by the study cohort.

Exhibit 3.3: Average Cost Per Day of Emergency Shelter for Homeless Individuals				
Site	Housing Model	Average Cost Per Person Per Day	Range of Costs Per Person Per Day^a	Average Cost Per Day As Used By The Cohort
Des Moines	Congregate	\$19	\$19	\$19
Houston	Short Stay	\$28	\$19 - \$73	\$36
Houston	Extended Stay	\$61	\$31 - \$85	\$67
Jacksonville	Overnight	\$14	\$14	\$14
Jacksonville	24-hour	\$32	\$32	\$32

^a If only one number is provided, costs were only collected from one program.

While emergency shelter costs are generally low, they are quite varied. Overnight and short-term emergency shelters have relatively low daily costs. In Jacksonville, the overnight emergency shelter has a cost of only \$14 per day. Des Moines’ congregate shelter program is provided for \$19 per day. Jacksonville’s 24-hour shelter serves both singles and families and has a daily cost more than double the cost of the overnight emergency shelter, \$32. Houston’s short-stay programs have a similar average daily cost, \$28, although costs ranged from \$19 per day to \$73 per day depending on the program. Houston’s extended stay shelter model has a cost almost triple the daily cost of the short-stay shelters, \$82. The lower cost emergency shelter programs all have high capacity (more than 100

beds) and are able to achieve significant economies of scale that are not achievable with programs that have only 20 to 40 beds.

Single women are frequently served in shelter programs that also serve families and that also have much higher daily costs.⁸ A single agency in Houston operates a short-stay program for single men and another program for families and single women. The shelter for men, a large facility with more than 300 beds, operates at a daily cost per person of only \$19, compared with \$73 for the program for families and single women. Half (51 percent) of the \$54 difference in cost can be attributed to services, for which the agency spends \$40 per single woman compared with \$13 per single man. But the program also spends \$26 more per night for single women on housing operations and agency overhead, since the women and families program provides more privacy and individual space and there are fewer units in the facility over which to prorate fixed housing operations and agency overhead costs.

Exhibit 3.3 also shows that the average daily cost of emergency shelter in Houston as it was actually used by members of the study cohort is higher than the cost per person per day weighted by program capacity. This means that individuals in the study cohort of first-time homeless individuals used the expensive programs slightly more than the less expensive programs within each category.

3.1.3 Transitional Housing Programs for Individuals

Transitional housing programs serving single adults in our study sites are offered in both facility-based and scattered site settings. Of the programs we examined, those designed exclusively for single adults use a facility-based model, whereas programs that serve families with children or both families and single women use both models. In the facility-based model, clients are housed in a single building or a campus of buildings owned or leased by the program. In the scattered site model, households are placed in independent apartments located in larger complexes where most of the buildings' tenants are not homeless. The difference in privacy and independence associated with scattered site transitional housing (which was offered for single women but not for single men in our study sites) may contribute to longer lengths of stay for single women. And since single women were often served in more expensive programs that were designed to accommodate families, their associated costs were also higher when compared with single men in the study cohort, as we discuss in Chapter 4.

Most transitional housing programs offer supportive services, including case management, assistance in securing benefits, and job training. In Jacksonville, many of the transitional programs screen out persons who are actively using drugs or alcohol and cite employment, sobriety, and obtaining permanent housing as their primary program goals. By contrast, most programs in Houston target persons with substance abuse histories. One large program targets tuberculosis patients who are in recovery, and another serves persons with HIV/AIDS. Several transitional programs in Houston serve only women.

Des Moines has two models of transitional housing: one with individual rooms or apartments and another with shared rooms. The facilities used by the programs with individual rooms are large

⁸ This is an important point that is discussed in more depth in Chapter 4, since we find that, even when patterns of homelessness such as lengths of stay are controlled for, single women are associated with substantially higher costs than single men, implying that women use more expensive programs.

buildings in downtown Des Moines, some of which are valuable properties. This has implications for the programs' daily costs per person, since we included a daily cost equivalent of capital infrastructure in the estimates for Des Moines. Programs providing transitional housing with shared rooms generally are group homes and have a completely different housing and capital cost structure. They target homeless people with particular types of need. Three of the five programs in this category serve people who are homeless and have a history of incarceration and, therefore, a need for specialized services that help to address barriers imposed by a criminal history and to mitigate behavior that may lead to reincarceration. Another is a program for veterans operating within an emergency shelter building but with more privacy, longer lengths of stay, and extensive client services funded by the Veterans Administration. The final program is targeted to homeless men recovering from substance abuse.

Exhibit 3.4 shows the range of daily program costs for transitional housing within each site and compares average program costs per day overall with the costs of the programs as they were used by the study cohort.

Transitional housing has the highest program cost per person per day across the three residential program types in Des Moines (\$46) and Houston (\$55). In Jacksonville, the cost of transitional housing (\$29 per person per day) is comparable to the cost of the 24-hour model of emergency shelter. As shown earlier in Exhibit 3.1, approximately half of the costs of transitional housing are expended for housing operations and agency overhead, ranging from 45 percent in Houston, to 57 percent in Des Moines, to 61 percent in Jacksonville. In Houston, where we are unable to include the daily cost equivalent of capital investments, services account for 55 percent of costs, whereas services represent only 26 percent in Des Moines and 37 percent in Jacksonville. The remaining 2 percent in Jacksonville and 25 percent in Des Moines represent the daily equivalent capital costs of transitional housing facilities owned by the agencies. Since many of the transitional housing programs identified in Houston were facility-based, the proportion of costs for both housing and services would be lower if capital costs were included.

In Des Moines, the two types of transitional housing have quite different cost structures due to their different models and locations. The combined housing and capital daily equivalent cost of the private room model (\$32.62) is more than 2.5 times that of the shared model (\$12.58), primarily due to the high value of the properties in which the private room model operates. The supportive services cost for the shared room model, which targets special populations, is 37 percent higher (\$14.46 versus \$10.55), offsetting some of the differences in facility-related costs. The cost of administration (~\$7) is approximately the same for both models. The net cost of the private room model is 47 percent higher than the shared room model, a result that affects the average cost of transitional housing as used by the study cohort in Des Moines, since the private room transitional housing model was used for 35 percent more total days than the shared room model. (The number of days used is not shown in the exhibit.)

Within each type of transitional housing program in Des Moines, the study cohort used lower cost programs somewhat more extensively than higher-cost programs. Since many programs in Des Moines were targeted to special needs populations, the actual program use and resulting costs may reflect the extent to which the study cohort met various eligibility requirements. In Houston and Jacksonville, the study cohort used the more expensive transitional housing programs more often than the less expensive ones. This could reflect the fact that higher cost units often offer more privacy and are more attractive to residents, thereby resulting in longer lengths of stay and higher utilization.

Exhibit 3.4: Average Cost Per Day of Transitional Housing for Homeless Individuals

Site	Housing Model	Average Cost Per Person Per Day	Range of Costs Per Person Per Day	Average Cost Per Day As Used By The Cohort
Des Moines	Shared Room Transitional Housing	\$34	\$10 - \$80	\$28
Des Moines	Individual Room Transitional Housing	\$50	\$22 - \$204	\$43
Houston	Transitional Housing	\$55	\$19 - \$144	\$65
Jacksonville	Transitional Housing	\$29	\$13 - \$46	\$31

3.1.4 Permanent Supportive Housing for Individuals

Permanent supportive housing provides indefinite housing assistance and supportive services to residents, directly or guaranteed based on formal relationships with mainstream providers. Permanent supportive housing in the three study sites is commonly offered in both facility-based and scattered site models. Houston has made a considerable investment in permanent supportive housing. These units are almost evenly split between facility-based and scattered-site programs. The biggest provider of supportive housing units targets persons with HIV/AIDS. Houston also has large permanent supportive housing programs for disabled veterans and individuals with severe mental illness. The only permanent supportive housing program serving individuals in Des Moines is a Shelter Plus Care (S+C) program providing subsidies for homeless people with disabilities who rent private market units. Under agreements with several providers of mental health and substance abuse services, a local non-profit sponsor of affordable housing make slots in the S+C program available to clients referred by those agencies.

While permanent supportive housing is generally limited to persons with a chronic disability that inhibits independent living, the majority of permanent housing units considered part of the residential system for homeless individuals in Jacksonville are Section 8 Moderate Rehabilitation Single Room Occupancies (SROs). Unlike permanent supportive housing, these programs do not exclusively serve persons with disabilities, although local providers said that most residents do have disabilities. Aside from meals, these permanent housing SROs do not include on-site supportive services. Services are provided through formal relationships with mainstream service providers and by referral. Jacksonville also has some permanent supportive housing programs that offer more intensive on-site supportive services.

In all three of the study sites for individuals, the cost per person per day of permanent supportive housing is less than or equal to the cost of transitional housing, with the exception of the scattered site permanent supportive housing model in Houston, which has slightly higher average costs per day (Exhibit 3.1). The cost of permanent supportive housing averages \$18 per day in Des Moines and \$29 per day in Jacksonville. In Houston, the cost is \$22 per day for facility-based housing and \$59 per day for scattered site housing. Because most services are delivered by mainstream agencies that residents are otherwise eligible for (and would be eligible to continue to receive if they moved to alternative housing), we did not include the costs of mainstream services as part of the permanent supportive housing program cost estimates. Although the resident may be enrolled in this service as a

direct result of being accepted into the housing, anecdotally we heard that clients moving into permanent supportive housing already are enrolled in mainstream care and may even be referred to the housing by their mainstream providers. Our analysis of enrollment of users of permanent supportive housing in mainstream services (reported in Chapter 4) is consistent with this premise. Services paid for within the program budget or otherwise dedicated to the project are accounted for in the program daily costs to the extent possible.

Martha Burt conducted two self-report surveys (2004 and 2007) of more than 90 permanent supportive housing providers that enable us to place these costs in context. The surveys were part of a multi-year study of the Taking Health Care Home evaluation for the Corporation of Supportive Housing (Corporation for Supportive Housing [CSH], 2005; CSH, 2008).⁹ These programs housed primarily individuals with chronic patterns of homelessness and used mainly facility-based models. From the 2007 survey, Burt reports costs averaging \$46 per unit per day, with housing costs of \$27 and services costs from all sources of \$19. These costs are higher than the estimates of the average cost per person per day presented in Exhibit 3.5 for permanent supportive housing in Des Moines and Jacksonville, and for facility-based permanent supportive housing in Houston. These lower overall costs in the study sites reflect lower services costs, but also lower housing operations costs, as shown in Exhibit 3.1. Perhaps the programs surveyed in the Burt study are more comparable to properties in this study with costs at the higher end of the ranges shown in Exhibit 3.5.

Exhibit 3.5: Average Cost Per Day of Permanent Supportive Housing Programs for Homeless Individuals				
Site	Housing Model	Average Cost Per Person Per Day	Range of Costs Per Person Per Day^a	Average Cost Per Day As Used By The Cohort
Des Moines	Scattered Site	\$18	\$18	\$18
Houston	Facility-based	\$22	\$13 - \$69	\$54
Houston	Scattered Site	\$59	\$35 - \$80	\$47
Jacksonville	Scattered Site and Facility-based	\$29	\$21 - \$41	\$24

^a If only one number is provided, costs were only collected from one program.

Another analysis, conducted by Abt Associates Inc. (2005) for HUD, reviewed the costs of permanent supportive housing projects serving individuals with a history of chronic homelessness. That cost review also found lower costs than the Burt survey. The Abt Associates analysis was based on program budget data collected on-site and included costs of services unless we concluded that they were mainstream costs readily available to all people with qualifying conditions regardless of their homelessness. That study found average daily costs per person of \$21 for older facility-based models (62 percent for housing, 38 percent for services), \$22 for newly developed properties (46 percent for

⁹ This information was self-reported in response to a survey and not based on direct examination of program budget documents. Some survey respondents reported that they were unable to include costs reimbursed by certain mainstream systems, such as Medicaid.

housing, 54 percent for services), and \$40 for scattered site models (57 percent for housing, 43 percent for services).¹⁰

The comparison of average costs per day with the costs per day actually incurred by the study cohort within each site (Exhibit 3.5) again illustrates how client-specific or systemic decisions that determine who uses which particular program can make a significant difference in costs incurred by the homeless services system. This is most clear for Houston. On average, the scattered-site permanent supportive housing model in Houston costs almost three times as much as the facility-based model. However, the individuals we studied who used facility-based models generally used the more expensive programs, whereas those who used scattered site housing used less expensive programs than the community average. As a result, the average cost per day for members of the Houston cohort using facility-based housing was greater than the average cost per day for those who used scattered site housing, exactly opposite what we would have surmised from the overall averages for the program types.

Des Moines has only one permanent supportive housing program, so there is no difference between the two average costs. In Jacksonville, the difference between the average cohort cost and the community-wide average cost shows that members of the Jacksonville study cohort used less expensive programs more heavily than more expensive models.

Very few individuals in our study cohort used permanent supportive housing at any time during the study's 18-month tracking period. For example in Des Moines, we found only four individuals in the Shelter Plus Care program from among the 1,124 who became homeless for the first time between July 1, 2004 and June 30, 2005. Across all three sites, this phenomenon may be a result of two patterns. First, most people using permanent supportive housing programs were not included in this study because they had been housed in a homeless residential program before July 1, 2004. Second, some individuals in our study cohorts who used permanent supportive housing were not placed there until well into the 18-month observation period, so some permanent supportive housing stays may have been truncated. Regardless, costs associated with permanent supportive housing are not a major part of the costs associated with homelessness for our study cohort.

3.2. Homeless Program Costs for Families

As we did for individuals, we identified three primary types of homeless residential programs for families in our four family study sites—emergency shelter, transitional housing, and permanent supportive housing—and also made further distinctions among “housing models” for some program types in some communities. The average cost per person per day is shown for each program type in Exhibit 3.6 for DC, Houston, Kalamazoo, and Upstate South Carolina. The exhibit also shows the proportion of costs spent for housing operations, services, agency overhead, and—only for Upstate South Carolina--the daily cost equivalent of capital investments for programs that are operated in a facility owned by the agency. (Rental or leasing costs for facilities not owned by the agency are factored into housing operations.) These are the average costs per day for the programs for which we collected cost data, weighted by program capacity. Costs for the programs as used by the study cohorts of first-time homeless families are presented later.

¹⁰ These figures do not include daily equivalent costs for capital investments.

Exhibit 3.6: Average Cost Per Family Per Day of Homeless Residential Programs Serving Families by Program Type and Site^a

Site – Program Type	Housing Model	Average Cost Per Family Per Day ^b	Housing Operations	Supportive Services	Agency Overhead	Capital Costs ^c
District of Columbia						
Emergency Shelter	Congregate	\$123	\$67 (54%)	\$41 (33%)	\$16 (13%)	
Emergency Shelter	Apartment-style	\$83	\$45 (55%)	\$30 (36%)	\$8 (10%)	
Transitional Housing	Facility-based	\$73	\$19 (26%)	\$32 (45%)	\$21 (29%)	
Transitional Housing	Scattered Site	\$72	\$33 (47%)	\$27 (38%)	\$11 (16%)	
Permanent Supportive Housing	Shelter Plus Care ^d	\$42	\$39 (94%)	\$0 (0%)	\$3 (6%)	
Houston						
Emergency Shelter	Congregate and Apartment-Style	\$46	\$9 (19%)	\$31 (66%)	\$7 (15%)	
Transitional Housing	Facility-based	\$149	\$37 (25%)	\$82 (55%)	\$30 (20%)	
Transitional Housing	Scattered Site	\$65	\$22 (34%)	\$30 (46%)	\$13 (20%)	
Permanent Supportive Housing	Shelter Plus Care and Facility-based	\$27	\$13 (48%)	\$7 (27%)	\$7 (25%)	
Kalamazoo						
Emergency Shelter	Congregate	\$54	\$27 (50%)	\$25 (46%)	\$2 (4%)	
Transitional Housing	Facility-based and Scattered Site	\$27	\$16 (58%)	\$8 (31%)	\$3 (11%)	
Permanent Supportive Housing	Shelter Plus Care	\$29	\$19 (65%)	\$0 (0%)	\$10 (35%)	
Upstate South Carolina						
Emergency Shelter	Congregate and Single Family	\$76	\$26 (34%)	\$32 (43%)	\$13 (17%)	\$5 (6%)
Emergency Shelter	Church Hospitality	\$297	\$68 (23%)	\$194 (65%)	\$35 (12%)	\$0 (0%)
Transitional Housing	Scattered Site	\$40	\$20 (50%)	\$15 (37%)	\$5 (12%)	< \$1 (<1%)
Permanent Supportive Housing	Shelter Plus Care	\$22	\$21 (96%)	\$0 (0%)	\$1 (4%)	\$0 (0%)

^a Costs represent the average across programs within each type, weighted by the typical number of families served in each program each day.

^b Total weighted daily unit cost may not equal the sum of the budget component estimates due to rounding.

^c Capital costs are included for Upstate South Carolina only. Capital costs are only applicable to programs that own their own facilities.

^d The District has both scattered site and facility-based programs, but costs were only collected from the City-funded scattered site program.

As we found for programs for individuals, the more expensive family program types tend to have higher costs across all budget categories. That is, cost differences among programs are not explained by only one budget category. For example, in Houston, facility-based transitional housing costs more than 3 times as much as emergency shelter (\$149.39 vs. \$46.37). The housing operations cost is 4.2 times higher (\$37.35 vs. \$8.87 per family per day), and the services cost is 2.7 times higher (\$82.11 vs. \$30.62 per family per day). The higher cost of housing operations probably reflects both increased private space and lower program capacity, which decreases economies of scale. The higher

cost of services probably reflects more intensive services, as would be expected for transitional housing.

In DC, apartment-style emergency shelter is more expensive than scattered site transitional housing (\$83 vs. \$72). The housing operations cost is one-third higher (\$45 vs. \$33), and the services cost is one-tenth higher (\$30 vs. \$27). The apartment-style emergency shelter is facility-based, with 24-hour staffing, and the higher cost of housing operations may reflect this additional on-site supervision.

Often more expensive programs provide more services to clients, in the form of either lower case loads or a broader range of services. Agency overhead costs frequently are higher in more expensive programs, again in part due to smaller program capacity and decreased economies of scale. Cost differences also reflect idiosyncratic features of particular programs, such as program, size, amount of private space per family, level of volunteer or in-kind services, or the value of the physical location.

Unlike transitional housing for individuals, transitional housing for families is not consistently more expensive than emergency shelter. Emergency shelters are more expensive on average than transitional housing programs in DC, Kalamazoo, and Upstate South Carolina. One reason is that families often get private rooms or apartments in emergency shelter, in contrast to emergency shelter programs for individuals. Emergency shelters that serve families also are small and therefore have few units over which to prorate fixed costs, such as on-site supervision. Emergency shelter programs for families are likely to be open 24 hours a day and often provide fairly intensive supportive services. In Upstate South Carolina, the church-based shelter programs have particularly high in-kind costs associated with volunteer labor and donated materials. We counted the value of these contributions as costs since the program could not be operated without them. Thus, the physical and programmatic differences between family shelters and family transitional programs are not as great as they are between these program types for individuals. At the same time, there usually are very different philosophies, program goals, and intended lengths of stay between family emergency shelters and family transitional housing programs.

The characteristics of specific programs have more influence on costs for each program type within the family sites compared with the individual sites, because most communities had only a few family programs. Thus, the average program costs reflect heavily the costs of specific programs, such as a high-cost publicly-operated congregate shelter in the District of Columbia,¹¹ the small church-based shelters in South Carolina, a large and service-rich facility-based transitional housing program in Houston, and a particularly low-cost transitional housing program in Kalamazoo.

Despite the lower average cost per day for family transitional housing compared with family emergency shelter, we found that families in our study cohort who use transitional housing programs have higher costs than families who only use emergency shelter, as will be discussed in Chapter 5. Families in the study cohort who used only emergency shelter used less expensive shelter programs more heavily, while those who used transitional housing only or in combination with shelter used transitional housing programs higher-cost shelter programs more heavily.

¹¹ This program has subsequently been closed and the DC system has shifted entirely to an apartment-based emergency system.

As we found for individuals, permanent supportive housing was the least expensive program type *from the perspective of the homeless system*. In most cases, we found that permanent housing programs arranged for residents to receive services directly from mainstream systems rather than from the permanent supportive housing programs directly, so permanent housing programs did not have to secure resources to fund these services directly and the services costs are not accounted for in these estimates. However, even setting aside the issue of services, permanent supportive housing for families usually has equivalent or lower housing operations costs than the emergency shelter or transitional housing programs in the same site. Having said that, the cost of permanent supportive housing plays only a small role in the cost of homelessness for the study cohort of first-time homeless families. Very few families in the study cohort used it, because of a combination of capacity constraints and lack of families qualifying for permanent supportive housing on the basis of a disability.

3.2.1 Monthly Program Costs and Local Costs of Housing

Exhibit 3.7 shows the average costs per month for each program type in each community along with the average 2006 HUD Fair Market Rents for a two-bedroom unit in the same community.

Exhibit 3.7: Average Cost Per Family Per Month for Each Homeless Program Type for Families and FY2006 Two-Bedroom Fair Market Rents^a				
	Emergency Shelter	Transitional Housing	Permanent Supportive Housing	2006 Fair Market Rent for Two-bedroom Unit^b
District of Columbia	\$2,496 - \$3,698	\$2,146 - \$2,188	\$1,251	\$1,225
Houston	\$1,391	\$1,940 – \$4,482	\$799	\$743
Kalamazoo	\$1,614	\$813	\$881	\$612
Upstate South Carolina	\$2,269	\$1,209	\$661	\$599 (Greenville MSA)

^a Costs shown reflect weighted averages by program type. Ranges represent the averages for different programs within a program type.

^b FMR Source: HUD, 2005. The FMR does not include the monthly fee paid to a public housing agency for administering the voucher program, which ranged from \$50 to \$90 per unit per month in these four communities. (HUD, 2007)

In Chapter 5 we discuss the total homeless system costs incurred for each first-time homeless family over an 18-month tracking period. Many families remain in homeless programs for a month or more. In most cases, a month of assistance provided within the homeless system exceeds the local Fair Market Rent—that is, the maximum subsidy cost of providing a housing voucher to the family. The sections below describe each program type, the costs associated with providing it, and the extent to which programs are providing both housing assistance and supportive services—in contrast to the Fair Market Rents, which only represent housing assistance.

3.2.2 Emergency Shelters for Families

All four study sites provide emergency shelter for families, but shelter for homeless families looks quite different from shelter for homeless single adults.¹² Two types of shelter are offered in the District of Columbia: congregate emergency shelter and apartment-style emergency shelter. Congregate Emergency Shelters have communal eating and bathing facilities and little privacy. Families may share rooms, depending on the size of the family and the space available at the facility. During our study period, the largest of the congregate programs, DC Village, was the main point of entry into the emergency shelter system for families in DC. DC Village closed in October 2007, just before the end of the period during which we tracked families. Policy-makers were aware of the high daily cost of DC Village, and advocates for homeless people objected to its remote location and its lack of privacy. The factor that precipitated the facility's closing was the DC government's need to use the property for another purpose.¹³

The District of Columbia also houses families in Apartment-Style Emergency Shelters in which each family has a private apartment. However, there is 24-hour supervision, and access by visitors is restricted. During the study period, entry into these facilities usually was by referral from DC Village. The programs are funded by the DC government, and they must take any family referred to fill a vacancy.¹⁴ Emergency shelters for families have fairly high per family costs (Exhibit 3.6). In DC congregate shelter is the most expensive homeless program type, averaging \$123 per family per day. Apartment-style shelter costs two-thirds as much (\$83) per day in comparison, with the savings relatively evenly distributed across housing, services, and administration.

In Houston, emergency shelter programs for families provide both dormitory-style shelter units with shared kitchen and bath facilities and individual apartments that provide families more privacy and autonomy over their daily routines. Services include basic emergency support services such as food, immediate crisis intervention and de-escalation, and referral to more intensive services at other programs. The length of stay in congregate dormitory programs is intended to be shorter than in individual apartment emergency shelters, with an emphasis on referring families into more intensive service programs such as apartment-based shelters or transitional housing. Apartment-Style Emergency Shelter programs are structured as 90-day shelters with a level of service and linkage that is intended to be more intensive than congregate dorm emergency shelters. These programs focus on placing families directly into permanent housing. Exhibit 3.8 presents the costs of these two program types together. The average cost of emergency shelter for families in Houston is \$46 per family per day, with the services budget 66 percent of that total.

In Kalamazoo, families are served primarily by two shelter programs. One is a large house that is shared by up to six families. The other is operated for both families and single women in a large facility with shared common areas and private sleeping rooms. This facility also has a transitional housing program for families on another floor. Across the two programs, the average cost is \$54 per

¹² Except when single women are served alongside families in a women and families program.

¹³ After the closing of DC Village, another congregate program, DC Hypothermia, remained open but with plans to close. The number of apartment-style shelters was expanded to offset the loss of beds at DC Village.

¹⁴ The only exception is that the program can refuse to accept a family that would threaten the safety of other residents.

family per day, but the program operated in the single-family home is significantly more expensive due to lower economies of scale for housing and overhead and substantially more supportive services.

South Carolina provides three types of emergency shelters: congregate shelters, single family homes, and church hospitality networks. Congregate Facilities have open bed space or small sleeping rooms with shared living space and bathrooms. Occupancy is often fluid between families and single women based on need that day. Length of stay typically is less than six weeks. Single Family Houses are shared by multiple families, but offer private space for each family and have somewhat longer lengths of stay. Church Hospitality Networks provide housing sponsored by various congregations around the 13-county area covered by the Upstate South Carolina Continuum of Care. The actual shelter space rotates weekly in church rooms, and the programs are heavily staffed by volunteers. Lengths of stay typically are short but can last several months. The cost per family per day for the church-based program type is very high (\$297), in part reflecting actual paid costs and in part reflecting the estimated value of volunteer hours and donated space and supplies.¹⁵ Together the congregate and single family shelters cost an average of \$76 per family per day, of which 43 percent funds services.

Exhibit 3.8 reports the average cost per family per day, the range of costs per day across programs within each program type at each site, and the average cost per day of each program type as it was actually used by the study cohort.

Exhibit 3.8: Average Cost Per Day of Emergency Shelter for Homeless Families				
Site	Housing Model	Average Cost Per Person Per Day	Range of Costs Per Person Per Day^a	Average Cost Per Day As Used By the Cohort
District of Columbia	Congregate	\$123	\$123 ^b	\$123
District of Columbia	Apartment-style	\$83	\$67 - \$102	\$80
Houston	Congregate and Apartment-style	\$46	\$23 - \$175	\$61
Kalamazoo	Congregate	\$54	\$32 - \$179	\$75
Upstate South Carolina	Congregate and Single Family	\$76	\$37 - \$135	\$82
Upstate South Carolina	Church Hospitality	\$297	\$229 - \$348	\$229

^a If only one number is provided, costs were only collected from one program.

^b Costs were also collected for DC Hypothermia overflow shelter, which has daily costs of \$28 per family; however, these costs were not included in the program type average, since the Hypothermia shelter serves only a limited purpose. Members of the study cohort also used shelters for single individuals at times, whose costs are included in the DC case study and analysis reported in Chapter 5. They are not reported here, since this section discusses costs associated with family programs.

¹⁵ Many emergency shelter programs rely on substantial volunteer support to operate. Our cost calculation methodology shows the costs that would be required to replicate the level of effort provided by these programs.

Emergency shelter programs for families have huge variations in costs, ranging from \$23 per day on the low end to \$348 on the high end, as shown on Exhibit 3.8. The range of costs reflects differences in both the housing model and the type and level of services provided. Exhibit 3.8 also illustrates the influence of the specific programs used by the study cohort on the costs of homelessness reported in this study. The average costs per family per day for members of the cohort are slightly higher than the overall average daily costs of emergency shelter in Houston and for congregate and single-family shelters in Upstate South Carolina, meaning that the cohort spend a greater number of nights in more expensive programs than the lower cost ones. No one in the study cohort in Upstate South Carolina used the more expensive of the two church hospitality programs, so the cohort's costs represent only the relatively lower cost church program. The Kalamazoo cohort's daily costs for emergency shelter are almost 40 percent higher than the overall program average, since one-third of the cohort's shelter nights were spent at the more expensive shelter program. In DC the cohort used less expensive programs slightly more than higher cost programs within the Apartment-Style Emergency Shelter program type.

3.2.3 Transitional Housing Programs for Families

The four family study sites have transitional housing programs that aim to help the head of household become stably employed, maintain sobriety, and move to market-rate housing with or without the assistance of a Housing Choice Voucher. Facility-based programs are operated in a building owned by or rented exclusively for the program, while scattered site programs are provided in individual apartments that are rented on behalf of the program's clients. In some programs, families must find and move into different permanent housing units at the end of the transitional period. Other scattered-site programs allow families to remain in the same housing unit after graduating from the transitional program, assuming the families can assume the lease payments. Some housing units in a scattered-site program may be in the same larger rental development or may be located in particular neighborhood and serve families with ties to that neighborhood.

The District of Columbia, Houston, and Kalamazoo all offer both facility-based and scattered site transitional housing models. In Kalamazoo, one of the transitional programs is operated within the same facility as an emergency shelter, and almost all participants have graduated from the shelter program. One transitional housing program that was heavily used by the study cohort in Kalamazoo is facility-based and has very low housing operations costs. All transitional housing programs for families in Upstate South Carolina use a scattered-site housing approach.

The cost to operate transitional housing programs varies widely from one program to another, within and across sites, ranging from a weighted average cost per day of \$27 for the transitional housing programs in Kalamazoo to a weighted average of \$107 per day in Houston (Exhibit 3.9). The structure of the housing (e.g., facility-based vs. scattered site) does not seem to drive costs up or down consistently. On average, housing operations consumes a greater proportion of the program cost and services a lower proportion of the cost in scattered site models than it does in facility-based models. However, for the three sites that have both types of transitional housing, we were not able to include an estimate of capital costs for transitional housing programs that owned their facilities. Had we done this, it would reduce the percentage of total cost represented by services for these programs. The absolute dollar value of the average cost per day used to fund services is higher for facility-based programs than for scattered site programs in DC and much higher in Houston (Exhibit 3.6). It is possible that facility-based programs provide more living-support services, such as child care or informal resident mediation, while the case management and self-sufficiency related services on

average are comparable in intensity for facility-based and scattered-site transitional housing. It is also possible that scattered site programs provide more of their services through referral to mainstream employment or treatment programs, and that these services costs do not show up in their direct budgets.¹⁶ In interviews conducted for the study, program staff described similar levels of services across the two housing models.

Exhibit 3.9 reports the average cost per family per day, the range of costs per day across programs within each housing model at each site, and the average cost per day of each program type as it was actually used by the study cohort.¹⁷

Exhibit 3.9: Average Cost Per Day of Transitional Housing for Homeless Families				
Site	Housing Model	Average Cost Per Person Per Day	Range of Costs Per Person Per Day	Average Cost Per Day As Used By the Cohort
District of Columbia	Facility-based	\$73	\$30 - \$109	\$77
District of Columbia	Scattered Site	\$72	\$40 - \$112	\$68
Houston	Facility-based and Scattered Site	\$107	\$52 - \$177	\$134
Kalamazoo	Facility-based and Scattered Site	\$27	\$14 - \$66	\$22
Upstate South Carolina	Scattered Site	\$40	\$26 - \$44	\$40

In addition to the considerable range of program costs per day within each site, there is huge variation among sites, with the most expensive transitional housing program in Kalamazoo comparable in cost to some of the least expensive programs in Houston. These site differences have a substantial impact on the overall costs associated with first-time homeless families from one community to another. (See further discussion in Chapter 5.) The exhibit also shows that families in the study cohort who use transitional housing in Houston and families who use facility-based transitional housing in the District of Columbia make relatively heavy use of the more expensive transitional housing programs. The difference is most notable in Houston, where the study cohort used a high-cost, service-rich transitional program more heavily than other programs. This Houston program provides very high-levels of services (\$100 per day), including extensive services for the children of families enrolled in the program. In contrast, in Kalamazoo, families in the study cohort used the least expensive transitional housing program two-thirds of the time, increasing the differences in costs for first-time homeless families among the four communities.

¹⁶ For homeless system costs, we recorded costs of all housing and services provided directly by the program. The homeless system costs do not include costs of services provided by mainstream systems if the services were also available to other people who were not enrolled in the homeless program. To the extent that families received services from mainstream programs that were included in the mainstream system cost analysis for that site, these costs would be reflected in the mainstream system cost analysis for that site. Some mainstream services such as employment and training were not included in either the homeless system or mainstream system costs, whereas services such as mental health and substance abuse treatment services were included more frequently.

¹⁷ If only one number is provided in the Range column, costs were only collected from one program.

3.2.4 Permanent Supportive Housing Programs for Families

For families, permanent supportive housing is most commonly provided using a Shelter Plus Care, scattered-site model, and services are primarily brokered through mainstream agencies. Most target families have severe and persistent mental illness or chronic substance abuse, although some programs also target families with HIV/AIDS. Kalamazoo and Upstate South Carolina both use only a scattered-site model and target families with mental illness. The District of Columbia also uses mainly Shelter Plus Care, making units available to the clients of agencies serving homeless families with various types of qualifying disabilities. The few small facility-based supportive housing programs for homeless families in DC are privately funded, not integrated into the homeless services system, and not included in this study.

Houston provides both facility-based and scattered-site permanent supportive housing. Under agreements with providers of mental health and substance abuse services, slots in permanent housing are made available to homeless clients referred by those agencies. The referring agencies commit to providing case management while their clients are living in the housing and provide or link their clients to behavioral and physical health care and to other services such as job training and job support.

In all four of the family study sites, the cost of permanent supportive housing per family per day is less than the cost of any other program type in the residential system for homeless families (Exhibit 3.6), with an average cost of \$22 in Upstate South Carolina, \$27 in Houston, \$29 in Kalamazoo, and \$42 in the District of Columbia. The costs of operating the housing (i.e., for renting the housing units) and for managing the program (i.e. for administering the program) constitute all of the costs recorded in DC, Kalamazoo and Upstate South Carolina, and represent 73 percent of the cost of permanent supportive housing in Houston. Service costs explain the other 27 percent in Houston. This does not mean families in Shelter Plus Care or other scattered-site permanent supportive housing programs do not receive services. Rather, most services are delivered by mainstream agencies, and residents were eligible to receive them before they moved into permanent supportive housing and will continue to receive if they move to alternative housing. Anecdotally we heard that clients moving into permanent supportive housing already are enrolled in mainstream care and may even be referred to the housing by their mainstream providers. Analysis of Medicaid records in Kalamazoo, discussed later in Chapter 5, supports this hypothesis, since 89 percent of families in the group who used permanent supportive housing were enrolled in Medicaid in the period prior to homelessness.

Exhibit 3.10 reports the average cost per family per day, the range of costs per day across programs within each housing model at each site, and the average cost per day of each program type as it was actually used by the study cohort.

Exhibit 3.10: Average Cost Per Day of Permanent Supportive Housing for Homeless Families

Site	Housing Model	Average Cost Per Person Per Day	Range of Costs Per Person Per Day ^a	Average Cost Per Day As Used By The Cohort
District of Columbia	Scattered Site	\$42	\$42	\$42
Houston	Scattered-Site and Facility-based	\$27	\$16 - \$59	\$38
Kalamazoo	Scattered Site	\$29	\$19 - \$58	\$20
Upstate South Carolina	Scattered Site	\$22	\$22	\$0 ^b

^a If only one number is provided in the Range column, costs were only collected from one program.

^b None of the families in the Upstate South Carolina cohort used permanent supportive housing.

Only a small percentage of permanent supportive housing units in most communities are dedicated to families, and an even smaller percentage of families in our study cohorts used permanent supportive housing during our study period. None of the families in the South Carolina cohort used permanent housing, so while the average cost per day of permanent supportive housing is \$22, the cost for the cohort shown on Exhibit 3.10 is \$0. Low utilization occurred across all of the family sites. In Houston, the cohort spent only two percent of its total days in residential homeless programs in permanent supportive housing. In DC, five percent of the cohort’s days were spent in permanent supportive housing programs. The higher percentage for DC is affected by the 30-month observation period, which is one year longer than in the other sites. While the Kalamazoo study cohort spent 8 percent of its days in homeless programs in permanent supportive housing; these stays represent only 11 families or 3 percent of the cohort. These 11 families were in permanent supportive housing for most of the observation period.

The relatively low use of permanent supportive housing by first-time homeless families is related to a number of factors. Most families do not have a disability sufficient to qualify them for the program. Furthermore, many communities do not have many permanent supportive housing units for families, and the low turnover among those housed within them limits opportunities for families who are eligible to be housed in permanent supportive housing. Finally, other families in our study cohort may eventually have been housed in permanent supportive housing, but the 18-month observation period for three of the four communities in this study may not have been long enough to include these stays.

3.3. Policy Implications of Program Costs

This chapter summarized the wide-ranging costs of providing residential homeless programs to individuals and families. Several key policy considerations emerged related to the costs of different types of homeless programs, as well as individual programs within a community.

Emergency shelters for families are generally similar in cost and sometimes even more expensive than transitional housing programs, whereas transitional housing for individuals is generally more expensive than shelter. This broad finding has several policy and planning implications. First, given the low daily cost of emergency shelter for individuals, it would be very difficult to fund a prevention response that would yield cost savings. However, the higher costs of emergency shelter for families

may make homelessness prevention programs more cost-effective than emergency shelter for some families. Communities could also look at the cost structure of current emergency shelter programs for families to determine if the environment and services offered are appropriate to the needs of those who are using them. If shelter is intended to house families only briefly, it may not be necessary or cost-effective to provide non-crisis-related services within shelter. Therefore, it may be possible to reduce daily costs of shelter programs for families by scaling back on the therapeutic resources offered to families on-site. For those with greater needs who need longer stays or more intensive services, it may be more cost effective to quickly move them into transitional housing (facility-based or scattered site), permanent supportive housing, or permanent housing with mainstream supportive services.

Given, the high costs of transitional housing for both individuals and families, communities may want to consider whether alternative interventions or combinations of rent subsidies and standalone supportive services could achieve similar outcomes at lower costs. Permanent supportive housing is generally less expensive from the perspective of the homeless system than other types of residential homeless programs for families, often similar in cost to a deep rental subsidy. To the extent that individuals or families have disabilities that qualify them for permanent supportive housing, communities should expedite their placement into these units. The low cost of permanent supportive housing is largely attributable to lower homeless system service costs made possible by formally linking clients to mainstream services. Communities could also explore creating transitional housing modeled like permanent supportive housing with housing and limited housing-focused services provided by the homeless system and non-housing services intentionally provided by mainstream systems.

In general, communities may want to examine program costs to determine if there are less expensive ways of delivering comparable interventions. The huge range of costs within program types—for example among transitional housing programs for families—may or may not reflect differences in the quality of services delivered or in the outcomes for families.

Individual program features can also have substantial impacts on the costs of delivering homeless assistance. For instance, we discussed the substantially higher costs of an extended stay emergency shelter program in Houston for single women compared with an extended stay shelter program serving single men. The women’s shelter provided more services and more privacy and also had higher per-person administrative costs due to its smaller size. The study did not explore whether programs with higher costs also have better outcomes. Nonetheless, the agency operating both of these may want to consider whether it would be more cost-effective to develop a program for single women with housing costs and administrative overhead more similar to those of the program for single men. Compounding the variability of daily costs from one program to another, homeless families and individuals do not use homeless programs evenly. Communities will be able to reduce homeless system costs the most by reducing costs of programs used most heavily by homeless individuals and families. The converse is also true: adding a program feature that raises the cost of a heavily used program will have a disproportionate effect on the costs associated with homelessness in that community.

The differences between community average costs for each program type and the costs associated with each study cohort discussed in this chapter illustrate the point that costs are driven by actual program utilization. Further, utilization varies for people with different demographic characteristics and needs. For instance, first-time homeless individuals may use a different set of programs than

individuals with chronic medical needs. Local efforts to shift costs to create a more effective response to homelessness must be conducted within the context of the programs serving the group of greatest interest to the community.

None of this is to suggest that communities should always seek to lower program costs. Strong outcomes may require a sizable investment; however, policymakers should understand what drives costs in their communities, so they can consider cost implications as part of the decision-making.

Cost per day is only one dimension of the costs of homelessness to the homeless services system. Lengths of stay, or the number of days an individual or a family uses residential programs for homeless people, also have a powerful influence on costs. The next two chapters combine information on costs per day and on patterns of utilization of the homeless services system, first for individuals (Chapter 4) and then for families (Chapter 5).

4. First-time Homelessness for Individuals and its Associated Costs

This study confirms the findings of some prior research on homelessness for individuals and presents new findings about first-time homelessness for individuals and its associated costs. The most important themes about costs of first-time homelessness for individuals that emerged from the study are that:

- The overall experience of homelessness, program utilization, and associated costs vary widely from one subpopulation of first-time homeless individuals to another, with only a small subgroup incurring substantial costs. The half of the cohort with the lowest homeless system costs—individuals who only briefly use emergency shelter—incur only 2 to 3 percent of the total homeless system costs. The highest-cost 10 percent of the cohort incurred 62 percent of the homeless system costs in Jacksonville, 70 percent in Des Moines, and 83 percent in Houston.
- The type of program used by individuals who are homeless appears to have the greatest influence on costs and certain program types and specific programs within those types are more expensive than others. The cost to the homeless services system of the most expensive 10 percent of individuals in the study cohort at each site generally reflects continuous use of expensive transitional housing programs for much or all of the 18-month observation period.
- For some subgroups, total homeless system costs incurred per person exceed the cost of an annual direct housing subsidy. Communities may want to consider whether housing assistance (without supportive services) would be a lower cost and potentially equally effective intervention for some of these groups.
- Single women are associated with statistically significant higher homeless system costs, even when controlling for their longer stays and the types of programs they use. Combining all of these factors, single women over 40 years old frequently have high system costs in the current system structure and may benefit from alternative interventions designed specifically to meet their needs. Other demographic groups, such as African-Americans and older adults are also associated with statistically significant higher costs.
- Cost savings may be achievable within the homeless system for first-time long-stayers based on providing housing assistance in different ways. However, the relationship between intensive use of the homeless system and high-cost mainstream use is not strong enough to expect significant cost savings within mainstream systems by ending homelessness for long-stayers as a whole.
- Higher mainstream costs in some domains were associated with individuals who had multiple episodes of homelessness. Communities could target individuals who return to shelter for a second (or third) non-consecutive program stay. This group may particularly benefit from intentional prevention-oriented discharge planning strategies.
- Mainstream system utilization and associated costs spike during homelessness, but costs also increase substantially immediately before first-time homelessness. Thus, costs peak

in the period just after the individual enters the residential homeless system. This finding suggests a need for discharge planning to ensure that individuals leave mainstream programs, such as inpatient treatment or jails, with adequate housing.

This chapter begins with a discussion of existing research, presents the findings of this study and then discusses the findings within the context of existing research.

4.1. Existing Research

4.1.1 Patterns of Homelessness among Individuals

Analysis of longitudinal shelter administrative data conducted a decade ago by Kuhn and Culhane (1998) in New York and Philadelphia provided a new typology of patterns of homelessness: transitional homelessness, episodic homelessness, and chronic homelessness. Although there had been prior research and discussion of typologies of homelessness, Kuhn and Culhane's framework was popularized by the National Alliance to End Homelessness (NAEH, 2000) and by the federal government when it adopted a ten-year goal to end chronic homelessness as part of its FY2003 budget (OMB, 2002). Transitional homelessness was characterized by short, single episodes of homelessness and described the pattern experienced by 80 percent of homeless individuals. Episodic homelessness described repeated short episodes of homelessness experienced over the course of years, often by younger individuals with chronic addictions. Chronic homelessness described a pattern of continuous stay in shelters extending over a year or more, generally by older individuals with mental illness. Ten percent of the individuals in Kuhn and Culhane's dataset experienced episodic homelessness, and the remaining ten percent were chronically homeless. The ten percent who experienced chronic homelessness consumed close to half of the emergency shelter bed nights, since they were present almost every night of the year, whereas other homeless individuals moved in and out of the system relatively quickly. While their study did not quantify the costs associated with each of these patterns of homelessness, the findings gave rise to a view among policymakers that communities could free shelter space and homeless system resources by identifying and addressing homelessness for the 10 to 20 percent of individuals who experienced episodic and chronic homelessness.

4.1.2 Mainstream Service Use by Homeless Individuals

Culhane, Metraux & Hadley (2002) also contributed to the literature on homelessness with a study of formerly homeless individuals with severe mental illness housed in permanent supportive housing in New York City, ("the NY/NY Cost Study"). Almost three-quarters of these individuals had used city-funded shelters within the two-year period prior to placement in permanent supportive housing, with an average shelter use of 137 days.¹ The study also found that these individuals experienced very high use of mainstream service systems (such as emergency rooms, inpatient psychiatric hospitals, and jails) in the two-year period prior to placement in permanent housing. The NY/NY study cohort incurred an average cost of \$40,500 per year (Exhibit 4.1). In the absence of other research covering multiple mainstream programs used by homeless individuals, the costs associated

¹ A history of homelessness was an eligibility requirement for the study, so the other quarter of the study sample presumably had some type of homeless episode in non city-funded shelters prior to placement or spent time on the "streets".

with the two-years prior to placement in permanent supportive housing have become for many a proxy of the costs of chronic homelessness.

Exhibit 4.1: NY/NY Cost Study Service Use during Two Year Period prior to Placement in Permanent Supportive Housing				
	Average days during 2 yr period prior to placement	Per Diem	Cost for 2 Year Period prior to placement	Annualized Cost
City Homeless Services	137	\$68	\$9,316	\$4,658
State Inpatient Psychiatric Hospitals	57.3	\$437	\$25,040	\$12,520
City Inpatient Public Hospitals	16.5	\$755	\$12,458	\$6,229
Medicaid (inpatient)	35.3	\$657	\$23,192	\$11,596
Medicaid (outpatient)	62.2	\$84	\$5,225	\$2,613
Veterans Affairs	7.8	\$467	\$3,643	\$1,822
State Corrections	9.3	\$79	\$735	\$368
City Corrections	10.0	\$129	\$1,290	\$645
TOTAL			\$80,899	\$40,451

Source: Culhane et al., 2002

Other studies have shown that homeless people use emergency rooms at a much higher rate than the general population, attributing this greater use to many different factors, including a higher rate of assault-related and unintentional injuries, general poor health status, barriers to accessing routine healthcare, and a high rate of substance abuse and mental illness among homeless people (D'Amore, Hung, Chiang, & Goldfrank, 2001; Kushel, Vittinghoff & Haas, 2001; Mandelberg, Kuhn & Kohn, 2000; Padgett, Struening, Andrews, & Pittman, 1995). Kushel, Perry, Bangsberg, Clark and Moss (2002) analyzed a sample of 2,500 homeless and marginally housed adults in San Francisco and found that the 40 percent who went to the emergency room were more likely to be homeless rather than marginally housed, after controlling for other characteristics of study sample members. Kushel et al. (2002) also found that 8 percent of the study cohort visited emergency rooms four or more times within a year, accounting for 54.5 percent of all emergency room visits by the study sample. These high users also were more likely to be homeless than marginally housed. A 1998 study by Salit, Kuhn, Hartz, Vu and Mosso found that, after controlling for co-occurring substance abuse disorder or psychiatric disability and other patient characteristics, homeless patients had hospital stays 4.1 days (36 percent) longer than non-homeless patients. Folsom et al. (2005) found similar patterns of inpatient and crisis service use within the public mental health system. All of these findings suggest that homelessness is likely to be associated with high mainstream health costs.

Other studies have found a correlation between homelessness and involvement with the criminal justice system. Caton, Wilkins and Anderson (2007) cite findings of high rates of criminal history among individuals who experience long-term homelessness and suggest that the criminal justice system may be a safety net of sorts for individuals with severe mental illness who lack sufficient housing and treatment.

4.1.3 Opportunities for Cost Savings

With a growing body of research correlating costly mainstream system utilization with the chronic homelessness of people with significant levels of disability, policymakers and advocates became interested in understanding which interventions reduce the costs of mainstream system use associated with homelessness.

The NY/NY Cost Study concluded that placement in permanent supportive housing significantly reduced homeless and mainstream expenditures for formerly homeless, severely mentally ill individuals. This finding suggests that permanent supportive housing is an effective strategy to address chronic homelessness for persons with severe mental illness at little additional cost.² An experimental study of the cost-effectiveness of HUD-VA sponsored permanent supportive housing (VASH) for homeless veterans with severe mental illness (Rosenheck, Kaspro, Frisman, & Liu-Mares, 2003) found that the costs of permanent supportive housing were approximately 18 percent higher (\$2,067 annually) than the costs of standard care. Higher costs were largely attributable to the additional intensive case management costs and increased outpatient treatment costs incurred by this group. Rosenheck et al. did not observe differences between the intervention groups (VASH intervention, case management only, and standard care) in VA or other system costs significant enough to achieve cost offsets; however, the housing outcomes were greater for supported housing study participants so the study concludes that the intervention was most likely cost-effective.³ Different methodologies between the Rosenheck et al. and Culhane et al. studies limit the ability to compare results.

In a paper synthesizing findings on cost effectiveness—Rosenheck (2000) observes that while mainstream service use is frequently positively associated with homelessness, not all persons who are homeless and mentally ill have high service use. Interventions that target directly those individuals with high service use can more easily show cost-effectiveness than those that serve a broad group of homeless mentally ill persons. Rosenheck points out that in the evaluation of two programs targeting persons who were homeless and mentally ill but not necessarily high service users, only 10 percent of participants had annual inpatient costs sufficient to offset the costs of the intervention.⁴ He concludes that, while cost offsets are achievable, resource-intensive interventions must be narrowly targeted to high service users to realize the savings.

These studies are just a few among a growing body of research on costs associated with individuals who are homeless with severe mental illness. In addition, many localities have conducted, with varying degrees of rigor, their own cost studies of individuals who are chronically homeless or

² The NY/NY Cost Study found that the cost reductions in mainstream and homeless systems resulting from placement in permanent supportive housing were almost equal to the costs of providing the permanent supportive housing itself. This finding has fueled substantial investment in developing permanent supportive housing for chronically disabled homeless individuals around the country.

³ Cost-effectiveness is defined relative to societal value. In the absence of an established societal value for housing, Rosenheck reports cost-effectiveness for various monetary values.

⁴ The study evaluated the VA's Chronically Mentally Ill Veterans Program and the Access to Community Care and Effective Supportive Services Program evaluations. Rosenheck et al. measured fewer mainstream domains than Culhane et al. (2002) in the NY/NY Cost Study. With more comprehensive data, it is possible that more than 10 percent of participants would have realized cost savings equal or greater than the costs of the intervention.

individuals who are identified as frequent high-cost users. (See Culhane, Metraux, Park, Schretzman & Valente, 2007 for examples.) In many cases, this research has been used to build support and secure funding for interventions to assist individuals who may benefit from permanent supportive housing. The research has also left policymakers and advocates eager for parallel research on other populations.

Our study is intended to expand the base of knowledge on costs associated with other populations who experience homelessness, besides those with chronic patterns of homelessness or severe mental illness. Kuhn and Culhane (1998) noted that most other populations have relatively short episodes of homelessness and therefore can be expected to have much lower costs than those measured for homeless individuals with severe mental illness, but there has been little work to quantify the level and nature of those costs. This study examines first-time homelessness for individuals and the level of resources associated with their use of the homeless and mainstream systems in Jacksonville, Florida; Houston, Texas; and Des Moines, Iowa.⁵ While these results are not representative of the nation as a whole, they can help build our understanding of costs associated with homelessness to inform national and local policymaking.

4.2. Characteristics of First-time Homeless Individuals

We studied first-time homelessness among single adults in three study communities: Jacksonville, Florida; Houston, Texas; and Des Moines, Iowa.⁶ Across the three sites, we identified 7,502 individuals who became homeless for the first time between July 1, 2004 and June 30, 2005. More than half the study population was homeless in Houston, Texas. The characteristics of the study cohort in each site are shown in Exhibit 4.2.

Individuals who experienced first-time homelessness in the study communities were predominantly male, 73 to 81 percent across the three sites. On average, first-time homeless individuals were between 39 and 41 years of age at first program entry; only 15 to 18 percent were older than 50. In comparison to the national estimates in HUD's 2007 Annual Homeless Assessment Report (AHAR) (HUD, 2008), first-time homeless individuals in our three study sites were more likely to be male and somewhat younger. The AHAR estimates that the single adult homeless population who used emergency shelter or transitional housing is 69 percent male and that 24 percent are older than 50. The proportion of the study cohort that was African-American varied across the three communities, from 21 percent in Des Moines to 48 percent in Jacksonville to 57 percent in Houston.⁷

⁵ Past research has also found wide regional variations in costs of both homeless and mainstream services (Culhane et al., 2007).

⁶ Any adult who was served as part of a family at any time during the study period was not considered a single adult and was excluded from the study cohort. In Houston, these persons were studied as part of the family study cohort.

⁷ Information on ethnicity was missing from a high percentage of the HMIS records at our study sites. Therefore, ethnicity is not included in our demographic analysis. People who identified themselves as white and Hispanic were simply categorized as white.

Exhibit 4.2: Characteristics of the Study Cohort of Individuals Who Became Homeless between July 1, 2004 and June 30, 2005 as compared with National Estimates^a

	Size of Study Cohort	Women	African-American	Average Age	Age over 50 years
Jacksonville	1,972 persons	19%	48%	41 yrs	18%
Houston	4,406 persons	26%	57%	41 yrs	16%
Des Moines	1,124 persons	27%	21%	39 yrs	15%
National estimate ^b		31%	33%	N/A	24%

^a Percentages are based on sample members for whom we have data for the characteristic.

^b AHAR estimate for individuals who used emergency shelter or transitional housing between October 2006 and September 2007 (HUD, 2008).

Some of the differences between our study population and national estimates of the characteristics of homeless individuals may reflect differences among the three study sites and other communities or the fact that our study includes some individuals who used only outreach and some who used only permanent supportive housing programs, neither of which are included in the AHAR. However, the comparison with the AHAR estimates may also suggest differences between first-time homeless individuals (our study) and all homeless individuals (AHAR). In addition to describing the study cohort and placing it in a national context, demographic data about the study cohorts also were used to understand relationships between demographic characteristics and costs. Findings from multivariate regression analysis presented later in Section 4.3.2 show that higher homeless system costs are associated with being female, African-American, or older, even when controlling for homeless utilization patterns such as lengths of stay.

Section 4.3 focuses on utilization and costs of the homeless system itself; costs of mainstream services are discussed in Section 4.4.

4.3. Patterns of First-Time Homelessness and Associated Homeless System Costs

4.3.1 Homeless System Utilization

As shown in Exhibit 4.3, we found that more than half of the study cohort experiencing homelessness stayed “in the system” for substantially less than one month. The median length of time spent in homeless residential programs was 2 days in Houston, 10 days in Jacksonville, and just over 3 weeks in Des Moines. Average lengths of stay are longer than these medians: almost 6 weeks in Houston, 8 weeks in Jacksonville, and just over 10 weeks in Des Moines. The differences between the median and average lengths of stay reflect the skewed distribution of the homeless experience for individuals. While half of the first-time homeless population in Houston spends only a couple of days in homeless programs over an 18-month period, a sizable population has very long lengths of stay that substantially increase the average. As we show in the next section, costs for individuals in our study communities are similarly skewed. This finding on patterns of homelessness confirms the research by Kuhn and Culhane (1998) on patterns of homeless service utilization, extends those conclusions to communities other than New York and Philadelphia, and provides an important context for understanding the costs associated with homeless individuals. Local communities, such as Columbus

Ohio, have analyzed their own HMIS data and found similarly skewed patterns of use of the homeless services system.

Exhibit 4.3: Use of the Homeless System by the Study Cohorts of First-Time Homeless Individuals During an 18-Month Period					
	Average Days in Homeless Programs	Median Days in Homeless Programs	% of Cohort with One Program Stay	Average Number of Program Stays	Average “Gap Days” Between Stays
Jacksonville	57 days	10 days	50%	3 Stays	75 days
Houston	39 days	2 days	65%	3 Stays	44 days
Des Moines	73 days	24 days	53%	3 Stays	63 days

In addition to lengths of stay, other patterns also show a dramatically skewed distribution of the homeless experience. The average number of program stays (continuous days in a particular program) across the sites was three, as shown by Exhibit 4.3, but at least 50 percent of the cohort had only one stay, and the remainder of the cohort in each site averaged five or more stays.⁸ The “gap days” shown in the exhibit (days during the entire period of homelessness when an individual was not in a residential homeless program) are, by definition, associated with individuals with more than one stay and show that those with more than one stay were not just bouncing among residential homeless programs from one day to the next. In many cases, months elapsed between when an individual exited one program and when he entered another program. We cannot tell whether any particular individual was homeless on the streets during “gap,” living in his own housing unit, unstably housed with friends or family, or in an inpatient or institutional program.⁹

Multivariate regression analysis with covariates for demographic characteristics, program type, and sites was used to understand the factors that drive longer cumulative lengths of stay in homeless residential programs for the 7,502 individuals in the study cohort. The model’s results are presented in Exhibit 4.4.¹⁰ When multiplied by 100, the coefficients for the covariates can be interpreted as percentage differences in the number of days spent in homeless programs from the reference category because the outcome variable is in logarithm scale.

⁸ For purposes of this study, a stay is defined by continuous residence in a specific program. A new stay is counted each time the person enrolls in a new program. A “stay” is not to be confused with an “episode” as defined by Kuhn and Culhane (1998) as residence in homeless programs with gaps no longer than 30 days.

⁹ Some of these “gaps” may also represent incomplete data, since not every homeless program enters data about their clients in the HMIS.

¹⁰ See Appendix C.2.1, Model 2, for more detailed multivariate regression analysis results, including a model without the program type variable.

Individuals using both emergency shelter and transitional housing stayed more than 3 times longer than people who used only emergency shelter, the omitted category.¹¹ Individuals using only transitional housing stayed about 3 times longer. People served by outreach¹² or permanent supportive housing programs alone or in combination with emergency shelter or transitional housing stayed more than twice as long as those who used only emergency shelter. The shorter lengths of stays for people who use only emergency shelters likely reflect both the shorter-term nature of their need for residential assistance and the environment and design of most emergency programs, which encourage shorter stays or have explicit limits on days that can be spent in shelter. Shorter stays result in lower costs, as will be detailed in the next section.

The model results also highlight the influence of the nature and composition of the homeless services system at each site. After controlling for the program type used and demographics, individuals in Des Moines stayed 23 percent longer in homeless programs than individuals in Jacksonville (the reference category). Many members of the study cohort in Des Moines used a form of transitional housing in which residents have private living space and lengths of stay that suggest that outplacements to mainstream permanent housing are not a high priority for the programs. Everything else being equal, individuals in Houston stayed 47 percent fewer days in homeless programs

Exhibit 4.4. Regression Analysis of Lengths of Stay for First-Time Homeless Individuals in Des Moines, Houston, and Jacksonville

Explanatory Variables	Total Days Spent in Homeless Programs (log scale)
Types of Homeless Programs Used+	
Only Used TH Programs	2.029*** (0.063)
Used both ES and TH Programs	2.294*** (0.088)
Used Other Program Types or Combinations ^a	1.261*** (0.067)
Site Variables+	
Iowa	0.227*** (0.061)
Houston	-0.465*** (0.046)
Demographics+	
Age 18 – 24	-0.232*** (0.075)
Age 25 – 30	-0.043 (0.070)
Age 41 – 50	0.190*** (0.051)
Age 51 and over	0.261*** (0.062)
Female	0.735*** (0.047)
African-American	0.300*** (0.040)
Other Races	0.100 (0.080)
Constant	1.685*** (0.054)
Observations	7502
R-squared	0.36

+ Reference categories are: Used ES Only, Jacksonville, Age 31 – 40, Male, White.

Standard errors in parentheses. * significant at 10%; ** significant at 5%; *** significant at 1%

Definitions: ES is emergency shelter, TH is transitional housing, and PSH is permanent supportive housing.

^aUsed Outreach Alone, Used PSH Alone, Used Outreach or PSH in Combination with ES or TH

¹¹ The coefficient of 2.294 indicates that these individuals spend 2.3 additional days for each reference day, or 3.3 times the reference category.

¹² In an attempt to capture the period of time that people experienced homelessness on the streets as part of length of homelessness calculations, each contact with a street outreach team was counted as one-day of homelessness—equivalent to a one-day program stay in a residential program—unless the contact was made on a day that the individual stayed in a residential homeless program, in which case the outreach contact was disregarded for length of stay calculations.

than individuals in Jacksonville. This probably reflects the time limits imposed on individuals in some of the emergency shelters and the fact that many individuals who were identified on the street did not use residential programs. Thus, individual program environments and rules may substantially influence lengths of stay. It is important to recall that this study does not measure the benefits of stays in the homeless services system, so we cannot say whether shorter or longer lengths of stay are positive or negative or whether the costs associated with these stays are worth the investment.

Ways in which the utilization of homeless programs varies by gender and race also are shown in Exhibit 4.4 and discussed below, along with cost variations by gender and race, in Section 4.3.3.

4.3.2 Costs to Homeless System of First-time Homelessness

The cost to the homeless services system for serving each first-time homeless individual is the sum of the costs of each program stay. The cost of each stay is the daily cost of the particular program used by the individual times the number of days in the stay. Daily costs varied tremendously from one program to the next. Differences in daily costs of programs used by members of the cohort generally explain differences in homeless costs from one person to another for individuals with otherwise similar patterns of homeless system use. (See Chapter 3 for a discussion of variations in the costs of homeless programs by site and program type.)

On average, individuals incurred \$2,101 in homeless system costs across the three study sites. The average homeless system cost incurred for each individual homeless person in the study cohort is similar in Houston and Des Moines (\$2,257 and \$2,308) and somewhat lower in Jacksonville (\$1,634).

Exhibit 4.5: Average Homeless System Cost per Individual			
	Jacksonville	Houston	Des Moines
Average Cost per Individual	\$1,634	\$2,257	\$2,308

Houston and Des Moines have similar average costs per first-time homeless individuals, despite having very different lengths of stay. Houston’s shorter lengths of stay than Des Moines are offset by the higher daily program costs of the program types used by the Houston study cohort. Though average lengths of stay in Jacksonville were only slightly lower than the average for Des Moines, the Jacksonville cohort spent over half of its days in emergency shelter at an average cost of \$29 per day; whereas the Des Moines cohort spent over half of its days in transitional housing with individual rooms at an average daily cost of \$43 per day.

Average costs offer a general picture of the costs associated with homelessness, but they obscure important information about the wide variation in costs associated with first-time homelessness. Only a small group of homeless individuals incurred high costs at each site, while the majority had minimal costs. The half of the cohort with the lowest homeless system costs incurred only 2 to 3 percent of the total homeless system costs; whereas the highest-cost 10 percent of the cohort incurred 62 percent of the homeless system costs in Jacksonville, 70 percent in Des Moines, and 83 percent in Houston. As was discussed extensively in Chapter 3, transitional housing for individuals is more expensive on average than other program types, and programmatic factors also encourage longer lengths of stay, also driving up the costs for individuals who use transitional housing. Thus, it is not surprising that

the cost to the homeless services system of the most expensive 10 percent of individuals in the study cohort at each site generally reflects continuous use of expensive transitional housing programs for much or all of the 18-month observation period.

A multivariate regression model was also used to identify the relationship of different factors, including length of stay, to total homeless system costs per person (Exhibit 4.6) to better understand what is underlying the wide distribution of costs. The model R-squared statistics of 0.68, meaning that the set of explanatory variables used in the model was able to account for 68 percent of the variation in costs.

The model results suggest that, for these study cohorts of first-time homeless individuals, the influence on total cost per individual of the program type used is much greater than the influence of staying in the program for an additional month. Each additional month adds only 35 percent to the cost per individual, whereas using transitional housing (alone or in combination with emergency shelter) more than doubles an individual's total cost. Once both length of stay and program type are taken into account, the community in which the individual becomes homeless has no significant effect on the total cost per individual.

In addition to the length of stay and the type of program used, additional stays and the greater lengths of time between stays were both also associated with increased costs, but only with small increases.

4.3.3 Variations in Homeless System Utilization and Costs by Gender, Race, and Age

The multivariate analysis that predicts lengths of stay (Exhibit 4.4) shows that women stay in homeless programs 74 percent longer than single men. An alternative model specification excluding the program type covariate shows that women have 38 percent fewer distinct

Exhibit 4.6. Regression Analysis of Total Homeless System Costs for First-Time Homeless Individuals in Des Moines, Houston, and Jacksonville

Explanatory Variables	Total Homeless Costs (log scale)
Type of Homeless Program Used+	
Only Used TH	1.299*** (0.049)
Only Used ES and TH Programs	1.114*** (0.067)
Used Other Program Types or Combinations ^a	0.793*** (0.051)
Site Variables+	
Iowa	0.068 (0.045)
Houston	0.012 (0.033)
Homeless System Utilization	
Number of Homeless Program Stays	0.037*** (0.003)
Length of Stay (in months)	0.351*** (0.005)
Homeless Gap Days (in months)	0.073*** (0.004)
Demographics+	
Age 18 – 24	0.074 (0.055)
Age 25 – 30	0.105*** (0.051)
Age 41 – 50	0.098*** (0.037)
Age 51 and over	0.098** (0.046)
Female	0.974*** (0.035)
African-American	0.192*** (0.030)
Other Races	0.051 (0.059)
Constant	3.953*** (0.041)
Observations	7,502
R-squared	0.68

+ Reference categories are: Used ES Only, Jacksonville, Age 31 – 40, Male, White.

Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%

^aUsed Outreach Alone, Used PSH Alone, Used Outreach or PSH in Combination with ES or TH

stays.¹³ This may reflect the different causes of homelessness for men and women. Men may be more likely to be asked to leave housing shared with family or friends due to disputes than women, resulting in short-term but repeated shelter stays. Or, alternatively, men may be more willing to leave unappealing shelter conditions for the streets. With longer lengths of stay, it is not surprising that women are also associated with higher homeless system costs. However even controlling for length of stay, being female is associated with 97 percent greater homeless system costs than being male, as shown in the model in Exhibit 4.6. Both the longer lengths of stay and higher costs are most likely a reflection of the specific homeless programs used by females.

As was discussed in Chapter 3, emergency shelters that serve women are more likely to be 24-hour, full-service shelters rather than overnight shelters, which have much lower daily costs. In addition, some women stay in service-intensive programs that also serve families. These programs have higher costs per day on average than those that exclusively serve single adult populations. Like single women, families tend to have fewer distinct stays, but their cumulative lengths of stay are longer on average than those of men. These similarities may be a reflection of the program influences, if single women and families are frequently served within the same setting, or they may reflect that the needs and decisions of single women are more similar to women with children than they are to single men.

Less dramatic, although still statistically significant, the models presented in Exhibits 4.4 and 4.6 also show that African-Americans have 30 percent longer stays than whites and 19 percent greater costs than whites after controlling for lengths of stay and program types. Again, the higher costs after controlling for lengths of stay probably reflect the fact that African-Americans used programs with more expensive daily costs than those used by whites within each program type. Nothing from our review of homeless programs suggests that certain programs encourage those who are African-American to stay in programs longer or that the homeless services system encourages African-Americans to use more expensive programs. However, African-Americans also have 14 percent more stays than Whites, which may also contribute to the greater cumulative number of days in homeless programs. Reasons related to the circumstances that led to homelessness, reduced housing stability after exit from a residential program for homeless people, more limited access to informal or formal supports, and greater involvement with criminal justice or other mainstream systems may help to explain the longer lengths of stay and more frequent stays for African American individuals.

Finally, the length-of-stay model (Exhibit 4.4) shows that relatively older individuals have longer stays than younger persons.¹⁴ For example, relative to the 31 to 40 year olds in the study population, individuals between the ages of 18 and 24 have stays 23 percent *shorter*, 41 to 50 years olds stay 19 percent *longer*, and individuals 51 and older stay 26 percent *longer*. Although this study examined only individuals who experienced homelessness for the first-time, the finding that longer lengths of stay are associated with older individuals is consistent with Kuhn and Culhane's (1998) research, which found that individuals who were chronically homeless were older than other homeless groups. The longer lengths of stay for older adults may be a function of age-related disabilities and associated barriers to housing stability, barriers to employment, or more fractured family relationships. Conversely, younger adults may have shorter lengths of stay related to the circumstances that led to their homelessness (e.g., if they became homeless due to family conflict or temporary income loss),

¹³ For details of the models that predict numbers of stays and gap days, see Appendix C.2.2.

¹⁴ In this study cohort, as in the homeless population in general (HUD, 2008), few people are elderly, that is, 62 or older.

have fewer employment barriers, have fewer long-term disabilities, or have greater access to family and other support networks that may be able to help resolve their homelessness. Older adults also have 10 percent greater costs than the 31 to 40 year old group after controlling for length of stay and program type, potentially attributable to residence in relatively more expensive programs within the transitional or permanent supportive housing program types. Somewhat counter-intuitively, the slightly younger group of 25 to 30 year olds was also associated with 11 percent higher costs. Again, this is likely a reflection of the specific programs used by this group. For instance, in Des Moines individuals who used only the more expensive form of transitional housing were younger than those who used other program types.

4.3.4 Costs for “Path” Groups: Individuals Who Use the Homeless System in Similar Ways

To better understand the heterogeneity of the homeless experience and its associated costs, we used multivariate cluster analysis to categorize individuals into “path groups” based on their lengths of stay, number of stays, length of gaps between stays, and the types and sequences of programs used. Cluster analysis was conducted independently for each site.

The following path groups emerged that described similar patterns of use across all three sites, representing 79 to 94 percent of the study cohort in each site:

- Emergency Shelter Short Stayers
- Emergency Shelter Long Gappers
- Sequential Program Users
- Circling Program Users

Exhibit 4.7 briefly describes each of these four common patterns of use of the homeless services system by first-time homeless individuals and shows the relative size of each group within each site.¹⁵ Each of the path groups making up these common patterns is discussed in more depth in the text that follows, followed by discussion of path groups unique to particular sites. Data on all path groups for each of the three sites are provided in Appendix 4.7.

¹⁵ For purposes of this section, the universe of individuals in the Houston study cohort is 3,535 adults. The full Houston study cohort of 4,406 individuals included 871 adults who were only found on the streets; who have been excluded from the discussion of path groups. The HMIS lacked identifiers for a large percentage of these individuals, and, therefore, it was not possible to determine if any of these people also used other programs.

Exhibit 4.7: Path Groups Common to All Three Sites and their Relative Sizes

Common Path Groups	Brief Description	Jacksonville (% of Study Cohort)	Houston (% of Study Cohort)^a	Des Moines (% of Study Cohort)
Emergency Shelter Short Stayers	Used only emergency shelter, 1 or 2 brief stays totaling 1 to 3 weeks.	66%	65%	57%
Emergency Shelter Long Gappers	Used emergency shelter only, 7 to 40 times over 13 months, though only 1 to 5 months actually spent in shelter.	10%	10%	14%
Sequential Program Users	Used at least 2 program types (in this sequence): emergency shelter, transitional housing, and/or permanent housing.	12%	3%	4%
Circling Program Users	Used transitional housing or permanent supportive housing and later returned to emergency shelter.	7%	2%	4%
Total % of Study Cohort represented by these Common Path Groups in each Site		95%	80%	79%

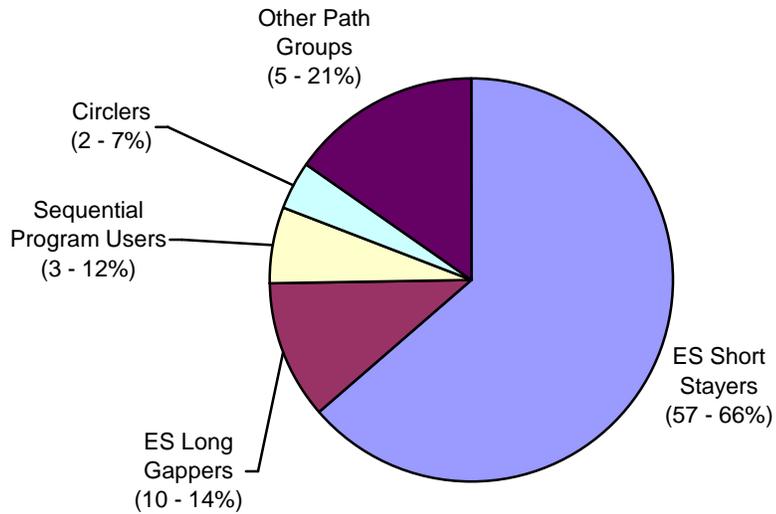
^aPercentages exclude the portion of the Houston Study Cohort that was only found on the streets.

The Emergency Shelter (ES) Short Stayers path group represents the majority of the study cohort of first-time homeless individuals in each site. The Sequential Program Users and Circling Program Users are the only two path groups that involve use of multiple program types, including those not combined into these common path groups. This means that 81 percent of individuals in Jacksonville, 92 percent of individuals in Des Moines, and 95 percent of individuals in Houston used only one type of homeless program over an 18-month period.

Very few individuals in our study cohort ever used permanent supportive housing. This may be because most people using permanent supportive housing programs were excluded from this study since they were homeless prior to the start of the study. Also, capacity of permanent supportive housing may be limited enough that turnover may not be sufficient to accommodate continued demand from individuals with chronic disabilities who become newly homeless.

The common path groups are shown graphically in Exhibit 4.8.¹⁶

Exhibit 4.8: Proportion of Study Cohort Represented by Common Path Groups



The groups are characterized by differences in their patterns of use of the homeless services system, but analysis of their demographic characteristics and mainstream program involvement¹⁷ help to describe further the differences among these common path groups. (Exhibit 4.9)

¹⁶ The pie chart is intended only to illustrate the relative size of each path group and should not be interpreted literally. The size of pie chart represents the size of the path group averaged across the three sites.

¹⁷ Based on mainstream domains collected in Jacksonville (Medicaid, mental health, substance abuse, entitlements, and jail) and Houston (mental health, City and County jail).

Exhibit 4.9: Characteristics of Individuals in Common Path Groups

Common Path Groups	Jacksonville	Houston	Des Moines
ES Short Stayers	Relatively fewer women Slightly fewer African Americans Relatively younger Average healthcare use Less substance abuse and criminal justice involvement	Very few women Fewer African-Americans Relatively younger adults Lowest rates of mental health care Lowest rates of criminal justice involvement	Not demographically distinct from other common path groups
ES Long Gappers	Almost no women More likely to be African-American Lowest rates of Medicaid managed care Highest criminal justice involvement	Very few women Slightly more African-Americans Slightly older (Frequent ES Longer Gappers much older) Fairly high mental health use High rates of criminal justice involvement	Not distinct from other path groups in percent women and African American Younger than other common path groups
Sequential Program Users	Relatively more women Fewer African-Americans Slightly older High use of Food Stamps Highest rates of mental health and substance abuse treatment prior to homelessness Low criminal justice involvement	Relatively more women Slightly more African-Americans Slightly older Moderate rates of mental health care Moderate criminal justice involvement	Relatively fewer women Oldest path group
Circlers	More likely to be African-American Slightly older Moderate use of mental health care, lower use of other healthcare High criminal justice involvement	Predominately women Slightly more African-Americans Slightly younger Highest rates of mental health care and State mental health Inpatient hospitalization Highest rates of criminal justice involvement	Very few women Older adults

Path Groups Using Only Emergency Shelter

Two of the common path groups describe individuals who only use emergency shelter: Short Stayers and Long Gappers. These two groups represent roughly three-quarters of each homeless individual study cohort.

Emergency Shelter Short Stayers are by far the largest path group in each of the three sites, representing 57 to 68 percent of each study cohort (Exhibit 4.7). Emergency Shelter Short Stayers use only emergency shelter and have one or two brief stays, totaling one to three weeks. In Des Moines, the demographic characteristics of this group do not appear substantially different from those of the other path groups, but in Jacksonville and Houston this group is younger (20 to 23 percent of the group are 30 years or younger), has fewer women, and has a slightly higher proportion of whites than other groups. In Jacksonville, this group had the lowest rates of substance abuse; in Houston, this group had the lowest rate of mental health system involvement and criminal justice involvement. Not surprisingly, this group incurs minimal homeless system costs, averaging only \$321 to \$686 total per person over the 18-month period (Exhibit 4.10). Despite the large size of this path group, the total homeless system costs associated with Emergency Shelter Short Stayers is disproportionately small, representing only 8 percent of the total homeless costs for the cohort in Des Moines and in Houston and 28 percent in Jacksonville.

All three sites had a sizable group, 10 to 14 percent, that stayed in emergency shelter an average of 7 to 11 times over the course of a year, but spent an average of only 23 to 124 cumulative nights in shelter (Exhibit 4.7).¹⁸ These are referred to as **Emergency Shelter Long Gappers** because of the long gaps between shelter stays. A small number of individuals within this group in Houston had a huge number of stays (more than 40 brief stays with gaps averaging less than a week between stays), and this group is much older than the study cohort as a whole or the other Houston Long Gapper Groups (Appendix C.1.2). Emergency Shelter Long Gappers are almost entirely male (95 percent in Jacksonville, 90 percent in Houston, and 72 percent in Des Moines), and slightly more likely than members of other path groups to be African-American. In Houston, more than a third of this group had mental health involvement, and more than a quarter had criminal justice involvement. In Jacksonville, this group had very high criminal justice involvement (62 percent). These individuals also had involvement in substance abuse and mental health treatment (26 and 21 percent), although other path groups had similar treatment rates. Even though individuals in this group experienced homelessness on and off for a full year, their total homeless system costs averaged only \$910 to \$2,494 per person since most of that time was not spent in shelter (Exhibit 4.10).

The cost variations for these two groups, all of whom used emergency shelter exclusively, relate primarily to the sheer differences in lengths of stay. However, another key cost driver is the cost per day of the programs used by each group. The total homeless system costs for Emergency Shelter Long Gappers represent 5 to 10 percent of the each study cohort's costs, slightly lower than the proportion of the study cohort they represent.

¹⁸ Although this study examined first-time homeless individuals, a number of individuals we studied such as members of this path group experienced patterns of chronic homelessness over time.

Path Groups Using Multiple Program Types

The other two common path groups describe individuals who used multiple types of programs either sequentially or in a circling fashion, using transitional or permanent housing and later circling back to emergency shelter.

Sequential Users, 3 to 12 percent of the study cohort at each site, used a combination of emergency shelter, transitional housing, and permanent supportive housing programs. Not all individuals used all three program types, but those they used were accessed in the emergency-transitional-permanent sequence. Jacksonville had two groups of Sequential Users: short stayers with an average of two stays totaling two months, and long stayers with an average of six stays totaling more than a year. In Houston and Des Moines, Sequential Users stayed an average of six and nine months over three and four stays respectively. Individuals generally had cumulative gaps of more than one month between stays (Appendix C.1 tables). In all three sites, more than half of this group's days in homeless programs were spent in transitional housing.

In Jacksonville, the combined Sequential Users groups were almost one-third female. The Sequential Long Stayers group had an average age of 47 years—the oldest of all of the path groups, although similar to Permanent Housing Long Stayers. More than 30 percent of Jacksonville's Sequential Users were shown by the match with mainstream data to have received substance abuse treatment, compared with an average of 22 percent for the Jacksonville cohort as a whole.

In Houston, almost half of Sequential Users were female, and almost 20 percent were over 50 years of age, compared with a cohort average of 12 percent. The Houston transitional housing system offers many possibilities for single women, including access to much of the scattered site transitional stock offered in conjunction with family programs. This helps explain the high percentage of women in Houston path groups that used programs other than emergency shelter.

The average homeless system cost in Jacksonville for Sequential Users was \$1,585 for Sequential User Short Stayers and \$10,416 for Sequential User Long Stayers. The figure for Long Stayers can be compared with the average total cost per person of \$8,539 for Sequential Users in Des Moines and \$14,418 in Houston. The costs for Sequential User Long Stayers were the highest of all path groups in Jacksonville and Houston, and in Des Moines the costs for Sequential Users were outpaced only by a path group that used only transitional housing (Exhibit 4.10). The total costs for Sequential Users represents 13 to 22 percent of the cohort's total homeless costs, two to four times higher than the proportion of the cohort they represent.

The high costs for the Sequential Users were driven both by the long lengths of stay and by the high percentage of nights (59 percent to 84 percent) that this group spends in transitional housing programs. Transitional housing for individuals has high costs in all sites compared with other program types (see Chapter 3 for further discussion), although particular programs of other types used by this path group are also expensive: for example, extended stay emergency shelter and permanent supportive housing with intensive services.

Circlers, 2 to 7 percent of the study cohort in each site, are individuals who used transitional housing or permanent supportive housing and later returned to emergency shelter. By definition, individuals in this group used more than one program type and, therefore had multiple stays. On average, each person had three stays in Houston, seven in Des Moines, and eight in Jacksonville. The cumulative length of gaps between stays is similar to the length of time actually spent in programs (Appendix

5.x). Circlers do not appear have distinguishing demographic characteristics that might help to identify them when they first enter the homeless services system. In Houston they were predominately women and slightly younger, while in Des Moines very few were women and they were relatively older than other path groups. In Jacksonville, Circlers had low rates of access to medical care (15 percent), high mental health involvement (30 percent), and high criminal justice involvement (44 percent). For Houston, Circlers had the highest rates of mental health (48 percent) and criminal justice (27 percent) involvement of all path groups. We do not have enough information to draw conclusions about why these individuals returned to shelter. For instance, the individuals may have been terminated from a transitional or permanent housing program without finding sustainable long-term housing or may have experienced barriers accessing appropriate permanent housing related to their mental health or criminal history. Alternatively, they may have had involvement with inpatient treatment or jail that disrupted housing and resulted in repeat homelessness.

The group had average homeless system costs of \$3,987 in Jacksonville, \$6,374 in Des Moines, and \$10,705 in Houston (Exhibit 4.10). In Jacksonville, the Circlers represented 18 percent of total cohort costs though the path group only comprised 7 percent of the cohort's population. The Des Moines Circlers represent only 4 percent of the cohort but incurred 12 percent of the cohort's total costs, and the Houston Circlers represent only 2 percent of the cohort but incurred 9 percent of the total costs.

Length of stay is a key factor driving this group's costs, but it does not explain the difference in costs across the sites. Houston's costs were significantly higher than Jacksonville's, in large part because the daily costs of the specific programs used by the individuals in this path group were higher and partly because the Houston group spent 89 percent of nights in extended emergency shelter, transitional housing and higher cost permanent supportive housing programs, whereas Jacksonville's cohort spent only 59 percent of nights in more expensive transitional or permanent programs. Des Moines Circlers' costs were higher than Jacksonville's in part because this path group spent 76 percent of its sheltered homeless days in transitional programs and more than half of its transitional housing days in the more expensive of the two transitional housing program models. (More detail about the costs of these models can be found in Chapter 3.)

Other Path Groups

The remaining portion of each site's study cohort was represented by path groups with other patterns. These groups all represent individuals who used a single program type for extended periods, and as a result, most are fairly high cost groups. However, the types of programs each group used differed, so they are described individually for each site. Very few individuals in this study used permanent supportive housing, either immediately upon entering the homeless services system or after a stay in emergency shelter or transitional housing.

Jacksonville Emergency Shelter Long Stayers. This group represents only 2 percent of the Jacksonville cohort, but they had almost year-long continuous stays in emergency shelter. The Emergency Shelter Long Stayers are the only path group across all three sites with patterns of homelessness consistent with Kuhn and Culhane's original chronically homeless group (Kuhn & Culhane, 1998), though not all members of this group would meet HUD's current definition of chronically homeless which has a disability component.¹⁹ While the size of this group is smaller than

¹⁹ HUD's definition of chronic homelessness also incorporates Kuhn and Culhane's episodically homeless, which is more parallel to the Emergency Shelter Long Gappers.

the percent identified by Kuhn and Culhane, the Jacksonville cohort only includes first-time homeless individuals; thus, one would not expect to find a sizable chronically homeless population. Rather, the small size of this path group may provide an indication of the proportion of first-time homeless individuals who may continuously use emergency shelters without an appropriate re-housing intervention.

In contrast to the study cohort as a whole, 54 percent of emergency shelter long stayers were female, and the group had the highest percentage of African Americans, 73 percent, compared with 47 percent for the Jacksonville study cohort as a whole. Compared with other first-time homeless individuals in Jacksonville, members of this group were more likely to receive income support from the Food Stamps program prior to homelessness (48 percent) or during their long stays in shelter (77 percent), but this does not appear to have helped them avoid homelessness or leave it quickly. Their use of mainstream systems suggests that medical illness may have contributed to their extended homelessness. Their rate of involvement with the criminal justice system was low (Appendix C.1.1).

The cost to the homeless system to house these individuals was very high, \$9,756 per person (Exhibit 4.10). Yet, due to the small size of the group, their total cost to the homeless services system was modest, representing 13 percent of the cohort's total costs. The average cost per Emergency Shelter Long Stayer is equivalent to 15 months of maximum rent subsidy at the FY2006 Fair Market Rent of \$643 per month for a one-bedroom unit (HUD, 2005) (Exhibit 4.11). Given the pattern of long-term homelessness that emerged over the 18-month observation period and the high costs associated with individuals in this group, an alternative permanent housing intervention may be a more appropriate intervention for this group than shelter.

Jacksonville Permanent Supportive Housing Long Stayers spent an average of one year in residential homeless programs, primarily in permanent supportive housing. This group was about one-third female, compared to 20 percent for the study cohort as a whole, and a similar percentage was more than 50 years old, much higher than in any other path group in Jacksonville. Not surprisingly, for a group that used mainly programs available only to persons with disabilities, their rates of use of mental health and substance abuse treatment were high (Appendix C.1.1). The homeless services system incurred approximately \$8,500 per person for this group (Exhibit 4.10), slightly greater than a maximum annual rent subsidy based on the Fair Market Rent. Permanent Supportive Housing Long Stayers represent 15 percent of the total Jacksonville cohort's homeless system costs, though these individuals represent only 3 percent of the overall cohort. Most of these expenses were incurred for project-based SRO housing or Shelter Plus Care vouchers, so conceptually these costs to the residential system for homeless people are essentially equivalent to paying rent in the private market and therefore are quite different from the residential homeless system costs incurred on behalf of other path groups. Most of the services associated with these units were provided through relationships with mainstream providers and may be reflected in the mainstream service system costs incurred for this path group or may not be fully captured.

Houston Users of Extended Stay Emergency Shelter. In Houston, 3 percent of the study cohort used extended stay emergency shelter programs for an average of 158 days, slightly more than 5 months. This subset had average per person homeless system costs of \$10,540. Extended stay programs are a hybrid model that provide clients a greater level of privacy and have a wider array of services than the shorter-stay model, in many ways paralleling the environment and programming provided at a transitional housing program. They are more expensive than less service-rich emergency shelters. The Extended Stay programs are primarily targeted to women with a history of

substance abuse. Fifty-five percent of the people in this group were women, and 69 percent were African American.

Houston Users of Transitional or Permanent Supportive Housing Only. In Houston, 16 percent of the study cohort went directly to transitional housing or to permanent supportive housing. These individuals were mainly women (77 percent), in sharp contrast to the users of transitional or permanent supportive housing programs who arrived there sequentially or who used them and then “circled” back to emergency shelter. This group is somewhat less likely to be African American than the study cohort as a whole. Their use of mental health care and encounters with the criminal justice system were not different from the study cohort as a whole. Their lengths of stay in the residential system for homeless people were slightly lower than Sequential Users or Circlers in Houston, and their costs to the homeless services system were slightly lower, \$8,799 on average (Exhibit 4.10). Nonetheless the average costs per person are still very high compared with the average cost per person of \$2,257 for the cohort overall. This path group represented the majority (52 percent) of homeless costs within Houston, substantially larger than the proportion of the cohort (16 percent) they represent.

Des Moines Transitional Housing Only, Shared Rooms. In Des Moines, 13 percent of the study cohort used transitional housing provided in shared rooms and, therefore, with relatively little privacy. This group was 42 percent female (compared with 27 percent for the study cohort as a whole) and less likely to be African American (12 vs. 21 percent). They were somewhat younger than the study cohort as a whole and stayed an average of just over 4 months (133 days), substantially less than Sequential Users, Circlers, or those who used only Transitional Housing provided in independent rooms, described below. We have no mainstream data for Des Moines from which to speculate further on the possible causes of their homelessness or the way in which they were served by transitional housing. However, one of the shared room transitional housing programs in Des Moines serves women who have recently been incarcerated. The average total cost to the homeless services system for members of this group is only \$3,103 (Exhibit 4.10), reflecting their use of a relatively low cost model for transitional housing for a relatively short period of time. Because of the relatively low costs per person, this group was associated with only 18 percent of the homeless system costs incurred by the cohort, a proportion only slightly higher than the size of the path group.

Des Moines Transitional Housing Only, Independent Rooms. Eight (8) percent of the study cohort in Des Moines used only a form of transitional housing that provides private rooms to clients. This group had lengths of stay averaging almost 8 months (237 days), perhaps due to the higher levels of privacy and relative independence provided to this group. Members of this path group were predominately male (85 percent compared to 73 percent of the study cohort as a whole), but similar to the rest of the study cohort in other respects. Given the long lengths of stay for this group and their use of an expensive type of transitional housing (see Chapter 3), they had the highest cost per person of any path group in Des Moines, \$11,731 (Exhibit 4.10). Cumulatively, they incurred 42 percent of the total homeless costs for the Des Moines cohort even though the group comprised only 8 percent of the cohort.

The average per person costs for individuals in each path group are shown in Exhibit 4.10.

Exhibit 4.10 Average Homeless System Costs Per Person By Path Group						
	ES Short Stayers	ES Long Gappers	Sequential Users	Circling Users	Other Path Groups	Average for Overall Cohort
Jacksonville	\$686	\$910	\$1,585 Short Stayers	\$3,987	\$8,493 PSH Long Stayers	\$1,634
			\$10,416 Long Stayers		\$9,756 ES Long Stayers	
Houston	\$353	\$880 ES Long Gappers	\$14,418	\$10,705	\$8,799 TH or PSH Only	\$2,257
		\$2,494 Frequent ES Long Gappers				
Des Moines	\$321	\$1,224	\$8,539	\$6,374	\$3,103 TH – Shared Rm	\$2,308
					\$11,731 TH – Indiv Rm	

Exhibit 4.10 clearly illustrates the range of average homeless system costs per person for each of the path groups, as discussed in the previous section. The highest cost path groups (long stayers in expensive programs) in each of the three sites had average costs per person 15 to 41 times the average costs per person of the lowest cost path group, Emergency Shelter Short Stayers. Since path groups correspond strongly with costs, policymakers could use information like this to determine how much they could invest in alternative interventions for different path groups while staying cost-neutral. This could be as simple as assessing whether there are less expensive ways of delivering similar services to single women, who are frequently served in a higher-cost family program environment.

For higher cost path groups, the CoC could also assess the level of housing and service assistance currently provided to long stayers relative to alternative interventions. Fair Market Rents (Exhibit 4.11) represent the equivalent of funding a deep rental subsidy for an individual for a month. For example, Jacksonville could fund a rental subsidy for 16 months with the resources currently spent on average to house a Sequential Long Stayer in homeless programs for one year. To determine the relative cost-effectiveness of the current strategy to alternative interventions, policymakers can compare the costs and long-term outcomes of the housing assistance and services provided to Sequential Long Stayers in these programs with the costs and outcomes that might be achieved by using these funds to support alternative interventions, such as a rental subsidy.

Exhibit 4.11: 2006 Fair Market Rent for One-bedroom Unit in Individual Study Sites

	Jacksonville MSA	Houston MSA	Des Moines MSA
2006 Fair Market Rents: monthly rent for one-bedroom ^a	\$643	\$612	\$549

^a FMR Source: HUD, 2005. The FMR does not include the monthly fee paid to a public housing agency for administering the voucher program, which was about \$58 per unit per month in these three communities. (HUD, 2007)

Thus, an important policy question is whether there is alternative prevention, housing, or other homeless interventions that could be offered at similar or lower costs that would achieve improved outcomes or be preferable for other moral, programmatic, or policy reasons? If the response is affirmative, then in addition to developing the alternative interventions, the CoC would also need to identify the individuals that need to be assisted differently. The path group analysis provided in this section provides some clues about what to look for in an assessment process, though more research in this area is needed.

A related finding is that all program types and all programs within each type do not have equal costs; thus, long-stayers do not have universally high-costs. For example, Jacksonville’s Emergency Shelter Long Stayers (the group with homeless system use most comparable to Kuhn and Culhane’s chronically homeless cluster) have lower average per person costs than the Sequential Long Stayers in Jacksonville who used transitional housing extensively. Setting aside ethical or programmatic reasons, Jacksonville may benefit more financially by seeking an alternative intervention for the Sequential Program Users than for other path groups. Similarly, if stakeholders in Houston undertake efforts to reduce lengths of stays in Houston’s standard emergency shelters, they will not achieve cost-savings remotely approaching those that could be realized from efforts to reduce lengths of stays in the higher-cost extended stay emergency shelters. Again, that is not to say the extra investments in more expensive programs are not warranted based on additional benefits or outcomes for program clients. This cost analysis may help to identify programs about which cost-effectiveness analysis would be helpful.

4.4. Costs Associated with Mainstream System Use

In contrast to homeless residential system costs, mainstream system costs can occur before or after an individual’s period of homelessness and there may or may not be a relationship between homelessness and increased or decreased involvement in mainstream systems. As described in section 4.1, prior research suggested that periods of homelessness are related to increased costs across most mainstream domains and that certain interventions may reduce acute care costs and other mainstream costs associated with crises that lead to homelessness. This research also assumes that reduced costs over time reflect positive client outcomes brought about by the intervention. At least theoretically, the cost reductions can be used to fund the homelessness interventions. This study was not designed to understand the client outcomes or cost-effectiveness of specified homelessness interventions. However, the study attempts to measure the study cohort’s mainstream system involvement and associated costs incurred to serve these individuals before, during, and following

first-time homelessness. This information may help policy makers assess the extent of potential mainstream cost savings possible or recognize the limited opportunities for them.

For Jacksonville, we were able to obtain mainstream utilization and cost data for the Medicaid primary health care, Medicaid and State-funded mental health and substance abuse treatment, food stamps, and Temporary Assistance for Needy Families (TANF) systems aggregated by path group for the periods before, during and following homelessness. We also received client-level total mainstream costs for each domain and each study period. We were not able to obtain access to individual client encounter data, so we do not know the exact dates of the mainstream involvement or costs of individual services within these domains. The limitations of data aggregated by time period will be discussed later in this section. We were able to obtain client-level data documenting each arrest and jail stay throughout the full study period. In Houston, we were able to obtain client-level service utilization and cost data for City and County jails, mental health treatment, and inpatient stays in the state psychiatric hospital. For Des Moines, we were not able to obtain any data on any mainstream systems; therefore, this section discusses costs only for Jacksonville and Houston.

This section presents estimates of mainstream costs for the study cohorts in Jacksonville and Houston and also compares them with the results of previous research. Like past cost studies, these results may understate mainstream costs since we have not accounted for all mainstream domains.

4.4.1 Rates of Mainstream System Involvement

As it is for homeless system costs, utilization of mainstream systems is an essential building block for estimating costs. Examining rates of interaction with mainstream systems also yields a better understanding of the characteristics of the individuals in the study cohorts—at least the minimum percentage of the cohort with certain needs or experiences, since it is likely some members of the cohort have needs for services but did not access them during the study timeframe. Some individuals also may have used non-publicly funded services that were not captured in the datasets we analyzed. Exhibit 4.12 shows rates of cohort involvement with mainstream systems in Jacksonville and Houston across the study period. Use during the 12 months prior to homelessness can help show needs that were present during that period. It can also be compared to the patterns of use after the start of homelessness to suggest how homelessness or involvement with homeless programs may have affected mainstream use.

Exhibit 4.12 Rates of Involvement with Mainstream System Domains Prior to Homelessness, During Homelessness and Overall During the Study Period								
	Jacksonville				Houston			
	<i>Prior</i>	<i>During</i>	<i>After</i>	<i>Overall</i>	<i>Prior</i>	<i>During</i>	<i>After</i>	<i>Overall</i>
Average days in period	365	132	599	1096	365	83	689	1137
Medicaid Primary Health	13%	9%	16%	20%				
Mental Health	13%	8%	18%	25%	11%	9%	12%	18%
Substance Abuse	9%	7%	15%	22%				
Criminal Justice	19%	13%	22%	38%	6%	2%	9%	13%
Income Support	29%	22%	43%	52%				

In Jacksonville, almost one-third of individuals were receiving income support (mainly food stamps) in the 12-months prior to homelessness, and 13, 13 and 9 percent respectively had accessed publicly funded medical, mental health and substance abuse treatment. Almost one-fifth had been in arrested or in jail.

A relatively smaller percentage of individuals interacted with these systems during homelessness, providing a fairly small group of individuals for policymakers to target for potential cost offsets. The smaller percentage with service encounters primarily reflects the shorter period of time homeless for most of the study cohort, compared with the periods of time before and after homelessness. The average length of each period is shown in the first row of Exhibit 4.12. Food stamps eligibility may have dropped during homelessness for people in programs supplying meals. Nonetheless, as later sections on mainstream costs will show, these small percentages of individuals can incur substantial costs per person.

Use of mainstream systems rises following the end of homelessness. This may be primarily due to the longer period of time in which we tracked people following homelessness. In some cases— income support, Medicaid primary health care, and perhaps mental health and substance abuse services—the increased rates may also reflect the success of the homeless services system in linking homeless individuals to needed mainstream services. In other cases—criminal justice, and again perhaps mental health and substance abuse services—the higher rates of use following homelessness could indicate that spending time in the residential services system for homeless people does not change—and may even exacerbate—the negative behavior of individual homeless people. There clearly are cost implications associated with increased use of mainstream systems following homelessness.

The next section details the costs incurred by certain mainstream systems and sets the stage for the next step of analysis that a community can take: exploring whether the costs are positive or negative, and whether there are opportunities to reduce costs for the percentage of clients who interact with these systems through homeless interventions.

4.4.2 Costs to Mainstream Systems During Homelessness

First we present costs incurred during the study cohort’s period of homelessness (Exhibit 4.13),²⁰ the primary costs that we assume to be influenced by homelessness. The costs shown in the exhibit reflect only the domains for which we were able to obtain data, so they are minimum costs associated with our cohort of first-time homeless individuals.

²⁰ “During” homelessness is used to describe the period from the first day of the first stay in a residential program to the last day in the last stay within the 18-month study period. For individuals with more than one homeless program stay, during homelessness also includes gaps or periods of time between homeless stays when the individual may be housed.

Exhibit 4.13: Average Mainstream System Costs per Person Incurred “During” Homelessness

	Jacksonville		Houston	
	<i>Average Costs During Homelessness Per Person Involved in this Domain</i>	<i>Average Costs During Homelessness Per Person in Cohort</i>	<i>Average Costs During Homelessness Per Person Involved in this Domain</i>	<i>Average Costs During Homelessness Per Person in Cohort</i>
Medicaid Primary Health	\$2,436	\$219		
Mental Health	\$1,318	\$106	\$4,157	\$391
Substance Abuse	\$2,265	\$158		
Criminal Justice	\$3,057	\$397	\$6,520	\$157
Income Supports	\$627	\$138		
Average Total Per Person Costs for these Domains		\$1,018		\$547
Total Incurred During Homelessness by the Cohort for these Domains	\$2,006,539		\$2,412,227	

For each mainstream domain, Exhibit 4.13 shows the average costs per person for those who were served or interacted with that mainstream system and average per person costs when considering all individuals in the cohort. Per person costs for those who actually interacted with each system were relatively high, ranging from \$627 for food stamps and TANF to \$3,057 for those arrested or jailed during homelessness. The criminal justice expenses are high in part due to the large number of people who were involved with criminal justice (13 percent of the cohort, Exhibit 4.12). And those who were jailed, stayed in jail a long time—an average of 40 days each. When spread across the entire Jacksonville cohort, the costs are diluted.²¹

Therefore when considering the average mainstream cost per person in the overall cohort, costs during homelessness were relatively low, because most people spent only a brief time homeless and because only a portion of the cohort actually incurred costs in each of the domains. In Houston, average criminal justice costs are much lower than average mental health costs (Exhibit 4.13) for each cohort member, in part because only 2 percent of the study cohort had criminal justice costs during homelessness, compared with 9 percent who received mental health services (Exhibit 4.12). In fact, average costs per person for those who interacted with each system were higher for those involved with criminal justice than for those who received mental health care. As with Jacksonville, the average per person costs for both domains is diluted by the large percentage of individuals (more than 90 percent) who were not involved with either the mental health or the criminal justice system. Thus this further illustrates the point that an intervention can most easily achieve cost savings if it is targeted to those with high use (or any use). Conversely, interventions targeted to subgroups of

²¹ The Jacksonville case study Appendix provides greater detail on these mainstream costs.

homeless individuals that are not heavily involved in mainstream systems, and probably interventions targeting all first-time homeless individuals, are unlikely to achieve cost savings sufficient to fund them.

4.4.3 Mainstream Costs Before, During, and After Homelessness

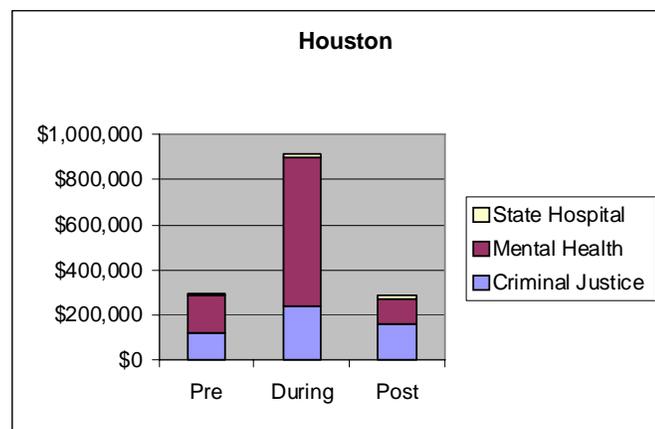
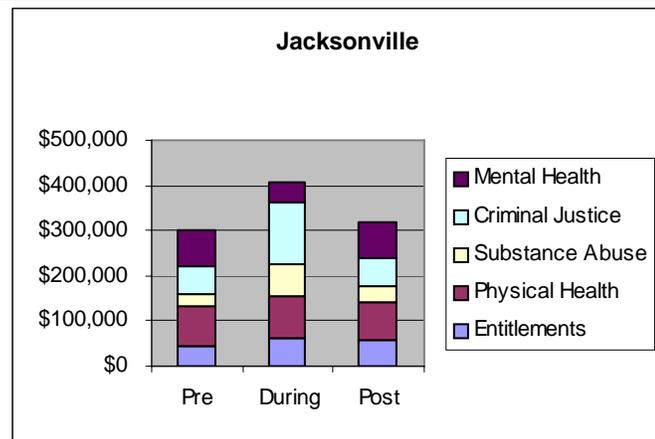
Although utilization rates for the study cohort go down during homelessness, as shown on Exhibit 4.12, this is largely a reflection of shorter time periods. Costs, expressed as one-month costs to control for the different lengths of the time periods before, during and following homelessness, go up during homelessness for most domains, as shown on Exhibit 4.14. In Jacksonville, the total monthly mainstream costs incurred by the study cohort increased from an average of \$161 per month per person to \$231 per month (43 percent increase) during homelessness and went back down to an average of \$166 per month per person following homelessness. (See the Jacksonville case study in Appendix A for more detail.) In Houston, mainstream costs increased from an average of \$67 per month per person to \$197 per month during homelessness (194 percent increase) and then reduced back to an average of \$65 per month per person following homelessness.²²

A smaller portion of the cohort interacts with each system during homelessness, so the increase in average monthly costs reflects concentrated usage of services by these users within a relatively brief period of time. In the periods before and after homelessness, more people interacted with the systems but the interactions were spread over longer periods and therefore the adjusted monthly cost is lower. More on the relationship of these costs before homelessness is provided in the next section. The lower rates of involvement with mainstream service systems may also reflect that some individuals may have received alternative services from homeless programs alleviating their need for mainstream care, and that those who did not have their needs met by the program internally may have needed higher cost clinical or acute care. However, not all of the change is explained by concentrated service use.

In some cases, individuals used, on average, more expensive services during homelessness. For instance, in

Jacksonville, the average cost per unit of physical health care covered by the Medicaid fee-for service

Exhibit 4.14: Monthly Mainstream Costs by Domain and Period, Jacksonville and Houston



²² See the Houston case study (Sokol, Leopold, Spellman, & Khadduri, 2009) for more detail.

plan was \$100 per unit during the period prior to homelessness, \$117 during homelessness, decreasing slightly to \$110 following homelessness. More dramatic is the change in the Jacksonville cohort's Medicaid-funded mental health average cost per unit: \$87 prior, \$129 during, and \$98 following homelessness. However, for Medicaid substance abuse treatment, the average cost per unit during homelessness was lowest (\$426) compared with \$471 per unit before and \$508 per unit following homelessness. In Houston, the mental health treatment cost per unit was highest (\$218) in the period preceding homelessness, dropping to an average cost per unit of \$154 during homelessness and \$141 per unit following homelessness. While bearing in mind that the average costs could reflect high-cost use by a handful of individuals and limited use by others, the higher cost per unit during homelessness for some domains is consistent with the theory raised in prior research that some people may receive more expensive acute care during periods of homelessness, but this pattern is not universal.

4.4.4 Mainstream Costs Immediately before Homelessness

While total mainstream costs increased during homelessness compared to the period prior to homelessness, suggesting more intensive mainstream use by particular individuals during homelessness, we come to a slightly different conclusion about the pattern by graphing mainstream utilization month by month, as shown in Exhibit 4.15 for jail stays in Jacksonville. The number of jail stays increases substantially immediately before first-time homelessness and peaks in the period immediately following first entry into a homeless program.²³ We see similar patterns for criminal justice involvement and mental health treatment costs in Houston, shown in Exhibits 4.16 and 4.17. The patterns graphed in these exhibits are very similar to those found in analysis of inpatient hospitalizations by homeless individuals in Philadelphia conducted by Culhane, Averyt and Hadley (1997). This pattern is not apparent when the cost analysis relies on average total monthly costs for the time periods before, during, and after homelessness shown in Exhibits 4.14.²⁴ This examination of data by month requires client-level service utilization data with actual dates of service, which we were not able to obtain from any of the Jacksonville mainstream systems except criminal justice.²⁵

²³ Other research analyzing rates of homelessness among ex-offenders found that individuals released from state prisons or jails have a greater risk of homelessness than individuals with similar characteristics who have not been recently incarcerated. In the communities studied, risk of homelessness among ex-offenders was higher for individuals with certain demographic characteristics. The same research also found that longer periods of incarceration were associated with greater risks of homelessness after release. (Graham, D., Locke, G., Bass Rubenstein, D. & Carlson, K., unpublished)

²⁴ These findings also corroborate those of Scully and Shank (2007), presented at the Summer 2007 National Alliance to End Homelessness conference. Scully's presentation prompted us to analyze data in this way to better understand patterns of use relative to homelessness

²⁵ The three period analysis was specified in the original data request to mainstream agencies who were not authorized to disclose client-level data. Now that this spike has emerged consistently for multiple domains, in the future we would explore alternate data specifications to capture this phenomenon more comprehensively.

Exhibit 4.15: Jacksonville Jail Stays Relative to Homelessness

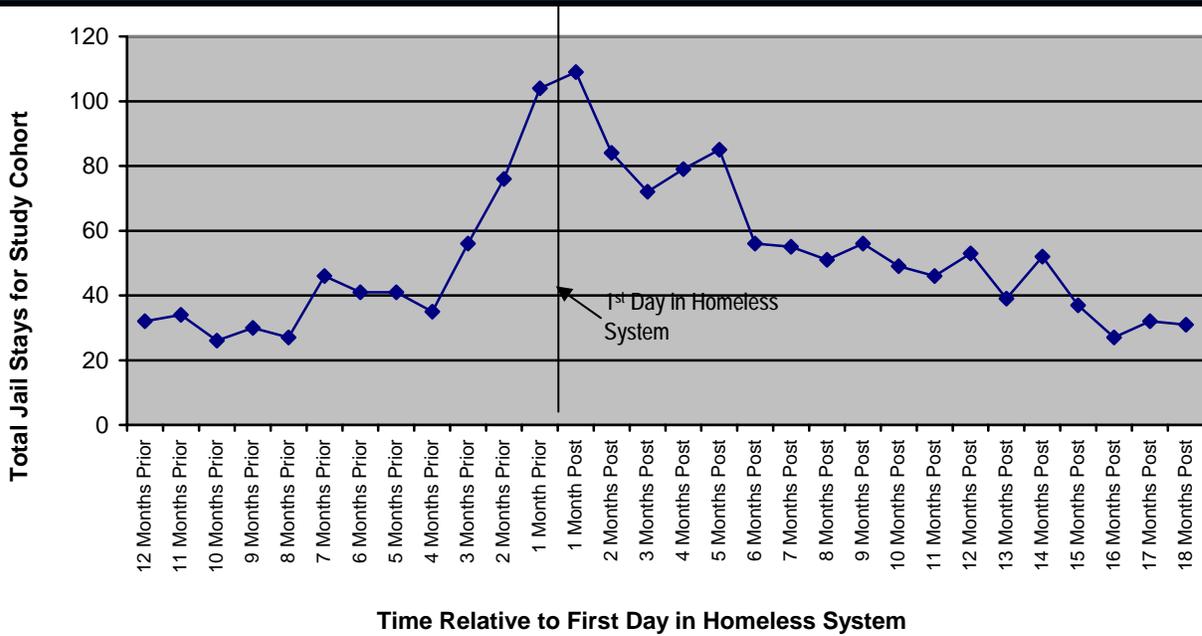
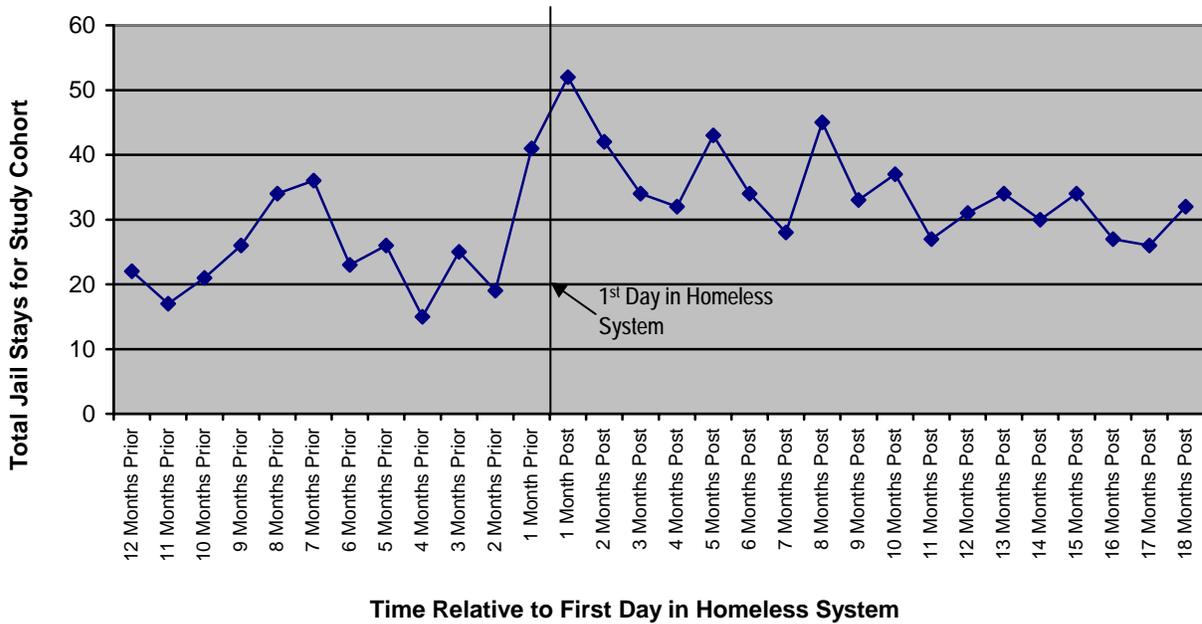


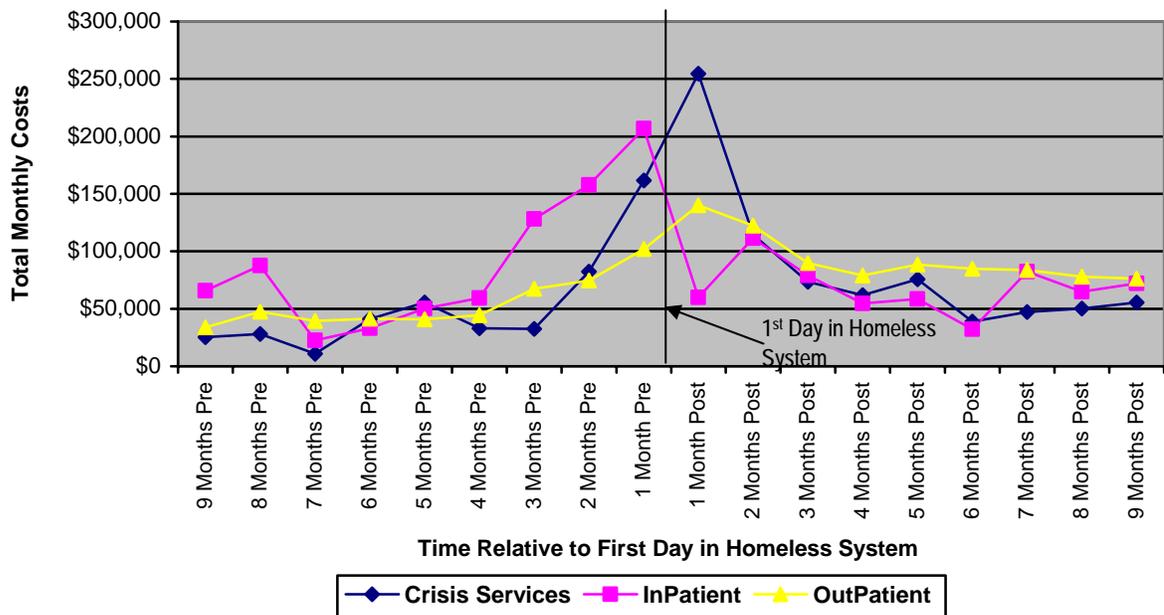
Exhibit 4.16: Houston (Individuals) Jail Stays Relative to Homelessness



Adding another layer of detail to the analysis, Exhibit 4.17 graphs mental health system costs separately for crisis services, inpatient treatment and outpatient treatment in Houston. The exhibit shows a dramatic increase in costs for inpatient and crisis treatment and a slight increase in outpatient treatment immediately before homelessness. Particularly interesting is the fact that inpatient treatment costs peak in the month prior to homelessness and then decline sharply in the month following the start of homelessness, whereas crisis and outpatient service costs peak in the month following the start of homelessness and then drop to levels slightly higher than the period before homelessness. It is logical that inpatient costs would decline once someone enters a residential homeless program, since a person cannot be staying in an inpatient facility at the same time he is in a homeless facility. However, the dramatic increase in use immediately prior to homelessness suggests that individuals may be exiting inpatient programs with inadequate housing placement services or that the mental health crisis that necessitated inpatient care is related to housing instability and homelessness in some other way.

The images are compelling and suggest a strong relationship between mainstream involvement and the start of homelessness. However, the current analysis has several important limitations. These exhibits depict total numbers of jail stays and total mental health costs for the cohort. We would need much more analysis to determine whether the individuals experiencing the crises before homelessness are the same people who later are shifting to outpatient mental health use. Furthermore, the analysis is built up from each individual's service utilization relative to his or her actual first day in the homeless system. The first month in the homeless system is roughly equivalent for all persons in the cohort and exactly the same for the 12 months prior to entry into the homeless system, so the pattern of progressively increasing mainstream costs is defensible for those timeframes. However, following the first day some people in the cohort quickly exit homeless programs, while others stay homeless

Exhibit 4.17: Houston (Individuals) Mental Health Costs by Month Relative to Homelessness



for long time periods or later return to homeless programs. Subsequent episodes of homelessness may also be related to increased mainstream involvement, but later increases are muted in these

graphs, since the costs of those who have subsequent episodes in month 6, for example, are summed with those in the cohort who are no longer homeless.

We did not collect and structure data in ways that facilitate conducting time-series analysis of mainstream system use relative to the end of homeless residential stays or subsequent episodes of homelessness. However, we believe that these interesting exploratory findings suggest opportunities for further research.

4.4.5 Characteristics Associated with Mainstream System Costs

A regression model was used to explain mainstream costs for different systems using covariates for demographic characteristics and homeless system utilization (Exhibit 4.18). Unlike the previous models presented in this chapter, we did not use a logarithm specification for the outcome variable for this analysis. These regression coefficients thus represent the differences in dollar costs between individuals with and without a particular characteristic.

Findings on the relationship between homeless utilization patterns and mainstream system costs over the total study period (before, during, and after homelessness) were somewhat inconsistent between the two sites.²⁶ In Jacksonville, multivariate analysis controlling for demographics and homeless experience showed a statistically significant relationship between length of stay in homeless residential programs and most mainstream costs (Exhibit 4.18). For each additional 30 days spent in homeless programs, physical healthcare costs increase by about \$199, costs for food stamps and TANF increased by \$80, and costs for substance abuse treatment increased by \$61. In contrast, criminal justice costs dropped slightly for individuals in the Jacksonville study cohort who spent more time in homeless residential programs. Criminal justice costs increased by \$150 for every 30 “gap” days spent between homeless program stays, which suggests a possible link between engagement with the criminal justice system and homeless recidivism.

The multivariate analysis for Jacksonville did not show a statistically significant relationship between mental health costs and lengths of stay in homeless programs. This may mean that homeless programs, especially those that encourage longer lengths of stay, link mentally ill clients with routine outpatient treatment or otherwise stabilize clients sufficiently to reduce their need for more expensive crisis or in-patient psychiatric treatment. Alternatively, it is possible that more expensive service-rich programs provide mental health services themselves, offsetting the need for mainstream mental health services. Or perhaps persons who successfully stay in transitional housing or permanent supportive housing are not the individuals with the greatest or most severe mental health needs, therefore suggesting that those with higher needs and associated treatment costs leave earlier or never enroll in the first place.²⁷ Many other explanations are possible, but the relationship between homeless system and mental health costs is notable.

²⁶ We were not able to analyze changes in mainstream costs from one period to another using regression analysis, since we did not have access to client-level data by domain and period in Jacksonville.

²⁷ A 2006 HUD study of leavers and stayers in permanent supportive housing indicates that higher use of mainstream mental health systems such as inpatient mental hospital admissions and emergency services during residence in permanent supportive housing is a strong predictor of leaving permanent supportive housing rather than staying long-term. (HUD, 2006) This finding supports the idea that people with greater mental health needs or less stable routine mental health treatment may have shorter lengths of stay in some homeless program types.

Exhibit 4.18. Regression Analysis of Mainstream System Costs for First-Time Homeless Individuals in Jacksonville

Outcome Variable: Costs of Mainstream Domains	Physical Health Costs	Mental Health Tx Costs	Substance Abuse Tx Costs	Income Supports Costs	Criminal Justice Costs
Homeless System Utilization					
Number of Homeless Program Stays	-74.742** (36.628)	-15.781 (37.545)	-15.465 (14.559)	-5.599 (10.013)	-34.855 (21.201)
Homeless Length of Stay (in months)	198.681*** (47.651)	-47.273 (48.844)	60.639*** (18.941)	80.128*** (13.027)	11.861 (27.582)
Homeless Gap Days (in months)	13.062 (43.528)	-18.746 (44.618)	40.846** (17.302)	0.982 (11.900)	149.972*** (25.196)
Demographics+					
Female	2,170.849*** (430.825)	1,663.730*** (441.617)	257.364 (171.251)	1,770.719*** (117.779)	-992.334*** (249.377)
Black	560.360* (337.435)	-907.569*** (345.888)	-378.032*** (134.129)	280.946*** (92.248)	380.364* (195.320)
Other race	209.352 (925.260)	575.892 (948.438)	-745.892** (367.788)	-174.340 (252.948)	814.333 (535.575)
Age: 18-24	646.639 (656.886)	1,237.724* (673.342)	-192.726 (261.110)	416.656** (179.580)	91.847 (380.230)
Age: 25-30	128.096 (589.908)	636.365 (604.686)	-196.469 (234.486)	248.953 (161.269)	-59.916 (341.461)
Age: 41-50	47.339 (416.223)	237.133 (426.649)	15.568 (165.447)	-152.958 (113.787)	-639.606*** (240.925)
Age: 51 or above	912.642* (503.089)	1,065.059** (515.691)	-43.218 (199.976)	-104.207 (137.534)	-1,094.955*** (291.206)
Constant	477.218 (380.681)	1,183.239*** (390.217)	727.681*** (151.319)	394.947*** (104.071)	1,820.685*** (220.352)
Observations	1972	1972	1972	1972	1972
R-squared	0.04	0.02	0.02	0.16	0.04

+ Reference categories are Males, Whites, and Ages 31 – 40.

Covariates for missing gender, race, and age were included in the full models (Appendix B).

Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%

In Houston, unlike Jacksonville, a positive and statistically significant relationship was found between homeless program lengths of stay and mental health costs (Exhibit 4.19), as well as between homeless system costs and mental health costs (Appendix C.3). Among persons who received mental health treatment, on average each additional month spent in homeless programs was associated with an increase of \$136 in mental health costs. The Mental Health and Mental Retardation Authority of Harris County offers numerous mental health programs targeting people who are homeless, including mental health programs that work in conjunction with local law enforcement officials and hospitals to divert individuals who are homeless from jail and inpatient hospitals. The higher mental health costs associated with long periods of sheltered homelessness likely reflect this local system of care. Alternatively, higher costs could reflect that individuals with mental illness are more likely to stay longer in the homeless system because their mental illness affects their ability to secure and maintain permanent housing outside the homeless services system.

Exhibit 4.19. Regression Analysis of Mainstream Costs for First-Time Homeless Individuals in Houston

Outcome Variable	Mental Health Costs	Criminal Justice Costs
Homeless System Utilization		
Number of Homeless Program Stays	2.035	-23.043*
	(15.330)	(12.658)
Homeless Length of Stay (in months)	135.568***	-33.204
	(31.638)	(26.123)
Homeless Gap Days (in months)	207.498***	136.029***
	(28.694)	(23.693)
Demographics+		
Females	408.504*	-174.216
	(233.006)	(192.393)
African-Americans	-281.174	62.298
	(216.820)	(179.028)
Other Races	-671.700**	-813.770***
	(308.407)	(254.652)
Ages 18 – 24	-625.156	-388.749
	(414.834)	(342.528)
Ages 25 – 30	-28.563	-321.642
	(369.645)	(305.216)
Ages 41 – 50	-797.297***	-1,250.060***
	(268.755)	(221.911)
Age 51 and Above	-1,498.154***	-1,635.552***
	(334.779)	(276.428)
Another covariate was also included for mainstream system involvement.		
Constant	1,990.985***	2,520.263***
	(262.855)	(217.039)
Observations	4,404	4,404
R-squared	0.04	0.04

+ Reference categories are Males, Whites, and Ages 31 – 40.

Standard errors in parentheses *significant at 10%; **significant at 5%; ***significant at 1%

In addition, individuals in Houston who have gaps between homeless program stays have even higher mental health costs. For each additional 30 days of time spent between homeless stays, mental health costs increase by \$207. This correlation suggests that in addition to facing challenges remaining in permanent housing, individuals with mental illness may also have a difficult time staying in homelessness programs.

Like the Jacksonville results, criminal justice costs in Houston are associated with gaps between homelessness. For each additional 30 days spent between various homeless program stays, criminal

justice costs for individuals in Houston increase by \$136.²⁸ Data were not available for Medicaid, substance abuse services, or entitlement programs in Houston.

The regression models also included covariates for gender, age, and race (Exhibits 4.18 and 4.19). Controlling for homeless system use, single women are associated with much higher mainstream costs in most domains than men. In Jacksonville, first-time homeless women are associated with \$2,171 more in physical health costs, \$1,664 in mental health costs, and \$1,771 in food stamps and TANF than first-time homeless men in Jacksonville. Women are also associated with \$992 less in criminal justice costs. Similarly, first-time homeless women in Houston have higher mental health costs of \$409. The cost differences for criminal justice expenses are not statistically significant.

Older age is also associated with statistically significant cost differences. Individuals in Jacksonville and Houston over 40 are associated with lower criminal justice costs, \$640 to \$1,250 less for individuals between 41 and 50 years of age and \$1,095 to \$1,635 less for individuals over 50. In Jacksonville, individuals over 50 have \$913 *higher* physical health costs and \$1,065 *higher* mental health system costs. In Houston, older adults are associated with *lower* mental health costs, \$800 for individuals between 41 and 50 years of age and \$1,498 for individuals over 50.

Race is also associated with statistically significant cost differences (Exhibits 4.18 and 4.19). In Jacksonville, African-Americans are associated with \$560 more in physical health costs, \$281 more in food stamps and TANF, and \$380 more in criminal justice costs, but \$907 less in mental health treatment costs and \$378 less in substance abuse treatment costs. These results provide a mixed picture, since they suggest that African-Americans are better connected to income support programs and may have fewer behavioral health needs, but have greater involvement with criminal justice. From this analysis, we cannot tell when the costs occurred in relation to homelessness. In Houston, individuals of “other” races had significantly lower mental health and criminal justice costs, but the results for African-Americans are not statistically significant.

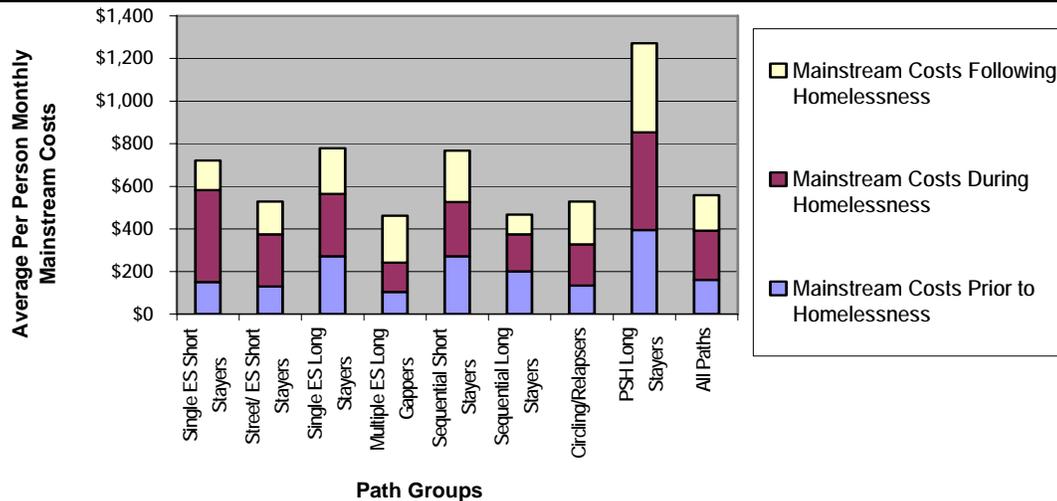
The results for cost differences associated with gender, age, and race are very interesting considering that women, African-Americans, and relatively older individuals are all associated with higher homeless system costs.

4.4.6 Mainstream Costs Associated with Different Path Groups of First-Time Homeless Individuals

The average per person mainstream system costs for each of Jacksonville’s path groups in the periods before, during, and following homelessness are shown in Exhibit 4.20. This exhibit illustrates the wide-range of mainstream costs for different subgroups of the study cohort defined by ways in which they use the homeless services system. Permanent Supportive Housing Long-Stayers incur the most mainstream costs when compared with other path groups. For this group, the period during homelessness refers almost entirely to the time individuals spent in permanent supportive housing programs that were part of the homeless system. Since eligibility for permanent supportive housing is contingent upon having a chronic disability, it is not surprising that this group has high mainstream costs across all three periods.

²⁸ The multivariate regression analysis for criminal justice may be affected by missing identifiers for the street only path group. The matching algorithm and process used for mental health records was more comprehensive.

Exhibit 4.20: Jacksonville Cohort's Average Per Person Monthly Mainstream Costs By Path Group and Period



We conducted multivariate analysis to show the extent to which mainstream costs for the total study period are greater for certain subgroups defined by the paths they take through the homeless services system. An extract of the regression models for each mainstream domain in Jacksonville is shown in Exhibit 4.21, and the complete model is provided in the Jacksonville case study Appendix B. Descriptions of the path groups were presented in Section 4.3.4.

Exhibit 4.21: Modeling Mainstream Costs for First-Time Homeless Individuals in Jacksonville by Path Groups

Mainstream System Costs	Medicaid Costs	Mental Health Tx Costs	Substance Abuse Tx Costs	Entitlement Costs	Criminal Justice Costs
Emergency Shelter Short Stayers	Omitted: reference category				
Emergency Shelter Long Stayers	1,629.965 (1,118.827)	-1,238.011 (1,158.049)	-12.359 (448.596)	2,326.988*** (306.924)	47.142 (656.299)
Emergency Shelter Long Gappers	-540.835 (576.914)	-163.468 (597.138)	349.426 (231.315)	-93.135 (158.263)	1,677.589*** (338.415)
Street/ES Short Stayers	-134.925 (400.498)	-2.881 (414.539)	312.461* (160.581)	-4.741 (109.867)	541.743** (234.931)
PSH Long Stayers	7,562.911*** (1,005.047)	-177.606 (1,040.280)	1,174.122*** (402.976)	439.888 (275.711)	839.736 (589.556)
Sequential Program Users (Short Stayers)	910.630 (577.251)	1,306.901** (597.487)	883.603*** (231.450)	-247.596 (158.355)	43.786 (338.613)
Sequential Program Users (Long Stayers)	-634.893 (1,233.235)	-716.680 (1,276.468)	1,345.077*** (494.468)	43.305 (338.309)	42.512 (723.410)
Circling Program Users	-342.969 (658.072)	-501.256 (681.141)	491.023* (263.855)	325.064* (180.526)	1,099.228*** (386.022)
Model also included covariates for Gender, Race, and Age					
Constant	476.466 (410.918)	978.383** (425.323)	587.542*** (164.758)	467.889*** (112.726)	1,682.568*** (241.042)
Observations	1972	1972	1972	1972	1972
R-squared	0.06	0.02	0.02	0.18	0.04

Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%

The model shows that those who go directly to permanent supportive housing and stay there for relatively long periods have on average Medicaid costs \$7,563 higher and substance abuse costs \$1,174 higher than short-stayers in emergency shelter, the reference category. Surprisingly, long stayers in permanent supportive housing do not have higher mental health costs than short stayers in emergency shelter. This may be because some of the permanent supportive housing programs target individuals with chronic addictions who may have fewer mental health treatment needs. Another possible explanation is that permanent supportive housing programs may be serving as caretakers for individuals with less severe mental health needs rather than a therapeutic model for those with acute needs. However, the model that predicts mental health costs has R-squared statistics of only .02, so patterns of homelessness and demographic characteristics may not be most relevant covariates for explaining results.

The two path groups who move in sequence from emergency shelter to transitional housing or permanent supportive housing and do not come back to emergency shelter have high substance abuse costs and (for one of the path groups) high mental health costs. Sequential Users (Short Stayers) were associated with over \$1,300 in additional mental health costs, and an additional \$884 in additional substance abuse costs on average, compared with Emergency Shelter Short Stayers. Sequential Users (Long Stayers) were associated with an additional \$1,345 in substance abuse costs, but did not have higher mental health costs. As we discussed earlier in this chapter, the Sequential Users spend a long time in transitional housing, in which program staff may play a role in facilitating access to intensive substance abuse treatment. It is not clear whether the higher costs for this path group reflect greater service needs of these individuals or whether they merely had greater access to services.

Three path groups had high criminal justice costs: those who had long gaps between emergency shelter stays; those who spent time on the streets; and those who circled back and forth between program types. This finding clearly links the criminal justice system to those individuals whose needs are not fully met by the homeless residential system. Individuals whose criminal justice costs are rooted in jail time served prior to homelessness may be more likely to follow one of these three paths. At the same time, those who have long gaps between stays are often incarcerated during these gaps.

A similar model, shown in Appendix C.3, predicts which of the path groups in Houston have particularly intensive use of mental health services and the criminal justice system. Four path groups are associated with higher mental health costs. Individuals with long gaps between stays had on average \$2,300 to \$3,000 more in mental health costs than individuals with brief stays in emergency shelter. These higher mental health costs may reflect recurring stays in in-patient treatment programs prior to and during homelessness. The Sequential Users with long stay in homeless programs, primarily in transitional housing, also have mental health treatment costs \$2,085 higher than brief users of emergency shelter. These costs may be related to inpatient treatment prior to homelessness or during, but may also be a reflection of service linkages with mental health programs established as a result of staying in certain types of homeless programs. Two of the groups with multiple homeless stays and long gaps between stays were associated with higher criminal justice costs than emergency shelter short-stayers. Emergency Shelter Long Gappers had \$1,179 in higher jail and arrest costs, and Circlers had \$1,943 more in criminal justice costs. Individuals who used transitional or permanent supportive housing only were also associated with \$791 more in criminal justice costs.

4.5. Homeless System and Mainstream Costs for First-Time Homeless Individuals During the Period of Homelessness

Exhibit 4.22 compares the costs per person for the homeless services system and selected mainstream systems in Jacksonville and Houston and shows that the homeless system costs were much higher. It is important to note that this study was not able to collect utilization and cost information for some high-cost mainstream domains, such as locally funded emergency room care or emergency medical transport. The ratio of homeless to mainstream costs to some degree reflects the relatively low levels of involvement with mainstream systems during homelessness for most in the cohort and the fact that the majority of costs are concentrated among a smaller percentage of the study cohort. This suggests that while there may be limited opportunities for cost offsets in mainstream systems for most of the first-time homeless cohort, there may be opportunities within the homeless system to allocate resources to support better outcomes for homeless individuals. There continue to be opportunities to identify cost-effective interventions targeting individuals with intensive or high-cost use of mainstream systems.

In Section 4.1, we discussed past research on patterns of homelessness and the growing body of research that has been completed on costs associated with homeless individuals who are severely mentally ill or individuals who are identified as frequent users of inpatient or high-cost mainstream systems. Past research on homeless individuals has recognized that costs can be assumed to be quite low for the majority of homeless individuals, but has not quantified them. This study shows that the

Exhibit 4.22: Homeless and Selected Mainstream System Costs per Person Incurred during Homelessness

	Jacksonville		Houston	
	Costs	% of Total	Costs	% of Total ^a
Homeless System	\$1,634	62%	\$2,257	80%
Selected Mainstream Systems	\$1,018	38%	\$547	20%

^aThis percentage is not very meaningful, since the Houston case study includes such limited mainstream domains.

overall Jacksonville study cohort incurred an average total cost of just over \$2,600 per person during homelessness (totaling homeless and mainstream systems costs shown on Exhibit 4.22), substantially lower than the annual estimates of \$40,500 per person from the NY/NY Cost Study (Culhane et al., 2002).²⁹ However, examining the average costs of the full cohort is not nearly as meaningful for policy purposes as focusing on costs associated with more specific subgroups that could be targeted with alternative interventions.

Exhibit 4.23 presents the costs of five of the eight path groups from the Jacksonville case study (our most comprehensive findings) to illustrate the range of costs that have been identified for different

²⁹ Note that these figures are provided for discussion purposes only. The two studies are not directly comparable because of the differences in the research objectives and designs, study populations, geographic locations, and timeframes for analysis.

homeless single adult populations in comparison with the NY/NY Cost Study.³⁰ This discussion assumes that local stakeholders have a mechanism to predict future patterns of homelessness as the basis for targeting various interventions—presumably the subject of future research.

Emergency Shelter Short Stayers represent more than half of the first-time homeless study cohort in Jacksonville. Individuals in this group have average stays of less than one month and could theoretically be targeted for prevention strategies. Thus, a major policy question is whether resources currently used to house these individuals in shelter could be allocated differently to fund a prevention approach. The exhibit shows that, because of their short stays in shelter, the group is associated with only \$686 per person in homeless system costs and incurs only \$452 in mainstream system costs per person while homeless. While prevention strategies might hope to decrease some of the mainstream costs such as criminal justice involvement (\$138), other mainstream use is desirable, such as receipt of food stamps/TANF (\$69) and Medicaid Managed Care (\$19). Therefore, to be cost-neutral, stakeholders in Jacksonville would need to limit a prevention intervention to an average per person cost of \$1,000 if cost offsets from both mainstream and homeless systems were used. Given the difficulty of reprogramming mainstream resources, only the \$686 under the control of the homeless system might be available.

Exhibit 4.23: Comparison of Costs During Homelessness Among Select Jacksonville Path Groups and Costs from the NY/NY Study Cohort Prior to Placement in Permanent Supportive Housing

	Jacksonville ES Short Stayers	Jacksonville ES Long Stayers	Jacksonville Circlers	Jacksonville PSH Long Stayers	NY/NY Cost Study SMI Cohort
Path Group Description	Less than one month spent in ES; 43% also had contact with street outreach teams	Continuous stay in ES averaging 10 months	Average 5 months (8 distinct stays) in homeless programs, returning to ES after TH or PSH; spread over 10 months	Average one year in homeless programs across 3 stays, primarily in PSH. Evidence of disability criteria for PSH.	4½ months in shelter over 2 yr period All psychiatrically disabled with severe mental illness
Homeless System	\$686	\$9,756	\$3,987	\$8,493	\$4,658
Medicaid (Primary Health, Mental Health, Substance Abuse)	\$126	\$829	\$282	\$3,716	\$14,208
Local Hospitals					\$6,229
State Mental Health Treatment	\$57	\$126	\$40	\$467	\$12,520
State Substance Abuse Treatment	\$62	\$164	\$92	\$786	-
Criminal Justice	\$138	\$57	\$1,400	\$561	\$1,012
Income Supports	\$69	\$1,777	\$243	\$667	
Veterans Affairs					\$1,822
Total Per Person	\$1,138	\$12,709	\$6,044	\$14,691	\$40,451

Total may not reflect the sum of the domains due to rounding.

³⁰ Emergency Shelter Short Stayers combines Jacksonville’s ES Short Stayers and Street/ES Short Stayers; therefore, five of the eight Jacksonville path groups are represented by the four groups discussed in this section.

Emergency Shelter Long Stayers represent a small percentage of the Jacksonville cohort, but they had almost year-long continuous stays in emergency shelter and were associated with substantial costs. More than one-third of these individuals received Medicaid-funded primary health care (average \$829 per person), so it is possible that medical conditions contributed to their long lengths of stay. If a locality wanted to target these individuals, they could flag individuals with stays longer than a specified length. Three-quarters of the costs associated with this group were incurred within the homeless system itself, an average of \$9,756 per person. These costs were equivalent to 15 months of rent subsidy at the FY2006 Fair Market Rent of \$643 per month (HUD, 2005). Mainstream costs were substantial, but mainly because 77 percent of the group received food stamps during homelessness with an average total benefit of \$1,551 per person. Future research would be required to know if an alternate housing intervention could achieve cost offsets through reductions of primary or behavioral healthcare expenses.

Circlers, 7 percent of the Jacksonville study cohort, spent almost 5 months in residential homeless programs spread over the course of more than 10 months. Individuals in this path group were characterized by a pattern of returning to emergency shelter at some point after an earlier stay in transitional or permanent housing. Because this group had frequent gaps when individuals were not staying in homeless programs, the homeless costs (almost \$4,000 per person) were not as high as some other groups. About one-third of this group received mental health care at some time during the study period, but a smaller portion accessed primary health care than in other groups. More than 40 percent were involved with criminal justice at an average cost of \$1,400 per person, more than two-thirds of all mainstream costs incurred by this group during homelessness. Arrests and jail sentences may have occurred between homeless stays, or may have caused the disruption in program usage resulting in the return to shelter. Criminal justice agencies may be interested in partnering to design an intervention to target this group.

Permanent Supportive Housing Long Stayers were associated with the highest costs per person, an average of almost \$15,000 per person for homeless and mainstream services. The individuals in this group spent an average of one year staying in residential homeless programs, primarily in permanent supportive housing. Thus, rather than identifying costs associated with homelessness, data for this path group essentially illustrates the homeless and mainstream costs that were incurred when the homeless system stably housed disabled individuals who experienced first-time homelessness. Most of the \$8,500 in homeless system costs per person in this group was incurred for permanent housing, so conceptually these costs are quite different from costs for the other path groups. These individuals each received an average of \$6,200 in mainstream services while in homeless programs, most for primary health care (\$3,452) and substance abuse treatment (\$950). This group also had a fairly high-level of criminal involvement (\$561 per person) during this period. It is somewhat surprising that the individuals in permanent supportive housing did not receive higher levels of mental health treatment, though several of these projects targeted individuals with chronic addictions, rather than persons with severe mental illness. These data would need to be parsed further to understand how homeless and mainstream costs varied when the individuals were in shelters or transitional housing as compared with permanent housing, but most of the mainstream costs were incurred while in permanent housing.

The final column of the Exhibit displays the costs incurred by the NY/NY Cost Study cohort in the two years prior to placement in supported housing. This group averaged close to five months in shelter during this period and incurred high levels of mainstream services during this timeframe. The differences in costs between the NY/NY cohort and the Jacksonville path groups reflect several

factors. The most significant is that all members of the NY/NY cohort were severely mentally ill and presumably had greater treatment needs and service utilization than any of the Jacksonville path groups. The figures also reflect significant differences in costs in different parts of the country, as well as state-to-state and city-to-city differences in service levels and access to services.³¹ Therefore, communities have varying opportunities to achieve cost offsets when employing alternative interventions. This comparison clearly illustrates the point made by Rosenheck (2000) that high-cost interventions must be targeted to individuals with high-cost service utilization in order to be cost-neutral. That is not to suggest that other populations should not be targeted with high-cost interventions for ethical, social and other reasons.

4.6. Policy Implications and Recommendations for Further Research

This chapter documents the patterns and costs associated with first-time homelessness for individuals, and perhaps most importantly, the wide range of costs incurred by individuals with different patterns of using homeless residential programs. For the majority, stays in homeless programs are a single brief occurrence, and costs are minimal. For a small percentage, stays are long, and costs are significant. High homeless system costs frequently reflect extended use of higher cost transitional housing. Average homeless system costs per person appear to overshadow average mainstream costs per person for most during homelessness, since a relatively small percentage of individuals interact with mainstream systems during homelessness. And those with extended periods of homelessness are not consistently associated with intensive or high-cost mainstream use. Further, while average monthly mainstream costs peak during homelessness, when graphed based on the month-by-month utilization, mainstream system costs actually increase dramatically immediately before homelessness and peak immediately after the individual enters the homeless residential system. Thus, while cost savings may be achievable *within the homeless system* for long-stayers, the data from these three sites do not suggest significant cost savings *within mainstream systems* can be achieved by ending homelessness for first-time long-stayers as a whole.

4.6.1 Opportunities for Cost Savings

From a policy perspective, this study affirms past research and emphasizes that communities should be cautious when extending per person averages to a broad group of homeless individuals. The greatest costs and the greatest potential for cost savings are found among the very small percentage of individuals who stay the longest in the homeless system or who have intensive involvement in high cost mainstream systems. Policymakers seeking cost-effective interventions for homelessness will need to appropriately target strategies to each group.

Communities can use this type of cost analysis to explore in much more detail how individuals use homeless residential programs, the associated costs, and the potential for cost offsets. But communities must recognize that cost offsets may not be possible for some of the largest groups of individuals who become homeless, and saving money is not the only reason to deliver housing and services differently. The majority of individuals who experienced first-time homelessness in this

³¹ For instance, in 2006, New York was ranked first with \$2,316 in per-capita Medicaid spending for 2006, whereas Florida was ranked 46th with \$706 per-capita spending (Public Policy Institute of New York State, n.d.).

study had very short stays with low associated homeless system costs. Nonetheless, communities could consider whether the average shelter cost per person for this subgroup could be reprogrammed (and potentially augmented) to support prevention and shelter diversion strategies.

Other policy considerations and cost saving possibilities are raised or affirmed by this research.

- Emergency shelter has low costs for short stayers, but is expensive and presumably an inappropriate intervention for longer stayers. Although the idea of prevention is appealing, the emergency shelters seem to provide an immediate, low-cost response to homelessness for the majority of individuals. It would be very difficult to fund a prevention response at such low cost, particularly since it may be challenging to identify up front which of the individuals' homelessness could be prevented with minimal assistance. Perhaps the emergency shelter system is an "adequate" response to an immediate housing crisis for most individuals, and a place in which individuals who are not able to quickly resolve their housing crisis can be more deliberately assisted or referred to more intensive interventions. For instance, emergency shelters could target case management or specialized assistance to individuals who have been in shelter for 30 days or more.
- Higher mainstream costs in some domains were associated with individuals with multiple episodes of homelessness (Long Gappers). Communities could target individuals who return to shelter for a second (or third) non-consecutive program stay. This group (and others) may also particularly benefit from intentional prevention-oriented discharge planning strategies and other strategies implemented in conjunction with criminal justice systems to reduce repeat incarceration.
- For some subgroups, total homeless system costs incurred per person exceed the cost of an annual direct housing subsidy. Communities may want to consider whether housing assistance would be a lower cost and potentially equally effective intervention for some of these groups.
- Transitional housing is generally one of the most expensive homeless program models. While this study does not look at long-term efficacy of this program model or its overall cost-effectiveness, communities may want to consider whether it is possible, and still consistent with program objectives, to shorten lengths of stay in transitional housing through more rapid out-placement, to target transitional housing more specifically to those who are less stable or more likely to interact inappropriately with mainstream systems and therefore need longer term housing support with intensive services, or to reduce the costs of the most expensive transitional housing programs.
- We surmise that one reason individual women cost more than individual men is that they may be more likely to be housed in programs that also serve families and therefore have a higher cost structure. Communities that are advancing a transitional housing solution may want to develop transitional housing for single women that can take advantage of a lower cost structure for individuals.
- Very few individuals in this study used permanent supportive housing, either immediately upon entering the homeless services system or after a stay in emergency shelter or transitional housing. We did not examine whether a larger percentage were eligible or appropriate for this model, but communities may want to assess whether capacity constraints in permanent

supportive housing may be contributing to episodic homeless behavior or longer stays in shelter or transitional housing for others.

- Any local system that attempts to change how individuals experience homelessness must presume that there are valid strategies to identify and triage people based on their predicted use of system resources. This study suggests that certain groups, such as single women over 40 years old, have higher costs than others; lower cost strategies may be able to be developed to house these subgroups more effectively. In this case, age and gender could be coupled with other basic screening criteria to triage potential high cost users to alternative interventions. More work is needed to understand both predictors and interventions that may be more effective for various subgroups.
- Some individual homeless programs used by first-time homeless individuals were extremely expensive, as shown in this chapter by the high costs of the homeless services system for particular groups of individuals even when lengths of stay are controlled for. (See Chapter 3 for more detail on program costs.) Communities should examine homeless program cost outliers for possible efficiency gains.

In identifying these ideas, we hope to increase understanding of how diverse the patterns of first-time homelessness are, as are presumably the needs of those who experience it, and the strategies and resources that are deployed to address it. These possibilities for cost-savings are offered to spark discussion about ways to identify opportunities to use existing resources to improve local homeless systems. However, to reiterate, this study did not examine cost-effectiveness and therefore, we do not mean to imply that lower cost assistance is better. This study measured only costs associated with homelessness. Although the methods we use may be useful in other circumstances to measure costs of alternative interventions, any effort to alter current programs or to create new interventions should be conducted with a comparable understanding of their relative effectiveness for different groups.

4.6.2 Methodological Lessons

An important methodological finding of the study is that analysts should be cautious using averages to calculate costs for a group of homeless individuals. Not all people incur the same level of costs, nor do they present an opportunity to achieve the same level of cost savings. If a community intends to target all people who are homeless, then applying an average to understand costs or cost savings is less of a concern, but a community planning a targeted intervention should recognize that most of the cost savings will be achieved for a small minority of homeless individuals and that they must use appropriate subgroup data to estimate the savings for the individuals they are targeting. For instance, if Jacksonville were to develop a prevention initiative for individuals who would otherwise spend less than a week in shelter, analysts in Jacksonville must assume that the homeless system cost offset is approximately \$600, not the average homeless cost of \$1,600 incurred by the complete Jacksonville study cohort.

Client-level data allowed us to: understand and graph the distribution of costs to the homeless system and some select mainstream systems; conduct multivariate analysis to understand whether costs were associated with certain demographic characteristics or homeless patterns that may be able to be used by communities to predict costs or target interventions; and avoid misusing averages for service utilization, costs, and misleading average costs calculated for broad time periods. Future studies should attempt to collect and analyze client-level data whenever possible.

4.6.3 Recommendations for Future Research

In numerous places throughout this chapter, we have cited limitations of our findings. Future research could examine several areas to further our understanding of costs of homelessness for first-time homeless individuals. One of the most important findings on mainstream data was the pattern of costs peaking around the first day of homelessness. These patterns need more analysis to understand how costs taper off after homelessness, teasing out the associations with subsequent episodes of homelessness. This study also defined the period during homelessness broadly as the period between the first day in a homeless program and the last, inclusive of gaps between stays. More analysis could be conducted on mainstream system costs to understand the frequency and types of service use relative to the times when individuals were staying in homeless programs and gaps between stays, and whether use varied by the type of homeless program used.

Additional data could also be gathered on other mainstream domains (or all of the mainstream domains for the Des Moines case study) to build a more comprehensive understanding of costs. To address methodological limitations, client-level service utilization data should be collected, if at all possible, for all (new and existing) mainstream domains to enable communities to more closely examine trends relative to periods before and immediately following the start of homelessness. With more complete client-level data, additional multivariate regression analysis could also be conducted to further understand the factors that are associated with higher costs for various path groups.

Finally, these methodologies could be employed as part of broader research examining the cost-effectiveness of various interventions for different subgroups—arguably, one of the most important policy question facing communities today.

5. First-time Homelessness for Families and its Associated Costs

This chapter examines the patterns of sheltered homelessness for families and associated costs to the homeless services and mainstream systems. The most important themes about costs associated with first-time homelessness for families that emerged are that the study:

- Confirms earlier research that long stays in the homeless services system are very expensive and makes explicit that most families with long periods of sheltered homelessness use transitional housing, either exclusively or in combination with emergency shelter.
- Shows that housing vouchers are less expensive than transitional housing per day or per month. Whether the cost of transitional housing is ultimately lower than the cost of a permanent voucher--because transitional housing is temporary—is an open question.
- Identifies a group of highly troubled families that cycle in and out of the homeless services system and have very unstable household composition, often including men for part of the total period of homelessness. Unlike heavy users of transitional housing, the outcomes of the use of the homeless services system by these highly unstable families are unambiguously negative in that they are never stably housed. An alternative treatment model for these families that focuses on their family instability rather than their housing instability may be needed.
- Shows that African-American families, shown by other research to be homeless at higher rates than other poor families, are associated with lower average costs per family in comparison to white families.
- Shows that, among the domains for which we were able to collect data, the highest rates of utilization and costs for homeless families are the medical costs reimbursed by Medicaid.
- Concludes that short-term costs to the criminal justice system, while troubling, do not appear high enough to suggest opportunities for offsets. We were not able to collect cost data for the use of the child welfare and foster care systems by homeless families in any of the study communities. This is an area in which additional research might find opportunities for cost offsets.
- Suggests—on the basis of the limited information collected for this study—that local policies designed to prevent families from becoming homeless and divert those on the brink of homelessness can succeed.

5.1. Existing Research

The 2007 Annual Homeless Assessment Report (AHAR) describes some salient characteristics of sheltered homeless families across the nation (HUD, 2008). Most adults who become homeless with their children are women (82 percent), a higher percentage than the two-thirds of adults in all poor families who are women. More than half of sheltered homeless families are African American. Homeless families are particularly likely to include children younger than age six.

Like the AHAR estimates based on HMIS data from a nationally representative sample of communities, most previous research on homeless families describes their characteristics. The literature has focused on trying to predict which poor families are at greatest risk of becoming homeless, given that few families become homeless even among the very poor. Rog, Holupka and Patton (2007) found that only 8.7 percent of a study sample of “fragile families”—recent mothers with incomes below 50 percent of the poverty level—became homeless during a three-year follow up period. Various studies have shown that mental health, substance abuse, and domestic violence are factors that put parents at risk of becoming homeless, but researchers have not been able to predict which families with these risk factors will become homeless (Rog and Buckner, 2007; Shinn, Rog, and Culhane, 2005).

5.1.1 Patterns and Costs of Family Homelessness

Based on a literature review, an expert panel, and some reanalysis of data, Rog, Holupka and Patton (2007) developed a framework for a typology of homeless families, but not a typology itself. They concluded that two typologies of homeless families are needed: a “prevention” typology that would help communities focus their resources on families at highest risk of becoming homeless, and a “resource allocation” typology that would help communities assist families who become homeless in cost-effective ways.

Culhane, Metraux, Min Park, Schretzman and Valente (2007) began to develop a resource allocation typology, based on cluster analysis of administrative data, conducted separately for New York City, Philadelphia, Columbus OH, and Massachusetts. Generalizing across the results of cluster analysis based on number of shelter stays and cumulative days of shelter use over a three year period in New York and Philadelphia and a two-year period in Columbus and Massachusetts, they identify three groups of first-time homeless families:

- Temporary: Families who use shelters or transitional housing for a single, relatively short, period of time and do not return to the residential system for homeless people after leaving it;
- Episodic: Families who cycle in and out of programs for homeless people, with relatively short stays for each homeless episode; and
- Long-Stayer: Families who stay for long periods of time in shelters, transitional housing, or both.

Culhane and his co-authors (2007) find that “Long-Stayer” families are by far the most expensive for the homeless services system. The average lengths of stay for this group ranged from six months (187 days) in Columbus to more than a year (444 days) in New York City, costing \$21, 692 per family in Columbus, \$30,812 in Philadelphia, \$48,440 in Massachusetts, and \$55,200 in New York (Exhibit 5.1). They question whether this is a cost-effective use of resources, given that these “Long Stayers,” who make up about a fifth of all sheltered homeless families, are not more intensive users of targeted social services than other groups of homeless families. They base this assessment on the rates at which families use such social services as mental health and substance abuse treatment and the foster care system.

Exhibit 5.1: Average Cost per Family to the Homeless Services System, based on Lengths of Stay and Shelter Reimbursement Rates for Each Community

	Columbus, OH	Philadelphia	Massachusetts	New York City
Temporary	\$3,828	\$4,900	\$11,550	\$13,900
Episodic	\$17,168	\$19,043	\$21,450	\$38,500
Long Stayer	\$21,692	\$30,812	\$48,440	\$55,200

Source: Culhane, Metraux, Park, Schretzman, and Valente, 2007.

Culhane et al. (2007) match families in their study sample to selected mainstream systems for which they were able to obtain data. However, they do not report the costs of mainstream system use or suggest whether these costs could be reduced by preventing or ending homelessness for particular families. Such analysis of cost offsets has been confined to the individual homeless population and is discussed in Chapter 4.

As far as we know, this is the only previous analysis of the costs of homelessness for families. Other studies have been program evaluations that have reported on the outcomes of interventions for homeless families, but not systematically on their costs.¹

5.1.2 This Study and Previous Research on Costs of Family Homelessness

This study of family homelessness in four additional communities—Kalamazoo, MI, Houston, TX, Upstate South Carolina, and Washington, D.C.—builds on and differs from Culhane et al. (2007) in the following ways:

- Like Culhane et al., we use cluster analysis, conducted separately for each of our four communities, to identify groups of first-time homeless families who follow different patterns or “paths” of use of the homeless services system. However, we use additional dimensions—type of program used, sequences of program use, and the lengths of “gaps” during which families are not in a residential program for homeless people—to create these clusters.
- Like Culhane et al., we use data from selected mainstream systems to which we were able to gain access to interpret the relative neediness of families and also to infer what caused them to become homeless.
- Instead of standard reimbursement rates for public funding of residential programs for homeless people, we use actual costs of programs collected from program budgets. This enables us to explore the influence of different types of programs on homeless costs.
- For three of the four communities, we are able to report data on the costs of the use of mainstream systems by homeless families and to make some inferences about potential cost savings and offsets.

¹ For a summary of this literature, see Locke, Khadduri, and O’Hara, 2007.

5.2. Characteristics of First-Time Homeless Families

We studied first-time homelessness among families in Houston, Washington DC, Kalamazoo, and Upstate South Carolina.² Across the four sites, we identified 1,374 families as first-time homeless between July 1, 2004 and June 30, 2005.³ Although Houston is by far the largest community in the study in terms of general population, only 35 percent of the study population is in Houston and Washington DC had almost as many first-time homeless families as Houston (Exhibit 5.2).

The characteristics of the families in the study cohort in each site are shown in Exhibit 5.2. At all sites, most were single-parent families, and most adults were female. However, all sites included some adult men. The percentages of family members identified as black or African American reflect differences among the four communities. At the same time, as is the case for the AHAR national estimate, homeless families at these sites were disproportionately African American, compared with the African American percentage of the poverty population in the same communities. Nevertheless, all sites except for DC have many white families. Because of limitations of the HMIS data for these four communities, we were not able to determine the percentage of families who identified themselves as Hispanic or Latino. The AHAR estimate is that, nationally, 22 percent of homeless families identify themselves as Hispanic (all races), considerably lower than the percentage of all poor families who are Hispanic (HUD 2008). In each of the communities and especially Houston, the percentage of first-time homeless families who are minorities, including families identifying themselves as Hispanic, doubtless is somewhat higher than the percentage who are African American.

Exhibit 5.2: Characteristics of the Study Cohort of Families Who Became Homeless between July 1, 2004 and June 30, 2005

	Number of families	Adults who are male	African American	Average Age of Adults	Average Family Size
Houston	477	13%	61%	32	3.2
DC	410	17%	93%	32	3.5
Kalamazoo	342	15%	61%	30	3.2
Upstate SC	145	11%	53%	31	3.0

The age of adults and average family size for the study cohorts in the four communities are very similar to those characteristics for homeless families nationally, as estimated by the AHAR (HUD 2008). Nationally, adult men are somewhat more common among adults in homeless families (18 percent), compared to the first-time homeless study cohorts in the study communities except for Washington, DC.

² A family was defined as a group of people who were served together at any time during the study period and who, at any time during the study period, included at least one adult (18 or older) and one child (17 or younger) when served by a program for homeless people. As a result, members of homeless families sometimes were found in programs serving homeless individuals at the study sites. “Stays” in individual programs were considered part of the overall period of homelessness, and their costs were included in the costs of serving homeless families.

³ In Kalamazoo, we identified families for the study cohort based on first entry into the homeless system between January 1, 2005 and December 31, 2005.

We followed all members of each family in the study cohort for 18 months after the family (or one of its members) first appeared in the homeless services system. For DC, we were able to follow the study cohort for 30 months following the beginning of homelessness, and we decided to take advantage of this longer observation period because we found few families in the study cohort in transitional housing or permanent supportive housing when we followed them just for the first 18 months after their first entry into the homeless residential services system for homeless people.

When a family had more than one “stay” in a homeless program during the observation period, we often found that the composition of the household changed over the family’s total period of homelessness. Change took a variety of forms: different adults appeared together with children; different children appeared together with adults; adults appeared without children during some program stays and with children in others; two adults were present at some times and not at others. Exhibit 5.3 shows the percentage of families with more than one program stay in each of the sites and also the extent of change in household composition.

Exhibit 5.3: Changes in Household Composition among Homeless Families			
	Families with change in composition (entire study cohort)	Families with more than one program stay	Families changing composition among those with more than one program stay
Houston	25%	28%	65%
Washington, DC	34%	42%	76%
Kalamazoo	13%	32%	35%
Upstate SC	17%	35%	43%

At every site, at least one quarter of the families had more than one program stay, and a substantial fraction of those changed household composition when comparing household membership at the start of one program stay to the next. In the District of Columbia, which has the highest rates of composition change, more than a third of the study families changed in composition between stays during their period of sheltered homelessness.

Multivariate analysis presented later in this chapter will show that, after controlling for many other potential cost drivers including total days spent in homeless programs, families that changed composition had substantially higher costs to the homeless services system than those that did not.

5.3. Patterns of Family Homelessness and Associated Homeless System Costs

5.3.1 Homeless System Utilization

Central to costs to the homeless services system is how the system is used and, in particular, how many days a family spends in residential programs for homeless people. As shown in Exhibit 5.4, we found that the average total time that families spent in homeless programs during their period of homelessness varied dramatically across the four communities in the study, from just over 3 months in Kalamazoo to more than 9 months in DC.

The exhibit does not reflect lengths of stay for families in DC who used only a program--Community Care Grants—that places families directly from a central intake system into permanent housing and provides them with case management and short-term rental assistance. The “stays” reported to the HMIS for Community Care Grants reflect long periods of program enrollment during which families may receive case management provided by the homeless system but are not in the residential system for homeless families. Such lengths of stay are not comparable to lengths of stay within emergency shelter, transitional housing, or permanent supportive housing. The observation period in DC was longer—30 months rather than 18 months. The figures in parentheses on Exhibit 5.4 show lengths of stay and other patterns for the DC families for the first 18 months after they became homeless and show that DC still has the longest lengths of stay of any of the four communities.

The communities with relatively shorter lengths of stay, Kalamazoo and Houston, had a more skewed distribution, as shown by the difference between the average days spent in homeless programs and the medians and lowest quartiles (Exhibit 5.4). In Houston, half the study sample spent fewer than two months in homeless residential programs, and a quarter of the families were sheltered for 15 days or less. In Kalamazoo, half the study sample was in a program for a month or less, and a quarter of the families stayed 5 or fewer days. In DC, by contrast, the quarter of the sample with the briefest periods of sheltered homelessness still was in the system for more than a month.

Long periods spent by families in residential programs for homeless people may reflect housing market characteristics—for example a tight and expensive housing market and long waiting lists for assisted housing in Washington, DC—but may also reflect the way the homeless services system is organized and the relative attractiveness of the emergency and transitional housing facilities available in the community. Other factors that may affect long stays in DC include a central intake and screening process that may divert some families who otherwise would be short-stayers. In addition, DC had both congregate emergency shelters and “second stage” emergency shelters that provided private apartments without the time limits imposed by federal law on many transitional housing programs. Kalamazoo and Houston’s systems may be structured to move families out faster.

Exhibit 5.4: Use of the Homeless System by the Study Cohorts of First-Time Homeless Families during an 18-Month Period^a

	Average days in homeless programs	Median days in homeless programs	25th percentile days in homeless programs	Average number of program stays	Average “Gap Days” between stays ^b
Houston	114	50	15	1.4	29
DC	289 (223)	168 (129)	46 (38)	2.6 (2.1)	92 (35)
Kalamazoo	94	31	5	1.5	61
Upstate SC	186	103	27	1.4	25

^aFor DC, the figures outside the parentheses are for the full 30-month observation period. The figures inside the parentheses show utilization patterns by the same families for the first 18 months following their entry into the homeless services system.

^bIncludes the total of all days during entire period of homelessness when no family members were in residential programs for homeless people. If a family had only one program stay or consecutive stays, the gap would be 0 days.

Families in the homeless services system experienced between 25 and 92 “gap days” on average—that is, days during the family’s entire period of homelessness when no family members were in a residential program for homeless people. We cannot tell whether families were living in their own housing units or unstably housed with family or friends during these periods. It is unlikely that all family members were homeless on the street (DC, for example reports to HUD that there are no families with children among its street homeless population) or that all members of the family were incarcerated or in hospitals or other inpatient programs.⁴

Multivariate analysis shows that, even after controlling for other factors that may influence lengths of stay, such as the type of program used (emergency shelter, transitional housing, or a combination of the two) and a large number of family demographic characteristics, the community in which a family was homeless had a powerful effect on its length of stay. Exhibit 5.5 reports the results of the multivariate analysis. When multiplied by 100, the coefficients for the covariates can be interpreted as percentage differences from the reference category, since the outcome variable is in logarithm scale. Compared with Kalamazoo (the reference category), DC families were sheltered 91 percent longer, Upstate South Carolina families 71 percent longer, and Houston families 45 percent longer.

Not unexpectedly, the most powerful factor for determining families’ lengths of stay in the homeless services system was the type of program they used. (Again, this analysis does not include families who used only the Community Care Grants program in DC, for which lengths of stay reflect a period

Exhibit 5.5: Regression Analysis of the Length of Stay for First-Time Homeless Families

Total length of stay (log scale)	
Site	
Families in DC ^a	0.913*** (0.115)
Families in South Carolina	0.714*** (0.135)
Families in Houston	0.449*** (0.098)
Household Characteristics	
Total number of adults in household	-0.045 (0.183)
Total number of children in household	0.077** (0.032)
Any change in household composition during the study period	0.443*** (0.104)
Program Types Used	
Transitional Housing-only program type	2.436*** (0.100)
Emergency Shelter and Transitional Housing-only program type	1.988*** (0.137)
Other program type	1.921*** (0.164)
Demographics	
Male adult-only household type	-0.127 (0.271)
Female adult-only household type	-0.361* (0.210)
African American household head	-0.132 (0.097)
Household head of other race	-0.182 (0.191)
Household head ages 18-24	-0.269** (0.113)
Household head ages 25-30	-0.057 (0.105)
Household head ages 41-50	0.145 (0.123)
Household head ages 51 or above	0.538* (0.281)
Household with youngest child born after study entry	0.224 (0.238)
Household youngest child ages 6-12	0.103 (0.101)
Household youngest child ages 13-17	0.176 (0.162)
Household head race missing	-0.312 (0.245)
Household head age missing	-0.522 (0.634)
Youngest child age missing	-0.183 (0.299)
Constant	2.812*** (0.407)
Observations	1285
R-squared	0.48

Reference categories are: clients in Kalamazoo, Emergency Shelter-only program type, mixed-adult household type, white household head, household head ages 31-40, household youngest child ages 0-5

^a *Excluded CCG/SAFAH-only families in DC*

Standard errors in parentheses.

significant at 10%; **significant at 5%; *significant at 1%*

⁴ Some of these “gaps” may represent incomplete HMIS data. Not every provider in these communities contributes data to the HMIS.

of case management rather than shelter within the homeless services system.) Controlling for other factors, including the community in which the family was served, those using only transitional housing spent 3.4⁵ times as many days in the homeless services system, and those using both emergency shelter and transitional housing spent approximately three times as many days as those who were only in emergency shelters. This model and others for which results are reported in this chapter were quite successful in explaining patterns and costs of family homelessness, as demonstrated by their large R-squared statistics.

Among the demographic characteristics tested, having more children had a small but statistically significant positive effect on length of stay, and changing household composition during the period of homelessness led to a 44 percent longer length of stay, after controlling for study site and type of program used. Race was not found to have a statistically significant effect on lengths of stay among study cohort families. This is an interesting finding, as the 2007 AHAR found that long-stayers in emergency shelter (among all families, not just first-time homeless families) were disproportionately African American (HUD, 2008).

Additional multivariate analysis predicting lengths of stay for first-time homeless families can be found in Appendix D.2.5.

Even controlling for length of stay, the program type a family uses is a powerful determinant of costs to the homeless services. Exhibit 5.6 shows the number of families in the study cohort using each type of residential program for homeless people across the four study sites. In every community, more families used emergency shelter than transitional housing. The numbers of families shown in the exhibit to have used each type of program sum to more families than the study cohort because some families used both emergency shelter and transitional housing or some other combination of programs

As shown in Chapter 3, emergency shelter and transitional programs have roughly equivalent daily costs when congregate shelters are compared with facility-based transitional models and apartment-based shelters are compared with scattered-site transitional models (See Exhibit 3.6). However, the costs of particular programs within each type of emergency shelter and transitional housing varied widely at each site. In addition, the first-time homeless families in our study cohort sometimes used particular programs that were either more expensive or less expensive than the typical emergency or transitional program serving families in that community. For example, in Houston the study cohort used extensively the most expensive transitional program, more costly in part because it offers many on-site services. In DC, use of the least expensive emergency shelter program by the study cohort was relatively rare. Whereas in Kalamazoo, the study cohort tended to use a particularly inexpensive transitional housing program;⁶ in Upstate South Carolina, first-time homeless families often used a relatively expensive emergency shelter program with a high ratio of staff to families served.⁷

⁵ The coefficient of 2.4 indicates that these families spent 2.4 additional days for each reference day, or 3.4 times the reference category.

⁶ One of the property-based transitional housing programs in Kalamazoo has very low housing operating costs, moderate service costs, and very low administrative overhead. The property also has very low market value, and adding an estimate for capital costs would have increased the daily cost by only \$1.

⁷ The program is heavily staffed by volunteers, and we included an estimate of the value of their time in the program cost.

Exhibit 5.6: Numbers of First-Time Homeless Families using Basic Types of Residential Programs for Homeless People by the Study Cohorts of First-Time Homeless Families

	Houston	DC	Kalamazoo	Upstate SC
Emergency shelter	400	317	271	109
Transitional housing	131	107	91	63
Permanent supportive housing	16	26	11	0
Other program types ^a	6	119	n/a	1

^aOther types include outreach (Houston) and the Community Care Grants program (DC). We have not included families who used only these programs in the multivariate analysis of the determinants of the use of program types or in the multivariate analysis of the determinants of total program costs per family. Among other reasons, the meaning of a “day” is ambiguous for these programs

As shown in the exhibit, few first-time homeless families in any community used permanent supportive housing (PSH). Permanent supportive housing is available only to families with a disabled adult. However, an examination of overall usage of permanent supportive housing during the study period also suggests a capacity constraint. Most PSH units available for families were already occupied by families who had become homeless before the start of our study period.

We conducted multivariate analysis (Multinomial Logit model) to determine which types of families are most likely to use which types of residential program for homeless people. In this analysis, families who used Permanent Supportive Housing were grouped with the “other” category. Families that used only the Community Care Grants program in DC were not included in the model, so across the four study communities the “other” category usually means permanent supportive housing, either alone or in combination with emergency shelter or transitional housing. The results are reported in Exhibit 5.7. The regression coefficients for the model are expressed in odds ratio format, with values greater than one showing that a particular type of household is more likely to use a program type than the reference group. The coefficients for the community in which a family is homeless show that families in Upstate South Carolina are more likely to use transitional housing in combination with emergency shelter than families in other communities, which may reflect a stronger pattern of referrals from emergency shelter to transitional housing in that community compared with others. Families in DC are relatively more likely than those in other communities to use an “other” program type, which reflects the relatively greater availability of permanent supportive housing units for families in that community.

The model shows that families with only adult women are not more likely to use transitional housing (alone or in combination with emergency shelter) than the small number of families in the study sample that have only adult men or that have both men and women. The odds ratio for families with only adult women is greater than one, but the result is not statistically significant. The only demographic characteristic that helps explain which families use transitional housing, is whether the family has a child born during the family’s period of homelessness. Such families are eight times as likely as those without a child born homeless to use both emergency shelter and transitional housing, suggesting that these vulnerable families often get referred from emergency shelter to transitional housing and pass whatever screening criteria transitional programs may use.

Finally, the model shows that African American families and families with a younger head of household (18 to 24 years) are only about a quarter as likely to use the “other” program type (basically permanent supportive housing) as white families or relatively older families. This suggests that young families and African American families who become homeless for the first time are relatively less likely than other first-time homeless families to have a disabling condition that made them vulnerable to becoming homeless. Having an adult household member with a disability condition is a requirement for receiving permanent supportive housing.

Exhibit 5.7: Regression Analysis of Program Types used by First-Time Homeless Families in Kalamazoo, DC, South Carolina, and Houston

Program type Category (ES only; TH only; ES and TH only; Other)	Multinomial Logit Model					
	Base category = Emergency Shelter Only					
	Transitional Housing Only		Emergency Shelter and Transitional Housing Only		Other	
Clients in DC ^d	0.852	(0.201)	1.346	(0.414)	9.246***	(3.822)
Clients in South Carolina	1.622	(0.404)	3.433***	(1.080)	0.224	(0.237)
Clients in Houston	0.990	(0.186)	0.984	(0.283)	1.433	(0.562)
Total number of adults in household	1.102	(0.445)	1.220	(0.603)	2.156	(0.849)
Total number of children in household	0.972	(0.064)	0.890	(0.080)	1.127	(0.096)
Male adult-only household type	0.965	(0.579)	0.899	(0.643)	1.732	(1.190)
Female adult-only household type	1.512	(0.705)	0.925	(0.509)	1.369	(0.688)
African American household head	0.934	(0.173)	1.155	(0.302)	0.286***	(0.101)
Household head of other race	0.713	(0.268)	0.164	(0.171)	0.000	(0.000)
Household head ages 18-24	0.747	(0.168)	1.009	(0.316)	0.265**	(0.118)
Household head ages 25-30	0.961	(0.199)	1.370	(0.395)	0.925	(0.290)
Household head ages 41-50	1.034	(0.261)	1.829	(0.585)	1.319	(0.424)
Household head ages 51 or above	0.780	(0.465)	1.391	(0.948)	0.553	(0.451)
Household with youngest child born after study entry	1.376	(0.745)	7.974***	(3.403)	1.124	(0.703)
Household youngest child ages 6-12	0.763	(0.158)	1.013	(0.274)	1.016	(0.303)
Household youngest child ages 13-17	1.164	(0.365)	1.035	(0.440)	1.454	(0.640)
Household head race missing	0.432	(0.247)	0.290	(0.306)	0.198	(0.215)
Household head age missing	0.575	(0.757)	0.000	(0.000)	0.000	(0.000)
Youngest child age missing	3.324*	(1.685)	0.912	(0.987)	3.284	(2.813)
Constant	0.222	(0.197)	0.086*	(0.094)	0.029***	(0.028)
Observations	1285					
Log likelihood	-1109.4261					

Reference categories are: clients in Kalamazoo, mixed-adult household type, white household head, household head ages 31-40, household youngest child ages 0-5. Coefficients for households with missing values are included in the full model in Appendix Sections D.2.3 and D.2.4.

Coefficients in relative risk ratio format

Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%

^d Excluded CCG/SAFAH-only families in DC

Additional multivariate analysis predicting the type of program used by first-time homeless families can be found in Appendix Sections D.2.3 and D.2.4.

5.3.2 Costs to Homeless System of First-Time Family Homelessness

The cost for serving each first-time homeless family is the sum of the costs of each program stay by one or more family members. The cost of each stay is the daily cost of the particular program used by the family times the number of days in the stay. The average cost to the homeless services system for each family in the study cohort ranges from only \$3,184 in Kalamazoo, to \$9,663 in Upstate South Carolina, to \$11,627 in Houston, to \$20,031 in Washington DC, as shown in Exhibit 5.8. The cost per family in DC drops to \$16,205 if we consider only costs for program stays that occurred during the first 18 months after a family enters the residential system, but is still much higher than any of the other study communities.

Exhibit 5.8: Average Homeless System Cost per Family				
	Kalamazoo	Upstate South Carolina	Houston	Washington, DC^a
Average Cost per Family	\$3,184	\$9,663	\$11,627	\$20,031

^aThe DC cost per family does not include families who used only the Community Care Grants program. Including such families would drop the average cost per family in DC to \$17,962.

With the exception of DC, these costs are substantially lower than the average costs identified by Culhane et al. in their study of homelessness in four other communities.⁸ However, like patterns of utilization, the distribution of costs for each family in our study cohort is quite skewed, more so in some communities than in others. In Upstate South Carolina, the highest-cost 10 percent of the study cohort accounts for 32 percent of the total cost to the system, while in Houston the 10 percent highest-cost group accounts for 57 percent of the total system cost. In every study site, the lowest-cost half of the families accounts for less than one-seventh of the total cost incurred by the community for serving first-time homeless families, although this ranges from 13 percent in Upstate South Carolina to 5 percent in Houston.

The multivariate analysis of homeless costs includes covariates for sites, length of stay, program types used and other variables that reflect program use patterns, including number of stays, and number of “gap days.” We also included whether the family changed composition during the period of homelessness, and the following basic family demographic characteristics: age of adults, age of children, number of adults, number of children, gender of head of household and race of head of household. Exhibit 5.9 presents the results of this analysis. Since the outcome variable is in logarithm scale, the coefficients for the covariates can be interpreted as percentage differences from the reference category when multiplied by 100.

Appendixes D.2.1 and D.2.2 show how we arrived at this final model specification, using two different model construction approaches. Approach 1 starts with the basic building block of costs per family, first adding length of stay (Model 1) to dummy variables controlling for site differences.

⁸ Culhane et al. (2007) found average costs per family to be \$24,000 in New York City over three years and \$19,690 in Massachusetts over two years.

Model 2 adds program type to site dummy variables and length of stay. Models 3 and 4 add program use, number of stays, number of gap days between stays, and whether the family changed composition between homeless stays. The final models (5 and 6) add basic family demographic characteristics. See Appendix D.2.1 for detailed results for all 6 models in Approach 1.

Exhibit 5.9: Regression Analysis of Total Homeless Costs			
	Total homeless costs (log scale)	(cont.)	Total homeless costs (log scale)
Site		Demographics	
Washington, DC ^a	0.836*** (0.103)	African American household head	-0.290*** (0.084)
Upstate South Carolina	0.693*** (0.119)	Household head of other race	-0.042 (0.166)
Houston, TX	0.862*** (0.086)	Household head ages 18-24	-0.038 (0.099)
Homeless System Utilization and Program Types			
Length of stay (in days) divided by 30	0.219*** (0.008)	Household head ages 25-30	0.020 (0.091)
Transitional Housing-only program type	0.475*** (0.111)	Household head ages 41-50	0.086 (0.107)
Emergency Shelter and Transitional Housing-only program type	0.437*** (0.133)	Household head ages 51 or above	0.156 (0.245)
Other program type	-0.427*** (0.158)	Household with youngest child born after study entry	-0.465** (0.209)
Total number of stays	0.031 (0.024)	Household youngest child ages 6-12	0.205*** (0.088)
Total gaps between stays (in days), divided by 30	0.028*** (0.009)	Household youngest child ages 13-17	0.195 (0.141)
Household Composition			
Any change in household composition during the study period	0.350*** (0.099)	Household head race missing	-0.191 (0.213)
Total number of adults in household	-0.024 (0.160)	Household head age missing	-0.802 (0.551)
Total number of children in household	0.055** (0.028)	Youngest child age missing	-0.061 (0.260)
Male adult-only household type	-0.230 (0.236)	Constant	6.283*** (0.355)
Female adult-only household type	-0.245 (0.183)	Observations	1285
		R-squared	0.64

Reference categories are: Kalamazoo, MI, Emergency Shelter-only program type, mixed-adult household type, white household head, household head ages 31 - 40, household youngest child ages 0-5.

Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%

^aExcluded CCG/SAFAH-only families in DC

Approach 2 (Appendix D.2.2) starts with site dummies and basic family demographics (Model 1) and then adds program type (Model 3), length of stay (Model 4), and then numbers of stays and gap days (Model 5). Models 2 and 6 also add the variable that reflects whether the household changed composition. See Appendix D.2.2 for detailed results for all 6 models in Approach 2. These alternative model specifications enable us to grasp the interactions among the variables in the full model.

The analysis shows that DC, Upstate South Carolina, and Houston all have costs per family 70-90 percent higher than Kalamazoo (the reference category). The lower cost per family in Kalamazoo reflects the use by first-time homeless families of particular emergency shelter and transitional housing programs that have low costs. For example, the average daily cost of the transitional housing programs used by the study cohort in Kalamazoo is only \$22, much lower than the daily cost of transitional housing used by the study cohorts in the other three communities. Kalamazoo has several transitional housing programs, with a wide range of daily costs per unit, as described in Chapter 3.

The differences in total cost per family among the other three communities are not very large when controlling for type of program used and patterns of use such as lengths of stay. Coefficients range from .693 to .862 and show that the study cohort in Houston used slightly more expensive programs within particular program types compared with the study cohorts in DC and Upstate South Carolina. Houston has a transitional housing program with very high operating and services costs, totaling \$177 per day.

Overall, the regression results show that each additional 30 days spent in residential homeless programs compared to the mean length of stay of 144 days adds about 22 percent to the cross-site average total family cost to the homeless services system of \$10,311. The effect of long lengths of stay in DC and Upstate South Carolina compound the already high costs in these communities. A model that does not control either for length of stay or for program type (Approach 2, Model 1) shows that first-time homeless families in DC and Upstate South Carolina cost the homeless services system more than twice as much as families in Kalamazoo. The coefficients are 1.630 for DC and 1.442 for Upstate South Carolina. Families in Houston cost twice as much as families in Kalamazoo. (The coefficient is 1.016).

Families who used emergency shelter together with transitional housing and no other programs (8 percent of the study cohort across the three sites) cost 44 percent more than families that use just emergency shelter, whereas families that use just transitional housing (13 percent of the study cohort) cost 48 percent more than families that use just emergency shelter. Those who used “other” combinations of programs beyond emergency shelter and transitional housing incurred 43 percent lower costs than those who used only emergency shelter. These lower costs reflect the relatively low cost of permanent supportive housing for the small number of families in the study cohorts that used it.⁹ As detailed in Chapter 3, the cost of permanent supportive housing to the homeless services system is low compared with both emergency shelter and transitional housing since services are primarily provided by mainstream systems, rather than directly by the homeless services system.

The model results also revealed some differences in total cost per family related to family characteristics. Families that change composition during their period of homelessness have costs about 35 percent higher than families that do not change. Despite the correlation between “gap days” spent in between program stays and changes in family composition, gaps (measured in 30-day increments) also have a statistically significant, although small, positive effect on costs per family to the homeless services system. Given that length of stay and program types are also controlled, these

⁹ This model did not include families in DC who used only the Congregate Care Grants or SAFAH programs. SAFAH provides housing placement assistance. Congregate Care Grants provides short-term rental assistance and longer-term case management for families who never enter the residential system for homeless families. The resulting costs are extremely low for each day that the HMIS counts a family as being in the program.

results suggest that families with unstable housing and unstable family composition on average use more expensive programs within each program type.

African-American families (70 percent of the study cohort across the four communities) have costs 29 percent lower on average than white families. The implication is that, within each site and each program type, African American families are using relatively less expensive homeless services programs. This could be because African-American families, shown by other research to be homeless at higher rates than other poor families, have fewer service needs and are homeless related to poverty and limited social supports that do not require intensive social services to address. Use of less expensive programs could also reflect an informal or clinical bias that results in fewer referrals or admissions for African-American families into more intensive programs.

In the full model, there is no significant difference in cost between families headed by people between the ages of 18 and 24 those headed by 31 to 40 year olds. Without controls for program types and length of stay, those between 18 and 24 cost about a third less than those between 31-40 (Approach 2, Models 1 and 2). Adding a control for program type reduces this difference to 25 percent (Model 3). The difference disappears when the control for length of stay is added (Model 4). Thus, younger families are using less expensive types of programs and using them for shorter periods of time than relatively older families.

Larger families (those with additional adults or additional children) cost the homeless services system little more than smaller families. An additional child (compared to the mean of 2.12 children) produces a modest 6 percent increase in costs. Additional adults or adults of different genders have no discernable effect on costs, and this result holds for models with and without a control for whether the composition of the family changed. To some extent, these results may stem from the way we collected program costs. We did not distinguish between the costs of different amounts of space needed for different families (e.g., numbers of beds or bedrooms) or for other costs that might vary by family size such as the number of meals provided. We simply assumed that a particular program incurs on average the same cost for each family using the program. As a whole, larger families do not use programs that, across all families served, have higher costs than the programs used by smaller families.

We did find a relationship between the age of a family's children and its costs to the homeless services system. Families whose youngest child is grade school age (6 to 12 years) cost 21 percent more than families with younger children. Families with children in that age range may choose to use programs—or be directed to programs—with more costly housing types or with additional services, compared with other first-time homeless families.

5.3.3 Costs to the Homeless System for “Path Groups” of Families Who Use the System in Similar Ways

To understand better the heterogeneity of the homeless experience and its associated costs among first-time homeless families, we used multivariate cluster analysis to categorize families into “path groups,” based on their total lengths of stay, number of discrete stays, total number of “gap days,” and types and sequences of programs used. Cluster analysis was conducted independently for each site, and each of the communities was found to have paths that were not replicated precisely at the others.

However, the following broad categories of path groups emerged in each of the four study sites.

- Brief users of emergency shelter
- Heavy users of transitional housing
- Repeat users of residential homeless programs with long gaps

Exhibit 5.10: Common Paths Taken by First-Time Homeless Families			
	Brief users of emergency shelter (% of study cohort)	Heavy users of transitional housing (% of study cohort)	Repeat users of one or more program types with long gaps (% of study cohort)
Houston	66%	29%	5%
DC ^a	33%	30%	16%
Kalamazoo	61%	24%	16%
Upstate South Carolina	49%	42%	10%

Percentages within each site may sum to greater than 100 percent due to rounding.

^aDC percentages exclude those who were served exclusively by the Community Care Grants program. In addition, eleven percent of families in DC followed paths not found in other sites, See Section 5.3.4.

Exhibit 5.10 shows the size of these groups across the four communities. Brief users of emergency shelter make up roughly two-thirds of the families in Houston and Kalamazoo, almost half of the families in Upstate South Carolina, and one-third of the families in DC. Heavy users of transitional housing are more than a quarter of the study cohort in Houston, DC, and Kalamazoo, and 42 percent in Upstate South Carolina. “Long gappers,” families with multiple program stays and long cumulative periods in between stays, make up a relatively small portion of all first-time homeless families. They are most common in DC and Kalamazoo.

The path groups are characterized by their shelter use patterns, but analysis of demographic characteristics and mainstream program involvement helps to describe further the differences among the groups. Exhibit 5.11 summarizes some of the ways in which families who followed particular path groups differ from other first-time homeless families in the study cohort.

Brief Users of Emergency Shelter have one or two stays in emergency shelters, spend a few days to a few months there, and then do not return to the residential system for homeless people.¹⁰ Across our four study communities, they had relatively younger and smaller households and, based on their use of mainstream systems, had relatively lower needs than other families in the study cohort (Exhibit 5.11).

¹⁰ This pattern held in DC, where we were able to follow families over a 30-month period after their first appearance in the homeless services system.

Exhibit 5.11: Selected Characteristics of First-Time Homeless Family Path Groups

	Brief users of emergency shelter	Heavy users of transitional housing	Repeat users of one or more program types with long gaps
<i>Compared with other First-Time Homeless Family Path Groups at each site:</i>			
Houston	Younger adults and children Least involvement with mental health treatment and criminal justice systems	Fewer men More likely to be white Heavy users of mental health system	More men More likely to be "other" race 68% experienced household change High arrest rates
DC	Demographics not distinct from rest of cohort Lower use of substance abuse services	Fewer men Somewhat younger adults and children Among highest use of substance abuse and mental health services	More men 92% experienced household change High rates of involvement with child welfare High use of substance abuse services
Kalamazoo	Younger adults, smaller households Lower arrest rates Lower use of Medicaid	More men More likely to be white	58% experienced household change High arrest rates
Upstate South Carolina	Younger adults and children, smaller households Lower use of Medicaid	Demographics not distinct from rest of cohort	More men More likely to be white 64% household change High arrest rates

Across the four study sites, this group represented between 33 percent and 66 percent of each cohort, but accounted for only 9 percent to 30 percent of total homeless system cost. Exhibit 5.12 shows the average household cost to the homeless services system for the path groups in each community following this pattern. They range from under \$1000 to almost \$9,000, depending on a combination of the average number of days spent in programs (shown on the Exhibit) and the relative cost of programs used. For example, costs in Upstate South Carolina are relatively high for its brief-user families compared with the number of days spent in programs, because many first-time homeless families used a very expensive type of emergency shelter.

Exhibit 5.12: Average Household Cost to the Homeless Services System for Brief Users of Emergency Shelter

	Average Total Length of Stay	Average Total Cost per Family
Houston Emergency Shelter Short Stayers	37 days	\$2,321
Houston Emergency Shelter Repeat Users	101 days	\$5,748
DC Congregate Emergency Shelter Short Stayers	67 days	\$5,098
Kalamazoo Emergency Shelter Single Use Short Stayers	15 days	\$1,172
Kalamazoo Emergency Shelter Repeat Users	48 days	\$2,977
SC One-Week Single Stayers	9 days	\$784
SC One-Month Returners	31 days	\$2,508
SC Three-Month Single Stayers	88 days	\$8,890

Heavy Users of Transitional Housing use transitional housing exclusively, in combination with emergency shelter, or (in a few cases) together with permanent supportive housing. Their average length of stay ranges from 8 to 18 months, depending on the community and the specific path revealed by the cluster analysis for that community (Exhibit 5.13).

Across the four communities, heavy users of transitional housing were somewhat more likely to be white and had a smaller percentage of men. However, in Kalamazoo this group includes more men, probably because one of the primary transitional housing programs in Kalamazoo accommodates two-adult families. In DC, heavy users of transitional housing are on average somewhat younger families than other path groups.

Unlike Culhane et al., (2007) we did not find that these “long stayers” in the residential services system for homeless families were less likely to be heavy users of mainstream behavioral health services than the study cohort as a whole. In Houston, they were heavy users of the mental health system, and in DC they had among the highest rates of use of mental health and substance abuse services of the path groups.¹¹ However, Culhane et al. (2007) looked only for use of intensive behavioral health services such as inpatient or acute care (in Philadelphia and Massachusetts), whereas we recorded any contact with the mental health system (in Houston and DC) or the substance abuse agency (in DC).

Like Culhane et al. (2007), we found that the long periods of time spent in the homeless services system made this by far the most costly group of families. Exhibit 5.13 shows that the average cost per family to the homeless services system for heavy users of transitional housing ranged from \$6,474 in Kalamazoo, a community with the relatively small percentage of such families and frequent use of a particularly inexpensive transitional housing program by first-time homeless families,¹² to \$38,742 in Washington DC for a group that first used emergency shelter and then moved to transitional housing, with an average total length of stay of 551 days. Heavy users of transitional housing represented only 24 percent to 42 percent of the families in each community, but incurred between 47 percent and 82 percent of total homeless system costs.

¹¹ Culhane et al.’s “long stayers” group does not distinguish between long stayers in emergency shelter and long stayers in transitional housing. Our most comparable group may be a path group in DC (discussed below in Section 5.3.4) that uses apartment-style emergency shelters as well as congregate emergency shelters and has long stays. The homeless services system in DC may be more similar to New York City and Philadelphia than the systems in our other study communities, in which we did not find a path group of long-term users of emergency shelter. This path group in DC has rates of involvement with the behavior health systems similar to rates for heavy users of transitional housing and a higher rate of involvement with the child welfare agency.

¹² One of the property-based transitional housing programs in Kalamazoo has very low housing operating costs, moderate service costs, and very low administrative overhead. The property also has very low market value, and while we did not record capital costs for any of the programs in Kalamazoo, Houston, or DC, adding an estimate for capital costs would have increased the daily cost by only \$1. In contrast, one of the transitional housing programs that was heavily used by the Houston family study cohort, representing 47 percent of the transitional housing stays by families in Houston, has high operating costs and extremely high service costs. The overall program costs are two to seven times higher than other transitional programs in Houston, and the services alone are almost triple those of the other family facility-based transitional housing programs for which we collected costs.

Exhibit 5.13: Cost to the Homeless Services System for Heavy Users of Transitional Housing

	Average Total Length of Stay	Average Total Cost per Family	Average Monthly Cost Per Family (including gap days)	Local Two-Bedroom Fair Market Rent FY 2006 ^b
Houston Multi-Program Users	236 days	\$26,913	\$2,544	
Houston Housing-Program Users	284 days	\$35,344	\$3,584	\$743
DC Progressing Long-Stayers ^a	551 days	\$38,742	\$1,960	
DC Transitional Housing Only ^a	477 days	\$31,822	\$2,001	\$1,225
Kalamazoo Long Stayers	289 days	\$6,574	\$664	\$612
SC Progressing Long-Stayers	329 days	\$16,036	\$1,358	
SC Transitional Housing Only	375 days	\$15,478	\$1,226	\$599

^aIf only the first 18 months following the family’s first entry into the homeless services system are counted, the average cost per family for DC is \$31,951 for progressing long-stayers and \$25,771 for those who use only transitional housing.

^bFY2006 FMR is provided for Greenville, SC MSA, which is part of the Upstate South Carolina CoC geography and appears to have the highest FMR in the CoC (HUD, 2005) The FMR does not include the monthly fee paid to a public housing agency for administering the voucher program, which ranged from \$50 to \$90 per unit per month in these four communities. (HUD, 2007)

The exhibit also shows the cost per family standardized to a one-month cost and compares it to the cost of housing a family similar in size to most homeless families with a Housing Choice Voucher, assuming that the family’s share of the rent would be the same in both cases—that is, that transitional housing, like the voucher program, would require a family rent payment of 30 percent of income. The far greater cost of transitional housing in every community except for Kalamazoo to some extent may reflect the use of more expensive residential structures by transitional housing programs, but probably mainly reflects higher costs associated with on-site supervision for some programs and case management and other services for all transitional housing programs.

Whether the additional cost of transitional housing produces offsetting benefits, compared with placing a homeless family directly into permanent housing with a voucher, is beyond the scope of this study. For example, the services provided in connection with transitional housing might enable a parent to become economically self-sufficient and pay the cost of a private market rent from earned income. The short-term cost of transitional housing then might offset the cost of a longer-term voucher rent subsidy. The evidence we have to date suggests that is not the case. Burt (forthcoming 2009) interviewed former users of transitional housing deemed by program staff to have left successfully. She found that longer stays in transitional housing were associated with some positive outcomes, but that the most successful leavers of transitional housing did so with a voucher.

Repeat Users of Residential Homeless Programs with Long Gaps may use just emergency shelter or may use a combination of emergency shelter and transitional housing. What distinguishes this relatively small group of families (5 to 16 percent of the study cohort) is that they leave the residential homeless services system and then return—not a few days later, but after long absences. The cumulative “gaps” in service during their entire periods of homelessness range from 134 days for the path group in South Carolina (where the “gapper” pattern was less pronounced than in other communities) to 515 days for families following this path in the District of Columbia, who have an

average of 7.2 discrete program stays and on average remain in a residential program for only 38 days at a time. Their average gap ranges from two and a half months in DC to six months for one of the groups in Kalamazoo (Exhibit 5.14).

Exhibit 5.14: Patterns of Use of the Residential Homeless System for “Long Gapper” First-Time Homeless Families				
	Average Number of Program Stays	Average Days per Program Stay	Average Cumulative gap days	Average gap between each stay
Houston Emergency Shelter Long Gappers	3.4 stays	19 days	346 days	144 days
DC Long Gappers	7.2 stays	38 days	515 days	79 days
Kalamazoo Emergency Shelter Long Gappers	3.1 stays	12 days	378 days	180 days
Kalamazoo Multi-Program Long Gappers	3.3 stays	44 days	275 days	120 days
Upstate South Carolina Six-Month Returners	2.3 stays	77 days	134 days	103 days

Note: The average gap is average cumulative gap days divided by one fewer than the average number of stays, since gaps have to take place between stays.

We do not know the extent to which these “long gappers” attempt to establish themselves as leaseholders between homeless program stays or how frequently they temporarily move in with family or friends. Suggestive characteristics of these families are that they experience very high rates of change in household composition and often include men at some point during their periods of sheltered homelessness (Exhibit 5.15). Thus, their housing instability may be linked to unstable situations involving family conflict or, in some cases, arrests and jail time.

Families with long gaps had high arrest rates in Houston, Kalamazoo, and Upstate South Carolina. In Upstate South Carolina, 71 percent of this group of families had a family member arrested at some point during the study period. We did not obtain criminal justice data for DC. In Washington, DC, the only community for which we were able to obtain any data at all from the child welfare system, we found that 55 percent of this group of families had a service record with the child welfare agency during the year before homelessness or following the start of homelessness.

Compared with all first-time homeless families in the community, families in the long-gapper group in Upstate South Carolina were relatively more likely to be white rather than African American. In Kalamazoo, they were somewhat more likely to be African American than the cohort overall (Exhibit 5.15). In DC, where almost the entire study cohort is African American, the long gapper group includes more families identifying their race as white, Asian, or “other.” In Houston, where the long-gapper group makes up only 5 percent of the study cohort, this group is slightly more likely to be African American than the study cohort as a whole. At the same time, a relatively high percentage of long gappers in Houston (23 percent) reported their race as “other” or refused to identify their race.

Exhibit 5.15: Selected Demographic Characteristics of “Long Gappers”

	Change in Household Composition	Percent of Adults who are Men	Percentage African American: Gappers/ study cohort
Houston Emergency Shelter Long Gappers	68%	28%	67% / 61%
DC Long Gappers	92%	24%	89% / 93%
Kalamazoo Emergency Shelter Long Gappers	61%	16%	67% / 61%
Kalamazoo Multi-Program Long Gappers	53%	10%	68% / 61%
Upstate South Carolina Six-Month Returners	64%	18%	35% / 53%

Because of the relatively small number of days spent in the homeless services system, the cost to the system for this group of highly unstable families is relatively low. Across the four sites, the group represented only between 5 percent and 16 percent of each cohort and incurred between 1.5 percent and 20 percent of total costs. As shown in Exhibit 5.16, cost per family ranges from \$3,295 for a group in Kalamazoo that used only emergency shelter to \$17,314 for a group in Washington DC that spent a relatively long time in residential programs, despite being out of the system for long periods as well over their total period of homelessness.

Exhibit 5.16: Average Cost Per Family to the Homeless Services System for Repeat Users of the Residential Services System with Long Gaps

	Average Total Length of Stay	Average Total Cost per Family
Houston Emergency Shelter Long Gappers	63 days	\$3,885
DC Long Gappers	273 days	\$17,314
Kalamazoo Emergency Shelter Long Gappers	38 days	\$3,295
Kalamazoo Multi-Program Long Gappers	144 days	\$5,925
Upstate South Carolina Six-Month Returners	176 days	\$12,475

Opportunities for cost savings to the homeless services system through helping these families to achieve stable rather than unstable housing when they leave shelter seem to be largest in Washington DC and in Upstate South Carolina. In DC we tracked families for a longer period after they first became homeless, 30 months instead of 18 months, and this is reflected in the relatively large number of days spent in homeless programs, almost 10 months on average and the large number of stays, 7.2.¹³ The high cost in DC reflects both this relatively long length of stay for a “gapper” group and

¹³ If only the first 18 months following the family’s first entry into the homeless services system are counted, the average number of stays per family for DC long gappers is 4.7 and the average total length of stay is 164 days. The average total cost per family is \$10,462.

the high cost of the particular programs used. In DC and perhaps in other communities as well, cost offsets may be possible within the homeless services system, as well as for mainstream public systems, if costs over a period of many years are considered.

The group most similar to long gappers in the Culhane et al. (2007) study of New York City, Philadelphia, Columbus OH, and Massachusetts is “Episodic” users of the shelter system, but this group has longer lengths of stay, ranging from 148 days in Columbus to 385 days in New York. The “Episodic” group has considerably higher homeless system costs than the costs of the “long-gapper” groups in Houston, Kalamazoo, and Upstate South Carolina: \$17,168 in Columbus, \$19,043 in Philadelphia, \$21,450 in Massachusetts, and \$38,500 in New York. Only in Washington DC are the costs for “long gappers” similar to the costs of “Episodic” users in the Culhane et al. study.

The longer stays and higher cost measured by Culhane et al. (2007) may be in part a result of how total days in the homeless service system are measured (they ignore program exits if the family returns to shelter within 30 days) and also a three-year observation period in New York and Philadelphia. At the same time, the costs per day of shelter used by Culhane, based on “jurisdictional reimbursement rates” are high compared with the cost per day for many of the programs for which we collected cost data directly from financial records. Columbus reimburses programs at \$116 per day, Massachusetts at \$110 per day, Philadelphia at \$94 per day, and New York City at \$100 per day. By comparison, we found the average cost of congregate emergency shelters used by our study cohort was \$71 per day in Houston, \$85 per day in DC, \$75 per day in Kalamazoo, and \$81 per day in Upstate South Carolina.

Unlike heavy users of transitional housing, the outcomes of long-gapper families’ use of the homeless services system as it currently is constituted are unambiguously negative. An alternative treatment model for these families that focuses on their family instability rather than their housing instability may be needed.

5.3.4 Costs to the Homeless System of Other Patterns of First-time Homelessness in Washington DC

Washington DC has two program types not found at the other sites, and families using those programs are not included in the path groups discussed in Section 5.3.3.

Apartment-style Emergency Shelters in DC are considered emergency shelters because, unlike transitional housing programs, they do not have admission requirements other than homelessness and because they are not subject to the two-year time limit for federally funded transitional housing. During the period in which we conducted the study, almost all families using the three facilities that comprised this program type went there after an initial stay in a congregate emergency shelter.¹⁴ Apartment-style emergency shelters had a cost per day for first-time homeless families in the study cohort of \$79.80, slightly lower than the average cost of congregate shelters (despite providing each family with a self-contained apartment) and slightly higher than the daily cost of transitional housing.

We identified a separate path group in DC consisting of families who used both congregate and apartment-style emergency shelters and no other type of residential program, 9 percent of the study

¹⁴ Subsequently, DC’s main congregate emergency shelter for families was closed down, and the central intake center for homeless families began sending families directly to apartment-style emergency shelters.

cohort of first-time homeless families.¹⁵ Selected characteristics of this path group are shown in Exhibit 5.17 and compared with the characteristics of the path groups that used transitional housing. In many ways this path group is similar to the group that used both emergency shelter and transitional housing. Lengths of stay are similar, and the total cost per family to the homeless services system is similar. The only notable demographic characteristics for the group using both types of emergency shelter but not transitional housing are the high percentage that have five or more persons in the household and the high percentage of male adults. Other demographic characteristics, not shown on the exhibit, are similar to those of other path groups. This path group also had the highest rate of service encounters with the child welfare agency of any of the DC path groups, 56 percent. These family characteristics may help explain the long stays within what is supposed to be an emergency shelter system: large families and families that include adult men may be hard to place into transitional housing programs or into permanent housing in the private market.

Other factors that may influence the long lengths of stay for families using both congregate and apartment-style emergency shelter may be the fairly rich services available in the apartment-style programs¹⁶ and the relative attractiveness of these apartments that come with some restrictions on privacy and independence but are rent free in a housing market with high rents and long waiting lists for assisted housing.

Exhibit 5.17: First-Time Homeless Families Using both Congregate and Apartment-Style Emergency Shelter (and not transitional housing) in Washington DC

	Total cost per family	Average length of stay	Families with 5 or more persons	Percent of adults who are men
DC Congregate and Apartment ES	\$38,444	513 days	42%	23%
DC Progressing Long-Stayers	\$38,742	551 days	29%	16%
DC Transitional Housing Only	\$31,822	477 days	13%	4%

The Community Care Grants program in Washington, DC, places qualifying families in mainstream permanent housing immediately after intake, without a shelter stay. The Continuum of Care considers this diversion program a key element in its homeless services system. The central intake center first determines that a family qualifies as homeless because the family cannot be stabilized in its own housing unit or someone else’s for more than a month—that is, that the alternative to the CCG program would be a placement into emergency shelter. A further assessment determines whether the family should be admitted to emergency shelter or could become a successful

¹⁵ The small size of this group is somewhat surprising, given the capacity of this type of shelter to serve 93 families at a time. However, the long lengths of stay for families using apartment-style emergency shelter in DC meant that many families occupying those units had already become homeless before the start of our study period.

¹⁶ The average daily services cost for apartment-style emergency shelter is \$42.32, slightly higher than the services cost for scattered-site transitional housing (\$29.59) and only slightly lower than the services cost for facility-based transitional housing (\$44.69).

leaseholder immediately. Factors in the assessment are whether the family head has ever been a leaseholder, head of household's employment history, and whether the family has a current problem with substance abuse or untreated mental illness.

Ninety-six families in the DC study cohort of first-time homeless families were placed directly into mainstream permanent housing the Community Care Grants program, and only eight of these families subsequently entered either emergency shelter or transitional housing during the 30-month follow-up period for DC. Thus, the program appears to be successful in diverting families away from the residential system for homeless families, though it is not clear how many of these families would have become homeless without assistance.

The average cost for each family reimbursed by the DC government was \$10,677, which includes some combination of move-in expenses, short-term rental assistance (typically for one or two months), and case management provided on an as-needed basis for a year on average. Not surprisingly given the screening criteria for the Community Care Grants program, the path group that is dominated by these families had by far the lowest rates of any path group of service contacts with DC's mental health and substance abuse agencies, less than 14 percent for mental health and only 1 percent for the substance abuse agency. The rate of involvement with the child welfare agency was also low, although still almost 29 percent.¹⁷ Because of the program's screening, had these families been placed into emergency shelter, they likely would have stayed relatively short periods of time. Whether they would have had short lengths of stay in the residential services system as a whole is unclear, because these families may have been considered good candidates for DC's transitional housing programs.

5.4. Costs Associated with Mainstream System Use by First-Time Homeless Families

The literature on individual homeless persons, particularly those with chronic patterns of homelessness, suggests that the costs of providing certain homeless individuals with stable permanent housing may be offset by savings from reduced use of mainstream public systems such as emergency rooms and hospitals by people no longer homeless.¹⁸ No similar claim has been made about cost offsets that might be produced by ending homelessness for families. In this study, we attempted to collect data on the use of mainstream systems and associated costs incurred on behalf of homeless families before, during, and after their periods of homelessness. This data collection had three purposes:

- Helping to characterize the families that follow different patterns of use of the homeless services system, as described in Sections 5.3.3 and 5.3.4;
- Understanding the extent to which homeless families are connected to mainstream income and other supports that might avert or soften financial or health crises that lead to homelessness; and

¹⁷ More information on these programs patterns of program use is available in a separate case study on the study's findings for Washington DC. See Khadduri, J., Spellman, B., Sokol, B., Leopold, J., & Rothschild, L. (2009a).

¹⁸ See the discussion in Chapter 4.

- Exploring whether savings in mainstream costs might result from reducing family homelessness.

As has been true for other studies that have attempted to match data on users of homeless services systems to mainstream data, we were not able to obtain data for all mainstream systems in each community. For DC, we were able to learn which members of the study cohort of first-time homeless families had service records with the Medicaid, child welfare, mental health, and substance abuse systems between July 2003 and June 2008, but we did not obtain cost data, and we do not know the timing of those service encounters in relation to the family's period of homelessness.

For Houston, we obtained client-level service utilization and cost data for City and Harris County arrests and jail stays, and we imputed associated court costs. We also obtained data on mental health treatment, and stays in the state psychiatric hospital, but we did not obtain data on Medicaid, income supports such as Food Stamps and Temporary Assistance for Needy Families (TANF), or on service encounters with the child welfare system.

For Kalamazoo, we obtained data on the use and costs of Medicaid managed care payments, Medicaid fee-for-service care, and state emergency financial assistance, aggregated by path groups of families and by the periods before, during, and following homelessness, on both program utilization and costs. We obtained client-level data from local law enforcement agencies on arrests and jail costs. Here again, we have no data on Food Stamps, TANF, or the child welfare system.

For Upstate South Carolina, we obtained data aggregated by path groups of families and by the periods before, during, and following homelessness on both program utilization and costs for Medicaid, Food Stamps, and the criminal justice system, but not for TANF or the child welfare system.

Thus, for the mainstream domain which may have the greatest potential for cost offsets for a family homeless population—child welfare—we have data only for DC and only evidence of some encounter with the system, not how serious or how costly the encounter was.

5.4.1 Rates of Mainstream System Involvement by First-Time Homeless Families

Exhibit 5.18 shows the rates at which families in the study cohort were involved with the mainstream systems for which we were able to collect data. Use of Medicaid and Food Stamps is high, more than 90 percent in the three places for which we have Medicaid data and 92 percent for Food Stamps in Upstate South Carolina. Earlier studies have shown that homeless families are able to access the income supports available in general to poor families with children (Burt, Aron, and Lee, 2001). We have no data on TANF, other than a statement from the South Carolina data warehouse administrator that the match rate to TANF records for the study cohort was low.¹⁹ Without information on the timing of receipt of TANF by the families in the Upstate South Carolina study cohort, we cannot infer whether the low rate reflects families being sanctioned or exhausting their time limit for TANF assistance before becoming homeless. The match rate would be expected to vary by state because of the flexibility in state administration of TANF, and the low match rate for a study cohort in Upstate South Carolina may not be typical.

¹⁹ The small number of matches and associated privacy concerns was stated as the reason for not providing TANF data even in aggregate tables.

Exhibit 5.18: Rates of Utilization of Selected Mainstream Systems by First-Time Homeless Families

	DC	Houston	Kalamazoo	Upstate SC
Medicaid	95%		94%	>90% ^a
Food Stamps				92%
Child Welfare	43%			
Criminal Justice		8%	42%	34%
Mental Health	36%	16%		
Substance Abuse	9%			
Emergency financial assistance			>39% ^b	

^a More than 90 percent of the cohort received both Medicaid Managed Care and Medicaid Fee For Service treatment. A de-duplicated rate of involvement was not provided by the State.

^b De-duplicated data across types of financial assistance types was not provided. Thirty-nine percent of families received rental assistance, which was the greatest proportion for each type. Thirty-three percent of families received cash assistance and 17 percent received food assistance. Only one family received mortgage assistance and four families received security or utility-deposit assistance.

The emergency financial assistance program used by at least 39 percent of the study cohort in Kalamazoo is a state-funded program operated through local non-profits and intended to help families through financial crises that can lead to homelessness by providing them with cash, food assistance, mortgage payments, rental payments, or security and utilities deposits.

The high rate of service encounters with the child welfare system in DC is interesting, although we do not know the extent to which they happened in response to immediate threats to children’s well being and we do not know the extent to which they led to out-of-home placement of children. While we have no information about service encounters with the child welfare system in our other study communities, considered together with the high rates of involvement with the criminal justice systems in Kalamazoo and Upstate South Carolina, we might infer that rates of involvement with child welfare among first-time homeless families would be high in those communities as well.

In Upstate South Carolina, 53 percent of family members between the ages of 18 and 24 had at least one arrest during the study period, which extended from a year before the start of homelessness for each family through December 2006. Fifty-four percent of families that changed composition during their period of homelessness had a family member who was arrested, as did 71 percent of the Upstate South Carolina families we have identified as “long gappers.” White families were more than twice as likely to have a member arrested as African-American families. This could be a geographic effect (Upstate South Carolina covers a large area), or it could suggest that black families in Upstate South Carolina become homeless as a result of extreme poverty,²⁰ while white families are more likely to experience a domestic crisis that triggers both extreme housing instability and an encounter with the criminal justice system. Across the three communities for which we were able to obtain data on involvement with the local criminal justice system, we found that many adult women were arrested, but arrest rates were higher for adult men than for adult women.

²⁰ Suggested also by the fact that a higher percentage of brief users of emergency shelter in Upstate South Carolina are black, compared to families following other patterns of use of the homeless services system.

The relatively lower involvement with the criminal justice system among first-time homeless families in Houston is difficult to interpret, but consistent with the relatively smaller percentage of families in Houston with a “long-gapper” pattern of homelessness (5 percent, vs. 10 percent in Upstate South Carolina and 16 percent in Kalamazoo).

5.4.2 Costs to Mainstream Systems of First-Time Family Homelessness

The fragmentary nature of our data on mainstream system costs for the three communities for which we have cost information—Houston, Kalamazoo, and Upstate South Carolina—makes it difficult to assess the potential opportunities for cost savings through reducing family homelessness. Exhibit 5.19 shows what we know about the magnitude of costs to the mainstream systems. The exhibit shows average costs for each family over the entire study period, which extended from one year before the start of homelessness to an average of three years after the beginning of homelessness.

Across the study cohorts, most costs were incurred for basic social safety net programs, Medicaid and food stamps. For those at the income levels of most homeless families, reducing food stamps costs does not make sense. Food stamps benefit levels are set by formula based on family size and income, and there is little potential for “excess” or inefficient use of the program by homeless families.²¹ Some residential homeless programs, especially emergency shelters, may provide food, and families may be less likely to use Food Stamps during their period of literal homelessness.

Exhibit 5.19: Average Costs for Selected Mainstream Domains per First-Time Homeless Family during the Entire Study Period

	Houston	Kalamazoo	Upstate South Carolina
Medicaid		\$21,770	\$15,615
Food Stamps			\$7,248
Criminal Justice	\$409	\$597	\$175
Mental Health	\$722		

Note: The study period varies for each family, depending on when the family became homeless compared to the last date for which mainstream costs were collected. Patterns change little when costs are measured over a uniform period, such as one year, for each family.

Homeless families might use Medicaid in ways that are more costly than other families participating in the program—for example, by using emergency room visits in place of routine outpatient care. The evidence we have from the two communities for which we have Medicaid costs is mixed. In Kalamazoo, Medicaid costs for the children in the study cohort of homeless families were 26 percent higher than statewide average Medicaid costs for children. Medicaid costs for adults were 78 percent higher than the statewide average (Kaiser Family Foundation, n.d.). The data only distinguish between services covered by managed care and services covered by fee-for-service, and the distribution of costs across these types is the same as for other Medicaid recipients in Michigan. Without more detail on types of services received, we cannot tell whether homeless family members have higher medical needs or whether homeless families are using the system inefficiently.

²¹ This is not to say that fraudulent use of the program is non-existent, but Food Stamps fraud is unlikely to vary based on whether a family is homeless or housed.

In Upstate South Carolina, Medicaid costs for the cohort of homeless families are similar to statewide averages for children who do not have disabilities and for adults who are neither elderly nor disabled. The type of services used by the study cohort compared with the general Medicaid population shows that homeless families were more likely to use standard medical services such as visits to doctors' offices and less likely to use outpatient hospital care (Kaiser Family Foundation, n.d.).

Exhibit 5.20 shows costs per family for each of the mainstream domains, during the periods before, during, and following homelessness. The costs are standardized to a one-month period to take into account the different lengths of the three periods—in particular, the relatively short period during homelessness for most families.²² In both Kalamazoo and Upstate South Carolina, the use of Medicaid-reimbursed services rose during the family's period of homelessness, which could suggest that health crises contributed to homelessness or could reflect the success of the homeless services system in referring family members to needed medical care.

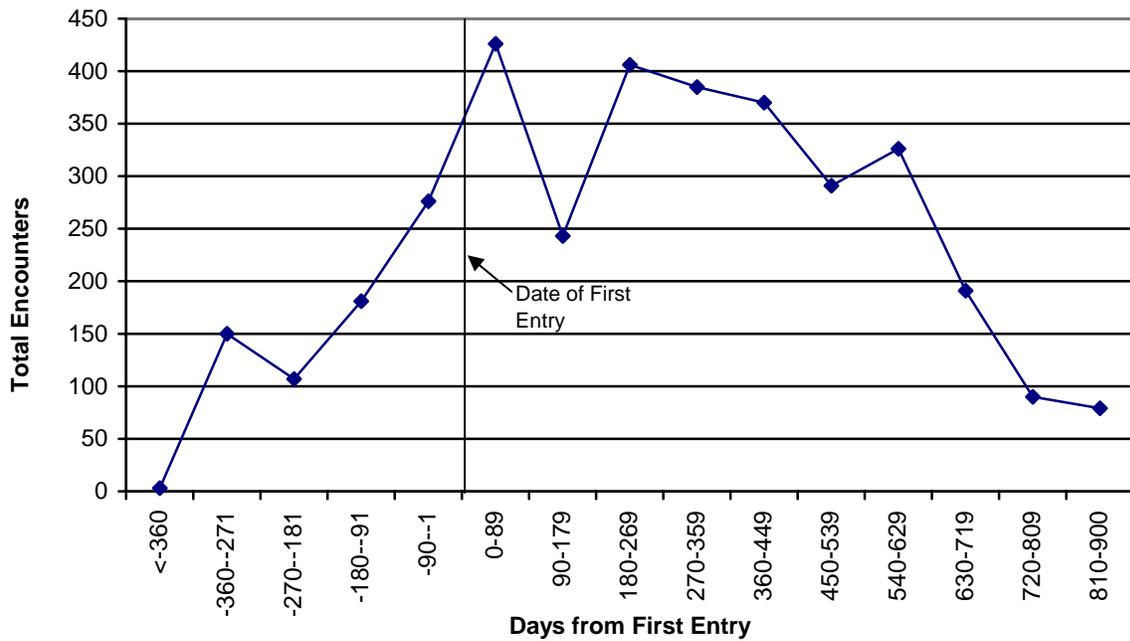
While the high rate of arrests for family members in Kalamazoo and Upstate South Carolina is troubling, the relatively brief interactions with criminal justice and low costs for this domain do not seem to provide major opportunities for cost offsets for first-time homeless families. Criminal justice costs, adjusted for differences in time periods, dropped during the period of homelessness in Houston and Kalamazoo and then rose to higher levels following homelessness (Exhibit 5.20). In Upstate South Carolina, after adjusting for differences in the lengths of time periods, the number of arrests of members of the study cohort was very similar before, during, and following homelessness. Neither homelessness nor stable housing seems to have reduced the likelihood of criminal justice encounters. That said, criminal justice costs are incomplete at each study site. For Kalamazoo, we have arrest and jail costs, but not court costs. For Upstate South Carolina, we have only arrest records, and we imputed a cost of \$200 per arrest, based on arrest costs for other study sites. For no community do we have costs to state or federal criminal justice systems. It is possible that more complete data would identify additional cost saving opportunities.

Exhibit 5.20: Mainstream Costs Per Family Per Month Before, During, and Following Homelessness						
	Mental Health	Medicaid	Criminal Justice	Financial Assistance	Food Stamps	State Hospital
Kalamazoo						
Pre-Homelessness		\$657.58	\$13.33	\$5.18		
During Homelessness		\$929.59	\$12.99	\$22.05		
Post-Homelessness		\$471.90	\$19.36	\$21.55		
South Carolina						
Pre-Homelessness		\$319.66	\$4.65		\$187.30	
During Homelessness		\$433.70	\$4.70		\$229.34	
Post-Homelessness		\$493.28	\$4.86		\$190.78	
Houston						
Pre-Homelessness	\$13.01		\$6.55			\$0.00
During Homelessness	\$32.87		\$1.57			\$0.00
Post-Homelessness	\$20.67		\$16.36			\$3.02

²² The period following homelessness depends on when during the tracking period the family's homelessness ended and also may be different from the period preceding homelessness, which is one year for all families.

Mental health costs in Houston averaged only \$409 per family but were much higher, \$4594, for the 16 percent of families that received at least one mental health service. The use of mental health services by first-time homeless families in Houston rose during the period just before first entry into a residential homeless program, peaked in the first 90 days after the start of homelessness, remained high for 18 months and then began to decline, as shown in Exhibit 5.21. This suggests that homelessness, or the crisis leading to it, exacerbates mental health issues or, alternatively, that a mental health crisis leads to housing instability and homelessness. The higher mental health costs following entry into a homeless residential program may reflect needed engagement in ongoing mental health care and, therefore, may not represent an opportunity for cost saving. However, it is also possible that alternative housing and mental health interventions could provide more cost-effective assistance.

Exhibit 5.21: Mental Health Encounters of First-Time Homeless Families in Houston Compared to Date of First Homeless Entry



Monthly costs per family of the state-funded financial assistance used by many families in the study cohort in Kalamazoo were very low in the period before homelessness (Exhibit 5.20), as were the number of families using financial assistance during the pre-homelessness period (not shown on the exhibit).²³ This pattern suggests that most families receiving prevention funds prior to becoming homeless did not in fact become homeless and provides evidence for the success of efforts to prevent homelessness through short-term financial assistance.

²³ For more detail, see the separate case study on Kalamazoo (Sokol, B., Spellman, B., Khadduri, J., & Leopold, J., 2009a).

5.4.3 Mainstream Costs for First-Time Homeless Families by Path Group

The costs and patterns just described for the entire study cohorts of first-time homeless in each community do not suggest opportunities for cost savings, with the possible exception of Medicaid costs in Kalamazoo and mental health in Houston. The literature on individual homeless people has focused on potential cost offsets among subsets of the homeless population—for example, individuals with chronic patterns of homelessness or homeless individuals with mental illness.²⁴ We examined patterns of use of mainstream services for homeless families following particular paths when using the homeless services system to determine if one of these path groups has patterns of use of mainstream services that could provide opportunities for cost savings or offsets.

In Kalamazoo, the “long gapper” groups had the highest Medicaid costs. The average Medicaid cost for families in these groups was \$31,177 compared to the cohort average of \$21,770. In Upstate South Carolina, Medicaid costs were fairly consistent across the path groups, but twenty percent of families whose composition changed during homelessness had a family member with an in-patient hospitalization during the period of homelessness. These findings suggest that further study of patterns of homelessness and medical costs for families with unstable membership might reveal opportunities for savings in medical costs.

Heavy users of transitional housing in Kalamazoo had similarly high Medicaid costs before and during the period of homelessness, but costs dropped following homelessness. Possibly, families in this group addressed pre-existing health issues during their stays in the homeless system. Or, they may have learned to sustain their ongoing healthcare needs after homelessness by using relatively lower-cost medical services.

Criminal justice costs were highest for the “long-gapper” groups in Kalamazoo, \$1,153 per household, nearly twice the overall average for the study cohort of \$597. As noted, this does not include court costs. Similarly, in Upstate South Carolina, criminal justice costs were particularly high for the “long-gapper” groups. In Houston, however, the highest criminal justice costs were for a group of heavy users of transitional housing, possibly incurred by one member of multi-adult households while others are in transitional housing.

Overall, families who have repeat episodes of homelessness, difficulty maintaining stable housing, and frequent changes in family composition probably incur, over time, substantial costs to public systems that could be reduced by appropriate interventions. This might be more obvious if we had been able to obtain consistent mainstream system data across all four sites or cost information from the child welfare system at one or more of our study communities. However, the appropriate interventions for these families are not as obvious as placing chronically homeless, mentally ill individuals in permanent supportive housing. A long-term rent subsidy to stabilize the family in mainstream permanent housing might help, but it likely is not sufficient to address the problems associated with unstable household composition, which may include domestic violence, other family conflict, problems with substance abuse, or chronic health problems.

²⁴ See Chapter 4 for a discussion of this literature.

5.5. Policy Implications and Recommendations for Further Research

This study of the patterns and costs associated with first-time homeless families in four communities:

- Confirms earlier research that long stays in the homeless services system are very expensive and makes explicit that most families with long periods of sheltered homelessness use transitional housing, either exclusively or in combination with emergency shelter. Groups of families that we identified as heavy users of transitional housing typically cost the homeless services system at least \$15,000 dollars. In some communities, these costs were in the \$30,000-40,000 range, which was similar to the costs for “long-stayer” families found by Dennis Culhane and his colleagues in other communities. Unlike Culhane’s research, this study found some indication that families used transitional housing for extended periods had high needs, based on their heavy involvement with mainstream behavioral health systems.
- Shows that housing vouchers typically are less expensive than transitional housing per day or per month. This is most pronounced in Houston, where the monthly cost of a two-bedroom voucher during our study period was \$743, while the average monthly cost of transitional housing was over \$4,000. The voucher cost in the high-cost DC housing market was much higher, \$1,225 per month for a two-bedroom Fair Market Rent, but the cost of transitional housing was still higher. In Upstate South Carolina, cost of transitional housing was about double the cost of a voucher. Whether the cost of transitional housing is ultimately lower than the cost of a permanent voucher—because transitional housing is temporary—is an open question.
- Identifies a group of highly troubled families that cycle in and out of the homeless services system and have very unstable household composition, often including men for part of the total period of homelessness. Their rates of involvement with the criminal justice system are high. Their repeat episodes of homelessness are comprised of relatively short stays in the residential homeless system separated by “gaps” of several months during which they evidently are unable to become stably housed in their own or someone else’s housing unit. These families are not particularly costly to the homeless services system because of their relatively small number of days in the system. The public system costs of their housing instability may be high, and over time savings in mainstream costs might offset the cost of stabilizing these families in permanent housing. We do not have enough mainstream system data over a long enough period of time to determine this. Unlike heavy users of transitional housing, the outcomes of “long-gapper” families’ use of the homeless services system as it currently is constituted are unambiguously negative. An alternative treatment model for these families that focuses on their family instability rather than their housing instability may be needed.
- Shows that African-American families, shown by other research to be homeless at higher rates than other poor families, have generally brief stays in the homeless service system and, because they use less expensive programs within each program type, they have relatively low costs to the homeless services system. In some communities African American families are less likely than other families to follow the “long gapper” pattern of homelessness. All of these factors suggest that they may become homeless mainly because of extreme poverty and limited social supports, and that more complex

interventions—beyond income and housing supports—may not be needed to prevent or end homelessness for many of these families. However, the use of less expensive programs could also be the result of fewer referrals or admissions to higher-cost programs, which may warrant follow-up to ensure that informal discrimination is not preventing access to important homeless system resources.

- Shows that, among the domains for which we were able to collect data, homeless families are well-connected to Medicaid and Food Stamps prior to homelessness and that the highest rates of mainstream utilization and costs for homeless families are the medical costs reimbursed by Medicaid. Our data do not permit us to determine whether homeless families use the health care system in inefficient ways or whether Medicaid costs might be reduced by preventing or ending homelessness. The limited information we have from Kalamazoo suggests this might be the case.
- Concludes that short-term costs to the criminal justice system, while troubling, do not appear high enough to suggest opportunities for offsets. We were not able to collect cost data for the use of the child welfare and foster care systems by homeless families in any of the study communities. This is an area in which additional research might find opportunities for cost offsets.
- Suggests that local policies designed to prevent families from becoming homeless and divert those on the brink of homelessness can succeed. Very few families using the Community Care Grants program in DC subsequently became homeless during a 30 month tracking period. Because the program screens for lease-holding history, employment history, and active substance abuse, it is likely that families diverted from homelessness would have used the emergency shelter system for short periods only. On the other hand, they might have been out-placed from emergency shelter into transitional housing. Similarly in Kalamazoo, financial assistance intended to prevent homelessness seems to have been largely successful, as few families in the study cohort received such assistance before becoming homeless. To confirm the success of this type of program would require tracking the results of prevention efforts directly—and ideally randomly assigning families to receive or not receive the limited funds available for such programs.

Because the daily cost of emergency shelter typically is just as high as the cost of transitional housing and sometimes is higher, moving families out of emergency shelter and into transitional housing quickly makes sense for families who are not placed immediately into permanent housing. In some communities, emergency shelters for families may operate more like transitional housing, but are being *used* like emergency shelters—that is, by many households for relatively short periods. Careful program evaluation may be required to determine whether the services rendered are appropriate to the needs for which they are allocated and whether there are opportunities for cost savings by cutting costs of individual programs.

As for transitional housing itself, analysis of cost effectiveness is needed to determine if long stays in transitional housing are justified either by improved outcomes for adults and children²⁵ or by reductions in costs to mainstream services system. The data we collected on the use of Medicaid by homeless families in Kalamazoo permits us to speculate that families who have used transitional

²⁵ HUD is now conducting an experimental design evaluation that will compare the outcomes of transitional housing with those of other approaches for serving homeless families.

housing subsequently use the health care system in a more cost-effective way, but we do not really know if health costs would have tapered off naturally or with an alternative less expensive housing intervention. More detailed analyses of use of health care by homeless families, and its costs, would be valuable.

Since the cost of permanent supportive housing to the homeless services system is low and families typically are well-connected to mainstream systems before they become homeless, quickly moving families who qualify out of emergency shelter and into this type of housing makes sense. More data collection and analysis is needed to determine the total costs to public systems of permanent supportive housing and whether providing services through mainstream systems is more cost-effective than services provided directly by residential programs for homeless people and paid for by their budgets. The services model used for permanent supportive housing, with housing and services managed and funded separately, may be more efficient than the services model used for transitional housing because it is better able to scale services to individual family needs.

Furthermore, it matters who pays for the services, even if they are ultimately paid for by public programs. Using funds appropriated to homeless programs for services can divert resources from providing for immediate shelter needs of homeless families and from programs that place them into long-term, stable housing.

Overall, exiting the homeless system did not yield a reduction in costs to mainstream services systems for first-time homeless families. From the limited data we have, costs to the criminal justice system went up following homelessness. Much more data are needed about other systems that may be affected by homelessness, in particular the child welfare system.

First-time homeless families who appear in the residential system for homeless people, leave, and then come back after long “gaps” and often with changes in family composition are expensive to the homeless services system when their costs are considered on a daily basis, as they appear to use relatively expensive programs. However, their relatively short lengths of stay mean that they do not create high total costs per family. Among homeless families, this is the group with the greatest potential for savings to mainstream systems. More research is needed on the complete costs over time of these “long gappers” to both homeless and mainstream systems. Also needed is the development of knowledge on how best to stabilize these families, based on interventions that are coordinated across mainstream sectors, including the child welfare and criminal justice systems.

6. Implications for Policy and Future Research

Around the country, communities are grappling with how to use their limited resources to efficiently and effectively respond to homelessness. In these uncertain economic times, many more individuals and families may experience first-time homelessness; thus, it is even more critical for communities to act prudently to use resources to meet the changing demand. This study presents findings that help to improve our understanding of homelessness and its associated costs; it presents ideas about opportunities for cost savings; and it develops an approach for measuring costs that, coupled with other evaluation methods, can help communities understand the cost-effectiveness of different homelessness interventions.

Throughout this report, we identified two types of findings with associated policy implications. One, different populations use homelessness programs differently and some populations are associated with greater costs. Communities may want to consider adjusting current interventions or developing new strategies to target people more efficiently. Second, we found that the structure of homeless programs and the roles they fill within the broader homeless assistance system present opportunities for cost savings.

We identified certain demographic characteristics and patterns of first-time homelessness that were associated with greater mainstream system involvement, but the analysis did not identify clear opportunities for overall mainstream system cost savings through the implementation of alternative responses to homelessness. However, the results also do not eliminate the possibility of mainstream system cost savings. Analysis of more comprehensive client-level data may yield more conclusive findings in this area.¹

This chapter summarizes our recommendations and reiterates ideas for future research that will continue to help policymakers and practitioners improve systems that respond to homelessness. While all communities can benefit from these findings, the results are not intended to be representative of the entire nation or every community. Regression analysis showed that the community in which individuals and families received services frequently had a strong effect on both length of stay and cost. Thus, local factors and particular Continuum and program-level decisions can have a large intervening effect on patterns of homelessness and associated homeless system costs. Policymakers should not assume that the findings here, despite spanning multiple different types of communities, will necessarily hold true everywhere. They should instead discuss whether the patterns of homelessness within their own communities are appropriate, whether their homelessness systems are efficient in achieving outcomes for people who become homeless, and whether there are opportunities for cost savings through alternative program models.

¹ We found it very challenging to obtain comprehensive mainstream data from the many federal, state, and local public agencies, in addition to private providers, that collect them. Future research that relies on analysis of mainstream administrative data will need to devote significant effort to the task of identifying and securing these data.

6.1. Policy Implications Related to Different Patterns of Homeless System Use

The study clearly demonstrates that the experience of homelessness and the costs associated with it are diverse and wide-ranging across different groups of homeless people. Most first-time individuals and families experience homelessness only once or twice and, in response, use emergency shelter for a limited period of time at fairly low cost. But some experience much longer stays and some have very high associated costs. And others use the system sporadically, moving in and out of homeless programs multiple times during long periods. Our analysis suggests that communities should consider specific responses to homelessness that target the needs of those who use the system in different ways.

6.1.1. Households that Use Only Emergency Shelters for Brief Periods

The majority of individuals we studied, 57 to 66 percent of the first-time homeless single adults in each of the three communities, used only emergency shelter and only stayed briefly. On average, “short-stayer” individuals used emergency shelter programs for only one week (Des Moines) to three weeks (Jacksonville) at an average cost per household of \$321 to \$686. Many first-time families, ranging from 42 percent in DC to 66 percent in Houston, also had only a few brief stays in emergency shelter. The stays for families were on average longer than those of the individuals in our cohorts. One group of short-stayer families in South Carolina remained in shelter only 10 days, but other short-stayer families in all four communities stayed an average of one to three months. The average costs per short-stayer family ranged from less than \$1,000 to almost \$9,000, depending on the average number of days spent in programs and the relative cost of the programs used.

These short-stayers all had much lower costs than other groups of first-time homeless individuals and families. We surmise that the short-stayers in emergency shelter are those households that may be most likely able to avoid homelessness with appropriate prevention assistance. However, the findings may suggest different responses for individuals versus families from a cost-perspective, recognizing that costs alone should not guide homelessness policy.

The homeless systems that have been established in the communities in which we studied individuals offer emergency shelter with low daily costs. For the majority of individuals, the emergency shelters seem to provide an immediate, low-cost response to their homelessness. It would be very difficult to fund a prevention response at such low cost, particularly since it may be challenging to identify up front which of the individuals’ homelessness could be prevented with minimal assistance. Perhaps the emergency shelter system is an “adequate” response to an immediate housing crisis for most individuals, and a place in which individuals who are not able to quickly resolve their housing crisis can be assisted or referred to more intensive interventions.

In contrast, emergency shelters for families are as expensive on average, if not more expensive, than transitional housing and permanent supportive housing offered in the four communities in which we had information on homeless families. The average cost per short-stayer family, even for the group in South Carolina that used shelter for only 10 days, exceeds a one-month rental subsidy based on local Fair Market Rents. The short-stayer families that stayed one to three months had associated costs per family of \$2,508 to \$8,890, significantly higher than several months of rental assistance. If families truly only need one to three months of assistance, communities may want to consider shelter

diversion or rapid-rehousing interventions that optimize the use of resources to get families back into housing. Alternatively, communities could look at the cost structure of current emergency shelter programs to determine if the environment and services offered are appropriate to the needs of those who are using them. If families stay in shelter for brief periods of time, they may not be taking full advantage of the non-crisis-related services provided to them; thus it may be possible to reduce costs by scaling back on the resources offered to families on-site in shelters. For those with greater needs who need longer stays or more intensive services, it may be more cost effective to quickly move them into transitional housing (facility-based or scattered site) or permanent supportive housing.

6.1.2. Households Who Remain in Homeless Programs for Extended Periods

The greatest opportunities for homeless system cost savings lie with the individuals and families who remain in homeless programs for extended periods. Without an assessment of the outcomes associated with the longer lengths of stay, we cannot determine whether the long stays are cost-effective. The extremely high costs associated with most of these groups suggest that communities should assess whether there are ways to reduce costs of existing programs without diminishing client outcomes, whether communities are appropriately targeting the high-cost interventions to those who benefit from them most, and whether alternative, lower-cost interventions could be developed that might be equally or more effective.

Transitional housing programs provide a starting place for this discussion. Not surprisingly since most transitional housing programs are designed for lengths of stay up to two years, those who used transitional housing alone or in combination with emergency shelter had lengths of stay in homeless programs three times that of households who only used emergency shelter. Even when controlling for lengths of stay, these households also had costs higher than those who only used emergency shelter, two times higher for individuals and one-third higher for families. The difference reflects the fact that emergency shelters for families are generally similar in cost and sometimes even more expensive than transitional housing programs, whereas transitional housing for individuals is generally more expensive than shelter.

For individuals, extended use of transitional housing costs an average of \$9,000 to \$14,000 per person, with the exception of those who used a low-cost form of shared transitional housing in Des Moines. For families, heavy users of transitional housing averaged between \$15,500 and \$38,800 per family, with the exception of families in Kalamazoo whose costs were \$6,574 on average. The environment in which transitional housing is provided, a centralized facility versus scattered site apartments, does not appear to make a consistent difference in program costs, although the distribution of costs between housing operations and services does vary somewhat from one model to another. Therefore, a program's housing model is not primarily a cost question, but rather a programmatic or philosophical one depending on the subpopulation being served.

In all cases, the costs to house individuals and families in transitional housing for extended periods are significantly higher than rental subsidies based on Fair Market Rents for an equivalent period. Transitional housing programs generally provide intensive supportive services along with housing assistance, so a direct comparison of rental assistance to transitional housing is not appropriate. However, communities may want to consider whether alternative interventions or combinations of rent subsidies and standalone supportive services could achieve similar outcomes at lower costs. To the extent that transitional housing is being used by individuals and families as a form of subsidized

permanent housing, actual rent subsidies without extensive services may be much more cost-effective.

Permanent supportive housing is generally less expensive from the perspective of the homeless system than other types of residential homeless programs for families, often similar in cost to a deep rental subsidy. This is not to suggest that the services come at no cost, but rather that permanent supportive housing programs appear to have been successful at helping residents obtain services for which they were already eligible through mainstream systems. To the extent that individuals or families have disabilities that qualify them for permanent supportive housing, communities should expedite their placement into permanent supportive housing programs. This may involve improved assessment and triage processes and may also require development of additional permanent supportive housing resources to accommodate increased referrals.

While some mainstream costs are substantial for these groups of heavy users of transitional housing, ending their homelessness does not appear to offer clear opportunities to achieve cost offsets. Our analysis identified fairly high rates of families who had received some form of mental health or substance abuse treatment in the year prior to homelessness among those who used transitional housing. So, unlike conclusions from past research, family transitional housing in our study communities appears to serve those with behavioral health and medical needs. To the extent that individuals and families are eligible for assistance in mainstream systems but do not have disabilities that qualify them for permanent supportive housing, there may be opportunities to create systematic linkages between transitional housing programs and mainstream system to promote appropriate use of mainstream systems (e.g., using primary healthcare systems for routine medical care rather than emergency or acute healthcare systems) and more efficient mechanisms for delivering these services. For instance, communities should consider creating transitional housing that is modeled like permanent supportive housing. This model would provide housing and limited housing-focused services through the homeless (or other housing) system and non-housing services through mainstream systems.

6.1.3. Households Who Use Homeless Programs Multiple Times with Long Gaps Between Stays

Our analysis also identified a small group of first-time homeless individuals and families who return multiple times for homeless assistance but have long gaps between stays. Their patterns suggest that the assistance they receive from the homeless system the first and even second or third time is not sufficient to help them regain stable housing. These households sometimes only use emergency shelter and other times use a combination of program types. Across the individual sites, costs for individuals who repeatedly used homeless programs with long gaps between stays averaged approximately \$1,000 for groups that only used emergency shelter to as high as \$10,705 for a group of individuals in Houston who used a range of program types. Costs for families averaged from \$3,295 in Kalamazoo for a group that used only emergency shelter for a total of 38 days across all stays to \$17,314 for a group in DC that spent an average of 9 months in range of programs. The homeless system costs are lower on average for groups with long gaps than those incurred by groups with extended stays because the homeless system does not incur costs between program stays.

Beyond the high levels of housing instability, this group is also of interest because of the nature of its involvement with mainstream systems. In Jacksonville, 62 percent of individuals with repeated use of emergency shelters and long gaps were arrested or spent time in jail and 26 percent of the comparable group in Houston had arrests or jail stays during the period in which we studied

mainstream use. In Kalamazoo, 61 percent of families with long gaps had a family member who was arrested or spent time in jail during the study period, as did 23 percent in Houston. In South Carolina, 71 percent of families with long gaps had a family member arrested. For both first-time homeless individuals and families, households with long gaps have much higher involvement with the criminal justice system than other groups. Since these criminal justice system rates represent a time period spanning approximately 3 years, starting 12 months before each household's first stay in a homeless program and generally going through the end of 2006, not all of the involvement occurred during homelessness or the gaps between homeless program stays. However, communities may be able to use patterns of homelessness to identify individuals and families who would benefit from interventions designed to reduce repeat offenses and achieve long-term housing stability. Local criminal justice agencies may be interested in supporting a joint intervention to assist homeless individuals and families with a history of criminal involvement.

A significant percentage of families with long gaps also had changes in household composition from one program stay to the next. Half to two-thirds of families with this pattern in Kalamazoo, Upstate South Carolina, and Houston had a household composition change, and 92 percent of families with long gaps in DC had such a change. These high rates of household change are evidence of household instability and may also suggest high involvement in child welfare systems. In DC, the only site in which we obtained rates of child welfare involvement, 55 percent of the group with long gaps had child welfare involvement at some point during the study period. Unfortunately the nature and timing of child welfare involvement were not available for DC, and data on child welfare involvement were not available for any of the other family sites. However, costs of out-of-home placement by the child welfare system can be substantial. The significant housing and family instability experienced by this group suggests that neither homeless nor mainstream systems are addressing sufficiently the needs of these families.

Although homeless costs associated with households with long gaps are not nearly as large as those for individuals and families with extended stays in homeless programs, the homeless system resources used by this population are sizable enough to support alternative interventions. Moreover, if costs associated with child welfare were captured, the costs for families in this group might be substantially higher. Communities should consider systems to identify individuals and families who leave homeless programs after a relatively brief stay and then return for a second or third time within the next few months. They could be targeted with a specific intervention to address the challenges they face in retaining permanent housing. For families, it may be possible to identify those who are likely to cycle in and out of the homeless system by assessing family stability as part of initial intake. Communities should consider partnering with the child welfare system to develop interventions to promote long-term family and housing stability for these families.

6.2. Policy Implications Related to Individuals and Families with Different Demographic Characteristics

Homelessness impacts first-time individuals and families with different demographic characteristics in different ways, and we found that different demographic groups use homeless programs differently. Cutting across the patterns of homelessness described in the last section, we identified several demographic characteristics that were associated with higher costs: gender for single adults, race for single adults, age for all populations, and household change for families. Recommendations for each of these demographic groups are discussed in this section.

6.2.1. Homeless Costs for Single Women

Among individuals, single women had fewer stays but used homeless programs 74 percent longer than single men. And women dominate groups with certain patterns of homelessness, such as those who use more expensive types of programs.² Even when controlling for length of stay, program type and other demographic characteristics, multivariate regression analysis shows that single women have 97 percent higher costs than men. We speculate that there are several reasons for the higher costs. Women's needs may be greater, and they may use higher-cost programs that can respond to these needs. In some sites, single women are served in small programs together with families, usually with higher daily costs, whereas single men often are served in large programs with lower daily costs. Like single women, most families have fewer but longer stays than single men. Thus, the similar patterns of use for both single women and families also may be influenced by the expectations of program goals and staff.

Regardless of the reasons, communities may want to reevaluate their systems for serving single women. Programs designed to accommodate families require a different physical environment, generally with more privacy than that needed for single women. If a community has sufficient numbers of single women experiencing homelessness, programs or living spaces designed specifically to meet the physical and programmatic needs of single women may be able to be delivered at lower costs per day without affecting quality. To the extent that women are staying in transitional housing for extended periods due to severe mental illness or other long-term disabilities, it may be more appropriate and less costly to quickly place these women in permanent supportive housing programs. As with all long-stayers in transitional housing (Section 6.1.2), communities should also consider whether alternative interventions such as rapid rehousing with community-based assistance could achieve equivalent or better outcomes at lower costs.

6.2.2. Homeless Costs for Older Individuals and Families Headed by Older Adults

Relatively older adults, homeless as individuals or as part of families, also had longer lengths of stay and higher homeless costs than younger adults. Even controlling for length of stay, type of program used, and other demographic characteristics, costs for individuals older than 40 were 10 percent higher for adults than those between 31 and 40 years. Among homeless families, costs for families headed by people between 18 and 24 were one-third less than those headed by 31 to 40 year olds. For individuals, the reasons for relatively older people using higher cost programs are not clear and may be due to individual needs and program eligibility. For families, the differences in costs can almost entirely be explained by the types of program used and lengths of stay.

Single women are older on average than women in families with children. This is not surprising as women who are older may have grown children and therefore be less likely to be accompanied by them. Since both age and gender are associated with higher costs for first-time homeless individuals, communities may want to consider using age and gender in combination with other indicators to identify older women with greater needs immediately at intake. Quickly diverting this group to alternative interventions specifically designed to meet their physical and programmatic needs may be more cost-effective.

² Data from victim service providers, such as domestic violence shelters, were not available for this study, so these findings are for other type of homeless residential services.

6.2.3. Homeless Costs of African-Americans

African-Americans are over-represented among first-time homeless individuals and families in comparison to the general population of individuals and families in poverty in each of the communities we studied, with the exception of Jacksonville. The multivariate analysis of lengths of homelessness and costs reveals contrasting results for African-American individuals and families. Among the individuals we studied, African-Americans are more likely to spend longer cumulative periods of time homeless, have a greater number of stays, and to incur higher homeless system costs than individuals of other races. However among the families we studied, African-Americans are likely to spend shorter periods of time in homeless programs and to be associated with lower costs. In some communities, African-Americans are associated with higher mainstream system costs and in some, lower. The conclusions suggest different strategies for African-American individuals than for families.

For individuals, African-Americans are likely to have longer lengths of stay due to their repeated episodes of homelessness. The greater costs are somewhat surprising, since African-Americans are found at lower rates in the path groups that primarily use transitional housing, the program type generally associated with higher costs. However, in Jacksonville these patterns of use—using emergency shelters rather than transitional housing—may in part drive the higher homeless system costs for African-American individuals. African-Americans comprise 73 percent of the emergency shelter long-stayer group, but only 47 percent of the Jacksonville study cohort. The Jacksonville emergency shelter that accommodates long stays is one of the most expensive homeless programs offered in the community. In Des Moines, the group of individuals that uses the lower cost, shared room model of transitional housing has a low rate of African-Americans compared with the Des Moines study cohort as a whole. To the extent that African-Americans individuals are using emergency shelter for extended periods, communities should explore strategies to alert programs to these patterns of extended stays, so more appropriate interventions can be deployed. If individuals are identified with issues that suggest need for more intensive interventions, they should be placed quickly in appropriate permanent supportive housing, transitional housing, or a newly created homeless program type that is focused on addressing their specific needs.

Among families, patterns of homelessness and involvement in healthcare systems suggest that African-American families are homeless due to extreme poverty, rather than issues related to mental illness or substance abuse. If so, communities should explore prioritizing African-American families for prevention and rapid rehousing interventions that address housing and income issues with less focus on services for non-economic issues. It may be particularly appropriate to provide a prevention or rapid rehousing intervention for families who have several characteristics associated with shorter episodes of homelessness and lower costs, for instance when African-American families headed by younger adults with younger children request shelter assistance. While communities may feel uncomfortable discussing methods of directing assistance based on race, this finding could be translated into strategies that identify ways other than race to uncover indicators for families who become homeless primarily due to poverty rather than psycho-social issues.

Alternatively, the low involvement in healthcare systems may also reflect an informal or clinical bias that results in lower access by African-American families to mainstream systems or fewer referrals or admissions to homeless programs that offer higher-intensity assistance. Therefore, communities

should also consider whether informal discrimination at the community level and as part of the case management process needs to be addressed.

6.2.4. Potential for Achieving Mainstream Cost Savings

The question of whether mainstream system costs can be offset by appropriate housing interventions is left open by this study. Our analysis suggests that there are few opportunities for mainstream cost savings when targeting groups based on their patterns of homelessness; however, consistent with past research, significant mainstream system costs may be achievable when targeting individuals or families with high levels of inappropriate involvement in mainstream systems prior to homelessness. For example, for individuals in Houston we identified patterns of mental health inpatient involvement immediately prior to homelessness, which imply that homeless programs may be currently used to house some individuals when they leave inpatient facilities. Mainstream systems and homeless systems (or ideally mainstream housing systems) may be able to design more appropriate, lower cost post-care housing responses that can offset future mainstream and homeless system costs for individuals being discharged from inpatient facilities.

Several demographic groups of first-time homeless individuals in Jacksonville and Houston, the only sites in which we had data to accommodate regression analysis, are associated with higher mainstream costs over the full period in which we studied these individuals when controlling for patterns of homelessness.³ First-time homeless single women had higher mainstream costs when compared to men for mental health treatment costs (as well as physical healthcare costs and income supports in Jacksonville) and lower criminal justice costs. Relatively older adults in both communities also had lower criminal justice costs. However, age had different effects on costs for health care across communities. First-time homeless adults over 40 had higher mental health and physical health costs in Jacksonville and lower mental health care costs in Houston. Results for race provided a mixed picture. Communities may want to explore whether certain demographic groups should be targeted with alternative interventions to ensure appropriate use of mainstream systems.

The key point is that communities must recognize that mainstream cost savings are most likely not readily achievable when targeting homeless individuals or families defined by their use of the homeless system, even those who are homeless for extended periods. Instead, communities interested in mainstream cost savings should be intentional about identifying and targeting those with high mainstream system use as they enter the system.

6.3. Ideas for Future Research

This study does not show which homelessness interventions are cost-effective or indicate whether mainstream systems are appropriately used during periods of homelessness. But it does illuminate the diverse patterns and costs of homeless and mainstream system use that are essential to answer the critical policy question of whether instances of higher costs are appropriate as a response to homelessness for specific subgroups, or whether there are more efficient and effective ways of meeting people's needs.

³ The mainstream costs were incurred throughout the periods before, during and after homelessness in which we studied these individuals.

This research raises a number of additional questions that should be the focus of new research.

1. Are there specific features of homeless programs, such as program structure or size that are consistently associated with higher costs? Understanding specific cost drivers more clearly may help communities understand how to design lower-cost interventions.
2. Do some program models have outcomes that justify greater investment?
3. Are needs and patterns of homelessness for single women distinct enough to warrant systems designed specifically for them, such that future homeless system planning would focus on three broad populations: single men, single women, and families with children?
4. Are there individual and family characteristics beyond those identified in this study that can be used to predict who is likely to experience extended or high-cost homeless system use? This study identifies many patterns of homelessness associated with high costs, but changing those costs requires directing people to alternative interventions before the costs have been incurred and communities will need a basis for setting new referral policies.
5. Are the tentative conclusions drawn here about the relationship of homelessness for African-American families and extreme poverty warranted? Are there other factors that are important for identifying African-American and other families who are likely candidates for prevention or rehousing interventions?
6. How are costs of the child welfare system related to periods of homelessness? Do the conclusions regarding limited opportunities for mainstream cost offsets change when analyzing a broader range of mainstream domains within the same community?
7. Although mainstream costs appear to be related to homelessness, does desirable and undesirable mainstream involvement vary when homeless individuals or families are accessing transitional housing as opposed to a shelter, permanent housing or rapid rehousing program? For instance, this study did not attempt to understand whether individuals had greater inpatient use while in shelter and more routine mental health care when placed in transitional housing. Understanding the nature of mainstream costs, how they change in relation to different types of homeless programs, would help communities implement homeless programs that encourage cost-effective use of mainstream systems.
8. How do mainstream costs vary for the periods in-between homeless program stays as compared with during homeless program stays and the periods before and after homelessness? This study aggregated the homeless program stays and the gaps between them in a single “during homelessness” period. More granular analysis might help explain important trends in mainstream use preceding homelessness, during stays in different types of homeless program, during times of housing instability between homeless program stays, and following homelessness

While there are many research avenues still to explore, this study contributes substantially to the effort to quantify the costs associated with homelessness. Understanding these costs is a critical step in ensuring that the resources invested in serving those who are homeless are directed in a manner that best meets the diverse needs of homeless individuals and families.

Appendix A: Costs Associated with First-time Homelessness: Individuals in Jacksonville, FL

A.1. Overview

This study aims to understand the financial costs associated with 1,972 single adults in Jacksonville, Florida who became homeless for the first-time between July 1, 2004 and June 30, 2005. This study describes how people who become homeless use homeless and mainstream services and the total costs associated with those services. The mainstream services included in this report are arrests and jail stays, Medicaid-funded healthcare costs, mental health services, substance abuse treatment, food stamps, and TANF benefits. Mainstream services were tracked for the periods before, during, and following homelessness.¹

Of the seven sites included in this study on the costs of first-time homelessness, we were able to develop the most comprehensive dataset for Jacksonville: data on utilization and costs for more mainstream systems, data for costs of residential homeless programs that include capital costs, and data on patterns of homelessness that include people who were contacted by homeless street outreach programs but never entered homeless residential programs.

Eighty percent of the first-time homeless individuals in the study cohort for Jacksonville were men. The average age was 41 years, and the study cohort was evenly split between whites and African-Americans (Exhibit 1). Half of the cohort had only one stay in a homeless program, and more than three-quarters used only emergency shelters. A small subset of the cohort had extended stays in homeless residential programs, and they were responsible for the majority of homeless costs. Three-fourths of the study cohort used mainstream systems before, during, or following the period of homelessness (Exhibit 1), and the costs of the study cohort to mainstream systems increased during homelessness.

Exhibit 1: The Jacksonville Cohort	
Basic Cohort Information	
Total Persons	1,972
Average Age	41
Percent Male	80%
Percent White	48%
Homeless Program Utilization	
Length of Homeless Tracking Period	18 months
Average Number of Stays	3.3 stays
Average Total Length of Stay	57 days
Median Length of Stay	10 days
Mainstream System Utilization	
Incurred costs in at least one mainstream system	74%
Incurred costs in two or more mainstream systems	49%

A.1.1 Highlights of Cost Findings

On average, individuals in the study cohort spent 132 days homeless during the 18-month homeless tracking period.² During this period, the study cohort incurred a per person total cost of \$2,652 for homeless and mainstream systems combined. Sixty-two percent of costs were incurred by the

¹ For the purposes of this study, mainstream systems are those that do not exclusively target people who are homeless.

² The period of homelessness extends from the first entry into a program for homeless people through the last exit from such a program. It may include “gap days” during which a person is not in a homeless program. Thus the 132 day average period of homelessness is longer than the 57 day average total length of stay shown on Exhibit 1.

homeless system (\$1,634), and the remaining 38 percent was spread across mainstream domains. Criminal justice was by far the most expensive mainstream domain during homelessness (Exhibit 2).

Homeless System Costs

- **Distribution of Costs:** The distribution of homeless costs was highly skewed. Fifty percent of the study cohort had total homeless system costs of less than \$225 and accounted for only 2 percent of total homeless costs. Ten percent of the study cohort had homeless costs of \$5,300 or more. These individuals accounted for 62 percent of total homeless costs.

Exhibit 2: Costs While Homeless	
Domain	Average Costs per Person
Homeless System Costs	\$1,634
Mainstream System Costs (all domains)	\$1,018
Income support (Food Stamps and TANF)	\$138
Physical Health	\$219
Criminal Justice	\$397
Substance Abuse	\$158
Mental Health	\$106
Total Costs While Homeless	\$2,652

Homeless System

Costs Included

- *Operational costs of homeless residential programs, including facility rents*
- *Services provided by homeless residential and homeless outreach programs*
- *Capital Costs of facilities owned by the program or donated*

Costs Not Included

- *Programs not covered by HMIS:* Probably not major costs; over 90 percent of beds are covered in the HMIS either directly or through data merges. However, the costs of one large health program that targeted the homeless are not included in this study.

- **Costs by Program Type:** Emergency shelters with 24-hour staffing and on-site supportive services had the highest daily cost of homeless residential programs. Overnight shelters and permanent supportive housing programs with low-intensity services had the lowest daily cost.³
- **Costs by Demographics:** The average homeless system cost for women (\$2,754) was more than

double the average cost for men (\$1,337). Women tended to stay in more extensive programs than men and have longer program stays.

- **Costs by Homeless System Utilization:** Not surprisingly, there was a strong correlation between length of time spent in homeless programs and homeless costs. Users with long term stays (six months or more) in transitional housing had the highest average homeless costs.

Cost of Mainstream Systems

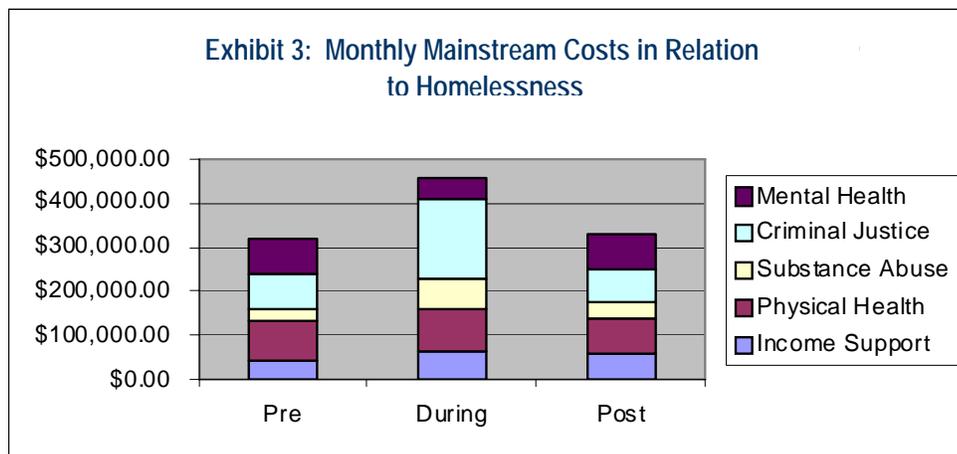
More than \$12.4 million, \$6,294 per person, in mainstream costs were incurred over the entire study period, which extended from one year before each person became homeless to December 2006. Like costs to the homeless services system, the distribution of mainstream costs across the study cohort was highly skewed, with more than a quarter of the study cohort using no mainstream systems and another quarter using more than \$7,000 in mainstream services during the entire study period.

³ The term Permanent Supportive Housing is used here because these programs were considered part of Jacksonville’s homeless service system. However, some of these programs were funded with HUD Section 8 SRO Moderate Rehabilitation grants and do not offer intensive supportive services.

Mainstream Systems	
Costs Included	
•	<i>Physical Health (Medicaid Managed Care and Fee For Service)</i>
•	<i>Income support (TANF and Food Stamps)</i>
•	<i>Criminal Justice (county and city)</i>
•	<i>Mental Health and Substance Abuse: Medicaid and IDS funded</i>
Costs Not Included	
•	<i>Non-Medicaid Primary Health Care: Likely to be high; as participation in Medicaid was low.</i>
•	<i>Veterans Administration Funded Services: May be high, we do not know what percent of the study cohort were veterans.</i>
•	<i>Other benefits (SSI/SSDI)</i>

- The event of becoming homeless for the first time was associated with a sharp increase in costs to mainstream systems (Exhibit 3).⁴ This increase was most pronounced in the criminal justice domain, where average monthly costs more than doubled during homelessness.
- Persons in the study cohort were frequently arrested for crimes such as trespassing that appeared to be directly related to their homelessness.

- Mental health was the only domain for which average monthly costs were lower during homelessness, and persons receiving mental health services had lower homeless costs than the rest of the study cohort.



- In regression analysis, demographic characteristics and involvement in mainstream domains were stronger predictors of mainstream costs than the path a person takes through the homeless service system. In particular, whether or not a person received physical healthcare was a very strong predictor of mainstream costs. Age was also a strong predictor, with the youngest and the oldest age groups in the study cohort having the highest mainstream costs.
- Overall mainstream costs were far lower than estimates from previous studies, suggesting that the experience of becoming homeless does not necessarily lead to long-term, costly involvement in mainstream service systems.

⁴ Average monthly costs are used here to adjust for the wide variance in the length of the homeless period for the study cohort.

A.2. The Homeless Services System for Single Adults in Jacksonville-Duval, Clay Counties

The Jacksonville-Duval/Clay Counties Continuum of Care (CoC) covers approximately 1,350 square miles along the northeastern Florida coastline. The CoC includes a significant portion of the metropolitan Jacksonville area, including its downtown hub, and has a population of 980,226. Exhibit 4 is a map showing the Jacksonville-Duval/Clay Counties CoC.

In January 2005, the CoC reported a point in time census of 2,930 homeless persons, 86 percent of whom (2,521) were single adults. Of those, 721 were without shelter. Nearly one in every 335 people in Jacksonville-Duval/Clay Counties was homeless on that single night in January.⁵

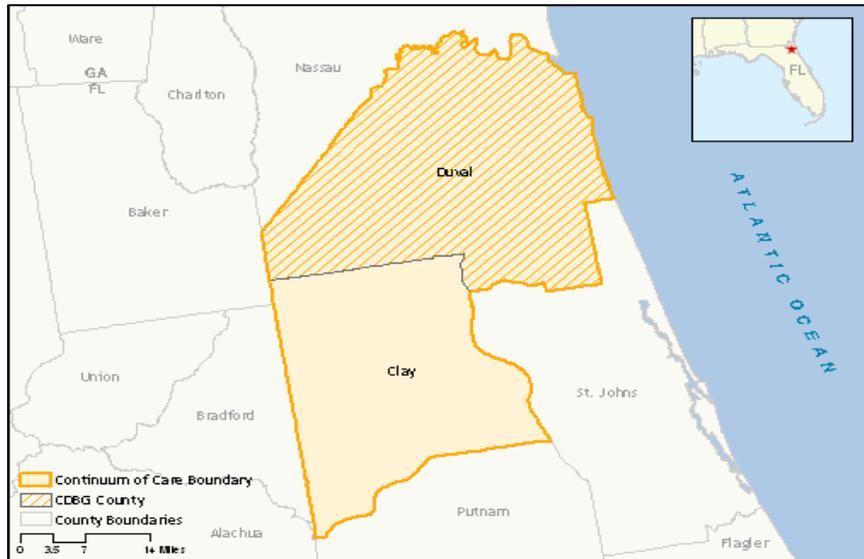
Fifteen primary agencies within the CoC provide shelter, transitional

housing and permanent housing to homeless people. They are clustered primarily within downtown Jacksonville. Several additional agencies do not provide shelter but provide supportive services to homeless persons in Jacksonville. Nearly all of the homeless service agencies, including large faith-based organizations that do not receive any public funding, participate actively in the CoC planning process. The CoC, led by the non-profit Emergency Services and Homeless Coalition (ESHC), establishes priorities for program development and funding. In 2004, ESHC published a 10-Year Strategic Plan entitled *Ending Homelessness in Jacksonville: A Blueprint for the Future* (ESHC, 2004). The plan encourages the CoC to adopt a “Housing First” approach of moving clients as quickly as possible into permanent housing. However, as is true for many jurisdictions that have announced intentions to place clients rapidly into permanent housing, Jacksonville’s service system still reflects, for the most part, a more traditional staged housing framework, wherein clients are assumed to move from emergency shelter to transitional housing and from there to independent or permanent supportive housing.

A.2.1 Homeless Program Types

Homeless programs in Jacksonville were assigned a program-type based on their role in the homeless service system, the level of supportive services they provided, and their expected cost structure.

Exhibit 4: The Jacksonville-Duval/Clay Counties CoC



⁵ This estimate is based on the Continuum of Care’s 2005 *Homeless Population and Subpopulations* chart from its annual funding application to HUD (HUD, 2006) and 2005 ACS population estimates for Duval and Clay Counties (U.S. Census Bureau, n.d.).

Exhibit 5 shows the program types identified in this analysis, the number of programs in each category, the number of available beds for each program type, and information on the costs collected for these programs.

Exhibit 5: Jacksonville CoC Program Typology				
Program Type	Description	Number of Programs	Number of Beds	Notes on Cost Estimates
Supportive Services Only	This category includes a service center that provides food, clothing and job training; a health clinic; and a case management program for persons with psychiatric disabilities.	3	N/A	These programs were not included in the case study due to lack of standardized data on utilization.
Street Outreach	Street-based outreach and service center, offering low demand, engagement-focused services. Clients are engaged on the streets and come into the center for more extensive assistance. Clients typically receive services for 6-12 months.	2	N/A	No data available on level of services received so a standard "engagement" cost was applied to each stay.
Congregate Overnight Shelter	Overnight shelters for homeless individuals. Programs were all faith-based and offered minimal services.	3	180	One overnight shelter was not included in this study due to lack of HMIS data. Costs were collected directly from one of the two other programs.
Congregate 24-hour Emergency Shelter	Emergency Shelter with 24-hour supervision, permitting longer lengths of stay and offering more extensive services.	1	300	Costs collected directly.
Facility-based Transitional Housing	Congregate facilities offering longer lengths of stay (up to 2 years) and intensive services, typically focused on substance abuse recovery.	8	450	Two programs were not included in study because they did not participate in HMIS. Cost data was collected directly from three of the six remaining programs.
Scattered Site Transitional Housing	Market-rate housing. Agency holds the lease, but clients may take over the lease if/when they become self-sufficient. Rent subsidies are typically provided for up to two years. Clients receive case management and other services.	2	60	Costs were collected directly from both programs.
Facility-based PH: Minimal Services	Section 8 Moderate Rehabilitation Single Room Occupancies (SROs). Clients served were not necessarily disabled. Minimal services offered in conjunction with program.	4	450	Costs were collected directly for three of the four programs.
Facility-based PSH: Moderate to Intensive Services	Permanent Supportive Housing, either SROs or group housing. Exclusively serve persons with disabilities and offer more intensive services.	5	175	Two programs were excluded due to lack of HMIS data. Costs were collected directly from two of three remaining programs.
Scattered Site PSH: Moderate to Intensive Services	Market-rate housing. Either the agency or the client holds the lease. Clients receive permanent, deep rental subsidy, case management, and other services.	4	165	One program was excluded due to lack of HMIS data. For Shelter + Care programs, case match included as service cost.

Jacksonville has two homeless outreach programs that provide a variety of services to persons living on the streets. In most cases these services are limited to brief interactions such as distributing blankets or bus tokens. However, some clients engaged for longer periods of time are placed into residential homeless programs.

Jacksonville has three overnight emergency shelters. These facilities offer minimal services and often limit the total number of nights clients can stay there. One overnight shelter allows three free nights per month and then charges \$5 per night. Although overnight shelters are not very large, they serve more people than other programs because they have the highest turnover rates. The largest emergency shelter in the area was placed in a separate category because, unlike the overnight emergency shelters, it has 24-hour staffing, on-site supportive services, and no explicit limits on length of stay.

Most transitional housing units in Jacksonville are facility-based, meaning that clients are housed in a single building or a campus of buildings owned or leased by the program. There are a few scattered-site transitional programs that rent individual apartments in larger complexes where most of the buildings' tenants are not homeless. Most transitional housing programs offer supportive services, including case management, benefits assistance, and job training. These programs screen out persons who are actively using drugs or alcohol and cite employment, sobriety and obtaining permanent housing as their primary program goals.

The majority of permanent supportive housing units in Jacksonville are Section 8 Moderate Rehabilitation Single Room Occupancies (SROs). Unlike permanent supportive housing, these programs do not exclusively serve persons with disabilities. Aside from meals, these permanent housing SROs do not include on-site supportive services. Services are provided through referral. Jacksonville also has several permanent supportive housing programs that offer more intensive on-site supportive services. Most individuals using permanent housing programs are not included in this study because their initial homeless program entry date was prior to July 1, 2004.

Annual operating budgets were collected for a sample of homeless programs of each type. The annual operating costs include the costs of housing operations, program administration and supportive services such as food and case management. For programs that own their own facilities, an estimate of the capital costs of those facilities was factored into the daily cost. Annual costs were divided by the annual number of total shelter days provided to derive a daily cost.

The daily costs were merged with homeless service utilization data to derive the total costs for each program stay. The primary source of data used to measure homeless program utilization was HMIS data. However, three of Jacksonville's largest providers did not consistently enter data into the HMIS during the study period. These providers had their own separate databases to track the number of clients they served, their characteristics, and their lengths of stay. For the study, data extracts from the HMIS and each of the three provider databases were merged to create a single dataset that captured the majority of homeless programs in the Jacksonville CoC.

Some programs did not participate in HMIS or provide a separate dataset. Those programs are missing from the analysis, and, therefore, this study does not provide a complete account of how many single adults became homeless during the study period, their service patterns, or their total costs. For instance, no data was available for Circle of Love, a medium-size faith-based organization

that operates an overnight shelter and a transitional housing program, or for Volunteers of America’s permanent supportive housing programs. Despite these limitations, data was available for over 95 percent of the total emergency, transitional and permanent supportive housing beds within the CoC.

Jacksonville has several homeless supportive services only programs whose costs are not included in this case study, including a health clinic; a service center that provides meals, clothing and employment services; and a case management program for homeless persons with psychiatric disabilities. These programs were excluded from the case study because of their lack of consistent and standardized HMIS data.

A.2.2 Homeless Costs by Program Type

It cost the homeless service system more than \$3.2 million to provide shelter and services to the 1,972 persons in the homeless study cohort during the 18-month homeless tracking period. Exhibit 6 presents the homeless system costs for each homeless program-type used by the study cohort of first-time homeless individuals in Jacksonville. Service intensity is the biggest determinant of cost per day. Programs that offer an array of on-site services such as healthcare and employment assistance have higher daily costs. Facility-based residential programs, where clients are all served in a single building or campus, have daily costs similar to those of scattered-site programs that lease market-rate apartment units.

Type	Total Cost	Total Days	Average Cost Per Day	Total Program Stays	Distinct Persons Served	Average # of Stays per Person	Average # of Days per Stay	Average Cost Per Person
Outreach and Engagement ^a	\$15,868	177	\$89.65	177	168	1.1	1	\$94
Congregate Overnight Shelter	\$134,183	9,862	\$13.61	4,909	1,210	4.1	2	\$111
Congregate 24-hour Emergency Shelter	\$1,733,325	54,046	\$32.07	884	700	1.3	61	\$2,476
Facility-based Transitional Housing: Moderate to Low Intensity Services	\$773,714	24,680	\$31.35	434	348	1.2	57	\$2,223
Scattered Site Transitional Housing: Moderate to Low Intensity services	\$19,002	686	\$27.70	6	6	1.0	114	\$3,167
Facility-based PSH: Moderate to Intensive Services	\$157,231	5,457	\$28.81	33	31	1.1	165	\$5,072
Scattered Site PSH: Moderate to Intensive Services	\$82,250	2,650	\$31.04	13	12	1.1	204	\$6,854
Facility-based PSH: Minimal Services	\$305,696	14,758	\$20.71	59	58	1.0	250	\$5,271

^a Each outreach engagement was treated as a one-day stay

Homeless outreach programs were responsible for less than one percent of total homeless system costs. Only nine percent of the study cohort had contact with a homeless outreach worker. The HMIS data did not offer information on the types of services clients received, so an average cost per “engagement” was estimated and applied to each member of the study cohort reported to have received outreach services.

Although congregate overnight emergency shelters served 61 percent of the homeless study cohort, they accounted for only 9 percent of homeless days and only 4 percent of homeless system costs. On average, a night in an overnight congregate shelter cost \$13.61, a significantly lower unit cost than any other residential homeless program. Overnight shelters also had the lowest total costs per person served because they had much shorter lengths of stay than other residential homeless programs.

Jacksonville’s congregate 24-hour emergency shelter served 35 percent of the study cohort at sometime during the tracking period and accounted for 48 percent of total shelter days and 54 percent of homeless costs. This shelter had a daily cost of \$32.07, the highest of any residential program, or \$962 for a one-month stay. By comparison, the 2007 fair market rent for a 1-bedroom apartment in Jacksonville was \$669. The twenty-four hour emergency shelter had a longer average length of stay than facility-based transitional housing programs. This could be because the 24-hour shelter has fewer program requirements such as maintaining sobriety or paying program rent. Because of the slightly higher daily cost and the slightly longer average stay, the total cost per individual of a stay in 24-hour emergency shelter was higher than the total cost of a stay in a transitional-housing facility.

Transitional housing programs accounted for 25 percent of total homeless system costs. Facility-based transitional housing programs had a slightly higher daily unit cost (\$31.35) than scattered site transitional housing (\$27.70). However, scattered-site transitional housing programs had a higher total per-person cost because their average stay was twice as long. The median stay in facility-based transitional housing lasted less than 30 days, possibly because persons in the study cohort had difficulty complying with their sobriety requirements or other program rules.

Although only 5 percent of the study cohort used permanent supportive housing, these programs accounted for 17 percent of total homeless costs.⁶ The daily costs of permanent supportive housing programs varied greatly depending on the level of services provided. Facility based SRO programs with minimal services had a daily cost per person of \$20.71, while scattered site permanent supportive housing programs with more intensive services had a daily cost per person of \$31.04. Permanent supportive housing programs with more intensive services had significantly shorter average lengths of stay than permanent supportive housing programs with services provided through referrals. Overall, permanent supportive housing programs had the highest total costs per person because their average lengths of stay were greater than other residential programs.

⁶ Several permanent supportive housing programs for people with mental illness did not have data in the HMIS, including these program might have increased the number of clients using permanent housing programs and their associated costs. However, most of those clients would not have been likely to fall into our cohort of first-time homeless between July 1, 2004 and June 30, 2005.

A.3. Homeless System Costs

A.3.1 Utilization of the Homeless System

The study cohort’s homeless service utilization was tracked for 18 months from the initial program entry date for each member of the study cohort. Seventy-eight percent of the study cohort used only emergency shelter or street outreach programs, and fifty percent of the study cohort had only one program stay.

The median total length of stay in residential homeless programs was only ten days. A small subset of the study cohort stayed in homeless residential programs for six months or more. As a result, the average length of stay (57 days) was more than five times the median length of stay. Similarly, a small subset of persons had five or more program stays. Although fifty percent of the study cohort had only one program stay, the average number of program stays was 3.3 (Exhibit 7).

It was rare for people in the study cohort to use the homeless service system as a continuum, moving from emergency shelter to transitional or permanent housing. Only 22 percent of the study cohort used transitional or permanent supportive housing at all. The majority of persons who used transitional or permanent housing also had an emergency shelter stay (59%). However, of those who used both emergency shelter and transitional or permanent housing, 37 percent accessed transitional or permanent housing directly, had a program exit, and then had a subsequent stay at an emergency shelter. When people moved from emergency shelter into transitional or permanent supportive housing, there was often a lag between their exit from emergency shelter and their entry into transitional or permanent supportive housing, suggesting that their entry into transitional or permanent supportive housing was not the result of a referral.

Exhibit 7. Homeless Program Utilization	
Average number of Homeless Program Stays	3.3
Percent of study cohort with only one program stay	50%
Percent of study cohort that used only emergency shelter or outreach programs	78%
Percent of study cohort that used transitional and/or permanent supportive housing	22%
Average (mean) number of days spent in homeless programs	57
Median number of days spent in homeless programs	10

A.3.2 Homeless System Costs per Person

Exhibit 8 shows the distribution of costs to the homeless services system for individuals in the study cohort. The average cost per person was \$1,634, while the median was \$225. The minimum cost for a person represents one night in an emergency shelter, and the maximum is for a person who stayed in a range of homeless programs for the entire 18-month period.

Exhibit 8. Summary of Per Person Homeless System Costs	
Average Homeless System Cost Per Person	\$1,634
Median Homeless Cost	\$225
Minimum Homeless Cost	\$13.61
25 th Percentile of Homeless Costs	\$40.82
75 th Percentile of Homeless Costs	\$1,578
Maximum Homeless Costs	\$23,069

As shown in Exhibit 8, half the study cohort had a total homeless cost of less than \$225. Almost all of these individuals either used just emergency shelter or had a street outreach contact followed by an

emergency shelter stay and spent only a few days total in shelter. These individuals accounted for only 2 percent of total homeless costs. Ten percent of the study cohort had a total homeless cost of \$5,300 or more. These individuals accounted for 62 percent of total homeless costs.

Exhibit 9: Distribution of Homeless Costs

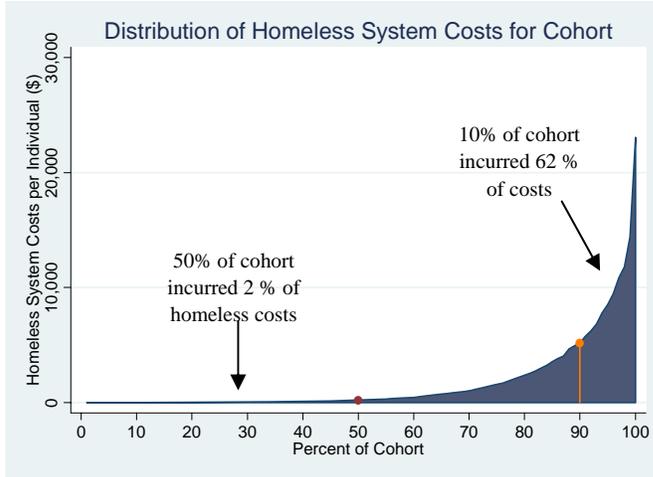


Exhibit 9 shows the cumulative distribution of homeless system costs for the individuals in the study cohort. The distribution of homeless system costs is heavily skewed by a small percentage of users responsible for the majority of total costs.

A.3.3 Homeless Costs by Demographic Characteristics

The average total homeless cost of women in the study cohort was more than double the average costs of men, as shown in Exhibit 10. Women were more likely to have long stays in emergency shelter. Fifty-five percent of persons who spent 6 months or more in emergency shelter were women, even though women made up only 20 percent of the homeless study cohort. This finding is consistent with other studies that have found that women typically have longer lengths of stay in residential homeless programs (HUD, 2008).

	Average Homeless Cost
Gender	
Men	\$1,337
Women	\$2,754
Race	
White	\$1,348
African-American	\$1,928
Age	
18 to 24	\$1,197
25 to 30	\$1,327
31 to 40	\$1,466
41 to 50	\$1,689
51 and older	\$2,152

Not only did women have longer homeless program stays, they also typically used more expensive programs. Multivariate regression analysis, shown in Appendix B.3.1, measures the effect each independent variable has on homeless costs, holding other variables constant. The outcome variable is in log form, and these coefficients can be understood as percentage differences from the reference category for each categorical variable. Model 4 in Appendix B.3.1 shows the effect of gender on homeless costs, controlling for the length of stay spent in homeless programs, number of program stays, gaps between homeless stays, race, and age. The female variable has a co-efficient of 1.21, meaning that women had 121 percent higher homeless costs after controlling for other variables. The relationship between gender and homeless costs was statistically significant at the .01 level.

The average total homeless cost for African-Americans (\$1,928) was nearly \$600 higher than the average homeless cost for whites (\$1,348) (Exhibit 10).⁷ African-Americans had longer average lengths of stay than whites. However, even after controlling for length of stay and other variables, African-Americans still had 39.4 percent higher costs than whites (Appendix B.3.1). This finding was statistically significant at the .01 level.

Exhibit 10 also shows that costs per individual increase with age, with those over 50 having the highest cost per person. Older persons were more likely to progress from emergency shelter to transitional or permanent supportive housing or to be placed directly in permanent supportive housing, possibly because they were more likely to have a documented disability. However, multivariate regression analysis found that the effect of age on total homeless cost per person was not statistically significant after controlling for homeless program utilization, suggesting that the greater cost per person for older individuals is associated only with longer stays (Appendix B.3.1, Model 4).

A.3.4 Costs by Homeless Path Group

First-time homeless individuals followed eight distinct “paths” through the homeless services system in Jacksonville. These paths were assigned based on a multivariate cluster analysis that included as variables the number of nights spent in homeless programs, number of homeless stays, length of gaps (in days) between homeless stays, and the types and sequences of programs used while homeless. Exhibit 11 presents the Jacksonville path groups, the percentage of the study cohort in each path, the path groups’ demographic characteristics, their lengths of stay, and the average cost to the homeless system for each person in the path group. Appendix B.1 provides more information on the demographic characteristics of each path group, and Appendix B.2 shows their utilization of homeless programs.

Two-thirds of the study cohort, 1,302 people, fell into either the “ES Short Stayer” or the “Street/ES Short Stayer” path group. These people had brief stays in emergency shelter or a brief engagement with a homeless outreach program followed by a stay in emergency shelter. The majority of people in these path groups spent three days or less in homeless programs and typically used only overnight emergency shelter rather than the more costly 24-hour emergency shelter. Therefore, the total homeless cost per person for these path groups were very low compared to the rest of the study cohort. The individuals in these path groups were overwhelmingly male and somewhat more likely to be white than individuals in other path groups.

Two percent of the study cohort had a single stay in emergency shelter that lasted more than six months. “Emergency Shelter Long Stayers” was the only path group with more women than men. This path group also had the highest percentage of African-Americans. “Emergency Shelter Long Stayers” had the second highest total homeless system cost per person of any path group, \$9,756. The forty-four persons in this path group had a higher total homeless cost (\$429,274) than the 746 “Emergency Shelter Short Stayers” (\$419,768).

⁷ Information on ethnicity was not available from the Homeless Management Information System (HMIS).

Exhibit 11: Jacksonville Homeless Path Groups

Path Name	Description	% of Study Cohort	Average Age	Percent Male	Percent White	Average Length of Stay	Average Homeless Cost	Total Homeless Cost
Single ES Short Stayers	A single stay in emergency shelter lasting less than 6 months	38%	40	80%	51%	18	\$563	\$419,768
Street/ES Short Stayers	This pattern includes outreach engagements followed by short emergency shelter stays, as well as multiple, brief shelter stays	28%	41	85%	52%	29	\$853	\$474,039
Single ES Long Stayers	A single stay in emergency shelter lasting 6 months or more	2%	41	46%	25%	304	\$9,756	\$429,274
Multiple ES Long Gappers	Multiple emergency shelter stays with significant gaps in time between stays	10%	42	95%	37%	40	\$910	\$179,249
Sequential Short Stayers	Brief use of transitional housing, sometimes following emergency shelter. A few members of this path ended the sequence with a short stay in PSH following emergency shelter or transitional housing. Total length of stay less than 6 months.	10%	41	65%	50%	54	\$1,585	\$310,652
Sequential Long Stayers	Long stays in transitional housing, sometimes following a stay in emergency shelter. A few members of this path ended the sequence with a short stay in PSH. Total length of stay greater than 6 months.	2%	47	67%	50%	364	\$10,416	\$374,961
Circlers	Use of emergency shelter following transitional or permanent supportive housing.	7%	43	79%	38%	135	\$3,987	\$566,200
Permanent Supportive Housing Long Stayers	Long stays in permanent supportive housing, sometimes preceded by a stay in emergency shelter	3%	46	67%	42%	338	\$8,493	\$467,126

Ten percent of the study cohort had a high number of stays in emergency shelter spread out over a long period of time. Ninety-five percent of “Emergency Shelter Long Gappers” were male and two thirds were African-Americans. “Long Gappers” had an average of 11 distinct program stays during the study period, and most of these stays lasted only a few days (Appendix B.2). On average, 398 days elapsed between the first shelter entry for “Emergency Shelter Long Gappers” and their last shelter exit during the study period. However, “ES Long Gappers” spent an average of only forty days in emergency shelter. Some “ES Long Gappers” may be chronically homeless persons alternating among spending the night in emergency shelters, living on the streets or in other tenuously housed situations, and staying in other institutions. The average homeless cost for this path group was \$910, lower than the overall study cohort average.

Ten percent of persons in the study cohort were “Sequential Short Stayers”. This path group ended the homeless “path” in transitional or permanent housing and had a total length of stay of less than six months. Two percent of persons in the study cohort were “Sequential Long Stayers”. This path group ended the homeless “path” in transitional or permanent housing and had a total length of stay of six months or more. Although people in these two path groups are characterized as “sequential” users of the homeless service system, the majority (56 percent) used only transitional housing.

“Sequential Long Stayers” had a total homeless cost per person of \$10,416, the highest of any path group. Together the 36 “Sequential Long Stayers” incurred \$374,961 in total homeless costs, \$64,000 more than the total homeless costs of the 196 “Sequential Short Stayers” (\$310,652). “Sequential Long Stayers” and “Sequential Short Stayers” both were somewhat more likely to be women than the study cohort as a whole. Long Stayers were older on average than other path groups, with an average age of 47, compared to 41 for the overall study cohort (Appendix B.1).

Seven percent of the study cohort, 142 people, were “Circlers”, meaning that they exited transitional or permanent supportive housing only to have a subsequent homeless program stay in emergency shelter or transitional housing. Compared to other path groups using transitional or permanent housing, “Circlers” were more likely to be male and more likely to be African-American. Because of their relatively short lengths of stay, their average costs were lower than costs for the “long-stayer” path groups.

Three percent of the study cohort, 55 persons, had long stays in permanent housing. “Permanent Supportive Housing Long Stayers” had a higher average age than the study cohort as a whole. Although this group had an average length of stay of 338 days and the highest median length of stay of any path group (384 days, compared with 371 for sequential long-stayers), they typically stayed in SRO units with minimal services and low daily costs (Appendix B.2). Thus, their total cost per person was considerably less than the costs per person of the long-term stayer groups that spent most of their time in transitional housing or emergency shelter.

A.4. Mainstream System Costs

Of the six sites in the Cost of Homelessness study, Jacksonville provides the most complete picture of mainstream service costs associated with first-time homelessness.

Administrative data on mainstream service systems were collected through the University of South Florida (USF), which acted as an intermediary. USF manages behavioral health data for the State and was able to link our homeless study data with mainstream datasets to produce the analysis needed for this case study. The study includes data for: Medicaid-funded physical

One or more mainstream domains	74%
Two or more mainstream domains	49%
Income support	52%
Criminal Justice	38%
Mental Health	25%
Substance Abuse	22%
Physical Health (Medicaid funded)	20%

healthcare; state and Medicaid funded mental health and substance abuse services; Temporary Assistance to Needy Families (TANF); food stamps; and jail and arrest data from the Duval County Sheriff. The data on physical healthcare cover both capitation plans (Medicaid managed care) and fee for service encounters. The capitation plan costs reported in the study represent the costs incurred by the medical providers for the visits and services provided, rather than the amount of the premiums paid by the State for the managed care.

Not included in the study are physical healthcare costs not covered by Medicaid, such as emergency room visits for the uninsured, and medical and other services provided through the Veterans Administration. We also did not collect data on SSI/SSDI income support or on service encounters and costs that members of the study cohort might have had with the child welfare system.⁸

Mainstream service costs were analyzed for the periods before, during and after homelessness. The pre-homelessness period was defined as the 12 months prior to the first homeless program entry for an individual in the study cohort. During homelessness was defined as the period between a cohort member's initial entry into a homeless program and his or her final exit from a homeless program.⁹ The after homelessness period was defined as the period between a person's final program exit date and the end of the study period December 31, 2006. The entire study period lasted between 2.5 and

⁸ Members of the study cohort were served only as single individuals during the study period. However, some of them may have been parents of minor children with encounters with the child welfare system, just as some received TANF income.

⁹ If clients were still in a homeless program 18 months after their initial program entry, they were given an exit date of 18 months (548 days) after their initial entry. For persons who had more than one homeless program stay, the during-homelessness period includes time when those persons were not actually residing in homeless programs and many not have actually been homeless. For example, a person in the study cohort might go to an overnight shelter for one night on July 3, 2004, exit the shelter to live in his own apartment, and then have a subsequent one night stay in an overnight shelter on December 21, 2005. Although this person's total length of stay in homeless programs was two nights, his total period "during homelessness" was 536 days.

3.5 years, depending on a client’s initial homeless program entry date.¹⁰ Exhibit 12 shows the percentage of the study cohort using each mainstream system at some point during the entire study period.

Exhibit 13 summarizes the mainstream system costs of the Jacksonville study cohort of first-time homeless individuals. The average total mainstream system cost per person in the study cohort was \$6,294. Some mainstream costs are positive, as persons in the study cohort received necessary benefits or services. Other mainstream costs were less positive, for example, incarceration or involuntary psychiatric hospitalizations.

Like homeless costs, the distribution of mainstream costs was heavily skewed, with a majority of the study cohort with relatively low costs and a small subset with very high costs. The skew is reflected in the large gap between the mean mainstream cost (\$7,136) and the median mainstream cost (\$1,602). More than a quarter (26 percent) of the study cohort made no use of mainstream services during the study period, so the 25th percentile cost per person is zero.

Exhibit 13. Summary of Total Mainstream System Costs	
Total Mainstream Costs	\$12,410,933
Percent of study cohort that incurred mainstream costs	74%
Average mainstream costs per person	\$6,294
Average mainstream costs per person incurred during homelessness	\$1,018
25 th percentile of mainstream cost	\$0
Median mainstream cost	\$1,602
75 th percentile of mainstream cost	\$7,136
Maximum mainstream cost	\$180,814

Exhibit 14 shows the total monthly mainstream costs for the entire study cohort for each major domain in the periods before, during and after homelessness. Monthly averages are used to control for the difference in length between the before, during and after homelessness time-periods. Total monthly mainstream costs for almost all domains were highest during homelessness. The biggest reason for the increase was a 125 percent spike in criminal justice costs during homelessness. The Duval County Department of Corrections spent an average of \$178,072 per month on the homeless study cohort during this period.

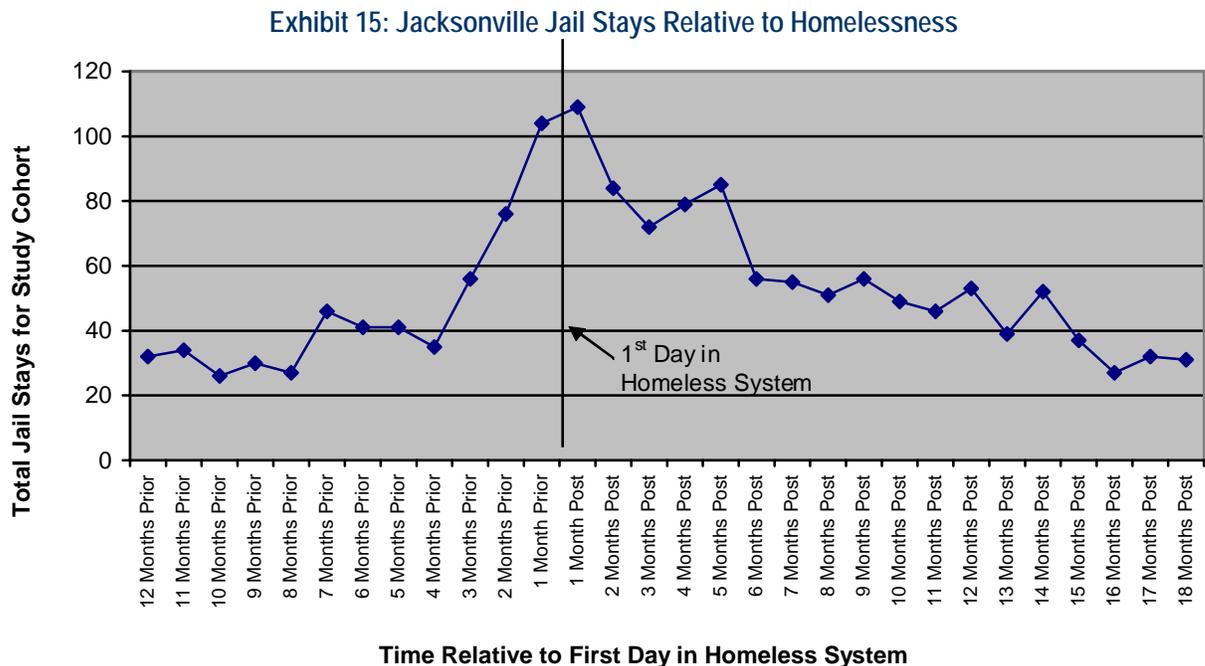
Exhibit 14: Total Monthly Mainstream Costs for the Study Cohort Before, During, and After Homelessness						
	Criminal Justice	Physical Health	Mental Health	Income Support	Substance Abuse	All Domains
Average Monthly Costs by Time Period						
Prior	\$79,274	\$89,923	\$78,091	\$42,595	\$26,622	\$317,198
During	\$178,072	\$98,206	\$47,328	\$61,526	\$70,992	\$456,124
Post	\$73,950	\$81,049	\$76,908	\$58,568	\$37,862	\$327,746
Percent of Costs Incurred by Time Period						
Prior	25%	28%	25%	13%	8%	-
During	39%	22%	10%	13%	16%	-
Post	23%	25%	23%	18%	12%	-
Overall	26%	25%	22%	16%	11%	-

¹⁰ The total length of the mainstream tracking period varied based on when persons in the study cohort first entered the homeless service system. Persons with a program entry date of July 1, 2004 had a total study period of 3.5 years (July 1, 2003 – December 31, 2006). Persons with a program entry date of June 30, 2005 had a total study period of 2.5 years (June 30, 2004–December 31, 2006). The average mainstream study period was 1,090 days.

Criminal justice was the most expensive mainstream domain for the study cohort, accounting for 26 percent of overall mainstream costs and 39 percent of mainstream costs incurred while the study cohort was homeless (Exhibit 14). Criminal justice costs include the costs of making an arrest (\$244.50/arrest) and putting someone in jail (a \$165 processing fee plus \$60 for each night spent in jail). Criminal justice costs do not include court costs or prison costs. Thirty-eight percent of the study cohort had at least one encounter with the criminal justice system (Exhibit 12).

Exhibit 14 shows a 125 percent increase in monthly criminal justice costs for the study cohort during homelessness, suggesting that persons are more likely to incur criminal justice costs while they are homeless. Trespassing was the most commonly cited cause for arrest, followed by possession of a controlled substance, petty theft, public intoxication, and driving with a suspended license – all non-violent offenses.

The monthly costs by time period show a sharp spike in criminal justice costs during homelessness. However, a more granular analysis of the criminal justice data shows that jail stays increase dramatically directly before and after first contact with a homeless program (Exhibit 15). The dramatic increase in jail stays (and jail costs) is obscured in Exhibit 14 because monthly costs are averaged out over the entire 12-month “pre-homelessness” period. Exhibit 15 suggests a connection between the event of becoming homeless and the likelihood a person goes to jail. In some cases a jail stay may have disrupted a person’s housing arrangement and precipitated his homelessness; in other cases, being homeless might have made people more likely to be arrested for vagrancy crimes such as trespassing or loitering.¹¹



¹¹ Other research analyzing rates of homelessness among ex-offenders found that individuals released from state prisons or jails have a greater risk of homelessness than individuals with similar characteristics who have not been recently incarcerated. The same research also found that certain demographic characteristics and longer periods of incarceration were associated with greater risks of homelessness after release. (Graham, D., Locke, G., Bass Rubenstein, D. & Carlson, K., unpublished)

Unfortunately, the administrative data used in this study is insufficient to investigate these relationships more thoroughly. This level of analysis requires client-level utilization data, which we did not receive for the other mainstream systems in Jacksonville.

Exhibit 16 shows the results of multivariate analysis we conducted to understand which characteristics of the study cohort and its patterns of homelessness are related to criminal justice costs.¹² In these models, the regression coefficients represent the differences in dollar costs between individuals with and without a particular characteristic. The first model in Exhibit 16 includes the number of homeless stays, length of stay in homeless programs, the number of gap days spent between homeless program stays, age, gender, and race. The coefficients in these models should be interpreted as the effect (in dollars) having a particular characteristic has on a person's criminal justice costs, controlling for all other characteristics included in the model. According to this model, there is not a strong association between the number of homeless program stays and criminal justice costs or between length of stay in homeless programs and criminal justice costs. However, there is a strongly significant relationship between sporadic use of the homeless service system and criminal justice costs. People who had long gaps between homeless program stays had higher criminal justice costs. The gap days variable has a coefficient of 149.9, meaning that for every 30 days spent between homeless program stays, criminal justice costs increased by almost \$150. The first model in Exhibit 16 also shows a strong relationship between gender and criminal justice costs, with women having almost \$1,000 lower criminal justice

Exhibit 16. Multivariate Regression Models for Criminal Justice Costs		
	Model without mainstream involvement	Model with mainstream involvement
Patterns of Homelessness		
Total Number of Stays	-34.855 (21.201)	-16.612 (18.684)
Total length of stay (in days), divided by 30	11.861 (27.582)	-40.961* (24.685)
Total gaps between stays (in days), divided by 30	149.972*** (25.196)	46.678** (22.557)
Demographics+		
Females	-992.334*** (249.377)	-699.162*** (239.654)
African-Americans	380.364* (195.320)	391.015** (173.505)
Other Races	814.333 (535.575)	1,037.067** (470.540)
Ages 18-24	91.847 (380.230)	20.461 (335.731)
Ages 25-30	-59.916 (341.461)	30.047 (300.492)
Ages 41-50	-639.606*** (240.925)	-442.451** (212.209)
Ages 51 and above	-1,094.955*** (291.206)	-451.928* (257.551)
Mainstream Involvement		
Income Support (TANF and food stamps)	N/A	162.643 (180.981)
Physical Healthcare	N/A	-522.385** (247.343)
Mental Health	N/A	133.297 (211.859)
Substance Abuse	N/A	1,003.905*** (211.772)
Criminal Justice	N/A	3,973.550*** (178.374)
Constant	1,820.685*** (220.352)	61.876 (214.513)
Observations	1972	1972
R-Squared	.04	.26
+ Reference categories are males, whites, and ages 31-40. Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%		

¹² Appendix B.4 provides a complete set of regression models, which include controls for missing variables. Appendices B.5 and B.6 provide alternate regression models that control for homeless path group and homeless cost respectively, rather than homeless service utilization.

costs than men. Age was also strongly associated with criminal justice costs, as persons over 40 had lower criminal justice costs than persons between 31 and 40.

The second regression model shown in Exhibit 16 controls for both patterns of use of the homeless services system and for use of the mainstream domains, including criminal justice, with which the study cohort had encounters.¹³ Thus, individuals with criminal justice encounters had criminal justice costs almost \$4,000 greater (the coefficient is 3973.55) than those without such encounters (whose criminal justice costs would be zero). Because this model controls for whether or not a person becomes involved in the criminal justice system, the coefficients indicate the extent of a person's involvement and not the likelihood of his involvement.

Thus, individuals who received substance abuse services as well as criminal justice services incurred an additional \$1,004 in criminal justice costs, while those who used Medicaid reimbursed health care had criminal justice costs \$522 lower. Even after controlling for the differential use of mainstream services, across the entire study cohort women had criminal justice costs about \$700 lower than men. The model shows that African American individuals have higher criminal justice costs than whites, as do those identifying themselves as belonging to "other" races. Not surprisingly, relatively older members of the study cohort have lower criminal justice costs than younger people.

After controlling for involvement in mainstream domains, there is still a significant relation between gap days and criminal justice costs. However the relationship is much weaker, as the coefficient decreases from 149.9 to 46.7. After controlling for involvement in mainstream domains, there is a negative correlation between length of stay in homeless programs and criminal justice costs. However, the effect is slight and only significant at the 10 percent level. Apparently, peoples' characteristics that are not directly related to homelessness—whether they are arrested, whether they have needs that bring them into contact with substance abuse services, whether they lack routine medical care—are much more powerful determinants of their criminal justice costs than their patterns of use of homeless programs. Gender and race also are more powerful predictors of criminal justice encounters than are patterns of use of the homeless services system.

Income support was used by just over half of the study cohort. Fifty-two percent of the study cohort received food stamps during the study period, while only three percent of persons in the cohort received TANF. The low utilization of TANF benefits was expected because most persons in the study cohort were single men, and many of the women may not have qualified for TANF because they did not have children living with them. Income support costs increased 44 percent while persons in the study cohort were homeless and decreased only slightly after clients exited homeless programs (Exhibit 14). It is unclear how persons living in residential homeless programs, who in many cases were provided free meals, used their food stamp benefits.

Multivariate analysis results indicate that income support costs were positively associated with longer homeless lengths of stay. The first regression model shown in Exhibit 17 shows that each additional 30 days in homeless residential programs is associated with an additional \$80 in income support across the study cohort. An alternate model that controls for homeless path groups (Appendix B.5.1, Model 2) shows that those with long stays in emergency shelter had a \$2,327 higher income support cost per person. The models control for the gender of the individual and also show that women have

¹³ Both models are shown in their entirety in Appendices B.4.1 and B.4.2 respectively.

much higher income support amounts than men. The second model in Exhibit 17 shows that people who also receive physical health care have higher income support amounts than those who do not.

Overall, the pattern seems to identify a group better connected to programs that alleviate poverty than other first-time homeless individuals.

Substance Abuse

services were used by 22 percent of the study cohort (Exhibit 12).

The monthly cost of substance abuse treatment for the study cohort spiked 167 percent during homelessness, from \$26,622 to \$70,992 and decreased to \$37,862 after persons in the study cohort exited homeless programs (Exhibit 14). Substance abuse treatment was the least expensive mainstream service domain during the study period, having the lowest costs in the periods before and after homelessness.

However, it was the third most expensive domain while people in the study cohort were homeless.

Exhibit 17. Multivariate Regression Models for Income Support Costs		
	Model without mainstream involvement	Model with mainstream involvement
Patterns of Homelessness		
Total number of stays	-5.599 (10.013)	-2.596 (8.964)
Total length of stay (in days), divided by 30	80.128*** (13.027)	40.700*** (11.843)
Total gaps between stays (in days), divided by 30	0.982 (11.900)	-12.295 (10.822)
Demographics+		
Females	1,770.719*** (117.779)	833.108*** (114.976)
African-Americans	280.946*** (92.248)	135.253 (83.241)
Other Races	-174.340 (252.948)	-115.260 (225.746)
Ages 18-24	416.656** (179.580)	185.669 (161.070)
Ages 25-30	248.953 (161.269)	92.079 (144.164)
Ages 41-50	-152.958 (113.787)	-242.203** (101.810)
Ages 51 and above	-104.207 (137.534)	-210.229* (123.563)
Mainstream Involvement		
Income Support (TANF and food stamps)	N/A	1,445.796*** (86.828)
Physical Healthcare	N/A	1,423.293*** (118.666)
Mental Health	N/A	-255.665** (101.641)
Substance Abuse	N/A	-123.407 (101.600)
Criminal Justice	N/A	7.975 (85.577)
Constant	394.947*** (104.071)	-112.587 (102.915)
Observations	1972	1972
R-Squared	0.16	0.34
+ Reference categories are males, whites, and ages 31-40. Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%		

Path groups that involved the use of transitional housing programs (“Sequential” Stayers and “Circlers”) had higher substance abuse costs than path groups associated with only the use of emergency shelter.¹⁴ The relationship between use of transitional housing programs and substance abuse costs holds both when the use of mainstream systems is controlled for in the model and when it is not (Exhibit 18). Most

transitional housing programs cited achieving sobriety as a principal program goal, and these programs may have referred their clients to mainstream drug treatment programs. An alternative specification of the model shows that each 30-day increase in the length of stay in a homeless program is associated with a \$61 increase in substance abuse costs (Appendix B.4.1). The first regression model in Exhibit 18, which does not control for the use of mainstream services, shows that heavy users of permanent supportive housing also have high substance abuse costs, but the coefficient is no longer significant in the second model, which does control for mainstream involvement. A possible explanation is that, while users of permanent supportive housing are more likely to incur substance abuse costs than other path groups, their substance abuse costs are not higher than other people who receive substance abuse treatment. Receiving mental health treatment was associated with a \$451 increase in substance abuse costs, for persons who received substance abuse treatment (Exhibit 18). Gender appears to have no effect on substance abuse costs.

Mental health services were the third most expensive mainstream service domain across the entire study period but the least expensive domain during the homelessness

Exhibit 18. Multivariate Regression Models for Substance Abuse Costs		
	Model without mainstream involvement - controlling for homeless path group	Model with mainstream involvement - controlling for homeless
Homeless Path Group+		
Single ES Long Stayers	-12.359 (448.596)	-267.271 (400.888)
Multiple ES Long Gappers	349.426 (231.315)	29.563 (209.701)
Street/ES Short Stayers	312.461* (160.581)	126.469 (143.937)
PSH Long Stayers	1,174.122*** (402.976)	583.988 (362.491)
Sequential Short Stayers	883.603*** (231.450)	414.067** (207.256)
Sequential Long Stayers	1,345.077*** (494.468)	862.500* (440.936)
Circlers	491.023* (263.855)	130.110 (238.325)
Mainstream Involvement		
Income Support (TANF and food stamps)	N/A	146.196 (125.848)
Physical Healthcare	N/A	239.911 (172.276)
Mental Health	N/A	451.142*** (147.491)
Substance Abuse	N/A	2,951.154*** (147.036)
Criminal Justice	N/A	-9.928 (123.700)
Constant	587.542*** (164.758)	-179.410 (158.159)
Observations	1972	1972
R-Squared	0.02	0.23
+ Reference categories are Single Emergency Shelter Short Stayers, males, whites, and ages 31-40. Both models also controlled for age, gender, and race. The full models are shown in Appendix B.4.1 and B.4.2. Standard errors in parentheses. *significant at 10%, **significant at 5%; ***significant at 1%		

¹⁴ Appendix B.7 shows mainstream involvement and per person costs by time period and homeless path group.

period, as shown on Exhibit 14. The exhibit shows that during homelessness, total mental health costs went down for the study cohort, even as substance abuse costs rose. This may reflect a substitution effect between similar services during the period of homelessness. However, regression models that look for determinants of mental health costs across the entire study period show no statistically significant differences in cost between persons who have and have not received substance abuse treatment (Exhibit 19). This means that, persons in the study cohort that received substance abuse treatment and also received mental health services had higher substance abuse costs than those who only received substance abuse treatment. However, persons who received mental health services and also received substance abuse treatment did not have higher mental health costs than persons that only received mental health services.

Both before and after controlling for involvement in mainstream systems, African-Americans have significantly lower mental health costs than white individuals (Exhibit 19). “Sequential Short Stayers”, those with short stays in transitional or permanent supportive housing, have higher mental health costs in both regression models (Appendix B.5.1, Appendix B.5.2). Aside from this, the path group regression analysis showed no significant relationship between homeless service use and mental health costs. Among those persons who had mental health treatment, people who received Medicaid funded physical health care incurred an additional \$3,204 in mental health costs (Exhibit 19).

Physical health care was the least likely mainstream domain to be utilized by the Jacksonville cohort.

Exhibit 19. Multivariate Regression Models for Mental Health Services Costs ¹⁵		
	Model without mainstream involvement	Model with mainstream involvement
Demographics		
Female	1,663.730*** (441.617)	34.806 (454.595)
African-American	-907.569*** (345.888)	-745.157** (329.119)
Other Race	575.892 (948.438)	358.007 (892.559)
Ages 18-24	1,237.724* (673.342)	286.685 (636.842)
Ages 25-30	636.365 (604.686)	334.982 (569.998)
Ages 41-50	237.133 (426.649)	244.497 (402.536)
Ages 51 and older	1,065.059** (515.691)	1,003.213** (488.545)
Mainstream Involvement		
Income Support (TANF and food stamps)	N/A	-623.605* (343.301)
Physical Healthcare	N/A	3,203.957*** (469.182)
Mental Health	N/A	4,531.870*** (401.871)
Substance Abuse	N/A	131.791 (401.706)
Criminal Justice	N/A	-7.631 (338.355)
Constant	1,183.239*** (390.217)	92.949 (406.907)
Observations	1972	1972
R-Squared	0.02	0.13
+ Reference categories are Single Emergency Shelter Short Stayers, males, whites, and ages 31-40. Both models also controlled for number of homeless program stays, homeless length of stay, and gaps between homeless stays. The full models are shown in Appendix B.4.1 and B.4.2 Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%		

While used by only 20 percent of the study cohort, it had the second highest total cost (Exhibit 14). Physical health care costs did not change significantly in the periods before, during and after persons in the study cohort were homeless (Exhibit 14).¹⁶ Long-stayers in permanent supportive housing had by far the highest physical health care costs of any path group. Their average physical health care cost was \$9,300, 239 percent higher than the per person physical health care costs of the next highest path group (Appendix B.7). Most permanent supportive housing programs serve exclusively people with disabilities, and these individuals may have physical as well as mental health conditions. No other path group had a significant association with physical health care costs after controlling for

¹⁶ Appendix B.7 shows the per person costs and involvement rates in physical health care by time period and homeless path group.

demographic characteristics. However, there was a significant association between physical health care costs and the length of time spent in homeless programs. The first model in Exhibit 20 shows that, for every thirty days spent in homeless programs, physical health care costs increase \$199. In the second model, which controls for mainstream involvement, each 30-day increase in homeless length of stay is associated with a \$157 increase in physical health care costs (Exhibit 20). This indicates that not only are persons with long stays in homeless programs more likely to receive Medicaid funded physical health care, they also are likely to receive it more frequently and/or receive more expensive services. The models that include involvement in other mainstream systems show that people who receive mental health services also have substantially higher physical health care costs than other members of the study cohort (Exhibit 20). The models that do not control for receipt of mainstream services show that women have much higher physical health care costs than men. However, once receipt of physical health care and other mainstream services is controlled for, women have lower costs than men (Exhibit 20). Apparently, individual homeless men are less likely than individual homeless women to receive Medicaid-reimbursed physical health care services, but when they do, their treatment is more expensive.

Exhibit 20. Multivariate Regression Models for Physical Health Care Costs		
	Model without mainstream involvement	Model with mainstream involvement
Patterns of Homelessness		
Total number of stays	-74.742** (36.628)	-34.522 (33.302)
Total length of stay (in days), divided by 30	198.681*** (47.651)	157.377*** (44.000)
Total gaps between stays (in days), divided by 30	13.062 (43.528)	4.806 (40.207)
Demographics+		
Females	2,170.849*** (430.825)	-951.443** (427.168)
African-Americans	560.360* (337.435)	284.895 (309.262)
Other Races	209.352 (925.260)	163.165 (838.707)
Ages 18-24	646.639 (656.886)	-508.376 (598.418)
Ages 25-30	128.096 (589.908)	-476.145 (535.607)
Ages 41-50	47.339 (416.223)	63.805 (378.249)
Ages 51 and above	912.642* (503.089)	421.008 (459.069)
Mainstream Involvement		
Income Support (TANF and food stamps)	N/A	-312.324 (322.588)
Physical Healthcare	N/A	7,847.323*** (440.874)
Mental Health	N/A	1,159.145*** (377.624)
Substance Abuse	N/A	878.769** (377.469)
Criminal Justice	N/A	-571.797* (317.940)
Constant	477.218 (380.681)	-219.240 (382.356)
Observations	1972	1972
R-Squared	0.04	0.21
+ Reference categories are males, whites, and ages 31-40. Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%		

A.5. Total Homeless and Mainstream Costs

The average total homeless and mainstream cost for each individual in the study cohort was \$7,927. The median total system cost for persons in the study cohort was \$3,057 (Exhibit 21). The average cost was inflated by a small subset of persons with overall homeless and mainstream system costs of more than \$20,000.

Total Costs (mainstream and homeless)	\$15,632,202
Average (mean) total cost per Person	\$7,927
Median total cost	\$3,057
Average Costs incurred while homeless	\$2,651

Exhibit 22 shows the distribution of overall costs during the homeless period across the homeless services system and mainstream domains.

Sixty-two percent of overall costs incurred during homelessness were borne by homeless programs and 38 percent was borne by mainstream systems. The average monthly costs for all mainstream domains except for mental health were highest during homelessness. Criminal justice was the most expensive mainstream domain during homelessness, accounting for 15 percent of total costs in this period.

Exhibit 22: Distribution of Costs During Homelessness

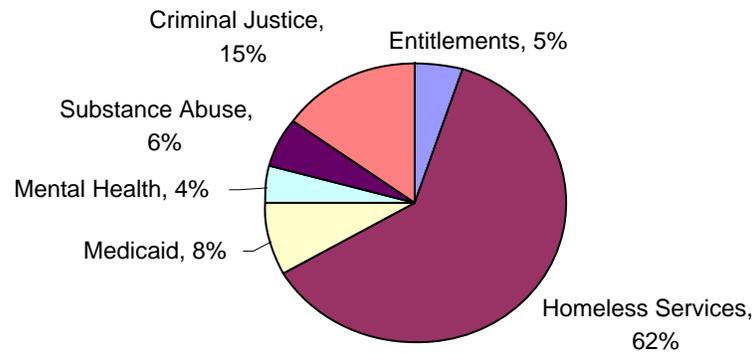


Exhibit 23 shows the average total costs of the study cohort by path group and time period. More detail about the differences in mainstream utilization and costs by path group is provided in Appendix B.7. The three path groups associated with long homeless residential stays (“Single ES Long Stayers”, “Transitional Housing Long Stayers”, and “Permanent Housing Long Stayers”) had the highest overall costs. PSH Long Stayers had a total average cost of \$23,930, the highest of any path group, primarily because their physical healthcare costs were much higher than any other path group.

	ES Short Stayers	Street/ES Short Stayers	ES Long Stayers	ES Long Gappers	Sequential Short Stayers	Sequential Long Stayers	Circlers	PSH Long Stayers
Mainstream Costs Before Homelessness	\$1,822	\$1,571	\$3,314	\$1,260	\$3,313	\$2,439	\$1,624	\$4,808
Homeless Costs	\$563	\$853	\$9,756	\$910	\$1,585	\$10,416	\$3,987	\$8,493
Mainstream Costs During Homelessness	\$259	\$711	\$2,953	\$1,841	\$1,054	\$2,385	\$2,057	\$6,198
Mainstream Costs After Homelessness	\$3,288	\$3,456	\$3,384	\$2,563	\$4,533	\$846	\$2,499	\$4,432
Total	\$5,932	\$6,771	\$19,407	\$6,574	\$10,485	\$16,086	\$10,167	\$23,931

The high healthcare costs for users of permanent supportive housing were expected because many of Jacksonville’s permanent supportive housing programs exclusively served people with disabilities, and these individuals are older than the study cohort as a whole and may have chronic physical conditions as well as mental health problems. More than half of PSH Long Stayers also had some involvement with the criminal justice system during the study period. Compared to other path groups, mainstream costs for PSH Long Stayers remained fairly consistent before and after becoming homeless.

“Sequential Long Stayers”, persons who had long stays in transitional housing, had the highest homeless costs of any path group, but only average mainstream costs. Their average total costs (\$16,086), were well below the overall costs of long-term stayers in emergency shelter or permanent supportive housing. The mainstream costs of “Sequential Long Stayers” dropped dramatically after homelessness, a possible indication that their lives were more stable as a result of their homeless stay or stays. Another interpretation is that this group of users was higher functioning than other path groups and thus had less frequent and less expensive involvement with mainstream systems after exiting homeless programs.

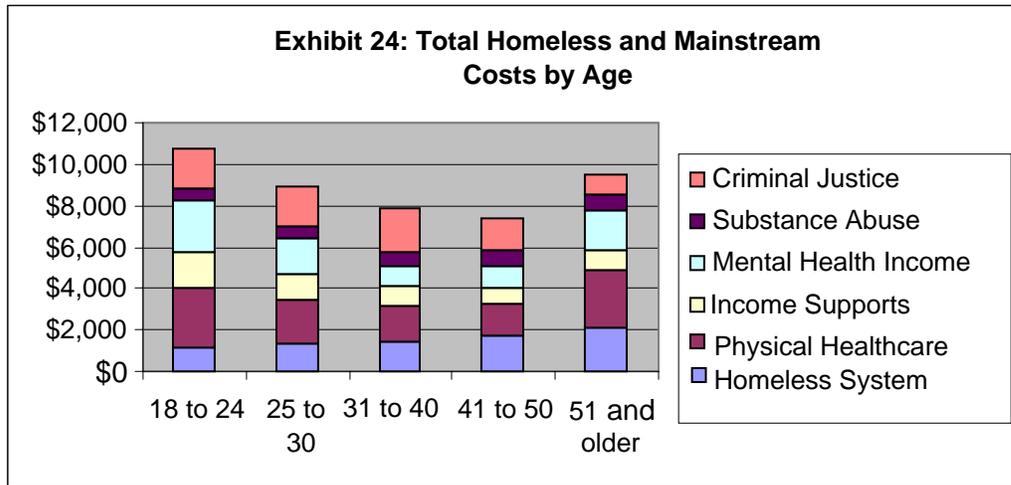
People with a single long stay in emergency shelter had an average total cost of \$19,407. This small path group, only two percent of the study cohort, had the second highest homeless (\$9,756) and mainstream (\$9,651) costs per person of any path group. This group appeared to be more connected to mainstream supports than other path groups. They were the most likely to receive both income supports (86 percent) and physical healthcare (39 percent).

“Sequential Short Stayers” and “Circlers” had nearly identical total costs per person, \$10,485 and \$10,167 respectively. Sequential Short Stayers had much higher mental health costs before becoming homeless than any other path group (Appendix B.7). Unlike Sequential Long Stayers, the average mainstream costs of Sequential Short Stayers remained high after exiting homeless programs. “Circlers” had high average criminal justice costs during homelessness; suggesting that in some cases a jail stay helped trigger homeless recidivism and entry into emergency shelter. However, both of these path groups had lower overall costs than long term users of transitional or permanent housing because they spent less time in residential homeless programs.

Surprisingly, “Multiple Emergency Shelter Long Gappers” the group that most closely resembles the chronically homeless in their patterns of homelessness, had the lowest average mainstream costs before becoming homeless of any path group (Exhibit 23). Although Long Gappers had high criminal justice costs during homelessness, their overall mainstream costs were significantly lower than users of transitional or permanent housing or long-term stayers in emergency shelter because they were less connected to mainstream services like food stamps and healthcare. Long Gappers also had low homeless costs because, despite their many homeless program stays, their cumulative number of nights in shelter was low and they used inexpensive overnight shelters. “Single ES Short Stayers”, the most common path group representing 38 percent of the study cohort, had the lowest total cost per person. “Street ES Short Stayers” also had overall costs significantly lower than the cohort average.

There was a U-shaped relationship between age and total cost, as demonstrated in Exhibit 24. The 18-24 year old age group had the highest total costs per person. Although their homeless costs were low, their income support costs were significantly higher than other age groups, and they also had high Medicaid and mental health costs. Persons over 50 also had significantly higher total costs than

other age groups. Older persons had significantly higher homeless and Medicaid costs compared with persons between the ages of 25 and 49.



Multivariate regression analysis shows that homeless service patterns, gender, race, and mainstream system involvement all had significant effects on overall costs. Holding constant demographic and mainstream system variables, long term stayers in transitional housing (“Sequential Long Stayers”) had the highest overall costs, 438 percent higher than short-term stayers in emergency shelter (Exhibit 25). After controlling for homeless path groups, mainstream involvement, and other demographic characteristics, women had 93 percent higher overall costs than men (Exhibit 25).

Similarly, African-Americans had 41-percent higher overall costs than whites (Exhibit 25). The entire difference in overall costs for African Americans was because of higher homeless costs. There was no significant difference in mainstream costs between African-Americans and those who are white (Appendix B.3.1, Models 5 and 6; Appendix B.3.2, Models 5 and 6.)

Involvement in mainstream systems was highly correlated with total costs for the homeless and mainstream systems combined. In most cases, persons involved in mainstream systems had higher overall costs. For instance, controlling

Exhibit 25. Multivariate Regression Models for Overall Homeless and Mainstream Costs

	Model with mainstream involvement -controlling for homeless path group
Homeless Path Group+	
Single ES Long Stayers	3.890*** (0.240)
Multiple ES Long Gappers	1.519*** (0.126)
Street/ES Short Stayers	0.721*** (0.086)
PSH Long Stayers	3.892*** (0.217)
Sequential Short Stayers	1.800*** (0.124)
Sequential Long Stayers	4.378*** (0.264)
Circlers	2.902*** (0.143)
Demographics+	
Females	0.931*** (0.100)
African-Americans	0.408*** (0.072)
Other Races	0.348*** (0.196)
Mainstream Involvement	
Income Support (TANF and food stamps)	0.542*** (0.075)
Physical Healthcare	0.405*** (0.103)
Mental Health	-0.203** (0.088)
Substance Abuse	0.429*** (0.088)
Criminal Justice	0.192*** (0.074)
Constant	3.620*** (0.095)
Observations	1972
R-Squared	0.49
+ Reference categories are Single Emergency Shelter Short Stayers, males, and whites. Both models also controlled for age. The full models are shown in Appendix B.3.2, which also includes models for homeless costs and overall mainstream costs. Standard errors in parentheses. ^a significant at 10%; ^b significant at 5%; ^c significant at 1%	

for other factors, persons receiving income supports had 54 percent higher costs than persons that did not receive income supports (Exhibit 25). The only exception to this was mental health. Controlling for homeless path group, demographics, and receipt of other mainstream services, people who used the mental health system had 20 percent lower overall costs than people who did not receive mental health services (Exhibit 25). The most likely explanation for this is that persons who received mental health services spent less time in homeless programs and had lower homeless costs.

A.6. Implications

This case study is consistent with past research showing great diversity in the ways people use the homeless service system. It also finds a similar diversity in the effects of becoming homeless on use of mainstream services. Particularly for homeless costs, but also for mainstream costs, a small subset of the study cohort was responsible for the majority of costs. Homeless interventions that target intensive users of homeless and mainstream services have the greatest potential for cost savings. More research is needed to understand what separates the majority of first-time homeless persons having brief and relatively inexpensive involvement with homeless and mainstream systems from the small subset with long periods of homelessness and costly involvement in homeless and mainstream systems. However, this case study did have several findings with direct implications for homeless policymakers.

A.6.1. Findings Associated with Homeless Paths

The small subset of the study cohort with long stays in emergency shelter, transitional, or permanent supportive housing had by far the highest costs over the entire period. People with longer homeless stays and higher homeless costs across program types also incurred higher costs for physical healthcare, income supports, and substance abuse treatment. Additionally, in many cases placement into service- rich, long-term homeless residential programs tends to increase costs to mainstream service systems rather than offset them. The current expenditures may also be justified by client needs and outcomes. However, homeless prevention and housing-based assistance targeting the most intense users of the homeless system may be able to equally meet needs and yield cost savings for both homeless and mainstream systems.

Short-term users of transitional housing had much higher mental health costs before becoming homeless than long-term users of emergency shelter or transitional housing. This could be an indication that people with the greatest barriers to independent living may have more difficulty successfully using homeless programs. It also suggests that people with long stays, and therefore those who incur the highest homeless costs, may not be the people with the greatest barriers to housing.

People with the most glaring need for assistance, those with long episodes of homelessness characterized by sporadic short stays in overnight shelters, actually had very low overall costs because they were not well connected to homeless or mainstream services. However, many people in this path group appeared to be stuck in a cycle of homelessness and incarceration. Criminal justice was the most expensive mainstream system for this group across the entire study period, and criminal justice costs spiked considerably around the time of initial entry into a homeless program, suggesting that people exiting jails are at increased risk of homelessness and persons with multiple homeless program stays are at increased risk of incarceration. In many cases, persons in the study cohort were arrested for public nuisance crimes like loitering or trespassing on public property, that were directly

related to their homelessness. This reflects a need for better discharge planning and greater coordination between law enforcement, homeless service providers, and mental health and substance abuse service providers to prevent repeated homelessness and criminal justice involvement.

A.6.2. Findings Associated with Gender, Age and Race

There were substantial differences in the experiences of men and women. Women had longer stays in homeless programs, used programs with higher daily costs, and thus had significantly higher homeless costs. In part this could be because women chose to stay in residential programs until they had secured stable housing while men often alternated between shelter and other tenuous living arrangements. However, the pattern also reflects the design of the homeless system itself. Overnight emergency shelters tend to only serve single men while transitional housing programs are more likely to serve single women and families. Therefore, it is possible that single women are more likely to use transitional housing even to address short-term housing needs. Both transitional housing for individuals and programs serving families are generally more expensive than emergency shelter for individuals. Emergency shelter programs that are geared to the specific short-term needs of single women might yield cost savings, reducing the percentage of women who need the more intensive assistance provided in transitional housing.

The youngest and oldest members of the Jacksonville study cohort had the highest overall costs. People between 18 and 25 incurred significantly higher costs in mainstream systems, particularly income supports and mental health services, than the rest of the study cohort. People over 50 had higher homeless and physical healthcare costs.

First-time homeless African-American individuals also had higher overall costs and homeless costs, though not necessarily higher mainstream costs. This is related to their disproportionate use of a single long-term emergency shelter, one of the most expensive homeless programs in the community. To the extent that African-Americans individuals are using emergency shelter for extended periods as a form of permanent housing, communities should explore alternative, lower-cost housing strategies. Alternatively, for those who remain in shelter due to intensive needs that prevent them from resolving their homelessness, they should be referred to lower-cost transitional or permanent supportive housing programs that can more appropriately address their needs. In either case, systems should be implemented to alert programs to these patterns of extended stays, so more appropriate interventions can be deployed.

Targeting prevention or rapid rehousing interventions to individuals who have several of the demographic characteristics associated with higher costs, or even raising awareness among program staff on the different ways in which various demographic groups tend to use the homeless system, may help ensure that individuals are directed to providers that best match their particular needs and also provide additional opportunities for cost savings.

A.6.3. Concluding Findings on the Cost of Homeless Programs

Except for overnight shelters with minimal services, the monthly costs of a stay in a homeless residential program were substantially higher than the fair market rent for a one-bedroom apartment in Jacksonville. It is worth exploring whether the cost of issuing a permanent housing voucher, even with accompanying additional services administered by the homeless system or through mainstream

systems (as is the case with permanent supportive housing programs), might be comparable to long-term placement in transitional housing.

This study provides an outline of the different ways that people who become homeless use homeless and mainstream services and the associated costs. However, this study did not collect data on clients' outcomes after exiting homeless residential programs or their long-term use of mainstream services after homelessness. This type of data would be necessary to compare the cost-effectiveness of various homeless interventions. Absent detailed health records for the study cohort, it is not possible to determine whether the low rates of involvement in healthcare and substance abuse treatment indicate a lack of need or a failure to connect persons in the study cohort to needed services. Finally, this case study is one piece of a larger study of the costs of homelessness, encompassing six communities. One of the key findings of the overall study is that the costs of homelessness vary greatly based on location and the characteristics of the study population. Policymakers should be wary of using cost estimates from this or other communities as a proxy for their own population and are encouraged to use their own administrative data to determine the costs of homelessness in their own communities.

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Appendix B: Jacksonville Tables

B.1. Demographic Characteristics of Homeless Path Groups

Characteristic	Single ES Short Stayers	Street/ES Short Stayers	Single ES Long Stayers	Multiple ES Long Gappers	Sequential Short Stayers	Sequential Long Stayers	Relapsers	PSH Long Stayers	All Paths
Total Individuals	746	556	44	197	196	36	142	55	1972
% of Study Population	38%	28%	2%	10%	10%	2%	7%	3%	100%
Gender									
Males	80%	85%	46%	95%	65%	67%	79%	67%	80%
Females	20%	15%	55%	5%	33%	28%	20%	29%	19%
Gender not reported	0%	0%	0%	0%	1%	5%	1%	4%	0%
Ages (at Client Start Date)									
18 to 24	10%	8%	2%	6%	11%	3%	4%	.	8%
25 to 30	13%	10%	14%	10%	8%	3%	5%	9%	11%
31 to 40	28%	28%	32%	24%	27%	14%	25%	15%	27%
41 to 50	31%	36%	32%	43%	34%	42%	47%	42%	36%
51 to 61	14%	13%	18%	16%	17%	22%	16%	31%	15%
62 and older	0%	0%	0%	0%	0%	0%	0%	0%	0%
Age not reported	4%	4%	2%	2%	4%	17%	3%	4%	4%
Average Age at Client Start Date	40	41	41	42	41	47	43	46	41
Race									
White	51%	52%	25%	37%	50%	50%	38%	42%	48%
Black or African-American	45%	42%	73%	58%	46%	39%	54%	53%	47%
Asian	1%	1%	2%	1%	0%	0%	1%	0%	1%
American Indian or Alaska Native	1%	1%	0%	1%	1%	0%	1%	2%	1%
Other	2%	2%	0%	2%	1%	0%	1%	2%	2%
Race not reported	1%	3%	0%	1%	3%	11%	5%	2%	2%

B.2. Homeless Service Utilization by Homeless Path Group

	Single ES Short Stayers	Street/ES Short Stayers	Single ES Long Stayers	Multiple ES Long Gappers	Sequential Short Stayers	Sequential Long Stayers	Relapsers	PSH Long Stayers	All Paths
Number of Clients	746	556	44	197	196	36	142	55	1,972
Percent of Clients	38%	28%	2%	10%	10%	2%	7%	3%	100%
Total Number of Stays									
Average	1	3.1	1	10.9	2.4	5.6	7.6	2.7	3.3
25th Percentile	1	2	1	4	1	2	3	1	1
50th Percentile (Median)	1	2	1	8	2	2	5	2	2
75th Percentile	1	4	1	14	3	3	9	3	3
Percent of Individuals with Only One Stay	100.0%	12.4%	100.0%	0.0%	50.0%	22.2%	0.0%	36.4%	49.9%
Total Length of Stays (in Days)									
Average	18	29	304	40	54	364	135	338	57
25th Percentile	1	3	215	12	11	266	38	172	2
50th Percentile (Median)	2	6	269	24	33	371	83	384	10
75th Percentile	17	20	372	47	84	469	199	505	56
Total Gap Between Stays (in Days)									
Average	0	58	0	358	71	49	182	68	75
50th Percentile (Median)	0	17	0	363	0	0	159	2	0
Total Homeless Period (in Days)									
Average	18	87	304	398	125	413	317	406	132

B.3. Multivariate Analysis of Total Costs, Homeless Costs, and Total Mainstream Costs

B.3.1 Models Excluding Usage of Each Domain as Covariates

Outcome variables: The outcome variable for model 1 and model 2 is total costs (homeless and mainstream) in log scale. The outcome variable for model 3 and model 4 is homeless costs in log scale. The outcome variable for model 5 and model 6 is total mainstream costs in log scale.

Description: All models control for gender, race and age. Models 1, 3, 5 are with control based on path groups; models 2, 4, and 6, are with control based on underlying utilization data. These models do not include utilization of each particular mainstream domain as covariates.

	Model (1) Total Costs – Homeless Path Group Model	Model (2) Total Costs - Homeless Service Utilization Model	Model (3) Homeless Costs – Homeless Path Group Model	Model (4) Homeless Costs - Homeless Service Utilization Model	Model (5) Mainstream Costs – Homeless Path Group Model	Model (6) Mainstream Costs – Homeless Service Utilization Model
Single ES Long Stayers+	4.109***		4.119***		0.376	
	(0.247)		(0.257)		(0.242)	
Multiple ES Long Gappers	1.678***		1.707***		0.190	
	(0.127)		(0.133)		(0.135)	
Street/ES Short Stayers	0.789***		0.874***		0.108	
	(0.088)		(0.096)		(0.100)	
PSH Long Stayers	4.229***		4.077***		0.595***	
	(0.222)		(0.231)		(0.222)	
Sequential Short Stayers	1.899***		1.848***		0.274**	
	(0.127)		(0.133)		(0.139)	
Sequential Short Stayers	4.555***		4.473***		0.406	
	(0.272)		(0.284)		(0.284)	
Circlers	3.076***		3.054***		0.210	
	(0.145)		(0.151)		(0.153)	
Total Number of Stays		0.023***		0.023***		-0.033***
		(0.007)		(0.007)		(0.008)
Total length of stay (in days), divided by 30		0.410***		0.409***		0.034***
		(0.009)		(0.009)		(0.010)
Total gaps between stays (in days), divided by 30		0.086***		0.086***		0.034***
		(0.008)		(0.008)		(0.010)

	Model (1) Total Costs – Homeless Path Group Model	Model (2) Total Costs - Homeless Service Utilization Model	Model (3) Homeless Costs – Homeless Path Group Model	Model (4) Homeless Costs - Homeless Service Utilization Model	Model (5) Mainstream Costs – Homeless Path Group Model	Model (6) Mainstream Costs – Homeless Service Utilization Model
Female+	1.235*** (0.094)	1.073*** (0.078)	1.460*** (0.102)	1.208*** (0.086)	0.672*** (0.097)	0.625*** (0.097)
Black+	0.437** (0.074)	0.360** (0.061)	0.457** (0.078)	0.394** (0.065)	-0.048 (0.081)	-0.032 (0.080)
Other race	0.302 (0.202)	0.307* (0.167)	0.352 (0.217)	0.351* (0.182)	-0.007 (0.225)	-0.041 (0.224)
Age: 18-24+	0.118 (0.143)	0.165 (0.118)	0.093 (0.153)	0.155 (0.128)	0.598*** (0.154)	0.590*** (0.153)
Age: 25-30	0.102 (0.129)	0.114 (0.106)	0.062 (0.136)	0.108 (0.113)	0.228 (0.141)	0.215 (0.140)
Age: 41-50	0.053 (0.091)	0.113 (0.075)	0.034 (0.097)	0.089 (0.081)	-0.083 (0.100)	-0.058 (0.099)
Age: 51 or above	0.206* (0.110)	0.096 (0.091)	0.198* (0.116)	0.090 (0.097)	0.140 (0.123)	0.160 (0.122)
Gender missing	0.706 (0.526)	0.343 (0.434)	0.935 (0.574)	0.427 (0.479)	0.399 (0.562)	0.411 (0.557)
Race missing	0.581** (0.263)	0.775*** (0.217)	0.634** (0.279)	0.834*** (0.233)	-0.005 (0.289)	0.020 (0.287)
Age missing	-0.656** (0.270)	-0.448** (0.222)	-0.715** (0.294)	-0.532** (0.245)	0.032 (0.316)	0.066 (0.312)
Constant	3.944*** (0.091)	4.030*** (0.069)	3.810*** (0.095)	3.893*** (0.074)	7.731*** (0.103)	7.810*** (0.093)
Observations	1972	1972	1901	1901	1465	1465
R-squared	0.46	0.63	0.45	0.61	0.07	0.08
Notes: + Reference categories are: Single Emergency Shelter Short Stayers, Men, Whites, Age 31 to 40. Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%						

B.3.2 Models Including Usage of Each Domain as Covariates

Outcome variables: The outcome variable for model 1 and model 2 is total costs (homeless and mainstream) in log scale. The outcome variable for model 3 and model 4 is homeless costs in log scale. The outcome variable for model 5 and model 6 is total mainstream costs in log scale.

Description: All models control for gender, race and age. Models 1, 3, 5 are with control based on path groups; models 2, 4, and 6, are with control based on underlying utilization data. These models include utilization of each particular mainstream domain as covariates.

	Model (1) Total Costs – Homeless Path Group Model	Model (2) Total Costs - Homeless Service Utilization Model	Model (3) Homeless Costs – Homeless Path Group Model	Model (4) Homeless Costs - Homeless Service Utilization Model	Model (5) Mainstream Costs – Homeless Path Group Model	Model (6) Mainstream Costs – Homeless Service Utilization Model
Single ES Long Stayers	3.890*** (0.240)		3.905*** (0.251)		0.450** (0.184)	
Multiple ES Long Gappers	1.519*** (0.126)		1.532*** (0.131)		0.067 (0.104)	
Street/ES Short Stayers	0.721*** (0.086)		0.801*** (0.094)		0.038 (0.076)	
PSH Long Stayers	3.892*** (0.217)		3.727*** (0.227)		0.247 (0.170)	
Sequential Short Stayers	1.800*** (0.124)		1.753*** (0.130)		0.177* (0.106)	
Sequential Short Stayers	4.378*** (0.264)		4.296*** (0.276)		0.353 (0.216)	
Circlers	2.902*** (0.143)		2.878*** (0.149)		0.142 (0.117)	
Total Number of Stays		0.026*** (0.006)		0.025*** (0.007)		-0.018*** (0.006)
Total length of stay (in days), divided by 30		0.393*** (0.009)		0.391*** (0.009)		0.020** (0.008)
Total gaps between stays (in days), divided by 30		0.075*** (0.008)		0.074*** (0.008)		0.014* (0.008)
Female+	0.931*** (0.100)	0.869*** (0.083)	1.117*** (0.110)	0.981*** (0.092)	0.044 (0.081)	0.034 (0.081)
Black+	0.408*** (0.072)	0.346*** (0.060)	0.424*** (0.077)	0.377*** (0.064)	-0.011 (0.062)	0.004 (0.062)
Other race	0.348* (0.196)	0.342** (0.162)	0.390* (0.211)	0.382** (0.177)	0.060 (0.171)	0.034 (0.170)
Age: 18-24+	0.058 (0.140)	0.125 (0.116)	0.034 (0.149)	0.114 (0.125)	0.238** (0.118)	0.225* (0.117)
Age: 25-30	0.072 (0.125)	0.093 (0.104)	0.037 (0.132)	0.088 (0.111)	0.105 (0.107)	0.093 (0.107)
Age: 41-50	0.037	0.093	0.027	0.076	-0.045	-0.036

	Model (1) Total Costs – Homeless Path Group Model	Model (2) Total Costs - Homeless Service Utilization Model	Model (3) Homeless Costs – Homeless Path Group Model	Model (4) Homeless Costs - Homeless Service Utilization Model	Model (5) Mainstream Costs – Homeless Path Group Model	Model (6) Mainstream Costs – Homeless Service Utilization Model
	(0.088)	(0.073)	(0.094)	(0.079)	(0.076)	(0.075)
Age: 51 or above	0.218**	0.109	0.211*	0.102	0.158*	0.166*
	(0.107)	(0.089)	(0.114)	(0.095)	(0.094)	(0.094)
Any Food Stamp or TANF Costs	0.542***	0.430***	0.541***	0.423***	0.577***	0.587***
	(0.075)	(0.062)	(0.080)	(0.068)	(0.068)	(0.068)
Any Physical Healthcare Costs	0.405***	0.239***	0.458***	0.285***	1.433***	1.413***
	(0.103)	(0.085)	(0.111)	(0.093)	(0.078)	(0.078)
Any Mental Health Costs	-0.203**	-0.126*	-0.213**	-0.145*	0.832***	0.831***
	(0.088)	(0.073)	(0.094)	(0.079)	(0.068)	(0.067)
Any Substance Abuse Costs	0.429***	0.357***	0.419***	0.372***	0.644***	0.637***
	(0.088)	(0.073)	(0.093)	(0.078)	(0.066)	(0.066)
Any Criminal Justice Costs	0.192***	0.127**	0.248***	0.160**	1.104***	1.094***
	(0.074)	(0.062)	(0.079)	(0.067)	(0.063)	(0.063)
Gender Missing	0.665	0.328	0.921*	0.433	0.110	0.108
	(0.510)	(0.423)	(0.557)	(0.468)	(0.427)	(0.425)
Race Missing	0.579**	0.772***	0.622**	0.830***	0.006	0.035
	(0.256)	(0.212)	(0.271)	(0.227)	(0.220)	(0.219)
Age Missing	-0.582**	-0.404*	-0.624**	-0.479**	0.235	0.246
	(0.263)	(0.218)	(0.287)	(0.240)	(0.242)	(0.240)
Constant	3.620***	3.766***	3.468***	3.619***	6.117***	6.172***
	(0.095)	(0.074)	(0.100)	(0.080)	(0.101)	(0.096)
Observations	1972	1972	1901	1901	1465	1465
R-squared	0.49	0.65	0.49	0.64	0.47	0.47
Notes: + Reference categories are: Single Emergency Shelter Short Stayers, Men, Whites, Age 31 to 40. Standard errors in parentheses. *significant at 10%; **significant at 5%; ***significant at 1%.						

B.4. Multivariate Analysis of Costs by Domain, with Homeless Utilization as Covariates

B.4.1 Models Excluding Usage of Each Domain as Covariates

Outcome variables: The outcome variable for these models is total costs associated with each domain in their original metric (dollar amounts).

Description: All models control for homeless utilization data, gender, race, and age homeless utilization. These models do not include utilization of each particular mainstream domain as covariates.

	Criminal Justice	Income Supports	Physical Healthcare	Mental Health	Substance abuse
Total Number of Stays	-34.855 (21.201)	-5.599 (10.013)	-74.742** (36.628)	-15.781 (37.545)	-15.465 (14.559)
Total length of stay (in days), divided by 30	11.861 (27.582)	80.128*** (13.027)	198.681*** (47.651)	-47.273 (48.844)	60.639*** (18.941)
Total gaps between stays (in days), divided by 30	149.972*** (25.196)	0.982 (11.900)	13.062 (43.528)	-18.746 (44.618)	40.846** (17.302)
Female+	-992.334*** (249.377)	1,770.719*** (117.779)	2,170.849*** (430.825)	1,663.730*** (441.617)	257.364 (171.251)
Black+	380.364* (195.320)	280.946*** (92.248)	560.360* (337.435)	-907.569*** (345.888)	-378.032*** (134.129)
Other race	814.333 (535.575)	-174.340 (252.948)	209.352 (925.260)	575.892 (948.438)	-745.892** (367.788)
Age: 18-24+	91.847 (380.230)	416.656** (179.580)	646.639 (656.886)	1,237.724* (673.342)	-192.726 (261.110)
Age: 25-30	-59.916 (341.461)	248.953 (161.269)	128.096 (589.908)	636.365 (604.686)	-196.469 (234.486)
Age: 41-50	-639.606*** (240.925)	-152.958 (113.787)	47.339 (416.223)	237.133 (426.649)	15.568 (165.447)
Age: 51 or above	-1,094.955*** (291.206)	-104.207 (137.534)	912.642* (503.089)	1,065.059** (515.691)	-43.218 (199.976)
Gender missing	-690.350 (1,392.916)	90.055 (657.863)	1,894.993 (2,406.404)	-953.652 (2,466.687)	702.451 (956.538)
Race missing	-575.680 (696.237)	287.534 (328.827)	-673.060 (1,202.820)	1,133.490 (1,232.952)	-422.936 (478.117)
Age missing	-1,842.868*** (713.407)	-7.848 (336.937)	1,816.595 (1,232.484)	9.502 (1,263.359)	636.696 (489.908)
Constant	1,820.685*** (220.352)	394.947*** (104.071)	477.218 (380.681)	1,183.239*** (390.217)	727.681*** (151.319)
Observations	1972	1972	1972	1972	1972
R-squared	0.04	0.16	0.04	0.02	0.02
Notes: + Reference categories are: Men, Whites, Age 31 to 40. Standard errors in parentheses. * significant at 10%; ** significant at 5%; *** significant at 1%.					

B.4.2 Models Including Usage of Each Domain as Covariates

Outcome variables: The outcome variables for these models are total homeless costs, total mainstream costs, and costs associated with each domain, all in log scale.

Description: All models control for homeless utilization data, gender, race, and age homeless utilization. These models include utilization of each particular mainstream domain as covariates.

Total Costs (log scale)	Homeless Costs	Mainstream Costs	Medicaid Costs	Mental Health Costs	Substance Abuse Costs	Entitlement Costs	Criminal Justice Costs
Number of Homeless Program Stays	0.025*** (0.007)	-0.018*** (0.006)	-0.057 (0.039)	-0.025 (0.025)	-0.007 (0.027)	-0.012* (0.007)	-0.005 (0.011)
Homeless Length of Stay (cost per additional 30 days)	0.391*** (0.009)	0.020** (0.008)	0.034 (0.022)	-0.020 (0.022)	0.045** (0.022)	0.027*** (0.008)	-0.041*** (0.014)
Homeless Gap Days (cost per 30 additional days between stays)	0.074*** (0.008)	0.014* (0.008)	0.021 (0.025)	-0.004 (0.022)	0.024 (0.022)	-0.008 (0.008)	0.025** (0.011)
Females	0.981*** (0.092)	0.034 (0.081)	0.128 (0.188)	-0.021 (0.196)	-0.237 (0.226)	0.470*** (0.083)	-0.557*** (0.141)
African-Americans	0.377*** (0.064)	0.004 (0.062)	-0.023 (0.177)	-0.316* (0.166)	-0.280 (0.175)	0.123* (0.068)	0.158 (0.100)
Other Races	0.382** (0.177)	0.034 (0.170)	-0.387 (0.516)	0.234 (0.389)	-1.263*** (0.457)	-0.121 (0.196)	0.462 (0.298)
Ages 18 – 24	0.114 (0.125)	0.225* (0.117)	0.569** (0.281)	0.188 (0.269)	-0.090 (0.331)	0.164 (0.129)	0.070 (0.185)
Ages 25 – 30	0.088 (0.111)	0.093 (0.107)	0.226 (0.28)	0.443 (0.279)	-0.536* (0.309)	0.160 (0.120)	-0.059 (0.169)
Ages 41 – 50	0.076 (0.079)	-0.036 (0.075)	0.349 (0.246)	0.183 (0.202)	-0.104 (0.207)	-0.047 (0.084)	-0.163 (0.119)
Age 51 and Above	0.102 (0.095)	0.166* (0.094)	0.260 (0.266)	0.207 (0.256)	-0.050 (0.265)	0.221** (0.103)	-0.244 (0.160)
Received Food Stamps or TANF	0.423*** (0.068)	0.587*** (0.068)	-0.015 (0.211)	0.012 (0.174)	0.468** (0.185)		0.240** (0.103)
Received Medicaid Services	0.285*** (0.093)	1.413*** (0.078)		0.749*** (0.174)	-0.501** (0.214)	0.614*** (0.082)	-0.269* (0.14)
Received Mental Healthcare	-0.145* (0.079)	0.831*** (0.067)	0.299* (0.176)		0.441** (0.176)	0.029 (0.075)	0.150 (0.116)
Received Substance Abuse	0.372*** (0.078)	0.637*** (0.066)	0.254 (0.184)	0.137 (0.158)		0.018 (0.074)	0.361*** (0.108)
Involved with Criminal Justice	0.160** (0.067)	1.094*** (0.063)	0.031 (0.177)	0.045 (0.162)	0.304* (0.17)	0.071 (0.067)	
Missing Gender	0.433 (0.468)	0.108 (0.425)	0.960 (1.125)	-0.411 (0.954)	0.147 (1.289)	-0.015 (0.454)	-0.812 (0.957)
Missing Race	0.830*** (0.227)	0.035 (0.219)	-1.107 (1.015)	0.321 (0.513)	0.630 (0.749)	0.190 (0.226)	-0.435 (0.363)
Missing Age	-0.479** (0.240)	0.246 (0.24)	0.573 (0.591)	-0.658 (0.524)	0.954 (0.679)	0.206 (0.256)	-2.011 (1.371)
Constant	3.619*** (0.080)	6.172*** (0.096)	7.432*** (0.328)	6.917*** (0.229)	6.389*** (0.248)	6.435*** (0.094)	7.374*** (0.127)
Observations	1901	1465	390	492	437	1024	755
R-squared	0.64	0.47	0.04	0.07	0.11	0.2	0.09

Reference categories are: Males, Whites, Ages 31 – 40

Standard errors in parentheses. * Significant at 10%; ** Significant at 5%; *** Significant at 1%

B.5. Multivariate Analysis of Costs by Domain, with Path Groups as Covariates

B.5.1 Models Excluding Usage of Each Domain as Covariates

Outcome variables: The outcome variable for these models is total costs associated with each domain in their original metric (dollar amounts).

Description: All models control for homeless path groups, gender, race, and age homeless utilization. These models do not include utilization of each particular mainstream domain as covariates.

	Model (1) Criminal Justice	Model (2) Income Supports	Model (3) Physical Healthcare	Model (4) Mental Health	Model (5) Substance Abuse
Single ES Long Stayers+	47.142 (656.299)	2,326.988*** (306.924)	1,629.965 (1,118.827)	-1,238.011 (1,158.049)	-12.359 (448.596)
Multiple ES Long Gappers	1,677.589*** (338.415)	-93.135 (158.263)	-540.835 (576.914)	-163.468 (597.138)	349.426 (231.315)
Street/ES Short Stayers	541.743** (234.931)	-4.741 (109.867)	-134.925 (400.498)	-2.881 (414.539)	312.461* (160.581)
PSH Long Stayers	839.736 (589.556)	439.888 (275.711)	7,562.911*** (1,005.047)	-177.606 (1,040.280)	1,174.122*** (402.976)
Sequential Short Stayers	43.786 (338.613)	-247.596 (158.355)	910.630 (577.251)	1,306.901** (597.487)	883.603*** (231.450)
Sequential Long Stayers	42.512 (723.410)	43.305 (338.309)	-634.893 (1,233.235)	-716.680 (1,276.468)	1,345.077*** (494.468)
Circling/ Relapsers	1,099.228*** (386.022)	325.064* (180.526)	-342.969 (658.072)	-501.256 (681.141)	491.023* (263.855)
Female+	-920.635*** (249.170)	1,793.028*** (116.526)	2,252.018*** (424.773)	1,590.685*** (439.664)	264.270 (170.314)
African American+	356.920* (196.010)	254.646*** (91.666)	524.382 (334.149)	-901.187*** (345.863)	-346.331*** (133.978)
Other Race	839.945 (537.436)	-215.937 (251.336)	176.758 (916.195)	659.964 (948.314)	-681.944* (367.350)
Age: 18-24+	90.056 (381.693)	455.442** (178.502)	715.421 (650.692)	1,209.422* (673.503)	-211.340 (260.896)
Age: 25-30	-82.979 (342.779)	231.148 (160.303)	63.796 (584.352)	684.489 (604.838)	-179.945 (234.297)
Age: 41-50	-692.992*** (242.255)	-135.882 (113.293)	-19.914 (412.985)	236.254 (427.463)	-14.492 (165.587)
Age: 51 or above	-1,132.213*** (292.185)	-52.109 (136.643)	748.102 (498.102)	1,013.491** (515.564)	-74.962 (199.715)
Gender missing	-895.875 (1,398.425)	495.061 (653.985)	1,427.608 (2,383.968)	-1,309.097 (2,467.542)	426.853 (955.857)
Race missing	-508.396 (700.858)	290.689 (327.762)	-426.163 (1,194.788)	1,139.488 (1,236.674)	-484.723 (479.053)
Age missing	-1,967.192*** (718.321)	28.630 (335.929)	1,998.803 (1,224.558)	176.788 (1,267.487)	550.893 (490.989)
Constant	1,682.568*** (241.042)	467.889*** (112.726)	476.466 (410.918)	978.383** (425.323)	587.542*** (164.758)
Observations	1972	1972	1972	1972	1972
R-squared	0.04	0.18	0.06	0.02	0.02

Notes: + Reference categories are: Single ES Short Stayers, Men, Whites, Age 31 to 40.
Standard errors in parentheses. * significant at 10%; ** significant at 5%; *** significant at 1%.

B.5.2 Model Including Usage of Each Domain as Covariates

Outcome variables: The outcome variable for these models is total costs associated with each domain in log scale.

Description: All models control for homeless path groups, gender, race, and age homeless utilization. These models include utilization of each particular mainstream domain as covariates.

Total Costs (log scale)	Homeless Costs	Mainstream Costs	Medicaid Costs	Mental Health Costs	Substance Abuse Costs	Entitlement Costs	Criminal Justice Costs
Single ES Long Stayers	3.905*** (0.251)	0.450** (0.184)	1.011** (0.416)	-1.088** (0.535)	-0.356 (0.562)	0.784*** (0.179)	-0.084 (0.356)
Multiple ES Long Gappers	1.532*** (0.131)	0.067 (0.104)	-0.302 (0.37)	-0.13 (0.309)	0.245 (0.288)	-0.254** (0.12)	0.256* (0.151)
Street/ES Short Stayers	0.801*** (0.094)	0.038 (0.076)	0.119 (0.216)	-0.320* (0.194)	0.096 (0.216)	-0.015 (0.086)	0.143 (0.128)
PSH Long Stayers	3.727*** (0.227)	0.247 (0.17)	0.789* (0.421)	-0.247 (0.475)	1.155** (0.45)	0.228 (0.167)	-0.403 (0.271)
Sequential Short Stayers	1.753*** (0.13)	0.177* (0.106)	0.841*** (0.275)	-0.233 (0.263)	0.772*** (0.268)	-0.087 (0.115)	-0.192 (0.184)
Sequential Long Stayers	4.296*** (0.276)	0.353 (0.216)	-0.73 (0.604)	-0.537 (0.562)	1.437*** (0.536)	-0.009 (0.225)	-0.407 (0.38)
Circling/Relapsers	2.878*** (0.149)	0.142 (0.117)	0.421 (0.379)	-0.926*** (0.303)	0.198 (0.326)	0.089 (0.121)	0.181 (0.195)
Females	1.117*** (0.11)	0.044 (0.081)	0.134 (0.184)	0.08 (0.197)	-0.256 (0.223)	0.478*** (0.082)	-0.564*** (0.141)
African-Americans	0.424*** (0.077)	-0.011 (0.062)	-0.031 (0.176)	-0.352** (0.166)	-0.203 (0.176)	0.096 (0.069)	0.144 (0.101)
Other Races	0.390* (0.211)	0.06 (0.171)	-0.334 (0.511)	0.296 (0.388)	-1.276*** (0.452)	-0.12 (0.196)	0.506* (0.299)
Ages 18 – 24	0.034 (0.149)	0.238** (0.118)	0.563** (0.275)	0.197 (0.267)	-0.151 (0.328)	0.201 (0.129)	0.08 (0.186)
Ages 25 – 30	0.037 (0.132)	0.105 (0.107)	0.226 (0.276)	0.42 (0.277)	-0.498 (0.305)	0.161 (0.119)	-0.066 (0.17)
Ages 41 – 50	0.027 (0.094)	-0.045 (0.076)	0.339 (0.244)	0.219 (0.201)	-0.095 (0.207)	-0.037 (0.084)	-0.174 (0.121)
Age 51 and Above	0.211* (0.114)	0.158* (0.094)	0.307 (0.265)	0.197 (0.256)	0.015 (0.261)	0.249** (0.103)	-0.281* (0.16)
Received Food Stamps or TANF	0.541*** (0.08)	0.577*** (0.068)	0.096 (0.209)	0.065 (0.173)	0.438** (0.184)		0.222** (0.105)
Received Medicaid Services	0.458*** (0.111)	1.433*** (0.078)		0.714*** (0.173)	-0.484** (0.212)	0.626*** (0.083)	-0.264* (0.141)
Received Mental Healthcare	-0.213** (0.094)	0.832*** (0.068)	0.267 (0.175)		0.416** (0.175)	0.033 (0.075)	0.137 (0.117)
Received Substance Abuse	0.419*** (0.093)	0.644*** (0.066)	0.255 (0.182)	0.116 (0.158)		0.034 (0.074)	0.363*** (0.109)
Involved with Criminal Justice	0.248*** (0.079)	1.104*** (0.063)	0.055 (0.176)	0.04 (0.163)	0.317* (0.169)	0.072 (0.067)	

Total Costs (log scale)	Homeless Costs	Mainstream Costs	Medicaid Costs	Mental Health Costs	Substance Abuse Costs	Entitlement Costs	Criminal Justice Costs
Missing Gender	0.921* (0.557)	0.11 (0.427)	0.754 (1.117)	-0.501 (0.955)	-0.227 (1.274)	0.171 (0.455)	-1.016 (0.973)
Missing Race	0.622** (0.271)	0.006 (0.22)	-0.846 (0.998)	0.44 (0.511)	0.758 (0.742)	0.144 (0.226)	-0.452 (0.366)
Missing Age	-0.624** (0.287)	0.235 (0.242)	0.791 (0.583)	-0.598 (0.523)	1.07 (0.672)	0.254 (0.257)	-2.226 (1.384)
Constant	3.468*** (0.1)	6.117*** (0.101)	7.144*** (0.327)	7.012*** (-0.237)	6.272*** (0.27)	6.420*** (-0.101)	7.329*** (-0.139)
Observations	1901	1465	390	492	437	1024	755
R-squared	0.49	0.47	0.09	0.09	0.14	0.21	0.09

Reference categories are: Males, Whites, Ages 31 – 40

Standard errors in parentheses. * Significant at 10%; ** Significant at 5%; *** Significant at 1%

B.6. Multivariate Analysis of Costs by Domain, with Total Homeless Costs as a Covariate

Outcome variables: The outcome variable for these models is total costs associated with each domain in log scale.

Description: All models control for homeless costs, gender, race, and age homeless utilization. These models include utilization of each particular mainstream domain as covariates.

Total Costs By Domain (log scale)	Medicaid Costs	Mental Health Costs	Substance Abuse Costs	Entitlement Costs	Criminal Justice Costs
Total Homeless System Costs	0.102** (0.046)	-0.077* (0.041)	0.058 (0.042)	0.029* (0.017)	-0.005 (0.026)
Females	0.107 (0.199)	0.101 (0.209)	-0.309 (0.233)	0.510*** (0.087)	-0.649*** (0.15)
African-Americans	-0.103 (0.183)	-0.341** (0.168)	-0.275 (0.176)	0.141** (0.07)	0.137 (0.1030)
Other Races	-0.155 (0.541)	0.42 (0.424)	-1.268*** (0.473)	-0.104 (0.199)	0.426 (0.314)
Ages 18 – 24	0.494* (0.295)	0.278 (0.273)	-0.118 (0.34)	0.151 (0.132)	0.117 (0.19)
Ages 25 – 30	0.134 (0.288)	0.383 (0.277)	-0.577* (0.31)	0.163 (0.121)	-0.065 (0.172)
Ages 41 – 50	0.271 (0.256)	0.15 (0.205)	-0.086 (0.209)	-0.059 (0.086)	-0.171 (0.123)
Age 51 and Above	0.135 (0.273)	0.126 (0.258)	-0.066 (0.268)	0.258** (0.104)	-0.327** (0.162)
Received Food Stamps or TANF	-0.032 (0.222)	0.019 (0.181)	0.514*** (0.189)		0.242** (0.109)
Received Medicaid Services		0.850*** (0.176)	-0.510** (0.216)	0.645*** (0.084)	-0.329** (0.146)
Received Mental Healthcare	0.403** (0.181)		0.449** (0.18)	0.032 (0.077)	0.168 (0.12)
Received Substance Abuse	0.238 (0.19)	0.134 (0.16)		0.004 (0.076)	0.339*** (0.111)
Involved with Criminal Justice	0.036 (0.182)	0.145 (0.163)	0.332* (0.171)	0.052 (0.069)	
Missing Gender	0.92 (1.184)	0.098 (1.054)	0.364 (1.277)	0.769 (0.485)	-1.493 (0.946)
Missing Race	-1.467 (1.043)	0.755 (0.525)	0.583 (0.748)	0.231 (0.227)	-0.486 (0.379)
Missing Age	0.813 (0.686)	-0.609 (0.569)	0.943 (0.681)	0.13 (-0.271)	-2.059 (1.381)
Constant	6.878*** (0.424)	7.144*** (0.275)	6.169*** (0.324)	6.233*** (0.127)	7.422*** (0.169)
Observations	369	465	429	980	719
R-squared	0.05	0.09	0.1	0.2	0.08

Reference categories are: Males, Whites, Ages 31 – 40

Standard errors in parentheses. * Significant at 10%; ** Significant at 5%; *** Significant at 1%

B.7. Mainstream Involvement and Per Person Mainstream Costs by Homeless Path Group and Time Period

Path Groups	ES Short Stayers	Street/ES Short Stayers	ES Long Stayers	ES Long Gappers	Sequential Short Stayers	Sequential Long Stayers	Circlers	PSH Long Stayers
Number of Individuals	746	556	44	197	196	36	142	55
% of Cohort	38%	28%	2%	10%	10%	2%	7%	3%
Criminal Justice								
Percent Involved	31%	38%	34%	62%	35%	36%	44%	55%
Average Costs Pre	\$461	\$573	\$376	\$527	\$356	\$488	\$454	\$539
Average Costs During	\$12	\$307	\$57	\$1,636	\$215	\$178	\$1,400	\$561
Average Costs Post	\$777	\$902	\$612	\$885	\$529	\$14	\$366	\$628
Average Costs Total	\$1,251	\$1,783	\$1,045	\$3,048	\$1,100	\$680	\$2,219	\$1,728
Income Supports (TANF and food stamps)								
Percent Involved	42%	51%	86%	53%	57%	67%	71%	84%
Average Costs Pre	\$298	\$194	\$706	\$182	\$227	\$432	\$328	\$332
Average Costs During	\$57	\$84	\$1,777	\$45	\$57	\$366	\$243	\$667
Average Costs Post	\$598	\$561	\$1,458	\$367	\$670	\$321	\$697	\$528
Average Costs Total	\$953	\$839	\$3,941	\$593	\$955	\$1,119	\$1,267	\$1,527
Physical Healthcare								
Percent Involved	22%	17%	39%	12%	25%	22%	15%	31%
Average Costs Pre	\$499	\$319	\$1,865	\$213	\$957	\$167	\$375	\$3,197
Average Costs During	\$86	\$56	\$808	\$19	\$302	\$528	\$201	\$3,452
Average Costs Post	\$804	\$733	\$1,218	\$303	\$1,367	\$451	\$489	\$2,651
Average Costs Total	\$1,389	\$1,108	\$3,892	\$535	\$2,626	\$1,146	\$1,064	\$9,300
Mental Healthcare								
Percent Involved	21%	28%	25%	21%	30%	28%	30%	27%
Average Costs Pre	\$474	\$427	\$131	\$267	\$1,230	\$470	\$147	\$429
Average Costs During	\$59	\$117	\$147	\$50	\$116	\$336	\$121	\$568
Average Costs Post	\$839	\$746	\$92	\$498	\$1,545	\$53	\$483	\$284
Average Costs Total	\$1,372	\$1,290	\$371	\$816	\$2,891	\$859	\$750	\$1,281
Substance Abuse								
Percent Involved	17%	22%	23%	26%	32%	31%	26%	33%
Average Costs Pre	\$90	\$57	\$235	\$71	\$542	\$881	\$321	\$310
Average Costs During	\$45	\$147	\$164	\$91	\$365	\$977	\$93	\$950
Average Costs Post	\$269	\$514	\$4	\$511	\$422	\$7	\$465	\$341
Average Costs Total	\$404	\$718	\$403	\$673	\$1,329	\$1,865	\$879	\$1,601
All Mainstream Domains								
Average Costs Pre	\$1,822	\$1,571	\$3,314	\$1,260	\$3,313	\$2,439	\$1,624	\$4,808
Average Costs During	\$259	\$711	\$2,953	\$1,841	\$1,054	\$2,385	\$2,057	\$6,198
Average Costs Post	\$3,288	\$3,456	\$3,384	\$2,563	\$4,533	\$846	\$2,499	\$4,432
Average Costs Total	\$5,369	\$5,737	\$9,651	\$5,664	\$8,901	\$5,670	\$6,180	\$15,438

Note: Jacksonville's ES Short Stayers and Street/ES Short Stayers are combined in the ES Short Stayers common path group. Sequential Short Stayers and Sequential Long Stayers are combined in the Sequential Program Users common path group.

Appendix C: Individual Data

C.1. Cohort Summaries

C.1.1 Jacksonville, Florida Study Cohort

Path Groups	ES Short Stayers	Street/ES Short Stayers	ES Long Stayers	ES Long Gappers	Sequential Short Stayers	Sequential Long Stayers	Circlers	PSH Long Stayers	Total Cohort
Number of Individuals	746	556	44	197	196	36	142	55	1,972
% of Cohort	38%	28%	2%	10%	10%	2%	7%	3%	100%
Demographics^a									
Male	80%	85%	45%	95%	66%	71%	79%	70%	81%
African-American	45%	43%	73%	59%	47%	44%	57%	54%	48%
51 and older	17%	16%	20%	17%	21%	31%	17%	33%	18%
Average Age at First Entry	40 yrs	41 yrs	41 yrs	42 yrs	41 yrs	47 yrs	43 yrs	46 yrs	41 yrs
Homeless Experience									
Average Number of Stays	1 stay	3 stays	1 stay	11 stays	2 stays	6 stays	8 stays	3 stays	3 stays
Average Total Length of Stay	18 days	29 days	304 days	40 days	54 days	364 days	135 days	338 days	57 days
Average Total Gap	0 days	58 days	0 days	358 days	71 days	49 days	182 days	68 days	75 days
Median Total Length of Stay	2 days	6 days	269 days	24 days	33 days	371 days	83 days	384 days	10 days
Mainstream System Involvement (% of study cohort with involvement at any point during the study)									
Medicaid Managed Care and Primary Health Claims	22%	17%	39%	12%	24%	22%	15%	31%	20%
Mental Health - Medicaid and State	21%	28%	25%	21%	30%	28%	30%	27%	25%
Substance Abuse Treatment - Medicaid and State	17%	22%	23%	26%	32%	31%	26%	33%	22%
Criminal Justice - Arrests and Jail	31%	38%	34%	62%	35%	36%	44%	55%	38%
TANF	5%	2%	18%	1%	3%	0%	1%	2%	3%
Food Stamps	42%	51%	86%	53%	57%	67%	71%	84%	52%
Costs During Homelessness (Average Cost Per Person in Path Group)									
Homeless System	\$563	\$853	\$9,756	\$910	\$1,585	\$10,416	\$3,987	\$8,493	\$1,634
Medicaid Managed Care and Primary Health Care Claims	\$86	\$56	\$808	\$19	\$302	\$528	\$201	\$3,452	\$219
Medicaid and State-funded Mental Health Treatment	\$58	\$117	\$147	\$50	\$116	\$336	\$121	\$568	\$106
Medicaid and State-funded Substance Abuse Treatment	\$45	\$147	\$164	\$91	\$365	\$977	\$93	\$950	\$158
Jail and Arrests	\$12	\$307	\$57	\$1,636	\$214	\$178	\$1,400	\$561	\$397
TANF	\$4	-	\$227	\$1	\$2	-	\$1	\$3	\$7
Food Stamps	\$54	\$84	\$1,551	\$44	\$55	\$366	\$241	\$664	\$131
Mainstream Costs	\$259	\$711	\$2,954	\$1,841	\$1,054	\$2,385	\$2,057	\$6,198	\$1,002
Total Costs	\$822	\$1,564	\$12,710	\$2,751	\$2,639	\$12,801	\$6,044	\$14,691	\$2,636

Note: Jacksonville's ES Short Stayers and Street/ES Short Stayers are combined in the ES Short Stayers common path group. Sequential Short Stayers and Sequential Long Stayers are combined in the Sequential Program Users common path group.

^aNull demographic values are excluded from percentage calculations and thus may differ from findings presented elsewhere.

C.1.2 Houston, Texas Individuals Study Cohort

	Street Only	ES Short Stayers	Extended ES Stayers	ES Long Gappers	Frequent ES Long Gappers	Sequential Program Users	Circlers	TH Only or PSH Only	Total Cohort
Number of Individuals	871	2,306	115	263	101	89	85	576	4,406
% of Cohort	20%	52%	3%	6%	2%	2%	2%	13%	100%
% of Cohort excluding Street Only Path Group	-	65%	3%	7%	3%	3%	2%	16%	100%
Demographics^a									
Male	78%	88%	43%	88%	100%	51%	31%	23%	74%
African-American	63%	52%	72%	66%	63%	65%	68%	52%	57%
51 and older	17%	17%	9%	19%	30%	19%	8%	12%	16%
Average Age at First Entry	42 yrs	40 yrs	37 yrs	42 yrs	46 yrs	43 yrs	40 yrs	40 yrs	41 yrs
Homeless Experience									
Average Number of Stays	1 stay	2 stays	1 stay	7 stays	40 stays	3 stays	3 stays	1 stay	3 stays
Average Total Length of Stay	1 day	8 days	158 days	23 days	124 days	182 days	174 days	150 days	39 days
Average Total Gap	0 days	16 days	6 days	376 days	245 days	149 days	150 days	10 days	44 days
Median Total Length of Stay	1 day	2 days	112 days	14 days	95 days	254 days	269 days	205 days	22 days
Mainstream System Involvement (% of study cohort with involvement at any point during the study)									
Mental Health Care	2%	17%	30%	36%	28%	35%	48%	28%	18%
State MH Inpatient	0%	<1%	0%	3%	0%	0%	2%	<1%	<1%
Criminal Justice	1%	14%	14%	26%	23%	19%	27%	19%	13%
Costs During Homelessness (Average Cost Per Person in Path Group)									
Residential Homeless	\$199	\$353	\$10,540	\$880	\$2,494	\$14,418	\$10,705	\$8,799	\$2,257
Mental Health Care	\$2	\$149	\$1,050	\$1,669	\$1,491	\$2,052	\$1,847	\$489	\$380
State MH Inpatient				\$170					\$10
Criminal Justice	-	\$45	\$222	\$1,049	\$782	\$900	\$749	\$109	\$157
Mainstream Costs	\$2	\$194	\$1,272	\$2,888	\$2,274	\$2,952	\$2,596	\$598	\$547
Total Costs	\$201	\$547	\$11,812	\$3,768	\$4,768	\$17,370	\$13,301	\$9,397	\$2,804
<p>Note: ES Long Gappers and Frequent ES Long Gappers are combined in the ES Long Gapper common path group.</p> <p>^aNull demographic values are excluded from percentage calculations and thus may differ from findings presented elsewhere.</p>									

C.1.3 Des Moines, Iowa Study Cohort

	ES Short Stayers	ES Long Gappers	Sequential Program Users	Circlers	TH Only (Shared Room Model)	TH Only (Ind Room Model)	Total Cohort
Number of Individuals	641	154	42	48	147	92	1,124
% of Cohort	57%	14%	4%	4%	13%	8%	100%
Demographics^a							
Male	73%	72%	88%	90%	58%	85%	73%
African-American	21%	29%	27%	26%	12%	18%	21%
51 and older	16%	14%	31%	19%	3%	13%	15%
Average Age at First Entry	39 yrs	40 yrs	44 yrs	40 yrs	34 yrs	37 yrs	39 yrs
Homeless Experience							
Average Number of Stays	2 stays	8 stays	4 stays	7 stays	1 stay	1 stay	3 stays
Average Total Length of Stay	17 days	63 days	259 days	203 days	133 days	237 days	73 days
Average Total Gap	10 days	308 days	110 days	171 days	9 days	26 days	63 days
Median Total Length of Stay	4 days	44 days	181 days	157 days	92 days	198 days	24 days
Average Per Person Residential Homeless System Costs	\$321	\$1,224	\$8,539	\$6,374	\$3,103	\$11,731	\$2,308
<i>^aNull demographic values are excluded from percentage calculations and thus may differ from findings presented elsewhere.</i>							

C.2. Cross-Site Individuals Multivariate Analyses

C.2.1 Analysis of Homeless Costs and Homeless Service Utilization, with Homeless Program Type as Covariates

Outcome variables: The outcome variables for these models are total homeless costs in log scale and total length of stay (in days) in log scale

Description: Both models control for the program types used, site, gender, race and age. The homeless costs model also controls for homeless utilization data.

	Model 1: Total Homeless Costs (log scale)	Model 2: Length of Stay (log scale)
Homeless Programs Used+		
Persons who only Used TH Housing	1.299*** (0.049)	2.029*** (0.063)
Only Used ES and TH Programs	1.114*** (0.067)	2.294*** (0.088)
Used Other Program Types or Combinations	0.793*** (0.051)	1.261*** (0.067)
Site+		
Des Moines, IA	0.068 (0.045)	0.227*** (0.061)
Houston, TX	0.012 (0.033)	-0.465*** (0.046)
Homeless System Utilization+		
Number of stays	0.037*** (0.003)	
Total length of stay (in days), divided by 30	0.351*** (0.005)	
Total gaps between stays (in days), divided by 30	0.073*** (0.004)	
Demographics+		
Female	0.974*** (0.035)	0.735*** (0.047)
Black	0.192*** (0.030)	0.300*** (0.040)
Other Race	0.051 (0.059)	0.100 (0.080)
Age 18 – 24	0.074 (0.055)	-0.232*** (0.075)
Age 25 – 30	0.105** (0.051)	-0.043 (0.070)
Age 41 – 50	0.098*** (0.037)	0.190*** (0.051)
Age 18 – 24	0.098** (0.046)	0.261*** (0.062)
Gender missing	-0.452*** (0.091)	0.439*** (0.123)
Race missing	0.241*** (0.087)	0.930*** (0.119)

	Model 1: Total Homeless Costs (log scale)	Model 2: Length of Stay (log scale)
Age missing	0.134**	-2.345***
	(0.063)	(0.084)
Constant	3.953***	1.685***
	(0.041)	(0.054)
Observations	7502	7502
R-squared	0.68	0.36
<p><i>Notes: + Reference categories are: Used ES Only, Jacksonville, Age 31 – 40, Male, White.</i></p> <p><i>Standard errors in parentheses. * significant at 10%; ** significant at 5%; *** significant at 1%</i></p>		

C.2.2 Analysis of Homeless Costs and Homeless Service Utilization, without Homeless Program Type as Covariates

Outcome variables: The outcome variables for these models are (1) total homeless cost in log scale, (2) total number of stays in log scale, (3) total length of stay in log scale, and (4) total number of gap days in log scale.

Description: All four models control for site, gender, race and age. The model for homeless costs controls for homeless system utilization data.

Outcome variable	Model 1: Total Homeless Costs (log scale)	Model 2: Number of Stays (log scale)	Model 3: Length of Stay (log scale)	Model 4: Total gap days (log scale)
Site+				
Des Moines, IA	0.180*** (0.049)	0.023 (0.030)	0.293*** (0.067)	-0.179* (0.103)
Houston, TX	0.095*** (0.037)	-0.084*** (0.023)	-0.534*** (0.050)	-0.119 (0.078)
Homeless System Utilization				
Number of stays	0.030*** (0.003)			
Total length of stay (in days), divided by 30	0.385*** (0.004)			
Total gaps between stays (in days), divided by 30	0.076*** (0.004)			
Demographics+				
Female	1.268*** (0.037)	-0.376*** (0.022)	1.307*** (0.049)	0.335*** (0.099)
Black	0.188*** (0.033)	0.137*** (0.020)	0.276*** (0.045)	0.403*** (0.075)
Other Race	-0.032 (0.065)	0.098** (0.040)	-0.060 (0.089)	-0.015 (0.143)
Age 18 – 24	0.061 (0.061)	-0.092** (0.038)	-0.310*** (0.083)	-0.030 (0.141)
Age 25 – 30	0.087 (0.057)	-0.098*** (0.035)	-0.116 (0.078)	-0.237* (0.128)
Age 41 – 50	0.116*** (0.041)	0.098*** (0.025)	0.228*** (0.056)	0.222** (0.088)
Age 18 – 24	0.094* (0.051)	0.153*** (0.031)	0.260*** (0.069)	0.074 (0.106)
Gender missing	-0.655*** (0.098)	-0.241*** (0.061)	0.136 (0.134)	-0.596** (0.272)
Race missing	0.129 (0.095)	0.246*** (0.059)	0.707*** (0.130)	0.256 (0.229)
Age missing	0.582*** (0.055)	-0.501*** (0.034)	-1.645*** (0.074)	0.180 (0.304)
Constant	4.059*** (0.044)	0.657*** (0.027)	2.096*** (0.059)	3.630*** (0.092)
Observations	7502	7502	7502	2870
R-squared	0.62	0.11	0.22	0.03
Notes: + Reference categories are: Used ES Only, Jacksonville, Age 31 – 40, Male, White Standard errors in parentheses * significant at 10%; ** significant at 5%; *** significant at 1%				

C.3. Multivariate Analysis of Costs by Domain in Houston Individuals

Outcome variables: The outcome variable for these models is total costs associated with each domain in their original metric (dollar amounts).

Description: Models 1, 2, and 3 model Mental Health System Costs. Models 4, 5, and 6 model criminal justice costs. All models control for gender, race, and age. Models 1 and 4 control based on path groups. Models 2 and 5 control for underlying homeless utilization data. Models 3 and 6 control for homeless system costs.

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Outcome	Mental Health System Costs (Homeless Path Group Model)	Mental Health System Costs (Homeless Utilization Model)	Mental Health System Costs (Homeless Cost Model)	Criminal Justice Costs (Homeless Path Group Model)	Criminal Justice Costs (Homeless Utilization Model)	Criminal Justice Costs (Homeless Cost Model)
Path Group+						
Street-Only Short Stayers	-648.743			-497.902		
	(472.107)			(389.487)		
Emergency Shelter Long Gappers	2,351.606***			1,179.294***		
	(401.362)			(331.123)		
Emergency Shelter Multiple-Stay Long Gappers	2,317.959***			761.055		
	(627.240)			(517.472)		
Emergency Shelter Extended Stayers	767.744			709.349		
	(598.898)			(494.089)		
Progressive Long Stayers	2,084.817***			604.719		
	(672.278)			(554.628)		
Circling Long Stayers	2,966.777***			1,943.164***		
	(695.542)			(573.821)		
TH-Only and PSH-Only	-94.020			790.651***		
	(331.763)			(273.704)		
Homeless System Utilization						
Number of stays		2.035			-23.043*	
		(15.330)			(12.658)	
Total length of stay (in days), divided by 30		135.568***			-33.204	
		(31.638)			(26.123)	
Total gaps between stays (in days), divided by 30		207.498***			136.029***	
Homeless System Costs						
Total Homeless Costs			244.533***			-25.776
			(54.671)			(44.988)

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Outcome	Mental Health System Costs (Homeless Path Group Model)	Mental Health System Costs (Homeless Utilization Model)	Mental Health System Costs (Homeless Cost Model)	Criminal Justice Costs (Homeless Path Group Model)	Criminal Justice Costs (Homeless Utilization Model)	Criminal Justice Costs (Homeless Cost Model)
Demographics+						
Female	568.855** (257.202)	408.504* (233.006)	6.249 (254.764)	-635.795*** (212.191)	-174.216 (192.393)	-227.191 (209.644)
Black	-249.602 (217.731)	-281.174 (216.820)	-170.798 (218.043)	81.006 (179.627)	62.298 (179.028)	125.816 (179.427)
Other Race	-668.275** (309.769)	-671.700** (308.407)	-589.103* (310.447)	-752.921*** (255.559)	-813.770*** (254.652)	-777.166*** (255.465)
Age 18 – 24	-653.342 (416.243)	-625.156 (414.834)	-664.094 (417.714)	-338.548 (343.400)	-388.749 (342.528)	-384.910 (343.734)
Age 25 – 30	-94.633 (370.515)	-28.563 (369.645)	-149.842 (371.953)	-290.677 (305.674)	-321.642 (305.216)	-365.413 (306.077)
Age 41 – 50	-729.987*** (269.043)	-797.297*** (268.755)	-739.953*** (270.714)	-1,242.844*** (221.960)	-1,250.060*** (221.911)	-1,210.904*** (222.769)
Age 51 or greater	-1,454.007*** (334.955)	-1,498.154*** (334.779)	-1,453.801*** (336.496)	-1,634.459*** (276.337)	-1,635.552*** (276.428)	-1,624.431*** (276.901)
Gender missing	174.329 (1,121.838)	-27.085 (1,117.312)	-211.924 (1,127.713)	-227.348 (925.514)	184.237 (922.565)	137.760 (927.988)
Race missing	-1,015.764* (551.384)	-692.421 (448.306)	-330.123 (452.561)	-749.294* (454.890)	-376.993 (370.166)	-341.467 (372.410)
Age missing	-1,393.196*** (498.065)	-1,772.292*** (299.000)	-2,305.343*** (294.904)	-1,745.497*** (410.902)	-2,333.122*** (246.884)	-2,470.592*** (242.675)
Constant	2,161.168*** (265.168)	1,990.985*** (262.855)	1,278.324*** (362.525)	2,420.949*** (218.763)	2,520.263*** (217.039)	2,741.075*** (298.320)
Observations	4404	4404	4404	4404	4404	4404
R-squared	0.04	0.04	0.03	0.04	0.04	0.03

Notes: + Reference categories are ES Short Stayers, Age 31 – 40, Male, White

Standard errors in parentheses

* significant at 10%; ** significant at 5%; *** significant at 1%

Appendix D: Family Data

D.1. Family Cohort Summaries

D.1.1 Houston, Texas Families Study Cohort

Path Groups ^a	ES Short Stayers	ES Repeat Users	ES Long Gappers	Multi-Program Users	Housing Program Users	Total Cohort
Number of Families	262	54	22	44	95	477
% of Cohort	55%	11%	5%	9%	20%	100%
Number of Adults	290	65	29	47	103	534
Number of Children	553	125	50	80	187	995
Avg. Household Size	3.2	3.5	3.6	2.9	3.1	3.2
Household Characteristics						
One Adult	89%	83%	68%	93%	91%	88%
Membership changed during homeless period	7%	52%	68%	70%	26%	25%
Children six and under	53%	35%	45%	56%	49%	50%
Demographics^b						
Male Adults	14%	25%	28%	9%	3%	13%
African-American	65%	67%	78%	62%	61%	65%
Adults 41 and older	15%	16%	28%	21%	15%	16%
Average Age at First Entry	30.4	33.4	34.9	32.5	31.8	31.5
Homeless Experience						
Average Number of Stays	1 stay	2.1 stays	3.4 stays	2.5 stays	1.2 stays	1.4 stays
Average Total Length of Stay	37.1 days	100.6 days	63.0 days	236.3 days	283.6 days	113.0 days
Median Total Length of Stay	24 days	49 days	45 days	191 days	45 days	49 days
Average Total Gap	0.0 days	41.3 days	346.0 days	81.1 days	12.2 days	30.5 days
Mainstream System Involvement (% of study cohort with involvement at any point during the study)						
Criminal Justice	5%	7%	23%	14%	13%	8%
Mental Health	11%	19%	23%	23%	21%	16%
State Hospitals	-	-	-	-	1%	0.2%
Costs During Homelessness (Average Cost Per Person in Path Group)						
Homeless System	\$2,321	\$5,748	\$3,885	\$26,913	\$35,344	\$11,626.77
Criminal Justice	-	-	\$163	-	-	\$7.52
Mental Health	\$48.92	\$210.29	\$72.68	\$331.27	\$364.72	\$157.22
State Hospitals	-	-	-	-	-	-
Mainstream Costs	\$49	\$210	\$236	\$331	\$365	\$164.74
Total Costs	\$2,370	\$5,959	\$4,121	\$27,244	\$35,709	\$11,792
^a The ES Short Stayers and ES Repeat Users are combined to form the Brief Users of Emergency Shelter path in the Family Chapter, Multi-Program Users and Housing Program Users are considered Heavy Users of Transitional Housing, and the Emergency Shelter Long Gappers path is considered Repeat Users with Long Gaps.						
^b Null demographic values are excluded from percentage calculations and thus may differ from findings presented elsewhere						

D.1.2 Kalamazoo, Michigan Study Cohort

Path Groups ^a	ES Single Use Short Stayers	ES Repeat Users	ES Long Gappers	Multi-Program Long Gappers	Long Stayers	Total Cohort
Number of Families	161	47	33	19	82	342
% of Cohort	47%	14%	10%	6%	24%	100%
Number of Adults	172	51	38	21	98	380
Number of Children	307	94	92	42	171	706
Avg. Household Size	3.0	3.1	3.9	3.3	3.3	3.2
Household Characteristics						
One Adult	93%	92%	85%	90%	81%	89%
Membership changed during homeless period	1%	17%	61%	53%	5%	13%
Children six and under	48%	54%	56%	51%	44%	49%
Demographics^b						
Male Adults	12%	8%	16%	10%	24%	15%
African-American	59%	53%	71%	67%	60%	60%
Adults 41 and older	11%	10%	11%	19%	15%	12%
Average Age at First Entry	29.6	28.8	29.1	32.7	31.1	30.0
Homeless Experience						
Average Number of Stays	1 stay	2.1 stays	3.1 stays	3.3 stays	1.2 stays	1.5 stays
Average Total Length of Stay	14.6 days	48.1 days	37.8 days	144.1 days	289 days	94 days
Median Total Length of Stay	8 days	31 days	31 days	135 days	308 days	30 days
Average Total Gap	0 days	50.0 days	377.5 days	275.4 days	8.7 days	60.5 days
Mainstream System Involvement (% of study cohort with involvement at any point during the study)						
Criminal Justice	39%	45%	61%	63%	34%	42%
Medicaid	92%	98%	100%	100%	94%	94%
Financial Assistance ^{ccc}	>=32%	>=36%	>=58%	>=79%	>=40%	>=39%
Costs During Homelessness (Average Cost Per Person in Path Group)						
Homeless System	\$1,172	\$2,977	\$3,295	\$5,925	\$6,574	\$3,184
Criminal Justice	\$1.09	\$45.34	\$125.61	\$383.00	\$112.31	\$67.08
Medicaid	\$340.35	\$1,951.99	\$13,184.15	\$10,283.72	\$10,555.85	\$4,802.88
Financial Assistance	\$3.04	\$51.15	\$204.29	\$268.76	\$295.47	\$113.95
Mainstream Costs	\$344	\$2,048	\$13,514	\$10,935	\$10,964	\$4,984
Total Costs	\$1,516	\$5,026	\$16,809	\$16,860	\$17,537	\$8,168

^a ES Single Use Short Stayers and ES Repeat Users are combined to form the Brief Users of Emergency Shelter path in the Family Chapter, the Long Stayers path is considered Heavy Users of Transitional Housing, and ES Long Gappers and Multi-Program Long Gappers are considered Repeat Users with Long Gaps.

^b Null demographic values are excluded from percentage calculations and thus may differ from findings presented elsewhere

^c De-duplicated data across programs within this domain was not provided. Values in this row represent the maximum value received by the path group in any one type of sub-domain. The total de-duplicated value across types is most likely higher assuming that at least some families receiving each type of assistance were different.

D.1.3 Upstate South Carolina Study Cohort

Path Groups ^a	One Week Single Stayers	One Month Returners	Three-Month Single Stayers	Six Month Returners	Long Stay Progressers	TH Only Long Stayers	Total Cohort
Number of Families	35	11	24	14	25	36	145
% of Cohort	24%	8%	17%	10%	17%	25%	100%
Number of Adults	38	12	26	17	28	41	162
Number of Children	57	16	48	26	48	77	272
Avg. Household Size	2.7	2.6	3.1	3.1	3.0	3.3	3.0
Household Characteristics							
One Adult	91%	91%	92%	79%	88%	86%	88%
Membership changed during homeless period	0%	36%	4%	64%	36%	6%	17%
Children six and under	50%	69%	27%	46%	30%	43%	41%
Demographics^b							
Male Adults	3%	17%	8%	18%	11%	15%	10%
African-American	56%	25%	46%	41%	63%	54%	49%
Adults 41 and older	5%	8%	23%	0%	18%	12%	12%
Average Age at First Entry	30.1	29.1	34.6	28.3	32.4	31.3	31.2
Homeless Experience							
Average Number of Stays	1 stay	2.1 stays	1 stay	2.3 stays	2.2 stays	1 stays	1.4 stays
Average Total Length of Stay	9.3 days	31.6 days	87.6 days	176.2 days	328.5 days	375.3 days	186.0 days
Median Total Length of Stay	6 days	33 days	87 days	117 days	298 days	409 days	103 days
Average Total Gap	0 days	92.7 days	0 days	133.8 days	24.9 days	3.4 days	24.9 days
Mainstream System Involvement (% of study cohort with involvement at any point during the study)							
Criminal Justice	31%	45%	38%	71%	32%	19%	34%
Food Stamps	80%	100%	92%	100%	100%	94%	92%
Medicaid ^c	>=69%	100%	>=96%	>=93%	100%	>=94%	>90%***
Costs During Homelessness (Average Cost Per Person in Path Group)							
Homeless System	\$784	\$2,508	\$8,890	\$12,475	\$16,036	\$15,478	\$9,663.12
Criminal Justice	-	\$18.18	\$41.67	\$57.14	\$64.00	\$33.33	\$33.10
Food Stamps	\$64.00	\$866.00	\$630.58	\$2,140.57	\$2,725.92	\$3,030.44	\$1,614.57
Medicaid	\$48.17	\$2,730.73	\$1,712.75	\$4,071.43	\$4,436.76	\$5,608.89	\$3,052.89
Mainstream Costs	\$112	\$3,615	\$2,385	\$6,269	\$7,227	\$8,673	\$4,700.56
Total Costs	\$896	\$6,123	\$11,275	\$18,744	\$23,262	\$24,151	\$14,363.68
^a One-Week Single Stayers, One-Month Returners and Three-Month Returners are combined to form the Brief Users of Emergency Shelter path in the Family Chapter, Long Stay Progressers and TH Only Long Stayers are considered Heavy Users of Transitional Housing, and the Six-Month Returners are considered Repeat Users with Long Gaps. ^b Null demographic values are excluded from percentage calculations and thus may differ from findings presented elsewhere ^c De-duplicated data across programs within this domain were not provided. Values in this row represent the maximum value received by the path group in any one type of sub-domain.							

D.1.4 Washington, DC Study Cohort

Path Groups ^a	Congregate ES, Short Stayers	Congregate and Apartment ES	Progressing Long Stayers	Transitional Housing Only	Direct to Permanent Housing	Long Gappers	Total Cohort
Number of Families	135	36	52	45	91	51	410
% of Cohort	33%	9%	13%	11%	22%	12%	100%
Number of Adults	157	47	70	47	108	171	500
Number of Children	303	112	135	90	199	107	946
Avg. Household Size	3.4	4.4	3.9	3.0	3.4	3.5	3.5
Household Characteristics							
One Adult	84%	72%	69%	96%	81%	69%	80%
Membership changed during homeless period	11%	64%	75%	22%	5%	92%	34%
Children six and under	43%	53%	43%	64%	44%	53%	48%
Demographics^b							
Male Adults	15%	25%	16%	4%	21%	25%	18%
African-American	97%	100%	100%	94%	96%	98%	97%
Adults 41 and older	21%	15%	29%	21%	16%	21%	20%
Average Age at First Entry	32.0	30.6	30.8	30.5	30.6	32.4	31.6
Homeless Experience							
Average Number of Stays	1.2 stays	2.6 stays	2.8 stays	1.2 stays	1 stays	7.2 stays	2.2 stays
Average Total Length of Stay	67.2 days	513.2 days	550.5 days	447.1 days	384.4 days	272.6 days	308.6 days
Median Total Length of Stay	39 days	474 days	543 days	472 days	381 days	207 days	258 days
Average Total Gap	5.8 days	20.4 days	42.6 days	0.1 days	0.0 days	514.7 days	73.2 days
Mainstream System Involvement (% of study cohort with involvement between 7/1/2003 and 7/31/2008)							
Medicaid	92%	100%	100%	98%	93%	98%	95%
Substance Abuse	7%	8%	6%	13%	1%	29%	9%
Child Welfare	46%	56%	37%	49%	29%	55%	43%
Mental Health	30%	47%	46%	58%	14%	55%	36%
^a Congregate ES Short Stayers are considered Brief Users of Emergency Shelter in the Family Chapter, Progressing Long Stayers and Transitional Housing Only are combined to form Heavy Users of Transitional Housing and the Long Gappers are considered Repeat Users with Long Gaps. ^b Null demographic values are excluded from percentage calculations and thus may differ from findings presented elsewhere							

D.2. Cross-Site Family Multivariate Analysis

D.2.1 Analysis of Total Homeless Costs: Approach 1

Description: This series of regressions starts with the basic building blocks of costs per family, first adding length of stay (Model 1) to dummy variables controlling for site differences. Model 2 adds program type to site dummy variables and length of stay. Models 3 and 4 add other variables that reflect program use patterns, number of stays, number of “gap days,” and whether the family changed composition during the period of homelessness. The final models (5 and 6) add basic family demographic characteristics: age of adults, age of children, household size, and race.

Outcome Variable: Total Homeless Costs in Log Scale

Total Homeless Cost (log scale)	Model 1 (Length of Stay only)	Model 2 (Model 1 variables plus Program Type)	Model 3 (Model 2 variables plus Number of stays and number of “gap days”)	Model 4 (Model 3 variables plus Change in composition during homeless period)	Model 5 (All variables except household change)	Model 6 (All variables)
Washington, DC ^a	0.734*** (0.097)	0.828*** (0.098)	0.769*** (0.098)	0.727*** (0.098)	0.864*** (0.103)	0.836*** (0.103)
Upstate South Carolina	0.733*** (0.121)	0.700*** (0.120)	0.748*** (0.119)	0.732*** (0.118)	0.719*** (0.119)	0.693*** (0.119)
Houston, TX	0.843*** (0.086)	0.862*** (0.085)	0.903*** (0.084)	0.854*** (0.085)	0.916*** (0.085)	0.862*** (0.086)
Length of stay (in days) divided by 30	0.239*** (0.006)	0.218*** (0.008)	0.223*** (0.008)	0.219*** (0.008)	0.222*** (0.008)	0.219*** (0.008)
Transitional Housing-only program type		0.422*** (0.112)	0.442*** (0.111)	0.459*** (0.111)	0.464*** (0.112)	0.475*** (0.111)
Emergency Shelter and Transitional Housing-only program type		0.633*** (0.131)	0.443*** (0.133)	0.394*** (0.133)	0.489*** (0.133)	0.437*** (0.133)
Other program type		-0.066 (0.153)	-0.222 (0.154)	-0.330** (0.157)	-0.303* (0.155)	-0.427*** (0.158)
Total number of stays			0.051** (0.024)	0.037 (0.024)	0.044* (0.024)	0.031 (0.024)
Total gaps between stays (in days), divided by 30			0.036*** (0.008)	0.025*** (0.009)	0.038*** (0.008)	0.028*** (0.009)
Any change in household composition during the study period				0.326*** (0.096)		0.350*** (0.099)
Total number of adults in household					0.025 (0.160)	-0.024 (0.160)
Total number of children in household					0.067** (0.028)	0.055** (0.028)
Male adult-only household type					-0.218 (0.237)	-0.230 (0.236)

Total Homeless Cost (log scale)	Model 1 (Length of Stay only)	Model 2 (Model 1 variables plus Program Type)	Model 3 (Model 2 variables plus Number of stays and number of "gap days")	Model 4 (Model 3 variables plus Change in composition during homeless period)	Model 5 (All variables except household change)	Model 6 (All variables)
Female adult-only household type					-0.243 (0.184)	-0.245 (0.183)
African American household head					-0.273*** (0.084)	-0.290*** (0.084)
Household head of other race					-0.038 (0.167)	-0.042 (0.166)
Household head ages 18-24					-0.037 (0.099)	-0.038 (0.099)
Household head ages 25-30					0.023 (0.092)	0.020 (0.091)
Household head ages 41-50					0.084 (0.108)	0.086 (0.107)
Household head ages 51 or above					0.159 (0.246)	0.156 (0.245)
Household with youngest child born after study entry					-0.338 (0.207)	-0.465** (0.209)
Household youngest child ages 6-12					0.198** (0.088)	0.205** (0.088)
Household youngest child ages 13-17					0.184 (0.142)	0.195 (0.141)
Household head race missing					-0.232 (0.214)	-0.191 (0.213)
Household head age missing					-0.763 (0.553)	-0.802 (0.551)
Youngest child age missing					-0.064 (0.261)	-0.061 (0.260)
Constant	6.221*** (0.068)	6.163*** (0.068)	6.012*** (0.074)	6.031*** (0.074)	6.179*** (0.356)	6.283*** (0.355)
Observations	1287	1287	1287	1287	1285	1285
R-squared	0.60	0.61	0.63	0.63	0.64	0.64

Reference categories are: Kalamazoo, MI, Emergency Shelter-only program type, mixed-adult household type, white household head, household head ages 31 - 40, household youngest child ages 0-5.

Standard errors in parentheses

* significant at 10%; ** significant at 5%; *** significant at 1%

^a Excluded CCG/SAFAH-only families in DC

D.2.2 Analysis of Total Homeless Costs: Approach 2

Description: This approach starts with site dummies and basic family demographics (Model 1) and then adds program type (Model 3), length of stay (Model 4), and then numbers of stays and gap days (Model 5). Models 2 and 6 also add the variable that reflects whether the household changed composition. Model 1 does not control either for length of stay or for program type.

Outcome Variable: Total Homeless Costs in Log Scale

Total homeless cost (log scale)	Model 1 (Basic family demographics)	Model 2 (Model 1 variables plus Household Change)	Model 3 (Model 2 variables plus Program Type)	Model 4 (Model 3 variables plus Length of Stay)	Model 5 (Model 4 plus Number of stays and gap days)	Model 6 (All variables)
Washington, DC ^a	1.630*** (0.149)	1.453*** (0.148)	1.483*** (0.126)	0.898*** (0.104)	0.864*** (0.103)	0.836*** (0.103)
Upstate South Carolina	1.442*** (0.177)	1.377*** (0.174)	1.121*** (0.148)	0.682*** (0.121)	0.719*** (0.119)	0.693*** (0.119)
Houston, TX	1.016*** (0.128)	0.890*** (0.127)	1.007*** (0.106)	0.881*** (0.086)	0.916*** (0.085)	0.862*** (0.086)
Total number of adults in household	0.181 (0.241)	-0.023 (0.238)	0.048 (0.200)	0.067 (0.161)	0.025 (0.160)	-0.024 (0.160)
Total number of children in household	0.085** (0.042)	0.052 (0.042)	0.095*** (0.035)	0.065** (0.028)	0.067** (0.028)	0.055** (0.028)
Male adult-only household type	-0.176 (0.358)	-0.253 (0.350)	-0.226 (0.296)	-0.203 (0.239)	-0.218 (0.237)	-0.230 (0.236)
Female adult-only household type	-0.219 (0.278)	-0.239 (0.272)	-0.368 (0.230)	-0.254 (0.186)	-0.243 (0.184)	-0.245 (0.183)
African American household head	-0.249* (0.127)	-0.277** (0.125)	-0.194* (0.105)	-0.270*** (0.085)	-0.273*** (0.084)	-0.290*** (0.084)
Household head of other race	-0.369 (0.252)	-0.320 (0.247)	-0.046 (0.209)	-0.032 (0.169)	-0.038 (0.167)	-0.042 (0.166)
Household head ages 18-24	-0.387*** (0.150)	-0.349** (0.147)	-0.251** (0.124)	-0.065 (0.100)	-0.037 (0.099)	-0.038 (0.099)
Household head ages 25-30	-0.070 (0.139)	-0.060 (0.136)	-0.088 (0.115)	-0.005 (0.093)	0.023 (0.092)	0.020 (0.091)
Household head ages 41-50	0.293* (0.163)	0.267* (0.160)	0.185 (0.135)	0.092 (0.109)	0.084 (0.108)	0.086 (0.107)
Household head ages 51 or above	0.575 (0.372)	0.518 (0.365)	0.631** (0.308)	0.227 (0.249)	0.159 (0.246)	0.156 (0.245)
Household with youngest child born after study entry	0.988*** (0.299)	0.380 (0.304)	0.481* (0.251)	-0.054 (0.204)	-0.338 (0.207)	-0.465** (0.209)

Total homeless cost (log scale)	Model 1 (Basic family demographics)	Model 2 (Model 1 variables plus Household Change)	Model 3 (Model 2 variables plus Program Type)	Model 4 (Model 3 variables plus Length of Stay)	Model 5 (Model 4 plus Number of stays and gap days)	Model 6 (All variables)
Household youngest child ages 6-12	0.092	0.124	0.165	0.177**	0.198**	0.205**
	(0.134)	(0.131)	(0.111)	(0.089)	(0.088)	(0.088)
Household youngest child ages 13-17	0.120	0.155	0.049	0.170	0.184	0.195
	(0.215)	(0.211)	(0.178)	(0.144)	(0.142)	(0.141)
Household head race missing	-0.778**	-0.602*	-0.398	-0.273	-0.232	-0.191
	(0.324)	(0.318)	(0.268)	(0.216)	(0.214)	(0.213)
Household head age missing	-0.940	-0.994	-0.641	-0.822	-0.763	-0.802
	(0.839)	(0.822)	(0.693)	(0.560)	(0.553)	(0.551)
Youngest child age missing	0.180	0.168	-0.297	-0.034	-0.064	-0.061
	(0.395)	(0.387)	(0.327)	(0.264)	(0.261)	(0.260)
Any change in household composition during the study period		0.926***				0.350***
		(0.125)				(0.099)
Transitional Housing-only program type			2.274***	0.459***	0.464***	0.475***
			(0.109)	(0.113)	(0.112)	(0.111)
Emergency Shelter and Transitional Housing-only program type			2.119***	0.659***	0.489***	0.437***
			(0.146)	(0.131)	(0.133)	(0.133)
Other program type			1.668***	-0.143	-0.303*	-0.427***
			(0.170)	(0.154)	(0.155)	(0.158)
Length of stay (in days) divided by 30				0.215***	0.222***	0.219***
				(0.008)	(0.008)	(0.008)
Total number of stays					0.044*	0.031
					(0.024)	(0.024)
Total gaps between stays (in days), divided by 30					0.038***	0.028***
					(0.008)	(0.009)
Constant	7.025***	7.227***	6.555***	6.307***	6.179***	6.283***
	(0.537)	(0.527)	(0.444)	(0.359)	(0.356)	(0.355)
Observations	1285	1285	1285	1285	1285	1285
R-squared	0.16	0.20	0.43	0.63	0.64	0.64

Reference categories are: clients in Kalamazoo, Emergency Shelter-only program type, mixed-adult household type, white household head, household head ages 31-40, household youngest child ages 0-5

Standard errors in parentheses

* significant at 10%; ** significant at 5%; *** significant at 1%

¹Excluded CCG/SAFAH-only families in DC

D.2.3 Analysis of the Selection of Program Type, With Household Change as a Covariate

Description: The coefficients for this Multinomial Logit model are expressed as odds ratios, with values greater than one showing that, compared to the reference category, a particular type of household is more likely to use a program type. This model is used to identify the factors associated with the type of program use by first-time homeless families.

Program type Category (ES only; TH only; ES and TH only; Other)	Multinomial Logit Model		
	Base category = Emergency Shelter Only		
Outcome	Transitional Housing Only	Emergency Shelter and Transitional Housing Only	Other
Washington, D.C. ^a	0.866 (0.205)	0.966 (0.311)	5.776*** (2.591)
Upstate South Carolina	1.630* (0.406)	2.865** (0.940)	0.151 (0.163)
Houston, TX	1.002 (0.190)	0.656 (0.200)	0.799 (0.342)
Total number of adults in household	1.112 (0.471)	0.827 (0.399)	1.255 (0.516)
Total number of children in household	0.972 (0.065)	0.830* (0.076)	0.998 (0.091)
Any change in household composition during the study period	0.894 (0.200)	6.057*** (1.446)	15.410*** (4.673)
Male adult-only household type	0.975 (0.597)	0.829 (0.593)	1.849 (1.346)
Female adult-only household type	1.493 (0.720)	0.897 (0.484)	1.438 (0.757)
African American household head	0.939 (0.174)	1.083 (0.296)	0.212*** (0.081)
Household head of other race	0.714 (0.269)	0.177 (0.185)	0.000 (0.000)
Household head ages 18-24	0.749 (0.169)	1.062 (0.343)	0.277** (0.129)
Household head ages 25-30	0.965 (0.200)	1.387 (0.415)	0.988 (0.337)
Household head ages 41-50	1.037 (0.263)	1.831 (0.602)	1.206 (0.428)
Household head ages 51 or above	0.767 (0.457)	1.234 (0.863)	0.390 (0.346)
Household with youngest child born after study entry	1.525 (0.870)	2.729* (1.216)	0.327 (0.205)
Household youngest child ages 6-12	0.761 (0.158)	1.121 (0.313)	1.258 (0.408)
Household youngest child ages 13-17	1.160 (0.365)	1.186 (0.517)	1.626 (0.794)
Household head race missing	0.427 (0.245)	0.456 (0.485)	0.421 (0.469)
Household head age missing	0.576 (0.767)	0.000 (0.000)	0.000 (0.000)
Youngest child age missing	3.273* (1.667)	0.802 (0.894)	2.961 (2.792)
Constant	0.223 (0.205)	0.115* (0.124)	0.035*** (0.036)
Observations	1285		
Log likelihood	-1109.4261		
Reference categories are: clients in Kalamazoo, mixed-adult household type, white household head, household head ages 31-40, household youngest child ages 0-5			
Coefficients in relative risk ratio format			
Standard errors in parentheses			
* significant at 10%; ** significant at 5%; *** significant at 1%			
^a Excluded CCG/SAFAH-only families in DC			

D.2.4 Analysis of the Selection of Program Type, Without Household Change as a Covariate

Description: coefficients for this Multinomial Logit model are expressed as odds ratios, with values greater than one showing that, compared to the reference category, a particular type of household is more likely to use a program type. This model is used to identify the factors associated with the type of program used by first-time homeless families. This analysis is identical to the one shown previously, except that the household change variable is excluded from the model.

Program type Category (ES only; TH only; ES and TH only; Other)	Multinomial Logit Model		
	Base category = Emergency Shelter Only		
	Transitional Housing Only	Emergency Shelter and Transitional Housing Only	Other
Washington, DC ^a	0.852 (0.201)	1.346 (0.414)	9.246*** (3.822)
Upstate, South Carolina	1.622 (0.404)	3.433*** (1.080)	0.224 (0.237)
Houston, TX	0.990 (0.186)	0.984 (0.283)	1.433 (0.562)
Total number of adults in household	1.102 (0.445)	1.220 (0.603)	2.156 (0.849)
Total number of children in household	0.972 (0.064)	0.890 (0.080)	1.127 (0.096)
Male adult-only household type	0.965 (0.579)	0.899 (0.643)	1.732 (1.190)
Female adult-only household type	1.512 (0.705)	0.925 (0.509)	1.369 (0.688)
African American household head	0.934 (0.173)	1.155 (0.302)	0.286*** (0.101)
Household head of other race	0.713 (0.268)	0.164 (0.171)	0.000 (0.000)
Household head ages 18-24	0.747 (0.168)	1.009 (0.316)	0.265** (0.118)
Household head ages 25-30	0.961 (0.199)	1.370 (0.395)	0.925 (0.290)
Household head ages 41-50	1.034 (0.261)	1.829 (0.585)	1.319 (0.424)
Household head ages 51 or above	0.780 (0.465)	1.391 (0.948)	0.553 (0.451)
Household with youngest child born after study entry	1.376 (0.745)	7.974*** (3.403)	1.124 (0.703)
Household youngest child ages 6-12	0.763 (0.158)	1.013 (0.274)	1.016 (0.303)
Household youngest child ages 13-17	1.164 (0.365)	1.035 (0.440)	1.454 (0.640)
Household head race missing	0.432 (0.247)	0.290 (0.306)	0.198 (0.215)
Household head age missing	0.575 (0.757)	0.000 (0.000)	0.000 (0.000)
Youngest child age missing	3.324* (1.685)	0.912 (0.987)	3.284 (2.813)
Constant	0.222 (0.197)	0.086* (0.094)	0.029*** (0.028)
Observations	1285		
Log likelihood	-1109.4261		
Reference categories are: clients in Kalamazoo, mixed-adult household type, white household head, household head ages 31-40, household youngest child ages 0-5			
Coefficients in relative risk ratio format			
Standard errors in parentheses			
* significant at 10%; ** significant at 5%; *** significant at 1%			
^a Excluded CCG/SAFAH-only families in DC			

D.2.5 Analysis of the Length of Stay

Description: This series of regressions predicts length of stay, based on study site and household characteristics, and the types of programs used. Model 1 includes all variables. Model 2 excludes the program type variables. Model 3 excludes the household change variable.

Outcome variable: Length of Stay in Log Scale

Total length of stay (log scale)	Model 1 All Variables	Model 2 All Variables except Program Type	Model 3 All Variables except Household Change
Washington, DC ^a	0.913*** (0.115)	1.003*** (0.144)	0.964*** (0.116)
Upstae South Carolina	0.714*** (0.135)	0.991*** (0.170)	0.737*** (0.136)
Houston, TX	0.449*** (0.098)	0.400*** (0.123)	0.507*** (0.097)
Total number of adults in household	-0.045 (0.183)	0.014 (0.232)	0.032 (0.184)
Total number of children in household	0.077** (0.032)	0.056 (0.040)	0.091*** (0.032)
Any change in household composition during the study period	0.443*** (0.104)	0.879*** (0.121)	
Transitional Housing-only program type	2.436*** (0.100)		2.431*** (0.100)
Emergency Shelter and Transitional Housing-only program type	1.988*** (0.137)		2.123*** (0.134)
Other program type	1.921*** (0.164)		2.145*** (0.156)
Male adult-only household type	-0.127 (0.271)	-0.093 (0.342)	-0.105 (0.272)
Female adult-only household type	-0.361* (0.210)	-0.195 (0.265)	-0.362* (0.211)
African American household head	-0.132 (0.097)	-0.214* (0.122)	-0.110 (0.097)
Household head of other race	-0.182 (0.191)	-0.500** (0.240)	-0.175 (0.192)
Household head ages 18-24	-0.269** (0.113)	-0.406*** (0.143)	-0.278** (0.114)
Household head ages 25-30	-0.057 (0.105)	-0.041 (0.133)	-0.063 (0.106)
Household head ages 41-50	0.145 (0.123)	0.238 (0.156)	0.146 (0.124)
Household head ages 51 or above	0.538* (0.281)	0.437 (0.356)	0.567** (0.283)
Household with youngest child born after study entry	0.224 (0.238)	0.390 (0.297)	0.487** (0.231)
Household youngest child ages 6-12	0.103 (0.101)	0.038 (0.128)	0.087 (0.102)
Household youngest child ages 13-17	0.176 (0.162)	0.273 (0.205)	0.156 (0.164)
Household head race missing	-0.312 (0.245)	-0.630** (0.310)	-0.378 (0.247)
Household head age missing	-0.522 (0.634)	-0.860 (0.801)	-0.492 (0.638)

Total length of stay (log scale)	Model 1 All Variables	Model 2 All Variables except Program Type	Model 3 All Variables except Household Change
Youngest child age missing	-0.183 (0.299)	0.337 (0.377)	-0.179 (0.301)
Constant	2.812*** (0.407)	3.372*** (0.513)	2.726*** (0.409)
Observations	1285	1285	1285
R-squared	0.48	0.16	0.47
<p>Reference categories are: clients in Kalamazoo, Emergency Shelter-only program type, mixed-adult household type, white household head, household head ages 31-40, household youngest child ages 0-5</p> <p>Standard errors in parentheses</p> <p>* significant at 10%; ** significant at 5%; *** significant at 1%</p> <p>^aExcluded CCG/SAFAH-only families in DC</p>			

D.2.6 Summary Statistics of Variables Used in the Family Cross-site Regression Models

Variable	Obs	Mean	Std. Dev.	Min	Max
Cost	1287	10,310.99	15,820.13	31.65	97,242.60
Costs in Log scale	1287	7.95	1.92	3.45	11.48
DC	1287	0.25	0.43	0	1
South Carolina	1287	0.11	0.32	0	1
Houston	1287	0.37	0.48	0	1
Total length of stay	1287	144.37	175.48	1	550
Total length of stay (in days), divided by 30	1287	4.81	5.85	0.03	18.33
Number of stays	1287	1.62	1.61	1	25
Total gap days	1287	53.11	139.45	0	867
Total gaps between stays (in days) divided by 30	1287	1.77	4.65	0	28.90
Transitional Housing-only program type	1287	0.18	0.39	0	1
Emergency Shelter and Transitional Housing-only program type	1287	0.09	0.29	0	1
Other program type	1287	0.07	0.26	0	1
Any change in household composition during study period	1287	0.25	0.43	0	1
Total number of adults in household	1286	1.14	0.38	1	4
Total number of children in household	1285	2.12	1.28	1	9
Male adult-only household type	1287	0.05	0.21	0	1
Female adult-only household type	1287	0.83	0.38	0	1
African American household head	1287	0.70	0.46	0	1
Household head of other race	1287	0.05	0.21	0	1
Household head ages 18-24	1287	0.27	0.44	0	1
Household head ages 25-40	1287	0.24	0.43	0	1
Household head ages 41-50	1287	0.14	0.35	0	1
Household head ages 51 or above	1287	0.02	0.14	0	1
Household with youngest child born after study entry	1287	0.03	0.17	0	1
Household youngest child ages 6-12	1287	0.25	0.43	0	1
Household youngest child ages 13-17	1287	0.08	0.27	0	1
Household head race missing	1287	0.03	0.16	0	1
Household head age missing	1287	0.01	0.07	0	1
Youngest child age missing	1287	0.02	0.14	0	1

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ATTACHMENT 28

THE NORTH CAROLINA STATE BAR

JOURNAL

FALL
2014



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The Fun Comes to a Halt

BY RONALD G. BAKER SR.

Prior to June 25 of this year, serving as the president of the North Carolina State Bar had been both enjoyable and relatively pain free except for the amount of time involved. All of that changed, however, at 5:30 PM that day when I received a phone call from State Bar Executive Director Tom Lunsford. During that phone call, Tom advised me that he had just received information from a state senator that House Bill 663 entitled "Commodities Producer Protection," which had crossed over to the Senate back in May 2013, had been stripped of its agricultural content and amended to substantially alter the definition of the practice of law. The purpose of that amendment was clearly to put a legislative stamp of approval on LegalZoom's method of operation in North Carolina and other places. As I mentioned in my first column after becoming president, among other lawsuits the State Bar is involved in, one is a suit brought by LegalZoom which involves, among other issues, the question of whether its activities in North Carolina constitute the unauthorized practice of law. We learned that HB 663 was to come before the Senate's Judiciary 1 Committee at 10:00 AM the following (June 26) morning.

Knowing that the State Bar should be represented at the meeting of the Judiciary Committee, the chair of the Authorized Practice Committee, Mike Robinson, was called around 7:00 PM on the evening of the 25th. Without hesitating, Mike graciously rearranged his schedule and promised to come to Raleigh and appear at the meeting of Senate Judiciary Committee 1 to state the position of the State Bar—that the language of the proposed amendment to the definition of the practice of law was entirely too broad and should not be passed. Mike appeared at the committee meeting and expressed the State Bar's position magnificently. Mr. Robinson



told the committee that the State Bar's interest and responsibility in the matter is consumer protection, and that the amendment would likely have serious unintended consequences and should not be the subject of precipitous legislative action. Unfortunately, the amended bill was voted out of the committee with a favorable report. At that point it appeared that the matter would come before the entire Senate with a favorable report of Senate Judiciary Committee 1 on the following Tuesday. Had the Senate adopted HB 663 it would have then returned to the House, where all that would have been needed was concurrence for the amended bill to be enacted.

Following the meeting of Senate Judiciary 1, past State Bar President John McMillan along with his partner, Michelle Frazier, volunteered to help the State Bar figure out how to effectively oppose LegalZoom in the legislature. The first two things that I did as your president were to write all of the members of the State Bar Council and all past presidents of the State Bar to advise them of the amendment to HB 663 and its likely consequences, and to request their assistance in contacting senators and legislators in an attempt to thwart passage of the bill. I also called Senate President Pro Tem Phil Berger to discuss the matter with him directly. Senator Berger graciously returned my call (as well as many others from lawyers and councilors) and discussed the matter with me. This bill had not been on Senator Berger's radar, and he was not aware of its pendency until we spoke with him. He promised to look into the matter and also requested that the State Bar come up with proposed alternate language for the bill that would be acceptable to the State Bar. Throughout the ensuing days Senator Berger was very responsive to the concerns of the State Bar.

Councilors, former State Bar presidents, and lawyers all over the state began calling their senators and representatives, and all of those calls had an effect. The bill was removed from the July 1 Senate calendar and postponed until a later time. Ultimately it was sent to the Senate Rules Committee.

All of this activity in the legislature was taking place against the backdrop of many other factors. As noted above, one was the LegalZoom litigation. The judge assigned to the case had stated to the parties on more than one occasion that ultimately it was the charge of the State Bar to regulate the practice of law in North Carolina, and that it should exercise its authority to come to some resolution in the matter. Of course, the court made very clear that if the State Bar could not resolve the matter, then the court would have to do so. Another complicating factor to the situation that had to be taken into account was the Federal Trade Commission's action against the North Carolina Dental Board when that board attempted to prevent nonlicensed individuals from performing teeth whitening services. Its efforts in doing so seem to be clearly within the purview of the statutory authority granted to it by the legislature. Yet the Federal Trade Commission determined its activities to be anticompetitive and improper, and even ruled that the members of the Dental Board might be subject to personal liability for antitrust violations. The State Bar, of course, also had its own experience with the Federal Trade Commission in dealing with activities surrounding real estate closings back in 2002, and again in 2010-2011 when the matter was revisited by the State Bar. Last, but not least, it was recognized that the chances of LegalZoom and similar providers being ordered to cease operation in this state were virtually nil.

In light of all of the foregoing, the officers, the Special Litigation Committee of the State Bar, and the chair and vice-chair of the Authorized Practice Committee felt that it was necessary and appropriate that an effort be

made to draft alternate language for consideration by the legislature that attempted to satisfy the State Bar's obligation to protect the citizens of North Carolina, yet did not run afoul of federal antitrust law. Such a suggested alternative was drafted by the Office of Counsel of the State Bar and considered by the Officers and Councilors just mentioned. The language was thoroughly vetted and ultimately approved. It was submitted to representatives of LegalZoom. Various counter proposals were received from LegalZoom, none of which were acceptable to the State Bar. Ultimately, LegalZoom's representatives were advised that the language that the State Bar had proposed was final and the State Bar was not prepared to agree to anything else. Following that, a conference was held between State Bar officials and LegalZoom's representatives along with LegalZoom's corporate general counsel for the purposes of explaining the language and the State Bar's reasoning with respect to it. Ultimately, LegalZoom agreed to accept the State Bar's language with two very minor clarifications, which merely better explained the State Bar's intention than the words that had been used. In doing so, LegalZoom agreed to support the substitute language before the legislature, and also agreed to settle the pending lawsuit by agreeing to conform its business practices to the new proposed statutory language. That information was communicated both to the members of the House and Senate and to various bar groups around the state. A copy of the final language of the proposed alternate bill from the State Bar appears at the end of this column. Ultimately, the substitute language was never introduced and the State Bar was advised that no action would be forthcoming from the legislature during this session with respect to the proposed amendments to Chapter 84 of the General Statutes. Thus, at present, matters remain status quo.

The vast majority of comments that the State Bar has received concerning its proposed substitute language to the LegalZoom legislation proposal have been favorable. The notable exception has been the comments from the real estate bar, particularly that portion that deals with residential real estate closings. That group has been rather vocal in its criticism of the State Bar's proposed alternate bill language, and they have accused the State Bar of "caving in" to LegalZoom, of lacking intestinal fortitude (to put things in language that is printable in a publication of general dis-

tribution), and of having characteristics that would serve no purpose to repeat here. While the concerns of the real estate bar are understandable, and largely well-founded, the State Bar has to deal with realities. First, LegalZoom has not been enjoined from doing business in any other state in the United States. In fact, it was represented to the legislature by representatives of LegalZoom that their operations have been approved in 49 states and that North Carolina is the lone holdout. Of course, this is not entirely true, but, as noted above, LegalZoom has not been enjoined from doing business anywhere else and is not likely to be enjoined from doing business in North Carolina. Second, there is a recognized scrivener's exception to the definition of the practice of law that has been recognized by courts all over the United States, specifically by the business court in the case of the *North Carolina State Bar v. LienGuard, Inc. and Janis Lundquist*, 2014 NCBC 11. It is clearly legal to sell legal forms in this state and the court seemed to recognize in the *LienGuard* decision that should LienGuard simply present its clients with a "fill in the blanks" form and populate the form with client-supplied information without any change or further manipulation, their method of operation would probably be legal. This is precisely what the State Bar has tried to mandate in the proposed statutory language. Some have urged the State Bar to adopt the settlement that LegalZoom entered into in South Carolina. It is the view of the State Bar that the language proposed in North Carolina is more restrictive than that approved by the South Carolina Supreme Court. It is noteworthy that the South Carolina ruling was not the result of a trial, but merely the approval of a settlement that was negotiated between private parties and LegalZoom, and that LegalZoom paid \$500,000 in attorney's fees to the private litigants. There is no question that the North Carolina State Bar will never be able to stop providers from making legal forms available on the internet. The best that the State Bar can hope to do is regulate the practices to the greatest extent possible for the protection of the consuming public. That is what has been attempted by the proposed language. It is understood that the proposed language will not suit everyone, and that reasonable minds can differ as to whether this is the proper way to go. However, under all of the constraints that had to be considered, it was felt by the leadership, the Office of Counsel, and the

North Carolina State Bar Council that this was the best way to handle what was a challenging situation.

The officers and staff of the State Bar sincerely appreciate the help and support of the North Carolina Bar Association and its lobbyist Kim Crouch in their efforts with respect to this legislation. The same is true of the Advocates for Justice and its president, Danny Glover. The cooperation of the Republican leadership in the Senate and the lawyer representatives in the House is also appreciated. Finally, there are really not words sufficient to recognize the great debt the State Bar owes to Past President John McMillan and his partner Michelle Frazier for their efforts on behalf of the State Bar and the lawyers of North Carolina in opposing the original amendment. They have spent countless volunteer hours on our behalf. Without them, it is hard to predict where we might be now.

On June 25 being president of the State Bar went from being enjoyable to challenging and difficult. It, however, remained rewarding. This being my last column as president, I would be remiss if I did not recognize and express my thanks for the dedicated effort of all of the officers, committee chairs and vice-chairs, and councilors during my term as president. Anyone who has not served as a councilor has any idea how time consuming such service is. Finally, I want to thank the lawyers of North Carolina for affording me the opportunity to serve as president of the North Carolina State Bar. Certainly when I started practicing law 39 years ago I would never have predicted that I would ever even be a State Bar councilor, much less the president of the North Carolina State Bar. I am deeply honored to have had the opportunity to serve. Thank you.

Proposed Amendment that would Except the Following from the Definition of the Practice of Law

(2) The production, distribution, or sale of materials, provided that:

- (a) The production of the materials must have occurred entirely before any contact between the provider and the consumer;
- (b) During and after initial contact between the provider and the consumer, the provider's participation in creating or completing any materials must be limited to typing, writing, or reproducing exactly the information provided by the consumer as dictated by the consumer or deleting

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content that is visible to the consumer at the instruction of the consumer;

(c) The provider does not select or assist in the selection of the product for the consumer; provided, however, (i) operating a website that requires the consumer to select the product to be purchased, (ii) publishing descriptions of the products offered, when not done to address the consumer's particular legal situation and when the products offered and the descriptions published to every consumer are identical, and (iii) publishing general information about the law, when not done to address the consumer's particular legal situation and when the general information published to every consumer is identical, does not constitute assistance in selection of the product;

(d) The provider does not provide any individualized legal advice to or exercise any legal judgment for the consumer; provided, however, that publishing general information about the law and describing the products offered, when not done to address the consumer's particular legal situation and when the general information pub-

lished to every consumer is identical, does not constitute legal advice or the exercise of legal judgment;

(e) During and after initial contact between the provider and the consumer, the provider may not participate in any way in selecting the content of the finished materials;

(f) In the case of the sale of materials including information supplied by the consumer through an internet website or otherwise, the consumer is provided a means to see the blank template or the final, completed product before finalizing a purchase of that product;

(g) The provider does not review the consumer's final product for errors other than notifying the consumer (i) of spelling errors, (ii) that a required field has not been completed, and (iii) that information entered into a form or template by the consumer is factually inconsistent with other information entered into the form or template by the consumer;

(h) The provider must clearly and conspicuously communicate to the consumer that

the materials are not a substitute for the advice or services of an attorney;

(i) The provider discloses its legal name and physical location and address to the consumer;

(j) The provider does not disclaim any warranties or liability and does not limit the recovery of damages or other remedies by the consumer; and

(k) The provider does not require the consumer to agree to jurisdiction or venue in any state other than North Carolina for the resolution of disputes between the provider and the consumer.

For purposes of this subsection, "production" shall mean design, creation, publication, or display, including by means of an internet website; "materials" shall mean legal written materials, books, documents, templates, forms, or computer software; and "provider" shall mean designer, creator, publisher, distributor, displayer, or seller. ■

Ronald G Baker Sr. is a partner with the Kitty Hawk firm of Sharp, Michael, Graham & Baker LLP.

Life After Meth—A Journey of Addiction and Recovery

BY DOUGLAS WILSON “WIL” MILLER

In the summer of 1997 at the age of 35, I fell in love. That relationship exposed me to many new things. Unfortunately, one of them was methamphetamine.

I didn't know a lot about meth the first time I tried it. It wasn't a common drug where I was from. I knew it was a stimulant and I knew it was illegal. And although I had been employed as a prosecutor in New York City and Seattle for the preceding nine years, I had always been a vocal opponent of the “War on Drugs” and refused to handle drug cases because of it. That left a dangerous void in my knowledge of meth.

From the very first time I tried meth, I loved it. Nothing had ever made me feel as happy or alive or confident as meth did. That's because no natural experience can make your brain produce dopamine like meth can. Dopamine is a neurotransmitter that makes you experience pleasure. Normally there are about 100 units of dopamine in the pleasure centers of your brain; when you have sex, those levels double up to around 200 units. Cocaine can make your dopamine levels go up to 350 units and keep them there for over an hour. That's why cocaine is so addictive. But when you use meth, your dopamine levels shoot up to 1,250 units and you stay high for up to 12 hours. At the same time your dopamine levels are spiking, meth is also reducing blood flow to your frontal lobes, hobbling that section of your brain that helps you make good and responsible decisions. It's a dangerous combination—a perfect storm of addiction.

Barreling Towards Addiction

By the third time I tried meth, I knew I wasn't going to stop, and soon what started



Photo courtesy of Lana M. Wilson Photography

as a weekend ritual of getting high quickly snowballed into extended periods of use followed by debilitating periods of withdrawal. Meth withdrawal can leave you feeling impossibly weak, apathetic, and depressed, sometimes for days. You eat and sleep uncontrollably and sometimes experience crying jags or bouts of paranoia for no reason. It can make you feel like you're losing your mind.

By December 1997 I couldn't take it anymore. I became an addicted, daily substance user just to avoid withdrawal. Suddenly, for the first time in my career, I started showing up late to work. I couldn't stay organized anymore. I was losing my

temper for no reason and being really rude to some of the defense attorneys.

Many people believe it's easy to figure out when someone is using meth by their violent or erratic behavior, but that's a myth. Like any drug, individual responses to meth vary widely. Just as some alcoholics can maintain the appearance of sobriety with relatively high blood-alcohol levels, many meth addicts can do the same with meth. In many ways, my meth-influenced behavior was not unlike the behavior of many trial attorneys who are short-tempered and stressed out, and for the most part it went unnoticed.

Being a prosecutor certainly made my

addiction much more complicated. I was overwhelmed with feelings of guilt and hypocrisy. And although I knew I desperately needed help, I had no idea where I could get it without losing my job.

And I really didn't want to lose my job. I loved being a trial attorney and a victims' advocate. After graduating from Duke Law in 1988, I started my career in the Brooklyn DA's Office, where I focused on prosecuting sex crimes. Three years later, I took a job as a trial attorney and supervisor in the Special Victims Bureau in the Queens DA's Office. Then in 1995 I moved to Seattle to work for Norm Maleng as a King County deputy prosecutor.

Being a prosecutor was all I had ever done. I was also really good at it. In nine years of trying cases back-to-back, I rarely lost. Trial work felt completely natural to me—like the thing I was born to do.

Caught at the Courthouse

That all ended one day in March 1998, three months into my addiction, when a security guard at the King County Courthouse asked me to open my briefcase, which had just gone through the x-ray machine. It was a common request; I frequently had my briefcase searched when entering the courthouse. Only this time, inside there was an Altoids tin containing drugs and drug paraphernalia—I recognized the Altoids tin. It belonged to me and my significant other. But I had no idea why it was in my briefcase, where it would so obviously be found by security.

In an instant, I saw my life crumble before my eyes. I was about to lose everything: my job, my friends, and my reputation. I denied the drugs were mine, but I knew it didn't matter. The damage was done. A few days later, I resigned my job and a special prosecutor was appointed to handle the investigation.

As I saw it, I had two choices at that point: 1) stop using meth and face reality, or 2) keep using a drug that made me insanely happy, no matter how bad my life became. I knew if I kept using meth there was a good chance it would eventually kill me, but that was no longer a reason *not* to use it. My life already felt like it was over. I wanted it to be over.

But I had a different problem now. Snorting meth no longer put enough of the drug into my bloodstream to make its

magic work. I needed to get a lot more in me, a lot faster. So I started injecting it. At \$25 a shot, that was expensive, and within a few weeks I was completely broke. Not surprisingly, that's also when my relationship ended. Once my significant other was gone, I felt completely lost.

All my former friends were prosecutors who couldn't have any contact with me. All I had left was meth. However, I was still an experienced criminal attorney—one who now knew dozens of meth addicts, most of whom desperately needed representation from a lawyer they could trust. You're probably thinking, "You were still able to practice? Didn't the Washington Supreme Court suspend you?" No, they didn't. Because I had yet to be charged with any crime.

When word went out among the meth addicts in Seattle that I was going to start practicing criminal law again, they quickly became my client base and my friends. They almost never had money, but they almost always had meth. My addiction found a way to survive.

Propped up by the chemically induced confidence of meth, I walked back into the King County Courthouse in May 1998, three months after resigning my job, and started my career as a criminal defense attorney. Much to my surprise, I loved it just as much as I loved being a prosecutor. That's when I realized I might still have a future. I wanted to live, but only if I could stop using meth.

The Public Learns My Name

So I made a plan: I'd save up enough money to pay for rehab and get my mortgage current, then block out enough time in my schedule to go. It may not have been realistic, but it was a huge improvement over my earlier plan of just using meth until it killed me. Unfortunately, my plan got interrupted when the special prosecutor handling the courthouse incident decided *not* to charge me with drug possession. His decision provoked an angry backlash of editorials and newspaper articles claiming preferential treatment by one prosecutor for another—editorials and articles that named me publicly for the first time as the person involved. I'm not sure why I wasn't charged; in retrospect, I really wish I had been. If I had, my case would likely have gone to drug court, where I would have gotten the kind of life-saving intervention I desperately needed.

That burst of publicity quickly scared off all my paying clients. No one wanted to hire me. Soon I started getting notices from my mortgage lender threatening me with foreclosure, and then my phone and utilities were turned off. Even though I was now no longer facing potential drug charges, my life kept getting worse and worse. That's when I finally gave up trying to save myself.

About a month later, in December 1998—a year into my addiction—my ex started calling me again. He said he needed my help getting some meth for a friend of his. He told me if I could finance the deal, we could split the profit. It didn't take a lot of convincing at that point: I could no longer see any future, and like most meth addicts, it wasn't the first time I had done something like this. My ex set up the initial meeting and I obtained the drugs. Over the course of the next two months, I sold drugs to his friend three times.

On February 16, 1999, the fourth time I was supposed to sell his friend drugs, the friend showed up at my house with a SWAT team, a battering ram, and a KOMO 4 News team to film my arrest live on television. It turned out the "friend" was an undercover cop and my ex was making money setting me up for the police.

Well, that was the luckiest thing that ever happened to me. It was the only intervention I was ever going to get, and it started the chain reaction of events that eventually saved my life. Only it didn't happen quickly. After my arrest, I used my knowledge of the criminal justice system to stall my trial for over a year and a half. I still had my license to practice law, but it was almost impossible for me to concentrate on the little bit of work I had. It was during this time between my arrest and my trial that I made my first serious attempt at drug rehab.

Rehab and Picking Up Where You Left Off

There are two basic schools of drug recovery programs. One is the 12-step approach, which uses a person's faith in God, or a "higher power," to help recover from addiction. The other approach is based on cognitive behavioral therapy—a school of psychology that employs a variety of techniques to help a person understand their addictive behavior and quit using. My first rehab was based exclusively on the 12-step model. I'm a huge fan of the 12-step

**“It turns out you don’t really need “faith” to benefit from a 12-step meeting.
All you really need to do is talk and listen.”**

program; I’ve seen it help a lot of people, and I have witnessed firsthand the amazing power of faith.

But I am also a lifelong atheist. So “faith” just isn’t one of the tools in my toolbox. At rehab I openly questioned the appropriateness—for me—of a “faith-based” or “spiritual” recovery program. After ten days of arguing, I was told by the facility director that I was in the wrong place and that I needed to leave. I returned to Seattle and stayed clean for a few months, but by late autumn of 1999, I relapsed with a vengeance. It was during that first major relapse that I learned the truth of one of many valuable sayings taught to me by the 12-step program: “You pick up where you left off.” What does that mean? That means when you’re dealing with addiction, and you stop using your drug of choice for a while, then relapse, you don’t get to go back to the feelings you had during the first few fun times you used. The drug won’t do that neat little trick for you anymore. Instead, you go right back to the crappy feelings you had just before you quit.

With chronic meth use, you reach a point where the drug no longer makes you feel good, because you have literally worked the dopamine-producing cells in your brain to death. They’re gone. The meth still gives you an adrenaline rush, but now the drug starts to make you crazy—paranoid, delusional, or severely ADD. But you know that if you stop using meth, you’ll become incredibly weak and depressed. So every day you use, you’re choosing between being crazy and being depressed.

When I relapsed, I became really angry, distracted, and convinced everyone was out to get me. My law practice was in shambles. It was impossible for me to be an effective advocate when I couldn’t even predict when I’d be awake. Even with planning, alarm clocks, and the best of intentions, I missed court dates and important appointments because I had stayed awake for too many days, run out of meth, and fallen unconscious. The judges and prosecutors were completely fed up with my behavior—and

with good reason. It was obvious to everyone I had relapsed and that I should no longer be practicing law.

I continued to use meth right through my trial in July 2000. I wasn’t surprised when I got convicted. I expected it. That’s when the Washington Supreme Court finally disbarred me.

Even after my conviction, I managed to stay out of custody while my case was on appeal. I was homeless at that point and living on the couches of other drug addicts all over Seattle. That’s when I finally hit my rock bottom. I knew that, compared to where I was at that moment, prison was going to be a step up for me—at least in prison I’d have a bed, clean clothes, and regular meals. Only I was determined not to go to prison addicted. So I made a new plan to get clean—a much more realistic plan.

I got myself into a state-funded rehab (this time based on the cognitive behavioral therapy model of recovery), moved into clean and sober housing, and found work as a housekeeper at a Victorian bed and breakfast on Seattle’s Capitol Hill. The owners of the B&B were a woman and her elderly mother who had followed my story in the newspapers, felt sorry for me, and miraculously agreed not only to be my employers, but also my surrogate family as I struggled through the first years of my recovery. They were difficult years. I gained 50 pounds. I was often severely depressed. My brain still didn’t function well. The cravings for meth were intense. But at least I had some income, a job with lots of leftovers to eat, and the love and support of those two women who owned the B&B. I knew they genuinely wanted to see me succeed and it made all the difference. If it weren’t for them, I probably wouldn’t have made it.

Serving Time

After successfully completing six months of rehab and staying meth-free for over a year, I knew what had to happen next. In August 2002 I withdrew my case from the Washington State Court of Appeals, and on September 22 I turned myself in to the

Department of Corrections to start serving my sentence.

My situation in prison was precarious. After all, I was an openly gay former prosecutor forced to serve my time in the same jurisdiction where I had spent years putting violent felons behind bars. Most of that time I went unrecognized, and I was fine. But there were times when I was recognized by men I had prosecuted for serious violent offenses, and things got dangerous quickly. As a result, I spent more than two months locked up in solitary confinement for my own protection, in a 9 x 6 foot cell with bright fluorescent lights that could never be turned off. There were many days when I thought I would lose my mind.

Despite that, I will always value the time I spent in prison, the vast majority of which was really helpful. In prison I was safe from temptation during the early fragile years of my recovery. I could never have afforded the two-year inpatient drug rehab I needed. Prison served that role in my life. I met hundreds of men whose lives had been destroyed by drugs, especially meth. For many of them, the drug had taken their teeth, destroyed their skin, and left them with horrible burns from meth lab accidents. Some had lost their minds.

In prison I learned that this was the insanity I had helped foster when I got involved with meth, and this is what I would become if I went back to using it. It was a life-changing lesson and an amazing gift. And although I will always do everything I can to keep my clients out of prison, I genuinely feel I was lucky to go...and even luckier to have lived through it.

It was also from prison that I started writing letters to everyone I knew. That’s how I finally reconnected with family and friends. When their letters came flooding back in, I realized I was no longer alone in my struggle, and I began to believe that if I could stay clean, I just might be able to get my life back.

Gaining Hope

The Washington Supreme Court

doesn't allow disbarred attorneys to work as paralegals in Washington, but other states don't have that rule. So after my release from prison on September 12, 2004, I moved my parole from Seattle to Wilmington, North Carolina, where I reunited with my family and got a job in a civil litigation firm as a paralegal and office manager. I worked there for the next eight years.

During those eight years, I got involved with the North Carolina State Bar's Lawyer Assistance Program (or LAP, as it's called). LAP trained me to be a volunteer and let me serve as a mentor, monitor, and recovery coach for other drug-addicted lawyers. LAP also got me speaking at CLEs, high schools, and community groups about meth addiction and recovery.

It was through LAP that I started going to lunches for lawyers in recovery. The lunches were like 12-step meetings just for attorneys. I went reluctantly at first, but after going for a while I came to understand why 12-steppers are so passionate

about their program. It was in those meetings that I learned just how much shame I was still carrying around with me about the things I had done to other people while using meth—things like worrying my family and friends, embarrassing my co-workers, disappointing my clients, and worst of all, enabling the addictions of other addicts. Those lunch meetings gave me a safe place to talk about my guilt and remorse, and the lawyers there helped me find a way to live with those feelings. I had recovered from meth addiction long before I ever went to my first LAP lawyer lunch, but the things that happened to me at those meetings finally made me feel like I was healed.

It turns out you don't really need "faith" to benefit from a 12-step meeting. All you really need to do is talk and listen. And it was also at those lunches that the other lawyers convinced me to try and get my law license back in Washington. I knew with four felony convictions the chances were slim, but they had faith I could pull it off.

Reinstatement

It took me almost a year to get ready for my hearing before the WSBA Character and Fitness Board in 2009. I was still a total control freak about all things resembling trials. I represented myself. The hearing lasted over seven hours. After a lot of testimony, a lot of argument, and quite a bit of deliberation, the Board voted to reinstate me.

After retaking the bar exam, I was officially reinstated as a lawyer in Washington in June 2010. Although my original plan was to then get admitted to the bar in North Carolina, part of me never gave up on the idea of moving back to Seattle. As fate would have it, after 12 years of being single, I ended up getting married just a few months before Washington passed marriage equality by popular vote. I took that as a sign. So a year ago in June, my husband and I packed the car and headed west.

I'll always miss North Carolina, but Seattle feels like home. It feels like where I belong. And it feels like the place where my personal history and skill set can do the

METH BY THE NUMBERS



Usage Rate

According to a 2012 National Survey on Drug Use and Health, funded by an agency of the U.S. Department of Health and Human Services and administered by Research Triangle Institute, approximately 1.2 million people in the United States reported using meth.

Environmental Impact

- Areas where meth-making poisonous by-products are dumped or "dead zones" can contaminate the environment and cost thousands to clean up.
- A small dead zone cleanup can cost \$40,000.
- Much of meth waste is highly flammable and explosive, which

makes it a danger for the summer forest fire season.

- Meth waste leaches moisture from whatever it touches, so it is very harmful to the surrounding environment, whether discarded indoors or outdoors.

Impact on Economy

- The RAND Corporation released a study stating that meth use costs the United States between \$16.2 and \$48.3 billion per year.
- The annual cost of drug-related crimes in the United States is over \$61 billion, according to the US Department of Justice's National Drug Intelligence Center (justice.gov/archive/ndic/pubs44/44731/44731p.pdf).
- A 2010 National Drug Threat Study found that meth and cocaine cause a majority of drug-related crimes.

Drug Abuse by Attorneys

- The ABA estimates nearly 20 percent of lawyers suffer from alcohol and substance abuse.
- The national heavy drinkers rate is 26.2 percent of people aged 18 or older, according to the NIH. Attorneys with heavy drinking problems are twice the national rate, according to the ABA's Commission on Lawyer Assistance Programs. ([niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics; americanbar.org/groups/lawyer_assistance/resources/alcohol_abuse_dependence.html](http://niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics;americanbar.org/groups/lawyer_assistance/resources/alcohol_abuse_dependence.html))



**Thanks for your JPE
survey responses!**

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most good for other people struggling with addiction. But I realize I can't be a proper role model for recovery if the people who need me most can't see me. So I make sure I'm visible to them by representing them and telling them my story. Not surprisingly, many of my criminal and family law cases involve issues of addiction.

Recovery from meth is not impossible or uncommon. In my experience, it often takes a lot of external support to get through those first

crucial years of recovery. The reason my addiction blew up in such a spectacular way had a lot to do with how isolated I became from my sober family and friends, and even more to do with my false belief that recovery from meth addiction was not possible. People have recovered from meth addiction, but the stigma makes it very hard to identify themselves publicly. If recovered meth addicts don't start coming out of the shadows and showing their recovery to the world, the lie that you can't

recover from meth addiction will continue and be a huge obstacle for those trying to quit.

Getting Help

If you have a problem with addiction, the NC Lawyer Assistance Program is ready to provide confidential help. You can meet with a LAP counselor personally, or LAP can set you up with a peer counselor (a fellow attorney) who can speak to you about your options. Best of all, anything you tell your peer counselor is confidential pursuant to Rule 1.6(c). Don't be afraid to ask for help and don't be afraid to accept help when it's offered.

But what if the problem isn't with you? What if someone you care about or work with is struggling with addiction? What can you do to help? Those are really difficult situations, often complicated by a host of other issues. All I can say for certain is that it's important that you don't enable them. Don't give them opportunities, or excuses, or resources that make it easier for them to continue using. But don't give up on them, either. Don't stop caring about them. Tell them their substance abuse is scaring you. Tell them you want them to stop. And remind them that when they're ready to stop, you'll still be there for them, because you care about them.

It can make all the difference. ■

Douglas Wilson "Wil" Miller is a litigator in Seattle with a private practice focused on criminal defense, family law, and personal injury. Miller devotes much of his spare time to providing pro bono legal services to the survivors of domestic violence, and serving as a recovery coach to meth-addicted lawyers throughout the country. He volunteers with the WSBA Lawyers Assistance Program. He can be reached at wil@wilmler.com.

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you would like more information, go to nclap.org or call: Cathy Killian (for Charlotte and areas west) at 704-910-2310, Towanda Garner (in the Piedmont area) at 919-719-9290, or Robynn Monaites (for Raleigh and down east) at 704-892-5699.

The Washington State Bar Association grants authorization to the NC State Bar to reprint "Life After Meth" by Douglas Wilson "Wil" Miller, which appeared in the June 2014 issue of NWLawyer.

Informing the Public in Upcoming Judicial Elections

BY ASHLEY M. LONDON

A record number of attorneys across North Carolina carved time out of hectic schedules to complete the Judicial Performance Evaluation (JPE) surveys conducted by the North Carolina Bar Association—and the process will continue to create a more informed electorate.

All candidates for the trial bench in 2014 were evaluated. The JPE Survey Phase I was conducted in November 2013, covering superior and district court judges whose terms will expire in 2014. Phase II was conducted at the end of the February 2014 filing period, covering newly installed judges and nonincumbent candidates.¹ The combined results for all contested judicial seats are currently available for public review in advance of the general election on November 4, 2014, at ElectNCJudges.org. The nonincumbent survey is the only one of its kind in the US.

The state of North Carolina has elected its judges for more than a century. But if one asks just about any person on the street the merits of one judicial candidate over another, the answers will vary dramatically in degree of knowledge or ignorance. Judicial election candidates receive little consideration by the general voting public—despite the critical jobs performed by members of the bench—because of a previous dearth of knowledge available for review before ballots are cast. The North Carolina Bar Association has sought to fill that knowledge gap. Its efforts have met with widespread success, thanks to the input of thousands of attorney participants.

“Phase I of the JPE survey harvested 31,000 individual responses, and Phase II (covering the challengers) 7,298 individual evaluations, which is a magnificent response,” says Nancy Black Norelli, immediate past

chair of the JPE committee.

The large response enabled the North Carolina Bar Association to provide extensive information for voters on nine superior and district court races that appeared on the primary ballot on May 6.

The results from the JPE survey are easily accessible to the public through the website ElectNCJudges.org. A voter simply clicks on the county of residence, and all contested trial court seats on his or her ballot appear in PDF format, printable and accessible on handheld electronic devices. Thirty-seven counties are represented. The 2014 election cycle will mark the second time members of the public will have access to the survey results.

Each active North Carolina attorney was encouraged to evaluate each judicial candidate with whom the attorney has had a level of professional contact in six categories: Integrity & Impartiality, Legal Ability, Professionalism, Communication, Administrative Skills, and Overall Performance. To preserve the integrity of the feedback, the names and responses from participating attorneys were kept confidential, with an outside accounting firm hired to conduct the surveys.

“We are grateful to the lawyers across the state for their participation in both phases of the survey for the 2014 election cycle,” Norelli says. “Voters, as we learned during the last election, are grateful to have access to this information before they go to the polls.”

The goal for the JPE Committee moving forward is to make sure that members of the public are aware of this exceptional resource. The NCBA will market the website throughout the election season in print and online publications, and will also be conducting a social media campaign to promote the survey.

“We are encouraging members of the NCBA to talk about the website and the sur-



vey, both at work and in their broader communities,” said Matt Sawchak, the current chair of the JPE Committee. “It’s important to remember how the results of judicial elections have a far-reaching impact on the lives of all North Carolinians. Helping alert the public to these survey results is a great way to serve our fellow North Carolinians and promote an impartial judiciary.”

This project was made possible by a grant from the NCBA Foundation Endowment. It is another example of how North Carolina lawyers serve the public and our judicial system. ■

Ms. London, a former professional journalist and 2011 graduate of Charlotte School of Law, is a member of the faculty at Charlotte School of Law.

Endnote

1. Complete survey information can be found in two separate reports posted on the NCBA website, ncba.org, under the headings, “JPE Survey - Phase I Results” and “JPE Survey - Phase II Results.” Results for judges who are not seeking election are not reported.

If it Feels Like Technology is Moving Faster, It's Not Just You

BY ERIK MAZZONE

I spent my mom's recent 75th birthday with her helping her use the Netflix and HBOGo apps on her iPad. Not earthshaking; there are lots of 70 year olds toting iPads these days. But then I recalled that when I first started working at the North Carolina Bar Association—February of 2008, which doesn't seem so long ago to me – Apple had not invented the App Store yet. Apps wouldn't become a part of our lives for another five months, and now they are part of our cultural landscape.

The past six years have been an incredibly vibrant time for technology. The stew of smart phones, cloud-based software, and ubiquitous internet connections—along with investments from venture capitalists—have produced a torrent of products and services that have transformed the way virtually all of us use technology in our personal and professional lives. At the Bar Center during breaks in CLE programs, you'd be hard pressed to find a lawyer not hunched over a smart phone, pecking out emails and putting out fires.

These technological advancements do come with a cost: they sometimes provide services that bump uncomfortably into our ethics rules. Because our ethics rules (of necessity) lag the pace of technological innovation, it can be frustrating to embrace new services without knowing whether they will

eventually pass ethical muster. That said, the business justification for embracing these new technologies is so persuasive that it remains worth figuring out how and what to incorporate into your practice.

In this article, I'll address two of the most significant technology trends that have marked the last year or two and which I believe are likely to impact the next couple of years as well. These are not companies, services, or apps; they are meta-trends in the technology world that will have a profound impact on us as technology users. The two trends are the sharing economy and the evolution of cloud-based software.

The Sharing Economy

The phrase "sharing economy" might be new to you, but it's based on an old idea: that borrowing something expensive (say, a pick-



Dave Cutler/Illustration Source

up truck) from a friend is more efficient than buying one of your own if you only need it once in a while.

The sharing economy refers to this old idea of sharing expensive goods and services, but puts a new wrapper around it. There is a burgeoning posse of companies, services, and apps dedicated to using technology to help make the sharing of these big ticket items more frictionless.

It's easiest to think about it as a time share condo. Time share condos became popular because even if you could not afford to purchase a vacation home in a resort area for sev-

eral hundred thousand dollars, most people could afford to purchase the right to use a vacation condo a single week each year as a time share. Along with 51 other purchasers, they share the costs of the condo.

In the way time shares make vacation condos more affordable, the sharing economy makes virtually everything more affordable: Relay Rides enables the sharing of cars, Airbnb enables the sharing of spare rooms and entire residences, and so on.

These examples are consumer-focused, but the sharing economy is reaching into services used by law firms as well. Ruby Receptionists is a phone answering service that law firms pay for a certain number of minutes of phone answering per month. Speak Write is a web-based typing service that allows users to purchase just the portion of transcription support needed, paying by the word. Lawyers have been sharing real estate for a long time, but in recent years the rise of executive suite services like Regus has formalized these arrangements and reduced costs and increased flexibility for countless firms across North Carolina. The business justification for these sharing economy services is easy to see: it reduces large capital expenditures, allows the flexible increase or decrease of services as needed, and prevents paying for more support than one needs.

As these sharing economy services become more popular, ethics guidance has begun to surface. 2012 FEO 6 (use of time-shared office address on letterhead and advertising) cautions that use of a time-shared address in advertising or letterhead can't be misleading, such as implying a deeper connection between law firm and community than actually exists. 2011 FEO 14 (outsourcing administrative tasks) requires that a lawyer must obtain written consent from her client before outsourcing tasks such as transcription to a foreign jurisdiction.

The upshot is that for staffing support, real estate, and virtually any other expensive purchase a lawyer needs to make, it is worth looking to see if the sharing economy has provided a more affordable option. If you do find some shared resources that work, re-read the Formal Ethics Opinions and see if you need to update your client agreements.

The Evolution of Cloud-Based Software

When use of cloud-based software was ratified for lawyer use (subject to a reasonable care standard) by 2011 FEO 6, it drew an

invisible line among the practicing bar. Lawyers quietly sorted themselves into those willing to let their clients' confidential information be stored on computers outside their office walls and those who would not. Three years into the evolution of cloud-based software, it has become harder than ever for the latter group to maintain their prohibition.

While it's pretty straightforward to avoid the use of obvious cloud-based applications like Dropbox, Gmail, and Clio practice management software, it's not always so easy to spot software that relies on cloud technology in one fashion or another. Smartphones and tablet computers have quietly opened the backdoor to use of cloud software in two key ways. First, messaging apps, including text messages, have begun to supplant email as the primary method of sending text messages, especially among younger users. Messaging apps across all major mobile platforms tend to rely heavily on cloud-based software. Lawyers who eschew storing client data in cloud-based services like Dropbox often think nothing of exchanging text messages laden with confidential information to the same ethical effect.

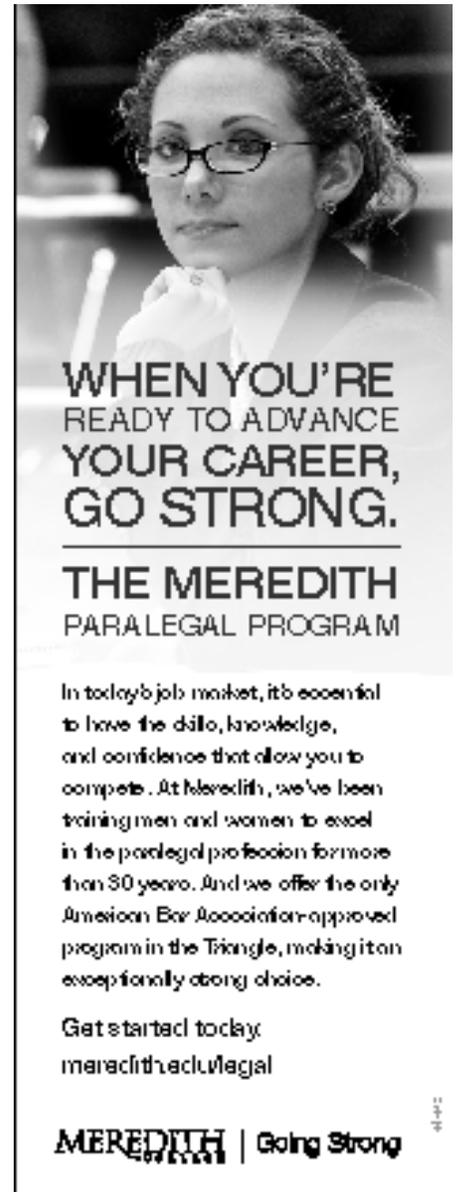
Additionally, as functionality has expanded for tablet computers, much of it has ridden on an infrastructure of cloud-based software. iPad users cheered when Microsoft finally made its Office suite available for iPads earlier this year. It instantly improved the use of iPads for document creation and editing. Use of those apps (as well as countless others used for document creation and editing) is diminished if not made virtually unusable without connecting them to an online storage service like Dropbox or Windows OneDrive.

It never feels particularly like you are using the cloud; it just creeps in to help make the tablet and apps work more seamlessly together. We should expect it to get harder to avoid cloud-based software in the future, both because it will mean forgoing services that will allow us to serve clients more efficiently, and because it will be harder to tell when we're actually using the cloud.

The takeaway here is that if you are dead set against using the cloud in any capacity for your professional life, you will need to exercise great diligence to make sure you aren't inadvertently relying on a cloud service.

Summary

Things are happening fast in this zone.



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The sharing economy and the evolution of cloud-based software will continue to shape the landscape for advances that allow us to practice more efficiently and serve our clients better. Understanding these trends enables lawyers to understand the ethical implications of using the services and apps that rely on them.

It's been a remarkable six years. Who can possibly imagine what the next six will bring? ■

Erik Mazzone is the director of the Center for Practice Management at the North Carolina Bar Association where he dispenses practice management and technology advice, and helps dispose of leftover food from CLE programs.

Washington State LLLT Program: Improving Access to Justice

BY THEA JENNINGS

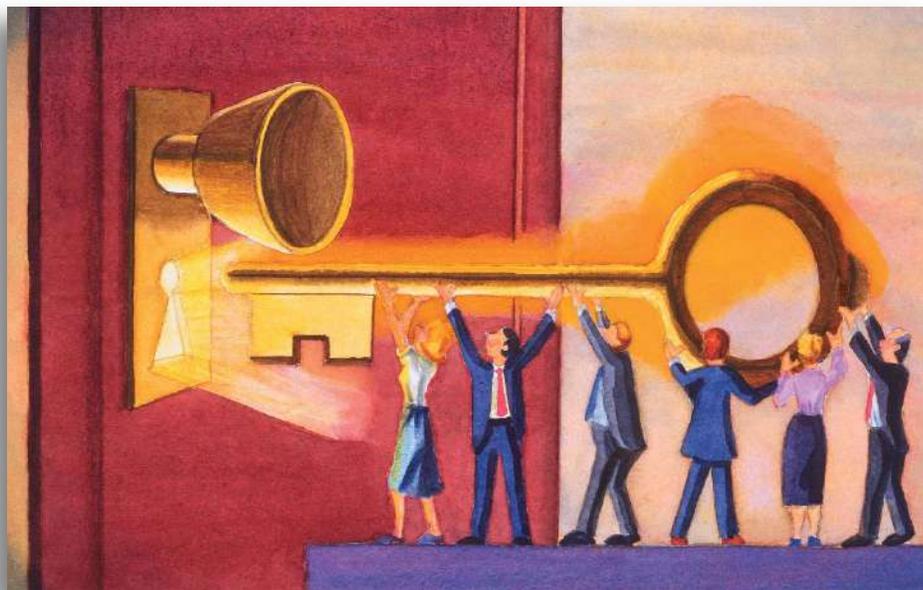
At the request of State Bar President Ron Baker, the Board of Paralegal Certification has been monitoring efforts in other states to permit limited licensing of nonlawyers to provide discrete legal services to the public, targeting litigants of modest means. The recent “legal technician” initiative in Washington State has prompted several other jurisdictions to consider expanding the scope of legal services to be offered by qualified legal technicians as a form of authorized practice. While the Washington program was just launched this year, the Board will follow its progress to determine whether it increases access to justice while protecting the public. The program is explained below.

Washington State is leading the nation in licensing nonlawyers to practice law on a limited basis with its Limited License Legal Technician (LLLT) Program. As the first state to implement such a program, Washington breaks new ground and serves as the model for other states that seem well poised to take the leap, including California and New York.

History and Creation of the LLLT Rule

The genesis of this effort arose in part from alarming statistics regarding the need for access to legal services among Washington’s moderate to low income citizens. According to a 2003 Civil Legal Needs Study, nearly 88% of low income Washington residents face their legal problems alone, without the assistance of an attorney. Often these legal problems relate to family law, housing, consumer law, and other basic needs. The LLLT Program seeks to provide competent, reduced cost legal services to this underserved population.

In response to the Civil Legal Needs Study and concerns regarding the unauthorized practice of law, the Washington Supreme Court took the monumental step of adopting the LLLT Rule—a rule that



Ron L. Wheeler/Illustration Source

would for the first time provide a regulatory framework for educated and experienced paralegals to obtain a limited license to practice law in approved practice areas. In its order adopting Admission to Practice Rule (APR) 28, the Washington Supreme Court stated “[w]e have a duty to ensure the public can access affordable legal and law related services, and that they are not left to fall prey to perils of the unregulated market place.”(Order at 5-6). With the adoption of APR 28 in June 2012, the Washington

Supreme Court created a new legal professional—the Limited License Legal Technician (LLLT).

The LLLT Board

The Washington Supreme Court created the LLLT Board (board) to govern the LLLT Program and to ensure LLLTs are well-trained in ways that protect the public from the unauthorized and unregulated practice of law and increase access to justice. The board is staffed and the program is administered by the

Washington State Bar Association (WSBA).

The board began its work in January 2013. As one of its first actions, the board recommended domestic relations as the first practice area in which to license LLLTs, which the Washington Supreme Court unanimously approved in March 2013. APR 28 contemplates that the Rule would be applied to other practice areas. Consideration of additional practice areas will be undertaken during 2014.

The board is acutely aware of its duty to protect the public and increase access to justice. For its first year, the board spent long hours defining the LLLT family law scope of practice and qualifications for the LLLT license.

Scope of Practice for LLLTs

Self-represented litigants are frequently unprepared to advocate for their interests in court or against an opposing party, oftentimes to devastating effects. The role of the LLLT is to help these litigants navigate the legal process and to arm them with the tools they need to adequately represent themselves. The limited scope of legal services the LLLTs may provide to *pro se* clients includes:

- informing clients of procedures and the course of legal proceedings,
- providing approved and lawyer prepared self-help materials,
- reviewing documents and exhibits from the opposing party and explaining them to clients,
- selecting, completing, filing, and serving approved and lawyer prepared forms and advising of their relevance,
- advising clients of necessary documents and explaining their relevance, and
- assisting clients in obtaining necessary documents.

There are specific actions LLLTs may not engage in, such as representing a client in a court proceeding, negotiating a client's legal rights, and discussing a client's position with another person or conveying the position of another party to a client. LLLTs must advise clients to seek the advice of an attorney for matters outside the scope of their authority.

Qualifications

During 2013, the board worked conscientiously to develop LLLT qualifications that guarantee both the protection of the public, and that LLLTs possess the knowledge and skills to practice in their field.

LLLTs will be well educated, trained, and tested before licensure.

Education

Of great importance to the board is establishing the credibility of the program by requiring a rigorous course of study that will guarantee the competence of legal technicians coming into the profession. LLLTs must have:

- (1) a minimum associate level degree,
- (2) 45 credit hours of core curriculum in legal studies from an ABA approved program, and
- (3) attended practice area courses developed by or in conjunction with an ABA approved law school.

Unanticipated partnerships have developed between the board and Washington's higher learning institutions, which is sure to contribute to the success and integrity of the program. Both Washington's community colleges and law schools have combined forces with the board to further the goal of making the education affordable, accessible, and academically rigorous.

Representatives from each of the Washington law schools assisted the board with developing the domestic relations practice area courses. What has resulted is a technologically innovative and collaborative approach to offering the courses. The 15-credit hour, three-quarter class will be web-cast, meaning students can attend in real time from any location nationwide. The University of Washington's School of Law began offering the series of courses for the first time in Winter Quarter 2014 for a fraction of the cost of law school. Professors from all three Washington law schools will assist in the delivery of the education.

Recognizing that many competent and experienced paralegals currently in the workforce may not have completed the LLLT education, the board approved a limited time waiver, or grandfathering provision, that seeks to balance the need to protect the public with the great need for access to justice in our state. The waiver qualifies these individuals for licensure without completing the required associate degree or core education. The waiver applies to those who have:

- (1) passed NALA's Certified Paralegal Exam,
- (2) active certification as a certified paralegal, and
- (3) 10 years of substantive law related work

experience supervised by an attorney.

The waiver is not a license to practice as an LLLT, nor does it waive the practice area education. The short term waiver period ends December 31, 2016.

Exam

After completing the LLLT education, there are two exams to pass: the core education and the practice area exams. Given that LLLTs will advise clients on their legal rights and responsibilities, the examination will test on not only general coursework, but also on the ability to assess a client's case and recommend an appropriate course of action.

Experience

Given that the LLLTs may set up their own firms without the supervision of an attorney, experience ensures LLLTs have the tools and expertise to provide competent legal services autonomously. Before entering the profession, LLLTs must have completed at least 3,000 hours (18 months full time) of substantive law related work experience supervised by a lawyer. The experience must be gained three years before or after passing the exam.

Next Steps

The board continues to create the operational details of the LLLT Program, including drafting the Rules of Professional Conduct (RPC) for LLLTs, which are the ethical rules LLLTs must abide by. Among the many ethical situations the board must grapple with are the types of business relationships LLLTs may form, the results of which may well change the landscape of legal service providers in our state. The board is also hard at work developing the domestic relations practice area examination, which will include multiple choice, essay, and practice exercise sections. If all goes according to projected timelines, the first LLLT examination will be held in March 2015, with the first LLLT licenses issued by early Spring 2015. ■

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The Bottom Line—Legal Services is a Good Investment

BY MARY IRVINE

Public support of civil legal services for the poor is money well spent. A recent report found that advocacy boosted the state's economy by nearly \$49 million in a single year. The study, conducted by the

UNC Center on Poverty, Work, and Opportunity in partnership with the North Carolina Equal Access to Justice Commission, used data from Legal Aid of North Carolina, Legal Services of Southern Piedmont, and Pisgah Legal Services from cases closed in 2012 to analyze the organizations' collective economic impact. The bottom line is quite simple—investment in legal services benefits the entire state.

Despite an increasing need for free civil legal services, legal services providers have experienced cuts to every traditional funding source, both private and public. Since 2008, state funding has decreased by 40% in North Carolina, and United Way and IOLTA grants have dropped by 32% and 30%, respectively. Further, increased scrutiny facing non-profits across the country is putting pressure on all to demonstrate the value of their work, putting more emphasis on measuring outcomes and requiring frequent reporting on progress.

As a result, legal services providers nationwide have turned to economic impact studies to build the case for investment in their pro-

grams. Economic impact research provides insight into the specific impact on a particular geographic area due to a change in the economy. In the legal services industry, this research measures the value of advocacy that brings new direct benefits into the state—usually federal dollars—which then stimulate the economy, resulting in additional indirect economic impacts.

The findings? Civil legal service providers undoubtedly spur local economic growth and save the state money. For every dollar spent by the state on legal aid, nearly \$10 flows into the economy for the residents of North Carolina—a 108% return on the state's

investment in legal services.

The need for legal services far surpasses available resources of legal services providers to represent all eligible clients. "While resources to support legal services have decreased, the need for legal assistance is greater than ever," said George Hausen, executive director of Legal Aid of North Carolina, "and our goal is to ensure the basic needs of people are met, including access to food, shelter, safety, and healthcare." Further investment will result in justice for those in need of legal assistance and economic benefit for all North Carolinians.

The North Carolina Economic Impact Study

Released in January, the study "A 108% Return on Investment: The Economic Impact to the State of North Carolina of Civil Legal Services in 2012" found that legal representation helped North Carolinians gain access to \$9.2 million dollars in new federal benefits, including food stamps, disability, other cash assistance programs for low-income families, and federal tax refunds. Without the help of a free attorney, the benefits likely would not have been secured by clients working on their own. The study also found an additional \$8.8 million was awarded to low-income clients in child support and housing cases. This includes awards of monthly child support payments and past due support for struggling single-parent families. Housing awards include protection of housing benefits, rent abatements due to problems with the condition of the housing unit, return of a client's security deposit, or avoidance of unreasonable charges by the landlord.

"This report quantifies what we knew anecdotally," said Jennifer Lechner, executive director of the North Carolina Equal Access



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to Justice Commission. “Legal aid is good for North Carolina—not just for their provision of legal services to those who would otherwise be unable to access the justice system, but also through the economic benefit these services bring to the state as individuals spend money at businesses in their communities.”

Flowing from the direct economic benefits, the study also found an indirect impact of nearly \$13.9 million. The indirect impact provides an estimate of the changes in the local and state economies when new federal revenue enters the market and additional spending occurs. The estimate includes increases in employment, wages, and business outputs. While only an estimate of increased economic activity, the number captures the benefit to the community as a whole of providing legal services to those who could not otherwise afford an attorney.

The report also found that the efforts of legal services providers to prevent domestic violence, eviction, and foreclosure generate cost savings for the state of \$17.1 million. Cost savings represent the amount saved by the state and local communities in emergency medical services, mental health treatment,

public health, court costs, unpaid property taxes, police and fire services, social services, and other public services. For example, by preventing 488 foreclosures, legal services kept many families who were the victims of mortgage scams in their homes and reduced local government expenditures to secure vacant, foreclosed properties.

“Poverty is the greatest challenge facing the people of North Carolina,” said Gene Nichol, director of the Poverty Center. “By advocating for the rights of the poor, the work of legal services lawyers brings us closer to equal justice under the law. It also generates an economic benefit to the state worth millions.”

Access to Justice Makes Dollars and Sense

In addition to depriving North Carolina families of much needed access to the justice system, lack of civil legal representation leaves money on the table that could have boosted the overall economic outlook of the state. This study, not unlike scores of others done in states across the country, suggests further economic gains with increased funding for

legal services given the inadequate capacity of providers to serve all those who are eligible.

The primary focus of civil legal service providers is to ensure access to the civil legal system for all, regardless of ability to pay. “The financial benefits do not begin to measure the full value of this work,” said Ken Schorr, executive director of Legal Services of Southern Piedmont and member of the NC Equal Access to Justice Commission. “Protecting women and children from violence, keeping families from being separated or homeless, helping elderly and disabled people stay in control of their lives, and other life-changing benefits cannot be measured in terms of dollars.”

However, in working to meet clients’ legal needs, legal services organizations gain immense benefits for the state, reaching far beyond the individual clients and families served.

To read the study, visit the North Carolina Equal Access to Justice Commission, ncequalaccesstojustice.org. ■

Mary Irvine is IOLTA’s access to justice coordinator.

“Living with Blindness Has Given Me a Broader Perspective...” —*An Interview with Attorney Jamie Dean*

BY JOHN GEHRING

When Gray Wilson asked me to interview Jamie Dean, an attorney with the Womble Carlyle firm in Winston-Salem, I wondered where the point of interest was. Dean graduated Summa Cum Laude from Wake Forest University and then from the Wake Forest School of Law, Magna Cum Laude, and also received a Master's in Business Administration. Along the way, during his student years, he was inducted in both Phi Beta Kappa and the Mortarboard National Honor Society. Further, he was a silver medalist in adaptive rowing in the 2008 games in Beijing. The major law firms in the United States look to hire, and do hire, the academically elite, so why is the story of Jamie Dean any different from the other honors graduates? All of his accolades are set forth in his Womble Carlyle profile, with one omission! Until you meet him you would not know that Jamie Dean has a disability, one that he describes as both beneficial to him and also as an inconvenience. I met with Jamie and Priscilla (his four-legged co-counsel), and we talked about his life. You see, Jamie is blind. Thus this interview...

John Ghering (JG): Have you been blind from birth? What sports have drawn your interest, and are these sports activities correctly called “adaptive”? Your sport in the 2008 Paralympic games in Beijing was “adaptive rowing”. You stated that you do not consider yourself to be an adaptive person. How so? What does that mean?



Jamie Dean (JD): I was legally blind from birth due to a disease called retinitis pigmentosa (“RP”). RP didn’t affect my

visual acuity so much as it reduced my visual field. I’ve heard people compare my condition to trying to look at an elephant from six

inches away: the image is clear, but you just can't see the whole picture. When I was a child, my vision did not have a great impact on my life. I could read, write, ride a bike, and do most things other kids could do. As I neared middle school age, my visual field took its most significant decrease, and that process continued gradually throughout high school. By the end of high school, I was relying on my first seeing eye dog and using adaptive technologies like a talking computer and recorded books. At present, my vision is pretty much limited to distinguishing between light and dark.

Sports have been an integral part of my life since a pretty young age, due mainly to the persistent prompting of my dad. He saw that I needed something from which to draw confidence and to keep me connected to other kids my age, so he really pushed me to try new things and to stay the course when my athletic endeavors were not going my way (which was frequent).

I've done a mix of "adaptive" (sports created or adapted for people with disabilities) and mainstream sports, but I've spent most time in mainstream competition. When I came to Wake Forest, I joined the rowing club, because rowing seemed like one of the few sports for which sight was not a prerequisite and because the club's leadership didn't seem as daunted as some other clubs about the prospect of having a blind member.

As for "adaptive" sports, I had never heard of "adaptive rowing" until my very last college race. At that race, a former national team coach spotted me using a white cane while still in my spandex unisuit (the most significant drawback to rowing), put two and two together, and introduced me to the current national adaptive team director. The next spring, I was invited to try out for the national adaptive team and, over the next three years, I was honored to compete for Team USA in the United States, Canada, Germany, England, and, in 2008, the Paralympic Games in Beijing, China.

"Adaptive" rowing really is no different from any other form of rowing, except that all participants have physical disabilities. There is no difference in the stroke, equipment, or technical aspects of the sport. The main distinctions between my adaptive races and my college races before them were that (1) in my adaptive races, my crew was comprised of two men and two women, which is not done in any other collegiate or Olympic

rowing event and (2) our "adaptive" races were only 1,000 meters long instead of the 2,000 meter length used in other collegiate and Olympic races.

I am extremely proud to call myself a Paralympian. However, before joining the national team, I never would have considered myself an "adaptive" athlete as much as an "adapted" athlete. In other words, I had been able to compete in the mainstream despite my blindness. The same is true of my everyday life. Blindness is the undercurrent that informs how I go about accomplishing my daily tasks, but it's not the driving force behind what I do or why I do it. I do not define myself by my lack of sight, and my hope is that others see past the seeing eye dog and cool adaptive technologies to the father, husband, and lawyer behind them, as well.

JG: You have said that being blind has benefitted you and that most of the time this disability is just an inconvenience, sometimes a major inconvenience. Please describe the benefits and inconveniences.

JD: The most valuable benefit of blindness is perspective. I often tell people that, if you think I am cocky now, imagine how insufferable I would be if I could see. That is more truth than gest. Blindness has forced me to see the importance of reliance on other people and not being too proud to ask for help. In our hyper-independent culture, this adjusted perspective keeps me grounded and, in my better moments, gives me a greater appreciation for the people around me.

To jump back to your earlier question, athletics bore out another of the great benefits of blindness. When I started rowing, to put it bluntly, I was abysmal. I mean, my performance was shameful. At the first team time-trial, I was the slowest man, by far, and slower than two or three of the women. However, one thing blindness taught me is that sometimes, to get what you want, you have to work harder and put in more time than everyone else. That was the approach I took. I lifted weights, gained muscle, did extra workouts, and so on until I caught up with the others on my team, and eventually worked my way into the stroke seat of the varsity men's lightweight crew. That is where I remained for my sophomore, junior, and senior years. I think the perseverance that fueled my transition was something that developed in me as a result of my blindness,

not an intrinsic character trait.

As for inconveniences, the two things that get under my skin more than any others are not being able to drive and not being able to read print. There are ways to get around both of those things, but they are decidedly annoying to someone like me who likes to get out and about and to get lost in books.

JG: As for your rowing for the national team, just how did you fit this extracurricular activity into your academic schedule? Also, speaking of schedules, how have you fit your current community efforts with your "lawyer" schedule? And what are your community activities?

JD: I was blessed with gracious law and business school faculty and administrators and a gracious employer. I'm sure this grace was strained on occasion, like the time the US Anti-Doping Agency showed up to administer my random drug test while I was in class, and the deans had to allow their conference room to be commandeered as a temporary urine analysis lab. Wake Forest's faculty and administrators were also extremely generous in allowing me to miss classes at the beginning of my 1L and 2L years so that I could compete in the annual world championships that are the qualifying events for the Paralympics, and they helped me arrange my course load so that I could essentially miss half of the first semester of my 3L year to participate in the Paralympics. Womble was also very kind in allowing me to miss many Fridays during my summer clerkship so that I could travel to spend weekends training with my team in Philadelphia and DC. My wife showed the greatest grace and patience by permitting us to postpone our honeymoon so that I could train, and in allowing me to use the second bedroom in our apartment as a home gym. It truly took a coordinated effort to get me to Beijing, and I am very grateful for everyone who helped along the way.

As for community activities, I don't think I am any more involved than most attorneys, particularly since becoming a father. I am a deacon at my church and a volunteer for the Forsyth County Jail and Prison ministry, where I play guitar for chapel services every few months. I am also a board member for a young non-profit that my friends started to do economic development work in Uganda. This year I also started teaching pre-trial practice and procedure at Wake Forest, which has been a privilege and also a



Dean with his teammates on the podium at the 2008 Paralympic Games in Beijing, China.

lot of fun. By limiting my community activities to things I really care about, I have found that making time has never been a major problem.

JG: Preparing for trial is exhausting and the trial of a case even more so! I cannot imagine doing all this without the benefit of sight.

How do you locate a case or exhibit in court; how do you pick a jury and how to you talk to the jury in a “face to face” matter?

JD: As for any lawyer, the key for me is careful and deliberate preparation. I use technology to its fullest when I’m arguing a motion or trying a case. My computer has special software that can read documents to me, so I make sure I have all cases, exhibits, outlines, etc. saved on my laptop whenever I go to court. I use an earphone so I can read my notes without my computer reading to the whole court room. The same computer software makes online legal research fully accessible, so I can use Lexis and Westlaw just like anyone else. With the proliferation of wireless internet access, including in many court houses, there is very little I cannot access from my laptop.

Jury interactions are a different animal and something I am still figuring out. I think walking in with a cute dog is a good start. I also think that blindness can be a humanizing factor that differentiates me from the other blue and gray suit clad stiff and helps the jury see me as a real person. Rather than

hide my blindness, I have tried to address it in a light hearted way at the outset of my trials to put the jury at ease and eliminate distractions as we move on to what really matters. For example, at the beginning of voir dire in one trial, I reminded the jury that “Y’all have seen my four-legged co-counsel, so you know that raising your hand and waiting for me to call on you isn’t going to do any of us much good.” That elicited a chuckle, accomplished the more important objective of securing the jury’s cooperation during the voir dire process, and broke the ice so that the jurors could get past my blindness and my dog and focus on the case. Preparation also helps, particularly in orienting myself to the courtroom, witness stand, and jury box so that, even if people are silent, I can fake eye contact well enough to keep things from becoming too awkward.

This is not to say there have never been any mishaps. In the above-referenced trial, for example, I was pretty embarrassed at the close of voir dire by a Batson challenge that I did not anticipate. I realized, only after the opposing counsel stood up and began passionately arguing his motion, that I had no idea what the racial composition of my jury pool even was, including those who had been excluded. That was a mistake that mostly resulted from being a rookie, but blindness certainly did not help. In another trial, one of my colleagues walked an exhibit up to the witness stand while I was cross-

examining an expert. After what I thought was a pretty effective cross based on the exhibit, I confidently instructed my colleague that he could step down, only to realize when he put his hand on my shoulder a second later that he had quietly returned to our table some minutes earlier. Fortunately, another thing blindness has taught me is that, sometimes, the only thing to do is enjoy a laugh at your own expense (which is what I did along with the rest of the courtroom).

JG: Modern day computer science must be a great help (necessity?) to you, but it takes more than a computer to try a case. Exactly how does the computer work for you? What are the computer programs which allow you “to see” what you are doing?

JD: The main computer program I use is called JAWS. In essence, it speaks everything that is written on the screen, including documents, websites, email, etc. It enables me to perform legal research and draft documents the same way any other lawyer would. Another crucial asset I’ve been fortunate to have is an excellent support staff, including the assistants I’ve worked with and our firm’s team of word processors. Together, they scan and convert paper documents or electronic documents that JAWS can’t read into accessible formats, so that I can read every part of the case file. The other piece of technology that I’ve become dependent upon, like many others, is my iPhone and its built-in accessibility software. I use my phone for everything from emails to reading to looking up cases and rules in court. More than a cool gadget, the iPhone has actually been a great equalizer in access to information for the blind.

JG: Part of the Christian faith requires the faithful to care for the “widows and orphans”. You and your wife adopted two children from Ethiopia and now are expecting a biological child. Before the adoption of the children, did you have any special ties to Ethiopia? Please tell us about fatherhood and your family life.

JD: My wife and I felt called to adoption before we knew one another, and we discussed adoption early on in our relationship. Within our first year of marriage, we decided to adopt first and try for biological children later, which we thought would enable us and our extended families to focus on connecting

CONTINUED ON PAGE 53

Share Your Thoughts and Ideas with the Bar



The *Journal* wants articles of interest to the legal community. Submit your work or suggestions for publication. Contact the editor at ncbar@bellsouth.net.

Seven Room Barn

BY P. RICHARD WILKINSON

The rusty neglected hinges made a squeal as Frankie yanked open the sagging rough-board rectangle that served as a door into Uncle Otha's seven room barn. You had to squat and kinda crabwalk to get into the opening of any tobacco barn, and this one was especially low. The smaller and lower the door, the less heat you'll lose, and this tall of a barn needed all the heat it could hold. Frankie stepped sideways over the high sill and ducked into the barn.

His steps caused dust to rise from the floor of tobacco talcum, making the air rich with the intoxicating smell of flue-cured tobacco. Dust particles hung suspended in the shafts of sunlight leaking through the chinks in the walls, narrow strips of visibility crisscrossing the shadows up high in the barn, making a ladder of light that funhouse mirrored the set timbers used to hang the sewn sticks of just-picked tobacco; they too laddered above across the vast empty space created by four simple and tall log walls. Frankie breathed a big gulp of dust, aroma, and nostalgia.

This was Uncle Otha's barn, once considered not only the biggest tobacco barn in all of Wake County, but at the time also one of its tallest structures as well. From the vent window at the very top, you could see both the Knightdale fire lookout tower—looking like a project from Frankie's brother's Erector set—and the new Holiday Inn high-rise in Raleigh, which was shaped like a mailing tube with balconies and supposedly copied a famous building in Hollywood. More impressively, from those two buildings you could unmistakably see the shiny top of Uncle Otha's barn. Frankie used to brag about that at school when he was younger, and actually saw it was true once when he visited Raleigh with his pa. They had taken the elevator in the hotel to the top floor and looked out a hallway window. Way in the

distance was Otha's flashy tin roof.

While all of the Piedmont's tobacco farms were dotted with log curing barns, the usual barn was only about two stories tall. Conventional wisdom held that the dry heat from the flues—literally greenwood fires in ground level hearths before the gas company set up in Wendell—would lessen by the time it rose much higher, hence failing to dry or “cure” the tobacco hung at the higher levels. Barns were about 16 by 16, and were divided into four parallel “rooms.” Frankie was confused when he was little because these “rooms” don't have walls and as such aren't really rooms at all. Each room was defined by the ladder of eight timbers crossing from one side of the barn to the other, each timber about 30 inches directly above the one below it and spaced about four feet apart from side to side. Each level of cross timbers would support the ends of the long, roughhewn tobacco sticks laden with sticky, heavy, ripe green-gold leaves—the leaves tied on by hand when Frankie was little, but he remembered the carnival atmosphere the day his pa and uncle came home pulling a brand spanking new Holland stitching machine, an immensely labor saving machine part conveyor belt, part industrial seamstress, and part magic to Frankie. The loaded sticks would travel on the conveyor through the stooped door to the floor man inside, usually both tall and strong and frequently also the crew boss, who then handed up one end of the heavy tobacco stick—reaching as high as he could—to one of the hangers clambering above. The hangers were agile and strong teenagers who flew monkeylike up and down the wide-spaced ladder of crosslogs, filling the top tier in the first room by squeezing as many fat, loaded sticks as they could, side-by-side on each level. Good hangers would flatten themselves against the wall to force in a few more sticks, cramming the space with

The Results Are In!

This year the Publications Committee of the State Bar sponsored its 11th Annual Fiction Writing Competition. Fifteen submissions were received and judged by the committee members. The submission that earned first prize is published in this edition of the *Journal*.

as much tobacco as possible. Then they would move down a level and start to fill the next tier. Once that room was jammed full all the way to the bottom rung, the process would start again at the top in the next room.

Sometimes a barn monkey would lose his grip and drop a loaded stick, making the floor man dodge, curse, and threaten. They were heavy enough to cause serious injury, especially when dropped from on high. Frankie's pa once said he thought you could kill a man if you dropped a stick on him from the top tier of Otha's barn.

For although you might see a rare six room barn, proudly built eight feet wider but no taller by some proud, successful (and some unsuccessful yet still proud), scratch-dirt farmer—usually placed right by the road so everyone would see and hopefully draw the right conclusions of prosperity and ambition—Otha's barn was a very unique “seven rooms,” almost twice as high as any other. Oh, the Broadwells claimed an “eight room barn,” but everybody knew it was really only two four room barns built side-by-side, sharing a common wall. And instead of roadside, Otha built his barn tucked back into the trees behind his house, ostensibly to use the natural shade for his barn workers, but having the subsidiary effect of making his barn look even taller as its sheet metal roof tow-

ered over the pines. Like the six room farmers, Otha enjoyed all the envy of his peers, but in the trees he was free from their sins of obvious pride and showmanship.

Otha had hit upon the idea of a taller barn when we first got LP gas for the barns. Ignoring the local naysayers—including two professors from NC State who came out at the request of “concerned neighbors”—Frankie’s uncle dropped a bunch of tall straight pines one winter and started building his barn the next. (“*Goddam engineers,*” muttered Uncle Otha.) Using woodstove pipe, he built tall chimneys that rose beside and anchored to the walls, and that carried heat almost all the way to the top. And though technically it still only had four “rooms,” they were very tall. Otha’s barn was exactly three-quarters taller than most so, as he figured it, the barn held seven rooms worth of tobacco. Instead of eight hanger levels, there were 14.

Frankie looked up again at the ladder of cross timbers and he remembered attempting to climb it while neglected one hot afternoon when he was just six. Using the gaps in the log walls as toeholds, he made it all the way to the second level before falling and breaking his arm, landing on one of the sheet metal covered gas burners installed on the dirt floor of the barn. He tasted some bitterness now at that memory, as he not only broke his arm, but he also got a whipping for wandering away, and even worse, his pa never let him work in the barns when he got older. Instead, he was a field worker—he spent all day every day but Sunday out in the hot North Carolina sun all summer long.

Frankie was adept at the manual field work: the plugging and planting; the hoeing and weeding; laying endless rows of irrigation pipe; breaking out the flowering tops and suckers that would limit broadleaf growth; and “priming,” the term used for harvesting the leaves by hand when they were at their prime. Yet he wasn’t very adept at much else. His pa’s attempts to teach him to operate the tractor were disastrous—he still couldn’t drive. Although an enthusiastic reader, he did poorly in school and was slow to pick up on things in general. Mostly ignored in school—by teachers and peers—he had never held any job but farming right here, and he still lived at home with his ma and uncle. He knew he was different and it had made him shy and friendless. It was the main reason why he

spent so much time alone in the barns now that they weren’t used.

Despite banishment to the field, that’s not to say the young Frankie never went to the barns when they were used. For 16 years he would accompany his pa in the evenings after supper to check on the barns, making sure the burners were all lit and adjusting the heat to maximize the curing process. On crisp fall dawns he would help load the cured tobacco onto a flatbed trailer, the humidity just right for keeping the leaf in “order”—meaning supple and not brittle—so it could be handled. Oftentimes the field hands would ride in on the last trailer of primed tobacco, and hang out in the shade while the barn hands would sew and load the last of the sticks. His first (and only) kiss was in this tobacco barn, the lucky girl the skinny 15 year old sister of the barn crew boss. Otha’s barn was where Frankie came to hide when he wanted to be alone; it’s where he came to cry when his brother died, and when his pa died. He had lots of memories of this barn.

He had not always lived at his uncle’s. Although the brothers farmed together, Frankie’s immediate family used to live on the adjoining farm, but they had lost it during the estate battle after his grandpa on his mother’s side died and his ma’s sister forced the sale of everything. (“*Goddam lawyers!*” cursed Uncle Otha.) They had lived and farmed with his father’s brother ever since. Frankie knew nothing but farm life: wide open spaces, trees, animals, and tobacco. He couldn’t imagine living anywhere else. The farm was his sanctuary, the barn his solitude. He always came here when he was upset, so it felt right to come for one last visit.

The burners were all gone now, scavenged for scrap metal or used to turn old cut up fuel tanks into pig cookers. The log barn had set empty for years, and Frankie suspected he was the only one who went inside anymore. The barns were no longer used because Otha had switched to metal automated curing sheds in the 80s, a necessary evolution needed to use the automated tobacco harvester. The harvester eliminated the need for field laborers, who had gotten harder and harder to find each year. Frankie remembered the various groups of workers from over the years: when he was a child they had always been black (“*We’re supposed to call them Negroes,*” sneered Uncle Otha); when he was a young teen the blacks didn’t want to farm anymore so his pa hired a bunch of teenagers

from the nearby trailer park (“*Watch out for the white trash stealin’ from us,*” growled Uncle Otha); and then when the trailer park crew grew up and drifted away, the farm hired migrant workers from Mexico. (“*And when the crop is in, they’ll go back to where they’re from!*” predicted a smiling Uncle Otha.)

Frankie’s pa had never warmed to his brother’s tall barn theories, and usage proved his caution well placed. It used more gas than two four room barns would, and even then getting a uniform cure was challenging. Most days during harvest they would fill two barns with fat loaded sticks. Eight rooms of tobacco was plenty of work for one day, especially when you were pacing yourself for eight weeks of that work at six days a week. So in theory a seven room day should be shorter, but it wasn’t. The extra height meant an extra barn monkey was needed, which meant one less primer in the field. Fewer primers slowed the picking; climbing up and down the tall ladders with heavy loads slowed the barning. Frankie’s ma would sometimes call the great old barn Otha’s Folly or the Terrible Tobacco Tower, but Frankie noticed she never did when Otha was around.

Sadly, this great old barn—in fact the whole farm—would soon be history. The location of the new outer bypass around Raleigh was announced and it was coming right through Otha’s house. (“*Goddam bureaucrats!*” roared Uncle Otha.) Frankie was visiting the barn one last time as he, his ma, and Uncle Otha cleaned and sorted and readied to move to some house in a subdivision with a tiny yard. No one was excited or happy about the move, least of all Frankie. Everything was packed. Today was the last day any of his kin would live on this spot. The loss left him feeling worse than anything before. The farm was always the one constant he could count on, even when other stuff let him down or left him bewildered. Now it would be gone.

Frankie felt truly lost and aimless. His feelings of grief and despair had grown over the last years, the bad events coming one after the other, no gap in between long enough to have mourned and evolved, but instead each tragedy overlaying the last until assimilating all into a single giant chest-pressing weight he never seemed to shake. Losing the farm wasn’t just the proverbial last straw, but instead was like being crushed by a giant bale of hay dropped from a plane. He didn’t know what to do.

His ma tried hard to convince Frankie to use this opportunity to start a new life, to strike out on his own. He needed to find a job. He needed to stop depending on her; she could already see her next few years would be spent caring for the aging Otha. (“*No goddam drool-chinned nursing home!*” raged Uncle Otha.) Even the pastor at church had pulled him aside to urge Frankie to let go of the past and move into the future. Assuming he could and assuming he wanted to, Frankie wasn’t even sure how. Where does one start when starting over?

Frankie looked up at the cross timbers. Now that he was grown, the first beams were head high, causing him to duck as he moved around. He tugged on one, feeling its strength, and made a decision. Maybe here is where you start over. Today would be very different, and not just because he was moving. Today he would have the courage to do what escaped him many times since the broken arm. Today he would climb to the top of the seven room barn.

The first tier was easy. It was no higher than standing on the back deck of the house, and it took little effort to kick off the floor and wall and scramble up. He stood on the beam with one hand holding to a knot in the wall. He realized now that even grown he would have to climb to the upper room the same way he had as a child—working his way up a wall, digging his toes into the chinks between the logs, while pulling up on the beam of the next tier above.

The second level was where Frankie had fallen as a child, breaking his arm and ruining his chances of working in the shade. It didn’t look that tall at all. He was sure he could just jump down from here if he wanted. This was also the log Jeanie sat on when she would sneak a cigarette, since she was too young to smoke. She would climb up and sit bent-kneed on the second, with her feet on the first, leaning against the wall, wrongly believing her brother the barn boss was oblivious. Frankie would just as sneakily follow her and stand looking up at her as she smoked. She wore cutoff jeans—the kids called them Daisy Dukes—and he tried not to stare at her legs. They hardly ever said anything, instead sharing a quiet moment in the shade, each wondering what the other was wondering. On the last day of harvest of the last season he would ever see her or her brother, she tossed her butt down into the dirt as always, but when she hopped down

Jeanie had walked right up to Frankie and kissed him hard, and had then ducked out through the door. He could still feel the warmth of her lips, the mash of his lips against his teeth, and the complete vacuum that immediately followed. He looked up into the shadows and dust for a moment longer than the kiss, and then scrambled up to the third beam and kept climbing.

Otha had fallen from about the fifth level when Frankie was 16, the suspected cause the drinking of “apple cider” that Otha kept in a big barrel hidden in the loft of the regular barn. He broke both wrists, just before harvest, so he was completely useless when they needed him the most. (“*Come here and help me, Frankie! I can’t even wipe my own damn ass!*” bellowed the double-casted Otha.)

Frankie climbed up onto the seventh level of cross beams. Now he was nervous, for it seemed a long way down. He rested here for a while at the halfway point, looking up and looking down. He was being flooded with memories and emotions, all of it making him shaky. He had never climbed this high anywhere, much less in the barns—he was always too scared. Heck, he didn’t even like the second floor balcony at North Hills Mall. He took a big deep breath and started to climb up to the next logs.

The tenth row of beams held a good memory for him. It was from here that his older brother pissed down on top of the head of one of the trailer park boys, a troublemaking bully called “Rooftop” because of the stiff shingle of hair that stuck straight out from his forehead. He had cornered a young Frankie in the barn and was teasing and pushing him around, unaware the brother was hanging out up high. “*Francis, Francis,*” he had sing-songed until he felt the first splash and unwittingly looked straight up into the yellow stream. Rooftop ran from the barn cursing and crying. He never came back. The good memory faded though, since Frankie’s brother died some years later in Iraq. (“*Goddam politicians!*” wailed Uncle Otha.) Frankie missed his brother something fierce.

The memory of Rooftop brought a flood of others. If Frankie had ever had any “friends,” it was a handful of the dozens of field workers who had come and gone over the years. Like DJ, the big black kid who didn’t talk like any of the others—black or white—but instead sounded like the books Frankie liked to read. DJ would tell Frankie

he could be whatever he wanted when he grew up. DJ planned on going to college and being a lawyer. Or Michael and Billy, the two cut-ups from the trailer park who would pull pranks like putting garter snakes in the bacca trailer to scare the girls at the barn, or would offer Frankie a dollar to eat a fat, juicy tobacco worm. Or Miguel, the migrant worker who had claimed to not speak or understand any English until the day Frankie’s pa came by with an old TV in the back of the truck. He was giving the migrants the set to put in the ancient tenant farmer’s shack where they all lived. Miguel had taken one look at the TV and blurted out, “*Is it color?*” This had caused Frankie to fall down laughing, which made the other workers laugh too. After that, he and Miguel always primed side-by-side rows, and Miguel would tell him stories of life in Mexico.

There had been a few others like the Wilson boys and the Baker brothers, maybe not friends but at least friendly. However, none of the former workers had ever stopped by the farm over the years, and after the switch to automation, there were no more crews. After graduation from high school, Frankie knew not much more than the isolation of the farm, except for sporadic trips to the First Baptist Church with his ma and the Wendell tobacco warehouse with his uncle.

Frankie resumed moving slowly up the wall. He didn’t pause anymore for fear he would lose his will to rise any further. He pulled and reached and climbed, and finally kicked up onto the last timber. This was the 14th tier, but technically the first to be filled with tobacco. Even though it was a nice day, the top of the barn was sermon hot and stuffy. Being above the trees meant no shade. The sun would bear down on the metal roof, super-heating the upper barn in the summer. It supplemented Otha’s chimneys, but was almost unbearable to the hangers laboring in it. Here, from the side, the barn monkey could get some fresh air by opening a small wooden vent built into the wall—you lifted a swinging hook from a bent nail and pushed the door outward. Except the door had swelled eons ago and was always stuck, so you had to beat it open using your fist like a hammer. Holding on tightly with one arm, he banged open the vent.

He blinked in the sudden blinding flood of sunlight. Through the opening, Frankie could see out over the trees, just as Uncle Otha had planned. He could see part of the

old farmhouse where six generations of his father's family had lived. The view had changed over the years, with the fire tower now long gone and Raleigh full of tall, generally square-cornered buildings. Most of the neighboring tobacco fields and log barns were also gone, they and the forests buried under cookie-cutter subdivisions. Yet, even with farms turning into neighborhoods, and cross-roads country stores lost to bigger IGAs or even bigger Kroger shopping centers, it still was a vast vista of trees and open space. The bypass would change that, for good or ill.

For Frankie, though he had never been here, the top of the seven room barn was the place that had affected his life the most. Frankie's father fell from right here, opening this stupid little door, losing his balance while banging on it with his fist. He cracked his skull on one of those stupid little gas burners at the bottom. He last saw his father in the Intensive Care Unit at Wake Memorial, his head completely wrapped in gauze, a stupid little tube leading from one corner of his mouth, a trickle of blood dribbling from the other. ("*Goddam doctors,*" sobbed Uncle Otha.) Nothing had ever been the same again.

Frankie had never imagined being this far off the ground. The floor, even without the old jets, looked deadly simply because it was so far down. Sliding his hands out onto the log and pushing off the barn wall with his feet, he edged out onto the beam that once held hundreds of pounds of ripe, fat tobacco, letting it settle into his armpits as his torso hung half off half on and his legs dangled below.

Frankie hung there using his muscles and body weight to achieve a state of suspended animation. It took little effort to remain in balance. It felt like floating. He turned his head and looked out of the little window over the trees and let his memories float as well: he thought of his ma and his pa and his Uncle Otha; the loss of one brother and not one but two farms; the smell of cured tobacco and unwashed workers; the long, hot summers and long tanned legs; loud music and loud auctioneers. He could hear the singing of the field crews working their way down the long rows, the steady rumble of the tractor and trailer slowly keeping pace beside them. He felt for a moment the peace that he always felt during the morning and afternoon breaks, sitting in the shade, listening to birds chirp and twitter over the silenced trac-

tor, drinking deeply from an ice-cold Pepsi. ("*Off your ass and on your feet; out of the shade and into the heat!*" roared Uncle Otha.) He could feel the scratch of burlap, the sticky of tobacco resin, the pain in his bent lowered back. He could taste the sting of sprayed chemicals, of sweat pouring down his face, of cold chicken soup eaten directly from the can at the store during lunch when all the farmers would congregate for 30 minutes repeating the same tired phrases about the heat, the humidity, the crop, and the prices. He could sense the buzz of nicotine seeping into his pores from the black gum staining his forearms after a long day of priming. He thought of highways and houses, families and funerals, the things he would never have and the things he would never have again. Loss, longing, helplessness, aimlessness, despair, and bittersweet nostalgia washed over Frankie, just like the acrid papery smell of decades of cured tobacco. He now had no past and he could see no future.

Frankie thought of all of these things as he swayed on the log and floated in the warm still air. He suddenly and sharply realized, maybe with a clarity of reason he had never experienced, that he did indeed carry an awful heavy burden with him, a burden that prevented him from moving forward, from being happy. And dammit! he was tired of feeling that way. He looked down at the shadowy dirt floor. He looked at the rough log walls. He looked out the window at bright sunshine and what would be no more. He even looked up at the underside of the tin roof, never shiny underneath but not on top anymore either, noting the small pinholes and spreading stains of rust. Frankie looked at everything and nothing, felt everything and nothing, tasted and heard and smelled everything and nothing. He was being crushed by his feelings, His Feelings, HIS FEELINGS. Something drastic had to change, and then Frankie decided that the best way for him to get on with life was to simply let it all go. And so he did.

Frankie let go. ■

P. Richard Wilkinson closed his law practice in 1998 to take a two year travel sabbatical. He has since roamed the American West fighting wildfire, rafting Class V rivers, climbing 10,000'+ mountains, and skiing big lines. He will begin his return home to NC in 2015, projecting the journey will take 12 to 18 months (depending on Alaska).

Poetic Justice

The following poems are excerpts from the book Poetic Justice, a collection of vignettes from life in the practice of law rendered as humorous poems, written by Charlotte attorney James DuPuy and award-winning writer and editor ML Philpott. A portion of the proceeds from the sale of the book go to benefit WomensLaw.org. For more information, see poeticjusticethebook.com.

The Call Not Taken

With a wink in Robert Frost's direction

Two lines diverged on a Mylar plat,
And to one call I could not commit,
And being new here, sweating I sat,
And wondered just how it could be that
A single line could seemingly split.
One line was an easement of some sort,
But which was which? I was doomed to fail.
The clock was ticking, time had grown short,
And as my guts started to contort,
I sat alone and chewed my thumbnail.
Being young and scared, I dared not ask
My cruel senior partner for his take,
For fear of catching merciless flack,
Or being the victim of a wisecrack,
When he realized I was a fake.
So I chose the one that I thought right,
With anxiety and doubts acute.
Two lines diverged on a plat and I,
I called the one less traveled by,
And that led to my malpractice suit.

Ode to the Rainmaker

With thanks for the inspiration to Elizabeth Barrett Browning

How do I love thee? Let me count the ways.
You reek of charm, the genetically blessed,
And while I spend my hours in this office,
You're on some golf course or other most days.
Your intellect is at best rather base,
Your work product is far below the rest,
Your attitude is I-couldn't-care-less,
When I clean up your mess, you get the praise.
Family connections and a silver spoon,
Like a nephew in the mob you're plugged in.
What's to love, then? It's simple. Selfish, too:
I like having a job, money to spend.
And as little true law work as you do,
You've the golden touch at bringing it in. ■

Profiles in Specialization—Robert C. Kemp III

BY DENISE MULLEN, ASSISTANT DIRECTOR OF LEGAL SPECIALIZATION

I recently had an opportunity to talk with Robert (Bert) C. Kemp III, a board certified specialist in state criminal law practicing in Pitt County. Bert attended the University of North Carolina at Chapel Hill, earning an undergraduate degree in economics, and subsequently received his law degree from Wake Forest University. Following graduation he spent several years practicing both general litigation and criminal defense before accepting a position as an assistant public defender in Pitt County. He was appointed chief public defender in June 2007 and currently supervises 13 attorneys in that office. Bert is also a judge advocate, holding the rank of lieutenant colonel in the NC National Guard. Bert became a board certified specialist in 2005, and was appointed to the Criminal Law Specialty Committee in 2013. His comments about the specialization program and its impact on his career follow.

Q: Why did you pursue certification?

I had been in private practice as a criminal defense attorney when I accepted the position of assistant public defender in Pitt County. At the time, several of my clients viewed that change as a demotion, akin to a resident doctor or some kind of training position. They expressed concern for me and were hopeful that I would get myself out of trouble and back to being a "real" lawyer. I had to explain that I was a "real" lawyer and that I took this position very seriously. I wanted to prove to clients, colleagues, and mainly to myself that I could accomplish this goal. I also knew it would be a good opportunity to refresh my knowledge about criminal law as well.

Q: How did you prepare for the examination?

I read Chapters 14, 15, 15A, and 20 of

the North Carolina General Statutes. I also reviewed materials from several continuing legal education courses. The School of Government has a wealth of outstanding information available online, and I certainly took advantage of those resources. As an assistant public defender I worked mainly on high-level felonies, including robberies and sex offense cases. I viewed having to study as a great opportunity to re-learn some items I had forgotten. I especially reviewed recent case law and spent time examining subjects I did not routinely encounter in my daily work.

Q: Has certification been helpful to your practice?

The certification has shown others that this is a target that can be achieved. One of my personal goals moving forward is to promote certification within the public service arena. I believe that it is critical to our judicial system to retain qualified lawyers in both public defender and prosecutorial positions, as well as those working for Legal Aid. Many of the lawyers that I work with are [*de facto*] specialists in their area and deserve, not only a monetary raise, but a high level of recognition for their dedication. Board certification is one way to provide this recognition, and hopefully to encourage and inspire them to continue their public service.

I am so pleased to learn that the Board of Legal Specialization recently launched a new program with NC LEAF [Lawyers Education Assistance Foundation, ncleaf.org] to provide financial scholarships to cover the certification application fees for state prosecutors, public defenders, and non-profit public service attorneys. I think this type of program and the John R. Justice program [ncleaf.org/content/john-r-justice-jrj-program-summary] are critical components to retaining quality public defenders and prosecutors. For the past few

years, pay increases have been few and far between for these lawyers. Therefore, every little bit helps to recognize their dedication.

Q: How does certification benefit your clients?

Few ways exist to distinguish yourself as a dedicated and competent lawyer. Certification is one way that I can demonstrate to my clients what this practice means to me, and give them the comfort that they have been assigned a "real" lawyer. As the public defender for Pitt County, I have built an office of good and knowledgeable employees who have a calling for this work. I want all of our clients to recognize the quality and commitment of their attorneys.

Q: Are there any hot topics in your specialty area right now?

One of the biggest issues in criminal law right now involves the collateral consequences associated with a conviction, such as in domestic violence cases, DWIs, and sex offenses. Our work as public defenders encompasses all of these areas. DWI law has become so complicated—with the consequences for clients being so serious—that it really takes a specialist's depth of knowledge and experience to be able to understand and properly manage all of the issues involved. Other hot topics include immigration ramifications and the possible upcoming change in juvenile delinquency laws. If the juvenile age is indeed raised in certain cases, more proceedings will be handled in juvenile court, which will significantly increase the demand for specialists in juvenile delinquency law.

Q: Is certification important in your practice area?

Certification is extremely important in criminal law. The more information made available to the public, the better. In general, clients today have greater access to information, thereby enabling them to make informed choices. However, I, as a public defender, am appointed to represent my



Kemp

Resolution of Appreciation for Jeri L. Whitfield

WHEREAS, the North Carolina State Bar Board of Legal Specialization desires to recognize the services of JERI L. WHITFIELD and her contribution to the specialization program of the North Carolina State Bar; and

WHEREAS, Jeri's exemplary statewide reputation as a workers' compensation defense lawyer led to her appointment by the board to the initial Workers' Compensation Law Specialty Committee where she served for six years; the committee was charged with the development of the standards for the specialty and the drafting of the first workers' compensation law specialty examination; and, although specialty certification in this practice area may appear to be more advantageous to plaintiffs' lawyers than to defense lawyers, Jeri became a champion for board certification, recognizing the significance of a workers' compensation law specialty to the public and to the professional development of all workers' compensation lawyers; and

WHEREAS, Jeri became one of the first board certified specialists in workers' compensation law in 1997; and

WHEREAS, as a member of the Board of Legal Specialization from 2006 to 2014, Jeri gave unselfishly of her time and talent—over the course of nine years, missing only one board meeting; Jeri's personal experience with certification helped the board to make informed policy decisions about the certification and recertification of lawyers, the allocation of resources, the employment of the board's first psychometrician, and the development of new areas of specialty, including elder law; and

WHEREAS, as a member of numerous board committees and review panels, Jeri heard complex appeals from denials of certification and recertification, and, as a consequence of her experience with difficult appeals, she was appointed to chair a committee that studied and then overhauled the board's hearing and appeal rules, thereby increasing the clarity, transparency, and fairness of the process; and

WHEREAS, as chair of the board from 2011 to 2014, Jeri led the development of new and unique specialties in practice areas that are important to the consuming public; to wit: appellate practice—for which she enlisted the support of law partner, former Chief Justice James Exum—juvenile delinquency law, and trademark law; and she oversaw the twenty-fifth anniversary of the North Carolina State Bar's specialization program; and

WHEREAS, Jeri's consummate professionalism, thoughtful and diplomatic approach to difficult issues, championship of the specialization staff, and unwavering support of board certification for lawyers as the hallmark of professionalism, will be missed by the members of the board, by the specialization staff, and by the members of the bar;

NOW, THEREFORE, BE IT RESOLVED BY THE NORTH CAROLINA BOARD OF LEGAL SPECIALIZATION:

That the members of the board hereby express their appreciation and gratitude to JERI L. WHITFIELD for her outstanding devotion and service on the North Carolina State Bar Board of Legal Specialization.

client. Therefore, the client has no choice in their attorney, which makes certification even more important in developing a high level of trust and comfort between the attorney and client.

Q: How does certification benefit the profession?

Certification builds trust and credibility with the clients, which in turn benefits the profession. It also creates a collegiality among peers, including adversaries, as it promotes a focus on professional practice rather than monetary gain. Anything we can do as lawyers to further our knowledge and hone our skills will also improve the practice of criminal law for all involved.

Q: How do you see the future of specialization?

I think the program will continue to expand as more attorneys will see it becoming almost a necessity. Providing a legal specialty certification program is one way that the State Bar shows the public that it is making an investment in the continuing education and growth of attorneys. ■

For more information on the State Bar's specialization program, visit us online at nclawspecialists.gov. To donate to the NC Leaf Scholarship Fund, please send a check to: NC LEAF - Specialization Scholarship, 217 E. Edenton Street, Raleigh, NC 27601.

NO MORE THAN 24!

Please return every phone call, email or other form of communication from a client within 24 hours. The number one complaint against lawyers each year at the NC State Bar is, "my lawyer will not return my phone calls or communications." We can end these complaints—it will just take a little effort.

—Mel Wright
Executive Director, The Chief Justice's
Commission on Professionalism

The Price We Pay as Professional Problem Solvers

BY ROBYNN MORAITES

Most of us decided to go to law school because we had a passion for justice and helping people. While we may not think of the legal profession as a traditional helping profession like we typically think of social work, the reality is that we serve in a primary helping capacity. Clients are in distress, enough so that they have elected to pay someone (a lawyer) to help them fix the problem or help them achieve the best (or more often, the least bad) outcome.

When we help a client fix a problem or reach a desired outcome, we often feel a strong sense of personal and professional achievement and satisfaction. Researchers call that experience “compassion satisfaction.” Compassion satisfaction is crucially important because it sustains us through the bad days—the days when we don’t achieve the desired outcome or when a client has no viable good options. For many of us, much of our career is spent assisting people in terribly difficult situations, and our ability to effect real change or outcomes is far more limited than we ever imagined it would be.

With the ever increasing specialization of the profession, today most lawyers deal with a very high volume of the same kind of client distress day in and day out. It is not uncommon, for example, for a workers’ comp lawyer to have anywhere from 250-400 open cases at one time. With a high case load and nonstop exposure to the same type of client distress, over the course of a

career the bad days can begin to outweigh the good ones. When that happens, we may develop a condition known as compassion fatigue. If left unaddressed, compassion fatigue can lead to secondary trauma and burn out.

Compassion fatigue is defined as the cumulative physical/emotional/psychological effects of continual exposure to traumatic or distressing stories/events when working in a helping capacity where demands outweigh resources. The two largest factors that contribute to developing compassion fatigue are 1) high volume of workload and 2) exposure to client distress and trauma. Unfortunately, all the best legal training in the world cannot turn off our mirror neurons, which exist in that highly-evolved part of our brain that responds neurologically/emotionally to other people’s distress as an involuntary response (even when we might not have any conscious awareness of an emotional response). The



symptoms of compassion fatigue can often mimic those of depression or anxiety, but there are a few key differences (and depression and anxiety are often symptoms of compassion fatigue).

Behavioral symptoms:

- absenteeism from work
- anger and irritability with coworkers, clients, opposing counsel, judges, family, and friends
- indecisiveness; an impaired ability to make decisions
- avoidance of clients in general or certain clients
- lack of diligence in work performed
- no longer finding enjoyment in hobbies and activities that used to be pleasurable
- avoidant behavior at home (e.g. watching too much TV, reading, online gaming, and not interacting with family or friends).

Psychological symptoms:

- emotional exhaustion
- intrusive thoughts (like flashbacks to evidence in an old case when one is at home, or a sense of dread of something bad happening to one’s family or children)
- heightened sense of anxiety and fear
- sleep disturbance at night and fatigue during the day
- loss of appetite
- cynicism (loss of empathy; loss of faith in humanity)

- sense of isolation or alienation from others (for example, either intentionally distancing from friends and family or simply feeling isolated in a group—“When I get home, I feel like I am from another planet because of what I saw today at work.”)

- physical complaints (headaches, stomach problems, TMJ, back problems, etc.)
- helplessness
- dread of seeing certain clients.

When one moves beyond compassion fatigue into secondary trauma and burnout, symptoms are more severe. In secondary trauma, the lawyer or judge has developed a post-traumatic stress disorder (PTSD) response to the day-to-day activities needed in his or her job and in life. The PTSD response results not from some personal trauma the lawyer once suffered, but from the vicarious trauma he or she is exposed to when helping clients.

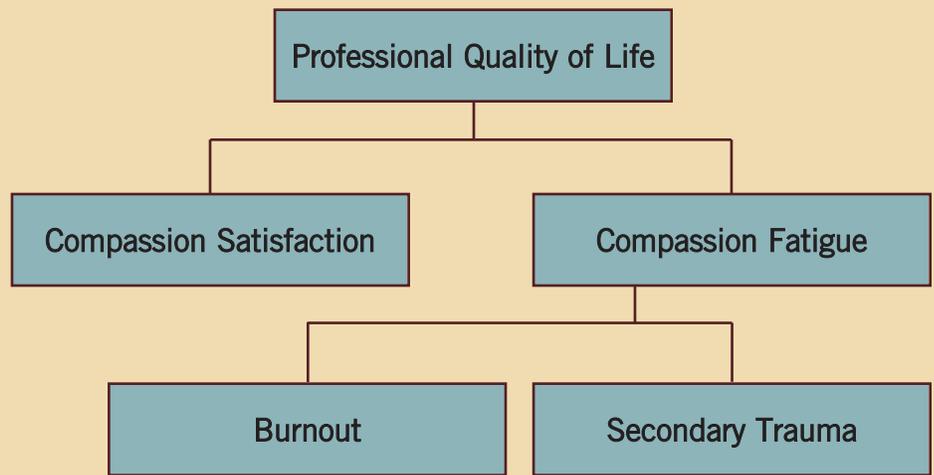
Judges in particular are at risk for developing compassion fatigue, especially district court judges. And lawyers in these practice areas are considered particularly at risk for developing compassion fatigue:

- criminal law
- family law
- personal injury and workers’ comp law
- medical malpractice law
- personal bankruptcy
- wills, trusts, and estates.

In good news, compassion fatigue can often be treated largely through awareness and lifestyle choices. The problem, of course, is that many of us are entrenched in how we operate on a day-to-day basis, and some of these lifestyle suggestions seem unattainable. The LAP has helped so many lawyers bring their lives back into balance who are suffering from compassion fatigue.

Listed below are some suggestions that at first blush might seem minor, but have the greatest impact.

- **Rigorous exercise three to four times a week.** Our bodies and brains store a great deal of pent-up energy from the stresses we encounter in work and life. Regular exercise does more than release endorphins, although that is a great benefit. I am a big advocate of hot yoga. As one client reports, “It takes all the fight right out of you.” Another client who was suffering from compassion fatigue reported, “If I hit two hot yoga classes a week I seem to be fine. When I skip a week I start to derail pretty quickly.” Running, long distance cycling, swimming,



By Beth Hudnall Stamm PhD, et. al.

triathlons, vinyasa (power) yoga or hot yoga, Zumba, or other aerobic classes are all viable options. Anything that moves your heart rate into a 65-85% of max range will work—it needn’t be a high impact activity.

- **Finding ways to laugh and have real fun and connection.** Our emotional balance in life depends in part on the stimulus hitting our mirror neurons. When you recall times you felt really connected to someone or a group of people, there was something very positive happening in your brain. That felt sense of connection is an important tool for emotional resilience. Sometimes a belly laugh that brings tears to our eyes is more restorative than two years of talk therapy. So find people who make you laugh and to whom you feel a deep sense of connection and spend time with them.

- **Resume or develop hobbies.** Usually as work and time demands increase, the first thing we abandon are hobbies and activities that seemingly serve no useful purpose. These activities are precisely the kinds of things that restore emotional resilience. Doing something you enjoy simply because you enjoy it balances the chemistry in your brain and goes a long way toward balancing our perspective when faced with difficulties. Find those things you abandoned—or those things you’ve always wanted to do but have never gotten around to doing—and begin to incorporate them into your life.

- **Begin to develop some form of a mindfulness or meditation practice.** These practices help foster big-picture perspective and separate us, just a little bit, from our emotional reactions to situations. As we get

more skilled in learning to step back emotionally and noticing our reactions, those reactions have less power to dictate our behavior. We learn to pause when agitated or doubtful instead of reacting to the agitation or doubt.

Compassion fatigue symptoms are normal displays of stress resulting from the problem solving and caregiving work we perform on a regular basis. While the symptoms can be at first subtle if not addressed, they can eventually become disruptive to both our work and home life. An awareness of the symptoms and their negative effects can lead to positive change, personal transformation, and a new emotional resilience. Reaching a point where we each realize we have control over our own life choices takes some time, dedication, and hard work. There is no magic involved. There is only a commitment to make our lives the best they can be. ■

Robynn Moraites is the director of the North Carolina Lawyer Assistance Program.

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may lead to impairing a lawyer’s ability to practice. If you would like more information, go to nclap.org or call: Cathy Killian (for Charlotte and areas west) at 704-910-2310, Towanda Garner (in the Piedmont area) at 919-719-9290, or Robynn Moraites (for Raleigh and down east) at 704-892-5699.

Celebrating Certified Paralegals

BY JOY BELK

On May 2, 2014, the North Carolina State Bar Board of Paralegal Certification held an event to honor North Carolina certified paralegals (CPs) and to express appreciation to CPs for their contributions to the new North Carolina State Bar headquarters. The event was held at the new headquarters and consisted of a free three-hour continuing paralegal education (CPE) program followed by a catered reception. Over 200 guests attended the event.

Shelby Benton of Benton Family Law, a NC State Bar councilor from the 8th Judicial District and current member of the Board of Paralegal Certification, presented at the CPE program. Ms. Benton, a certified family law specialist who practices in Wayne County, provided an overview of social media and how it can be used by paralegals to help lawyers investigate cases, discover electronic evidence, and better represent their clients. Attorney Ketan P. Soni provided



NC State Bar Foundation Chair John McMillan and NC State Bar Board of Paralegal Certification Chair G. Gray Wilson.

ed materials for the presentation.

Patricia F. Clapper, ACP, NCCP, made a presentation on “Patti’s Wonderful



Websites for Paralegals.” Ms. Clapper is a paralegal for Levine & Stewart in Chapel Hill and currently serves on the Board of Paralegal Certification. She is also the current president of the North Carolina Paralegal Association and an adjunct professor for the paralegal certificate program at Central Piedmont Carolina Community College.

Alice Neece Mine presented the ethics portion of the CPE program. Ms. Mine is the assistant executive director of the North Carolina State Bar. In this capacity she is staff counsel to the Ethics Committee and director of the Board of Paralegal Certification.

After the CPE presentations, board chair Gray Wilson welcomed the certified paralegals and recognized NC State Bar officers, former and present members of the Board of Paralegal Certification, members of the Paralegal Certification Committee,

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Income Outlook Remains Bleak for Near Future

Income

Unfortunately, we must report that the income from IOLTA accounts continues to decrease as many banks are recertifying their comparability rates at lower levels. In 2013, income from IOLTA accounts declined by 9% and was under \$2 million for the second year in a row, which had not previously happened since 1994. However, our total income, which received a boost from two cy pres awards during 2013 totaling over \$650,000, was \$2.4 million. Income from participant accounts through the first quarter of 2014 decreased by another 5%.

Grants

Current Grants. Beginning with 2010 grants, we have limited our grant making to a core group of (mainly) legal aid providers. Even with that restriction and using over \$2.5 million in reserve funds, grants have dramatically decreased (by over 40%). For 2013, we were able to keep grants steady at the 2012 level of \$2.3 million without using any additional funds from reserve because of a large cy pres award received in 2012. We were also able to add funds to our reserve, bringing it to just under \$1 million. The reserve funds and the additional income from cy pres awards received in 2013 allowed the trustees to keep grants steady at \$2.3 million again for 2014, although we are taking \$215,000 from reserve for that purpose.

Grant Software. For the 2015 grant cycle we will implement new grant software that is already in use in three large IOLTA programs in other states. The new software will allow applicants to apply online and submit all necessary documents through the system, and allow staff and trustees to review applications through the system. Further, all narrative and statistical reporting and tracking of grantee outcomes will occur within the system, allowing staff to generate reports on program impacts efficiently. The initial \$16,000 cost of purchasing and implementing the software is



Though in difficult times, NC IOLTA reaches its 30th year in 2014. NC State Bar officers and IOLTA trustees recognized the milestone at the April board dinner. Edward C. Winslow III, John B. McMillan, Janice M. Cole, Michael A. Colombo (chair), Freeman Edward Broadwell Jr., (vice-chair), Hope H. Connell, Charles E. Burgin, E. Fitzgerald Parnell, and Linda M. McGee.

being supported by two grants totaling \$9,000 from the Chief Justice's Commission on Professionalism and the NC Equal Access to Justice Commission.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for legal aid on behalf of the NC State Bar. Total state funding distributed for the 2013 calendar year was \$3.5 million, decreased from just under \$6 million in 2008 due to reductions to both the appropriated funds and the filing fee allocations. The state budget adjustments for 2014-15 eliminated the appropriation for legal aid work (currently \$671,250). Though the proposed Senate budget had also eliminated the Access to Civil Justice funding from court fees (~\$1.8 million), that funding was continued in the final budget, with significant additional reporting requirements for Legal Aid of NC. The Equal Access to

Justice Commission and the NCBA continue to work to sustain and improve the funding for legal aid.

IOLTA Leadership

The State Bar Council appointed Ed Broadwell and Charles Burgin as chair and vice-chair of the NC IOLTA Board of Trustees for 2014-15. Broadwell is retired chairman and CEO of Home Trust Bank in Asheville, and has served on the board of the American Bankers Association (2007-09) and the NC Bankers Association (1976-78 and 1980-82), including serving in 1980-81 as chair. Burgin, a former NC Bar Association president, is retired from private practice in Marion. Both have served as NC IOLTA trustees for a number of years, and their continuity and knowledge of the NC IOLTA program and its grantees will be particularly valuable

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Lawyers Receive Professional Discipline

Disbarments

Donald Lively of Raleigh surrendered his law license and was disbarred by the State Bar Council. Lively was administratively suspended in 2010 for failing to attend mandatory continuing legal education. During the suspension he practiced law, collected fees, and misrepresented his professional status to the court, other attorneys, his clients, and third parties.

Susan E. Mako, formerly of Wilmington, was disbarred by the DHC. The DHC concluded that Mako misappropriated and grossly mishandled entrusted funds, did not pay taxes, and abandoned her law practice.

Richard Z. Polidi of Raleigh surrendered his law license and was disbarred by the Wake County Superior Court. Polidi received approximately \$16,000 in settlement for a client. Although Polidi knew his client had assigned the right to those funds to a third party, he used the entrusted funds for his own benefit and for the benefit of the client without the third party's authorization.

Suspensions & Stayed Suspensions

The DHC suspended **William T. Batchelor** of Wilmington for three years. The DHC found that Batchelor charged and collected a clearly excessive amount for expenses

and mismanaged his trust account in a variety of ways. After serving one year of the suspension, Batchelor may apply for a stay of the balance upon compliance with numerous conditions.

George Rexford (Rex) Gore of Shallotte is a former elected district attorney. Gore agreed to increase an assistant district attorney's compensation by approving false travel reimbursement claims the ADA submitted to the Administrative Office of the Courts. He approved 63 travel claims totaling over \$14,000 for mileage the ADA did not incur. Gore pled guilty to the misdemeanor offense of Willful Failure to Discharge Duties. The DHC suspended Gore for four years. Gore received credit toward the satisfaction of the four-year suspension for the time since the court suspended his law license in August 2013. After serving two years of the suspension, Gore may apply for a stay of the balance upon compliance with numerous conditions.

In 2012, **Roydera Hackworth** of Greensboro was suspended by the DHC. Before she was suspended, Hackworth engaged in the unauthorized practice of law by representing her nephew in a personal injury case in Alabama, where she was not licensed. After she was suspended by the DHC, Hackworth continued representing

her nephew. She also made misrepresentations to the Grievance Committee. The DHC suspended Hackworth for five years. The suspension runs concurrently with the suspension imposed in 12 DHC 3.

Mary Susan Phillips of Wallace neglected numerous clients and did not respond to notices from the clerk of court to file estate accountings. The DHC suspended her for three years. After serving nine months of the suspension, Phillips may apply for a stay of the balance upon compliance with numerous conditions.

Asheville attorney **Julia Leigh Sitton** pled guilty to misdemeanor obstruction of justice. Sitton was an employee of the Bev Perdue campaign. Sitton agreed that a campaign contributor could pay her an extra \$2,000 per month through a purported consulting contract under which Sitton did not actually provide any consulting services to the contributor. This arrangement allowed the contributor to exceed the limit on allowable campaign contributions under N.C. Gen. Stat. § 163-278.13 and allowed the campaign to avoid reporting the payments on campaign finance reports required by N.C. Gen. Stat. § 163-278.8 and § 163-278.11. The DHC suspended Sitton's law license for three years. After serving one year of the suspension, Sitton may apply for a stay of the balance upon compliance with enumerated conditions. Sitton received credit for the time she voluntarily abstained from the practice of law following her conviction.

Censures

Ronald E. Cooley of Hillsborough was censured by the Grievance Committee. Cooley failed to attend a deposition for his client, did not communicate with his client about discovery requests, did not comply with discovery obligations, did not ensure proper service on an opposing party, and made false statements to his client.

The Rowan County District Court censured **Tiffany Dawn Russell** of Durham. The court concluded that Russell engaged in unprofessional behavior and willfully failed to



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comply with Rule 12 of the General Rules of Practice for the Superior and District Courts. Russell gave notice of appeal.

Reprimands

Thomas D. Blue Jr. of Raleigh was reprimanded by the Grievance Committee. Blue was assigned by his law firm to supervise a nonattorney assistant's trust account record keeping. Because Blue failed to ensure the assistant was conducting proper reconciliations, the firm did not discover an error on a client ledger that occurred in November 2010. As a result of the undiscovered error, the firm over disbursed to the client 14 months later. The firm finally discovered the original error and the overdisbursement in August 2013. The Grievance Committee recognized several mitigating factors.

The Grievance Committee reprimanded **Kristen Comerford**, formerly of Winston-Salem. Comerford made false entries in document review software and a timekeeping system to exaggerate her billable hours.

Mark Jetton of Raleigh was reprimanded by the Grievance Committee. Jetton's direct solicitation letters contained false and misleading statements, promised results that could not be guaranteed, and compared his services to those of other lawyers.

The Grievance Committee reprimanded **Christopher Lane** of Clemmons. Lane agreed to serve as "Of Counsel" to a foreign law firm and facilitated the firm's unauthorized prac-

tice of law in North Carolina. Lane also made false or misleading statements to a client of the foreign firm.

The Grievance Committee reprimanded Raleigh lawyer **W. Andrew LeLiever**. LeLiever did not timely comply with bankruptcy court orders, did not appear at court hearings regarding his noncompliance, and told the bankruptcy trustee that he would not pay over funds in his possession that belonged to the bankruptcy estate without a court order. LeLiever also committed a number of trust account violations, including failing to reconcile his trust account quarterly, failing to maintain client ledgers, commingling his own funds with entrusted funds, and using improper methods to disburse funds from his trust account.

Jennifer Moore of Asheville was reprimanded by the Grievance Committee. Moore made misleading statements to the State Bar, neglected her client's interests, and did not take appropriate steps to protect the client's interests when she withdrew from representation.

The Grievance Committee reprimanded **Claire J. Samuels** of Charlotte, who argued the merits of her client's case in emails to the judge and her clerk.

Antoinette Van-Riel of Winston-Salem was reprimanded by the Grievance Committee. Van-Riel charged clearly excessive fees, did not communicate with her client, did not participate in the State Bar's

mandatory fee dispute resolution program, and did not respond to the Grievance Committee.

Karen Wright of Shelby was reprimanded by the Grievance Committee. Wright neglected her duty to settle the estates of her clients' parents, did not keep the beneficiaries reasonably informed about the statuses of the estates, and did not promptly comply with the beneficiaries' reasonable requests for information.

Reinstatements

Douglas T. Simons of Durham surrendered his law license and was disbarred by the State Bar Council on April 15, 2005. Simons admitted that he misappropriated at least \$300,000. On March 27, 2014, a panel of the DHC recommended that his petition for reinstatement be denied. Simons' appeal to the State Bar Council is pending.

In November 2007, **Ralph T. Bryant** of Newport surrendered his law license and was disbarred by the DHC for misappropriating entrusted funds totaling \$64,847. Bryant petitioned for reinstatement. On June 12, 2014, a panel of the DHC announced its finding that Bryant had reformed, but that his reinstatement would be detrimental to the integrity and standing of the bar, the administration of justice, or to the public's interest and recommended that his petition for reinstatement be denied. An order has not yet been entered. ■

Paralegals (cont.)

and members of the Item Writers Committee in attendance. He also recognized John McMillan, chair of the North Carolina State Bar Foundation, and other members of the foundation in attendance. Prior to the construction of the new State Bar headquarters, the foundation was created to receive donations of funds for the enhancement of the new building. That initiative was kickstarted in 2009 when the Board of Paralegal Certification, upon the recommendation of the paralegal members of the board, gave half a million dollars for the construction of the building.

Mr. McMillan presented Mr. Wilson and the Paralegal Certification Program with a beautiful memory book that chronicles the construction of the new headquar-

ters. Champagne glasses were passed and a toast was made in appreciation of certified paralegals for their dedication to and financial support of the State Bar.

After the toast, everyone was treated to a catered reception. The decorations and food were provided by Savory Fare of Durham. Guests were given tours of the new building and art collection. The tour ended with a visit to the first floor "Members Suite" where a plaque commemorating the contribution to the building hangs. The reception provided the opportunity for seasoned and newly certified paralegals to network and visit with old and new friends. It was a memorable and successful event. ■

Joy Belk is the assistant director of the Paralegal Certification Program.



Top Tips on Trust Accounting: Trust Account Reconciliation Sheet & Instructions

BY PETER BOLAC

On the next page you will find a Trust Account Reconciliation Sheet, which was designed to assist lawyers with their quarterly three-way reconciliations. Rule 1.15-3(d)(1) requires that lawyers complete a three-way reconciliation at least quarterly; however, the State Bar recommends that lawyers perform this task on a monthly basis. We have designed these instructions to make it as simple and clear as possible to complete your reconciliation. The numbers and sections in these instructions correspond to the numbers and sections on the reconciliation sheet.

Instructions

General Information

You will note that you must complete a separate form for each trust account. Many lawyers encounter problems because they try to combine all entrusted funds into one reconciliation regardless of whether they are held in separate accounts. You must also attach the listed documents in order for this to be a proper three-way reconciliation.

Reconciliation of Lawyer's Trust Account Records

1. Enter the total of positive client ledger balances as of the cut-off date on the bank statement. This includes any administrative funds ledger or firm funds ledger that you maintain to service the account. Do not include balances that are negative. If a client ledger shows a negative balance, check the box. On another page, explain the reason for the negative balance and show your corrective action.

2. List the balance shown on your general ledger/checkbook register as of the cut-off date on the bank statement. Using the same cut-off date on all documents is imperative to avoid mismatched numbers.

Bank Statement Reconciliation

3. List the ending balance as shown on the bank statement. On the next line list the deposits that have yet to appear on the bank statement (probably because they were made at the end of the month). You should provide a list of these outstanding deposits and note the number of these deposits in the provided line. Do the same for outstanding/uncleared checks. Take this time to examine the list of outstanding checks and to investigate why those checks have not cleared.

4. Add the outstanding deposits to the ending balance and subtract the outstanding checks to find your Subtotal.

5. This section is provided for lawyers to explain any necessary adjustments to their reconciliation. Adjustments might be required if, for example, you identify bank errors in your review of the bank statement. Adjustments that are made to balances must be explained with documentation.

6. Your Adjusted Trust Account Bank Balance is your Subtotal plus or minus any necessary adjustments listed in Section 5.

7. The balances listed in Sections 1, 2, and 6 should all agree. If they are different, attach an explanation and show how this imbalance has been corrected. The person who completed the reconciliation should sign the form, as well as the lawyer who reviewed the reconciliation and supporting documents. Save this reconciliation for six years as required in Rule 1.15-3.

If you have any questions about this form (or would like a PDF copy) or any other trust accounting issue, please contact Peter Bolac at (919) 450-7860 or Pbolac@ncbar.gov. Follow Peter on Twitter @TrustAccountNC for alerts on trust account scams.

Random Audits

Districts randomly selected for audit in the 3rd quarter are District 15A (Alamance

County) and District 23 (Alleghany, Ashe, Wilkes, and Yadkin Counties). ■

Peter Bolac is the State Bar's district bar liaison and trust account compliance counsel.

IOLTA Update (cont.)

in these roles.

The council also appointed three trustees. John McMillan was reappointed to a second three-year term, and Betty Quick and Sid Eagles were appointed as new trustees replacing outgoing trustees Linda M. McGee and Hope H. Connell.

- John B. McMillan is in private practice in Raleigh. He currently serves on the Equal Access to Justice Commission. During his service as NC State Bar president in 2008-2009, he made it a priority to increase IOLTA income by implementing comparability, and he had earlier supported moving NC IOLTA to a mandatory program as a NCSB officer and councilor. His knowledge of the State Bar, the IOLTA program, and the legal aid community is extremely valuable to our program.

- Elizabeth L. Quick is in private practice in Winston-Salem. Through her work with a number of charitable organizations and foundations, she has strong knowledge of and interest in philanthropy. She is a past-president of the North Carolina Bar Association, 1997-98.

- Sidney S. Eagles Jr. is in private practice in Raleigh. From 1983 to 2004 he served first as a judge and later as chief judge of the North Carolina Court of Appeals. He has also served as counsel to the speaker of the house and as a special deputy attorney general. He will bring valuable judicial perspective to the board. ■

Amendments Pending Approval of the Supreme Court

At its meetings on April 25, 2014, and July 25, 2014, the council of the North Carolina State Bar voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval (for the complete text see the Spring 2014 and Summer 2014 editions of the *Journal* or visit the State Bar website):

Proposed Amendments to the Procedures for Reinstatement from Inactive Status and Administrative Suspension

27 N.C.A.C. 1D, Section .0900, Procedures for Administrative Committee

The proposed amendments eliminate the three different CLE requirements for reinstatement from inactive status and administrative suspension in favor of one standard that applies to all petitioners for reinstatement without regard to when the petitioner was transferred to inactive or suspended status; make March 10, 2011, the effective date for the requirement of passage of the bar exam if a petitioner was administratively suspended for seven years or more; and permit a member to take up to 6.0 CLE credits per year online to satisfy the requirements for reinstatement from inactive status and administrative suspension.

Proposed Amendment to the Rules Governing the Administration of the CLE Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program

The proposed amendment requires a lawyer to be a nonresident for at least six consecutive months in a given year to qualify for the nonresident exemption from mandatory CLE.

Proposed Amendments to the Standards for Certification as a Specialist

27 N.C.A.C. 1D, Section .2500, Certification Standards for the Criminal Law Specialty, and 27 N.C.A.C. 1D, Section .2600, Certification Standards for the

Immigration Law Specialty

The proposed amendments to the standards for the criminal law specialty reduce the number of opposing counsel and judges that must be listed as peer references on an application for certification in criminal law.

The proposed amendments to the standards for the immigration law specialty clarify that CLE courses on topics related to immigration law may be used to satisfy the CLE requirements for certification and recertification, and require four peer references to be from lawyers or judges who have substantial experience in immigration law.

Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, The Rules of Professional Conduct

In 2012 and 2013 the American Bar Association (ABA) amended the ABA Model Rules of Professional Conduct to address issues relative to outsourcing, lawyer mobility, and advances in technology. Following study by a special committee of the State Bar Council, similar proposed amendments to 13 of the North Carolina Rules of Professional Conduct (the NC Rules) were approved for publication by the council on January 24, 2014. An executive summary and the proposed rule amendments can be viewed in the Spring 2014 edition of the *Journal* and on the State Bar website (ncbar.gov/PDFs/Ethics_20-20.pdf).

Previously, at a meeting on October 25, 2013, the council voted to adopt amendments to Rule 1.17 and Rule 7.3 of the NC Rules, unrelated to the ABA amendments, for transmission to the North Carolina Supreme Court for approval (see the Fall 2013 edition of the *Journal* or visit the State Bar website). However, at its meeting on January 24, 2014, the council decided that all pending proposed amendments to the NC Rules should be submitted to the Supreme Court at one time. Therefore, proposed amendments to the following North Carolina Rules of Professional Conduct have been approved for transmission to the Supreme Court (proposed amendments to

the title of a rule are noted):

Rule 1.0, *Terminology*

Rule 1.1, *Competence*

Rule 1.4, *Communication*

Rule 1.6, *Confidentiality of Information*

Rule 1.17, *Sale of a Law Practice*

Rule 1.18, *Duties to Prospective Client*

Rule 4.4, *Respect for Rights of Third Persons*

Rule 5.3, *Responsibilities Regarding Nonlawyer ~~Assistants~~ Assistance*

Rule 5.5, *Unauthorized Practice of Law; Multijurisdictional Practice of Law*

Rule 7.1, *Communications Concerning a Lawyer's Services*

Rule 7.2, *Advertising*

Rule 7.3, *~~Direct Contact with Potential Solicitation of Clients~~*

Rule 8.3, *Disciplinary Authority; Choice of Law*

Proposed Amendments to the Rules of the Board of Law Examiners

Rules Governing Admission to the Practice of Law in the State of North Carolina, Section .0100, Organization

Proposed amendments to Rules Governing Admission to the Practice of Law change the street and mailing address listed for the offices of the Board of Law Examiners to reflect the board's recent move to a new location.

The Process

Proposed amendments to the Rules of the North Carolina State Bar are published for comment in the *Journal*. They are considered for adoption by the council at the succeeding quarterly meeting. If adopted, they are submitted to the North Carolina Supreme Court for approval. Amendments become effective upon approval by the Court. **Unless otherwise noted, proposed additions to rules are printed in bold and underlined; deletions are interlined.**

Proposed Amendments

At its meeting on July 25, 2014, the council voted to publish the following proposed rule amendments for comment from the members of the bar:

Proposed Amendments to the Discipline and Disability Rules

27 N.C.A.C. 1B, Section .0100, Discipline and Disability of Attorneys

To better identify the program's purpose, the proposed amendments change the name of the Trust Accounting Supervisory Program to the Trust Account Compliance Program. There are no changes to the substance of the rule other than the name change.

.0112 Investigations: Initial Determination; Notice and Response; Committee Referrals

(a) Investigation Authority

...

(k) Referral to Trust Accounting ~~Supervisory Compliance~~ Program

(1) If, at any time before a finding of probable cause, the Grievance Committee determines that the alleged misconduct is primarily attributable to the respondent's failure to employ sound trust accounting techniques, the committee may offer the respondent an opportunity to voluntarily participate in the State Bar's ~~Trust Account Supervisory Compliance~~ Program for up to two years before the committee considers discipline.

If the respondent accepts the committee's offer to participate in the ~~supervisory compliance~~ program, the respondent must fully cooperate with the Trust Account Compliance Counsel...

(2) Completion of Trust Account ~~Supervisory Compliance~~ Program

...

(3) The committee will not refer to the program any case involving possible misappropriation of entrusted funds, criminal conduct, dishonesty, fraud, misrepresentation, or deceit, or any other case the committee deems inappropriate for referral...Referral to the Trust Accounting ~~Supervisory Compliance~~ Program is not a defense to allegations

that a lawyer misappropriated entrusted funds, engaged in criminal conduct, or engaged in conduct involving dishonesty, fraud, misrepresentation, or deceit, and it does not immunize a lawyer from the disciplinary consequences of such conduct.

Proposed Amendments to the Rules Governing the Administration of the CLE Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program

The proposed amendments change the name of the mandatory CLE program for new lawyers from "Professionalism for New Admittees" to "Professionalism for New Attorneys" (PNA Program), and permit the Board of Continuing Education to approve alternative timeframes for the PNA Program, which will give CLE providers more flexibility to be creative in their presentations of the program.

.1518 Continuing Legal Education Program

(a) Annual Requirement

...

(c) Professionalism Requirement for New Members.

Except as provided in paragraph (d)(1), each active member admitted to the North Carolina State Bar after January 1, 2011, must complete the North Carolina State Bar Professionalism for New ~~Admittees~~ Attorneys Program (PNA Program) in the year the member is first required to meet the continuing legal education requirements as set forth in Rule .1526(b) and (c) of this subchapter. CLE credit for the PNA Program shall be applied to the annual mandatory continuing legal education requirements set forth in paragraph (a) above.

(1) Content and Accreditation. The State Bar PNA Program shall consist of 12 hours of training in subjects designated by the State

...

(2) Evaluation ...

(3) ~~Format~~ Timetable and Partial Credit. The PNA Program shall be pre-

ented in two six-hour blocks (with appropriate breaks) over two days. The six-hour blocks do not have to be attended on consecutive days or taken from the same provider; however, no partial credit shall be awarded for attending less than an entire six-hour block unless a special circumstances exemption is granted by the board. The board may approve an alternative timetable for a PNA program upon demonstration by the provider that the alternative timetable will provide an enhanced learning experience or for other good cause; however, no partial credit shall be awarded for attending less than the entire 12-hour program unless a special circumstances exemption is granted by the board.

(4) Online and Prerecorded Programs.

The PNA Program may be distributed over the Internet by live web streaming (webcasting) but no part of the program may be taken online (via the Internet) on demand...

(d) Exemptions from Professionalism Requirement for New Members.

...

Proposed Amendments to Certification Standards for the Juvenile Delinquency Subspecialty

27 N.C.A.C. 1D, Section .2500, Certification Standards for the Criminal Law Specialty

The proposed amendments reduce the number of practice hours required to meet the "substantial involvement" criterion for the juvenile delinquency subspecialty and allow for additional forms of "practice equivalents." This will reflect more realistically the practice experience of qualified

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juvenile delinquency practitioners, particularly in rural communities.

.2508 Standards for Certification as a Specialist in Juvenile Delinquency Law

Each applicant for certification as a specialist in juvenile delinquency law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification:

(a) Licensure and Practice ...

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of juvenile delinquency law.

(1) Substantial involvement shall mean during the five years immediately preceding the application, the applicant devoted an average of at least ~~500~~ **400** hours a year to the practice of juvenile delinquency law, but not less than ~~400~~ **100** hours in any one year. "Practice" shall mean substantive legal work, specifically including representation of juveniles or the state in juvenile delinquency court, done primarily for the purpose of providing legal advice or representation, or a practice equivalent.

(2) "Practice equivalent" shall mean:

(A) ...
(B) ...

(C) Service as a law professor in a juvenile delinquency legal clinic at an accredited law school may be used to meet the requirement set forth in Rule .2508(b)(1).

(D) The practice of state criminal law may be used to meet the requirement set forth in Rule .2508(b)(1) but not to exceed 100 hours for any year during the five years. "Practice of state criminal law" shall mean substantive legal work representing adults or the state in the state's criminal district and superior courts

(3) ...

(b) Continuing Legal Education

...

Proposed Amendments to the Standards for Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, The Plan for Certification of Paralegals

The proposed amendments permit a

degree from a foreign educational institution to satisfy part of the educational requirements for certification if the foreign degree is evaluated by a qualified credential evaluation service and found to be equivalent to an associate's or bachelor's degree from an accredited US institution.

.0119 Standards for Certification of Paralegals

(a) To qualify for certification as a paralegal, an applicant must pay any required fee, and comply with the following standards:

(1) Education. The applicant must have earned one of the following:

(A) an associate's, bachelor's, or master's degree from a qualified paralegal studies program;

(B) **a certificate from a qualified paralegal studies program** and an associate's or bachelor's degree in any discipline

from any institution of post-secondary education that is accredited by an accrediting body recognized by the United States Department of Education (**an accredited US institution**) or **an equivalent degree from a foreign educational institution if the degree is determined to be equivalent to a degree from an accredited US institution by a organization that is a member of the National Association of Credential Evaluation Services (NACES) or the Association of International Credentials Evaluators (AICE)** and ~~a certificate from a qualified paralegal studies program~~; or
(C) a juris doctorate degree from a law school accredited by the American Bar Association.

(2) Examination.

... ■

In Memoriam

Douglas E. Canders
Fayetteville, NC

John Fleming Carter III
Wilmington, NC

Leonor Ortiz Childers
Durham, NC

David McKenzie Clark
Greensboro, NC

William C. Connor
Greensboro, NC

John Wyatt Dickson
Fayetteville, NC

Wiley Edwin Gavin
Asheboro, NC

William Campbell Gray Jr.
Wilkesboro, NC

Fred A. Gregory
Durham, NC

Charles Franklin Griffin
Charlotte, NC

Robert Curtis Gunst Sr.
Waxhaw, NC

Alton Myles Haynes Jr.
Pineville, NC

Margaret McLean Faw Fonvielle
Heyward
Wilmington, NC

Clark Mason Holt
Reidsville, NC

William Horace Lewis Jr.
Farmville, NC

William F. Marshall Jr.
Danbury, NC

Thomas Hill Matthews
Rocky Mount, NC

Christy Eve Reid
Charlotte, NC

Archie Leak Smith
Asheboro, NC

Dow M. Spaulding
Greensboro, NC

Daniel Thomas Tillman
Wadesboro, NC

David H. Wagner Jr.
Winston-Salem, NC

Harold L. Waters
Jacksonville, NC

Laura Kay Zhao
Charlotte, NC

Committee Revisits Sending a NC Subpoena to a Records Custodian in Another Jurisdiction

Council Actions

At its meeting on July 25, 2014, the State Bar Council adopted the ethics opinions summarized below:

2013 Formal Ethics Opinion 8

Responding to the Mental Impairment of Firm Lawyer

Opinion analyzes the responsibilities of the partners and supervisory lawyers in a firm when another firm lawyer has a mental impairment.

2013 Formal Ethics Opinion 12

Disclosure of Settlement Terms to Former Lawyer Asserting a Claim for Fee Division

Opinion rules that, in a workers' compensation case, when a client terminates representation, pursuant to an applicable exception to the duty of confidentiality, the subsequently hired lawyer may disclose the settlement terms to the former lawyer to resolve a pre-litigation claim for fee division.

2014 Formal Ethics Opinion 4

Serving Subpoenas on Health Care Providers Covered by HIPAA

Opinion rules that a lawyer may send a subpoena for medical records to an entity covered by HIPAA without providing the assurances necessary for the entity to comply with the subpoena as set out in 45 C.F.R. § 164.512(e)(ii).

2014 Formal Ethics Opinion 5

Advising a Civil Litigation Client About Social Media

Opinion rules a lawyer must advise a client about information on social media if information and postings on social media are relevant and material to the client's representation. The lawyer may advise a client to remove information on social media if not spoliation or otherwise illegal.

2014 Formal Ethics Opinion 6

Duty to Avoid Conflicts When Advising Members of Nonprofit Organization

Opinion rules that a lawyer who provides free brief consultations to members of a nonprofit organization must still screen for conflicts prior to conducting a consultation.

Ethics Committee Actions

At its meeting on July 24, 2014, the Ethics Committee voted to send the following proposed opinion to a subcommittee for continued study: Proposed 2013 FEO 14, *Representation of Parties to a Commercial Real Estate Loan Closing*. The committee also voted to publish a proposed substitute opinion for 2013 FEO 2, *Providing Defendant with Discovery During Representation*, an opinion that was adopted by the State Bar Council on January 24, 2014. Although the committee declined to recommend withdrawal of the existing opinion at this time, it is publishing the proposed substitute opinion to garner comment from members of the bar. On page 46 the Legal Ethics column considers the competing concerns addressed in the adopted opinion and the proposed substitute opinion which are printed, in their entirety, after the article. The Ethics Committee also voted to publish a revised version of one proposed opinion and three new proposed opinions. The comments of readers on the proposed opinions are welcomed.

Proposed 2014 Formal Ethics Opinion 1 Protecting Confidential Client Information When Mentoring July 24, 2014

Proposed opinion examines issues relative to confidentiality and the attorney-client privilege when mentoring law students and lawyers.

Note: This opinion does not apply to law students certified pursuant to the Rules Governing the Practical Training of Law Students (27 N.C.A.C 1C, Section .0200) or to lawyers, employees, or law clerks (paid or volunteer) being mentored or supervised by a lawyer *within the same firm*. This opinion addresses issues pertaining to informal mentoring relationships between lawyers, or between a lawyer and a law student, as well as to established bar and/or law school mentoring programs. Mentoring relationships between a lawyer and a college or a high

school student are not addressed by this opinion because such relationships require more restrictive measures due to these students' presumed inexperience and lack of understanding of a lawyer's professional responsibilities, particularly the professional duty of confidentiality.

Inquiry #1:

May a lawyer who is mentoring a law student allow the student to observe confidential client consultations between the lawyer and the lawyer's client?

Opinion #1:

Yes. The lawyer may allow the law student to observe the consultation so long as the student signs a confidentiality agreement and the lawyer's client gives his or her informed consent, *confirmed in writing*.

Rule 1.6(a) of the Rules of Professional Conduct provides that a lawyer shall not reveal information acquired during the professional relationship with a client unless (1) the client gives informed consent; (2) the disclosure is impliedly authorized; or (3) one of the exceptions set out in Rule 1.6(b) applies. "Informed consent" is defined by Rule 1.0(f) as denoting "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate to the circumstances."

Relevant to mentoring scenarios is the potential waiver of the attorney-client privilege that can occur when communications between the lawyer and the client take place in the presence of a third party. The attorney-client privilege prohibits a lawyer from testifying as to confidential communications between the lawyer and the client for the purpose of legal representation. *State v. McIntosh*, 336 NC 517, 523, 444 S.E.2d 438, 441 (1994).

It is important to note the distinction between the duty of confidentiality set out in Rule 1.6 of the Rules of Professional Conduct

and the attorney-client privilege. Although the concepts of confidentiality and attorney-client privilege are often used interchangeably, privilege applies to a much narrower category of client information. A privilege exists if (1) the relation of attorney and client existed at the time the communication was made, (2) the communication was made in confidence, (3) the communication relates to a matter about which the attorney is being professionally consulted, (4) the communication was made in the course of giving or seeking legal advice for a proper purpose although litigation need not be contemplated, and (5) the client has not waived the privilege. *McIntosh*, 336 NC at 523-24, 444 S.E.2d at 442. Because the representation of a client typically includes many activities that are not confidential communications between a client and a lawyer, there are many opportunities for a mentee to observe a lawyer/mentor without implicating the attorney-client privilege. (Examples include: real estate closings, court proceedings, witness interviews, etc.)

The privilege is fundamental to the client-lawyer relationship and the trust that underpins that relationship. To seek the client's informed consent, the lawyer must research the law relating to the attorney-client privilege and explain to the client what effect the law student's presence during the consultation may have on the attorney-client privilege including a potential waiver of the privilege. The lawyer must also explain any other adverse effect on the client's interests. ABA Standing Comm. on Ethics and Prof'l Resp., Formal Op. 98-411(1988). The lawyer must not ask for consent unless, in his professional opinion, either the attorney-client privilege will not be waived by the presence of the law student or a potential waiver of the attorney-client privilege will cause minimal, or no, detriment to the client's interests such that to ask for consent is reasonable.

Pursuant to Rule 1.0(c), "confirmed in writing" in this context "denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent."

The issues addressed in this opinion as to the potential waiver of the privilege are limited to mentoring scenarios where a law student/new lawyer/mentee is *observing* a communication between the lawyer and the lawyer's client but is not participating in the

representation as co-counsel or as an agent of the representing lawyer.

Inquiry #2:

If a lawyer is mentored by a lawyer in a different law firm, do the requirements in Opinion #1 apply when the lawyer-mentee observes a client consultation between the lawyer-mentor and a client or when the lawyer-mentor observes the lawyer-mentee conducting such a consultation with his client?

Opinion #2:

Yes. The lawyer conducting the consultation must evaluate the effect of the observing lawyer's presence on the attorney-client privilege. If the lawyer concludes that, in his professional opinion, either the attorney-client privilege will not be waived by the presence of the other lawyer, or a potential waiver of the attorney-client privilege will cause minimal or no detriment to the client's interests such that to ask for consent is reasonable, the lawyer may ask the client to consent to the observation. The lawyer must obtain the client's informed consent *confirmed in writing*.

The lawyer conducting the consultation must also obtain an agreement from the observing lawyer to maintain the confidentiality of the information as well as an agreement that the observing lawyer will not engage in adverse representations. Rule 1.7 and Rule 1.9.

Both lawyers should check for conflicts of interest in advance of the consultation. Rule 1.7 and Rule 1.9.

Inquiry #3:

When a lawyer seeks advice from a lawyer-mentor on the representation of a client of the lawyer, what actions should be taken to protect confidential client information?

Opinion #3:

If possible, the lawyer should try to obtain guidance without disclosing identifying client information, which can be done by using a hypothetical. If the consultation is general and does not involve the disclosure of identifying client information, no client consent is necessary and the lawyers do not have to comply with the requirements set out in Opinion #2.

If the consultation is intended to help the lawyer-mentee comply with the ethics rules,

Public Information

The Ethics Committee's meetings are public, and materials submitted for consideration are generally NOT held in confidence. Persons submitting requests for advice are cautioned that inquiries should not disclose client confidences or sensitive information that is not necessary to the resolution of the ethical questions presented.

Citation

To foster consistency in citation to the North Carolina Rules of Professional Conduct and the formal ethics opinions adopted by the North Carolina State Bar Council, the following formats are recommended:

- To cite a North Carolina Rule of Professional Conduct: NC Rules of Prof'l Conduct Rule 1.1 (2003)
- To cite a North Carolina formal ethics opinion: NC State Bar Formal Op. 1 (2011)

Note that the current, informal method of citation used within the formal ethics opinions themselves and in this *Journal* article will continue for a transitional period.

no client consent is necessary and the lawyers do not have to comply with the requirements set out in Opinion #2. Rule 1.6(b)(5) provides that a lawyer may reveal protected client information to the extent the lawyer reasonably believes necessary "to secure legal advice about the lawyer's compliance with [the Rules of Professional Conduct]." Pursuant to Comment [10] to Rule 1.6:

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with [the Rules of Professional Conduct]. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph

Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the Rules of Professional Conduct as revised effective March 1, 2003, and thereafter amended, and referred to herein as the Rules of Professional Conduct (2003). The proposed opinions are issued pursuant to the "Procedures for Ruling on Questions of Legal Ethics." 27 N.C.A.C. ID, Sect. .0100. Any interested person or group may submit a written comment or request to be heard concerning a proposed opinion. Any comment or request should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, by September 30, 2014.

Captions and Headnotes

A caption and a short description of each of the proposed opinions precedes the statement of the inquiry. The captions and descriptions are provided as research aids and are not official statements of the Ethics Committee or the council.

(b)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

If the consultation does not involve advice about the lawyer's compliance with the Rules of Professional Conduct, a hypothetical is not practical, or making the inquiry risks disclosure of information relating to the representation, the lawyer-mentee must comply with the requirements set out in Opinion #2.

Both the lawyer-mentee and the lawyer-mentor should avoid the creation of a conflict of interest with any existing or former clients by virtue of the mentoring relationship. For example, the lawyer-mentee should not consult with a lawyer he knows has represented the opposing party in the

past without first ascertaining that the matters are not substantially related, and that the opposing party is not represented in the current matter by the lawyer-mentor. Similarly, the lawyer-mentor should obtain information sufficient to determine that the lawyer-mentee's matter is not one affecting the interests of an existing or former client. Rule 1.7 and Rule 1.9.

Proposed 2014 Formal Ethics Opinion 7 Use of North Carolina Subpoena to Obtain Documents from Foreign Entity or Individual July 24, 2014

Proposed opinion rules that a lawyer may provide a foreign entity or individual with a North Carolina subpoena accompanied by a statement/letter explaining that the subpoena is not enforceable in the foreign jurisdiction, the recipient is not required to comply with the subpoena, and the subpoena is being provided solely for the recipient's records.

Editor's note: This opinion supplements and clarifies 2010 FEO 2, *Obtaining Medical Records from Out of State Health Care Providers*.

Inquiry #1:

In a state legal matter, a lawyer wishes to obtain documents from a medical provider or other entity that is not located in North Carolina and does not have a registered agent in the state (foreign entity). The lawyer contacts the foreign entity and requests the documents. The lawyer informs the foreign entity that the subpoena power set out in N.C. R. Civ. P. 45 does not extend to the foreign jurisdiction. The foreign entity indicates that it will comply with the request for documents upon the receipt of a North Carolina subpoena "for its records."

May the lawyer provide the foreign entity with a North Carolina subpoena accompanied by a statement/letter explaining that the subpoena is not enforceable in the foreign jurisdiction and is provided to the entity solely for the entity's records?

Opinion #1:

Yes. Rule 8.4(c) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. RPC 236 provides that it is false and deceptive for a lawyer to use the subpoena process to mislead the custodian of

documentary evidence as to the lawyer's authority to require the production of such documents. 2010 FEO 2 prohibits a lawyer's use of a subpoena to request medical records under the authority of Rule 45 knowing that the North Carolina subpoena is unenforceable. 2010 FEO 2 explains that if "the North Carolina subpoena is not enforceable out of state, the lawyer may not misrepresent to the out of state health care provider that it must comply with the subpoena."

RPC 236 and 2010 FEO 2 prohibit a lawyer from making misrepresentations to the subpoena recipient that the lawyer has the legal authority to issue the subpoena under Rule 45 or *misleading* the recipient as to whether compliance with the subpoena is required by law.

If the subpoena is accompanied by a statement/letter explaining that the subpoena is not enforceable in the foreign jurisdiction, the recipient is not required to comply with the subpoena, and the subpoena is being provided solely for the entity's records, the lawyer has not made misrepresentations to, nor misled, the subpoena recipient. The subpoena recipient is aware that it cannot be compelled to comply with the subpoena and may determine whether to provide the requested documents voluntarily.

Inquiry #2:

Would the answer differ if the lawyer wishes to obtain the appearance and testimony of an individual over which the North Carolina court does not have *in personam* jurisdiction?

Opinion #2:

No. If an individual requests a North Carolina subpoena, knowing that the North Carolina court lacks *in personam* jurisdiction over the individual and the subpoena will not be enforceable, the lawyer may provide the individual with the subpoena, accompanied by a statement/letter explaining that the subpoena is not enforceable as to the individual and is being provided solely at the individual's request.

Proposed 2014 Formal Ethics Opinion 8 Accepting an Invitation from a Judge to Connect on LinkedIn July 24, 2014

Proposed opinion rules that a lawyer may accept an invitation from a judge to be a "con-

nection” on a professional networking website, and may endorse a judge. However, a lawyer may not accept a legal skill or expertise endorsement or recommendation from a judge.

Facts:

Lawyer has a profile listing on LinkedIn, a social networking website for people in professional occupations. The website allows registered users (“members”) to maintain a list of contact details on their LinkedIn pages for people with whom they have some level of relationship via the website. These contacts are called “connections.” Members can invite anyone (whether a site user or not) to become a connection.

LinkedIn can be used to list jobs and search for job candidates, to find employment, and to seek out business opportunities. Members can view the connections of other members, post their photographs, and view the photos of other members. Members can post comments on another member’s profile page. Members can also endorse or write recommendations for other members. Such endorsements or recommendations, if accepted by the recipient, are posted on the recipient’s profile listing.

Inquiry #1:

May a lawyer with a professional profile on LinkedIn accept an invitation to connect from a judge?

Opinion #1:

Yes. Interactions with judges using social media are evaluated in the same manner as personal interactions with a judge, such as an invitation to dinner. In certain scenarios, a lawyer may accept a judge’s dinner invitation. Similarly, in certain scenarios a lawyer may accept a LinkedIn invitation to connect from a judge. However, if a lawyer represents clients in proceedings before a judge, the lawyer is subject to the following duties: to avoid conduct prejudicial to the administration of justice; to not state or imply an ability to influence improperly a government agency or official; and to avoid *ex parte* communications with a judge regarding a legal matter or issue the judge is considering. See Rule 3.5 and Rule 8.4. These duties may require the lawyer to decline a judge’s invitation to connect on LinkedIn.

Rule 8.4(d) provides that it is professional misconduct for a lawyer to “engage in conduct that is prejudicial to the administra-

tion of justice.” Rule 8.4(e) provides that it is professional misconduct for a lawyer to “state or imply an ability to influence improperly a government agency or official.” Lawyers have an obligation to protect the integrity of the judicial system and to avoid creating an appearance of judicial partiality. See 2005 FEO 1.

If a lawyer receives an invitation to connect from a judge during the pendency of a matter before the judge, and the lawyer concludes that accepting the invitation will impair the lawyer’s compliance with these duties, the lawyer should not accept the judge’s invitation to connect until the matter is concluded. The lawyer may communicate to the judge the reason the lawyer did not accept the judge’s invitation. Such a communication with the judge is not a prohibited *ex parte* communication provided the communication does not include a discussion of the underlying legal matter.

Rule 3.5 prohibits lawyers from engaging in *ex parte* communications with a judge. Because connected members can post comments on each other’s profile pages, the connection between a judge and a lawyer appearing in a matter before the judge could lead to improper *ex parte* communications. Therefore, while the lawyer has a matter pending before a judge, the lawyer may not use LinkedIn or any other form of social media to communicate with the judge about the pending matter.

Rule 8.4(f) provides that it is professional misconduct for a lawyer to “knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.” To the extent that a judge is prohibited by the North Carolina Code of Judicial Conduct from participating in LinkedIn, or from sending invitations to connect to lawyers, a lawyer may not assist the judge in violating such prohibitions.

Inquiry #2:

May the lawyer send an invitation to connect to a judge?

Opinion #2:

Yes, subject to the limitations described in Opinion #1.

Inquiry #3:

A LinkedIn member has the option of displaying a “skills & expertise” section within his profile. A member can add items to the

“skills & expertise” section of his profile page. In addition, some connections can add a new item to another member’s “skills & expertise” section, can “endorse” a skill or expertise already listed for the member, or write a recommendation for the member. A member who is being endorsed by another member will receive a notification containing the identity of the endorser and the specific skill or expertise that is being endorsed. The member may decline the endorsement entirely or choose the specific endorsements to be displayed. The endorsed member may also subsequently edit the “skills & expertise” section to “hide” selected endorsements. If a member endorses another member, and the endorsement is not declined by the recipient, the endorser’s name and profile picture will appear next to the skill on the endorsed member’s profile.

A recommendation is a comment written by a LinkedIn member to recognize or commend another member. When someone recommends a member, the recommended member will receive a message in the recommended member’s LinkedIn inbox and a notification on the member’s “Manage Recommendations” page. Recommendations are only visible to connections. A member can choose to hide a recommendation from the member’s profile, but cannot delete it. Recommendations written for others can be withdrawn or revised.

May a lawyer endorse a judge’s legal skills or expertise, or write a recommendation on the judge’s profile page?

Opinion #3:

Yes, subject to the limitations explained in Opinion #1.

Inquiry #4:

May a lawyer accept an endorsement or recommendation from a judge and display the endorsement or recommendation on his profile page?

Opinion #4:

No. Displaying an endorsement or recommendation from a judge on a lawyer’s profile page would create the appearance of judicial partiality and the lawyer must decline. See Rule 8.4(e).

Inquiry #5:

May a lawyer accept and post endorsements and recommendations on his

LinkedIn profile page from persons other than judges?

Opinion #5:

Lawyers are professionally obligated to ensure that communications about the lawyer or the lawyer's services are not false or misleading. *See* Rule 7.1(a). Provided that the content of the endorsement or recommendation is truthful and not misleading in compliance with the requirements of Rule 7.1, the lawyer may post endorsements and recommendations from persons other than judges on the lawyer's LinkedIn profile page. *See* 2012 FEO 8.

Inquiry #6:

A lawyer previously accepted and displayed on his LinkedIn profile page an endorsement or recommendation from a lawyer who subsequently became a judge. Is the lawyer required to remove the endorsement or recommendation from the lawyer's profile?

Opinion #6:

Yes. *See* Opinion #4.

Inquiry #7:

Do the holdings in this opinion apply to other social media applications such as Facebook, Twitter, Google+, Instagram, and Myspace?

Opinion #7:

The holdings apply to any social media application that allows public display of connections, endorsements, or recommendations between lawyers and judges.

Proposed 2014 Formal Ethics Opinion 9 Private Lawyer Supervision of Investigation Involving Misrepresentation July 24, 2014

Proposed opinion rules that a private lawyer may supervise an investigation involving misrepresentation if certain conditions are satisfied.

Note: This opinion does not apply to the conduct of a government lawyer. As explained in comment [1] to Rule 8.4, the prohibition in Rule 8.4(a) against knowingly assisting another to violate the Rules of Professional Conduct or violating the Rules of Professional Conduct through the acts of another does not prohibit a government

lawyer from providing legal advice to investigatory personnel relative to any action such as investigatory personnel are lawfully entitled to take.

In addition, this opinion is limited to private lawyers who advise, direct, or supervise conduct involving dishonesty, deceit, or misrepresentation as opposed to a lawyer who personally participates in such conduct.

Inquiry:

Attorney A was retained by Client C to investigate and, if appropriate, file a lawsuit against Client C's former employer, E. Employer E employed Client C as a janitor and required him to work 60 hours per week. E paid Client C a salary of \$400 per week. Attorney A believes that because his client's employment was a "non-exempt position" under the North Carolina Wage and Hour Act, the payment method used by E was unlawful. Instead, E should have paid Client C at least \$7.25 (minimum wage) per hour for each of the first 40 hours Client C worked per week, and at least \$10.88 (time and a half) for each hour in excess of 40 (overtime) that Client C worked per week.

Prior to filing a lawsuit, Attorney A wants to retain a private investigator to investigate E's payment practices. The private investigator suggests using lawful, but misleading or deceptive tactics, to obtain the information Attorney A seeks. For example, the private investigator may pose as a person interested in being hired by E in the same capacity as Client C to see if E violates the North Carolina Wage and Hour Act when compensating the investigator.

Prior to filing a lawsuit, may Attorney A retain a private investigator who will misrepresent his identity and purpose when conducting an investigation into E's payment practices?

Opinion:

Rule 8.4(c) provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." This prohibition is extended to third parties acting at the direction of a lawyer by Rule 8.4(a). However, the Rules of Professional Conduct are rules of reason. Rule 0.2, Scope. Therefore, not every act of dishonesty, deceit, or misrepresentation constitutes professional misconduct.

Other jurisdictions have interpreted their

Rules of Professional Conduct to permit lawyer supervision of investigations involving misrepresentation in circumstances similar to that set out in the inquiry. For example, the bars of Arizona and Maryland permit lawyers to use "testers" who employ misrepresentation to collect evidence of discriminatory practices. *Ariz. State Bar Comm. on the Rules of Prof'l Conduct, Op. 99-11 (1999)*; *Maryland Bar Ass'n, Op. 2006-02 (2005)*. These ethics opinions conclude that testers are necessary to prove discriminatory practices and, therefore, serve an important public policy. The State Bar of Arizona opined that it would be inconsistent with the intent of the Rules of Professional Conduct to interpret the rules to prohibit a lawyer from supervising the activity of testers. *Ariz. State Bar Comm. on the Rules of Prof'l Conduct, Op. 99-11 (1999)*.

The intent of Rule 8.4 is set out in comment [3] to the rule: "The purpose of professional discipline for misconduct is not punishment, but to protect the public, the courts, and the legal profession." The challenge is to balance the public's interest in having unlawful activity fully investigated and possibly thereby stopped, with the public's and the profession's interest in ensuring that lawyers conduct themselves with integrity and honesty. In an attempt to balance these two important interests, we conclude that a lawyer may advise, direct, or supervise an investigation involving pretext under certain limited circumstances.

A lawyer may advise, direct, or supervise the use of misrepresentation (1) in lawful efforts to obtain information on unlawful activity; (2) in the investigation of violations of criminal law, civil law, or constitutional rights; (3) if the lawyer's conduct is otherwise in compliance with the Rules of Professional Conduct; (4) the lawyer has a good faith belief that there is a reasonable possibility that a violation of criminal law, civil law, or constitutional rights has taken place, is taking place, or will take place in the foreseeable future; (5) misrepresentations are limited to identity or purpose; and (6) the evidence sought is not reasonably and readily available through other means.

If Attorney A concludes that each of the conditions is satisfied, he may retain a private investigator to conduct an investigation into E's payment practices which investigation may include misrepresentations as to identity and purpose. ■

Grappling with the Duty to Inform When a Client is Incarcerated

BY SUZANNE LEVER

Imagine that you have been wrongly accused of a crime that is punishable by death. Because you are incarcerated, you have been forced to close down your law practice. With no income, you are unable to retain a private defense lawyer. Therefore, you are being defended by a court-appointed lawyer. Eager to learn what evidence the state has against you, you ask to see the discovery. Your lawyer reviews the discovery and provides you with his summary of the relevant discovery materials. Anxious and unsatisfied, you request the opportunity to review the complete discovery file. Do the Rules of Professional Conduct require your lawyer to comply with your request?

Now imagine that you have been court-appointed to represent a defendant in a capital case. While awaiting trial, the incarcerated defendant has had several amorous telephone conversations with his girlfriend, all of which have been recorded per prison regulations. The recordings are included in the discovery materials provided to you by the state. Your paralegal reviews the 17 plus hours of recordings and determines that they contain no information relevant to your client's legal defense. After providing the defendant with your summary of the relevant discovery materials, the defendant requests the opportunity to personally review all of the discovery, including the recordings of the telephone conversations. It is not permissible to leave the discovery with the defendant in the jail. Therefore, one of your staff members will have to travel to the jail and sit with the defendant while he reviews the written discovery and listens to the recordings. Do the Rules of Professional Conduct require you to comply with the defendant's request?

Rule 1.4 provides that a lawyer shall keep a client *reasonably informed* about the status

of a matter and promptly comply with reasonable requests for information. The two scenarios above demonstrate that what is "reasonable" may be in the eyes of the beholder.

A recently adopted ethics opinion attempts to give guidance to lawyers faced with such discovery review requests. Pursuant to 2013 FEO 2 (adopted 1/24/2014), if, *after* providing a criminal client with a summary of the discovery materials, the client requests access to the entire discovery file, the lawyer must afford the client the opportunity to review all of the "relevant" discovery materials unless the lawyer believes it is not in the best interest of the client's legal defense to comply with the request. In determining what discovery materials are relevant, and what disclosure is in the best interest of the client's legal defense, the lawyer must exercise his independent professional judgment.

The content of 2013 FEO 2 was, and continues to be, hotly debated. Some lawyers believe a criminal defense client is absolutely entitled to review everything in the client's file. Other lawyers argue that a criminal defense lawyer has absolute discretion to determine what file materials to disclose to a criminal client. Rule 1.2 discusses the general allocation of authority between the lawyer and the client. The rule provides that a lawyer must abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. Comment [2] to Rule 1.2 notes that clients "normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal, and tactical matters."

Query: Is a criminal defense lawyer's decision on whether to provide a client with unlimited access to discovery materials a

matter of trial strategy and judgment that ultimately lies within the lawyer's discretion?

There are genuine concerns underlying the continuing discussion: the limited resources available to represent indigent defendants; the practical difficulties in providing discovery review to an incarcerated defendant; the sheer volume of discovery produced pursuant to open discovery laws; and the desire to provide equal access to justice to all criminal defendants.

2013 FEO 2 attempts to address these sometimes competing concerns in the context of a lawyer's duties under the Rules of Professional Conduct. Of paramount importance in the drafting was the desire to craft an ethics opinion that did not differentiate a lawyer's professional responsibilities to clients based on the client's location or ability to pay for the lawyer's services.

The Ethics Committee continued to debate 2013 FEO 2 even after its adoption. Given the importance of the issues addressed in the opinion, as well as the necessity for immediate guidance for criminal defense lawyers, the Ethics Committee took an unusual step at its meeting on July 24, 2014, by voting to publish for comment an alternative version of the opinion.

Without substantially changing the conclusions in 2013 FEO 2, the alternative proposed opinion emphasizes that, in determining what discovery materials are relevant and what disclosure is in the best interest of the client's legal defense, the lawyer must exercise his or her independent professional judgment in the context of the critical decisions that are exclusively those of the criminal defendant. Under Rule 1.2(a)(1), the client in a criminal case has the authority to decide the "plea to be entered, whether to waive a jury trial, and whether [to] testify." The opinion draws the connection between these decisions and the duty to keep the client reasonably informed and to respond

to requests for information. The alternative proposed opinion states that a criminal defense lawyer complies with the requirement of Rule 1.4 to keep a client “reasonably informed” by providing the client with information sufficient to make these important decisions.

The two opinions also differ slightly as to the criteria for withholding relevant discovery from a criminal defense client. The adopted opinion provides that a lawyer may withhold relevant discovery if withholding the information is in the best interest of the client’s legal defense. The adopted opinion adds that the defense lawyer may redact information that would endanger the safety and welfare of the client or others, violate a court rule or order, or is subject to a protective order or nondisclosure agreement. The acceptable justifications for withholding relevant discovery in the alternative opinion are expanded to include discovery agreements and time constraints due to the volume of discovery and deadlines for trial or pleas.

Query: Does the adopted opinion allow more discretion to the lawyer because it does not specify the conditions under which a lawyer may withhold review of discovery from an incarcerated client, or is more specific guidance, as provided in the alternative opinion, preferable?

Comments on the adopted opinion as well as the alternative draft will be considered at the October ethics meeting.

Suzanne Lever is assistant ethics counsel for the North Carolina State Bar.

Providing Discovery to an Incarcerated Client

At its meeting on July 24, 2014, the Ethics Committee considered a motion to recommend that the State Bar Council withdraw existing ethics opinion 2013 FEO 4, which was adopted by the Council in January of this year, and to publish a proposed substitute opinion. The motion failed but a second motion, to publish the proposed substitute opinion for comment, passed. It was agreed that the existing opinion would be published together with the substitute so that members of the bar could compare and offer comment on whether the substitute, by providing additional or different guidance, should supersede the existing opinion. Comments are strongly encour-

aged and should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, by September 30, 2014.

2013 FEO 2 Providing Defendant with Discovery During Representation

January 24, 2014

Opinion rules that if, after providing a criminal client with a summary/explanation of the discovery materials in the client’s file, the client requests access to the entire file, the lawyer must afford the client the opportunity to meaningfully review all of the relevant discovery materials unless the lawyer believes it is in the best interest of the client’s legal defense not to do so.

Inquiry #1:

Lawyer represents Defendant in a criminal case. The state has provided Lawyer with discovery as PDF files. The state has also provided Lawyer DVDs containing copies of the video recordings of interrogations of Defendant and a codefendant; surveillance videotapes; and audio recordings of calls made by Defendant and the codefendant from the jail.

Lawyer reviewed the discovery and provided Defendant with a summary of the evidence. Defendant demands that he be provided a copy of the entire 1,200 pages of discovery and be allowed to view/listen to the 17 hours of video and audio recordings.

Does Lawyer have an ethical duty to comply with the client’s demand?

Opinion #1:

As a matter of professional responsibility, Rule 1.4 requires a lawyer to “keep a client reasonably informed about the status of a matter” and “promptly comply with reasonable requests for information.” As stated in comment [5] to Rule 1.4:

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued...The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interests, and the client’s overall requirements as to the character of representation.

The duties set out in Rule 1.4 are similar to those found in ABA Standards for

Criminal Justice, Defense Functions, Standard 4-3.8 (3d ed. 1993) which provides:

- (a) Defense counsel should keep the client informed of the developments in the case and the progress of preparing the defense and should promptly comply with reasonable requests for information.
- (b) Defense counsel should explain developments in the case to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

During the course of the representation, the lawyer complies with the requirements of Rule 1.4 by providing the client with a summary of the discovery materials and consulting with the client as to the relevance of the materials to the client’s case. However, if the lawyer has provided the client with a summary/explanation of the discovery materials and the client, nonetheless, requests copies of any of the file materials, the lawyer must afford the client the opportunity to meaningfully review all of the relevant discovery material unless the lawyer believes it is in the best interest of the client’s legal defense to deny the request. The lawyer is not required to provide the client with a physical copy of the discovery materials during the course of the representation.

In determining what discovery materials are relevant, and what disclosure is in the best interest of the client’s legal defense, the lawyer must exercise his or her independent professional judgment. As stated in comment [5] to Rule 1.4: “The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interests, and the client’s overall requirements as to the character of representation.” However, as stated in comment [7] to Rule 1.4, a lawyer “may not withhold information to serve the lawyer’s own interest or convenience or the interest or convenience of another person.” Therefore, the lawyer may not deny the request due to issues of expense or inconvenience.

Inquiry #2:

If Lawyer provides Defendant with a copy of, or access to, discovery materials, may Lawyer redact or otherwise remove

private information of a third person, such as the address of a witness or pictures of an alleged rape victim?

Opinion #2:

The lawyer may redact or otherwise remove information that the lawyer determines, in his professional discretion, should not be disclosed to the client, including information that would endanger the safety and welfare of the client or others, violate a court rule or order, or is subject to any protective order or nondisclosure agreement. *See* Rule 1.4, cmt. [7].

Proposed Substitute for 2013 Formal Ethics Opinion 2 Providing Incarcerated Defendant with Opportunity to Review Discovery Materials

July 24, 2014

Proposed substitute opinion rules that if, after providing an incarcerated criminal client with a summary/explanation of the discovery materials in the client's file, the client requests access to any of the discovery materials, the lawyer must afford the client the opportunity to meaningfully review relevant discovery materials unless certain conditions exist.

Inquiry #1:

Lawyer represents Defendant in a criminal case. The state has provided Lawyer with discovery as PDF files. The state has also given Lawyer DVDs containing copies of the video recordings of interrogations of Defendant and a codefendant; surveillance videotapes; and audio recordings of calls made by Defendant and the codefendant from the jail.

Lawyer reviewed the discovery and provided Defendant with a summary of the evidence. Defendant demands that he be provided a copy of the entire 1,200 pages of discovery and be allowed to view/listen to the 17 hours of video and audio recordings.

Does Lawyer have an ethical duty to comply with the client's demand?

Opinion #1:

As a matter of professional responsibility, Rule 1.4 requires a lawyer to "keep a client reasonably informed about the status of a matter" and "promptly comply with reasonable requests for information." As stated in comment [5] to Rule 1.4:

The client should have sufficient information to participate intelligently in deci-

sions concerning the objectives of the representation and the means by which they are to be pursued...The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

The duties set out in Rule 1.4 are similar to those found in ABA Standards for Criminal Justice, Defense Functions, Standard 4-3.8 (3d ed. 1993) which provides:

(a) Defense counsel should keep the client informed of the developments in the case and the progress of preparing the defense and should promptly comply with reasonable requests for information.

(b) Defense counsel should explain developments in the case to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Under Rule 1.2(a)(1), the client in a criminal case has the authority to decide, "after consultation with the lawyer, as to a plea to be entered, whether to waive a jury trial, and whether the client will testify." During the course of the representation, a criminal defense lawyer complies with the requirements of Rule 1.4 to keep a client "reasonably informed" by providing the client with sufficient information to make informed decisions about these important issues. This obligation is fulfilled by providing the client with a summary of the discovery materials and consulting with the client as to the relevance of the materials to the client's case. If the lawyer has provided the client with a summary/explanation of the discovery materials and the client, nonetheless, requests copies or asks to review any of the file materials, the duty to comply with reasonable requests for information requires the lawyer to afford the client the opportunity to meaningfully review relevant discovery material unless one or more of the following conditions exist: (1) the lawyer believes it is in the best interest of the client's legal defense to deny the request; (2) a protective order or court rule limiting the discovery materials that may be shown to the defendant or taken to a jail or prison is in effect; (3) such review is prohibited by the specific terms of a discovery agreement¹ between the prosecution and the defense lawyer; (4) because of circumstances beyond the defense counsel's control, such review is

not feasible in light of the volume of discovery materials and the time remaining before trial or before a decision must be made by the client on a plea offer; or (5) disclosure of the discovery materials will endanger the safety or welfare of the client or others.

In determining what discovery materials are relevant, and what disclosure is in the best interest of the client's legal defense, the lawyer must exercise his or her independent professional judgment in the context of the decisions that the defendant must make about what plea to enter, whether to waive jury trial, and whether to testify. *See* Rule 1.2(a)(1). As noted above: "The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation." Rule 1.4, cmt. [5]. However, as stated in comment [7] to Rule 1.4, a lawyer "may not withhold information to serve the lawyer's own interest or convenience or the interest or convenience of another person." Therefore, the lawyer may not deny the request due to issues of expense or inconvenience.

Regardless of whether the lawyer determines that the client should have an opportunity to review some or all of the discovery materials, the lawyer is not required to provide the client with a physical copy of the discovery materials during the course of the representation.

Inquiry #2:

If Lawyer provides Defendant with a copy of, or access to, discovery materials, may Lawyer redact or otherwise remove private information of a third person, such as the address of a witness or pictures of an alleged rape victim?

Opinion #2:

The lawyer may redact or otherwise remove information that the lawyer determines, in his professional judgment, should not be disclosed to the client, including information that would endanger the safety and welfare of the client or is subject to a protective order, court rule, or agreement prohibiting disclosure. *See* Rule 1.4, cmt. [7]. ■

Endnote

1. Discovery agreements between the prosecution and the defense may present other ethical concerns not addressed in this opinion.

Law School Briefs

All of the law schools located in North Carolina are invited to provide material for this column. Below are the submissions we received this quarter.

Campbell University School of Law

Campbell Law Confers 150 Degrees at 2014 Graduation—Campbell Law School conferred 150 Juris Doctor degrees at its 36th annual hooding and graduation ceremony on May 9 at Meymandi Concert Hall at the Duke Energy Center for the Performing Arts. Red Hat President and Chief Executive Officer Jim Whitehurst delivered the commencement address.

The National Jurist Names Campbell Law to List of Top Private Law Schools for Best Value—Campbell Law School has been named to a list of the top 22 private law schools in the country for best value by *The National Jurist*. In selecting institutions for inclusion, the publication considered a number of academic and financial variables, including price of tuition, student debt accumulation, employment success, bar passage, and cost of living figures.

Campbell Law Invited to Participate in NITA Tournament of Champions—Campbell Law School has received an invitation to the prestigious National Institute of Trial Advocacy's Tournament of Championships mock trial competition. One of the premier mock trial competitions in the country, only 16 law schools are invited to the Tournament of Champions.

Campbell Law Students Awarded WCBA Scholarships—Campbell Law School students Amanda Brookie and Emily Pappas have been awarded Wake County Bar Association Memorial Scholarships for the upcoming academic year. Brookie, a rising second year student, and Pappas, a rising third year, formally received their \$5,000 scholarships during a presentation at a recent WCBA luncheon on June 3 at the Women's Club of Raleigh.

Benton named NCBA President-Elect—Shelby Duffy Benton, a 1985 Campbell Law graduate, has been named president-elect of the North Carolina Bar Association. She is the

first Campbell Law graduate to serve the NCBA in this capacity.

Charlotte School of Law

Student Success Program—Charlotte School of Law's mission is to provide leadership in meeting the evolving needs of the profession and in unlocking the potential of students. To further those commitments, Charlotte will launch this fall its Student Success Program, a comprehensive addition to its program of education that is unique to American legal education. The purpose of the program is to systematically develop key competencies vital to success in law school, on the bar exam, in job search and career development, and in professional endeavor. Initially the program will focus on the competency clusters of grit, professionalism, and emotional intelligence (self-awareness and relationship building). The competencies will be developed through integration into the pedagogy of small classes, a graduation requirement that calls on students to complete activities or assessments throughout the three years, and training law school staff to support and reinforce development of these competencies.

Partnership with Yingke Law Firm—Charlotte has entered into a partnership with the Yingke Law Firm for the law school to provide training programs to lawyers in the firm. Yingke is the largest law firm in the Asian-Pacific region with 2,400 lawyers in 40 offices in major commercial regions around the world. The educational programs will provide lawyers based in China with substantive training in US business law and other areas important to the work of Yingke lawyers.

Ms. JD Fellowship—Charlotte student Lexi Andresen has been selected as one of 15 recipients of the Ms. JD Fellowship. The fellowship, awarded in partnership with the ABA Commission on Women in the Profession, recognizes academic performance, leadership, and dedication to advancing the status of women in the profession. Fellows are provided with a mentor who has been a winner of the ABA Brent Award. Andresen is the first fellowship recipient from a North

Carolina law school.

Duke Law School

New Civil Justice Clinic Focuses on Civil Litigation Assistance for Low-Income Clients—Duke Law School has launched the Civil Justice Clinic, the school's tenth clinical program. A partnership between Duke Law and Legal Aid of North Carolina (LANC), the clinic has the dual focus of providing substantive legal assistance to low-income clients who have little access to civil justice, as well as facilitating students' development of practical litigation skills that are readily translatable to a wide variety of cases and practice areas. For students, the clinic includes a substantive weekly seminar, direct client representation, and individual supervision and instruction from Duke faculty and LANC attorneys.

The clinic, which is based out of the Durham LANC office, is directed by Charles R. Holton, a partner at Womble Carlyle Sandridge & Rice in Research Triangle Park who currently chairs the LANC Board of Directors. He is a longstanding member of the local advisory committee for LANC's Durham office and was named *Pro Bono* Attorney of the Year for 2013 by the North Carolina Bar Association.

Student-Run Cancer Pro Bono Project Honored by NCBA—The Duke-UNC Cancer *Pro Bono* Project was honored in June with the North Carolina Bar Association's 2014 Law Student Group *Pro Bono* Award. The project represents a partnership between Duke Law School, UNC School of Law, and the Duke and UNC Cancer Centers. Under the supervision of volunteer attorneys, law students hold advanced directive clinics at each cancer center twice each month, where they interview patients to assess their legal needs and educate them on matters related to advanced directives. They draft the relevant documents for their clients and, with their supervisors, facilitate their review and execution by the patient-clients.

Elon University School of Law

National Symposium Advances Experiential

Education in Law—A June 13-15 national symposium at Elon Law featured research findings about the educational value of immersive and recurring legal practice experiences for law students. Elon welcomed more than 150 participants from the US and Canada including members of the legal academy and profession, and representatives from other disciplines including architecture, business, and medicine.

“This is not just about clinical legal education,” said Luke Bierman, dean and professor of law at Elon. “This is not just about externships. It’s not just about simulations in classrooms. It’s about how to move all these things in a particular way, and how to think about how it fits into the enterprise of legal education and the goals we have for our students.”

ABA President-Elect William C. Hubbard called for innovators in law and legal education to shape the future of justice by creating more efficient and effective models for the delivery of legal services. Prominent law scholar William Henderson presented research indicating that Northeastern’s Cooperative Legal Education Program (co-op) accelerates more self-aware and deliberate career planning by students, enabled by insights they gain during nearly a year of full-time legal experience through the program. NCBA President Alan Duncan highlighted NCBA programs including the Center for Practice Management, providing two full-time staff devoted to assisting attorneys with law firm start up, technology, and practice management questions.

Other highlights included:

- practitioners and teachers in medical, architectural, and business sectors presented insights about experiential education components in their fields
- law school leaders presented innovative experiential education programs established since 2012
- panelists presented research in areas such as cost and sustainability measures for experiential legal education and the regulatory landscape at national and state levels surrounding pedagogical change in law schools.

Visit the symposium website for details: law.elon.edu/aell.

North Carolina Central University School of Law

Wallace to Lead NCCU Dispute Resolution Institute—NCCU Law Professor Kathleen Wallace was named director of the school’s Dispute Resolution Institute (DRI) beginning July 2014. Wallace takes the reins

from outgoing director Mark Morris.

NCCU has led the state in developing expertise in the growing field of conflict resolution with the creation of its Alternative Dispute Resolution (ADR) Clinic in 2000 and the DRI in 2006.

The practice of alternative dispute resolution seeks to avoid the typical adversarial approach of litigation in order to better preserve the relationship between those in conflict. This is particularly important in cases involving divorcing parents, family members, business partners, and neighbors—anyone who anticipates ongoing interaction.

At NCCU’s Dispute Resolution Institute, those seeking a certificate complete three core courses—Negotiation, Mediation, and Arbitration—and select from among a dozen others in ADR processes and practice to total ten credit hours.

One popular elective is the ADR Clinic. NCCU Law has partnered with the Elna B. Spaulding Conflict Resolution Center to mediate cases presented at the center and in district court in Durham. Each Friday the students gain hands-on experience mediating community disputes, Medicare/Medicaid appeals, and misdemeanor offences involving property damage and simple assaults.

According to Wallace, “Our students can easily parlay these negotiation and conflict management skills in almost any professional capacity.”

She should know. Since 2004 Wallace has also served as a mediator for the US Olympic Committee. As a crisis intervention specialist and legal counsel for the US Paralympic Team, Wallace attended the Paralympic Games in Sochi, Russia, where she managed disputes regarding rule interpretation, disqualifications, and athletes’ rights.

Wallace intends to use her tenure as director to increase students’ engagement in the community. “I’d like to see more work with youth in conflict management and with families in crisis regarding decisions about elder care,” said Wallace.

University of North Carolina School of Law

Dean Boger Announces Plan to Return to Teaching—John Charles “Jack” Boger ’74 announced that he will conclude his role as dean of the law school in July 2015 to return to the law school faculty. He will have served as dean for nine years, and as a member of the UNC faculty for 25 years. Boger was named

the law school’s 13th dean in 2006 after serving as deputy director of the UNC Center for Civil Rights. He holds the Wade Edwards Distinguished Chair. Boger will continue to lead the law school until his successor is named and assumes the leadership role in the summer of 2015.

New Associate Dean for Student Affairs—The law school welcomes Paul Rollins to its staff, starting in August as its new associate dean for student affairs. Rollins, a native of South Carolina, received his BA degree from the University of South Carolina and his JD degree from Yale Law School. He joins UNC from UGA’s law school, where he served as associate dean for administration and student affairs. In his role at UNC he will oversee the admissions, student services, and career development offices.

Faculty Corporate Law Treatise Quoted by SCOTUS—In the recently decided *Hobby Lobby* case, both the majority and the dissenting opinions of the Supreme Court cited propositions from *Treatise on the Law of Corporations*, a book co-authored by Tom Hazen, the Cary C. Boshamer Distinguished Professor of Law at UNC School of Law, and James Cox, a law professor at Duke. The Supreme Court previously has cited Hazen’s work in securities law, but the opinions in the *Hobby Lobby* case represent the first time that both the majority and dissent cited his work in the same case.

Wake Forest University School of Law

Interim Dean Named—Wake Forest University School of Law Executive Associate Dean for Academic Affairs Suzanne Reynolds (’77) has been named interim dean of the law school effective September 1, following the announcement that Dean Blake D. Morant has accepted an offer to become dean at George Washington Law School.

Reynolds has served as Wake Forest Law’s executive associate dean for academic affairs for the past four years. She is the first woman to serve as dean of Wake Forest Law.

Needham Yancy Gulley Professor of Criminal Law Ron Wright, who served as executive associate dean for academic affairs at the law school for three years prior to Reynolds, will step back into his former role.

Both appointments are for the 2014-2015 academic year, according to WFU Provost Rogan Kersh. A national search for Dean

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John B. McMillan Distinguished Service Award

James B. Maxwell is a recipient of the John B. McMillan Distinguished Service Award. A Virginia native, Mr. Maxwell earned his undergraduate degree from the Randolph-Macon College in 1963, and his law degree from Duke University in 1966. Mr. Maxwell currently practices at the law firm of Maxwell, Freeman & Bowman, PA in Durham. Throughout his distinguished career, Mr. Maxwell has established himself as an outstanding attorney, mentor, community servant, coach, and leader. Among countless endeavors, Mr. Maxwell was the first lawyer to serve both as president of the NC Academy of Trial Lawyers and as president of the North Carolina Bar Association. In addition, Mr. Maxwell has coached the Duke University Law School National Moot Court Team since 2002, has been chair of the Legal Aid Board of Directors, and chair of the Lawyers Mutual Claims Committee. He has been listed in the Best Lawyers in America since 1987. He has spoken at dozens of CLEs and written numerous articles relating to both litigation and professional ethics. A man of character who has dedicated his life to serving the legal community and the public, James B. Maxwell is a deserving recipient of the John B. McMillan Distinguished Service Award.

Sharon A. Thompson is a recipient of the John B. McMillan Distinguished Service Award. Ms. Thompson began practicing law in 1976 in Raleigh. In 1979 she became a member of Thompson & McAllaster, where she remained until starting the Sharon Thompson Law Group in 1991. Ms. Thompson currently concentrates in family law but has previously practiced in a wide range of areas. Ms. Thompson served two terms in the NC House of Representatives from 1987-1990. She was also an adjunct professor at NC Central University Law School. A pioneer, Ms. Thompson was a cofounder of the NC Association of Women Attorneys (NCAWA), and founding member and first president of the NC Gay and Lesbian Attorneys (NC GALA). In 1987 Ms. Thompson was granted the annual award from the NCAWA for promoting the partici-

pation of women in the legal profession and the rights of women under the law. She was a member of the Board of Governors of the NC Academy of Trial Lawyers, and in 2007 she was inducted into the NC Bar Association's General Practice Hall of Fame. She has spoken at numerous CLEs and published many articles focusing on family law issues for LGBT clients. An excellent lawyer and civil rights advocate, Sharon A. Thompson is a deserving recipient of the John B. McMillan Distinguished Service Award.

M. Gordon Widenhouse is a recipient of the John B. McMillan Distinguished Service Award. Mr. Widenhouse received his undergraduate degree from Davidson College in 1976, his Master of Arts from UNC-Greensboro in 1978, and his JD from Wake Forest University Law School in 1982. Following law school, Mr. Widenhouse clerked in the United States District Court, and then for Justice James Exum in the North Carolina Supreme Court. After a time as an assistant appellate defender and assistant federal public defender, Mr. Widenhouse has focused his career on appellate litigation and criminal defense with the firm of Rudolf, Widenhouse & Filako in Chapel Hill. Mr. Widenhouse has been an adjunct professor at NC Central University Law School, where he was awarded a Charles L. Becton Teaching Award in 2013. In addition to teaching law students, Mr. Widenhouse has devoted time to assisting high school students in North Carolina with a better understanding of the legal system and the legal profession as one of the founders of the Wade Edwards High School Mock Trial Program for the NCAJ. The award for the best overall competitor at the competition is named after Mr. Widenhouse. He has spoken at numerous CLEs, published numerous articles, and is considered a mentor to many lawyers. Listed in NC Super Lawyers since 2007 and Best Lawyers in America since 2002, Mr. Widenhouse has had a career of service to the bar and to the public, and is a deserving recipient of the John B. McMillan Distinguished Service Award.

Seeking Award Nominations

The John B. McMillan Distinguished Service Award honors current and retired members of the North Carolina State Bar who have demonstrated exemplary service to the legal profession. Awards will be presented in recipients' districts, with the State Bar councilor from the recipient's district introducing the recipient and presenting the certificate. Recipients will also be recognized in the *Journal* and honored at the State Bar's annual meeting in Raleigh.

Members of the bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. The nomination form is available on the State Bar's website, ncbar.gov. Please direct questions to Peter Bolac, PBolac@ncbar.gov ■

Law School Briefs (cont.)

Morant's successor will begin in September.

Reynolds is widely respected for her scholarship and teaching about family law, and for her public service. She was a principal drafter of statutes that modernized the law of both alimony and of adoption, and she co-founded a domestic violence program that received national recognition by the American Bar. Reynolds authored a three-volume treatise on North Carolina family law that has become the authoritative source for law students, lawyers, and judges.

Wright is one of the nation's best known criminal justice scholars. He is the co-author of two casebooks in criminal procedure and sentencing; his empirical research concentrates on the work of criminal prosecutors. He is a board member of the Prosecution and Racial Justice Project of the Vera Institute of Justice, and has been an adviser or board member for Families Against Mandatory Minimum Sentences (FAMM), North Carolina Prisoner Legal Services, Inc., and the Winston-Salem Citizens' Police Review Board. Prior to joining the faculty, he was a trial attorney with the US Department of Justice. ■

Client Security Fund Reimburses Victims

At its July 24, 2014, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$250,137.86 to 11 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$22,880.95 to a former client of William S. Britt of Lumberton. The board determined that Britt was retained to handle a negligence claim against a nursing home that resulted in the client's husband's death and personal injury claims for the client and her two sons. Britt settled the matters and deposited the settlement proceeds into his trust account, but failed to disburse some of the funds prior to his trust account being frozen by the State Bar. Due to misappropriation, Britt's trust account balance is insufficient to cover all of his clients' obligations. Although Britt had deposited funds in his lawyer's trust account to cover the expected shortage, he agreed that his client should be reimbursed by the board and be subrogated to the funds in his lawyer's trust account. Britt was disbarred on June 12, 2014.

2. An award of \$72,576.08 to two former clients of Sue E. Mako of Wilmington. The board determined that Mako was retained to handle the clients' personal injury claims. Mako settled the matters and deposited the settlement proceeds into her trust account. At the time of the deposits, Mako knew that her trust account was short due to an unrelated scam. Mako failed to make any disbursements from the proceeds for the benefit of the clients prior to the State Bar freezing Mako's trust account. Due to the shortage in her account caused by Mako's disbursement against uncollected funds related to the scam, and her dishonest act of failing to return missing funds to the trust account from money she earned after the scam, Mako's trust account balance is insufficient to cover all her clients' obligations. Mako's disbarment will be effective

on August 20, 2014.

3. An award of \$3,366.53 to a former client of Nicholas A. Stratas of Raleigh. The board determined that Stratas was retained to handle a client's personal injury claim. Stratas settled the matter and retained a portion of the settlement proceeds to resolve a subrogation lien. Stratas failed to resolve the lien prior to being disbarred. Due to misappropriation, Stratas' trust account balance was insufficient to pay all his clients' obligations. Stratas was disbarred on February 1, 2013. The board previously reimbursed ten other Stratas clients a total of \$152,215.78.

4. An award of \$11,696.10 to a former client of Daniel L. Taylor of Troutman. The board determined that Taylor was retained to prepare estate planning documents for a client's father. Taylor suffered a stroke shortly after meeting with the client and prior to the client signing a "nonrefundable" fee agreement and paying the legal fee. Taylor failed to provide any valuable legal services for the fee paid. Taylor died on December 25, 2013.

5. An award of \$11,746.10 to a former client of Daniel L. Taylor. The board determined that Taylor was retained to prepare estate planning documents and provide asset protection services for the client and his wife. The client signed two "nonrefundable" fee agreements and paid the combined fee in full because time was of the essence to get his wife's assets protected due to her declining health. Despite being paid and having all the necessary information to prepare the documents, Taylor failed to produce any documents for the client's wife prior to her death. Taylor failed to provide any valuable legal services for the fees paid.

6. An award of \$5,000 to former clients of Daniel L. Taylor. The board determined that Taylor was retained to handle the client's son's petition for a contested case hearing before the Office of Administrative Hearings (OAH). Taylor faxed the client's handwritten petition, rather than one he was retained to prepare, to OAH a day after

the filing deadline. Taylor failed to provide any valuable legal service for the clients.

7. An award of \$6,000 to a former client of Daniel L. Taylor. The board determined that Taylor was retained to prepare estate planning documents and represent a client in a petition for guardianship over her husband. The client signed Taylor's "nonrefundable" fee agreement and paid the fees for the estate planning documents and representation in the guardianship proceeding. After preparing the estate planning documents, filing the guardianship petition, and participating in the guardianship proceeding, Taylor requested an additional \$6,000 fee to complete the guardianship. The client paid the additional fee, but Taylor failed to complete the guardianship. Taylor failed to provide any valuable legal services for the additional fee paid.

8. An award of \$11,696.10 to a former client of Daniel L. Taylor. The board determined that Taylor was retained to apply for Medicaid benefits and provide asset planning services for the client's father. The client signed a "nonrefundable" retainer agreement and paid the fees quoted. Taylor never prepared any estate planning documents and failed to provide any other valuable legal services for the fee paid.

9. An award of \$3,500 to a former client of Clyde Gary Triggs of Hildebran. The board determined that Triggs was retained to handle a client's domestic matter. Triggs failed to provide any valuable legal services to the client prior to being disbarred. Triggs was disbarred on January 31, 2013.

10. An award of \$1,266 to a former client of David A. Vesel of Raleigh. The board determined that Vesel was retained to handle a client's real estate closing. Vesel failed to deliver two disbursement checks on the client's behalf prior to his trust account being frozen by the State Bar. Due to misappropriation, Vesel's trust account balance was insufficient to pay all his clients' obligations. Vesel was disbarred on July 5, 2013. The board previously paid one other Vesel client a total of \$5,914.

11. An award of \$100,000 to a former client of W. Darrell Whitley of Lexington. The board determined that Whitley was retained to create and administer a trust for a client. Within two weeks of the client's

funds being deposited into his trust account, Whitley misappropriated virtually all of the funds. Due to misappropriation, Whitley's trust account was insufficient to pay all of his clients' obligations. Whitley

died on December 6, 2011. The board previously reimbursed several other Whitley clients and applicants a total of \$664,096.74. ■

Living with Blindness (cont.)

a multi-national, multi-racial family. We did not have any ties to Ethiopia, but we both had friends and experiences that drew us to Africa, generally. We also had friends who went through the Ethiopian adoption process before us, so that encouraged us to go that route. Thus, in May of 2012 we brought home our daughter Kalkidan (then age four) and our son Rebuma (then 18 months old).

Fatherhood has been a blast. My children really help to keep me humble. They don't care where I work or who I represent, but are just impressed that I have a job where there is a candy dish and a soda fountain and where I get to talk on a phone that actually has a cord, as opposed to the ubiquitous smart phones that are all they've ever known. Coming home to fans who don't keep track of wins and losses or count billable hours is the best part of every day.

I will say that fatherhood is one of the few areas where I've found blindness to be

frustrating. There are things I'd like to be able to do as a dad—see my son's goofy facial expressions, watch my daughter dance and play soccer, or play catch—that I can't do, and not being able to do things isn't something I am very accustomed to. I guess I am still learning what it means to be blind in a new stage of life.

JG: In describing your disability, you used the phrase that sight for you is like “looking at an elephant from six inches away”. In many ways, this describes some sighted persons and how they pass their lives with blinders on. How have you handled the elephant?

JD: That is a lesson I am still learning. Like most people, I sometimes struggle to see what really matters beyond the court deadlines, case outcomes, and career goals that require so much daily energy. As I mentioned before, though, living with blindness has given me a broader perspective about the inter-connectedness of people and the importance of relationships. That perspective has not always made me a more sanguine or compassionate person, but, as I've grown up, started a family and a career, I have been able to see and appreciate just

how many people contributed to getting me to where I am in life: a dad who encouraged me to work hard and compete; a mom who, many nights, came home from work only to spend several hours reading textbooks to me when my high-school couldn't provide them in accessible formats; teachers and coaches who worked creatively to teach me their subjects and sports; friends who rowed and trained with me to prepare me for the Paralympics, though there was no potential for personal glory for them; colleagues who took the risk of hiring a blind person and who provide the support needed to enable me to do my job; and a wife and kids who love and encourage me without regard to personal or professional successes. Understanding how much I have benefited from the generosity of other people inspires both confidence and humility, and for me has been the best medicine against the self-absorption that can be so alluring. ■

John Gehring, a former State Bar councilor and chair of the Publications Committee, is now semi-retired, which means that he “works less and enjoys it more.”

Merritt Nominated as Vice-President



Charlotte attorney Mark Merritt was selected by the State Bar's Nominating Committee to stand for election to the office of vice-president of the North Carolina State Bar. The election will take place in October at the State Bar's annual meeting.

Merritt is a graduate of the University of North Carolina where he was a Morehead

Scholar and a member of Phi Beta Kappa. He earned his law degree in 1982 from the University of Virginia and served as editor in chief of the *Virginia Law Review*. After law school he clerked on the Fifth Circuit Court of Appeals for Judge John M. Wisdom. He returned to Charlotte and has practiced law at Robinson Bradshaw & Hinson since 1983.

His professional activities include serving as treasurer and president of the Mecklenburg County Bar, serving on the Board of Directors and as president of Legal Services of Southern Piedmont, and serving

as chair of the North Carolina Bar Association Antitrust Section Counsel. While a State Bar councilor he has served as chair of the Ethics Committee and of the Lawyers Assistance Program. He has served as a member of the Facilities, Grievance, Issues, and Authorized Practice Committees. He also served as chair of the Special Committee on Ethics 2020.

Mark is a member of the American College of Trial Lawyers and the International Society of Barristers.

He is married to Lindsay Merritt and has three children, Alex, Elizabeth, and Jay. ■

The North Carolina State Bar and Affiliated Entities

Selected Financial Data

The North Carolina State Bar			Total operating			Fund equity-		
	2013	2012	revenues	2,470,211	3,276,866	retained earnings	<u>176,840</u>	<u>172,960</u>
Assets			Operating expenses	(2,691,021)	(2,711,263)		\$191,899	\$181,122
Cash and cash equivalents	\$6,548,412	\$7,156,681	Non-operating revenues	<u>8,518</u>	<u>9,568</u>	Revenues and Expenses		
Property and equipment, net	17,691,016	13,791,676	Net income (loss)	\$(212,292)	\$575,171	Operating revenues-		
Other assets	<u>329,470</u>	<u>300,252</u>				specialization fees	\$136,050	\$134,018
	\$24,568,898	\$21,248,609				Operating expenses	(132,164)	(129,244)
Liabilities and Fund Equity						Non-operating revenues	<u>(6)</u>	<u>89</u>
Current liabilities	\$4,843,760	\$4,754,581	Board of Client Security Fund			Net income	\$3,880	\$4,863
Long-term debt	<u>11,545,979</u>	<u>8,613,737</u>		2013	2012			
	16,389,739	13,368,318	Assets					
Fund equity-retained earnings	<u>8,179,159</u>	<u>7,880,291</u>	Cash and cash equivalents	\$1,390,739	\$1,668,369	The Chief Justice's Commission on Professionalism		
	\$24,568,898	\$21,248,609	Other assets	<u>(790)</u>	<u>(446)</u>		2013	2012
Revenues and Expenses				\$1,389,949	\$1,667,923	Assets		
Dues	\$7,631,961	\$7,399,734	Liabilities and Fund Equity			Cash and cash equivalents	\$221,068	\$196,053
Other operating revenues	<u>909,935</u>	<u>753,104</u>	Current liabilities	\$20,269	\$17,662	Other assets	<u>100,762</u>	<u>100,527</u>
Total operating revenues	8,541,896	8,152,838	Fund equity-retained earnings	<u>1,370,018</u>	<u>1,650,261</u>		\$321,830	\$296,580
Operating expenses	(8,027,353)	(7,166,301)		\$1,390,287	\$1,667,923	Liabilities and Fund Equity		
Non-operating revenues	<u>(30,175)</u>	<u>837,569</u>	Revenues and Expenses			Current liabilities	522	90
Net income	\$484,368	\$1,824,106	Operating revenues	\$728,173	\$741,424	Fund equity-retained earnings	<u>321,308</u>	<u>296,490</u>
			Operating expenses	(1,009,786)	(783,750)		\$321,830	\$296,580
			Non-operating revenues	<u>1,370</u>	<u>3,098</u>	Revenues and Expenses		
			Net loss	\$(280,243)	\$(39,228)	Operating revenues-fees	\$327,547	\$328,321
						Operating expenses	(302,761)	(292,266)
			Board of Continuing Legal Education			Non-operating revenues	<u>32</u>	<u>63</u>
				2013	2012	Net income	\$24,818	\$36,118
			Assets					
			Cash and cash equivalents	\$287,066	\$243,708	Board of Paralegal Certification		
			Other assets	<u>173,802</u>	<u>191,853</u>		2013	2012
				\$460,868	\$435,561	Assets		
			Liabilities and Fund Equity			Cash and cash equivalents	\$402,611	\$348,099
			Current liabilities	116,822	69,520	Other assets	<u>7,050</u>	<u>-</u>
			Fund equity-retained earnings	<u>344,046</u>	<u>366,041</u>		\$409,661	\$348,099
				\$460,868	\$435,561	Liabilities and Fund Equity		
			Revenues and Expenses			Current liabilities -		
			Operating revenues	\$664,397	\$646,041	accounts payable	7,275	7,193
			Operating expenses	(686,423)	(652,845)	Fund equity-retained earnings	<u>402,386</u>	<u>340,906</u>
			Non-operating revenues	<u>31</u>	<u>(400)</u>		\$409,661	\$348,099
			Net loss	\$(21,995)	\$(7,204)	Revenues and Expenses		
						Operating revenues-fees	\$245,575	\$257,130
			Board of Legal Specialization			Operating expenses	(184,083)	(205,688)
				2013	2012	Non-operating revenues	<u>(12)</u>	<u>155</u>
			Assets			Net income (loss)	\$61,480	\$51,597
			Cash and cash equivalents	\$191,899	\$180,394			
			Other assets	<u>-</u>	<u>728</u>			
				\$191,899	\$181,122			
			Liabilities and Fund Equity					
			Current liabilities	15,059	8,162			

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APPENDIX
ATTACHMENT 29

Unauthorized Practice of Law Claims Against LegalZoom—Who Do These Lawsuits Protect, and is the Rule Outdated?

CAROLINE SHIPMAN*

INTRODUCTION

Hypothetical 1: It is a rainy day and you need to get from your apartment to an appointment quickly. You could go outside, brave the elements, and look for a taxi. But it might be awhile until you spot one. And even then, when you think you've found one, the light might not be on—it could be busy. Not to mention the fact that taxis can be expensive, and the rates go up with traffic. Alternatively, you could order an Uber. The Uber has an upfront price, it will come straight to your door, and you do not need to embarrassingly flail your arms and sprint in the streets to hail it.

Hypothetical 2: You have just come up with an amazing invention in a not-so-great economy and want to get a patent as soon as possible. You could try to find a patent lawyer, asking around for recommendations and doing research on qualified lawyers in your area. This could take a while. And even if you do find one you like the lawyer could be too busy to take you on as a client. Not to mention the fact that lawyers can be expensive, and that you might incur a substantial amount of unanticipated charges. Alternatively, you could use LegalZoom. LegalZoom provides a set price for registering a patent, you can do it from your couch, and best of all, you do not need to interact with a lawyer.

The hypotheticals above are meant to illustrate how developments in technology have drastically changed the ways many businesses operate and how consumers have come to demand more easily accessible and less expensive services.¹ Perhaps most apparently, these changes have affected simple business models like transportation in Hypothetical 1, food delivery, and booking a spin class. But they also have touched complex industries where business is typically conducted by licensed professionals, like the legal services described in

* J.D., Georgetown University Law Center (expected May 2020); B.A., Kenyon College (2015). © 2019, Caroline Shipman.

1. See Jochen Wirtz, *How Tech and the Focused Service Model Are Transforming the Service Sector*, FORBES, (Mar. 12, 2018), <https://www.forbes.com/sites/nusbusinessschool/2018/03/12/how-tech-and-the-focused-service-model-are-transforming-the-service-sector/#7722ebb2397a> [<https://perma.cc/Z3YW-KVM3>].

Hypothetical 2.² Unsurprisingly then, numerous companies are trying to use technology to disrupt the legal industry to provide cheaper and more convenient legal services to consumers. A recent study conducted by Harris Poll of over 2,000 adults in the United States showed that 76% of respondents aged 18–54 said “they were willing to use online legal services for legal issues if it would save them money.”³

Based on the facts above, one might think that lawyers working on less complex matters for smaller clients will inevitably be edged out by these online legal services. However, Rule 5.5 of the Model Rules of Professional Conduct published by the American Bar Association, the restriction on the unauthorized practice of law, has served as a roadblock, halting the complete overthrow of traditional legal services,⁴ and highlights some of the ethical issues surrounding whether these online legal services are an adequate substitute to traditional legal services. Although there are multiple providers of online legal services,⁵ this Note will look specifically at LegalZoom, which has faced a number of unauthorized practice of law challenges.⁶ The different lawsuits regarding this issue that LegalZoom has faced and continues to face raise interesting questions of whom the restriction on the unauthorized practice of law is meant to protect, what the rule seeks to achieve, and whether it has been successful in its goals.

This Note examines three recent unauthorized practice of law allegations involving LegalZoom, which have involved dissimilar parties opposing LegalZoom and which have unfolded in very different ways. The first lawsuit discussed is *LegalZoom v. North Carolina State Bar*.⁷ In this case, LegalZoom brought an action against the North Carolina State Bar in response to their cease and desist letters to LegalZoom on the basis that it was operating illegally and engaged in the unauthorized practice of law.⁸ The second case discussed is *Janson v.*

2. Another example of a complex industry where business is typically conducted by licensed professionals is financial advising. A growing number of financial services companies are providing consumers the option to use robo-advisors to create and manage their stock portfolios. See Tara Siegel Bernard, *Robo-Advisers for Investors Are Not One-Size-Fits-All*, N.Y. TIMES, (Jan. 26, 2016), <https://www.nytimes.com/2016/01/23/your-money/robo-advisers-for-investors-are-not-one-size-fits-all.html> [<https://perma.cc/ATP3-NXE5>].

3. ALM Media, *Survey: 69 Percent of People Would Use Online Legal Services Over Attorneys*, YAHOO FINANCE (Dec. 12, 2018), <https://finance.yahoo.com/news/survey-69-percent-people-online-163048715.html> [<https://perma.cc/PNK9-HRME>].

4. Cf. Emily McClure, *LegalZoom and Online Legal Service Providers: Is the Development and Sale of Interactive Questionnaires That Generate Legal Documents the Unauthorized Practice of Law?*, 105 KY. L.J. 563, 573 (2017) (discussing a number of cases where unauthorized practice of law claims have been brought against online legal providers).

5. Other companies that provide legal services comparable to those provided by LegalZoom include RocketLawyer, Bridge US, and Modria. Margaret Hagan, *The User Experience of the Internet as a Legal Help Service: Defining Standards for the Next Generation of User-Friendly Online Legal Services*, 20 VA. J.L. & TECH. 394, 413 (2016).

6. McClure, *supra* note 4, at 573.

7. *LegalZoom.com v. N.C. State Bar*, No. 11CVS15111, 2011 WL 8424700 (N.C. Super. Ct. Sept. 30, 2011).

8. *Id.* at *2-5.

LegalZoom, which was a class action brought in Missouri by customers of LegalZoom against the company for charging consumers while allegedly engaged in the unauthorized practice of law.⁹ The third case examined is *LegalForce v. LegalZoom*, a case brought by a California IP firm against LegalZoom as well as codefendants United States Patent & Trademark Office, the State Bar of California, the State Bar of Arizona, and the State Bar of Texas.¹⁰ In this still ongoing lawsuit, the plaintiffs assert that LegalZoom is engaged in large scale unauthorized practice of law and that regulators have turned a blind eye.¹¹

After the discussion of the unauthorized practice of law cases against LegalZoom, this Note will discuss two policy issues related to the unauthorized practice of law. The first issue addressed is who the ban on the unauthorized practice of law rule actually protects. The second issue is whether the rules should be updated to allow for technological companies like LegalZoom to provide consumers with certain legal services.

Part I of this Note will provide relevant background information on how LegalZoom's online legal services work, as well as provide a basic overview on restrictions of the unauthorized practice of law. Part II of the Note will examine the aforementioned unauthorized practice of law lawsuits against LegalZoom in North Carolina, Missouri, and California. Part III will compare and contrast the policy concerns raised in these different cases, and which concerns have the most merit.

I. A BRIEF BACKGROUND

This background is meant to provide a very rudimentary understanding of the way that LegalZoom's services function, as well as explain the purpose and background of ABA Model Rule 5.5's restriction on the unauthorized practice of law.

A. HOW DOES LEGALZOOM WORK?

LegalZoom was founded in 1999, when the rising popularity of the internet inspired many individuals to utilize new technologies and the web to create new types of business models.¹² LegalZoom's platform offers online interactive legal documents, subscription legal plans, and registered agent services.¹³ LegalZoom's services were designed to be an affordable alternative to traditional legal services for small businesses and individual consumers.¹⁴

9. *Janson v. LegalZoom.com, Inc.*, 802 F. Supp. 2d 1053, 1053 (W.D. Mo. 2011).

10. *LegalForce RAPC Worldwide v. LegalZoom.com*, No. 5:17-cv-7194, 2017 WL 6505183, at 2 (N.D. Cal. Dec. 19, 2017).

11. *Id.* at 96-104.

12. See *About Us*, LEGALZOOM, <https://www.legalzoom.com/about-us> [<https://perma.cc/6PSS-VXTD>] (last visited Jan. 15, 2019).

13. LegalZoom.com, Inc., Registration Statement p. 1 (Form S-1) (May 10, 2012).

14. See *About Us*, LEGALZOOM (last visited Jan. 15, 2019), <https://www.legalzoom.com/about-us> [<https://perma.cc/6PSS-VXTD>].

The interactive legal document service is a large portion of LegalZoom's business.¹⁵ For small businesses, LegalZoom provides interactive legal documents that consumers can use for incorporation of their business, registering business names, applying for patents and copyrights, amongst other things.¹⁶ For individual consumers, some of the interactive legal documents LegalZoom provides include last will and testament, power of attorney, living will, living trust, uncontested divorce, and name change.¹⁷ The interactive legal documents are created through a three-step process.¹⁸ First, "customers complete an online questionnaire that uses conditional, rules-based logic to personalize questions based on earlier responses."¹⁹ Second, LegalZoom employees review the customer's "responses for spelling, grammar, and completeness."²⁰ Third, the LegalZoom software "generates a final document tailored, as applicable, to the appropriate federal, state, or local jurisdiction" and prints the final copy to send to the customer or the appropriate government agency when a filing is required.²¹ The system automatically notifies customers of the status of their documents.²²

While a user of LegalZoom's services might understandably construe the interactive document service as a form of legal advice, in its Terms of Use, LegalZoom proffers numerous disclaimers on why its services cannot be relied upon for that purpose:

At no time do we review your answers for legal sufficiency, draw legal conclusions, provide legal advice, opinions or recommendations about your legal rights, remedies, defenses, options, selection of forms, or strategies, or apply the law to the facts of your particular situation. LegalZoom is not a law firm and may not perform services performed by an attorney. LegalZoom, its Services, and its forms or templates are not a substitute for the advice or services of an attorney LegalZoom strives to keep its legal documents accurate, current and up-to-date. However, because the law changes rapidly, LegalZoom cannot guarantee that all of the information on the Site or Applications is completely current. The law is different from jurisdiction to jurisdiction, and may be subject to interpretation by different courts. The law is a personal matter, and no general information or legal tool like the kind LegalZoom provides can fit every circumstance. Furthermore, the legal information contained on the Site and Applications is not legal advice and is not guaranteed to be correct, complete or up-to-date. Therefore, if you need legal advice for your specific problem, or if your specific problem is too complex to

15. See LegalZoom.com, Inc., Registration Statement p. 1 (Form S-1) (May 10, 2012).

16. *Id.* at p. 65.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

be addressed by our tools, you should consult a licensed attorney in your area.²³

In the Terms of Use, LegalZoom purports that the company does not offer legal advice or any services meant to be performed by an attorney.²⁴ However, simply stating this policy does not necessarily make it true, and obvious tensions exist between the fine print and how a rational consumer would expect to rely on LegalZoom. This will be discussed more in the Part III discussion on policy.

B. UNAUTHORIZED PRACTICE OF LAW RULES: ORIGINS AND RATIONALE

In assessing whether LegalZoom engages in the unauthorized practice of law, it is important to understand ABA Model Rule 5.5(b) and what it seeks to achieve. ABA Model Rule 5.5(b) holds that:

A lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.²⁵

For over a century, the American legal profession has placed restrictions on who may practice law.²⁶ This rule was initially concerned with individuals fraudulently representing themselves as lawyers, but it has also evolved in response to technological changes which threatened to disrupt the channels of legal advice in far-reaching ways.²⁷

Advancements in technology seem to create new anxieties surrounding the unauthorized practice of law, and one early example of this took place when the radio became popular in America.²⁸ In the 1930s, NBC broadcast a national radio show called *The Good Will Court* where individuals brought their legal issues to a panel of judges who would respond to these inquiries with legal advice.²⁹ Although the show disclaimed to listeners that the legal advice on the show should not be treated as a replacement for advice from a lawyer, the ABA Committee on Professional Ethics and Grievances denounced the program.³⁰

23. *Terms of Use*, LEGALZOOM, <https://www.legalzoom.com/legal/general-terms/terms-of-use> [<https://perma.cc/2QUA-T983>] (last visited on Jan. 15, 2019).

24. *Id.*

25. MODEL RULES OF PROF'L CONDUCT R. 5.5 (2016).

26. Thomas R. Andrews, *Nonlawyers in the Business of Law: Does the One Who Has the Gold Really Make the Rules?*, 40 HASTINGS L.J. 577, 579–80 (1989) (“At least as early as 1899, the New York Penal Code prohibited anyone from practicing as an attorney or making it a business to practice as such ‘without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state.’”).

27. See Catherine J. Lanctot, *Attorney-Client Relationships in Cyberspace: The Peril and the Promise*, 49 DUKE L.J. 147, 147–48 (1999).

28. *Id.* at 200.

29. *Id.* at 202.

30. *Id.* at 210.

They condemned the show, saying that listeners would detrimentally rely on legal counsel from the show when in reality the advice might be inappropriate for listeners' specific legal situations.³¹ These lawyers brought their complaints about The Good Will Court to the New York Appellate Division, which responded by prohibiting lawyers and judges from appearing on the show which effectively ended the broadcast program.³² Although The Good Will Court did not survive, the case signaled that the future of the legal profession would be full of challenges posed by technologies that disrupted traditional modes of providing legal advice. The case also illustrated the dual motivations behind unauthorized practice of law rules: concern with protecting the public from unqualified legal advice and to act as an anti-competition safeguard for lawyers.

There are many legitimate policy reasons for the restrictions against the unauthorized practice of law. These reasons include "preserving and strengthening the lawyer-client relationship"³³ and protecting "the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the judicial department could exercise slight or no control."³⁴ The functioning of the legal system would not be possible without the privileges afforded to and obligations imposed on lawyers when they enter into a formal attorney-client relationship. The formation of an attorney-client relationship subjects a lawyer to "duties of care, loyalty, confidentiality, and communication, duties enforceable by the client and through disciplinary sanctions."³⁵ An individual receiving legal advice from an individual or entity not authorized to practice law would therefore not be afforded the protections of an attorney-client relationship, which is a serious reason why the unauthorized practice of law could end up being problematic for people seeking legal advice. The other chief reason behind the policy requiring a license to practice law is to ensure that an individual rendering legal services is competent and that the public is not injured by individuals who are not qualified to provide the services for which they are charging people.³⁶

Despite the legitimate interests that unauthorized practice of law statutes protect, some critics have rebuked these rules for several reasons. One chief reason is that these rules inhibit innovation in the legal industry.³⁷ Another major critique is that the bar's purpose in the promulgation of these rules has more to do with protecting lawyers' economic interests than with concerns for the public.³⁸

31. *Id.* at 204–07.

32. *Id.* at 212.

33. Duke University School of Law, *Unauthorized Practice of Law: Supreme Court Holds States Cannot Restrict Authorized Activities of Nonlawyer Patent Office Practitioner Source*, 1964 DUKE L.J. 190, 192–93.

34. *W. Va. State Bar v. Earley*, 109 S.E.2d 420, 424 (W. Va. 1959).

35. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS ch. 2, intro. note (AM. LAW INST. 2000).

36. *Earley*, 109 S.E.2d at 436.

37. See Gillian K. Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control over Corporate Legal Markets*, 60 STAN. L. REV. 1689, 1695 (2008).

38. See Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 154 (2010).

It is ironic, given the zealous policing of unauthorized practice of law, that there is not a strong consensus for defining what the practice of law actually is. Comment 2 to Rule 5.5 in the *Model Rules* says that the definition of practice of law is jurisdiction specific and therefore a flexible construct.³⁹ This amorphous standard makes sense given the fact that “the boundaries of the practice of law are unclear and have been prone to vary over time and geography,”⁴⁰ and also because the multifaceted nature of providing legal services makes it difficult to render an exhaustive list of everything the lawyer does in one definition.⁴¹ However, overly broad or vague definitions of the practice of law can be detrimental in that they allow lawyers to monopolize certain activities for their own gain⁴² and stifle the innovation of affordable alternatives in the world of legal services.⁴³

II. UNAUTHORIZED PRACTICE OF LAW CHALLENGES TO LEGALZOOM

Numerous plaintiffs have challenged LegalZoom in court, alleging that the company engages in the unauthorized practice of law. Because each state promulgates its own rule regarding the unauthorized practice of law, there is no universal consensus on the issue and courts have taken broad discretion in deciding these matters. Accordingly, LegalZoom has been involved in a “whack-a-mole” type of litigation, having to face each challenger that pops up in a new jurisdiction. The following examples about actions that took place in North Carolina, Missouri, and California demonstrate how different constituents interpret unauthorized practice of law statutes, and how they have sought to protect their interests against LegalZoom.

A. NORTH CAROLINA

One of LegalZoom’s unauthorized practice of law disputes took place in North Carolina in an action against the State Bar of North Carolina.⁴⁴ In 2003, the bar first looked into LegalZoom but brought no action.⁴⁵ Then, in 2007 it reopened an

39. MODEL RULES OF PROF’L CONDUCT R. 5.5 cmt. 2 (AM. BAR ASS’N 2018) (“The definition of the practice of law is established by law and varies from one jurisdiction to another.”).

40. DEP’T OF JUSTICE & FED. TRADE COMM’N, Comment Letter on the American Bar Association’s Proposed Model Definition of the Practice of Law (Dec. 20, 2002), at 2, <https://www.justice.gov/atr/comments-american-bar-associations-proposed-model-definition-practice-law> [<https://perma.cc/5B63-PZ5D>].

41. State Bar of Ariz. v. Ariz. Land Title & Tr. Co., 366 P.2d 1, 8–9 (1961), *opinion supplemented on denial of reh’g*, 371 P.2d 1020 (1962).

42. DEP’T OF JUSTICE & FED. TRADE COMM’N, Comment Letter on the American Bar Association’s Proposed Model Definition of the Practice of Law (Dec. 20, 2002), at 3, <https://www.justice.gov/atr/comments-american-bar-associations-proposed-model-definition-practice-law> [<https://perma.cc/5B63-PZ5D>].

43. Ray Worthy Campbell, *Rethinking Regulation and Innovation in the U.S. Legal Services Market*, 9 N.Y. U. J.L. & BUS. 1, 51 (2012).

44. See *LegalZoom.com v. N.C. State Bar*, No. 11CVS15111, 2011 WL 8424700 (N.C. Super. Ct. Sept. 30, 2011).

45. Daniel Fisher, *LegalZoom Settles Fight with North Carolina Bar over Online Law*, FORBES (Oct. 22, 2015), <https://www.forbes.com/sites/danielfisher/2015/10/22/legalzoom-settles-fight-with-north-carolina-bar-over-online-law/#1080b74d3eb2> [<https://perma.cc/2N4T-FDWX>].

investigation and in 2008 issued a cease and desist letter asserting that LegalZoom's activities in the state constituted the unauthorized practice of law and therefore the company was operating illegally.⁴⁶ LegalZoom did not stop its activities, and subsequently filed an action against the Bar for relief because the Bar had refused to register the company's prepaid legal plans.⁴⁷

In the ensuing litigation, the Superior Court of North Carolina considered whether LegalZoom's activities constituted the practice of law, looking specifically into whether their services fell into two well-known exceptions to this rule.⁴⁸ The first exception considered was the "self-help" exception, and the court examined whether LegalZoom is merely a tool for people engaged in self-representation.⁴⁹ The second exception that the court assessed was the "scrivener's exception," which allows unlicensed individuals to record information provided by another individual without engaging in the unauthorized practice of law "as long as they do not also provide advice or express legal judgments."⁵⁰ The State Bar argued that LegalZoom's activities did not fall into these exceptions because its software system, which contained conditional logic based on earlier responses, does require professional legal judgment, and compared LegalZoom's questionnaires to a lawyer interviewing a client and choosing follow-up questions based on the client's response.⁵¹ In its opinion in 2014, the North Carolina court did not reach a definitive conclusion based on these arguments, holding that a more developed factual record was necessary to reach a decision on the unauthorized practice of law.⁵²

Around the same time that the North Carolina court was considering the LegalZoom-State Bar dispute, another case of particular interest to LegalZoom, which also originated in North Carolina, was making its way to the Supreme Court, *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.⁵³ This case involved the issue of whether the North Carolina State Board of Dental Examiners, a statutorily created agency that regulated the practice of dentistry in the state, was in violation of federal antitrust laws when it issued cease and desist letters to non-dentists offering teeth whitening services.⁵⁴ LegalZoom filed an *amicus curiae* brief in support of the Federal Trade

46. Complaint at 26, *LegalZoom.com v. N.C. State Bar*, No. 11CVS15111, 2011 WL 8424700 (N.C. Super. Ct. Sept. 30, 2011).

47. Complaint at 1, *LegalZoom.com v. N.C. State Bar*, No. 11CVS15111, 2011 WL 8424700 (N.C. Super. Ct. Sept. 30, 2011).

48. *LegalZoom.com, Inc. v. N.C. State Bar*, No. 11CVS15111, 2014 WL 1213242 at *12 (N.C. Super. Ct. Mar. 24, 2014).

49. *Id.*

50. *Id.*

51. *Id.* at *5.

52. *Id.* at *10.

53. *N.C. State Bd. of Dental Examiners v. F.T.C.*, 135 S. Ct. 1101 (2015).

54. *Id.* at 1104.

Commission.⁵⁵ The Supreme Court cited the precedent *Parker v. Brown* for the proposition that state regulatory bodies are immune from antitrust actions when a state acts to regulate activity within its boundaries.⁵⁶ However, when a regulatory body is made up of market participants, their actions are lawful only so much as they further state policy, and they can only claim immunity if they are subject to active supervision by the state.⁵⁷ Because the Board of Dental Examiners was a non-state regulatory body that was not subject to active supervision, they were not immune to antitrust actions.⁵⁸ Riding the coattails of this case, in 2015 LegalZoom filed a federal antitrust lawsuit against the North Carolina State Bar for its refusal to register prepaid legal plans.⁵⁹

Shortly after LegalZoom filed the antitrust lawsuit, the two parties went to the bargaining table where they developed a consent agreement in an attempt to end their years-long dispute.⁶⁰ The compromise that was reached required LegalZoom to agree to three things: (1) to have North Carolina lawyers evaluate all the documents they offer in the state; (2) to allow customers to view the full text of blank document templates before being charged; and (3) to inform customers that forms are not substitutes for an attorney.⁶¹ The Bar then agreed to support a state law to clarify some ambiguities regarding the definition of unauthorized practice of law.⁶² The General Assembly of North Carolina did subsequently pass in 2015 “An Act to Further Define the Term ‘Practice Law’ For the Purpose of Protecting Members of the Public From Harm Resulting From the Unauthorized Practice of Law,” codified in North Carolina General Statute section 84-2.2.⁶³ This section provides that the definition of the practice of law “does not include the operation of a Web site by a provider that offers consumers access to interactive software that generates a legal document based on the consumer’s answers to questions presented by the software. . . .”⁶⁴ The rule also imposes the same conditions that the consent agreement required from LegalZoom, such as to have a North Carolina licensed attorney review the templates before offering them, disclosing that the services are not a substitute for an attorney, etc.⁶⁵

55. Brief for Legalzoom.com, Inc. as Amici Curiae Supporting Respondent, N.C. State Bd. of Dental Examiners v. FTC., 135 S. Ct. 1101 (2015) (No. 13-534).

56. *N.C. State Bd. of Dental Examiners*, 135 S. Ct. at 1104–05.

57. *Id.* at 1116–17.

58. *Id.* at 1103.

59. See Fisher, *supra* note 45.

60. *Id.*

61. *Id.*

62. See *id.*

63. N.C. GEN. STAT. §84-2.2.

64. *Id.*

65. *Id.*

B. MISSOURI

LegalZoom also faced a legal dispute in Missouri.⁶⁶ The case was settled out of court, with LegalZoom allowed to keep operating after meeting certain requirements to change its business.⁶⁷ However, the trial court's denial of LegalZoom's motion for summary judgment on the issue of unauthorized practice of law demonstrated that it was very plausible that LegalZoom could have been found guilty of the plaintiffs' allegations. The plaintiffs in the Missouri case, *Janson v. LegalZoom*, were not lawyers or a bar association, but rather a class of individuals who had purchased services from LegalZoom and sued for unauthorized practice of law. The plaintiffs did not allege that LegalZoom's documents were defective,⁶⁸ but rather asserted that the money the plaintiffs paid LegalZoom "was not used for their benefit because LegalZoom is not authorized to engage in the lawful practice of law in the State of Missouri."⁶⁹

In this case, the court once again analyzed the theory that LegalZoom's services fell under the self-help exemption regarding the unauthorized practice of law, that their services were simply a tool for consumers to engage in *pro se* representation.⁷⁰ The court recognized that this exemption could apply when consumers downloaded and printed LegalZoom's forms to fill out themselves but drew a distinction when consumers used the online software.⁷¹ The court noted the representations that LegalZoom made in advertisements and its website remove it from the realm of self-help, discussing the nature of the online document preparation:

LegalZoom says: 'Just answer a few simple online questions and LegalZoom takes over. You get a quality legal document filed for you by real helpful people.' . . . Thus, LegalZoom's internet portal sells more than merely a good (i.e., a kit for self help) but also a service (i.e., preparing that legal document). Because those that provide that service are not authorized to practice law in Missouri, there is a clear risk of the public being served in legal matters by 'incompetent or unreliable persons.'⁷²

As stated in the excerpt above, the Missouri court paid particular attention to the role that humans play at LegalZoom and noted the various stages where LegalZoom employees intervene in these self-help services, asserting that this human intervention, and not the internet medium, created the unauthorized

66. *Janson v. LegalZoom.com, Inc.*, 802 F. Supp. 2d 1053 (W.D. Mo. 2011).

67. Debra Cassens Weiss, *LegalZoom Can Continue to Offer Documents in Missouri Under Proposed Settlement*, ABA JOURNAL (Aug. 23, 2011), <http://www.abajournal.com/news/article/legalzoom-can-continue-to-offer-documents-in-missouri-under-proposed-settle/> [<https://perma.cc/BDV9-39H7>].

68. *Janson*, 802 F. Supp. 2d at 1057.

69. *Id.*

70. *Id.* at 1063.

71. *Id.*

72. *Id.* at 1064.

practice of law issue.⁷³ The first major aspect in which individuals are involved is when an employee creates the template itself, and the court said there is no difference between the LegalZoom document preparation and “a lawyer in Missouri asking a client a series of questions and then preparing a legal document based on the answers provided and applicable Missouri law.”⁷⁴ The court also pointed out the human intervention that occurs after the consumer has filled out the form: employees review files for completeness, spelling and grammar, consistency, factual issues, formatting, and printing and shipping the form.⁷⁵ The court asserted that this human involvement by those unauthorized to practice the law poses a risk that an incompetent or unqualified person may be involved in the creation of this legal document to the detriment of the consumer.⁷⁶

In its denial of summary judgment in favor of LegalZoom, the court held that, under LegalZoom’s then business model, a reasonable juror could find that LegalZoom engaged in the unauthorized practice of law. However, before the trial court ruled on the merits, the case was settled, and LegalZoom agreed to provide compensation to plaintiffs and agreed to make certain business modifications.⁷⁷

C. CALIFORNIA

One of LegalZoom’s most recent disputes regarding whether it engages in the unauthorized practice of law is in *LegalForce v. LegalZoom*.⁷⁸ In December 2017, an IP lawyer filed a lawsuit against LegalZoom asserting that by engaging in the unauthorized practice of law, and by evading the regulatory costs associated with the traditional practice of law, LegalZoom is essentially able to be a monopoly.⁷⁹ One of LegalZoom’s services is IP related, and includes trademark and copyright registration services.⁸⁰ The complaint also names the United States Patent & Trademark Office and the state bars of California, Arizona, and Texas as “necessary defendants,” alleging that they essentially abet LegalZoom’s monopoly by allowing it to operate.⁸¹

73. *See id.*

74. *Id.* at 1065.

75. *Id.* at 1064.

76. *Id.*

77. The specific business modifications were not apparent in the public record, but presumably are similar to the modifications agreed to in the North Carolina case. *See Weiss, supra* note 67.

78. *LegalForce RAPC Worldwide v. LegalZoom.com*, No. 5:17-cv-7194, 2017 WL 6505183 (N.D. Cal. Dec. 19, 2017).

79. Samson Habte, *IP Firm Files \$60M Antitrust Suit vs. LegalZoom, State Bars*, BLOOMBERG LAW (Dec. 20, 2017), <https://biglawbusiness.com/ip-firm-files-60m-antitrust-suit-vs-legalzoom-state-bars> [<https://perma.cc/YHN4-KRG2>].

80. *See Intellectual Property, LEGALZOOM*, <https://www.legalzoom.com/business/intellectual-property/> [<https://perma.cc/8SBN-AK9C>] (last visited Jan. 15, 2019).

81. *See Habte, supra* note 79.

LegalForce's complaint makes an appeal to the court based on the investments, hurdles, and requirements necessary for an individual to be authorized to practice law, pointing out the inequity in the fact that LegalZoom is allowed to offer the same service yet bypass these onuses: "Attorneys who have spent years going through law school, taking a difficult bar exam . . . and performing conflict checks cannot effectively compete against non-law firm competitors like LegalZoom on an even playing field."⁸² The complaint also notes the compliance costs that LegalZoom is able to avoid, such as not having to purchase malpractice insurance or conduct conflict checks.⁸³

LegalForce is seeking \$60 million in damages and declaratory relief that would allow LegalForce to file patents similarly to LegalZoom, in essence, to remove red tape without liability for the unauthorized practice of law.⁸⁴ Some specific examples of what LegalForce is looking for in declaratory relief is that non-lawyer assistants at the firm be allowed to perform certain tasks regarding patent filing that would otherwise be the unauthorized practice of law, to not have to check for conflicts, and to sell forms for consumers to fill out themselves similarly to LegalZoom.⁸⁵

Although the *LegalForce* complaint raised many novel issues regarding LegalZoom and the unauthorized practice of law, resolution of this dispute will not take place in the court system.⁸⁶ This case is currently being arbitrated as the court found that when the plaintiff purchased services from LegalZoom (even for mere investigatory purposes), it became bound by the company's arbitration clause.⁸⁷

III. WHAT TO MAKE OF THESE CASES

Although all three of the cases above included unauthorized practice of law allegations against LegalZoom, these cases are extremely different and highlight some of the competing interests incident to the rule against the unauthorized practice of law. Two key issues raised are: (1) who is the unauthorized practice of law rule actually protecting, and (2) whether the current rules are appropriate in our modern society.

82. Complaint at ¶ 63, *LegalForce RAPC Worldwide v. LegalZoom.com*, No. 5:17-cv-7194, 2017 WL 6505183 (N.D. Cal. Dec. 19, 2017).

83. *Id.* at ¶ 83.

84. See Habte, *supra* note 79.

85. Complaint at Prayer for Relief Section, *LegalForce RAPC Worldwide v. LegalZoom.com*, No. 5:17-cv-7194, 2017 WL 6505183 (N.D. Cal. Dec. 19, 2017).

86. Kat Greene, *LegalZoom Can Arbitrate IP Firm's Ad, Competition Claims*, LAW360 (Apr. 10, 2018), <https://www-law360-com.proxygt-law.wrlc.org/articles/1032015/legalzoom-can-arbitrate-ip-firm-s-ad-competition-claims> [<https://perma.cc/3BT9-PXJZ>].

87. *Id.*

A. WHO IS THE BAN ON UNAUTHORIZED PRACTICE OF LAW PROTECTING?

The cases above against LegalZoom include a number of different players, including bar associations, independent lawyers, and consumers of legal services themselves. Despite their different motives and interests, they all brought unauthorized practice of law claims against LegalZoom.

Lawyers who bring unauthorized practice of law claims might sometimes be viewed as doing so for selfish purposes.⁸⁸ That is, that the rule gets invoked not to protect consumers, but rather to protect the bar's monopoly.⁸⁹ Both *North Carolina State Bar* and the *LegalForce* complaint involved lawyers asserting unauthorized practice of law claims against LegalZoom, and they demonstrated that the rule is essentially entangled with self-interest.⁹⁰ The *LegalForce* complaint reveals a large element of lawyer self-interest, as it asserts antitrust claims on the basis that by engaging in the unauthorized practice of law, LegalZoom can edge out competition.⁹¹ The concerns the plaintiff raises about why a LegalZoom monopoly should be prevented are primarily based on inequity to lawyers' investments, rather than out of a concern for the public.⁹² These claims also ignore the notion that competition in the legal market might be beneficial to the public by increasing the supply of legal resources available to consumers and driving down prices. This bolsters the proposition that "[t]he belief that lawyers are somehow above 'trade' is an anachronism."⁹³

Whether rules against unauthorized practice of law are effective anti-competitive measures is another issue. Indeed, this is illustrated in the distinctions between the *North Carolina State Bar* and *LegalForce* disputes. In *North Carolina State Bar*, LegalZoom accused the North Carolina Bar of being monopolistic for not letting it operate,⁹⁴ while in *LegalForce*, plaintiffs asserted in their complaint that LegalZoom was becoming a monopoly because the bar did not crack down on them for the unauthorized practice of law.⁹⁵ The differences in these two cases also demonstrate that bar associations might not always be protective towards traditional lawyering.

88. See Julee Fischer, *Policing the Self-Help Legal Market: Consumer Protection or Protection of the Legal Cartel?*, 34 IND. L. REV. 121, 144 (2000).

89. See *id.* at 122.

90. See *LegalForce RAPC Worldwide v. LegalZoom.com*, No. 5:17-cv-7194, 2017 WL 6505183 (N.D. Cal. Dec. 19, 2017); *LegalZoom.com v. N.C. State Bar*, No. 11CVS15111, 2011 WL 8424700 (N.C. Super. Ct. Sept. 30, 2011).

91. See *LegalForce RAPC Worldwide v. LegalZoom.com*, No. 5:17-cv-7194, 2017 WL 6505183 (N.D. Cal. Dec. 19, 2017).

92. *Id.*

93. *Bates v. State Bar of Ariz.*, 433 U.S. 350, 350 (1977).

94. See *LegalZoom.com v. N.C. State Bar*, No. 11CVS15111, 2011 WL 8424700 (N.C. Super. Ct. Sept. 30, 2011).

95. See *LegalForce RAPC Worldwide v. LegalZoom.com*, No. 5:17-cv-7194, 2017 WL 6505183 (N.D. Cal. Dec. 19, 2017).

The more conventionally recognized beneficiaries of unauthorized practice of law rules, however, are consumers and the public at large. As discussed in Part I, there are a number of compelling policy reasons why strong unauthorized practice of law rules are necessary for the public benefit.⁹⁶ Two of these considerations that could potentially be undermined by services like LegalZoom are that (1) there is no real lawyer-client relationship, which creates trust as well as obligations on the lawyer's behalf; and (2) an unqualified individual might provide the legal services.⁹⁷ The *Janson* case against LegalZoom was brought by a class of individuals who had purchased the company's products and claimed to be harmed by the fact LegalZoom was engaged in the unauthorized practice of law.⁹⁸ The facts of that case are interesting when considering the policy intentions of the rule, because plaintiffs admitted that the documents had not been defective,⁹⁹ so the hazards associated with the second public policy reason for the unauthorized practice of law rule is not clearly met. Although the case was not decided on the merits, perhaps one could speculate that the plaintiffs' allegations that they were harmed by LegalZoom's engagement in the unauthorized practice of law does implicate the first policy consideration regarding lawyer-client relationships. That is, that plaintiffs were damaged by paying for legal services that did not provide the benefits of the lawyer-client relationship traditionally afforded to individuals who purchases legal services. Notably, because LegalZoom does not seem to have an ascertainable track record of harming the public in ways that the unauthorized practice of law rule seeks to prevent, assessing what public policy dangers might arise from LegalZoom's activities are largely hypothetical.

These different cases show that the unauthorized practice of law rules can be used by different types of parties to seek different ends. While the rule may conventionally be thought to be about protecting the public from incompetent legal service, it would be naïve not to recognize that the rule also is wielded as a weapon by lawyers to protect their own economic interests.

B. DO UNAUTHORIZED PRACTICE OF LAW RULES NEED TO BE UPDATED FOR THE TECHNOLOGICAL ERA?

As discussed in Part I, many states' unauthorized practice of law rules are very broad and not friendly to technological advancements. Critics have suggested this much about the *Model Rules* in general, asserting that "[t]he existing language and content of the Model Rules is outdated and does not account for technological advancement."¹⁰⁰ Additionally, both *North Carolina State Bar* and the *LegalForce* complaint reveal that rules against unauthorized practice of law must

96. See Part I.

97. *Id.*

98. *Janson v. LegalZoom.com, Inc.*, 802 F. Supp. 2d 1053, 1057 (W.D. Mo. 2011).

99. *Id.*

100. Katherine Medianik, *Artificially Intelligent Lawyers: Updating the Model Rules of Professional Conduct in Accordance with the New Technological Era*, 39 CARDOZO L. REV. 1497, 1501 (2018).

be updated or clarified in response to new technology, as they are inadequate in their current states.¹⁰¹

The Federal Trade Commission has also been a proponent of updating practice of law definitions in ways that would allow consumers to use technology that would otherwise be prohibited.¹⁰² As the agency entrusted with consumer protection, it noted that “overbroad scope-of-practice and unauthorized-practice-of-law-policies can potentially inhibit new ways of delivering legal services that may benefit consumers.”¹⁰³ In fact, when the North Carolina rule to update the definition of practice of law was proposed in the wake of the LegalZoom case there, the Federal Trade Commission, along with the Antitrust Division of the U.S. Department of Justice, wrote a comment letter that in general supported the General Assembly’s effort to allow the use of technology for certain legal services.¹⁰⁴ They suggested that updating the definition of the practice of law to exclude interactive software that generates legal documents can benefit consumers by being more cost effective, pressuring lawyers to reduce their costs, promoting more efficient and convenient legal services, and increasing access to legal services in general.¹⁰⁵ However, they also recognized certain risks to consumers by allowing this type of technology, and stated that express disclosures that the software is not a substitute for a lawyer are necessary.¹⁰⁶

The passing of North Carolina’s rule that included an exception to the practice of law definition demonstrated one way that updates to rules against the unauthorized practice of law can allow for consumers to use technology like LegalZoom for their simple legal needs. However, while a number of states have added exceptions to allow for interactive technologies like LegalZoom, most states do not provide these exceptions.¹⁰⁷ It can be expected that without updates to these rules, many more unauthorized practice of law claims will be brought against LegalZoom and its peers.

The *LegalForce* case suggests that updating unauthorized practice of law rules could also benefit more traditional law firms, in addition to companies like LegalZoom. The plaintiff in *LegalForce* said in an interview with Bloomberg Law that one goal of the lawsuit is for the law firm to be able to adopt

101. See *LegalForce RAPC Worldwide v. LegalZoom.com*, No. 5:17-cv-7194, 2017 WL 6505183 (N.D. Cal. Dec. 19, 2017); *LegalZoom.com v. N.C. State Bar*, No. 11CVS15111, 2011 WL 8424700 (N.C. Super. Ct. Sept. 30, 2011).

102. See Cristina L. Underwood, *Balancing Consumer Interests in A Digital Age: A New Approach to Regulating the Unauthorized Practice of Law*, 79 WASH. L. REV. 437, 445 (2004) (“The Federal Trade Commission (FTC) has also criticized state use of broad practice of law definitions for its failure to accommodate access to emerging technologies.”).

103. DEP’T OF JUSTICE & FED. TRADE COMM’N, Comment Letter on North Carolina HB 436 at 10 (June 10, 2016), <https://www.justice.gov/atr/file/866666/download> [<https://perma.cc/3GR9-956H>].

104. See *id.*

105. *Id.* at 2.

106. *Id.*

107. Underwood, *supra* note 102, at 446.

LegalZoom's model.¹⁰⁸ The complaint even "asks the court to declare that lawyers can sell form documents, like trademark applications, and 'employ non-lawyer assistants to recommend and advise' buyers on how to customize them" without being in violation of unauthorized practice of law rules.¹⁰⁹ This case thus shows that if unauthorized practice of law rules are amended to be less hostile to technology, it is not inevitable that traditional firms will go out of business because everyone will use services from LegalZoom. Rather, traditional law firms can also cut costs and increase efficiency that will enable them to compete with LegalZoom, which will ultimately benefit consumers.

There are a few arguments, however, for why unauthorized practice of law rules should not be updated to allow for companies like LegalZoom to operate. One of the strongest arguments is that some consumers may rely on these services without understanding that the documents they purchase may be of a lesser quality and less reliable than what they would get from a traditional lawyer. While LegalZoom explicitly states in its Terms of Use that legal documents purchased on their site may not be accurate, it is not likely that people are aware of this since very few people read the fine print.¹¹⁰ For this reason, even unauthorized practice of law rules that require certain disclosures be provided by online document providers regarding their sufficiency, such as the rule in North Carolina, may fail to protect consumers from relying on LegalZoom-type documents to their detriment.

The *Janson* case raises another consideration as to why updating unauthorized practice of law rules to allow services like LegalZoom to operate might have detrimental consequences: that employees involved in the creation of interactive legal documents might not be competent.¹¹¹ Requiring individuals to be competent and qualified when rendering legal services is the essential purpose on the restrictions of unauthorized practice of law.¹¹² Because no qualifications or licenses are necessary to be involved in the creation and quality checking of LegalZoom documents, there is a risk of incompetency or even dubious ethics. This risk is exacerbated by the fact that LegalZoom limits its liability in its Terms of Use, providing little option for recourse for customers that would be harmed by erroneous legal documents.¹¹³ Additionally, LegalZoom has an arbitration

108. See *Habte*, *supra* note 79.

109. *Id.*

110. A 2017 Deloitte study found that over 90% of people don't read terms of service and legal conditions before accepting. Caroline Cakebread, *You're Not Alone, No One Reads Terms of Service Agreements*, BUSINESS INSIDER (Nov. 15, 2017), <https://www.businessinsider.com/deloitte-study-91-percent-agree-terms-of-service-without-reading-2017-11> [<https://perma.cc/5AAP-HTGY>].

111. See McClure, *supra* note 4, at 581.

112. *Id.* ("The purpose of regulating the unauthorized practice of law is . . . to protect the public from incompetent or unreliable persons offering legal advice.").

113. *Terms of Use*, LEGALZOOM, <https://www.legalzoom.com/legal/general-terms/terms-of-use> [<https://perma.cc/2QUA-T983>] (last visited on Jan. 15, 2019).

clause for customers that purchase their services.¹¹⁴ Since LegalZoom and similar companies are not technically practicing law, they would not be liable for malpractice claims. This raises a hazard which has been called the “malpractice gap” which is “created when technology companies practice law without being held to the same standard of care as the rest of the practicing legal community.”¹¹⁵

The benefits associated with updating unauthorized practice of law statutes to be friendlier to companies like LegalZoom must be considered against the aforementioned risks. A paramount consideration is that allowing companies like LegalZoom to operate does help increase access to civil justice. It does so by providing cheap and convenient legal services. It is recognized in the current legal economy that many people who have legal needs are unable to find appropriate legal services.¹¹⁶ For this reason lawyers are able to charge extremely costly fees for their services and there are limited alternatives for consumers in need of legal services that are affordable.¹¹⁷ Recognizing this need, one way to counteract the risks could be to update unauthorized practice of law statutes to allow the LegalZooms of the world to operate, but impose on them regulations regarding explicit disclosures and restricting limits on liability.

CONCLUSION

There is little doubt that advancements in technology will affect the ways that legal services are offered to the public. The cases against LegalZoom show, however, that there is often resistance to these changes that stem from the ethical issues surrounding them. The rule against the unauthorized practice of law has been invoked as a barricade to companies like LegalZoom, based on legitimate concerns about how the public may be harmed by new technology in the legal industry, and perhaps also based on lawyers’ resistance to economic competition. While some genuine public policy dangers are raised by allowing companies like LegalZoom to operate, many unauthorized practice of law rules that are hostile to technological innovation may hinder efficiency and access to justice.

114. *Id.*

115. David Andrew Kobilka, *Backs to the Future: How the Legal Profession Has Ignored the Malpractice Gap Created by Technology*, 20 J. CONSUMER & COM. L. 130, 131 (2017).

116. Deborah L. Rhode et al., *Access to Justice Through Limited Legal Assistance*, 16 NW. J. HUM RTS. 1, 2 (2018).

117. See Zachary C. Zurek, *The Limited Power of the Bar to Protect Its Monopoly*, 3 ST. MARY’S J. LEGAL MALPRACTICE. & ETHICS 242, 251 (2013).



APPENDIX
ATTACHMENT 30

The Truth About the Billable Hour

One important aspect of law firm life that is nearly impossible to avoid is the “billable hour.” Most law firms make their money by billing their clients by the hour. In order to be profitable to your firm, you must make enough money from your billable hours not only to cover your salary and your overhead, but also to generate revenue for the firm. It’s not a complicated equation – the more hours you bill, the more revenue for the firm.

Firms “average,” “target” or “minimum” stated billables typically range between 1700 and 2300, although informal networks often quote much higher numbers. The NALP Directory of Legal Employers (www.nalpdirectory.com) contains billable hour information in the “hour and lifestyle” tab, although many firms choose not to share their data.

Not all law firms have the same emphasis on billable hours. Public interest law firms, smaller law firms, and law firms outside of large metropolitan areas often require less billable hours and may place more emphasis on training, client development, community-related activities and the like. In addition, government and public interest employers typically do not have any billable hour requirements because they do not bill their hours to a paying client.

A. The Full Time Job: Target 1800 Billable Hours

Assume you “work” from 8:00 am - 6:00 pm each day	10.0
Assume you take an hour for lunch	-1.0
Assume you take two 15 minute coffee breaks	- .5
Assume you spend a half-hour reading legal updates and reviewing general correspondence	- .5
Assume you will need to attend department meetings, occasional conferences, and do CLE	<u>- .5</u>
This means that you work 10 hours a day but may bill	7.5
If you work a 5 day week	<u>x 5</u>
You have been at work 50 hours and billed	37.5
If you do this all year long, and we assume:	
3 weeks vacation	
2 weeks holiday	
No sick days or personal days	
You will work 47 weeks	<u>x 47</u>
And have billed an annual average of	1762
To gain an extra 70 hours to be respectable you could:	
(a) Add approximately 1 ½ hours a week (approximately 20 minutes a day)	
1 ½ x 47 weeks =	<u>70</u>
So come in at 8:00 am and work until 6:20 pm Mon - Fri	
You have achieved	1832
BUT You have been “at work”	2420

The Commute

With a half hour commute (to your desk and working) you are “working” from 7:30 am to 6:50 pm
With a one hour commute you are “working” from 7:00 am to 7:20 pm, Monday - Friday

OR

(b) Work one Saturday a month
(10:00 am to 5:00 pm with 1 nonbillable hour) 6 x 12 months = 72

You have now billed 1834
BUT... You have been “at work” 2434

B. The Overtime Job: Target 2200 Billable Hours

Assume you “work” from 8:00 am - 8:00 pm each day 12.0

Assume you take an hour for lunch and an hour for dinner -2.0

Assume you take four 15 minute bathroom/coffee breaks -1.0

Assume you will need the same time for department meetings,
conferences and CLE -.5

This means you “work” 12 hours a day but bill only 8.5

You do this 5 days a week x 5

You have “worked” 60 hours but have billed only 42.5

If you do this all year long, and we assume:

3 weeks vacation

2 weeks holiday

No sick days or personal days

You will work 47 weeks x 47

And have billed an annual average of 1997

To gain the needed 200+ hours you could add two Saturdays a month

If you work 10-5 two Saturdays per month with 1 nonbillable hour
you will have 6 billables per day x 2 = 12 x 12 months = 144

For a new total of... 2141

Still Short!

So add another Saturday a month for 10 months
(take a break in Nov. & Dec. for the Holidays) 6 x 10 months = 60

You made it! You have billed

2201

However, you have been “at work”

3058

The Commute

With a half hour commute you are “working” from 7:30 am to 8:30 pm Monday - Friday

And 9:30 am - 5:30 pm three Saturdays a month

With a one hour commute you are “working” 7:00 am to 9:00 pm Monday - Friday

And 9:00 am to 6:00 pm three Saturdays a month

Keep in mind that these schedules do not account for personal calls at work, training/observing, talking with coworkers, a longer lunch (to exercise or shop perhaps), a family funeral, pro bono work (if not treated as billable hours), serving on a Bar committee, writing an article for the bar journal, or interviewing an applicant. When contemplating offers from firms, ask questions to learn more about their billable hour policies and practices.

w:\brochures\private\billable hour (July 2018)



APPENDIX
ATTACHMENT 31

WASHINGTON STATE BAR ASSOCIATION

ADMISSIONS POLICIES OF THE WASHINGTON STATE BAR ASSOCIATION

Under the authority of, and consistent with, the Washington Supreme Court's Admission and Practice Rules, the Board of Governors of the Washington State Bar Association (Bar) has adopted the following Admissions Policies in administering those rules. These policies apply to individuals seeking admission to the Bar as a lawyer, limited license legal technician (LLLT), limited practice officer (LPO), house counsel or foreign law consultant. These policies supplement APR 3-5, 8(f), 14 and 20-25. Any discrepancy or conflict between these policies and the Admission and Practice Rules (APR) is unintentional and will be resolved in favor of strict compliance with the APR.

Adopted July 1, 2012. Amended July 28, 2017, amendments effective September 1, 2017.
Amended November 14, 2020, amendments effective December 1, 2020.



I. GENERAL PROVISIONS AND DEFINITIONS

A. Applications

Applications for admission to practice law in Washington must be completed and submitted online or as prescribed by the Bar's admissions staff. Permission to submit an application in a paper format may be requested and granted for good cause shown.

B. Definitions

"Approved Law School" means a law school approved by the Board of Governors. Only those law schools approved, or provisionally approved, by the American Bar Association at the time the J.D. was conferred are approved by the Board of Governors. A list of ABA approved law schools is available on the ABA website.

"Attorney Applicant" means a person applying for admission as a lawyer under APR 3 who, at the time of filing the application, has ever been admitted to practice law as a lawyer (or the equivalent for that jurisdiction) in any jurisdiction other than Washington.

"Foreign Law Consultant Applicant" means a person applying for licensure as a foreign law consultant under APR 14.

"General Applicant" means a person applying for admission as a lawyer under APR 3 who, at the time of filing the application, has never been admitted to practice law as a lawyer (or the equivalent for that jurisdiction) in any jurisdiction other than Washington.

"House Counsel Applicant" means a person applying for licensure as a house counsel under APR 8(f).

"LLLT Applicant" means a person applying for admission as a limited license legal technician.

"LPO Applicant" means a person applying for admission as a limited practice officer.

II. APPLICATION REQUIREMENTS

A. Application Submission Policy

All applicants must submit electronically, within the filing deadlines specified below, the following:

- a completed application in the form required by the Bar including any required supplemental documentation;
- two Certificates of Good Moral Character, dated within 6 months prior to the application date and completed by two lawyers admitted to practice law in any U.S. jurisdiction or the foreign jurisdiction in which the applicant is admitted to practice law. For LLLT Applicants and LPO Applicants the certificates may be completed by LLLTs or LPOs admitted to practice in Washington; and
- an Authorization and Release form. The form must be signed and notarized within 6 months prior to the application date.

In addition, Attorney Applicants must submit:

- a Certificate of Good Standing from each jurisdiction in which the applicant has ever been admitted (including federal courts and tribal courts). Certificates of Good Standing (or similar document) for Attorney Applicants admitted to practice law must be issued by the admitting authority (e.g., State Bar or highest state court) in each jurisdiction where the applicant has been admitted. If the applicant is no longer admitted in the jurisdiction, the applicant must submit a letter from the jurisdiction that includes the dates of admission and status history. The certificate or letter must be signed and dated within 6 months prior to the application date.

All documents must be in English or accompanied by a certified English translation.

B. Application Filing Deadlines

Only applications for an exam have a filing deadline. Applications for admission by exam are accepted beginning February 1 for the summer exam and September 1 for the winter exam. Filing deadlines for applications to take an examination are as follows:

Examination	Applications Accepted	First Deadline	Late Filing Deadline	Failed the Immediately Preceding Winter WA Exam Deadline With No Late Fee
Summer Exam	February 1	March 5	April 5	May 5
Winter Exam	September 1	October 5	November 5	N/A

The deadline will be the next business day when a deadline falls on a Saturday, Sunday or holiday.

Late filing requires payment of a late filing fee as provided in the fee schedule. No applications will be accepted after the late filing deadline except for applicants who failed the immediately preceding winter Washington exam and are applying for the following summer Washington exam; those applicants are not required to pay the late filing fee and the deadline will be May 5.

Applications, including payment, Authorization and Release form, and Certificates of Good Moral Character, must be submitted online by 11:59 P.M. (PST/PDT) the day of the deadline. Applications, authorization and release forms, or certificates of good moral character filed after the first deadline will incur a late filing fee. Applications with incomplete or missing payment, authorization and release forms or certificates of good moral character will not be processed and will be disqualified if not received by the final deadline.

The LLLT Board or Limited Practice Board may schedule exams at times other than the lawyer bar exams and set application deadlines for those exams. Any such exams and the corresponding application deadlines will be posted on the Bar’s website.

C. Other Deadlines

- Request ADA accommodations..... 45 days prior to first day of exam.
- File all requested and/or additional items..... 18 days prior to first day of exam.
- Character and fitness resolution..... 18 days prior to first day of exam.
- Exam360 (laptop) registration 18 days prior to first day of exam.

Change of exam method.....	18 days prior to first day of exam.
Change of exam location	18 days prior to first day of exam.
Special requests for exam room	18 days prior to first day of exam.
Withdraw from exam with partial refund.....	18 days prior to first day of exam.
UBE Score Transfer Applications.....	No deadline, may apply at any time.
Admission by Motion Applications	No deadline, may apply at any time.
House Counsel Applicants.....	No deadline, may apply at any time.
Foreign Law Consultant Applicants.....	No deadline, may apply at any time.
Withdraw a non-exam application with partial refund	One year from date of application.

III. FEES

A. Fee Schedule

(1) General Applicants.....	\$585
Late Filing Fee (exam applicants only).....	\$300
(2) Attorney Applicants	\$620
Late Filing Fee (exam applicants only).....	\$300
(3) LLLT Applicants.....	\$300
Practice Area Exam Only	\$250
Professional Responsibility Exam Only.....	\$80
Late Filing Fee.....	\$150
(4) LPO Applicants	\$200
Late Filing Fee.....	\$100
(5) House Counsel Applicants.....	\$620
(6) Foreign Law Consultant Applicants.....	\$620

All bank card transactions are subject to a separate non-refundable transaction fee of 2.5%. There is no transaction fee for payments by electronic funds transfer or check.

For exam applicants, payments by check must be received or postmarked by the application deadline. Payments received or postmarked after the first deadline will incur a late filing fee as outlined in section II (B). Applications will not be accepted if payment is received or postmarked after the final deadline.

B. NCBE Investigation Fee

Applications for General Applicants applying under APR 3(b)(4)(B), House Counsel Applicants, Foreign Law Consultant Applicants, and all Attorney Applicants, except for applicants eligible for military spouse admission by motion under APR 3(c)(2), are referred to the National Conference of Bar Examiners (NCBE) for verification and investigation of the information in the application. Applicants are required to pay a nonrefundable investigation fee to the NCBE. See section V of these policies for all NCBE requirements.

C. Withdrawals and Refunds

For all applicants, the application fee includes a non-refundable administrative processing fee as set forth below. An exam applicant must withdraw an application at least 18 days prior to the date of the examination for a partial refund. All other applicants must withdraw their applications no later than one year after filing the application to receive a partial refund. The Bar will issue a refund of the application fee less the administrative fee. Any late filing fees paid and any investigation costs are nonrefundable. No refunds will be issued for withdrawals or disqualifications made less than 18 days prior to the date of the exam. Exam applicants forfeit all fees if they do not show up for the exam.

The partial refund policy applies to applications that are disqualified.

Administrative Fee (nonrefundable portion of application fee):

General, Attorney, House Counsel and Foreign Law Consultant Applicants.....	\$300
LLLT Applicants.....	\$150
LPO Applicants	\$100

If there are extraordinary circumstances that prevent an applicant from taking the examination (e.g., a serious medical emergency, death in the immediate family, significant health problems, house fire), a written request must be delivered to the Bar within 18 days after the exam in order to receive a partial refund as set forth above. The Bar may require the applicant to submit supporting documentation for the request.

For good cause shown, Bar staff has discretion to change the application type upon request of the applicant and transfer any application fee already paid to the new application type.

IV. CHARACTER & FITNESS REVIEW

All applicants are subject to a character and fitness review prior to being admitted to practice law in Washington State. The responsibility for full disclosure rests entirely upon the applicant. Permission to sit for the examination or admission to practice law may be withheld pending a hearing before the Character and Fitness Board and a final determination by the Washington Supreme Court regarding whether the applicants have met their burden of proving that they are of good moral character, fit to practice law and have met the Essential Eligibility Requirements. See APR 20-24.3. Factors considered by Admissions staff and Bar Counsel when determining whether an applicant should be referred to the Character and Fitness Board are set forth in APR 21(a).

Washington requires resolution of all character and fitness issues at least 18 days prior to sitting for the exam. Exam applicants with unresolved character and fitness issues after this deadline will not be permitted to sit for the exam and will have their application transferred to the next exam. Applicants may choose to withdraw from the exam and receive a partial refund if the request is made at least 18 days prior to the first day of the exam in lieu of transferring to the next exam. Therefore, applicants who disclose any information that may raise an issue of character or fitness are advised to file their applications early in the registration period. Early filing or providing information prior to the 18 day deadline does not guarantee all issues will be resolved 18 days prior to the exam.

V. NCBE REPORT REQUIREMENT

Applications for General Applicants applying under APR 3(b)(4)(B), House Counsel Applicants, Foreign Law Consultant Applicants, and all Attorney Applicants, except for applicants eligible for military spouse admission by motion under APR 3(c)(2), are referred to the National Conference of Bar Examiners (NCBE) for verification and investigation of the information in the application. Applicants who have an application that is referred to the NCBE will be contacted by the NCBE and required to pay an investigation fee and submit authorization and release forms directly to the NCBE. The Bar cannot finish processing applications until the report is received from the NCBE.

Applicants applying for an exam will not be allowed to sit for the exam if the Bar does not receive a report back from the NCBE at least 18 days prior to the first day of the exam; in that case, the application will be transferred to the next exam.

Applicants may choose to withdraw from the exam and receive a partial refund if the request is made at least 18 days prior to the first day of the exam in lieu of transferring to the next exam.

NCBE reports are valid for one calendar year from the date the Bar receives the completed report from the NCBE, after which a supplemental or new NCBE report will be required. See the NCBE website for additional information: <http://www.ncbex.org/character-and-fitness/jurisdiction/wa>.

VI. REASONABLE ACCOMMODATIONS UNDER THE ADA

Any applicant with a disability for which reasonable accommodation is needed must request such accommodation through the online admissions site at least 45 days prior to the examination date. Applicants requesting reasonable accommodations because of disabilities must provide appropriate documentation of the disability and specify the extent to which the standard testing procedures need to be modified. The burden of proof is on the applicant to show the need for any reasonable accommodations. The Bar reserves the right to make final judgment concerning testing accommodations and may have documentation reviewed by a medical specialist, psychologist or learning disability specialist. See the online admissions site for additional information regarding accommodations requests and required documentation.

Any reasonable accommodation may not compromise the integrity or security of the examination or affect the standards set for the examination. The Bar and any applicant granted accommodations must agree to and accept the terms and conditions of the accommodations no less than 18 days prior to the first day of the examination.

VII. SPECIAL REQUESTS FOR THE EXAM ROOM

For good cause shown, applicants may be permitted to bring otherwise prohibited items into the exam room. Examples of items are: pillows/lumbar supports, ergonomic chairs, book stand, wrist rest, medication, external keyboard or mouse, and religious headgear. In addition, applicants may request a specific seating location in the exam room due to a medical condition.

The Bar will provide a room for nursing mothers upon request. Nursing mothers may use the nursing room before and after the exam, during breaks and during the exam. An applicant must be accompanied by a proctor if the nursing room is used during the exam session.

All special requests for an exam must be made on the online admissions site no less than 18 days prior to the first day of the exam. All requests must be supported (if applicable) by a doctor's note.

VIII. LAPTOP USE AND EXAM360 SOFTWARE

Applicants for an exam requesting to use a laptop computer for the written portions of the exam must register, pay for, and download software from ILG Exam360. Exam360 must be purchased and downloaded for each administration of the exam, even if used in the past. Fees paid to ILG Exam360 are nonrefundable and nontransferable. Laptop users must sign a waiver of liability on exam day. Applicants who do not purchase and download the software by 18 days prior to the exam will be required to handwrite the exam.

If an exam applicant's laptop fails prior to the exam, the applicant must contact ILG Exam360 to download Exam360 again.

IX. EXAMINATION PROVISIONS

A. Grading and Results for All Examinations

(1) All applicants for all exams are to abide by the Exam Security Policy as established by the Bar.

(2) Grading of examinations shall be anonymous. Graders shall be provided exam answers with only the applicant ID number to identify to whom the answer belongs. Names or other personal information that would identify an applicant is not provided to the graders. All information matching names and numbers of the applicants shall be kept in the custody of the Bar until all examinations have been graded and each examination has been given either a pass or fail grade by applicant number only.

(3) There is no review or appeal of final examination results. APR 4(b).

(4) The names of successful applicants will be posted on the Bar's website.

(5) Unsuccessful exam applicants may reapply and retake the exam in the same manner as any other applicant.

B. Lawyer Bar Examination

(1) All lawyer bar exam applicants must pass the Uniform Bar Exam prepared and coordinated by the National Conference of Bar Examiners. The UBE consists of Multistate Bar Exam (MBE), Multistate Essay Exam (MEE) and Multistate Performance Test (MPT) questions. The UBE is administered over two days in accordance with the procedures established by the NCBE.

(2) The Board of Bar Examiners is responsible for the grading of the MEE and MPT questions on the UBE. In order to assure fairness and uniformity in grading, the Board of Bar Examiners shall follow NCBE-prescribed standards for grading to be used by all graders. The Board of Bar Examiners shall, as soon as practicable and within any guidelines prepared by the NCBE, certify the scores on the MEE and MPT portions for all applicants who have taken the UBE.

(3) Upon completion of the grading and certification, the Bar shall cause each lawyer bar exam applicant to be notified of the result of the examination. All results shall be reported to the NCBE in accordance with procedures established by the NCBE. All scaled scores and the applicant's national percentile rank for the MBE will also be reported to the applicant's law school.

(4) All lawyer bar exam applicants will be provided with the scaled written (MEE+MPT) score, scaled MBE score, total scaled UBE score and their national percentile rank for the MBE. Unsuccessful lawyer bar exam applicants will receive copies of their written essay and performance test questions and answers and written raw scores. No other raw scores, results information or examination materials will be provided to the applicants.

C. Washington Law Component

All applicants qualifying for admission as a lawyer under APR 3 must pass the Washington Law Component (WLC). The WLC is comprised of online materials and an online multiple choice test based on areas or subjects of law that are specific to Washington State. The Board of Bar Examiners is responsible for the content of the WLC and shall publish the Washington state specific materials for applicants.

The WLC is self-administered by applicants and is available to applicants after submitting the application. There is no fee to take the WLC. The WLC is an open-book test. Applicants may take the WLC as many times as necessary to achieve the minimum pass score. There is a mandatory waiting period of 24 hours after failing to pass the WLC the first time. Subsequent fails of the WLC require a 72 hour waiting period before retaking the test. The WLC minimum pass score is 80% correct. If an applicant fails the UBE or withdraws from the UBE after taking the WLC, that applicant must retake the WLC after applying for the next UBE administration.

X. UBE SCORE TRANSFER APPLICANT PROVISIONS

UBE score transfer applicants must have a qualifying UBE score and must meet one of the qualifications for lawyer bar examination applicants as set forth in APR 3(b).

UBE score transfer applicants may apply in Washington as a UBE score transfer applicant while applying in a different UBE jurisdiction to take the UBE, with the intent of transferring a qualifying score from that jurisdiction to Washington. The applicant must notify the Bar of the jurisdiction where the applicant will take the UBE.

Applicants are not permitted to apply at the same time for admission in Washington as both an applicant to take the UBE in Washington and an applicant seeking to transfer a UBE score to Washington.



APPENDIX
ATTACHMENT 32



Utah State Bar
Licensed Paralegal Practitioner Program
Admissions and Licensing
645 South 200 East
Salt Lake City, Utah 84111
(801) 531-9077
Web site: www.utahbar.org

UTAH STATE BAR

LICENSED PARALEGAL PRACTITIONER APPLICATION FOR ADMISSION
FILING INSTRUCTIONS and INFORMATION

These instructions apply to persons who wish to file an application for admission to the Utah State Bar as a Licensed Paralegal Practitioner.

READ AND RETAIN THESE INSTRUCTIONS for use in preparing your application and for future reference.

The application conforms with the requirements outlined in Rule 14-802- Authorization to Practice Law, and the Rules Governing Licensed Paralegal Practitioners (“Rules”). You should refer to these rules (available on the Bar’s website) prior to completing the application. **Neither the Bar nor its representatives has the authority to waive the deadlines, fees, or requirements contained therein.**

Use these instructions in conjunction with the Application Checklist and the Application Steps (both found on our website) to ensure you compile and submit a complete application.

The first step in meeting the burden of proving your character and fitness to practice law as a Licensed Paralegal Practitioner (“LPP”) is to demonstrate your individual ability to read and follow instructions and thereby file a complete and accurate application. The LPP Admissions Staff is available to answer questions that may arise as you complete the application process. However, it is **not** the role of the LPP Admissions Staff to:

1. Advise you whether you should answer ‘Yes’ or ‘No’ to a particular question;
2. Suggest the evidence you should provide in order to meet your burden of proving character and fitness or eligibility; or
3. Conduct an individualized review of your application to determine what documents are still missing.

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I. FILING DEADLINES

A. APPLICATIONS FOR ADMISSION BY EXAMINATION

MARCH EXAMINATION:

Application filing deadline date – October 1

Late filing deadline date – October 15 (*include a \$50 late fee*)

Final filing deadline date – November 1 (*include a \$100 late fee*)

AUGUST EXAMINATION:

Application filing deadline date – April 1

Late filing deadline date – April 15 (*include a \$50 late fee*)

Final filing deadline date – May 1 (*include a \$100 late fee*)

The Application, with all forms and applicable supplementary documentation, must be **received by the Bar (NOT postmarked) by close of business on the appropriate filing deadline**. If the deadline date falls on a Saturday, Sunday, or holiday the deadline date will be the first business day thereafter.

NO APPLICATIONS OR SUPPLEMENTAL DOCUMENTATION FOR APPLICATIONS WILL BE ACCEPTED AFTER NOVEMBER 1 FOR THE MARCH LPP EXAMINATION AND MAY 1 FOR THE AUGUST LPP EXAMINATION.

II. APPLICATION FEES

A. Application fees are subject to change without notice and are as follows:

Applicants taking All Practice Areas and Professional Responsibility Examination	\$400
Applicants taking one or two Practice Areas and Professional Responsibility Examination	\$100/each exam area
	AND
	\$100 for Professional Responsibility
Incomplete Application Fee	Varies, up to \$150

B. Personal checks or money orders can be used for payment of application fees. Please make checks or money orders payable to: Utah State Bar.

C. **It is strongly recommended that you wait to pay the fee and submit your application when you are sure you will be able to meet the next applicable deadline.** Please note: if you pay the fees but then miss the application deadline, you must pay the late fee that is in force on the day all required documentation is received by the Admissions Office.

D. If at any time in the course of processing your application the Bar discovers that your application is missing documentation that should have been included when it was filed, an additional late fee may be assessed. This applies to all applications.

III. COMPLETING AND FILING THE APPLICATION

A. FORMAT

1. The LPP Exam Application Form must be typed and submitted to the LPP Admissions Office by the applicable filing deadline date.
 - a) The examination applications for the August exam are posted the preceding December or January. The examination applications for the March exam are posted the preceding July or August. If you want to start gathering information for the application, you may do so prior to the application being posted by referring to the Application Checklist and Application Steps.
2. The Application process requires you to provide numerous supporting documents. You must do so before the application deadline. A small number of documents will need to have the original mailed; **these also must be received- NOT postmarked- by the Bar by the deadline.**

B. CONTENT

1. All questions must be fully answered; leave no questions blank.
2. If a particular question does not apply or the answer is "none," so state.
3. **If the question calls for an explanation, provide a detailed narrative of all circumstances and events leading up to and surrounding the incident(s) described in your response.** Failure to do so delays the processing of your application. Use extra paper as necessary.
4. If you need additional space in order to provide all the information requested (for example, if you attended more than 3 colleges) you may copy the blank forms and use the blank copies to supply the necessary information.
5. Unless otherwise noted, all dates must include the **month** and the **year**.
6. All addresses, including reference and employer addresses, must be current and include zip codes. Telephone numbers must also be provided where requested. If an employer is no longer in business, provide the address as it was when you were employed there; instead of a phone number include a note that it no longer exists.
7. Thoroughly PROOFREAD your responses.
8. **Absolute and complete candor is required. Omissions or misstatements on the application will be presumed intentional. Failure to be completely candid on your application may result in denial of admission.**

C. SUBMISSION

1. Use the Application Checklist as a guide to gather the necessary documents prior to submission. Verifying that your application is complete is your responsibility.
2. Once you submit your application, any changes to your application will need to be made by filing an Amendment form.
3. If you submit an incomplete application, even if you paid the filing fee with your application, you may be subject to subsequent late fees in place when your application is completed. These fees will need to be paid by check or money order. **The Bar does not accept credit card payments at this time.**
4. Your complete application is not considered fully ‘submitted’ or ‘filed’ until all required documents have been submitted and the Declaration of Completion is received by the Admissions Office. In other words, if you submit your application and provide the required forms on March 1st, but your Declaration of Completion does not arrive until March 14th, your application is considered filed on March 14th. For those documents with a time limit (for example, the DMV record cannot be dated more than 30 days prior to the date the application is filed), the time would be measured from March 14th.
5. Applications mailed to the Bar should be sent with tracking capability (i.e. FedEx, UPS, U.S. Certified or Priority Mail) to the following address:

Utah State Bar
LPP Admissions
645 South 200 East
Salt Lake City, UT 84111

The LPP Admissions Office cannot be held liable for any lost applications sent via methods without tracking capabilities.

IV. SUPPLEMENTAL DOCUMENTATION

A. DOCUMENTATION TO BE PROVIDED WITH APPLICATION

1. **Passport-style photograph.** This photograph will be used on your Bar card once admitted. It will also be used to verify your identity at the examination. The photograph must be recent (within the last year) and it must be different from your government ID (i.e. do not simply scan your driver's license or passport). Your appearance should be the same on the day of the test so if something changes (e.g. hair color or facial hair), you will need to send a new photo. Attach the photo to the Application in the area noted on the first page.
2. **Applicant Certification and Acknowledgment.** This document must be initialed, signed with a pen, dated and notarized. Signature and date of notary execution must be no more than 30 days prior to the date the application is filed. Read this document carefully. This is your sworn verification that all statements and representations in your application are true and correct. The Application Verification and Acknowledgement is also your sworn statement that no alterations have been made to the text of the application questions, that you have proofread your responses, that you will amend your application within 10 days of any changes, and that you will cooperate in providing information to the Bar.
3. **Authorization and Release.** This document must be signed in pen, dated, and notarized. Date of signature and notary execution must be no more than 30 days prior to the date your application is filed. This document authorizes the Utah State Bar to conduct an investigation relative to your character and fitness for admission to practice law.
4. **Notification of Release of Information.** This document must be signed in pen, dated, and notarized. In it you acknowledge your understanding that as per the Rules Governing LPP's, the Bar is able to release information to certain parties.
5. **FBI Criminal Background Report OR FBI Declaration Form.** Please provide the original report with your application. This report cannot be dated more than six months prior to the date you file the application. If you have not received your background check from the FBI, you may still meet the application deadline, but only if you provide the signed FBI Declaration form. To provide proof that your request for a background check has been sent to the FBI, **a copy of the mailing receipt showing the tracking or article number must be included with the declaration.**
 - a) The background check process generally takes 2 months but may take longer. It is your responsibility to follow up with the FBI.

- b) Please be aware that the FBI will not allow background checks to be forwarded. If your address changes before you receive the report, you must send a new request.
 - c) The FBI does not send a copy of the completed report to the Bar.
 - d) If you receive the report after submitting your application, you must submit the document to the Admissions Office no later than two weeks prior to the next Motion for Admission to be eligible for inclusion on that motion.
 - e) If you have spent a considerable amount of time in another country, the Bar may ask you to obtain a background check from the appropriate authority in that country.
 - f) **Fingerprint Card Instructions.** Use this document to help you fill out the information section of the fingerprint card which you will send to the FBI. It does not need to be submitted. Blank fingerprint cards can be obtained at your local law enforcement agency or from the Utah State Bar. The Utah State Bar does not provide fingerprinting services.
 - g) **Request Form.** Submit this form with a completed fingerprint card to the Federal Bureau of Investigation at the West Virginia address printed on the form. This form does not need to be submitted to the Bar.
 - h) **FBI-approved Channelers.** For an additional fee it may be possible to expedite a background check request by using an FBI-approved Channeler to electronically forward the fingerprints to the FBI. Visit the FBI's website for a list of approved Channelers and for more information on this option. You will need to verify with the Channeler that they are able to provide an authenticated background check.
6. **Driving Record.** You must provide a copy of your motor vehicle records ("MVR") for the last 3 years, dated no more than 30 days prior to your application being filed. The record does not need to be certified; however, it **must** be obtained directly from the authority issuing the license (i.e. not a third-party website). If you have held a license in more than one state in the last three years, you will need to obtain a record from each of those states. For Applicants licensed in Utah, information on obtaining your MVR is available at the Department of Public Safety's website: <http://www.driverlicense.utah.gov>. **Please note:** although the DMV record only has to cover three years, you are required to report every traffic citation you have received in the last five (5) years on Form 4T.
7. **Educational Requirements.** Official Transcripts showing that you meet the minimum education requirements as set forth in the application and in Rules 15-701 and 703. Applicants who have received a Limited Time Waiver do not need to comply with this requirement.

8. **National Paralegal Certification.** At the time of filing your application, provide an original certificate verifying that you have been credentialed by one of the following organizations: National Association of Legal Assistants (Certified Paralegal or Certified Legal Assistant); National Association of Legal Secretaries (Professional Paralegal); National Foundation of Paralegal Associations (CORE Registered Paralegal).
9. **Substantive Law-Related Experience Certification Form.** This form must be completed and signed by the attorney supervising your Substantive Law-Related Experience. You must show that, in the three (3) years prior to your application, you have obtained the requisite number of hours, including the area-specific hour requirements, to satisfy the Substantive Law-Related Experience thresholds as set forth in Rules 15-701 and 15-703. If the same attorney has supervised you in all the practice areas, you need only submit one form. If there is more than one attorney supervising your experience in different practice areas, please submit a completed form for each supervising attorney and provide specific totals for each area in which the attorney supervised you.
10. **Certificate(s) of Good Standing.** (*Attorneys Only*) You must obtain a certificate from all jurisdictions where licensed, dated no more than 30 days prior to your application. A Certificate of Good Standing verifies your date of admission and whether you are currently subject to any discipline.
11. **Disciplinary History.** (*Attorneys Only*) You must obtain and submit a Disciplinary History (a.k.a. Letter of Discipline, Complaint Check, Grievance History, etc.) from all jurisdictions where licensed, dated no more than 30 days prior to your application. The Disciplinary History must state whether there are or ever have been any complaints filed against you, and whether those complaints were dismissed or resulted in public or private discipline. ***Almost invariably you must specifically request that private matters be addressed.*** In almost every state, the Disciplinary History is separate from the Certificate of Good Standing, and frequently it is requested from a separate authority.
12. **Examination Regulations and Code of Conduct for Applicants to the Utah State Bar.** This document must be initialed, signed in pen, dated, and notarized no more than 30 days prior to the date your application is filed.

B. DOCUMENTATION TO BE PROVIDED ONLY IF APPLICABLE

1. **Courtesy Provisions for Health-Related Conditions.** This document should be completed if you need to bring prohibited items such as medication and food or drink into the exam room due to a medical condition. You can also use this form to request special seating arrangements (e.g. near restroom, front of the room, etc.). A note from your doctor must be submitted with the form verifying your medical condition and explaining why you must have access to the item(s) at all times or why you need the special seating.
2. **Medical Alert Form.** Complete this form if you have a medical condition that might require emergency medical attention during the examination.

3. **Form 1** – Record of Military Service. This form requires you to attach a copy of your DD-214 if you are no longer in the military. If you were in the military for any of the last five years, you must also attach a copy of your OERs, NCOERs, or the equivalent for those years.
4. **Form 2** – Bonding Companies. Use this form to provide details if you answered ‘Yes’ to Question 22 about Bonding Companies.
5. **Form 3** – Record of Civil Actions and **Form 3A** – Record of Administrative Actions. These forms require you to attach copies of the pleadings and other documentation or proof that the records have been destroyed. Therefore, these forms should *always* have at least one document attached to it.
6. **Form 4** – Record of Criminal Cases. This form requires you to attach copies of the police reports and court documents or proof from the appropriate authority that no records are available. Writing on the form that the documents are no longer available is NOT sufficient—you must provide proof from the court and police department. Therefore, this form should *always* have at least two documents attached to it. Please note that you will be contacting two different authorities to obtain the requisite documentation: the police department for the police report and the court for the court documents. Also note that in most states sealed records are still available to the subject of the record; if they are not you must provide evidence that access is forbidden. If you petitioned to have a record expunged, you must provide a copy of the expungement order.
7. **Form 4T** – Record of Traffic Cases. The main information required for standard traffic citations are the location, the title (what the ticket was for), the date you received it, and how you resolved it. More serious cases (such as a DUI or a hi-and-run), should be reported on Form 4. If you cannot remember the information for all the tickets you have received, you will need search the court records of the states where you believe you received the citations; they will have dockets going back several decades. Most states have their court records online, for free or for a fee. Utah’s online court database is called XChange and requires payment of a fee. *Tip:* If you use XChange, put an asterisk after your first name (ex: John*) and do not enter any information other than your first and last name when you search; this will provide the most thorough results.
8. **Form 5** – Record of Bankruptcy or Insolvency. This form requires you to attach copies of the bankruptcy documents, including the petition, schedules, and discharge order.
9. **Form 6** – Record of Debts and Defaults. Use this form to provide details if you answered ‘Yes’ to questions asking about defaults or late payments on your debts. You do not need to report every debt you currently have, only those that are referenced in the application’s financial history questions.

10. **Form 6T** – Record of State and Federal Tax Liens. This form requires you to attach a copy of the lien and its release (if it has been released). Please be aware that Applicants with unpaid taxes will NOT receive character and fitness approval until the liens are released.
11. **Form 7** – Record of Conduct. This form is necessary if you answered “Yes” to questions about “other conduct”. These questions refer to conduct and conditions that may have an effect on an individual’s ability to practice law in a safe, competent, and/or ethical manner. Answering ‘Yes’ to these questions will not result in an automatic denial. Rather, it is your opportunity to show that you understand how the conditions/conduct relate to the practice of law and what actions you have taken or plan to take to prevent any negative effects on your practice.
12. **Child Support Payment History.** If you are the obligor on any child and/or spousal support, you must provide a copy of your child and/or spousal support payment history. Please be aware that Applicants who are behind on their support obligations will not receive approval from the Admissions Committee until they are current and have a six-month history of on-time payments. If no official payment history is available, you may submit an affidavit from the ex-spouse verifying you are current on your payments.
13. **Test Accommodation Forms.** Please see the General Guidelines for Test Accommodations for more information.

C. DOCUMENTATION THAT CAN BE MAILED.

1. **Character Reference Forms.** Provide a copy of these two pages to the individuals you have asked to be your references. All Applicants need three (3) Character Reference Forms: one form to be completed by an individual generally known to the Applicant, one form to be completed by an attorney generally known to the Applicant, and one form to be completed by current or former employers (if unemployed). Character Reference Forms may not be completed by persons related to you by blood or marriage, romantic partners, classmates from the same graduating class, or current employees. **Your references should return the complete forms to you in a sealed envelope with their signature on the seal. Once you have received all three references, mail them to the Bar in a single package by the filing deadline. Do NOT send them individually.** If you want to be able to confirm receipt of the references, you should send the package RETURN RECEIPT REQUESTED or OVERNIGHT DELIVERY for tracking capability because the Bar will not be able to immediately confirm receipt.

D. DOCUMENTATION TO BE SUBMITTED BY A THIRD PARTY

1. **Certificate of Law School Graduation (if applicable).** Submit this form to your law school Dean or Registrar for completion. The school (or you) must **mail the original of the completed document** to the Bar before the deadline. Once the document is received, the Bar will send an email confirmation. Please note that this confirmation will not be sent until you have submitted your application.

2. **It is your complete responsibility to follow up with the law school to ensure the original document is delivered to the Bar before the deadline. Electronic versions will not be accepted.**
 - a) LPP applicants are not required to have a J.D. However, if an applicant has graduated from law school, the applicant will need to provide the Certificate of Law School Graduation or be otherwise able to satisfy the education requirements.

E. DECLARATION OF COMPLETION.

1. **Declaration of Completion.** This form should be the last document you sign and submit. It may be emailed to lppadmissions@utahbar.org OR mailed to Utah State Bar Admissions, 645 South 200 East, SLC, UT 84111. Read this document carefully and make sure you have complied with it before signing. The date this document is RECEIVED by the Bar (NOT the date it is signed or postmarked) is the date your application is considered FILED. **The Admissions Office will not review your application until this document is received. Do not sign and send this form until you are sure your application is complete.**

V. REAPPLICATION FOR ADMISSION FORM

1. The Reapplication for Admission Form is intended to update the information in a previously-submitted original application.
2. You may use a Reapplication for Admission form instead of a full application if you are in one of the following situations:
 - a) You failed an exam and it is less than two years since you filed a full application.
 - b) You were permitted to transfer your application from a previous exam for character and fitness or medical reasons.
 - c) You withdrew a previous application after it had been accepted for processing and have filed a full application within the last two years.
3. You may NOT use the Reapplication for Admission form if you are in one of the following situations:
 - a) Your previous application was rejected as incomplete.
 - b) You withdrew an application before it was accepted for processing.
 - c) Your previous application was denied.
 - d) It has been more than two years since you filed a full application.
4. Deadlines and Fees. The deadlines and fees to submit the Reapplication for Admission form are the same as those for the full application, with the following two exceptions:
 - a) You are a transfer applicant who was given a different deadline in the letter confirming the transfer.
 - b) You are a failing applicant who is reapplying for the next scheduled examination. In this case you will have a separate retake deadline that will be specified in the results letter. This deadline is usually about 4 weeks after the results are released.
5. Reapplicants should refer to the Reapplication Checklist to ensure they submit all necessary supplemental documentation. **A Reapplication that is missing the necessary supplemental documentation will be rejected as incomplete.**

VI. APPLICATION PROCEDURES

A. UPDATING THE APPLICATION. This is a continuing application and all changes to the information provided must be reported *within ten days of occurrence*, using the Amendment form found on the website. Refer to the applicable question number that you are amending and provide all details relative to that question. Changes will not be accepted by telephone or e-mail. **You must continue to update your application until you are admitted to practice law as an LPP in Utah. Failure to update your application may result in denial of admission.**

B. CORRESPONDENCE.

1. Almost all correspondence will be sent via email. You should check your email frequently to ensure that you do not miss crucial communication. You should also read all communications carefully.
2. It is the policy of the Bar to correspond solely with the Applicant regarding a current or potential application. This includes questions about how to complete the application. Third parties such as family members or legal assistants may not act as intermediaries between the Applicant and the Bar. Exceptions to this policy are limited to extraordinary circumstances such as overseas military service. In such cases the Applicant may provide a signed and notarized document specifying the individual with whom we should communicate and the dates when the applicant will be unavailable.

C. PROCESS.

Below is an overview of the application process.

1. **SUBMISSION.** You may submit the application and any supplemental documents via mail or personal delivery. Applications submitted by mail must be received by the Bar on or before the stated deadlines. Applications received after the deadline will not be accepted without the specified late filing fees.
2. **ACCEPTANCE.** **If and when the application is complete, it will be accepted and you will receive notification via email.** This should occur within 1-2 weeks after Submission. Once your application is accepted, you are expected to update it as necessary until you are admitted. Any changes should be reported within 10 days of occurrence.
3. **PROCESSING.** The Admissions Office will process the applications in order of the dated each was received in the Admissions Office. Depending on the number of applications, processing generally begins 1-2 weeks after acceptance. Processing involves a detailed review of the application and the commencement of the investigation; this could take up to several months. The Admissions Office may follow up with you to obtain additional documentation, information, or explanations. During this stage you may receive a “Deficiency Notice” that will list the documents needed to complete your file.

At any time during processing the Admissions Office may request that you provide more information regarding your application. You must provide any requested information before the deadline specified in the request or you will be charged a late fee.

4. REVIEW. The LPP Admissions Committee meets to examine the application and the information obtained through the Bar's investigation.
5. LPP ADMISSIONS COMMITTEE ACTION. There are several possible actions the Committee might take in regard to an application after its review:
 - a) Approval – An approval letter is issued.
 - b) Request for Additional Information – You will receive an email detailing the information desired by the Committee; after the Bar receives the requested documentation, your application will be Reviewed once again.
 - c) Corrective Action Requirement – You will receive notification that the Committee cannot approve the application until you take certain steps.
 - d) Interview or Hearing – The Committee may require you to appear in person to answer specific questions and/or to address specific concerns.
 - e) Denial – A denial letter or decision is issued detailing the reasons for the denial.
6. PRE-EXAMINATION. During this period, you will receive correspondence with details about the examination. The Admissions Office will continue monitoring and investigating each application. If your character and fitness is called into question at any time, your application may be returned to the Admissions Committee for Review and Committee Action.
7. EXAMINATION. See Section IX for general information about the examination.
8. RESULTS. Results are sent via email 8-10 weeks after the Examination. Failing Applicants have the opportunity to apply to sit for the next examination. **Please note:** The Admissions Office will continue to monitor and investigate your application. If your character and fitness is called into question at any time, the application may be returned to the Committee for Review and Committee Action.
9. LICENSING. A short time before the next motion for admission is scheduled to be submitted to the Court, the LPP Admissions Office will send an email to those eligible for admission. This email will detail the steps you must take in order to be included on the motion.
10. PLACED ON MOTION. If you complete the necessary steps, your name will be submitted to the Court for final approval on a Motion for Admission. Motions for Admission to the Bar are only presented to the Utah Supreme Court four times a year: February, May, August, and October.
11. TAKE THE LICENSED PARALEGAL PRACTITIONER OATH. You cannot practice as an LPP until after you take and sign the LPP Oath. This can be done any time after the Motion for Admission is approved by making arrangements with the Court. **You must continue to update your application until you take the LPP Oath.**

VII. CHARACTER AND FITNESS

A. OVERVIEW

1. The LPP Admissions Committee of the Utah State Bar will conduct a background investigation on every Applicant for admission to the Bar as an LPP. Under Rule 15-708 of the Rules Governing Licensed Paralegal Practitioners all Examination Applicants must be certified to the Utah Supreme Court as morally and ethically fit **prior** to sitting for the LPP Examination. Applicants whose Character and Fitness background investigations are not completed by the date of the examination will have their applications deferred to the next LPP Examination.
2. To avoid delays in the completion of the investigation, be certain to provide all information requested in the application, including:
 - a) Complete and accurate mailing addresses for employers and references.
 - b) Complete and detailed accounts of all circumstances where explanations are required, including dates, location and final outcome.
3. Persons who file late applications will be given the lowest priority for completion of the background investigation and character and fitness approval. Applicants whose background investigations are not completed by the date of the examination will have their applications deferred to the next LPP Examination.
4. The Utah State Bar is not at liberty to engage in discussions relative to the status of an investigation. Applicants will be contacted, however, if explanations are inadequate, additional details are needed, or the Admissions Committee requests your appearance before an Inquiry Panel to discuss matters relative to your character and fitness for admission.
5. The burden of proof is on the Applicant to establish by clear and convincing evidence that he or she has the requisite character and fitness to practice law as an LPP. Therefore, it is important to substantiate any claims or explanations with appropriate documentation.

B. INVESTIGATION

The character and fitness investigation will include, but is not limited to, the following areas:

1. **Financial History.** As part of the background investigation, the Utah State Bar will obtain a credit report for every Applicant.
 - a) Please be aware that Applicants are expected to be current on all of their accounts. Applicants with accounts past due or with unpaid judgments, taxes, or child support will NOT be approved. In certain situations, an applicant *may* be considered current on past due accounts if he or she can demonstrate that payment arrangements have been made and kept with the creditor(s) for a minimum of six months.

2. **Education.** Your law school or undergraduate institution will be contacted to obtain relevant information and you may be asked to provide copies of documents that were previously submitted as part of an application for admission at those institutions.
3. **References.** Letters may be sent, and phone calls may be made to individuals deemed by the Bar's investigator as likely to have pertinent information. Some of these references may be anonymous: this means that you did not list them as references, but they have been identified as current or former neighbors, co-workers, employees, or clients.
4. **Other Jurisdictions.** The Bar may contact other jurisdictions to which you have applied and/or been admitted, to verify information and perhaps obtain a copy of your application.
5. **Court Records.** The Bar will search court records of various states to verify that all criminal, civil and traffic cases have been reported.

C. DENIED APPLICANTS.

1. Applicants who are denied must wait to reapply at least one year after the date of the denial, unless another date is specified in the denial letter. A full and Complete application must be filed in accordance with the normal deadlines and late fees.

VIII. TEST ACCOMMODATIONS

- A. If you need test accommodations that affect the format or administration of the exam (e.g. extra time, a private room, extra breaks, etc.) and you have a documented disability that qualifies you for test accommodations under the Americans with Disabilities Act (ADA), you may file a request for Test Accommodations using the Utah State Bar forms.
- B. These forms and instructions are found on the LPP Admissions website (“General Guidelines for Test Accommodations” and “Supplemental Forms – Test Accommodations”).
- C. You must indicate on your application that you are requesting accommodations and submit the completed forms before the filing deadline.
 - 1. If you file test accommodation documentation late you must pay the appropriate late fee. If you miss the final filing deadline your application can still move forward, but you will not be eligible for test accommodations on that particular examination.
- D. All requests must be accompanied by current, supporting medical documentation.
Incomplete requests will be denied.
- E. If there are any items that you need to bring with you into the exam room, such as food, medicine, special equipment, etc. which do not affect the format or administration of the test itself, use the Courtesy Provisions for Health-Related Conditions form to make your request.

IX. APPLICATION WITHDRAWAL, TRANSFER AND REFUND POLICIES

A. WITHDRAWALS

1. If you wish to withdraw your application, you must do so in writing. You may do this at any time. However, your ability to obtain a refund is determined by the date on which your withdrawal request is received. See “C” below.

B. TRANSFERS

1. At-will requests to transfer your application are not permitted. Emergency transfers are limited to two circumstances: 1) a personal medical emergency or 2) a death in the immediate family.
2. Applicants who are absent from the examination due to an emergency must submit proof of the emergency and a written request to transfer before the end of the examination or their application will be considered withdrawn. ***A \$100 transfer fee must accompany the request.*** If you are absent from the examination and do not submit a written emergency transfer request to the Utah State Bar you will be considered a No Show and your application will be withdrawn (see section “D”).

C. REFUNDS

1. **All Examination Applicants.** A 50% refund of the application filing fee (NOT any/all late fees) is available for Applicants who withdraw no later than 30 days prior to the date of the LPP Examination. **Absolutely no refunds will be available after such time.**
 - a) Refunds must be **requested in writing** at the time the application is withdrawn and will be processed in accordance with the date the withdrawal request is **received** in the LPP Admissions Office.
 - b) No refund is available to Applicants who have been called to appear before the LPP Admissions Committee.

D. AUTOMATIC WITHDRAWALS

1. If one of the following occurs your application will be considered withdrawn, with or without notice:
 - a) If you do not file a complete application by the final filing deadline.
 - b) You fail to respond to repeated requests from the LPP Admission Office.
 - c) You are absent from the LPP examination without notice.
2. Applicants who have had their application automatically withdrawn may only reopen the process by filing a new completed application with the appropriate fees.
 - a) Those whose application was never accepted for processing (see 1(a) above) must submit a full application in accordance with the Filing Instructions.
 - b) Those whose application was automatically withdrawn after being accepted for processing (see 1(c) above) may use a Reapplication form if the Admissions Office has not specified otherwise and if it has been less than two years since they filed a full application.

X. GENERAL INFORMATION CONCERNING THE LPP EXAMINATION

A. RESTRICTION OF PERSONAL ITEMS

1. Personal items are prohibited from the testing area. More detailed information will be forwarded one month prior to the examination.
2. Restrooms and drinking fountains will be accessible during the examination, with proctor surveillance.
3. Applicants with a medical condition that necessitates bringing medication, food or special equipment (e.g. inhaler, insulin pump, lactation pump, etc.) into the exam room must complete the Courtesy Provisions for Health-Related Conditions form.
4. Use of specially designed chairs, footstools, podiums or other types of personal equipment are restricted. If such equipment is necessary for the purpose of relieving a physical disability or impairment, you must complete a Courtesy Provisions for Health-Related Conditions form.

B. EXAM FORMAT

1. Overall Format

The LPP examination is a one-day examination, consisting of a multiple-choice Professional Responsibility Exam and up to three practice-area specific exams. The LPP Professional Responsibility Exam consists of 50 multiple-choice questions (90 minutes allotted for completion). The Family Law exam consists of 50 multiple-choice questions (90 minutes allotted for completion) and an essay/practical question (90 minutes allotted for completion). The Landlord/Tenant and Debt Collection areas each have 25 multiple-choice questions (45 minutes allotted for completion) and an essay/practical question (45 minutes allotted for completion).

2. The Written Component.

Each area-specific exam contains an essay/practical question that are intended to test the fundamental skills required for the performance of many an LPP's tasks. These skills include problem-solving; factual analysis; legal analysis; reasoning; written communication; organization and management of a legal task; and recognizing and resolving ethical dilemmas.

C. UNSUCCESSFUL APPLICANTS

1. A failing Applicant is entitled to examine his or her answers to the written portion of the examination. You may do so by sending a written request to the Admissions Office with a \$25 fee (cash or check).
2. Examinations shall be retained for not less than six months after the date that examination results have been announced.

3. Applicants who wish to retake the Utah State Bar LPP examination immediately following the failed exam must file a Reapplication for Admission Form (see Section V) and submit the proper application fee by the retake deadline. **The retake deadline will be approximately 4 weeks after the results are released. An exact date will be provided in the results letter.**
4. For Applicants who apply to retake a later exam, normal deadlines and late fees apply. If it has been more than two years since the original application was filed, you must complete the full application.

XI. THE MOST COMMON ERRORS THAT DELAY THE PROCESSING OF AN APPLICATION:

A. Failing to provide all required documentation.

1. **Failing to provide evidence that you are current on child support** (if applicable).
2. **Failing to send all three sealed references.**
3. **Failing to attach the pleadings for civil actions or evidence that no records are available.** (Note: Sealed records are available to the parties of the case.) *See Form 3.*
4. **Failing to attach the police report and court documents for a criminal action or evidence that no records are available.** (Note: Evidence must be provided that no records are available even if the case has been expunged.) *See Form 4.*
5. **Failing to provide a Disciplinary History** (if you are an attorney).
6. **Failing to provide documentation related to Bar Complaints** (if you are an attorney).

B. Failing to provide proof of mailing to the FBI Declaration Form. (Note: You may not cross out or remove this requirement from the declaration form.)

C. Answering ‘No’ when you have in fact received traffic citations. (Note: you must report every traffic citation you have received in the last five (5) years, not just those that appear on your driving record.)

D. Typographical errors in the dates of your employment or residence history.

E. Unexplained gaps of more than four months in your employment history.

F. Failing to provide a detailed explanation of circumstances surrounding any school discipline, an employment termination, a criminal act, or a civil action.

G. Failing to provide a DMV record.



APPENDIX
ATTACHMENT 33



OVW Fiscal Year 2021 Justice for Families Program Solicitation

CFDA #	16.021
Grants.gov Opportunity Number:	O-OVW-2021-30001
Solicitation Release Date:	November 23, 2020 4:00 PM
Version:	1
Grants.gov Deadline:	January 21, 2021 11:59 PM
Application JustGrants Deadline:	January 25, 2021 11:59 PM

Eligible Applicants:

City or township governments, County governments, Native American tribal governments (Federally recognized), Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education, State governments, Other

Other

Eligible applicants are limited to: States, units of local government, courts (including juvenile courts), Indian tribal governments, nonprofit organizations, legal services providers, and victim service providers in the United States or U.S. territories. For more information, see the Eligibility Information section of this solicitation.

Letter of Intent

Applicants are strongly encouraged to submit a non-binding Letter of Intent to OVW.JFF@usdoj.gov by January 8, 2021. Interested applicants who do not submit a Letter of Intent are still eligible to apply. For more information, see the Application and Submission Information section of this solicitation.

Pre-Application Information Sessions

OVW will post a pre-recorded Pre-Application Information Session on its website at <https://www.justice.gov/ovw/resources-applicants>. This session is tentatively scheduled to be available by December 11, 2020. For more information, see the Application and Submission Information section of this solicitation.

Contact Information

For assistance with the requirements of this solicitation, email OVW at OVW.JFF@usdoj.gov. Alternatively, interested parties may call OVW at 202-307-6026.

Submission Information

Registration: To submit an application, all applicants must obtain a Data Universal Number

System (DUNS) number and register online with the System for Award Management (SAM) and with Grants.gov. To ensure sufficient time to complete the registration process, applicants must obtain a DUNS number and register online with SAM and with Grants.gov immediately, but no later than January 8, 2021.

Submission: Applications for this program will be submitted through a **NEW** two-step process: (1) submission of the **SF-424 and SF-LLL** in Grants.gov and (2) submission of the **full application** including attachments in the Justice Grants System (JustGrants). Submit the SF-424 and SF-LLL as early as possible, but no later than 24 – 48 hours prior to the Grants.gov deadline. For technical assistance with Grants.gov, contact Grants.gov Applicant Support at 1-800-518-4726 or support@grants.gov. For technical assistance with JustGrants, contact OVW JustGrants Support at 1-866-655-4482 or OVW.JustGrantsSupport@usdoj.gov.

For more information about registration and submission, see the Application and Submission Information section of this solicitation.

Notification

OVW anticipates notifying applicants of funding decisions by October 1, 2021.

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Program Description

Overview of OVW

OVW is a component of the United States Department of Justice (DOJ). Created in 1995, OVW administers grant programs authorized by the Violence Against Women Act (VAWA) and subsequent legislation and provides national leadership on issues of domestic violence, dating violence, sexual assault, and stalking. OVW grants support coordinated community responses to hold offenders accountable and serve victims.

Statutory Authority

34 U.S.C. § 12464

About the OVW Justice for Families

This program is authorized by 34 U.S.C. § 12464. The Grants to Support Families in the Justice System program (referred to as the Justice for Families Program) (CFDA # 16.021) was authorized in the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) to improve the response of the civil and criminal justice system to families with a history of domestic violence, dating violence, sexual assault, and stalking, or in cases involving allegations of child sexual abuse. The program supports the following activities for improving the capacity of courts and communities to respond to families affected by the targeted crimes: court-based and court-related programs; supervised visitation and safe exchange by and between parents; training for people who work with families in the court system; civil legal services; and the provision of resources in juvenile court matters. For additional information about this program and related performance measures, including how awards contribute to the achievement of program goals and objectives, see:

- OVW grant program information: <https://www.justice.gov/ovw/grant-programs>.
- Program performance measures under the Measuring Effectiveness Initiative: <https://www.vawamei.org/grant-programs/>.
- Examples of successful projects in OVW's most recent report to Congress on the effectiveness of VAWA grant programs: <https://www.justice.gov/ovw/page/file/1292636/download>.

Program Scope

Activities supported by this program are determined by statute, federal regulations, and OVW policies. If an applicant receives an award, the funded project is bound by this solicitation, the [DOJ Financial Guide](#), including updates to the financial guide after an award is made, the [Solicitation Companion Guide](#), and the conditions of the award.

Purpose Areas

Pursuant to 34 U.S.C. § 12464, funds under this program must be used for one or more of the six purposes discussed below. OVW is interested in funding projects that take a coordinated approach to helping families victimized by domestic violence, dating violence, sexual assault, and stalking as they navigate the justice system. To help achieve this coordinated approach, applicants may propose either a **standard project** or a **comprehensive project**.

Standard Project: Applicants **must** propose activities either under **purpose area 1 (supervised visitation) or 5 (courts)**. If an applicant is proposing to provide supervised visitation/safe exchange services (purpose area 1), the applicant must propose activities under at least one additional purpose area. The courts purpose area (purpose area 5) can be addressed in combination with another purpose area or on its own under any one or more of the purpose area 5 sub-categories. However, applications that address pro se victim assistance programs (purpose area 5(b)) or propose education and outreach programs (purpose area 5(e)) also must propose activities under at least one more purpose area 5 subcategory or other purpose area(s).

Comprehensive Project: Applicants **must** propose activities under **purpose areas 1 (supervised visitation), 5 (courts), and 6 (civil legal services)**. Applicants may include additional purpose areas in a comprehensive project application but are required to include purpose areas 1, 5, and 6.

VAWA 2013 includes eight distinct purpose areas for the Justice for Families Program. In FY 2021, however, OVW is limiting applicants to addressing only purpose areas 1, 3, 4, 5, 6, and 8:

(Purpose Area 1) Supervised visitation and safe exchange: Provide supervised visitation and safe visitation exchange of children and youth by and between parents in situations involving domestic violence, dating violence, child sexual abuse, sexual assault, or stalking. Although the program statute allows for sliding scale fees (34 U.S.C. § 12464(d)(2)), to ensure accessibility of OVW-funded services, grantees providing supervised visitation and safe exchange services are not allowed to charge fees to parents served with OVW funds. **For a standard project, applicants proposing activities under this purpose area must propose activities under at least one additional purpose area. For a comprehensive project, this purpose area must be included.**

(Purpose Area 3) Training for court-based and court-related personnel: Educate court-based and court-related personnel and court-appointed personnel (including custody evaluators and guardians ad litem) and child protective services workers on the dynamics of domestic violence, dating violence, sexual assault, and stalking, including information on perpetrator behavior, evidence-based risk factors for domestic and dating violence homicide, and on issues relating to the needs of victims, including safety, security, privacy, and confidentiality, including cases in which the victim proceeds pro se. **Applicants proposing activities under this purpose area must also propose activities under purpose area 1 and/or 5.**

(Purpose Area 4) Juvenile court resources: Provide appropriate resources in juvenile court matters to respond to dating violence, domestic violence, sexual assault (including child sexual abuse), and stalking and ensure necessary services dealing with the health and mental health of victims are available. **Applicants proposing activities under this purpose area must also propose activities under purpose area 1 and/or 5.**

(Purpose Area 5) Court and court-based programs and services: Enable courts or court-based or court-related programs to develop or enhance: a) court infrastructure (such as specialized courts, consolidated courts, dockets, intake centers, or interpreter services); b) community-based initiatives within the court system (such as court watch programs, victim assistants, pro se victim assistance programs, or community-based supplementary services); c) offender management, monitoring, and accountability programs; d) safe and confidential information-storage and information-sharing databases within and between court systems; e) education and outreach programs to improve community access, including enhanced access for underserved populations; and f) other projects likely to improve court responses to domestic violence, dating violence, sexual assault, and stalking. **For a standard project, applicants proposing activities under purpose area 5 are not required to propose activities under any other purpose area. (However, OVW will not consider applications that only propose pro se victim assistance programs (purpose area 5(b)) or only propose education and outreach programs (purpose area 5(e)). Applicants may apply to implement additional purpose areas if they choose. For a comprehensive project, purpose area 5 must be included.**

(Purpose Area 6) Civil legal assistance: Provide civil legal assistance and advocacy services, including legal information and resources in cases in which the victim proceeds pro se, to:

- a. victims of domestic violence; and
- b. nonoffending parents in matters:
 - i. that involve allegations of child sexual abuse;
 - ii. that relate to family matters, including civil protection orders, custody, and divorce; and

- iii. in which the other parent is represented by counsel.

Applicants proposing activities under this purpose area must also propose activities under purpose area 1 and/or 5 for a standard project. This purpose area must be included in a comprehensive project. In addition, a project in which the *primary* focus is on providing civil legal assistance is not appropriate for the Justice for Families Program and will be removed from consideration. At least 50% of all proposed activities and budget items in the application must be targeted toward activities other than civil legal services. All costs supporting civil legal services, including indirect costs and pro se victim assistance programs that provide civil legal assistance proposed under purpose area 5(b), will be counted toward this cap on civil legal assistance.

(Purpose Area 8) Training within the civil justice system: Improve training and education to assist judges, judicial personnel, attorneys, child welfare personnel, and legal advocates in the civil justice system. **Applicants proposing activities under this purpose area must also propose activities under purpose area 1 and/or 5.**

OVW Priority Areas

In FY 2021, OVW is interested in supporting the priority areas identified below. Applications proposing activities in the following areas will be given special consideration:

1. Reduce violent crime against women and promote victim safety through investing in law enforcement, increasing prosecution, and promoting effective prevention. **Applications meaningfully addressing purpose area 5(a) (34 U.S.C. § 12464(b)(5)(A)) by developing or enhancing specialized courts, consolidating courts and/or dockets, and/or creating special intake centers will receive special consideration.**
2. Increase resources for courts and tribes to register protection orders in the National Crime Information Center (NCIC) and give access to tribes to crime information systems. **Applications meaningfully addressing purpose area 5(d) (34 U.S.C. § 12464(b)(5)(D)) by developing or enhancing safe and confidential information-storage and information-sharing databases within and between court systems will receive special consideration.**
3. Increase efforts to combat stalking. **To receive special consideration under this priority, applicants must clearly identify how they will meaningfully engage in efforts to combat stalking.**

Activities that Compromise Victim Safety and Recovery or Undermine Offender Accountability

OVW does not fund activities that jeopardize victim safety, deter or prevent physical or emotional healing for victims, or allow offenders to escape responsibility for their actions. Applications that propose any such activities may receive a deduction in points during the review process or may be eliminated from consideration. Information on activities that compromise victim safety and recovery or undermine offender accountability may be found in the [Solicitation Companion Guide](#).

Out-of-Scope Activities

The activities listed below are out of the program scope and will not be supported by this program's funding. See also the list of unallowable costs in the Funding Restrictions section of this solicitation.

1. Research projects. Funds under this program may not be used to conduct research, defined in 28 C.F.R. § 46.102 as a systematic investigation designed to develop or contribute to generalizable knowledge. Surveys and focus groups, depending on their design and purpose, may constitute research and therefore be out-of-scope. Prohibited research does not include assessments conducted for internal improvement purposes only (see Limited Use of Funds below). For information on distinguishing between research and assessments, see the [Solicitation Companion Guide](#).

2. Mediation involving offenders and victims being physically present in the same place, in cases where domestic violence, dating violence, sexual assault, or stalking is an issue.
3. Parent education programs.
4. Individual, group, and family counseling.
5. Telephonic and/or virtual monitoring of supervised visitation. (*OVW will grant temporary exceptions to grantees experiencing extreme impediments, such as the COVID-19 pandemic or a natural disaster, to in-person supervised visitation.*)
6. Supervised visitation and exchange services unrelated to domestic violence, dating violence, child sexual abuse, sexual assault, or stalking.
7. Legal representation in child protection cases, except for cases in which the legal services are provided to a victim of domestic violence and the proceedings relate to or arise out of the abuse or violence committed against the victim.
8. Legal representation in child sexual abuse cases, except for cases in which the legal services are provided to nonoffending parents and relate to family matters, including civil protection orders, custody, and divorce, and in which the other parent is represented by counsel.
9. Criminal defense of victims charged with crimes.
10. Support of law reform initiatives, including, but not limited to, impact litigation.
11. Civil legal services and pro se victim assistance programs that exceed 50% of the total project costs and activities.

Applications that propose activities deemed to be substantially out-of-scope may receive a deduction in points during the review process or may be eliminated from consideration.

Limited Use of Funds

Grantees may use up to two percent of grant award funds to assess their work for internal improvement purposes only, such as by convening a listening session to identify service gaps in the community or surveying training participants about the quality of training content and delivery. Applicants considering such assessments must refer to the OVW research decision tree in the Solicitation Companion Guide to ensure that the activity does not qualify as human subjects research. The [Solicitation Companion Guide](#) also provides additional information on federal requirements related to research, assessments, and surveys.

Activities Requiring Prior Approval

Activities listed below will require prior approval in order to be supported by grant funds (see the [Solicitation Companion Guide](#) for more information on relevant requirements).

1. Surveys, whether conducted as part of a program or needs assessment, or for any other purpose. Prior approval is necessary to determine whether the activity is within the scope of the award and meets the requirements of the Paperwork Reduction Act.
2. Renovations, including such minor things as painting, carpeting, or installing lighting. In addition to obtaining prior approval, recipients must follow all necessary steps to ensure that funded renovations are in compliance with the National Environmental Policy Act (NEPA) and related laws, which may be time consuming and may include public notice and consultation.

Federal Award Information

Availability of Funds

All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law. There is no guarantee that funds will be available in the future. OVW may elect to make awards in a future fiscal year for applications submitted under this solicitation but not selected for FY 2021 funding, depending on the merits of the applications and the availability of funding.

Awards will be made as grants.

Award Period and Amounts

The award period is 36 months. Budgets must reflect 36 months of project activity, and the total "estimated funding" on the SF-424 must reflect 36 months. OVW anticipates that the award period will start on October 1, 2021.

This program typically makes awards in the range of \$550,000 for standard projects and \$650,000 for comprehensive projects. OVW estimates that it will make up to 19 standard awards and three to five comprehensive awards for an estimated \$13,000,000.

Funding levels under this program for FY 2021 are:

1. Standard projects: up to \$550,000 for the entire 36 months.
2. Comprehensive projects: up to \$650,000 for the entire 36 months.

OVW has the discretion to make awards for greater or lesser amounts than requested and to negotiate the scope of work and budget with applicants prior to making an award.

Types of Applications

In FY 2021, OVW will accept applications for this program from the following:

New: Applicants that have never received funding under this program or whose previous Justice for Families funding expired on or before January 25, 2020.

Continuation: Applicants that have an existing or recently closed (after January 25, 2020) award under this program. Continuation funding is not guaranteed.

Recipients of an FY 2019 or FY 2020 award under this program are NOT eligible to apply as the lead applicant on an FY 2021 proposal.

Note: Current grantees with a substantial amount of unobligated funds remaining (50 percent or more of the previous award) as of March 31, 2021 without adequate justification may not be considered for funding or may receive a reduced award amount if selected for funding in FY 2021.

Mandatory Program Requirements

Applicants that receive funding under this program will be required to engage in the following activities:

1. OVW-sponsored training and technical assistance (TTA).
2. OVW may conduct a program assessment or evaluation necessitating grantee involvement. Therefore, recipients may be expected to dedicate some OVW-funded time and resources to participating in an assessment or evaluation.
3. A new grantee orientation unless exempted by OVW.

Eligibility Information

Eligible Applicants

Pursuant to 34 U.S.C. § 12464(a), the following entities are eligible to apply for this program:

1. **States**, meaning any of the states and the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands (34 U.S.C. § 12291(a)(31)).
2. **Units of local government**, meaning any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a state (34 U.S.C. §

12291(a)(40)). Pursuant to 28 C.F.R. § 90.2(g), the following are not considered units of local government and are not eligible to apply as the lead applicant: police departments, pre-trial service agencies, district or city attorneys' offices, sheriffs' departments, probation and parole departments, and universities.

3. **Courts (including juvenile courts)**, meaning any civil or criminal, tribal, and Alaska Native Village, federal, state, local or territorial court having jurisdiction to address domestic violence, dating violence, sexual assault or stalking, including immigration, family, juvenile, and dependency courts (34 U.S.C. § 12291(a)(2)). This does not include prosecutors' offices.
4. **Indian tribal governments**, meaning a tribe, band, pueblo, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians or the governing body of an Indian tribe (34 U.S.C. § 12291(a)(36)).
5. **Nonprofit organizations**, meaning an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Code (34 U.S.C. § 12291(b)(16)(B)(i)).
6. **Legal services providers**, meaning entities that provide legal assistance to victims of domestic violence, dating violence, sexual assault, and stalking. This does *not* include for-profit organizations.
7. **Victim service providers**, meaning nonprofit, nongovernmental or tribal organizations or rape crisis centers, including state or tribal coalitions, that assist or advocate for domestic violence, dating violence, sexual assault, or stalking victims, including domestic violence shelters, faith based organizations, and other organizations, with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking (34 U.S.C. § 12291(a)(43)). Victim service providers must provide direct services to victims of domestic violence, dating violence, sexual assault, or stalking as one of their primary purposes and have a demonstrated history of effective work in this field.

Faith-Based and Community Organizations

Faith Based and community organizations that meet the eligibility requirements are eligible to receive awards under this solicitation (see "Faith-Based Organizations" on the [OVW website](#) for more information).

501(c)(3) Status

Any entity that is eligible for this program based on its status as a nonprofit organization must be an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of that Code. See 34 U.S.C. § 12291(b)(16)(B)(i).

Ineligible Entities and Disqualifying Factors

Applications submitted by ineligible entities or that do not meet all program eligibility requirements may not be considered for funding. In addition, an application deemed deficient in one or more of the following categories may not be considered for funding: 1. activities that compromise victim safety, 2. out-of-scope activities, 3. unallowable costs, 4. pre-award risk assessment, 5. completeness of application contents, and 6. timeliness. Failure to comply fully with all applicable unique entity identifier and SAM requirements (see Application and Submission section for more information on these requirements) will result in removal from consideration. An applicant with past performance issues, long-standing open audits, or an open criminal investigation also may not be considered for funding.

Note: Any nonprofit organization that holds money in offshore accounts for the purpose of avoiding paying the tax described in section 511(a) of the Internal Revenue Code is not eligible for a grant from this program. See 34 U.S.C. § 12291(b)(16)(B)(ii).

Cost Sharing And Match

This program has no matching or cost-sharing requirement.

Other Program Eligibility Requirements

In addition to meeting the eligible entity requirements outlined above, applicants for this program must also meet the requirements below. All certification and other eligibility related documents must be current and developed in accordance with the FY 2021 solicitation.

Certifications must take the form of a letter, on letterhead, signed, and dated by the authorized representative. Failure to provide required certifications may disqualify an application from further consideration. At a minimum, an application missing the required certification letter will be required to submit a certification letter prior to receiving an award. The signed certification letter must be uploaded as a separate attachment in JustGrants. Sample certification letters can be found on the OVW website at <https://www.justice.gov/ovw/resources-applicants>.

Certification of Eligibility

Under 34 U.S.C. § 12464(d), all applicants for the Justice for Families Program must:

- Certify that the organizational policies of the applicant do not require mediation or counseling involving offenders and victims being physically present in the same place, in cases where domestic violence, dating violence, sexual assault, or stalking is alleged.

Applicants proposing projects under purpose area 1 (supervised visitation and/or safe exchange services) must also:

- Demonstrate that adequate security measures, including adequate facilities, procedures, and personnel capable of preventing violence, and adequate standards are, or will be, in place (including the development of protocols or policies to ensure that confidential information is not shared with courts, law enforcement agencies, or child welfare agencies unless necessary to ensure the safety of any child or adult using the services of a program funded by OVW).

Applicants proposing projects under purpose area 4 (juvenile court resources) or 5 (court and court-based programs and services) must also:

- Certify that victims of domestic violence, dating violence, sexual assault, or stalking are not charged fees or any other costs related to the filing, petitioning, modifying, issuance, registration, enforcement, withdrawal, or dismissal of matters relating to the domestic violence, dating violence, sexual assault, or stalking.

Applicants proposing projects under purpose area 5 to support custody evaluation and/or guardian ad litem services must also:

- Certify that any person providing custody evaluation or guardian ad litem services through a program funded under this program has completed or will complete training developed with input from and in collaboration with a tribal, state, territorial, or local domestic violence, dating violence, sexual assault, or stalking victim service provider or coalition on the dynamics of domestic violence and sexual assault, including child sexual abuse, that includes training on how to review evidence of past abuse and the use of evidence-based theories to make recommendations on custody and visitation.

Applicants proposing projects under purpose area 5(b) or 6 to provide civil legal assistance services must also certify the following:

Delivery of Legal Assistance Certification

Pursuant to 34 U.S.C. § 12464(d), to be eligible for an award, any recipient or subrecipient providing legal assistance with funds awarded under this program must certify in writing that:

1. any person providing legal assistance with funds through this program – (A) has demonstrated expertise in providing legal assistance to victims of domestic violence, dating violence, sexual assault, or stalking in the targeted population; or (B)(i) is partnered with an entity or person that has demonstrated expertise described in subparagraph (A); and (ii) has completed, or will complete, training in connection with domestic violence, dating violence, sexual assault or stalking and related legal issues, including training on evidence-based risk factors for domestic and dating violence homicide;
2. any training program conducted in satisfaction of the requirement of paragraph (1) has been or will be developed with input from and in collaboration with a tribal, state, territorial, or local domestic violence, dating violence, sexual assault or stalking victim service provider or coalition, as well as appropriate tribal, state, territorial, and local law enforcement officials;
3. any person or organization providing legal assistance with funds through this program has informed and will continue to inform state, local, or tribal domestic violence, dating violence, or sexual assault programs and coalitions, as well as appropriate state and local law enforcement officials of their work;
4. the grantee’s organizational policies do not require mediation or counseling involving offenders and victims physically together, in cases where sexual assault, domestic violence, dating violence, or child sexual abuse is an issue; and
5. any person providing legal assistance through a program funded under the Justice for Families Program has completed or will complete training on domestic violence, dating violence, sexual assault, and stalking, including child sexual abuse, and related legal issues.

Required Partnerships

All applicants for the Justice for Families Program must include formal partnerships with both 1) a nonprofit, nongovernmental, or tribal domestic violence or sexual assault victim service provider (as defined in “Eligible Applicants” section) and 2) a court. If a court is the lead applicant, it must have a domestic violence and/or sexual assault victim service provider as a project partner. If a domestic violence and/or sexual assault victim service provider is the lead applicant, it must have a court as a partner. If the lead applicant is neither a domestic violence and/or sexual assault victim service provider nor a court, it must have a partnership with both a domestic violence and/or sexual assault victim service provider and a court.

Limit on Number of Applications

OVW will consider only one application per organization for the same service area. In addition, if an applicant submits multiple versions of the same application, OVW will review only the most recent system-validated version submitted before the deadline.

Application and Submission Information

Address to Request Application Package

The complete application package (this solicitation, including links to required forms) is available on Grants.gov and on the [OVW website](#). Applicants wishing to request a paper copy of these materials should contact the Justice for Families Program at OVW.JFF@usdoj.gov or 202-307-6026.

Pre-Application Information Session: OVW will post a pre-recorded Pre-Application Information Session on its website. Listening to this session is optional and not a requirement to be eligible to apply. The session is tentatively scheduled to be available by December 11, 2020 on the OVW website <https://www.justice.gov/ovw/resources-applicants>. **The session will be captioned in English and Spanish. Interested applicants needing additional language assistance should contact this program at OVW.JFF@usdoj.gov or at**

202-307-2026 as soon as possible, but no later than December 1, 2020.

Content and Form of Application Submission

The information below ("**Letter of Intent**" through "**Submission Dates and Times**") describes the full content and form of application submission.

Letter of Intent

Applicants intending to apply for FY 2021 funding under this program are strongly encouraged to submit a Letter of Intent. The letter should state that the applicant is registered and current with SAM and with Grants.gov. The letter should be submitted to OVW at OVW.JFF@usdoj.gov by January 8, 2021. This letter will not obligate the applicant to submit an application. See <https://www.justice.gov/ovw/resources-applicants> for a sample Letter of Intent.

Formatting and Technical Requirements

Applications must follow the requirements below for all documents, unless otherwise noted. Points may be deducted for applications that do not adhere to the following requirements:

1. Double-spaced (Data Requested with Application, Pre-Award Risk Assessment, and charts may be single-spaced).
2. 8½ x 11 inch pages.
3. One-inch margins.
4. Type no smaller than 12 point, Times New Roman (TNR) or Arial font, except for footnotes, which may be in 10-point font.
5. Page numbers.
6. No more than 20 pages for the Proposal Narrative for standard projects and no more than 25 pages for comprehensive projects.
7. Word documents in the following formats: Microsoft Word (.doc), PDF files (.pdf), or Text Documents (.txt).
8. Headings and sub-headings that correspond to the sections identified in this section of the solicitation.

Application Contents

Applications must include the required documents and demonstrate that the program eligibility requirements have been met. For a complete checklist of the application contents, see the Application Checklist in the Other Information section of this solicitation.

OVW will not contact applicants for missing items on the list below. Applications that do not include all of the following documents will be considered substantially incomplete and will not be considered for funding:

1. Proposal Narrative.
2. Budget Detail Worksheet and Narrative.
3. Data Requested with Application.
4. Memorandum of Understanding (MOU) or Letters of Commitment (LOC) submitted in addition to or in lieu of MOU.

Information to Complete the Application for Federal Assistance (SF-424)

Application for Federal Assistance (SF-424)

Applicants must complete the SF-424 in Grants.gov. The SF-424 is generated when the applicant begins the submission process. For "Type of Applicant," do not select "Other." The amount of federal funding requested in the "Estimated Funding" section of this form must match the amount of federal funding requested in the budget section of the application package. This program does not require a match; therefore, the values for the Applicant line should be zero. The individual who is listed as "**Authorized Representative**" must be an individual who has the authority to apply for and accept grant awards on behalf of the organization or jurisdiction.

Intergovernmental Review (SF-424 Question 19): This solicitation ("funding opportunity") is subject to Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs. Applicants must check the Office of Management and Budget's website for the names and addresses of state Single Points of Contact (SPOC) under Intergovernmental Review: <https://www.whitehouse.gov/wp-content/uploads/2020/04/SPOC-4-13-20.pdf>. If the applicant's state appears on the SPOC list, the applicant must contact the state SPOC to find out about, and comply with, the state's process under E.O. 12372. In completing the SF-424, such an applicant is to make the appropriate selection in response to question 19 once the applicant has complied with its state E.O. 12372 process. An applicant whose state does not appear on the SPOC list should answer question 19 by selecting the following response: "Program is subject to E.O. 12372 but has not been selected by the state for review."

Disclosure of Lobbying Activities (SF-LLL)

All applicants must complete and submit the *Disclosure of Lobbying Activities* (SF-LLL) form in Grants.gov. Applicants that expend any funds for lobbying activities must provide the information requested on the SF-LLL. Applicants that do not expend any funds for lobbying activities should enter "N/A" in the required highlighted fields.

Standard Applicant Information (JustGrants 424 and General Agency Information)

Applicants must complete this web-based form in JustGrants, which is pre-populated with the SF-424 data submitted in Grants.gov. Applicants are required to confirm the Authorized Representative, verify the legal name and address, and enter the ZIP code(s) for the areas affected by the project.

Proposal Abstract

The Proposal Abstract must provide a short summary (**no more** than two pages double-spaced) of the proposed project, including names of applicant and partners, project title, purpose of the project (including goal and intended outcome), primary activities for which funds are requested, who will benefit (including geographic area to be served), products and deliverables, and how the applicant will measure progress in completing project goals and objectives. Applicants must not summarize past accomplishments in this section. The Proposal Abstract, which is to be entered into a text box in JustGrants, will not be scored but is used throughout the review process.

Proposal Narrative

The Proposal Narrative may not exceed 20 pages (standard project) or 25 pages (comprehensive project), double-spaced, and reviewers will not read beyond this page limit. The Proposal Narrative must include the following three sections. The total point value for the proposal narrative section is **65 points**. Applicants must upload the Proposal Narrative as an attachment in JustGrants.

Purpose of the Proposal (10 points)

This section must describe:

1. The challenge or need faced by the community and how the goal/vision for the proposal will meet that need.
2. The communities to be served, including the geographic location, the populations in the service area, including any underserved population, and any available, relevant victimization rates.
3. The purpose area(s) the applicant is proposing to address.
4. The gaps in services and how the proposed project will complement and not duplicate existing services.
5. Any previous or current efforts (OVW-funded or not) to address the problem(s) the proposed project targets, and the effectiveness of those efforts.

What Will Be Done (45 points)

The application must provide a clear link between the proposed activities and the need identified in the "Purpose of the Proposal" section above. The application must not include any of the activities listed as unallowable costs in the Funding Restrictions section of this solicitation.

This section must describe:

1. The approach to addressing the challenge or need identified in the Purpose of the Proposal section above.
2. How the applicant will measure its progress in achieving the proposal's goal(s)/vision. Identify targeted outcome(s) and describe any tool(s) the applicant will use to track those outcomes and report them to OVW. Tools may include OVW performance progress reports and logic model templates (both available at <https://www.vawamei.org/tools-resource/resources-available/>).
3. How the applicant will move to project sustainability; continuation applicants must provide specific details.
4. The safety needs of victims of domestic violence, dating violence, sexual assault, and stalking, and the applicant's commitment to addressing those needs through the proposed project.
5. Project goals, objectives, activities, and products (if applicable), and provide a corresponding 36-month timeline.
6. If applicable, how the proposed project will reduce violent crime against women and promote victim safety through activities under purpose area 5(a).
7. If applicable, how the proposed project will increase resources for courts and tribes to register protection orders in NCIC and give access to tribes to crime information systems under purpose area 5(d).
8. If applicable, how the proposed project will increase efforts to combat stalking.
9. How the project will address the victimization rates identified in the Purpose of the Proposal section.
10. How the proposed project will reach each population identified in the Purpose of the Proposal section.

For applicants proposing projects under purpose area 1 – supervised visitation and/or safe exchange services:

1. Using concrete examples, describe the extent to which the applicant's or a project partner's supervised visitation and/or safe exchange services align—or will be aligned—with the OVW's Supervised Visitation [Guiding Principles](#).
2. If applicable, describe the applicant's or a partner's previous experience providing supervised visitation and exchange services to families affected by domestic violence, dating violence, child sexual abuse, sexual assault, or stalking.
3. Provide a detailed statement of how the applicant will ensure that adequate security measures, including adequate facilities, procedures, and personnel capable of preventing violence, and adequate standards are, or will be, in place. Describe the layout and security features of the facility and where in the community the facility is located. Describe how the applicant will develop protocols or policies to ensure that confidential information is not shared with courts, law enforcement agencies, or child welfare agencies unless necessary to ensure the safety of any child or adult using the services of a program funded by OVW.

For applicants proposing projects under purpose area 4 and/or 5 – court programs and services:

1. Describe any specialized docket or court infrastructure that is currently in place or will be established as part of this project.
2. Describe how the project will improve the judicial handling of domestic violence, dating violence, sexual assault, and stalking, and cases involving child sexual abuse; ensure offender accountability; and promote informed judicial decision-making.

3. If the applicant is proposing to use any technology, explain how the project will address any victim safety concerns that could arise from the use of technology, such as confidentiality, safety planning, and informed consent.

For applicants proposing projects under purpose area 6 – civil legal assistance:

1. Describe the extent to which the applicant will provide legal services to victims of domestic violence; and/or to nonoffending parents in matters that involve allegations of child sexual abuse and relate to family matters, including civil protection orders, custody, and divorce, and in which the other parent is represented by counsel.
2. Describe how the applicant or project partner will provide a supervision and mentoring plan for attorney staff supported by this project.
3. If the applicant is not a domestic violence or sexual assault victim service provider, explain how it will coordinate with a local domestic violence or sexual assault victim service provider.

For applicants proposing projects under purpose area 3 or 8 – training:

1. Describe any training program or curriculum that is currently in place or will be established as part of this project.
2. Identify the agencies that will be trained, the estimated number of trainings and attendees for each training, and the purpose of the trainings.
3. Describe how the project will improve training and education for court-based and court-related personnel on the dynamics of domestic violence, dating violence, sexual assault, and stalking and/or improve training and education for those within the civil justice system.
4. Provide a detailed statement of how the applicant will reach the intended audience for training and education, including efforts MOU partners will engage in to encourage identified participants to attend the trainings.

Who Will Implement the Proposal (10 points)

This section must:

1. Identify the key individuals and organizations, including project partners, involved in the proposed project.
2. Demonstrate that the individuals and organizations identified have the capacity to address the stated need and can successfully implement the proposed project activities; attach job descriptions of all key personnel.
3. Demonstrate that the applicant and/or project partner(s) include a domestic violence and/or sexual assault victim service provider and a court.
4. Describe the applicant's expertise in the areas of domestic violence, dating violence, sexual assault, stalking, and child sexual abuse, as appropriate.
5. Describe the project partner(s)' expertise in the areas of domestic violence, dating violence, sexual assault, stalking, and child sexual abuse, as appropriate.

Budget and Associated Documentation

Applicants must complete the web-based form in JustGrants for the budget worksheet and budget narrative. Applicants also must upload the applicable associated documentation as described below under each heading. The budget worksheet and budget narrative are worth a total of **15** points and will be reviewed separately from the proposal narrative. The associated documentation will not be scored, but failure to include it may result in removal from consideration or a delay in access to funding.

Budget Worksheet and Budget Narrative (Web-based Form)

Complete the budget worksheet and narrative form for all applicable cost categories. The budget narrative must describe each line item requested in the budget and explain all costs

included in the budget, including how the costs of goods and services are determined and how they will fulfill the objectives of the project. See the sample budget and the Creating a Budget webinar available on the OVW website at <https://www.justice.gov/ovw/resources-applicants>. Keep in mind that budgetary requirements vary among programs. Applicants must submit reasonable budgets based on the resources needed to implement their projects in their specific geographic location.

Award Period and Amount

Budgets should cover a project period of 36 months, or three years, starting October 1, 2021 and ending on September 30, 2024. Budget requests should not exceed \$550,000 for standard projects and \$650,000 for comprehensive projects.

The budget must:

1. Display a clear link between the specific project activities and the proposed budget items. The budget should not contain items that are not supported by the proposal narrative.
2. Include funds to attend OVW-sponsored TTA in the amount of \$15,000 for standard projects and \$20,000 for comprehensive projects for applicants located in the 48 contiguous states. For applicants located in the territories, Hawaii, or Alaska, include \$20,000 for standard projects and \$25,000 for comprehensive projects. This amount is for the entire 36 months and NOT per year. Applicants also may budget expenses in excess of the required amount if they are aware of relevant non-OVW sponsored conferences or training for which they would like permission to use grant funds to support staff/project partner attendance.
3. For applicants that anticipate using OVW funds to cover only a portion of a particular service they provide (e.g., supervised visitation or civil legal assistance), the budget should prorate operational costs such as rent, phone service, etc., accordingly.
4. Include funds or describe other resources available to the applicant to ensure access for individuals with disabilities, Deaf/hard of hearing individuals, and persons with limited English proficiency. See Accessibility under Federal Award Administration Information for more information.
5. Compensate all project partners for their full level of effort, unless otherwise stated in the MOU/LOC. For more information on compensating project partners, see the sample Budget Detail Worksheet on the OVW website at <https://www.justice.gov/ovw/resources-applicants>.
6. Distinguish clearly between subawards and contracts in allocating any grant funds to other entities. Pursuant to 2 C.F.R. § 200.331, a subaward is for the purpose of carrying out a portion of the federal award, such as compensating an MOU partner, and a contract is for the purpose of obtaining goods and services for the grantee's own use. The substance of the relationship is more important than the form of the agreement in determining whether the recipient of the pass-through funds is a subrecipient or a contractor. The awarding and monitoring of contracts must follow the recipient's documented procurement procedures, including full and open competition, pursuant to the procurement standards and monitoring requirements in 2 C.F.R. §§ 200.317-200.329. The issuance and monitoring of subawards must meet the requirements of 2 C.F.R. § 200.332, which includes oversight of subrecipient/partner spending and monitoring performance measures and outcomes attributable to grant funds. For more information, see the sample Budget Detail Worksheet and the [Solicitation Companion Guide](#) on the OVW website at <https://www.justice.gov/ovw/resources-applicants>.

OVW awards are governed by the provisions of 2 C.F.R. Part 200 and the [DOJ Financial Guide](#), which include information on allowable costs, methods of payment, audit requirements, accounting systems, and financial records. For additional information on allowable and unallowable costs, see the Funding Restrictions section below and the sample budget on the OVW website at <https://www.justice.gov/ovw/resources-applicants>.

Funding Restrictions

The following information is provided to allow applicants to develop an application and budget consistent with program requirements.

Unallowable Costs

The costs associated with the activities listed below are unallowable and must not be included in applicants' budgets.

1. Lobbying except with explicit statutory authorization.
2. Fundraising.
3. Purchase of real property.
4. Physical modifications to buildings, including minor renovations (such as painting or carpeting) without prior approval by OVW.
5. Construction.

Food and Beverage/Costs for Refreshments and Meals

Generally, food and beverage costs are **not** allowable. Recipients must receive prior approval to use grant funds to provide a working meal and/or refreshments at a meeting, conference, training, or other event; OVW may provide such approval if one of the following applies:

1. The location of the event is not in close proximity to food establishments, despite efforts to secure a location near reasonably priced and accessible commercial food establishments.
2. Not serving food will significantly lengthen the day or necessitate extending the meeting to achieve meeting outcomes.
3. A special presentation at a conference requires a plenary address where there is no other time for food to be obtained.
4. Other extenuating circumstances necessitate the provision of food.

Justification for an exception listed above must be included in the applicant's budget narrative. For additional information on restrictions on food and beverage expenditures, see <https://www.justice.gov/ovw/conference-planning>.

Conference Planning and Expenditure Limitations

Applicants' budgets must be consistent with all requirements (including specific cost limits and prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (which is defined to include meetings, retreats, seminars, symposiums, training, and other similar events), and costs of attendance at such events. Information on conference planning, minimization of costs, and conference reporting is available at <https://www.justice.gov/ovw/conference-planning>.

Pre-Agreement Cost

OVW generally does not allow pre-award costs. Costs incurred prior to the start date of the award may not be charged to the project unless the recipient receives prior approval from OVW. See the [DOJ Financial Guide](#) for more information on pre-award costs.

Indirect Cost Rate Agreement (if applicable)

Applicants that intend to charge indirect costs through the use of a negotiated indirect cost rate must have a current, signed, federally-approved indirect cost rate agreement and must upload and attach a copy of the agreement to their application in JustGrants. Applicants (other than state, local, and tribal governments) that do not have a current negotiated (including provisional) rate may elect to charge a de minimis rate of 10% of modified total direct costs, which may be used indefinitely. State, local, and tribal governments that **have never** negotiated an indirect cost rate with the federal government and receive less than \$35 million in direct federal funding per year also may choose to use the 10% de minimis rate.

Organizations that wish to negotiate an indirect cost rate should contact OVW's Grants Financial Management Division at OVW.GFMD@usdoj.gov or 1-888-514-8556 for more information.

Financial Management Questionnaire (including applicant disclosure of high-risk status)

Applicant Financial Capability Questionnaire (if applicable)

All nonprofit, nongovernmental organizations that apply for funding from OVW and have not previously (or within the last three years) received funding from OVW must complete an Applicant Financial Capability Questionnaire and attach it to their application in JustGrants. In addition, applicants may be required to submit their current year's audit report at a later time. The questionnaire can be found at <https://www.justice.gov/ovw/file/866126/download>.

Pre-Award Risk Assessment

Each applicant must respond to the questions below in a document uploaded and attached to its application in JustGrants. **Do not submit responses from a prior fiscal year without updating them to be responsive to all questions listed below.** This information will be used for a mandatory pre-award risk assessment. Failure to provide this information or to respond to questions from OVW regarding this information in a timely manner could result in the application being removed from consideration or a delay in access to funds. Provide complete responses that address all questions included for each numbered item. This document should be no more than four pages and may be single or double-spaced.

1. Will all funds awarded under this program be maintained in a manner that they will be accounted for separately and distinctly from other sources of revenue/funding? Provide a brief description of the applicant's policies and procedures that ensure funds will be tracked appropriately.
2. Does the applicant have written accounting policies and procedures? How often are these policies and procedures updated? Provide a brief list of the topics covered in the applicant's policies and procedures. OVW may request a copy for review during the application/award process or as part of the grant monitoring process.
3. Is the applicant's financial management system able to track actual expenditures and outlays with budgeted amounts for each grant or subgrant? Provide a brief summary of the organization's process for tracking expenditures, including tracking budgeted versus actual amounts.
4. Does the applicant have procedures in place for minimizing the time between transfer of funds from the United States Treasury and disbursement for project activities? Provide a short summary of the applicant's policy for requesting payments for grant awards.
5. Does the applicant have effective internal controls in place to ensure that federal funds are used solely for authorized purposes? Provide a brief description of the applicant's internal controls that will provide reasonable assurance that the award funds will be managed properly.
6. Does the applicant have a documented records retention policy? If so, briefly describe the policy and confirm that the policy complies with federal regulations. Information on Record Retention and Access can be found at 2 C.F.R. §§ 200.334-200.338.
7. Does the applicant or any of its employees have any potential personal or organizational conflicts of interest related to the possible receipt of OVW award funds? Applicants are required to disclose in writing any potential conflicts of interest to their awarding agency. See 2 C.F.R. § 200.112 and Chapter 3.20, Grant Fraud, Waste and Abuse, of the [DOJ Financial Guide](#) for additional information.
8. Is the individual primarily responsible for fiscal and administrative oversight of grant awards familiar with the applicable grants management rules, principles, and regulations including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200)? Provide a short list of the individual's qualifications/experience. If the individual is not familiar with the applicable rules and regulations, the applicant must contact OVW's Grants Financial Management Division at OVW.GFMD@usdoj.gov or 1-888-514-8556 immediately after the applicant is notified of its award to coordinate training.
9. Does the applicant have policies and procedures in place to manage subawards and monitor activities of subrecipients as necessary to ensure that subawards are used for authorized purposes, in compliance with laws, regulations, and terms and conditions of the award, and that established subaward performance goals are achieved (2 C.F.R. §§ 200.331-200.333)? Provide a brief description of the organization's policies and procedures on subrecipient management and monitoring.
10. Does the applicant currently require employees to maintain time distribution records that accurately reflect the work performed on specific activities or cost objectives in order to support the distribution of employees' salaries among federal awards or other activities (2 C.F.R. § 200.430)? Budget estimates do not qualify as support for charges to federal awards. Provide a brief description of the organization's established timekeeping policies and procedures.

11. Is the applicant designated as high risk by a federal agency outside of DOJ? ("High risk" includes any status under which a federal awarding agency provides additional oversight due to the applicant entity's past performance, or other programmatic or financial concerns with the applicant entity.) If so, provide the names(s) of the federal awarding agency, the date(s) the agency notified the applicant entity of the high risk designation, contact information for the high risk point of contact at the federal agency, and the reason for the high risk status, as set out by the federal agency.

Disclosure of Process Related to Executive Compensation

An applicant that is a nonprofit organization may be required to make certain disclosures relating to the processes it uses to determine the compensation of its officers, directors, trustees, and key employees and must upload and attach a document with these disclosures to its application in JustGrants.

Under certain circumstances, a nonprofit organization that provides unreasonably high compensation to certain persons may subject both the organization's managers and those who receive the compensation to additional federal taxes. A rebuttable presumption of the reasonableness of a nonprofit organization's compensation arrangements, however, may be available if the nonprofit organization satisfies certain rules set out in Internal Revenue Service regulations with regard to its compensation decisions.

Each applicant must state at the time of its application (in the Data Requested with Application section) whether the applicant is a nonprofit organization that uses the Internal Revenue Service's three-step safe-harbor procedure to establish a rebuttable presumption that its executives' compensation is reasonable. If the applicant states that it uses the safe-harbor procedure, then it must disclose, in an attachment to its application (to be titled "Disclosure of Process Related to Executive Compensation"), the process it uses to determine the compensation of its officers, directors, trustees, and key employees (together, "covered persons"). See 34 U.S.C. § 12291(b)(16)(B)(iii).

At a minimum, the disclosure must describe in pertinent detail: (1) the composition of the body that reviews and approves compensation arrangements for covered persons; (2) the methods and practices used by the applicant nonprofit organization to ensure that no individual with a conflict of interest participates as a member of the body that reviews and approves a compensation arrangement for a covered person; (3) the appropriate data as to comparability of compensation that is obtained in advance and relied upon by the body that reviews and approves compensation arrangements for covered persons; and (4) the written or electronic records that the applicant maintains as concurrent documentation of the decisions with respect to compensation of covered persons made by the body that reviews and approves such compensation arrangements, including records of deliberations and of the basis for decisions. For a sample letter, see the OVW website at <https://www.justice.gov/ovw/resources-applicants>.

For purposes of the required disclosure, the following terms and phrases have the meanings set out by the Internal Revenue Service for use in connection with 26 C.F.R. § 53.4958-6: officers, directors, trustees, key employees, compensation, conflict of interest, appropriate data as to comparability, adequate documentation, and concurrent documentation.

Following receipt of an appropriate request, OVW may be authorized or required by law to make information submitted to satisfy this requirement available for public inspection. Also, a recipient may be required to make a prompt supplemental disclosure after the award in certain circumstances (e.g., changes in the way the organization determines compensation).

Data Requested with Application

The Data Requested with Application should be uploaded as an attachment in JustGrants. The following responses must be included:

1. Name, title, address, telephone number, and email address for the grant point-of-contact. This person must be an employee of the applicant.
2. Statement as to whether the applicant (the organization whose DUNS number is being used for the application) will serve as a fiscal agent. A fiscal agent is an entity that does not participate in implementation of the project and passes all funds through to subrecipients, conducting minimal administrative activities. A fiscal agent applicant must list these subrecipients and include a statement acknowledging that, should an award be made, the applicant will be responsible for all applicable statutory, fiscal, and programmatic requirements, including those of 2 C.F.R. Part 200, as well as all project deliverables. In such situations, the fiscal agent must be an eligible applicant for the program.
3. Statement as to whether the applicant has expended \$750,000 in federal funds in the applicant's past fiscal year. If so, specify the end date of the applicant's fiscal year.
4. Statement as to whether the applicant is a nonprofit organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of that Code.
5. Statement as to whether the applicant is a nonprofit organization that holds money in offshore accounts for the purpose of avoiding paying the tax described in section 511(a) of the Internal Revenue Code.
6. Statement as to whether the applicant is a nonprofit organization that uses the Internal Revenue Service's three-step safe-harbor procedure to establish a rebuttable presumption that its executives' compensation is reasonable. If the applicant is not a nonprofit organization or is a nonprofit that does not use the safe-harbor procedure, provide a statement to that effect. For additional information about the safe-harbor procedure, see "Disclosure of Process Related to Executive Compensation" in the Additional Required Information section of this solicitation.
7. Statement as to whether the applicant is a recipient, or partner/subrecipient, on a current grant or pending application for this grant program. If a current grant, provide the year of the award and the role of the applicant on the award (recipient or project partner).
8. Statement as to whether any proposed project partner/subrecipient is a recipient, or partner/subrecipient, on a current grant or pending application for this grant program. If a current grant, provide the year of the award and the role of the partner(s) on the award (recipient or project partner/subrecipient).
9. Statement as to whether the application addresses the priority area to reduce violent crime against women and promote victim safety through investing in law enforcement, increasing prosecution, and promoting effective prevention under purpose area 5(a).
10. Statement as to whether the application addresses the priority area to increase resources for courts and tribes to register protection orders in NCIC and give access to tribes to crime information systems under purpose area 5(d).
11. Statement as to whether the application addresses the priority area to increase efforts to combat stalking.
12. The purpose areas the application addresses and whether the application is a standard or comprehensive project. If the application is addressing purpose area 5(b), pro se victim assistance programs that provide civil legal assistance, and/or purpose area 6, Civil Legal Assistance, state the percentage of activities and funds of the project that will support civil legal assistance.
13. Name of the nonprofit, nongovernmental, or tribal domestic violence and/or sexual assault victim service provider partnering on the project or an affirmative statement that the lead applicant is such an entity.
14. Name of the court partner on the project or an affirmative statement that the lead applicant is such an entity.
15. The percentage of grant activities, should the application be funded, that will address each of the following issues (the total percentages should not exceed 100%):

- Stalking.
- Domestic Violence.
- Dating Violence.
- Sexual Assault.

Memoranda of Understanding (MOUs) and Other Supportive Documents

For purposes of this solicitation, the MOU is a document containing the terms of the partnership and the roles and responsibilities between two or more parties, and it must be included as an attachment to the application in JustGrants. The MOU and/or LOC section is worth a total of **20** points. The MOU is not a substitute for a subaward agreement, which ensures that subrecipients adhere to the requirements of the award and 2 C.F.R. Part 200 (see 2 C.F.R. § 200.332). Partners receiving funds under the award generally are considered subrecipients because they are carrying out a portion of the federal award.

The MOU **must** be a single document and **must** be signed and dated by the Authorized Representative of each proposed partner organization during the development of the application. OVW will accept electronic signatures. MOUs missing signatures may result in a point deduction or removal from consideration, particularly if the MOU is missing the signature of a required partner. If necessary, an MOU can include multiple signature pages so long as each page includes the names and titles of all signatories to the MOU. A sample MOU is available on the OVW website at <https://www.justice.gov/ovw/resources-applicants>.

Applicants must have formal partnerships, delineated in the MOU (or LOC) with both 1) a nonprofit, nongovernmental, or tribal domestic violence and/or sexual assault victim service provider and 2) a court (as outlined in the “Required Partnerships” section under Eligibility Information).

The MOU must clearly:

1. Identify the partners and provide a brief history of the collaborative relationship among those partners, including when and under what circumstances the relationship began and when each partner entered into the relationship.
2. Describe the roles and responsibilities each partner will assume to ensure the success of the proposed project.
3. State that each project partner has reviewed the budget, is aware of the total amount being requested, and is being fully compensated for their work under the grant or is agreeing to be partially compensated or receive no compensation from the grant.
4. Demonstrate meaningful collaboration with a state, tribal, or local court system and a nonprofit, nongovernmental or tribal domestic violence and/or sexual assault victim service provider.
5. Demonstrate a meaningful partnership among all signing parties.
6. Specify the extent of each partner’s participation in developing the application.
7. Identify the people who will be responsible for developing and implementing project activities and describe how they will work together and with project staff.
8. Describe the resources each partner would contribute to the project, either through time, in-kind contributions, or grant funds (e.g., office space, project staff, and training).
9. Demonstrate that the project has commitments from entities that will receive training if the applicant proposes training under purpose area 3 or 8 (training for court-based, court-related personnel or those within the civil justice system).

If a court is unable to sign an MOU, the court may submit a letter of commitment (LOC) in lieu of signing the MOU as described below:

- If the court is the lead applicant and unable to sign an MOU, all project partners

- should submit LOCs and no MOU is required.
- If the court is a project partner and unable to sign an MOU, the lead applicant should still submit an MOU signed by the applicant and any other non-court partners and the court partner should submit an LOC.
- If the domestic violence and/or sexual assault victim service provider is the lead applicant and the only project partner is the court, the court should submit an LOC but the lead applicant is not required to submit an MOU or LOC.

Each LOC must:

1. Identify the name of the organization and provide a brief description of the collaborative relationship with the applicant.
2. Highlight the expertise of the individual or organization's staff who will be affiliated with this project.
3. State the roles and responsibilities the organization would assume to ensure the success of the proposed project.
4. Demonstrate a commitment to work with the applicant and its partners to achieve the stated project goals.
5. State that the organization has reviewed the budget, is aware of the total amount being requested, and is being fully compensated for its work under the grant or is agreeing to be partially compensated or receive no compensation from the grant (not applicable to courts submitting LOC as lead applicant).
6. Specify the extent of the organization's participation in developing the application.
7. Describe the resources that would be contributed to the project, either through time, in-kind contributions, or grant funds (e.g., office space, project staff, and training).
8. Demonstrate that the project has commitments from entities that will receive training if the applicant proposes training under purpose area 3 or 8 (training for court-based, court-related personnel or those within the civil justice system).

Note: LOCs submitted in lieu of an MOU under circumstances other than those defined above will not be accepted.

Additional Application Components

The following components will not be scored but must be included with the application. Failure to supply this information will result in the application being removed from consideration. Some components will be generated during the application submission process while others will be uploaded and attached to the application in JustGrants.

Letters of Nonsupplanting

Applicants must attach a letter to OVW's Director, signed by the Authorized Representative, certifying that federal funds will not be used to supplant non-federal funds should a grant award be made. A sample letter is available at <https://www.justice.gov/ovw/resources-applicants>.

Proof of 501(c)(3) Status (Nonprofit Organization Only)

As noted under Eligible Applicants, an entity that is eligible for this program based on its status as a nonprofit organization must be an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of the Code. All such applicants are required to attach a determination letter from the Internal Revenue Service recognizing their tax-exempt status. OVW cannot make an award to any nonprofit organization that does not submit a 501(c)(3) determination letter from the Internal Revenue Service.

Confidentiality Notice Form

All applicants are required to acknowledge that they have received notice that grantees and subgrantees must comply with the confidentiality and privacy requirements of VAWA, as amended. Applicants must upload and attach, under Additional Attachments in JustGrants, the completed acknowledgement form available on the OVW website at

http://www.justice.gov/sites/default/files/ovw/pages/attachments/2015/01/20/confidentiality_acknowledgement_form_42015.pdf
. This form must be signed by the Authorized Representative.

Disclosures and Assurances

Review, complete, and submit all disclosures, assurances, and certifications as described below.

Disclosure of Lobbying Activities

All applicants must complete and submit the *Disclosure of Lobbying Activities* (SF-LLL) form in Grants.gov before beginning the application process in JustGrants.

DOJ Certified Standard Assurances

Applicants must read and acknowledge the DOJ Certified Standard Assurances in JustGrants.

DOJ Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

Applicants must read and acknowledge these DOJ certifications in JustGrants.

Applicant Disclosure of Duplication in Costs, Applications, and/or Current Awards

Applicants must disclose all current and pending OVW awards (if applicable). If the applicant has a current grant or cooperative agreement under any OVW grant program or an award that has been closed since January 25, 2020, the information must be provided in a table using the sample format found on the OVW website at <https://www.justice.gov/ovw/resources-applicants>. The applicant must also provide the same information regarding any current OVW grants or pending applications on which the applicant is a subrecipient.

Applicants also must disclose all other federal grant programs from which the applicant currently receives funding or for which it has applied for funding in FY 2021 **to do similar work**. Provide this information in a table using the sample format found on the OVW website at <https://www.justice.gov/ovw/resources-applicants>. Both tables, if applicable, should be uploaded as attachments in JustGrants.

How to Apply

Applications must be submitted electronically via Grants.gov and JustGrants. Applicants that are unable to submit electronically must follow the instructions below under OVW Policy on Late Submissions. See **Submission Dates and Times** below for a list of steps for registering with all required systems and deadlines for completing each step.

Unique Entity Identifier and System for Award Management (SAM)

Federal regulations require that an applicant for federal funding: (1) be registered in SAM before submitting its application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. In addition, OVW may not make an award to an applicant until the

applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with these requirements by the time OVW is ready to make an award, then OVW may determine that the applicant is not qualified to receive an award. See 2 C.F.R. §§ 25.200, 25.205.

The unique entity identifier that applicants for federal grants and cooperative agreements are required to have is a Data Universal Number System (DUNS) number. A DUNS number is a unique, nine-character identification number provided by the commercial company Dun & Bradstreet (D&B). Once an applicant has applied for a DUNS number through D&B, its DUNS number should be available within two business days.

SAM centralizes information about grant recipients and also provides a central location for grant recipients to change organizational information. Grants.gov uses SAM to establish roles and IDs for electronic submission of grant applications.

If the applicant already has an Employer Identification Number (EIN), the SAM registration will take **up to two weeks to process**. If the applicant does not have an EIN, then **the applicant should allow two to five weeks for obtaining an EIN from the Internal Revenue Service. There is no fee associated with these processes. These processes cannot be expedited**. OVW strongly discourages applicants from paying a third party to apply or register on their behalf in an attempt to expedite these processes. To ensure all applicants are able to apply by the deadline for this solicitation, applicants must have obtained a DUNS number and registered online with the SAM and with Grants.gov no later than January 8, 2021.

Submission Dates and Time

After applicants obtain their DUNS number and register with SAM, they can begin the Grants.gov registration process. The applying organization must complete the Grants.gov registration process prior to beginning an application for a federal grant. The E-Business Point of Contact (E-Biz POC) must register the applicant organization with Grants.gov. The E-Biz POC oversees the applicant's Grants.gov transactions and assigns the AOR. The AOR submits the application to Grants.gov and must register with Grants.gov as well. In some cases the E-Biz POC is also the AOR for the applicant. Complete instructions can be found at www.Grants.gov.

In JustGrants, each applying entity will have an assigned Entity Administrator who is responsible for managing entity-level information and assigning roles in the system. The Entity Administrator is also the E-Biz POC designated in SAM.gov. For more information on registering with JustGrants, see <https://justicegrants.usdoj.gov/>.

It is the applicant's responsibility to ensure that the application is complete and submitted by the deadline. Failure to meet the submission deadline will result in an application not being considered for funding. Applicants should refer to the list below to ensure that all required steps and deadlines are met.

Failure to begin registration or application submission by the deadlines stated in the list below is not an acceptable reason for late submission.

Applicant Actions with Required Dates/Deadlines

1. **Obtain a DUNS number by January 8, 2021.** Apply for a DUNS number at <https://www.dnb.com> or call 1-866-705-5711.
2. **Register with SAM by January 8, 2021.** Access the SAM online registration through the SAM homepage at <https://www.sam.gov/SAM> and follow the online instructions for new SAM users. If the applicant already has the necessary information on hand, the online registration takes approximately 30 minutes to complete, depending upon the size and complexity of the business or organization. **Organizations must update or renew their SAM registration at least once a year to maintain an active status.**
3. **Register with Grants.gov by January 8, 2021.** Once the SAM registration is active, the applicant will be able to complete the Grants.gov registration.
4. **Submit Letter of Intent by January 8, 2021** to the Justice for Families Program, OVW.JFF@usdoj.gov, 202-307-6026.

5. **If necessary, request hardcopy submission by January 13, 2021.** Applicants that cannot submit an application electronically due to lack of internet access must contact the program at 202-307-6026 or OVW.JFF@usdoj.gov to request permission to submit a hardcopy application.
6. **Download updated version of Adobe Acrobat at least 48 hours before the Grants.gov deadline.** Applicants are responsible for ensuring that the most up-to-date version of Adobe Acrobat is installed on all computers that may be used to download the solicitation and to submit the SF-424 and SF-LLL on Grants.gov. To verify that the Adobe software version is compatible with [Grants.gov](http://www.grants.gov), visit the following link: <http://www.grants.gov/web/grants/applicants/adobe-software-compatibility.html>.
7. **Begin application submission process in Grants.gov as early as possible, but no later than 24 – 48 hours prior to the Grants.gov deadline.** Applicants may find this funding opportunity on Grants.gov by using the CFDA number, Grants.gov opportunity number, or the title of this solicitation, all of which can be found on the cover page. Applicants will submit two forms in Grants.gov (SF-424 and SF-LLL). After submitting these forms, the applicant will receive an email notification from JustGrants to complete the rest of the application in JustGrants. If the applicant is a new user in JustGrants, the email will include instructions on registering with JustGrants.
8. **Upon receipt of this email, register with JustGrants (if necessary) and begin to develop the application.** Some of the application components will be entered directly into JustGrants, and others will require uploading attached documents. Therefore, applicants will need to allow ample time before the JustGrants deadline to prepare each component and **to submit the complete application package at least 24 – 48 hours prior to the deadline.** Applicants may save their progress in the system and revise the application as needed prior to hitting the Submit button at the end of the application in JustGrants.
9. **Confirm application receipt:** Applicants should closely monitor their email and JustGrants accounts for any notifications from Grants.gov or JustGrants about a possible failed submission. The user who is authorized to submit applications on behalf of the organization is the one who will receive these notifications. OVW does not send out these notifications, nor does OVW receive a copy of these notifications. It is the applicant's responsibility to notify OVW of any problems with the application submission process. **Submitting the application components at least 48 hours before each deadline (Grants.gov or JustGrants, as applicable) will enable the applicant to receive notice of a failed submission and provide an opportunity to correct the error before the applicable deadline.**

OVW Policy on Late Submissions/Other Submission Requirements

Applications submitted after **11:59 p.m. E.T. on January 25, 2021** will not be considered for funding, unless the applicant receives OVW permission to submit a late application. In limited circumstances, OVW will approve a request to submit an application after the deadline. The lists below provide a description of the circumstances under which OVW will consider such requests. Approval of a late submission request is not an indication of the application's final disposition. Applications approved for late submission are still subject to the review process and criteria described in this solicitation.

To ensure fairness for all applicants, OVW requires that applicants requesting late submission adhere to the following:

Experiencing Technical Difficulties Beyond the Applicant's Reasonable Control

Issue with SAM, Grants.gov, or JustGrants Registration

1. Register and/or confirm existing registration at least three weeks prior to the application deadline to ensure that the individual who will be submitting the application has SAM, Grants.gov, and JustGrants access and is the person registered to submit on behalf of the applicant.
2. Maintain documentation of when registration began, any issues related to registration, and all communication with technical support.

Note: Failure to begin the SAM, Grants.gov, or JustGrants registration process in sufficient time (i.e., by the date identified in this solicitation) is not an acceptable

reason for late submission.

Unforeseeable Technical Difficulties During the Submission Process

1. Contact Grants.gov or JustGrants, as applicable, for Applicant/User Support at least 24 hours prior to the applicable deadline.
2. Maintain documentation of all communication with Grants.gov or JustGrants Applicant/User Support.
3. Prior to the applicable deadline, contact this program, via email at OVW.JFF@usdoj.gov indicating that the applicant is experiencing technical difficulties and would like permission to submit a late application. The email must include the following: a) A detailed description of the difficulty that the applicant is experiencing; b) The contact information (name, telephone, and email) for the individual making the late submission request; and c) In the case of JustGrants technical difficulties, the complete application packet (Proposal Narrative, Budget and Budget Narrative, MOU and/or LOC, and applicable certifications).
4. Within 24 hours after the applicable deadline, the applicant must email this program at OVW.JFF@usdoj.gov the following information: a) Applicant's DUNS number; b) Grants.gov or JustGrants Applicant/User Support tracking numbers; and c) Other relevant documentation.

Common foreseeable technical difficulties for which OVW will not approve a late submission: (1) Using an outdated version of Adobe Acrobat; and (2) Attachment rejection (Grants.gov will reject attachments with names that contain certain unallowable characters).

Note: Through Grants.gov or JustGrants, OVW can confirm when submission began. Applicants that attempt final submission less than 24 hours before the deadline will not be considered for late submission. By beginning the final submission process 24-48 hours before the deadline, applicants should have sufficient time to receive notice of problems with their submissions and make necessary corrections.

Severe Inclement Weather or Natural or Man-Made Disaster

1. Contact this program at OVW.JFF@usdoj.gov as soon as the applicant is aware of severe weather or a natural or man-made disaster that may impede the submission of an application by the deadline. The email should include a detailed description of the weather event or natural or man-made disaster. A detailed description includes when the event occurred, or is likely to occur, the impacted area, and the specific impact on the applicant and/or partners' ability to submit the application by the deadline (e.g., without power for "x" days, office closed for "x" days). If the application is complete and ready for the submission at the time the applicant notifies OVW, the application should be included with the email.
2. Applicants impacted by severe weather or a natural or man-made disaster occurring on the deadline must contact OVW within 48 hours after the due date or as soon as communications are restored.

Note: OVW may not be able to accommodate all requests resulting from severe inclement weather or a natural or man-made disaster.

OVW will review the request for late submission and required documents and notify the applicant whether the request has been approved or denied within 30 days of the submitted request.

Application Review Information

Review Criteria

Review Criteria

Applications will be scored based on the degree to which the application responds to each section and addresses each element in the section. Furthermore, applications will be scored based upon the quality of the response, capacity of the applicant and any partners, and the level of detail provided. Each element **must** be addressed in the section in which it is

requested. Points may be deducted if the applicant does not include the information in the appropriate section regardless if it is included elsewhere within the application. Each section will be reviewed as a separate document and will be scored as such. Specifically, for the Justice for Families Program, scoring will be as follows:

1. Proposal narrative: (65) points, of which:
 - A. Purpose of the proposal: (10) points.
 - B. What will be done: (45) points.
 - C. Who will implement the proposal: (10) points.
2. Budget worksheet and budget narrative: (15) points.
3. MOU/LOC: (20) points.

Voluntary match or other cost sharing methods will not be considered in the evaluation of the application.

Review and Selection Process

Applications will be subject to a peer review and a programmatic review.

Peer Review

OVW will subject all eligible, complete, and timely applications to a peer review process that is based on the criteria outlined in this solicitation. OVW may use internal reviewers, external reviewers, or a combination of both.

Programmatic Review

All applications that are considered for funding will be subject to a programmatic review. The programmatic review consists of assessing the application for compliance with the program's scope, activities that compromise victim safety, and, if applicable, past performance and priority area review. OVW reserves the right to deduct points from applications for the following reasons:

1. Activities that compromise victim safety and recovery and undermine offender accountability (deduct up to 10 points).
2. Out-of-scope and unallowable activities (deduct up to 10 points).
3. Past performance (deduct up to 25 points).
4. Formatting and Technical Requirements (deduct up to 5 points).
5. Activities and budget items targeted toward civil legal services exceeding the 50% limitation described under Purpose Area 6 (deduct up to 10 points).

An application that is deemed to be substantially out-of-scope, proposes a substantial number of activities that are unallowable, or proposes activities that pose a significant threat to victim safety or a serious breach of confidentiality will not be considered for funding. **An applicant with considerable past performance issues may receive a deduction in points as described above or be removed from consideration entirely regardless of the application's peer review score.**

As a part of the programmatic review process described above, applicants with current or recently closed OVW awards will be reviewed for past performance and risk based on the elements listed below.

1. Demonstrated effectiveness of the current project indicated by timely progress toward meeting project goals and objectives.
2. Demonstration that past activities supported with OVW grant funds have been limited to program purpose areas.
3. Adherence to all special conditions of existing grant award(s) from OVW.
4. Adherence to programmatic and financial reporting requirements, including timely submission of required reports.
5. Completion of close-out of prior awards in a timely manner.
6. Appropriate use of and active participation in OVW-sponsored workshops and other technical assistance events as required by a special condition of the current or recent award.
7. Receipt of financial clearances on all current or recent grants from OVW.

8. Timely resolution of issues identified in any audit or on-site financial or programmatic monitoring visit.
9. Adherence to the Office of Management and Budget single-audit requirement.
10. Timely expenditure of grant funds.
11. Adherence to the requirements of the [DOJ Financial Guide](#).

Prior to making an award, OVW is required to review and consider any information about applicants included in the designated integrity and performance system accessible through SAM (currently the Federal Award Performance and Integrity Information System or FAPIIS). Applicants may review and comment on information in FAPIIS about themselves that another federal awarding agency has previously entered. OVW will consider the applicant's comments as well as other information available in FAPIIS in making its judgment about the risk posed by making an award to the applicant as described in 2 C.F.R. § 200.206.

Absent explicit statutory authorization or written delegation of authority to the contrary, all final award decisions will be made by the OVW Director, who also may give consideration to factors including, but not limited to, reaching underserved populations, geographic diversity, OVW priorities, past performance, and available funding when making awards. All award decisions are final and not subject to appeal.

High-Risk Grantees

Based on DOJ's assessment of each grantee with regard to current or previous funding, unresolved audit issues, delinquent programmatic and fiscal reporting, and prior performance, a grantee may be designated "high-risk." Awards to high-risk grantees may carry special conditions such as increased monitoring and/or prohibitions on drawing down funds until certain requirements are met. High-risk grantees with substantial or persistent performance or compliance issues, long-standing open audits, or open criminal investigations may not be considered for funding.

Anticipated Announcement and Federal Award Dates

It is anticipated that all applicants will be notified of the outcome of their applications by October 1, 2021.

Federal Award Administration Information

Federal Award Notices

Successful applicants will receive OVW award notifications electronically from JustGrants (not Grants.gov). This award notification will include instructions on enrolling in Automated Standard Application for Payments (ASAP) and accepting the award. Recipients will be required to log into JustGrants to review, sign, and accept the award. The Authorized Representative must acknowledge having read and understood all sections of the award instrument and submit the required declaration and certification to accept the award; these steps will be completed electronically in JustGrants.

Administrative, National Policy, and Other Legal Requirements

Information for All Federal Award Recipients

Applicants selected for awards must agree to comply with additional legal, administrative, and national policy requirements. OVW strongly encourages applicants to review the information pertaining to these additional requirements prior to submitting an application. This information can be found in the section of the [Solicitation Companion Guide](#) entitled "Post-Award Requirements for All Federal Award Recipients."

Terms and conditions for OVW awards are available at <https://www.justice.gov/ovw/award-conditions>. These terms are subject to change prior to the issuance of the awards.

Violence Against Women Act Non-Discrimination Provision

The Violence Against Women Reauthorization Act prohibits OVW grantees from excluding,

denying benefits to, or discriminating against any person on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability in any program or activity funded in whole or in part by OVW. Recipients may provide sex-segregated or sex-specific programming if doing so is necessary for the essential operation of a program, so long as the recipient provides comparable services to those who cannot be provided with the sex-segregated or sex-specific programming. Additional information on the civil rights obligations of OVW funding recipients can be found in the [Solicitation Companion Guide](#) under "Civil Rights Compliance."

Accessibility

Recipients of OVW funds must comply with applicable federal civil rights laws, which, among other things, prohibit discrimination on the basis of disability and national origin. Compliance with these laws includes taking reasonable steps to ensure that persons with limited English proficiency have meaningful access to recipients' programs and activities and that these programs and activities are readily accessible to individuals with disabilities. More information on these obligations is available in the [Solicitation Companion Guide](#) under "Civil Rights Compliance."

General Information about Post-Federal Award Reporting Requirements

OVW grantees are required to submit semi-annual progress reports and quarterly Federal Financial Reports (SF-425). Appropriate progress report forms will be provided to all applicants selected for an award. Forms will be submitted electronically. Future awards and fund drawdowns may be withheld if reports are delinquent. For more information on post award reporting requirements, including requirements for certain recipients to report information on civil, criminal, and administrative proceedings in FAPIIS, see the Solicitation Companion Guide and the award condition on recipient integrity and performance matters available on the OVW website at <https://www.justice.gov/ovw/award-conditions>.

Progress Reporting Frequency

semi-annual

Federal Awarding Agency Contact(s)

For assistance with the requirements of this solicitation, contact the following: for programmatic questions, contact this program at 202-307-6026 or OVW.JFF@usdoj.gov, for financial questions, contact 202-307-6026 or OVW.GFMD@usdoj.gov, and for technical questions, contact Grants.gov Applicant Support at 800-518-4726 or support@grants.gov or OVW JustGrants Support at 1-866-655-4482 or OVW.JustGrantsSupport@usdoj.gov.

Other Information

Public Reporting Burden- Paper Work Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OVW tries to create forms and instructions that are accurate, can be easily understood, and impose the least possible burden on applicants. The estimated average time to complete and file this form is 30 hours. Comments regarding the accuracy of this estimate or suggestions for simplifying this form can be submitted to the Office on Violence Against Women, U.S. Department of Justice, 145 N Street, NE, Washington, DC 20530.

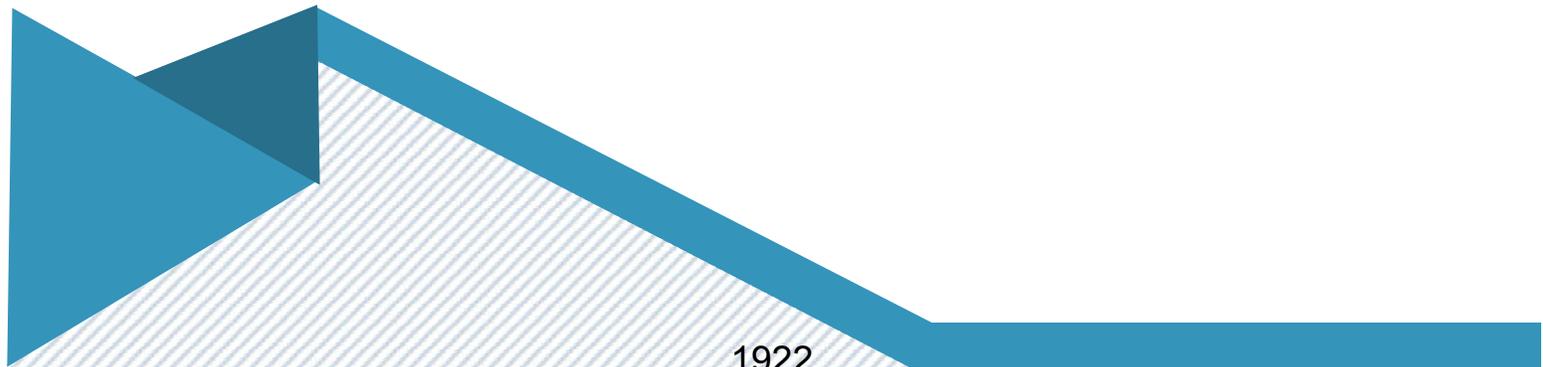
Note: Any materials submitted as part of an application may be released pursuant to a request under the Freedom of Information Act.

Applicants must submit a fully executed application to OVW, including all required supporting documentation. Prior to peer review, OVW will not contact applicants for missing items. Additionally, if an applicant plans to submit an application under any other OVW grant program this fiscal year, it is the applicant's responsibility to ensure that only documents pertinent to this solicitation are included with this application. OVW will not redirect documents that are inadvertently submitted with the wrong application (e.g., a Rural Program letter submitted with a Transitional Housing Program application will not be transferred to the Rural application).

Application Document	Completed
Letter of Intent.	
Data Requested with Application.	
Proposal Narrative <ul style="list-style-type: none"> • Purpose of Proposal • What Will Be Done • Who Will Implement the Proposal 	
Proposal Abstract.	
Budget Worksheet and Budget Narrative.	
Memorandum of Understanding (MOU) and/or Letters of Commitment (LOC).	
Application for Federal Assistance: SF-424.	
Disclosure of Lobbying Activities (SF-LLL).	
Applicant Financial Capability Questionnaire (if applicable).	
Confidentiality Notice Form.	
Disclosure of Process Related to Executive Compensation (if applicable).	
Pre-Award Risk Assessment.	
Indirect Cost Rate Agreement (if applicable).	
Letter of Nonsupplanting.	
Proof of 501(c)(3) Status (Nonprofit Organizations Only).	
Applicant Disclosure(s) of Duplication in Cost Items.	
Delivery of Legal Assistance Certification Letter (if applicable).	
Certification of Eligibility Regarding Mediation or Counseling (required for all applicants).	
Certification Letter Demonstrating Safe Operation of Supervised Visitation or Safe Exchange (only applicable to applicants proposing activities under purpose area 1).	
Certification Letter Regarding Filing and Other Fees (only applicable to applicants proposing activities under purpose area 4 or 5 that are court-based programs).	
Certification Letter Regarding Custody Evaluation and Guardian Ad Litem Services (only applicable to applicants proposing activities under purpose area 4 or 5 to support custody evaluation and/or guardian ad litem services).	



APPENDIX
ATTACHMENT 34



American Bar Endowment

Opportunity Grant Program Eligibility and Guidelines

Opportunity Grant Program Goal and Purpose

Through the ABE Opportunity Grants program, the ABE supports new, boots-on-the-ground, innovative programs and projects that serve the immediate and critical legal needs of the public and are of importance to the legal profession and its concerns for access to justice. Accordingly, ABE Opportunity Grant Program funding focus areas include:

- Access to justice, especially for vulnerable and underserved populations, through innovations to legal services delivery, including maximizing pro bono service delivery;
- The rule of law and improvement of the justice system, including ensuring equal justice and elimination of bias; and
- Increased public understanding of the law and the legal system to foster greater civic engagement.

This grant program favors programs and projects new to the providers and underserved communities that address immediate and on-going urgent needs in innovative ways taking advantage of existing and emerging technologies and other opportunities that might not otherwise be able to obtain timely funding from alternative sources. Grant proposals requesting support of \$25,000 or less are typical and viewed more favorably by the Grants Committee as it makes it possible to fund more projects. Requests for larger amounts will be considered if the proposed project addresses immediate and critical needs in a particularly innovative fashion with tools or resources that can be replicated by other service providers.

Organizational Eligibility

An organization is eligible to apply for an ABE Opportunity Grant if it is tax-exempt under section 501(c)(3) of the and classified as a public charity under section 509 (a) of the Internal Revenue Code or if it has a written fiscal agency relationship with such an organization. Eligible organizations must be incorporated in the United States or a U.S. Territory. This grant program does not fund governmental regulatory agencies.

Potential grantees include (but are not limited to):

- bar associations and bar foundations;
- law schools and law school legal clinics;
- Legal Services Corporation (LSC) funded organizations;
- legal service delivery organizations;
- human service organizations with legal service or law-related programming; and
- other non-profits or civic organizations with law-related programming.

ABE is particularly interested in supporting programs and projects that have a direct effect on the needs of individuals and communities. National organizations that apply should carefully draw the connection between their proposed work and its impact on local communities.

Organizations that have previously been funded by the ABE may apply for a new project/program. The ABE can only consider additional funding to an organization after a final grant report is submitted and accepted.

Project/Program Eligibility

ABE Opportunity Grants support law-related public service, education, and needs assessment/best practice demonstration projects/programs. Eligible projects must take place in and impact the United States or a U.S. territory. The ABE does not fund international projects.

ABE Opportunity Grants only support new and innovative projects. The ABE does not fund projects and programs that your organization is already doing or services it is already providing. To be considered new and innovative, the project you propose must, for example:

- create or utilize a tool, technology or program delivery approach that is new to your organization or community or to the field of law (examples include, adding a walk-in clinic to your delivery model for survivors of domestic violence; launching a new medical-legal partnership to serve a previously unserved population; adding a mobile clinic to your service delivery model to serve rural clients; automating Miranda warnings in multiple languages);
- address a new and urgent need or problem (examples include, pro se representation training to take advantage of a new law); or
- identify or document a new challenge or need (examples include, developing a legal framework for representing human trafficking survivors, conducting a needs assessment of medical clinic patients' legal needs).

The ABE will consider projects that, for example:

- build organizational capacity to serve clients better (examples include, upgrading or adding a client online intake system or creating on-demand training for pro bono lawyers so services can expand)
- develop tools, technology or approaches that could be used by the broader legal community (examples include, translating immigration forms and instructions into multiple languages, developing an app to assist disaster survivors and pro bono lawyers gather needed paperwork for legal claims or adding a petition generator to a client online service portal)
- document/prove a best practice (examples include, studying public defense best practices and reporting results, analyzing eviction data in rural areas to drive better prevention programming).

The ABE will not consider projects that seek funding to support the direct provision of legal services without a new or innovative component.

Generally, an ABE Opportunity Grant is a one-time award with a grant period of one year or less. The ABE Opportunity Grant Program favors projects/programs that are time-limited (i.e., do not involve long term general operating costs such as salaries and rent). The ABE will consider grants in support of one-time costs of a longer-term program (e.g., purchase the van to deliver mobile services). The ABE will also consider seed funding (except for staff costs) for a longer-term initiative if the organization can demonstrate firm plans to secure continued funding. Organizations applying to start a program that will become part of the annual programming of the organization will need to answer a question in the application about their specific plans to ensure continued funding for the effort.

The ABE Opportunity Grant Program does not support ongoing current general operating or staff expenses. You can use ABE grant funds to help the costs of consultants; interns; and short-term, project-specific contractual workers. Opportunity grants do not support the following:

- personnel costs (salaries and benefits) of staff. Your project budget may include the time of staff people, but you cannot use ABE Opportunity Grant funds to support these line items;
- portions of salary for individuals who are supervising direct project staff (these are considered indirect costs);
- capital expenditures unless they are one-time costs directly related to the implementation of the project (e.g., software or other technology to launch a project or a vehicle needed to provide mobile legal services delivery);
- indirect expenses and administrative overhead;
- fundraising expenses;
- sponsorships of fundraising or awards events;
- programs or projects that are intended to influence legislation or elect candidates; and
- operating deficits.

Application Process and Deadlines

To apply for an Opportunity Grant, you must complete this [application form](#). [Instructions](#) for completing the form will assist you. If you have questions or need additional guidance, you can contact Jackie Casey at 312-988-6402 or jcasey@abenet.org.

For the 2021 grant cycle, the ABE is also adding an OPTIONAL letter of inquiry. By completing the [letter of inquiry form](#), you can obtain feedback about your proposed project, including to determine if it fits the ABE guidelines as previously described.

To receive feedback before your application, you can submit your letter of inquiry form to the ABE by 5:00 Central Standard Time on Friday, August 21, 2020. Feedback will be provided by email or telephone conversation by Friday, September 11, 2020. Positive feedback about your letter of inquiry should not be interpreted as a promise of funding.

The letter of inquiry process is OPTIONAL. Organizations can bypass the letter of inquiry and submit a full proposal to be considered for funding. Proposals are due by 5:00 Central Standard Time on Friday, October 2, 2020. Announcement of grant awards will take place on or before February 28, 2021. Grants awards will be paid by April 1, 2021.

ABE Opportunity Grant Program Contact Information

Jackie Casey
American Bar Endowment
321 North Clark Street, 14th Floor
Chicago, Illinois 60654-7648
Attention: Opportunity Grants
312-988-6402
jcasey@abenet.org



APPENDIX
ATTACHMENT 35

CIVIL LEGAL AID GRANT PROGRAM

Grant Purpose

NC IOLTA's Civil Legal Aid Grants provide general support for a network of legal aid organizations that together provide basic access to the justice system for low-income people residing in every county in North Carolina. Some of these grants support legal aid for specific client services and serve specific client groups.

Funding Criteria

Preference generally will be given to requests from applicants:

- Having multiple-funding sources;
- For the direct representation of clients or client groups, including community legal education and community economic development;
- For staffed civil legal aid organizations as the most effective and efficient means by which to deliver high quality legal assistance to the poor, including pro bono efforts as an important supplement to staffed legal services;
- Supporting current qualified providers over additional, separate programs except where a separate program can address client needs more effectively and efficiently;
- Cooperating in the statewide coordination of delivery of civil legal aid through the NC Equal Justice Alliance formerly known as the NC Legal Services Planning Council, and, in areas with multiple providers, undertaking cooperative efforts as appropriate;
- Developing innovative client service techniques and evaluating their effectiveness and efficiency.

Definition of Indigent

To be considered for a Civil Legal Aid Grant from NC IOLTA, a program must be providing civil legal aid to indigent or low-income individuals or groups through a staffed program or a program using volunteer lawyers on a pro bono or reduced-fee basis.

The organization's definition of indigent or low-income clients must be clients who are:

- at or below 200% of the federal poverty guideline; or
- eligible to receive public assistance through a government program for the indigent.

In determining income, the organization may consider availability of income, i.e. whether the individual seeking assistance has direct and unfettered access, without having to obtain the consent or cooperation of another person over whom the individual does not have control and who does not in fact consent or cooperate.

If an organization uses a definition of indigent or low-income clients, for all or a portion of its clients that is different from the above, it must be able to show that a majority of its clients fall within the stated NC IOLTA definition.

Legal services may include direct legal representation and related training and technical assistance.

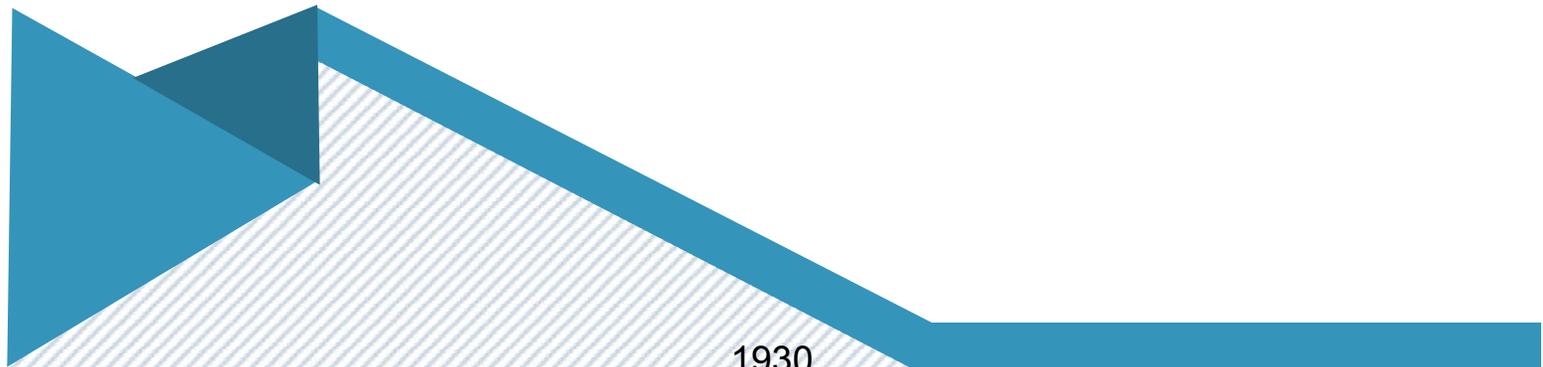
It is presumed that legal services will be provided to the indigent free of charge. However, an organization will not be disqualified for charging nominal fees as long as its policy allows for complete waiver of fees in cases where clients cannot pay the fee. Such organizations should keep updated with NC IOLTA a copy of their fee schedule and include information on fees received in their regular financial reports to NC IOLTA.

Definition of Legal Aid Organization

NC IOLTA defines a legal aid organization as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code whose primary purpose is to provide civil legal aid to low-income clients.



APPENDIX
ATTACHMENT 36



FAMILY LAW EXAM GUIDE

Family Law Exam Structure

- 2020 Exam offered with ExamSoft Remote Proctoring only.
- 6 hours long (four 90-minute modules).
- Exam Sessions will begin around 8 AM and finish prior to 5 PM.

Morning Module 1

- Includes approximately 18 questions.
- Short answer questions (5 points or 7.5 points each).
- Short essay questions (10 points or 12.5 points each). Allow approximately 10 minutes per essay question.
- Please note the point values and plan your time accordingly.

Morning Module 2

- Includes approximately 18 questions.
- Short answer questions (5 points or 7.5 points each).
- Short essay questions (10 points or 12.5 points each). Allow approximately 10 minutes per essay question.
- Please note the point values and plan your time accordingly.

60-minute lunch break

Afternoon Module 1

- Includes approximately 18 questions.
- Short answer questions (5 points or 7.5 points each).
- Short essay questions (10 points or 12.5 points each). Allow approximately 10 minutes per essay question.
- Please note the point values and plan your time accordingly.

Afternoon Module 2

- Includes approximately 18 questions.
- Short answer questions (5 points or 7.5 points each).
- Short essay questions (10 points or 12.5 points each). Allow approximately 10 minutes per essay question.
- Please note the point values and plan your time accordingly.

All questions are allocated "points" and require responses that demonstrate accuracy, clarity, sound reasoning, recognition of the problem presented, knowledge of the principle of law involved and correct application of those principles. Full or partial credit for answers may be given.

Subject Matter

The examination shall cover the applicant's knowledge and application of the law relating to:

- (A) Contempt (Chapter 5A of the North Carolina General Statutes);

- (B) Adoptions (Chapter 48);
- (C) Bastardy (Chapter 49);
- (D) Absolute Divorce, Divorce from Bed and Board, Alimony, Child Custody and Child Support, including enforcement of alimony, post-separation support, and Child Support Orders, and equitable distribution, (Chapter 50);
- (E) The Family Law Arbitration Act (Chapter 50, Article 3)
- (F) Collaborative Law Proceedings (Chapter 50, Article 4)
- (G) Appointment of Parenting Coordinators (Chapter 50, Article 5)
- (H) Uniform Child Custody Jurisdiction and Enforcement Act (Chapter 50A);
- (I) Domestic violence (Chapter 50B) and Chapter 50(c) No Contact Orders;
- (J) Marriage (Chapter 51);
- (K) Powers and liabilities of married persons (Chapter 52);
- (L) Uniform Interstate Family Support Act (Chapter 52C);
- (M) Uniform Premarital Agreement Act (Chapter 52B);
- (N) Termination of parental rights, including adoption and failure to provide support (Chapter 7B, Article 1);
- (O) Federal Wiretap Act and North Carolina Statutes concerning wiretapping and computer trespass;
- (P) Internal Revenue Code §§71 (Alimony), 215 (Alimony Deduction, 121 (Exclusion of Gain from the Sale of Principal Residence), 151 and 152 (Dependency Exemptions), 1041 (Transfer of Property Incidental to Divorce), 2043 and 2516 (Gift Tax Exception), 414 (p) (Defining QDRO Requirements), 408 (d)(6) (IRA Transfer Requirements for Non-Taxable Event), and regulations interpretive of these Code sections; and
- (Q) Parental Kidnapping Prevention Act (28 USC §1738A).

A recent family law examination contained questions on the following subjects. This year’s examination should include a similar allocation, but additional topics may also be included.

Family Law Exam Topics

Absolute divorce	Non-guidelines Child Support
Adoption	Military family law issues
Alienation of affection	Paternity
Alimony	Postnuptial agreements
Annulment	Postseparation support
Chapter 50C No Contact Orders	Premarital agreements
Child custody	QDRO (Qualified Domestic Relations Order)
Civil Procedure	Separation agreements
Criminal conversation	Tax issues arising from child custody (exemptions, deductions, etc.)
Criminal/civil contempt	Tax issues regarding support payments
Divorce from bed and board	Termination of parental rights
Domestic violence	Trial procedure

Equitable distribution	UCCJEA
Grandparent child support	UIFSA
Grandparent visitation/custody	Wiretapping/computer trespass/interception of communications
Guidelines Child Support	

SAMPLE QUESTIONS/ANSWERS

(Please note that sample questions are included only as a reference for types of questions and suggested answers, they are not intended for use as legal authority.)

1) Criminal contempt proceedings:

- a) May be commenced only with a show cause order
- b) Require that an indigent person alleged to be guilty of contempt be afforded the right to counsel before any imprisonment may be imposed.
- c) Do not apply to civil action for child support.
- d) Restrict any term of imprisonment to a period of six months or less.
- e) All of the above.
- f) None of the above.

ANSWER #1: b

1) The amount of child support set in a separation agreement is:

- a) The amount, which must be set by the court, in absence of evidence to the contrary.
- b) Some evidence of the reasonable needs of the child.
- c) A rebuttable presumption of the amount necessary for the child.
- d) All of the above.
- e) None of the above.

ANSWER #2: c

2) Mr. Morning and his employee, Miss Goodnight, lived together in North Carolina for 10 years before they decided to marry, both working for Mr. Morning's company. During this ten-year period, the couple lived in Mr. Morning's home which he had inherited free of any encumbrance. Miss Goodnight had paid all of the utility bills, all clothing, and food expenses for the couple during the time they lived together.

After their marriage, Mr. Morning withdrew \$90,000 cash from his separate funds and Ms. Morning (nee Miss Goodnight) withdrew \$10,000 cash from her separate funds. The couple purchased a new condominium at Atlantic Beach for \$100,000 as tenants by the entirety. The couple withdrew identical amounts of \$90,000 cash by Mr. Morning from his separate funds and \$10,000 cash from Mrs. Morning's separate funds and purchased CP&L stock in Mr. Morning's name alone. The couple continued to work in the business and each contributed 15% of his/her salary to retirement, as each of them had done for last 11 years. The marriage lasted exactly one year at which time the couple separated, sought equitable distribution and are now divorced.

(A) What, if anything, does Mrs. Morning own with regard to the home the couple lived in during the ten-year period? Explain your answer.

(B) What is Mrs. Morning entitled to receive from the condominium? Explain your answer.

(C) What is Mrs. Morning entitled to receive from the CP&L stock? Explain your answer.

(D) What, if anything, are Mr. Morning and Mrs. Morning entitled to with regard to the other's retirement accounts during the period in which they lived together and during their marriage? Explain your answer.

ANSWER #3:

(A) Mrs. Morning has no interest with regard to the home the couple lived in during the ten-year period prior to their marriage. North Carolina does not recognize the acquisition of “marital” rights with respect to a couple living together as man and wife but not married. Any remedy that Mrs. Morning may have would have to sound in unjust enrichment or quasi contract and could relate only to such issues. No consideration can be given in North Carolina for a sexual relationship between parties who are unmarried. Additionally, the home was inherited and was lien free. During the one-year period of the marriage, there is no evidence there was any active appreciation and thus any appreciation there may have been would have been passive. Passive appreciation on a spouse’s separate property remains separate property and the other spouse acquires no interest in same.

(B) With respect to the condominium, the parties took title as tenants by the entirety. Under McLean and its progeny, this would give rise to a strong presumption, rebuttable only by clear and convincing evidence, that the parties intended a gift to the marital estate. There is no evidence in this fact pattern to suggest this presumption could be overcome. A recent amendment to N.C.G.S. 50-20(b) changed the presumption on real property taken by the entireties during the marriage to a simple presumption rebutted by the greater weight of the evidence, although there have been no interpretive cases and it is not clear from 50-20(b) how the presumption can be overcome (i.e., by evidence of intent or only evidence of the source of funds). In practice, the stricter McLean presumption may still be applied.

(C) With respect to the CP&L stock, the result is different than with respect to the condominium. The equitable distribution statute states that separate property remains separate property regardless of how it is titled. The McLean distinction was drawn as a result of conveyancing language and law with respect to real property; no such distinction is present with respect to the CP&L stock. Therefore, the portion of the CP&L stock purchased by Mr. Morning from his separate funds (\$90,000) would be his separate property. The portion of the CP&L stock attributable to Mrs. Morning’s separate funds (\$10,000) would be her separate property. Nothing in this fact situation evidences any intent to make a gift to Mr. Morning.

(D) No marital rights of any type are acquired by a couple living together without the benefit of marriage. Therefore, any contributions Mr. Morning made to his retirement account prior to his marriage to Mrs. Morning would be his separate property. This would also be true for Mrs. Morning, i.e., all of her premarital contributions to her pension plan would be her separate property. All earnings and accumulations on each party’s separate retirement funds would also be their separate property. With respect to the contributions made by each party during their marriage and prior to their separation, these contributions would be marital. The contributions were 15 percent of the salary received for work performed during the marriage and as such would be classified as marital property. The court would have the authority to utilize a Qualified Domestic Relations Order to address the money in the pension plans or could determine the date of separation fair market value of the marital portion of each plan and distribute other assets as a “set off.”



APPENDIX
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ESTATE PLANNING AND PROBATE LAW

Estate Planning and Probate Law Exam Structure

- 2020 Exam offered with ExamSoft Remote Proctoring only.
- 6 hours long (four 90-minute modules).
- Exam sessions will begin around 8 AM and finish at approximately 5 PM.

Morning Module 1

- Includes one extensive essay question involving the development of an estate plan for a couple with complex estate planning needs and significant estate assets; includes a number of sub parts which ask you to address various tax and non-tax issues related to the development of their plan.
- The extensive fact pattern is provided and a total of 20 questions follow. The questions have various point values and require responses that demonstrate accuracy, clarity, sound reasoning, recognition of the problem presented, knowledge of the principle of law involved, and correct application of those principles. Please note the point values and allocate your time accordingly.
- Full or partial credit for answers may be given. Essay questions should be treated as law school exam essay questions. Mentioning a concept without further explanation will not get full credit. Merely listing bullet points without explanation will not get full credit. The law must be applied to the facts given.

Morning Module 2

- Includes two shorter essay questions which may cover NC estate and trust administration and NC corporate, partnership, and LLC law, including Federal and NC estate and income tax issues, as well as questions related to a client's insurance and retirement plan assets.
- The fact patterns are provided and a total of five questions follow for each essay. The questions have various point values and require responses that demonstrate accuracy, clarity, sound reasoning, recognition of the problem presented, knowledge of the principle of law involved, and correct application of those principles. Please note the point values and allocate your time accordingly.
- Full or partial credit for answers may be given. Essay questions should be treated as law school exam essay questions. Mentioning a concept without further explanation will not get full credit. Merely listing bullet points without explanation will not get full credit. The law must be applied to the facts given.

60-minute lunch break

Afternoon Module 1

- 52 multiple choice questions – covering topics including: Estate/GST Tax, Gift Tax, NC Trust Law, NC Wills and POA's, Estate Administration and Probate Law, Advanced Planning Techniques, Insurance and ILIT's, Retirement Benefits, and Business Issues.

Afternoon Module 2

- 53 multiple choice questions – covering topics including: Estate Administration, Business Issues, NC Trust Law, Fiduciary Income Tax, Advanced Planning Techniques, Gift Tax, Retirement Benefits, and NC Wills and POA's.

Subject Matter

The examination shall cover the applicant's knowledge and application of the law in the following topics:

- (A) Federal gift tax;
- (B) Federal estate tax;

- (C) Federal generation skipping transfer tax;
- (D) Federal and North Carolina fiduciary income taxes;
- (E) Federal and North Carolina income taxes as they apply to the final returns of the decedent and his or her surviving spouse;
- (F) North Carolina law of wills and trusts;
- (G) North Carolina probate law, including fiduciary accounting;
- (H) Federal and North Carolina income and estate tax laws and Federal gift tax law applicable to revocable and irrevocable inter vivos trusts;
- (I) North Carolina law of business organizations, family law, and property law as they may be applicable to estate planning transactions;
- (J) Federal and North Carolina tax law applicable to LLC's, partnerships and corporations (including S corporations) which may be encountered in estate planning and administration; and
- (K) Planning with life insurance, retirement accounts, and charitable trusts.

Exam Preparation Tips

Please study the exam topics listed above. Approximately 60% of the exam tests your knowledge of gift, estate, generation skipping and income tax rules as these rules pertain to estate planning and estate administration matters. The balance of the exam (approximately 40%) tests North Carolina state law issues. The exam will test your knowledge of current law as the law exists at the time of the examination.

Most applicants who pass the exam have spent substantial time preparing for the exam. It is important that you identify the areas and topics of which you have the least knowledge and that you concentrate your preparation in these areas. Many applicants obtain the materials for or attend the North Carolina Bar Association Estate Planning and Fiduciary Law Survey CLE Course (normally offered every third year). These materials are offered by the Bar Association in digital copy and/or video replay. See [ncbar.org](https://www.ncbar.org/members/sections/estate-planning-fiduciary-law/) (<https://www.ncbar.org/members/sections/estate-planning-fiduciary-law/>).

The estate planning and probate law examination covers the following topics. The current exam may include a very similar distribution of questions.

Estate Planning & Probate Law Exam Topics

Asset protection	Fiduciary income tax return preparation
Beneficiary designations	Formalized business agreements
Business continuation	Generation-skipping transfer tax
Charitable transfers	Gift tax returns
Claims against estate	Income in respect of a decedent
Comprehensive estate plan	Inter vivos trusts
Decedent's final income tax returns	IRA distributions
Deferred estate tax payment	Irrevocable trusts
Disclaimers	Joint tenancies
Elective Share	Life Insurance policies and planning
Estate freezing	Marital dispositions
Estate planning documents	NC laws of wills and trusts

Estate tax liability	Powers of attorney
Federal estate tax	Probate administration and accounting
Federal estate tax return	Revocable trusts
Federal gift tax	Summary Administration
Fiduciaries	

SAMPLE QUESTIONS/ANSWERS

(Please note that sample questions are included only as a reference for types of questions and suggested answers, they are not intended for use as legal authority.)

1) Grantor creates a trust with three co-trustees named. The terms of the trust confer the authority to invest the trust property on only one of the three co-trustees. Which of the following is/are TRUE under default North Carolina statutes, assuming the terms of the trust do not specifically address these issues?

- A. The excluded co-trustees are not liable, individually or as fiduciaries for any loss incurred by the beneficiaries as the result of imprudent action taken by the co-trustee with sole investment authority.
- B. The excluded trustees have no duty to monitor the conduct of the co-trustee with sole investment authority.
- C. The excluded co-trustees are not required to give notice to any beneficiary of any action taken or not taken by the co-trustee with sole investment authority whether or not the excluded co-trustees agree with the action of the co-trustee with investment authority.
- D. All of the above.

ANSWER #1: D

2) FEDERAL ESTATE TAX: Decedent's will provides for a QTIP trust to be funded for the surviving spouse in the amount of \$1,000,000. At the date of the descendant's death, the surviving spouse is 50 years old. The value of a life estate for a life tenant of age 50 is 76.642%. The value of the QTIP trust at the date of the death of the surviving spouse is also \$1,000,000.

- a) What is the maximum value of the QTIP trust, which qualifies for the federal estate tax marital deduction at the decedent's death?
- b) What value of the QTIP trust would be includible in the surviving spouse's estate for federal estate tax purposes at her death?

ANSWER #2: (a) \$1,000,000 (b) \$1,000,000

3) ESTATE PLANNING DOCUMENTS AND PROCEDURES: Mudd Family: Ronald Mudd, age 60, is married to Jane Mudd, age 55 and they have three children: Raoul Mudd, age 35, is a practicing surgeon, is married, and has two children, ages 12 and 6; Stephanie M. Mudd, age 32, is married - her husband is a computer programmer- and has one child, age 8; and Melanie Mudd, age 30, is unmarried, but has a child, age 4. She is employed by the Communist Workers Party and corresponds infrequently with her parents, visiting them only on rare occasions. All of the children and grandchildren are North Carolina residents except for Melanie and her child who live in California.

Estate Facts: Following his making of an appointment with you to get advice on appropriate estate planning documents, Ronald Mudd has presented to you detailed information with regard to his assets at the present time which are:

Cash and Money Market Accounts \$1,000,000

Marketable Securities 20,000,000

Life Insurance (Face Amount) 2,000,000

Residence 275,000

Rental Real Estate 300,000

Personal Property and Personal Effects 10,000

Current Gross Estate \$13,585,000

The income currently being produced by his assets amounts to \$835,000 as follows:

Cash and Money Market Accounts \$5,000

Marketable Securities 800,000

Rental Real Estate 30,000

Total Income from Assets \$835,000

At your initial conference Ronald Mudd indicates that the primary intentions with regard to disposition of his estate are that his wife be amply provided for during her remaining lifetime and that death taxes be minimized so as to provide a maximum amount to be left to his family. He also indicates to you that, following the death of his wife, he would prefer that funds be provided on a preferential basis to care for his daughters and their children rather than for his son, whose education and medical training have been financed by Ronald and who is commencing to build an independent estate. In addition, he inquires with regard to a procedure whereby only limited funds be made available to his daughter, Melanie, whom he considers unreliable and imprudent.

- a) Discuss in the space provided below and on the following page the estate plan (lifetime and at death) that you would recommend for Ronald and his family, including (if appropriate) testamentary and inter vivos trusts.
- b) Discuss the dispositive provisions you would recommend for Ronald's will and trusts to carry out his primary testamentary intentions and planning objectives [Do not discuss the selection of fiduciaries (See question (c), below)].
- c) Discuss in the space provided below the factors to be considered in the selection of fiduciaries under Ronald's will and any testamentary or inter vivos trusts included in the estate plan recommended in question (a), above. State also your recommendations as to the specific fiduciaries to be selected by Ronald.

ANSWER #3

a) Because of the size of Ronald's estate, an estate plan would be recommended which would take full advantage of the unlimited marital deduction under the federal estate tax law. In addition, it would be appropriate to make use of the federal unified credit shelter share, so that this amount would be excluded from the taxable estate of Ronald's wife, Jane, at her death. Due regard would be reserved to provide an inheritance for the Mudd daughters, Stephanie and Melanie, providing supervision for the investment of Stephanie's trust for a limited period of time and permanent provisions for the administration and preservation of an estate or funds for Melanie, including possibly a provision for Melanie by an inter vivos trust.

Provisions for generation-skipping bequests to the children of Raoul Mudd would be recommended within the amount of the GST exemption.

b) Exemption equivalent bequests (subject to payment of death taxes) to Ronald's daughters, Stephanie and Melanie, in trust with the trust income payable to his wife and/or daughters and his residuary estate to a qualified marital trust for Jane with remainder, or contingent bequests of the residue if Jane predeceases, trusts for his daughters with a \$1,000,000 bequest to the children of Raoul in minority trusts; Stephanie's trust would terminate when she attained age 45, the remainder interest passing to Stephanie; Melanie's trust would terminate upon the death of the survivor of Jane or Melanie and would pass to Melanie's child, subject to being held in trust until she attained at least age 30.

In the event that funds were needed by Melanie prior to Ronald's death, a recommendation might be that an irrevocable inter vivos trust be established to provide for Melanie's welfare, and the bequest passing to Melanie's trust under Ronald's will would be adjusted for equalization with the same amount to be passed to Stephanie or to Stephanie's trust following the administration of Ronald's estate.

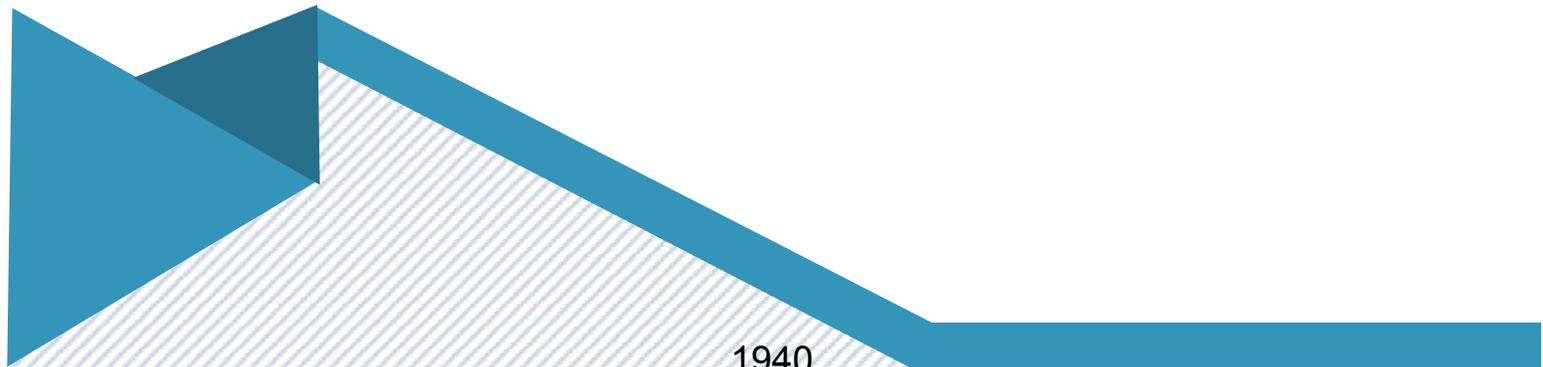
c) In selecting an executor for the administration of Ronald's will, I would recommend his wife, Jane Mudd, or his wife, Jane, and his daughter, Stephanie, with consideration as successor executors of Ronald's will, his son, Raoul Mudd, and/or a North Carolina bank or trust company.

In the selection of a trustee for the QTIP marital trust, my recommendations would be Stephanie and/or Raoul with a North Carolina bank or trust company as either a co-trustee or a successor-trustee of the QTIP Trust.

With regard to the naming of a trustee for Melanie's trust, I would certainly consider recommending a California bank if the trust were to be established prior to the death of Ronald Mudd and possibly a California bank (if such bank qualifies to serve as a trustee of a testamentary trust under North Carolina law) as trustee of any testamentary trust established for the benefit of Melanie Mudd and her daughter.



APPENDIX
ATTACHMENT 38



THE PEDAGOGY OF TRAUMA-INFORMED LAWYERING

SARAH KATZ & DEEYA HALDAR*

“Trauma-informed practice” is an increasingly prevalent approach in the delivery of therapeutic services, social and human services, and now legal practice. Put simply, the hallmarks of trauma-informed practice are when the practitioner puts the realities of the client’s trauma experiences at the forefront in engaging with the client, and adjusts the practice approach informed by the individual client’s trauma experience. Trauma-informed practice also encompasses the practitioner employing modes of self-care to counterbalance the effect the client’s trauma experience may have on the practitioner.

This article posits that teaching trauma-informed practice in law school clinics furthers the goals of clinical teaching, and is a critical aspect of preparing law students for legal careers. Trauma-informed practice is relevant to many legal practice areas. Clients frequently seek legal assistance at a time when they are highly vulnerable and emotional. As clinical professors who each supervise a family law clinic, we of course teach our students how to connect with their clients, while drawing the appropriate boundaries of the attorney-client relationship. Equally challenging and important is helping our students cultivate insight into identifying and addressing trauma and its effects. Many of our clinics’ clients are survivors of intimate partner violence or have experienced other significant traumatic events that are relevant to their family court matters. Law students should learn to recognize the effects these traumatic experiences may have on their clients’ actions and behaviors. Further, law students should learn to recognize the effect that their clients’ stories and hardships are having on their own advocacy and lives as a whole. It is particularly crucial that we educate our law students about the effects of vicarious trauma and help them develop tools to manage its effects as they move through their clinical work and ultimately into legal practice.

This article argues that four key characteristics of trauma-informed lawyering are: identifying trauma, adjusting the attorney-cl-

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ent relationship, adapting litigation strategy, and preventing vicarious trauma. Specifically, the article discusses how to teach trauma-informed lawyering through direct examples of pedagogical approaches.

INTRODUCTION

When Victoria¹ came into the clinic for an intake appointment with a law student, the student knew only that this was a child and spousal support case. After explaining the goals and purpose of an intake interview, the law student asked a simple question: what legal problem brings you here today? Victoria broke down crying and began explaining that about two years before, she learned that her husband of twenty-one years had been sexually abusing their now thirteen year-old daughter and fifteen year-old son since they were small children. Victoria stated that her husband had sometimes physically abused her, but she knew nothing of the sexual abuse. After the disclosure, she had filed for and been granted a protection order in Tennessee on behalf of herself and her children. She then moved with her children from the marital home in Tennessee to Philadelphia to be with family. The Tennessee protection order expired, and because of threatening phone messages received from her husband, she had sought a protection order again in Philadelphia. A local domestic violence legal services agency had referred her to the clinic for help with a child and spousal support case.

During the meeting with the law student, Victoria became increasingly upset, and continued to share details of the abuse she and her children had suffered. Victoria seemed intent on convincing the law student that she really had not known about the abuse of her children while it was happening. The law student offered tissues and told Victoria repeatedly that he believed her, and that it must have been so awful to make this realization. When the law student tried to move the focus of the conversation to the pending support case, it turned out that Victoria had not brought any of the paperwork she had been asked to bring by the clinic's office manager. The law student got as much information as Victoria could provide, and then explained that for the clinic to see if it could help her with the case, he would need to see the paperwork. The law student and Victoria scheduled another appointment, and the law student provided Victoria a written list of the needed documents. The law student discussed with his supervisor, and later shared in class case rounds, how challenging the interview had been. Victoria did bring the needed documents to the second appointment, and the clinic ultimately accepted the case.

¹ This case description is based on the experience of a client represented by Professor Katz's clinic. Names and identifying information have been changed.

Prior to going to court, Victoria called the law student asking if she could just not attend the court date, because she was terrified of seeing her husband. The law student calmly explained that Victoria needed to be present if she wanted to pursue the support claim. They scheduled a time to meet the day before court, and the law student spent a lot of time reviewing with Victoria exactly what occurs in a support hearing, including where she and others would sit, what types of questions would be asked, and what the law student would be doing. The law student also arranged to meet Victoria prior to the hearing time at a location near the courthouse, so they could walk into court together. Because the litigation became very contentious and there were multiple court hearings, the law student repeated this approach each time there was a court hearing. He also encouraged Victoria to speak with her therapist about her anxiety over dealing with her husband. Ultimately the support case was resolved favorably for Victoria.

While many reading would view the description of the law student's handling of the case above as simply "good lawyering," it is also an example of "trauma-informed practice." "Trauma-informed practice" is an increasingly prevalent approach in the delivery of therapeutic services, social and human services, and now legal practice. Put simply, the hallmarks of trauma-informed practice are when the practitioner, here a law student, puts the realities of the clients' trauma experiences at the forefront in engaging with clients and adjusts the practice approach informed by the individual client's trauma experience. Trauma-informed practice also encompasses the practitioner employing modes of self-care to counterbalance the effect the client's trauma experience may have on the practitioner.

Although there is a body of clinical legal education literature devoted to the value of teaching and developing law students' empathy toward their clients, less attention has been devoted to the importance of teaching trauma-informed practice, the pedagogy of teaching law students to recognize and understand trauma, and the effect of vicarious trauma on law students (and attorneys) who work with clients who have experienced serious trauma. Clients frequently seek legal assistance at a time when they are highly vulnerable and emotional. In practice areas such as family law, immigration, child welfare, criminal law and others, by necessity, clients must share some of the most intimate and painful details of their lives. In our family law clinics, our students are taught how to connect with their clients, while drawing the appropriate boundaries of the attorney-client relationship. Equally challenging and important is helping our students cultivate insight into identifying and addressing trauma and its effects. Many of

our clinics' clients are domestic violence survivors or have experienced other significant traumatic events that are relevant to their family court matters. Law students must learn to recognize the effects these traumatic experiences may have on their clients' actions and behaviors. Further, law students must learn to recognize the effect that their clients' stories and hardships are having on their own advocacy and lives as a whole. It is particularly crucial that we educate our law students about the effects of vicarious trauma and help them develop tools to manage its effects as they move through their clinical work, and ultimately into legal practice.

Although the authors draw from their own experience teaching family law clinics, other types of law school clinics could likely benefit from the pedagogy of trauma-informed lawyering, such as immigration law, criminal law, juvenile law, and veterans' rights law.² A significant body of literature exists regarding working with traumatized children involved in the legal system, including in the law school clinical context.³ It is the authors' intention that this article will provide tools for teaching trauma-informed practice in all law school clinic settings, while the examples offered are specific to family law experience.

This article proceeds in three sections. The first section will further explore trauma-informed practice, and what is meant by the terms "trauma," and "vicarious trauma." The second section will argue why teaching trauma-informed lawyering in a clinical legal educa-

² See, e.g., Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katherine & George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163 (2007) (discussing students in immigration clinic begin confronted with traumatized client seeking asylum); Ingrid Loreen, *Therapeutic Jurisprudence & The Law School Asylum Clinic*, 17 ST. THOMAS L. REV. 835, 845 (2005) (arguing that students need training in therapeutic jurisprudence topics, including trauma training in order to adequately serve traumatized clients seeking asylum); Sarah Mourer, *Study, Support, and Save: Teaching Sensitivity in the Law School Death Penalty Clinic*, 7 U. MIAMI L. REV. 357 (2013) (discussing students exposed to clients with trauma histories in the Miami Law Death Penalty Clinic); Capt. Evan R. Seamone, *The Veterans' Lawyer as Counselor: Using Therapeutic Jurisprudence to Enhance Client Counseling for Combat Veterans with Posttraumatic Stress Disorder*, 202 MIL. L. REV. 185 (2009).

³ See Carolyn Salisbury, *From Violence and Victimization to Voice and Validation: Incorporating Therapeutic Jurisprudence in a Children's Law Clinic*, 17 ST. THOMAS L. REV. 623 (2005). See also Renee DeBoard-Lucas, Kate Wasserman, Betsy McAlister Groves & Megan Bair-Merritt, *16 Trauma-Informed, Evidence-Based Recommendations for Advocates Working with Children Exposed to Intimate Partner Violence*, 32(9) CHILD L. PRAC. 136 (2013); JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 9 (2007); NATIONAL CHILD TRAUMATIC STRESS NETWORK, BIRTH PARENTS WITH TRAUMA HISTORIES AND THE CHILD WELFARE SYSTEM: A GUIDE FOR JUDGES AND ATTORNEYS, available at <http://www.nctsn.org/products/birth-parents-trauma-histories-child-welfare-system-guide-birth-parents-2012> (last viewed Dec. 20, 2015).

tion setting makes sense. The third section will identify four hallmarks of trauma-informed legal practice: (1) identifying trauma; (2) adjusting the lawyer-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma. The article then discusses how to incorporate these hallmarks of trauma-informed lawyering as teaching goals in law school clinics through direct examples of pedagogical approaches.

I. DEFINING TRAUMA-INFORMED PRACTICE

Trauma-informed practice has gained traction in the therapeutic world for at least the last decade. As one practitioner has explained, “[t]rauma-informed practice incorporates assessment of trauma and trauma symptoms into all routine practice; it also ensures that clients have access to trauma-focused interventions, that is, interventions that treat the consequences of traumatic stress. A trauma-informed perspective asks clients not ‘What is wrong with you?’ but instead, ‘What happened to you?’”⁴ As psychiatrist Sandra Bloom has written, “It connects a person’s behavior to their trauma response rather than isolating their actions to the current circumstances and assuming a character flaw.”⁵ A trauma-informed system also focuses on how services are delivered, and how service-systems are organized.⁶ These approaches in the therapeutic context have begun to profoundly inform the delivery of other types of human and social services, such as child welfare,⁷ law enforcement, and the courts.⁸ But in order to understand what is meant by trauma-informed practice, an understanding of trauma, and vicarious trauma is necessary; this section will define and explain these terms, and then return to a discussion of how trauma-

⁴ Nancy Smyth, *Trauma-Informed Social Work Practice: What Is It and Why Should We Care?*, SOCIAL WORK/SOCIAL CARE & MEDIA (Mar. 20, 2012), available at <http://swscmedia.wordpress.com/2012/03/20/trauma-informed-social-work-practice-what-is-it-and-why-should-we-care-opinion-piece-by-dr-nancy-smyth/> (citing SANDRA L. BLOOM, & BRIAN FARRAGHER, *DESTROYING SANCTUARY: THE CRISIS IN HUMAN SERVICES DELIVERY SYSTEMS* (2011)).

⁵ Sandra L. Bloom, *Why Should Philadelphia Become a Trauma-Informed City*, Briefing Paper Prepared for the Philadelphia Mayoral Forum, sponsored by the Scattergood Foundation (2015), available at <http://sanctuaryweb.com/Portals/0/Bloom%20Pubs/2015%20Bloom%20Why%20should%20Philadelphia%20become%20a%20Trauma.pdf>.

⁶ Sandra L. Bloom, *The Sanctuary Model of Trauma-Informed Organizational Change*, 16 (1) THE SOURCE 12, 14 (Nat’l Abandoned Infants Resource Center, 2007).

⁷ ABA CENTER FOR CHILDREN & THE LAW, *IMPLEMENTING TRAUMA-INFORMED PRACTICES IN CHILD WELFARE* (2013) available at <http://childwelfareparc.org/wp-content/uploads/2013/11/Implementing-Trauma-Informed-Practices.pdf>.

⁸ SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *ESSENTIAL COMPONENTS OF TRAUMA-INFORMED JUDICIAL PRACTICE*, available at http://www.nasmhpd.org/sites/default/files/JudgesEssential_5%201%202013finaldraft.pdf (last viewed Dec. 20, 2015) [hereinafter SAMHSA].

informed practice is implemented.

A. Understanding Trauma

An event is defined as traumatic when it renders an individual's internal and external resources inadequate, making effective coping impossible.⁹ A traumatic experience occurs when an individual subjectively experiences a threat to life, bodily integrity or sanity.¹⁰ The American Psychological Association further defines trauma as:

[An] emotional response to a terrible event like an accident, rape or natural disaster. Immediately after the event, shock and denial are typical. Longer term reactions include unpredictable emotions, flashbacks, strained relationships and even physical symptoms like headaches or nausea. While these feelings are normal, some people have difficulty moving on with their lives.¹¹

External threats that result in trauma can include “experiencing, witnessing, anticipating, or being confronted with an event or events that involve actual or threatened death or serious injury, or threats to the physical integrity of one's self or others.”¹²

Trauma can take many different forms. A 1997 study found that about one third of the population will experience severe trauma at some point.¹³ The most common sources of trauma, experienced by 15 to 35 percent of the people surveyed, included witnessing someone being hurt or killed, or being involved in a fire, flood, or other such life-threatening accidents.¹⁴ Other common experiences included robbery and sudden deaths of loved ones.¹⁵ An estimated 0.5 percent of people (1.2 million) in the United States were victims of a violent crime in 2014.¹⁶ Researchers have begun to confirm the interconnection between the effects of racism and trauma.¹⁷ Further the intercon-

⁹ Richard R. Kluft, Sandra L. Bloom, & John D. Kinzie, *Treating the Traumatized Patient and Victims of Violence*, in 86 *NEW DIRECTIONS IN MENTAL HEALTH SERVICES* 79 (2000) (citing B. A. Van der Kolk, *The Compulsion to Repeat the Trauma: Re-enactment, Re-victimization, and Masochism*, 12 *PSYCHIATRIC CLINICS OF N. AM.* 2 (1989)).

¹⁰ LAURIE A. PEARLMAN & KAREN SAAKVITNE, *TRAUMA AND THE THERAPIST: COUNTERTRANSFERENCE AND VICARIOUS TRAUMATIZATION IN PSYCHOTHERAPY WITH INCEST SURVIVORS* 60 (1995).

¹¹ *Trauma*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/topics/trauma/> (last viewed Dec. 20, 2015).

¹² *Id.*

¹³ S.D. Solomon & J.R.T. Davidson, *Trauma: Prevalence, Impairment, Service Use, and Cost*, 58 *J. CLINICAL PSYCHIATRY* (SUPPL. 9) 5-11, 7 (1997).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Jennifer L. Truman & Lynn Langton, *Criminal Victimization, 2014* at 1 (U.S. Dept. of Justice Sept. 29, 2015), available at <http://www.bjs.gov/content/pub/pdf/cv14.pdf>.

¹⁷ See, e.g., Dottie Lebron, Laura Morrison, Dan Ferris, Amanda Alcantara, Danielle Cummings, Gary Parker & Mary McKay, *The Trauma of Racism* (McSilver Institute for

nection between urban poverty and trauma has been established.¹⁸

Intimate partner violence and child maltreatment are other examples of trauma, and are far more prevalent than is often acknowledged. On average, twenty four people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States—more than twelve million women and men over the course of a year.¹⁹ Nearly three in ten women and one in ten men in the US have experienced rape, physical violence, and/or stalking by a partner and report a related impact on their functioning.²⁰ A reported 1.71% of children are maltreated in the United States.²¹

The rates of abuse are higher among the population of litigants in family court. The anecdotal experience of our family law clinics is many of our clients have experienced serious incidents of physical or sexual abuse by an intimate partner, and in the past as a child. They may also have witnessed or experienced their own child(ren) being physically or sexually abused. These anecdotal observations are supported by empirical study. For example, one study indicated that 80% of parents who were separating or divorcing were able to agree on custody and parenting time with their children. But among the 20% of parents who needed the court to intervene to decide custody, domestic violence was remarkably prevalent, and a domestic violence allegation was substantiated in 41-55% of these cases.²² In fact, experts have noted the “majority of parents in ‘high-conflict divorces’ involving child custody disputes report a history of domestic violence.”²³ The National Center for State Courts has found documented evidence in court records of domestic violence in 20-55% of contested custody cases.²⁴

Poverty Policy & Research, NYU 2015), available at <http://www.mcsilver.org/wp-content/uploads/2015/04/Trauma-of-Racism-Report.pdf>; Glenn H. Miller, *Commentary: The Trauma of Insidious Racism* 37(1) J AM. ACAD. PSYCHIATRY LAW 41, 42 (Mar. 2009).

¹⁸ See, e.g., KATHRYN COLLINS ET AL., UNDERSTANDING THE IMPACT OF TRAUMA AND URBAN POVERTY ON FAMILY SYSTEMS: RISKS, RESILIENCE & INTERVENTIONS (Family Informed Trauma Treatment Center 2010).

¹⁹ CENTERS FOR DISEASE CONTROL, UNDERSTANDING INTIMATE PARTNER VIOLENCE FACT SHEET, available at, <http://www.cdc.gov/ViolencePrevention/pdf/IPV-FactSheet.pdf> (last viewed Dec. 20, 2015).

²⁰ *Id.*

²¹ U.S. DEPT. OF HEALTH AND HUMAN SERVICES, FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4): REPORT TO CONGRESS, at 3-3 (2010).

²² Janet R. Johnson, Soyoun Lee, Nancy W. Oleson, & Marjorie G. Walters., *Allegations and Substantiations of Abuse in Custody-Disputing Families*, 43 FAM. CT. REV. 283, 289-290 (2005).

²³ PETER JAFFE, MICHELLE ZERWER, SAMANTHA POISSON, ACCESS DENIED: THE BARRIERS OF VIOLENCE AND POVERTY FOR ABUSED WOMEN AND THEIR CHILDREN AFTER SEPARATION 1 (2002).

²⁴ NATIONAL CENTER FOR STATE COURTS, DOMESTIC VIOLENCE AND CHILD CUSTODY DISPUTES: A RESOURCE HANDBOOK FOR JUDGES AND COURT MANAGERS 5 (1997).

The trauma experiences of clients have a direct relationship to how they relate to their attorneys and the courts, because trauma has a distinct physiological effect on the brain, which in turn affects behavior in the short-term and long-term. Colloquially, this evolutionary response is sometimes referred to as a “flight, fight, freeze.” As one writer has explained:

The brain’s prefrontal cortex—which is key to decision-making and memory—often becomes temporarily impaired. The amygdala, known to encode emotional experiences, begins to dominate, triggering the release of stress hormones and helping to record particular fragments of sensory information. Victims can also experience tonic immobility—a sensation of being frozen in place—or a dissociative state.²⁵

Subsequently, a traumatic experience becomes encoded as a traumatic memory and is stored in the brain via a pathway involving high levels of activity in the amygdala, making recall of the traumatic event highly affectively charged.²⁶ Recall, either intentional or through inadvertent exposure to internal or external stimuli related to the trauma, leads to the release of stress hormones.²⁷ For many individuals who have experienced trauma, specific conditioned stimuli may be linked to the traumatic event (unconditional stimulus) such that re-exposure to a similar environment produces recurrence of fear and anxiety similar to what was experienced during the trauma itself.²⁸ Thus the physiological effects of trauma can manifest far after the traumatic incident occurs, as the amygdala does not always discriminate between real dangers and memory from a past dangerous situation.

In response to traumatic experiences, an individual may feel intense fear, helplessness, or horror.²⁹ People process these reactions differently, resulting in different indicators of trauma.³⁰ Four common behaviors are: anxiety and depression, intense anger towards self or others, the formation of unhealthy relationships, and denial.³¹ Yet, although these common behaviors can result from trauma, the reac-

²⁵ Rebecca Ruiz, *Why Don't Cops Believe Rape Victims?*, SLATE (June 19, 2013), http://www.slate.com/articles/news_and_politics/jurisprudence/2013/06/why_cops_don_t_believe_rape_victims_and_how_brain_science_can_solve_the.html.

²⁶ Ronald A. Ruden, *Neurobiology of Encoding Trauma*, in THE ENCYCLOPEDIA OF TRAUMA: AN INTERDISCIPLINARY GUIDE (Charles R. Figley ed.) 228, 230-231 (2012).

²⁷ *Id.*

²⁸ Dennis Charney, *Psychobiological Mechanisms of Resilience and Vulnerability: Implications for Successful Adaptation to Extreme Stress*, 2 AM. J. PSYCHIATRY 161 (2004).

²⁹ Kluft et al., *supra* note 9, at 1.

³⁰ *Id.* at 3.

³¹ Sandra L. Bloom, *The Grief That Dare Not Speak Its Name Part I: Dealing With the Ravages of Childhood Abuse*, PSYCHOTHERAPY REV. 2 (9), 408, 408-409 (2000). *See also* JUDITH HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE – FROM DOMESTIC TO POLITICAL TERROR, 88-95 (1992).

tions to traumatic events can look different among individuals because although trauma is a common human experience, it is affected by a wide range of “personality styles, ego strengths, diatheses for mental and physical illnesses, social supports, intercurrent stressors, and cultural backgrounds.”³² Thus, the reactions to trauma are psychobiologic and are influenced by complex individual and social contexts, all of which determine the ways in which each individual processes trauma.³³ As a result there are no universal indicators of, or responses to, traumatic events.³⁴

The responses to trauma can be short term or long term.³⁵ Short-term consequences can include re-experiencing the traumatic event, such as having recurrent or intrusive distressing recollections of the event, acting or feeling as if the event is recurring, or avoidance of stimuli associated with the trauma.³⁶ Avoidance may include efforts to avoid thoughts, feelings, or conversations associated with the trauma, efforts to avoid activities, places, or people that arouse recollections of the trauma. Avoidance can also include amnesia for aspects of the trauma, detachment or estrangement from others, defensive mumbling, or dissociative symptoms.³⁷ Dissociation may consist of a diminished awareness or realization of ones surroundings, problems with concentration and attention, or increased arousal.³⁸ Increased arousal refers to such symptoms as experiencing difficulty falling or staying asleep, hypervigilance, or an exaggerated startle response.³⁹

Long-term consequences may include persistence of the short term symptoms, chronic guilt and shame, a sense of helplessness and ineffectiveness, a sense of being permanently damaged, difficulty trusting others or maintaining relationships, vulnerability to re-victimization, and becoming a perpetrator of trauma.⁴⁰ The responses may also be triggered or exacerbated by anniversaries of traumatic events or stressors that are suggestive of the past trauma.⁴¹

B. Understanding Vicarious Trauma

Vicarious trauma, also sometimes called “compassion fatigue” or “secondary trauma,” is a term for the effect that working with survi-

³² Kluff et al., *supra* note 9, at 3.

³³ *Id.* at 1.

³⁴ *Id.* at 3.

³⁵ *Id.* at 4.

³⁶ *Id.* at 4.

³⁷ *Id.* at 4-5; HERMAN, *supra* note 31, at 89.

³⁸ HERMAN, *supra* note 31, at 94.

³⁹ *Id.* at 5.

⁴⁰ *Id.* at 4.

⁴¹ *Id.*

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vors of trauma may have on counselors, therapists, doctors, attorneys, and others who directly help them.⁴² Vicarious traumatization refers to harmful changes that occur in professionals' views of themselves, others, and the world, as a result of exposure to the graphic or traumatic experiences of their clients.⁴³ As psychologist Mark Evces has written, "[s]econdary, or indirect, traumatic exposure is not limited to mental health providers. Anyone who repeatedly and empathically engages with traumatized individuals can be at risk for distress and impairment due to indirect exposure to others' traumatic material."⁴⁴

Vicarious trauma is distinct from "burnout," which refers to the toll that work may take over time.⁴⁵ Burnout can usually be remedied by taking time off, by moving to a new job. Vicarious trauma is a state of tension or preoccupation with clients' stories of trauma.⁴⁶ It may be marked by either an avoidance of clients' trauma histories (almost a numbness to the trauma) or by a state of persistent hyperarousal.⁴⁷

Professionals experiencing vicarious trauma may experience painful images and emotions associated with their clients' traumatic memories and may, over time, incorporate these memories into their own memory systems.⁴⁸ As a result, there may be disruptions to schema in five areas.⁴⁹ These are safety, trust, esteem, intimacy, and control, each representing a psychological need.⁵⁰ Each schema is experienced in relation to self and others. The harmful effects of vicarious trauma occur through the disruptions to these schemas.⁵¹ Vicarious trauma "has been described as a common, long-term response to working with traumatized populations, and as part of a continuum of helper reactions ranging from vicarious growth and resilience to vicarious traumatization and impairment."⁵²

As a normal response to the continuing challenges to their beliefs

⁴² AMERICAN COUNSELING ASSOCIATION, VICARIOUS TRAUMA FACT SHEET #9, *available at*, <http://www.counseling.org/docs/trauma-disaster/fact-sheet-9—vicarious-trauma.pdf?sfvrsn=2> (last viewed Dec. 20, 2015).

⁴³ Katie Baird & Amanda C. Kracen, *Vicarious Traumatization and Secondary Traumatic Stress: A Research Synthesis*, 19 COUNSELING PSYCHOL. Q. 181 (2006).

⁴⁴ Mark R. Evces, *What is Vicarious Trauma?*, in VICARIOUS TRAUMA AND DISASTER MENTAL HEALTH: UNDERSTANDING RISKS AND PROMOTING RESILIENCE, 9, 10 (Gertie Quintangon & Mark R. Evces, eds.) (2015).

⁴⁵ Lisa McCann & Larie A. Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, 3 J. TRAUMATIC STRESS 131, 133 (1990).

⁴⁶ AMERICAN COUNSELING ASSOCIATION, *supra* note 42.

⁴⁷ *Id.*

⁴⁸ McCann & Pearlman, *supra* note 45, at 144.

⁴⁹ Baird & Kracen, *supra* note 43.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Evces, *supra* note 44, at 11.

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and values, individuals experiencing vicarious trauma may exhibit varying symptoms.⁵³ Some of these symptoms include: denial of clients' trauma, over-identification with clients, no time and energy for oneself, feelings of great vulnerability, experiencing insignificant daily events as threatening, feelings of alienation, social withdrawal, disconnection from loved ones, loss of confidence that good is still possible in the world, generalized despair and hopelessness, loss of feeling secure, increased sensitivity to violence, cynicism, feeling disillusioned by humanity, disrupted frame of reference, changes in identity, world view, and spirituality, diminished self-capacities, impaired ego resources, and alterations in sensory experiences.⁵⁴

C. Understanding Trauma-Informed Practice

The increase in studies on trauma and vicarious trauma, and the various measures taken to mitigate the effects of the two have resulted in a systemic approach to how human services can be delivered to address the concerns of trauma and vicarious trauma simultaneously. "A trauma-informed approach to services or intervention acknowledges the prevalence and impact of trauma and attempts to create a sense of safety for all participants, whether or not they have a trauma-related diagnosis."⁵⁵ To be trauma-informed means to be educated about the impact of interpersonal violence and victimization on an individual's life and development.⁵⁶ Providing trauma-informed services requires all the staff of an organization to understand the effects of trauma on the people being served, so that all interactions with the organization reduce the possibility of retraumatization and are consistent with the process of recovery.⁵⁷ Trauma-informed practice recognizes the ways in which trauma impacts systems and individuals.⁵⁸ Becoming trauma informed results in the recognition that behavioral

⁵³ *Id.*

⁵⁴ Christian Pross, *Burnout, vicarious traumatization and its prevention*, 16 TORTURE 1 (2006).

⁵⁵ SAMSHA, *supra* note 8, at 1.

⁵⁶ Denise E. Elliott and Paula Bjelajac et al., *Trauma-Informed or Trauma Denied: Principles and Implementation of Trauma-Informed Services for Women*, 33(4) JOURNAL OF COMMUNITY PSYCHOLOGY, 461-477, 462 (2005).

⁵⁷ *Id.*

⁵⁸ Whereas vicarious trauma impacts individuals exposed to trauma victims, organizations working with a traumatized population can experience organizational trauma, in which an organization's adaptation to chronic stress can create "a state of dysfunction that in some cases virtually prohibits the recovery of the individual clients who are the source of its underlying and original mission, and damages many of the people who work within it." SANDRA L. BLOOM, & BRIAN FARRAGHER, *DESTROYING SANCTUARY: THE CRISIS IN HUMAN SERVICES DELIVERY SYSTEMS* 14 (2011). See also Shana Hormann and Pat Vivian, *Toward and Understanding of Traumatized Organizations and How to Intervene in Them*, 11(3) TRAUMATOLOGY 159, 160-164 (September 2005).

symptoms, mental health diagnoses, and involvement in the criminal justice system are all manifestations of injury, rather than indicators of sickness or badness – the two current explanations for such behavior.⁵⁹ As a result, trauma-informed services and programs are more supportive (rather than controlling and punitive), avoid retraumatizing and punishing those served, and avoid vicarious traumatization of those serving the survivors.⁶⁰

In particular, trauma-informed practice has had a significant impact in the fields of domestic violence,⁶¹ health care, child welfare, law enforcement and judicial administration. As discussed in the next section, trauma-informed practice has also informed the practice of law.

II. THE TRAUMA-INFORMED LAWYER

The concepts of trauma-informed practice have begun to have a profound effect on attorneys who routinely work with trauma survivors.⁶² Particularly for attorneys in practice areas such as domestic vi-

⁵⁹ SANDRA L. BLOOM & BRIAN FARRAGHER, *RESTORING SANCTUARY: A NEW OPERATING SYSTEM FOR TRAUMA-INFORMED SYSTEMS OF CARE*, 1, 7-9 (2013).

⁶⁰ For example, one model used to accomplish these goals is the Sanctuary Model, a trauma-informed method for changing organizational culture, created by psychiatrist Sandra Bloom. The Sanctuary Model can be described as a “plan, process, and method for creating trauma-sensitive, democratic, nonviolent cultures that are far better equipped to engage in the innovative treatment planning and implementation that is necessary to adequately respond to the extremely complex and deeply embedded injuries that children, adults, and families have sustained.” Sandra L. Bloom, *The Sanctuary Model of Organizational Change for Children’s Residential Treatment*, *THERAPEUTIC COMMUNITY: THE INTERNATIONAL JOURNAL FOR THERAPEUTIC AND SUPPORTIVE ORGANIZATIONS* 26(1): 65-81, 70-71 (2005). The Sanctuary Model proposes seven characteristics that would result in an organization being trauma informed: a culture of nonviolence, which means committing to safety skills and higher goals; a culture of emotional intelligence, which means to teach and model emotional management skills; a culture of social learning, which involves creating an environment that promotes conflict resolution and transformation; a culture of shared governance, which involves encouraging self-control, self-discipline, and healthy authority figures; a culture of open communication; a culture of social responsibility, which involves building healthy relationships and connections; and a culture of growth and change, which requires restoring hope, meaning and purpose by actively working through loss/trauma. *Id.* at 71.

⁶¹ Joshua M. Wilson, Jenny E. Fauci, & Lisa A. Goodman, *Bringing trauma-informed practice to domestic violence programs: A qualitative analysis of current approaches*, 85(6) *AM. J. OF ORTHOPSYCHIATRY* 586, 587 (2015).

⁶² See LISA PILNIK & JESSICA R KENDALL, *OFFICE JUVENILE JUSTICE AND DELINQUENCY PREVENTION, IDENTIFYING POLYVICTIMIZATION AND TRAUMA AMONG COURT-INVOLVED CHILDREN AND YOUTH: A Checklist and Resource Guide for Attorneys and Other Court-Appointed Advocates* (2012), <http://www.ojjdp.gov/programs/safestart/IdentifyingPolyvictimization.pdf>. KAREN REITMAN, *ATTORNEYS FOR CHILDREN GUIDE TO INTERVIEWING CLIENTS: INTEGRATING TRAUMA INFORMED CARE AND SOLUTION FOCUSED STRATEGIES* (2011); Barbara Glesner Fines & Cathy Madsen, *Caring Too Little, Caring Too Much: Competence and the Family Law Attorney*, 75 *UMKC L. REV.* 965 (2007); Lynda Murdoch, *Psychological Consequences of Adopting a Therapeutic Lawyering Approach: Pitfalls and Protecting Strategies*, 24 *SEATTLE U.L. REV.* 483 (2000); Susan Daicoff,

olence, immigration, and child welfare, the principles of trauma-informed practice have altered the way legal services are delivered.⁶³ In fact, trauma-informed practice can have relevance to all areas of practice, as clients may present with a trauma history whether central to the subject of the representation or not.

Trauma-informed practice can be particularly salient for attorneys because traditionally attorneys are trained to separate emotions from the law in order to competently analyze legal problems.⁶⁴ By borrowing trauma-informed techniques developed in the therapeutic context, attorneys are learning to provide more effective representation.⁶⁵ Attorneys can learn how to identify trauma, and to adjust their methods of counseling and representation to incorporate an understanding of their clients' trauma history. Attorneys can also help clients identify the need for behavioral health intervention, or help clients secure trauma-informed therapeutic services.⁶⁶ Attorneys can also employ methods of self-care to prevent vicarious traumatization. Systemic implementation of these methods form trauma-informed legal practice. Domestic violence legal centers, immigration legal centers, and other public interest legal services offices have become particularly adept at incorporating these practices into daily legal work. This article posits that clinical law professors can and should incorporate this methodology into law school clinics.

The experience of Victoria, the client described at the beginning of this article, is a good example of trauma-informed lawyering at work. First, the law student handling the case was trained to recognize trauma. In other words, the student could recognize that the

Law as a Healing Profession: The "Comprehensive Law Movement", 6 PEPP. DISP. RESOL. L.J. 1 (2006); MARJORIE SILVER, THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION (2007); Marjorie Silver, *Love, Hate, and Other Emotional Interferences in the Lawyer/Client Relationship*, 6 CLIN. L. REV. 259 (1999); Marjorie A. Silver, *Supporting Attorneys' Personal Skills*, 78 REV. JUR. U.P.R. 147, 148 (2009); MARY MALEFYT SEIGHMAN, ERIKA SUSSMAN, & OLGA TRUJILLO, REPRESENTING DOMESTIC VIOLENCE SURVIVORS WHO ARE EXPERIENCING TRAUMA AND OTHER MENTAL HEALTH CHALLENGES: A HANDBOOK FOR ATTORNEYS, available at <http://www.nationalcenterdvtraumamh.org/publications-products/attorneys-handbook/> (last viewed Dec. 20, 2015).

⁶³ Both authors had the opportunity as legal services attorneys to work in family law practices that trained staff in and applied methods of trauma-informed practice.

⁶⁴ Parker, *supra* note 2.

⁶⁵ *Id.* See also AMERICAN BAR ASSOCIATION, ABA POLICY ON TRAUMA-INFORMED ADVOCACY FOR CHILDREN & YOUTH (Feb. 10, 2014), http://www.americanbar.org/content/dam/aba/administrative/child_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.authcheckdam.pdf; Eliza Patten & Talia Kraemer, *Practice Recommendations for Trauma-Informed Legal Services* (July 2013), available at http://www.americanbar.org/content/dam/aba/administrative/child_law/5C_Patten%20Kraemer_Practice%20Recommendations%20for%20Trauma%20Informed%20Legal%20Services.authcheckdam.pdf.

⁶⁶ See PILNIK & KENDALL, *supra* note 62.

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physical abuse that Victoria had experienced, as well as the knowledge that her children had been sexually abused, were traumatic experiences which would profoundly affect the attorney-client relationship and the nature of the representation, even though the abuse allegations were not directly pertinent to the case. If the law student not been trained in trauma-informed practice, he might have been more dismissive of the client's insistence on telling her trauma story. Instead, the law student exhibited patience and affirmation for the client that ultimately enabled the client to develop a trusting relationship with the law student. Similarly, the law student adjusted his approach to counseling the client and preparing the client for court, based upon the law student's acknowledgement and understanding of the client's trauma experience. Instead of simply preparing the client for the kinds of testimony and evidence that would be requested, the law student took into account how terrifying it was for the client to go to court against her abusive ex-husband. The student also encouraged the client regarding the importance of continuing in therapy, drawing clear lines between the kind of counseling the law student could provide, and support that could be provided by a therapist. Finally, the law student also had opportunities for self-reflection and sharing through supervision to allow him to process the impact of working with a client who had experienced severe trauma.

Rather than waiting until lawyers enter practice to learn these skills, law schools can and should teach trauma-informed lawyering, particularly in the law clinic setting.⁶⁷ Teaching trauma-informed lawyering in law school clinics bolsters and builds upon existing approaches to clinical pedagogy. Clinical legal education has traditionally emphasized teaching social justice values, client-centered lawyering and the acquisition of practical lawyering skills,⁶⁸ and teaching trauma-informed lawyering reinforces each of these areas. Further, trauma-informed lawyering builds upon existing clinical pedagogical literature on therapeutic jurisprudence, empathy and emotional intelligence, and vicarious trauma.⁶⁹ Law school clinics are particularly well-suited to teach trauma-informed lawyering because

⁶⁷ See, e.g., Jill Engle, *Taming the Tigers: Domestic Violence, Legal Professionalism and Well-Being*, 4 TENN. J. RACE, GENDER & SOC. JUST. 1 (2015); Joan Meier, *Teaching Lawyering With Heart, forthcoming in VIOLENCE AGAINST WOMEN* (2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685926##.

⁶⁸ See, e.g., Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327, 338 (2001); David Binder and Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLIN. L. REV. 191 (2003); Katherine Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLIN. L. REV. 369 (2006).

⁶⁹ See, e.g., MARJORIE A. SILVER, *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* (2007).

of the focus on reflective practice, and their capacity to teach law students important practice skills to take into their legal careers.

*A. Teaching Trauma-Informed Lawyering Fits with the Values of
Clinical Pedagogy and into Already Existing
Clinical Theoretical Areas*

Teaching trauma-informed lawyering in law school clinics furthers the value clinical legal education places on teaching social justice principles and the notion of client-centered lawyering.

1. Social Justice

Clinical legal education has always had a social justice focus, in its mission to provide much-needed legal services for the indigent, and also in its goals of exposing law students to the lack of legal services for the poor, and to the limits and realities of the legal system. The first clinics were established and developed in the 1920s and 1930s as a way to supplement traditional, doctrinal classes taught in the Langdellian case method. However, clinical legal education did not really take hold in law schools until the 1960s and 1970s. A crucial event in the development of clinical pedagogy was the establishment of the Council on Legal Education and Professional Responsibility (CLEPR), by William Pincus, Vice President of the Ford Foundation. The mission of the CLEPR was to provide legal services to the poor, and in order to do so, CLEPR funded several law school clinics, significantly affecting legal education by infusing clinical legal education with a social justice purpose.⁷⁰

Although the initial mission of law school clinics was to provide access to legal services for low-income clients, as clinical pedagogy developed, clinics developed the added function of exposing students to the realities of the legal system, and in particular its limitations for meeting the goals of indigent individuals.⁷¹ Teaching trauma-informed lawyering in clinics reinforces the social justice value of clinical education because it causes students to be exposed to the realities and limits of the legal system.⁷² Teaching trauma enables students to see, though the experiences of their trauma-affected client, how, for that particular individual, legal doctrines, theories, or the litigation

⁷⁰ *Id.* at 338 (“From the beginning of the clinical legal education movement, experiential learning and skills-training were seen as the means for achieving the justice goal articulated by William Pincus, not as ends in themselves.”).

⁷¹ Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic’s Ability to Harmonize Teaching Practical Skills, Ethics, and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 39-40 (2006).

⁷² See, e.g., Wizner, *supra* note 68.

system may or may not work to achieve the client's stated goals.⁷³ Recognition that the legal system may not always be an effective mechanism of pursuing the client's goals is particularly relevant when the client has experienced trauma. This statement is particularly true in light of the fact that for a traumatized client, court proceedings may run the risk of causing the client to relive or confront the trauma, and court proceedings themselves may cause further trauma to the client.

Additionally, teaching students trauma-informed lawyering, and specifically focusing on the ways in which the current legal system may not be able to meet a client's goals, encourages students to think critically about the legal system as it affects litigants who have been subject to trauma in their lives.⁷⁴ By learning about trauma-informed lawyering and thinking critically about the legal system, students will begin to think not only about procedural justice, defined as access to the courts or representation in court, but also about true substantive justice for litigants, a term which "could be perceived to require disassembling the existing power structure in order to precipitate a redistribution of resources."⁷⁵ Thinking critically about the legal system, developing strong professional values, and developing an appreciation for the important role that attorneys play in society are all sub-parts of the larger clinical goal of teaching social justice to law students through their clinical work.⁷⁶

The importance of teaching trauma-informed lawyering to clinic students to further the social justice goal of clinics is underscored by the literature on therapeutic jurisprudence, which focuses on the extent to which the law enhances or inhibits the wellbeing of those who are affected by it.⁷⁷ The practice of trauma-informed lawyering can be a natural extension of the teachings of therapeutic jurisprudence. Therapeutic jurisprudence is a lens for viewing litigation⁷⁸ and concerns itself with the therapeutic and anti-therapeutic goals that flow from legal rules, procedures, and the operation of the legal system.⁷⁹

⁷³ *Id.* at 351.

⁷⁴ Leigh Goodmark, *Clinical Cognitive Dissonance: The Values and Goals of Domestic Violence Clinics, the Legal System, and the Students Caught in the Middle*, 20 J. OF LAW & POLICY 301, 314 (2012) (quoting Sue Bryant & Maria Arias, *Case Study: A Battered Women's Rights Clinic: Designing a Clinical Program which Encourages a Problem Solving Vision of Lawyering*, 42 WASH. U. J. URB. & CONTEMP. L. 207, 212-215 (1992)).

⁷⁵ Carasik *supra* note 71, at 45 (citing John O. Calmore, "Chasing the Wind": Pursuing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization, 37 LOY. L.A. L. REV. 1167, 1175 (2004)).

⁷⁶ Stephen Wizner, *Is Social Justice Still Relevant?*, 32 B.C. L. J. & SOC. JUST. 345 (2012) (exploring the social justice mission of law school clinics).

⁷⁷ See, e.g., Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients, and Communities*, 13 CLIN. L. REV. 213 (2006).

⁷⁸ David B. Wexler, *Therapeutic Jurisprudence*, 20 TOURO L. REV. 353 (2004).

⁷⁹ *Id.*

One of the crucial principles is the emphasis on voice and validation for clients. Pursuant to a therapeutic jurisprudence perspective, achieving voice and validation has special significance and importance for survivors of violence.⁸⁰ Survivors need to be accorded a sense of “voice,” the ability to tell their side of the story, and “validation,” the sense that what they have to say is taken seriously. By acknowledging and honoring the client’s trauma experience, lawyers can help give voice to the client’s perspective. Therapeutic jurisprudence scholars emphasize that these survivors should be treated with dignity and respect, which will diminish the extent to which they feel coerced and gives them a sense of voluntary choice.⁸¹ Rather than viewing the client’s trauma experience as a weakness, a therapeutic jurisprudence approach emphasizes the resilience of the client.⁸² Teaching trauma-informed lawyering to clinic students furthers these therapeutic jurisprudence goals and causes students to think more about the meaning of the broader clinical goal of social justice.⁸³

2. Client-Centered Lawyering

Teaching trauma-informed lawyering in clinics also reinforces one of clinical legal education’s central tenets, the importance of client-centered lawyering. Client-centered lawyering focuses on understanding clients’ perspectives, emotions, and values, including the possible effects of prior trauma on a client’s decisions and actions.⁸⁴ Client-centered lawyering is perhaps the central value in many current law school clinics, particularly in clinics where clients are individual litigants. The goals of client-centered lawyering focus on maintaining respect for a client’s decision-making authority within the lawyer-client relationship. In the client-centered lawyering paradigm, the lawyer should remain neutral as to the goals of the representation.⁸⁵ Unlike

⁸⁰ Carolyn S. Salisbury, *From Violence and Victimization to Voice and Validation: Incorporating Therapeutic Jurisprudence in A Children’s Law Clinic*, 17 ST. THOMAS L. REV. 623, 654-55 (2005).

⁸¹ Bruce J. Winick, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 UMKC L. REV. 33, 63 (2000).

⁸² Pilar Hernandez & David Gangsei, *Vicarious Resilience: A New Concept in Work with Those Who Survive Trauma*, 46 FAMILY PROCESS 229 (2007).

⁸³ Closely related to therapeutic jurisprudence is the literature on restorative justice, which focuses on having all of the individuals who have been affected by a particular act come together and agree on how to repair the harm. According to restorative justice principles, the focus of the process is on healing, rather than finding a way to hurt the offender in a way that would be proportional to the victim’s hurt. See John Braithwaite, *A Future Where Punishment is Marginalized: Realistic or Utopian?* 46 UCLA L. REV. 1727, 1743 (1999).

⁸⁴ Kruse, *supra* note 68, at 377 (describing the cornerstones of client-centered lawyering).

⁸⁵ *Id.* at 376.

traditional doctrinal law school classes which focus on appellate court decisions, a clinic with a client-centered philosophy helps the client solve their identified problems, through either legal or non-legal means. The four central tenets of client-centered lawyering can be summarized as follows: 1) it draws attention to the critical importance of non-legal aspects of a client's situation; 2) it cabins the lawyer's role in the representation within limitations set by a sharply circumscribed view of the lawyer's professional expertise; 3) it insists on the primacy of client decision-making; and 4) it places a high value on lawyers' understanding their clients' perspectives, emotions, and values.⁸⁶ A lawyer's principal role in a client-centered lawyering model is to help the client solve a problem, not simply to identify and apply legal rules.⁸⁷ Teaching trauma-informed lawyering to clinic students in law clinics reinforces all of the main tenets of client-centered lawyering.

Teaching trauma-informed practice as part of client-centered lawyering improves the client's experience of representation, by encouraging students to consider the non-legal aspects of a client's situation, and also places a high value on the law student's understanding of a client's perspectives, emotions, and values. Teaching about the possible effects of trauma on clients encourages students to look at the client outside of the narrow context of litigation, and to consider the other effects of her life experiences. Additionally, trauma-informed lawyering, with its emphasis on the effects of prior trauma, persuades students to look at what the client may be seeking from the representation, and to consider whether the litigation process will achieve that goal, or whether that goal is best achieved by non-legal methods. The student must take into account the effect of the trauma on the client and the effect on the client's current decision-making, even though that decision process may be different from the process that the student is using to make a decision as a legal advocate.

The theory behind client-centered law practice is based on the influence of other social sciences on law, particularly psychology, in which empathy is considered a useful skill for supporting clients.⁸⁸ Law students will be better able to incorporate empathy into their interactions with clients if they are trained in trauma. The literature on emotional intelligence and the literature on the clinical pedagogy of teaching empathy focus on the legitimacy of emotions and their

⁸⁶ *Id.* at 377.

⁸⁷ *Id.* at 376-77 (quoting Binder's textbook).

⁸⁸ Emily Gould, *The Empathy Debate: The Role of Empathy in Law, Mediation, and the New Professionalism*, 36-FALL VT. B.J. 23, 24 (2010). See also Sarah Buhler, *Painful Injustices: Encountering Social Suffering in Clinical Legal Education*, 19 CLIN. L. REV. 405 (2013).

relevance to our actions and decisions, and also on the need and manner in which the clinical supervisor facilitates a process through which law students interpret their emotional experiences as advocates, a process which will positively affect the representation.⁸⁹ Trauma-informed clinic students will better empathize with their clients. Empathy can be a key part of the information-gathering function of a client interview and client counseling.⁹⁰ Empathy encompasses several different phenomena: feeling the emotions of another; understanding another's situation or experience; and taking actions based on another's situation.⁹¹ Similarly, the literature regarding teaching empathy to law students in a clinical context explores the concept of "identification." Identification can be defined as taking on the attitudes, behaviors, and perspectives of others.⁹² Identification and empathy allow an attorney to "enter" into the emotional state of the client,⁹³ which provides the attorney with a far more complex understanding of the client and the client's legal needs. With clients in particularly difficult situations, such as clients who have experienced trauma or torture, a student may become overwhelmed by the experiences of suffering and therefore fail to identify and empathize with the client.⁹⁴ Teaching law students to identify trauma and its effects on clients will aid in identification with a client in a situation where identification and empathy might otherwise not be possible, and will enable the student to achieve a greater empathy for and understanding of the client's perspectives and needs. Trauma-informed clinic students will achieve greater empathy with a client, and also will use that empathy to adjust the attorney-client relationship or to adjust the litigation strategy.

Teaching trauma-informed lawyering in law clinics will also encourage students to circumscribe their view of their own expertise, emotional understanding and role as law students in the representation, and will encourage students to focus on the primacy of client decision-making as emphasized in the client-centered lawyering model.⁹⁵ In the client-centered lawyering model, the lawyer and the client work together as problem-solvers, and the client is able to

⁸⁹ See, e.g., Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 CLIN. L. REV. 135 (2002); Gould, *supra* note 88; see also, Silver, *supra* note 69 at 5.

⁹⁰ Fletcher & Weinstein, *supra* note 89.

⁹¹ John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 336-37 (2008).

⁹² *Id.*

⁹³ *Id.* at 142.

⁹⁴ Fletcher & Weinstein, *supra* note 89, at 143.

⁹⁵ Kruse, *supra* note 68, at 377.

choose what s/he wants from the lawyer and the legal system.⁹⁶ A lawyer working in a client-centered model should listen to all of the client's concerns, not just the facts which are deemed legally relevant.⁹⁷

B. Acquisition of Practical Lawyering Skills: Teaching Trauma-Informed Lawyering Makes Students Better Advocates

Another central value in clinical pedagogy is that students should acquire practical lawyering skills, by gaining experience in practice and by participating in the lawyer/client relationship.⁹⁸ Students are generally more motivated to learn because they are given a tremendous amount of responsibility over the case of a real-life individual, and this responsibility leads to greater identification with the client and other individuals who are similarly situated.⁹⁹ Clinics are particularly well-suited for teaching trauma-informed lawyering because students are readily able to put into practice with their clients the trauma-informed lawyering goals of identifying trauma, adjusting the attorney-client relationship, adjusting the litigation strategy, and preventing vicarious trauma.

Clinics are also ideally suited to teaching trauma-informed lawyering to students because clinics are one of the primary vehicles through which law students learn the practical aspects of professional responsibility. The Model Rules of Professional Conduct summarizes the duty of competent representation as follows: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."¹⁰⁰ When representing clients who have survived trauma in the past, the duty of competent representation requires not only legal knowledge and preparation, but also requires a thorough understanding of the ways in which trauma may present in clients, and of the ways prior trauma may affect the attorney-client relationship and the litigation process. Competent representation may also mean acknowledging the limits of the attorney's role, and using mental health professionals as supports when necessary.

Teaching trauma-informed lawyering will cause students to become better, more effective advocates who are able to fulfill the duty

⁹⁶ Jane Stoeber, *Transforming Domestic Violence Representation*, 101 KY. L.J. 483, 496 (2012-2013).

⁹⁷ *Id.* at 498.

⁹⁸ See, e.g., David Binder & Paul Bergman, *supra* note 68, at 194-95, 198.

⁹⁹ See Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLIN. L. REV. 489, 511 (2013) (Grose refers to a student's participation in the lawyer-client relationship as "the heart of clinical pedagogy.").

¹⁰⁰ MODEL RULES OF PROF'L CONDUCT §1.1 (2015).

of competent representation. Through learning about trauma-informed lawyering, law students will become better advocates because they will gain better interviewing skills; more effectively build trust with their clients; and more effectively tackle problems that clients face. Students will also be better prepared for hearings, and better able to prepare their clients for hearings.¹⁰¹ Students who interview clients may be better able to identify signs of such trauma such as: clients experiencing difficulty telling their story in a linear manner; clients describing violent or upsetting events in a flat, detached matter; clients seeming disassociated or emotionally absent during interviews; and clients not remembering key details of abuse.¹⁰²

Here is another example of how law students are able to implement trauma-informed practice to better represent their clients:

Jane¹⁰³ came to the clinic seeking representation for her two family law cases. She had filed a Protection From Abuse (PFA) petition against her boyfriend, Tom, because he had become physically abusive a few months before, and on the last night they were together, beat her and tried to run her over with his car. Jane had a daughter, Anne. When Anne's father, Mark learned of the abuse by Tom, he didn't give Anne back to Jane for a month after a weekend visit. Jane had to involve the police to get Anne back. Mark filed a custody modification petition asking the court to give him primary physical custody of Anne. Jane filed a contempt of custody petition against him for keeping Anne away from her.

Jane missed the first two appointments and arrived two hours late for her third appointment with the law student assigned to her case. During her meeting, which was to begin to prepare for the PFA case against Tom, Jane only wanted to talk about Anne and whether she might lose custody. She became very emotional when talking about the custody case. Jane was angry with Mark for keeping Anne for so long and said that she hoped he would be punished by the Judge for what he did. Jane did not remember when the abuse by Tom began, when he tried to run her over, or when she had gone to the police. She also did not remember when Mark had kept Anne from a month, or the date when she was able to get Anne back.

¹⁰¹ Parker, *supra* note 2.

¹⁰² See NAT'L CENTER ON DOMESTIC VIOLENCE, TRAUMA & MENTAL HEALTH, SUPPORTING SURVIVORS IN CONTESTED CUSTODY CASES: TRAUMA-INFORMED STRATEGIES FOR BUILDING ON PARENTING STRENGTHS WHERE MENTAL HEALTH IS A FACTOR (March 2014), available at <http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2014/01/Supporting-Survivors-in-Custody-Cases-April-7-FINAL-v3.pdf>.

¹⁰³ This case description is based on the experience of a client represented by Professor Haldar's clinic. Names and identifying information have been changed.

Rather than thinking a client is difficult or uncooperative, a student who has been taught trauma-informed lawyering will be able to recognize the preceding characteristics as signs of trauma, and will develop the skills to counteract the specific trauma symptoms which arise during client interviews.¹⁰⁴ These skills include developing mechanisms to: interview and prepare clients' cases with minimal re-traumatization; work with emotional clients more effectively by validating their feelings; focus or re-focus clients who are avoiding talking about a traumatic experience; help clients remember significant details; anticipate and handle clients who are late to an appointment or who miss the appointment entirely; define the role of the legal advocate, as opposed to a therapist or social worker; and build trust with the client. In short, teaching trauma-informed lawyering will allow students to specifically tailor their interviewing and case preparation to the client's individual circumstances, which include past trauma.

During the first meeting with Jane, the law student recalled the guest lecture by an area psychologist regarding trauma and recognized the indicators of trauma in Jane's actions. He told her that both the abuse by Tom and having Anne taken away from her must have been very difficult for her. He told her that during that first meeting, they would talk about what she most wanted to discuss, and then he and Jane together planned a timeline of appointments to get ready for both the PFA hearing and the custody hearing. The law student explained the purpose of each hearing and how the Judge would make a decision in each case. The law student let Jane know what documents she needed to bring to each meeting.

Additionally, the law student was able to use the police report filed when Jane got Anne back to determine when Mark had taken her and returned her. He also looked at Tom's date of arrest and Jane's PFA petition to get a rough timeframe of when the abuse happened, and Jane was able to supplement that information.

During a later meeting to prepare for the custody hearing, Jane revealed that as part of the abuse, Tom had forced her to join him in his drug use. Substance abuse was particularly emotionally difficult for Jane to discuss, because she and Anne's father Mark both had severe addiction issues when they were together, and they both stopped using when Jane became pregnant with Anne. Because the law student had this important bit of information, he was able to inform Jane that it was very common for custody judges to ask litigants to take drug tests, particularly if there is a history of drug abuse. He also discussed with her the importance of continuing to attend her substance abuse meetings,

¹⁰⁴ Parker, *supra* note 2, at 182.

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which served as a support for her in staying drug-free.

The law student went over Jane's direct examination with her several times before each hearing. He stressed the importance of being on time for the hearing, told her exactly who would be in the courtroom, and what each party might say. He emphasized that although she felt very emotional about the events, it was important to remember to answer only the questions asked of her in court. The law student reminded her the day before each time she had to be in court, and would meet her just inside the entrance to the courthouse. The custody judge decided not to modify the order in Jane's custody case with Mark, and the Protection From Abuse judge granted Jane a final protection order.

The enhanced interview skills that students learn when taught trauma-informed lawyering can help to nurture a trusting relationship between the client and the student lawyer. The law student and the client can then analyze risks, review and develop safety plans, and devise legal strategies together. Building this kind of a trusting relationship may help avoid a situation in which a client does not reveal crucial information. In addition to hearings, building a trusting relationship between a client and a law student recognizes the fact that advocating effectively for a client may not always involve an adversarial, court-centered litigation strategy. In fact, any form of litigation may not be the best way for the client to achieve her goals. Encouraging a client to speak as freely as possible about the past trauma, as well as her current experiences, can lead both parties to exchange important information so that they can most productively discuss the next steps to take in a client's case. Students will also be able to more effectively prepare for hearings if they are trained in trauma-informed lawyering. Once students understand which types of events can trigger the trauma of a client, they can work to lessen that potential.¹⁰⁵

Additionally, teaching trauma-informed lawyering will also cause students to more effectively tackle clients' trauma-related problems. For example, in family law cases, two of the most significant problems with the domestic violence survivor client population are mental health issues, often caused or exacerbated by the trauma and more recent trauma-related triggers, and substance abuse, which may also be cause or heightened by a traumatic situation. A crucial aspect of trauma-informed legal practice is recognizing the limits of lawyers' professional role, and knowing when to help the client seek behavioral health supports. Particularly for law students who are in the midst of

¹⁰⁵ See Parker, *supra* note 2, at 177-178 (discussing the importance of credible testimony in political asylum cases, where a traumatized client may have difficult expressing emotion).

cultivating their professional identities, and are still developing their competency at lawyering skills, it is important to underscore their professional boundaries.

An additional important aspect of clinical pedagogy is the importance of teaching students how to integrate being lawyers with the rest of their lives as they move forward as practicing attorneys. Recent research indicates that attorneys exhibited a higher level of vicarious traumatization compared to mental health professionals, at least in part because they felt that they had not received systemic education regarding the effects of trauma in their clients and themselves.¹⁰⁶ If explicitly taught trauma-informed lawyering, law clinic students will be more effectively prepared to handle their own feelings upon hearing their clients' traumatic stories, and will as a result suffer less from vicarious trauma and burnout.¹⁰⁷ Teaching trauma-informed lawyering in clinics creates foundations for students for positive self-care as they pursue and develop their legal careers.

III. THE PEDAGOGY OF TRAUMA-INFORMED LAWYERING: HOW TO TEACH TRAUMA-INFORMED LAWYERING IN LAW CLINICS

While acknowledging that teaching trauma-informed practice is an important goal, clinical law professors may struggle with how to integrate it into their clinics. This section will first describe four key hallmarks of trauma-informed lawyering: (1) identifying trauma; (2) adjusting the attorney-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma. The following section will give concrete examples of how to teach these hallmarks in law clinics.

A. *The Hallmarks of Trauma-Informed Lawyering*

The authors have identified four teaching goals that we believe are the key hallmarks of trauma-informed lawyering:

Identifying Trauma. Simply learning to identify trauma can go a long way in making an attorney more effective. Arguably, an attorney's ability to communicate with clients and develop a relationship of trust with clients is critical to attorney competence.¹⁰⁸ An attorney need not be a mental health expert to recognize that what the client is describing, or behavior the client in exhibiting, is indicative of trauma. Unless the law student has a previous professional background in

¹⁰⁶ See, e.g., Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245, 252 (2003).

¹⁰⁷ *Id.* at 251-252.

¹⁰⁸ Fines & Madsen, *supra* note 62.

trauma-related practice, law students tend not to be particularly aware of how trauma is defined or presents. A client who has experienced trauma needs to be able to feel safe in the attorney-client relationship, and an attorney who can be both affirming and empathetic to the client will help create that feeling of safety.

Adjusting Attorney-Client Relationship. Once an attorney has recognized that a client has experience with trauma, the attorney can adjust the attorney-client relationship accordingly. Trauma may affect the attorney's ability to get the whole story, and law students need training in these techniques. Because trauma manifests differently in different people, the attorney should be versed in a variety of strategies to work with the client. For example, the client may be very withdrawn, and the attorney will need to help the client gain a sense of trust and safety in order to get necessary information to prepare the case.¹⁰⁹ Another client might be highly emotional, flooding the attorney with a lot of information; the attorney will need to employ strategies to focus the client on key facts pertinent to the representation.¹¹⁰ Another client may be angry or suspicious, and the attorney will need to put continued focus on transparency and trust.¹¹¹ Cultivating these strategies will make the attorney more effective in developing a relationship with clients and handling their cases.

Adapting Litigation Strategy. The client's trauma experience may also change the attorney's litigation strategy in a variety of ways. Court can be overwhelming or frightening to many clients, but a client with a trauma history may have a particularly difficult time coping.¹¹² Law students need to be introduced to these topics to effectively prepare their clients. To the extent the client needs to testify about the traumatic events, the client may have difficulty telling the story consistently and credibly. The attorney can help the client by making the situation as predictable as possible by de-sensitizing the client by rehearsing.¹¹³ The attorney may make certain adaptations for the client, like making a plan to take a break if the testimony becomes too trying, or enlisting the support of a mental health provider or other support person in preparing for or attending court.¹¹⁴ Finally, the

¹⁰⁹ Judy I. Eidelson, *Representing Traumatized Clients*, Phila. Bar Assoc. Family Law Section, Nov. 4, 2013.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See generally Ann E. Freedman, *Fact-Finding in Civil Domestic Violence Cases: Secondary Traumatic Stress & the Need for Compassionate Witnesses*, 11 AM. U.J. GENDER SOC. POL'Y & L. 567 (2003).

¹¹³ Eidelson, *supra* note 109, at slide 13.

¹¹⁴ *Id.*

attorney may need to give extra thought to how the client will be able to testify about the traumatic experiences in court.¹¹⁵ By employing these strategies, the attorney may make court more palatable for the client and simultaneously more successfully advocate for the client's position.

Preventing Vicarious Trauma. Attorneys working with clients who have experienced severe trauma can also take preventive measures to avoid vicarious trauma. The risks of vicarious trauma for attorneys working with survivors of trauma may be even higher than those in other helping professions, because those in the legal profession tend to have higher caseloads,¹¹⁶ and to not be trained in the dynamics of trauma.¹¹⁷ Particularly in a high volume practice, with limited resources, attorneys are at a high risk of developing clinically significant symptoms of vicarious trauma.¹¹⁸ Although it is unlikely that law students in a clinic practice setting will develop vicarious trauma, it is important that they become aware of the risks and prevention measures at the start of their practice experience. One of the most important preventive measures for attorneys is to diversify and manage case load, so that the attorney has the opportunity to work with trauma survivors as well as clients who have not experienced severe trauma, and so the attorney does not become overwhelmed with too many cases.¹¹⁹ Further, attorneys can create a workplace culture that acknowledges the potential for vicarious trauma. This can include creating spaces for supervision and peer support, and encouraging open communication about the effect of the work.¹²⁰

B. Incorporating the Hallmarks of Trauma-Informed Lawyering as Teaching Goals

This next section will give concrete examples of how to achieve the teaching goals of (1) identifying trauma; (2) adjusting the attorney-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma.

Consider the examples of the clients Victoria and Jane, from the perspective of the clinical professor. The law students who worked

¹¹⁵ *Id.*

¹¹⁶ Levin, *supra* note 106.

¹¹⁷ Fines & Madsen, *supra* note 62, at 992. See also Yael Fischman, *Secondary trauma in the legal professions, a clinical perspective*, 18 TORTURE 107 (2008).

¹¹⁸ Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and their Administrative Support Staff Working With Trauma-Exposed Clients*, 199 J. OF NERVOUS & MENTAL DISEASE 946, 953 (2011).

¹¹⁹ Fines & Madsen, *supra* note 62, at 993.

¹²⁰ *Id.* at 994.

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with Victoria and Jane had been introduced to the concepts of trauma-informed practice in clinical seminar. The clinical professor had informed the students at orientation that learning to identify trauma, understand the effect of trauma on clients' behavior, and alter the attorney-client relationship and litigation strategy accordingly, were part of the teaching goals for the clinic. The clinical professor brought in an outside speaker to talk to the class about the dynamics of intimate partner violence, and also brought in a psychologist to discuss the impact of trauma on the brain, and how it may manifest. The clinical professor reinforced these lessons through reflection exercises such as case rounds, journaling, supervision and evaluation. And finally, the clinical professor introduced the concept of vicarious trauma, and educated the law students on how to prevent it, by focusing on creating confidential space to talk about the effect the work and clients had on the students, as well as underscoring the importance of good self care. By incorporating these teaching methods into the clinic, the professor created an environment where clients like Victoria and Jane can feel supported and empowered through the experience of representation by the clinic, and the law students are prepared to be excellent advocates on their behalf.

1. Identifying Trauma

To teach law students to identify trauma, the students must learn the definition of trauma and why it is relevant to the practice area in the clinic. Law students may incorrectly assume that in teaching about trauma, we are asking them to step outside the bounds of their role as attorney; in contrast, the purpose is to enhance their capacity to build an effective attorney-client relationship.¹²¹ In the context of family law clinics, whether the clinic has a specific domestic violence focus or not, identifying trauma can be introduced by contextualizing what we know about the population that relies on family courts to resolve disputes, specifically that there is a high prevalence of family violence.¹²² In other clinical settings, there may be other common types of trauma with which clients present; for example in an immigration clinic, there may be high rates of clients who witnessed family members or other individuals be harmed in tragic ways. In a child or family advocacy clinic, there may be many clients who have experienced severe child abuse or neglect.

¹²¹ Parker, *supra* note 2, at 169.

¹²² Janet Johnson et al., *supra* note 22. The link between child custody decisions and domestic violence is one that has been acknowledged by state legislatures and courts. See Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1062 (1991).

It is important to help the students shape what is meant when we refer to trauma. The word “trauma” is tossed around a lot (“*My favorite tv show is on summer hiatus and I am SO traumatized!*”; “*My child was lost in the department store for 10 minutes and I was so traumatized!*”). Although trauma is subjective to a specific individual’s ability to cope, not every bad experience is a traumatic one. And not every client who has experienced trauma carries a diagnosis of post-traumatic stress disorder. Further, in teaching about trauma, there is a risk that students will essentialize clients’ experiences, assuming they all share common histories or characteristics. By focusing on the particular commonalities and needs of the population served by the clinic, the professor can guide students toward being alert to relevant information in the client’s history and/or experience which may have an effect on the nature of the representation.

To teach students to identify trauma, the professor may elect to bring in a psychiatrist or psychologist to class, who can speak about how trauma presents and how it affects the brain. With some research and preparation, the clinical professor may also elect to teach this information on her own. The outside speaker or the professor can also focus on some of the common ways trauma presents in the population served by the clinic, and suggest or model strategies for working with these types of clients. For some clients the content of the representation will be specific to the trauma experience, such as representation in a protection order matter regarding abuse perpetrated by the opposing party, or representation in a custody matter about child abuse perpetrated by the opposing party. There are also times where the student may have to deduce that a backdrop of trauma is affecting the client’s demeanor or ability to relate to the student, such as representation in a child welfare case concerning allegations of mother’s mental health issues. With a basic understanding of how trauma may present, the student can develop greater sensitivity toward the client, and be alert to (sometimes subtle) indications that the client has experienced trauma.

Frequently, students have preconceived notions about how a survivor will present; the student expects the client to be forthcoming and compliant in relaying her story. An effective way to teach law students to identify trauma is to incorporate this learning goal into exercises focused on learning interviewing skills. For example toward the beginning of the semester, the authors utilize Laurie Shanks’ storytelling exercise to teach students about how difficult it sometimes is for clients to share intimate details of their lives.¹²³ In this exercise, students

¹²³ Laurie Shanks, *Whose Story is it, Anyway? – Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLIN. L. REV. 509, 516-517 (2008).

are paired in class and then asked to tell a story to each other about something that changed their life; the other student is then charged with telling her partner's story to the rest of the class, and a discussion ensues about the challenges and obstacles of telling someone else's narrative.¹²⁴ Although not specifically a trauma-related exercise, it can create a forum to underscore some of the barriers to effective fact gathering with clients who have experienced trauma. As Psychologist Judy Eidelson has hypothesized, some of these internal barriers for the interviewer may include fear of what we might have to hear, fear of not knowing how to respond, fear of losing composure, our own moral judgments, and idealization of the trauma survivor followed by disillusionment.¹²⁵

The law student should ensure that her representation creates no additional harm.¹²⁶ Clients' trauma history may affect representation by making it difficult to get the whole story (because of avoidance) and to get a consistent story (traumatic memories get stored in the brain in disconnected ways).¹²⁷ In addition to disruptions to the client's memory of the relevant events, the client may experience shame, hopelessness, traumatic flashbacks and/or distrust in being asked about the traumatic events.¹²⁸ Because trauma presents differently, it is helpful to make students aware that it is quite common for a trauma survivor to present as withdrawn and with flat emotion, *or* to flood with an overload of information, *or* to be angry and/or suspicious.¹²⁹ Through hypotheticals or role plays, the professor can brainstorm with the students effective strategies for working with each type of client. For example, with the withdrawn client, the client may feel more in control of the interview if the law student affirms how difficult it is to share the information.¹³⁰ With the flooding client, it can be valuable to be upfront and transparent about the goals and focus of the interview.¹³¹ With the angry or suspicious client, it can be beneficial to validate the client's frustration while not getting defensive.¹³²

All of the above teaching strategies can be reinforced throughout the students' work in the clinic through supervision and reflection. The student may need help or feedback around why a particular client interview did not go as smoothly as planned, or assistance with

¹²⁴ *Id.* at 518-526.

¹²⁵ Eidelson, *supra* note 109.

¹²⁶ SEIGHMAN ET AL., *supra* note 63, at 5., at 5.

¹²⁷ Eidelson, *supra* note 109, at slide 3.

¹²⁸ *Id.*

¹²⁹ *Id.* at slides 6-11.

¹³⁰ *Id.* at slide 7.

¹³¹ *Id.* at slide 9.

¹³² *Id.* at slide 10.

strategizing how to most effectively handle a particularly challenging client interview. Not every student will immediately draw the connection between the lessons learned about trauma in class and a client's particular behavior. For example, the student may feel frustrated by a client's repeated cancellation of appointments, or unwillingness to talk about key events in her history. By introducing trauma-informed practice early, the clinical professor can redirect the student to these lessons. In the authors' clinics, we frequently revisit how a client's trauma history may be affecting the law student-client relationship through supervision and case rounds.

2. *Adjusting the Attorney Client Relationship*

Once students learn to identify trauma in their clients, the next step is to enable the student to make adjustments to their strategy for building an attorney-client relationship. As mentioned above, an outside speaker or the clinical professor can teach students about how trauma or indicators of trauma may manifest in clients. In the family law context, both Professor Katz and Professor Haldar bring in outside speakers from a local domestic violence agency, who can talk about the dynamics of domestic violence. These speakers introduce the students to basic concepts like the idea that domestic violence is about power and control,¹³³ and that there is a cycle of abuse.¹³⁴ Without this backdrop, it can be hard for students to understand why their clients behave in certain ways: *Why did she decide to drop this protection order?*¹³⁵ *Why didn't she show up to court, I thought this case was important to her!*¹³⁶

Once students are informed about the effects their clients' trauma experience may have on the client's behavior, the clinical professor can help the students develop strategies for working with these clients. Such strategies can be integrated into lessons on client counseling through hypotheticals or simulations, as well as addressed through supervision and reflection. Because trauma presents differently in different clients, students need to be versed in a wide array of strategies. Students should learn that working with clients with trauma experience requires investing extra time in the attorney-client relationship, perhaps scheduling more in-person meetings than might otherwise be usual practice, and being particularly patient and consistent with the

¹³³ See generally LENORE E. WALKER, *THE BATTERED WOMAN* (1979).

¹³⁴ *Id.*

¹³⁵ James C. Roberts, Loreen Wolfer & Marie Mele, *Why Victims of Intimate Partner Violence Withdraw Protection Orders*, 23 J. FAM. VIOL. 369 (2008).

¹³⁶ Avoidance or withdrawal are common ways for clients' trauma to manifest. See Eidelson, *supra* note 109, at slides 6-7.

client. Student can also help the client identify and acknowledge how the trauma experience impacts their interactions with their law student, the opposing party or the judge. Transparently engaging the client in developing solutions can be empowering to the client and lays a strong foundation for a meaningful attorney-client relationship.¹³⁷ The student can also become versed in contemplating non-legal solutions with the client, such as referrals to trauma-informed therapy, connections to other social services or supports, or reliance on trusted family or friends.

Clinical professors should be aware that students, just like clients, may also present with their own trauma history. Working with particular clients may present triggers for certain students. While this will be addressed further in the discussion of vicarious trauma in Section III. B. 4., *infra*, the clinical professor can help students be mindful that the experience of listening to someone else's trauma history is not neutral. The students can be encouraged to be reflective with regard to their own reactions and responses to clients.

3. *Adapting Litigation Strategy*

Preparing a client with trauma experience for court requires particularized strategies which law students can learn through a clinic. The experience of going to court in and of itself can be re-traumatizing, particularly because the trier of fact may not know the client has a trauma history, or may not be aware of how trauma presents. To the extent that the client may have to testify about the traumatic events, many triers of fact might assume that if something really horrible happened that the client will be able to testify about it with great specificity.¹³⁸ In contrast, clients with trauma experience can make terrible witnesses for a variety of reasons.¹³⁹ First, because the brain stores memories in mismatched ways, the client may be unable to present a linear narrative.¹⁴⁰ Second, the client may not remember key elements of what occurred; while this may make a trier of fact question client's credibility, it is a normal trauma reaction.¹⁴¹ Third, a client's emotions or lack thereof may unnerve or misguide the trier of

¹³⁷ SEIGHMAN ET AL., *supra* note 63, at 7.

¹³⁸ Joan Meier, *Symposium: Domestic Violence, Child Custody & Child Protection: Understanding Judicial Resistance And Imagining Solutions*, 11 AM. U. J. GENDER SOC. POL'Y 657, 662 (2003) ("The failure of many courts to apply new understandings of domestic violence in cases concerning custody actually contrasts sharply with the demonstrable increases over the past ten years in judicial awareness and sensitivity to domestic violence in more standard 'domestic violence' cases, such as civil protection orders or criminal prosecutions.").

¹³⁹ Parker, *supra* note 2, at 171.

¹⁴⁰ Eidelson, *supra* note 109.

¹⁴¹ Parker, *supra* note 2, at 171.

fact: the client may appear with a flat affect; or the client may want to tell the full story in a rush of hysterical emotion; or the client may appear angry (thus making her seem like the aggressor) or the client may simply disassociate and not be able to articulate what happened at all.¹⁴²

Extra time spent on preparation can go a long way in making the litigation process palatable for clients with trauma experience. The student can spend extra time preparing the client for what to expect in the courtroom, reviewing details as mundane as where everyone will sit or stand, to what types of questions will be asked. The more the experience of court can become normalized and predictable for a client, the more likely they will be able to cope. In addition, because constantly re-telling the story of the traumatic events can be re-traumatizing for the client, dividing the preparation into shorter sessions can help minimize the risk of re-traumatization.¹⁴³

Students can utilize extra preparation time to work on mental safety-planning with the client. For example, the student can work with the client around how they will handle being asked difficult questions, or where to focus their energy when the opposing party is talking. The student and client can set up a safety signal, whereby the student can ask for a break in the testimony should it become too overwhelming for the client. Allowing the client to be an active participant in planning for how to handle going to court can help empower the client and normalize the experience of the court hearing.

The student can spend extra time preparing the client for the worst possible case outcomes (e.g. *The worst thing that may happen is that the judge grants his petition for shared custody*). Being able to visualize the possible results will help normalize the experience of court.

Finally, although difficult, students can seek to educate the trier of fact about dynamics of trauma through the litigation process. Some resources exist for training judges in a more systemic manner.¹⁴⁴

4. Preventing Vicarious Trauma

Perhaps the most crucial aspect of the pedagogy of teaching trauma-informed lawyering in law clinics, and certainly the aspect that students have the greatest need to carry forward with them in their legal practice, is the awareness of vicarious trauma and the need

¹⁴² Eidelson, *supra* note 109. One client in Professor Katz's clinic, after repeated questioning in court about the history of intimate partner violence between the parties simply blurted out "he has a hand problem!" (meaning "he puts his hands on me").

¹⁴³ Parker, *supra* note 2, at 176.

¹⁴⁴ SAMSHA, *supra* note 8.

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to take preventive measures against its effects. While students may not be likely to experience vicarious trauma in their clinical work, it is important that they learn about the risks, and are able to implement preventive measures starting with their clinical legal work. Preventive measures can be implemented in a number of ways. First, in the authors' clinical courses, the possibility and effects of vicarious trauma are explicitly taught and the authors are each transparent with their students about the preventive measures that are being implemented. When new students begin, as mentioned previously, a psychologist speaks with the students about the effects of trauma on clients, but also discusses the issue of vicarious trauma and how to identify vicarious trauma symptoms and also to protect oneself against vicarious trauma. Students read material about the effects of trauma and the effects of vicarious trauma on professionals who work with trauma survivors, and discuss the effects of vicarious trauma in class.¹⁴⁵

It is also possible and crucial to consider vicarious trauma when structuring clinical courses. One of the best ways to prevent vicarious trauma is balance and limit caseloads.¹⁴⁶ For example, cases should be distributed among students such that the cases involving clients with significant trauma histories are evenly distributed among the students. In Professor Haldar's clinic, where students handle both Protection From Abuse and custody cases, students are assigned both kinds of cases to increase the chance that each student will have at least a few clients who have not recently experienced traumatic events. Thus, every effort is made to ensure that no one student will have only clients who have recent trauma histories, and this balance is a significant factor to protect against vicarious traumatization.

Another recognized prevention technique is to create safe space for practitioners to talk about the effects of working with their clients with trauma histories on a regular basis.¹⁴⁷ In a law school clinic, this can be accomplished through supervision and reflection, and through effective use of case rounds. Both Professor Haldar and Professor Katz ask students to reflect upon vicarious trauma-related topics specifically in their journal assignments. The journal entries call for students to think specifically about whether and how they are being

¹⁴⁵ In addition to journal assignments, sample assignments might include role playing a client interview session when a client discusses a traumatic past event or reading articles about the effects of vicarious trauma in the therapy context and discussing in class the similarities and differences in the legal context.

¹⁴⁶ T. Bober and C.D. Regehr, *Strategies for Reducing Secondary or Vicarious Trauma: Do They Work?*, 6 *BRIEF TREATMENT AND CRISIS INTERVENTION* 1-9, 7 available at <http://dx.doi.org/10.1093/brief-treatment/mhj001> (last viewed Dec. 20, 2015).

¹⁴⁷ Barbara Dane, *Child Welfare Workers: An Innovative Approach for Interacting with Secondary Trauma*, 36 (1) *J. OF SOC. WORK EDUC.*, 27, 34-35 (2000).

affected by their clients' trauma histories, and whether they are experiencing vicarious trauma symptoms.

In clinics, students should be taught explicit strategies to prevent vicarious trauma that they can carry forward with them into their legal practices. One very effective way to teach students about preventing vicarious trauma is to encourage good self-care and model good self-care. Self-care, in the sense of setting appropriate boundaries between the advocate and the client, is recognized to be a protective factor against vicarious trauma.¹⁴⁸ Sandra Bloom divides self-care into several components: personal physical; personal psychological; personal social; personal moral; professional; organizational/work setting; societal.¹⁴⁹ In the beginning of the semester, along with a discussion of vicarious trauma, clinical professors may choose to encourage their students to develop their own self-care plans, incorporating all of the different components of self-care. In case rounds and supervision, students and the professor can refer back to these self-care plans as needed, especially when working with clients with trauma histories.

Clinical professors may also find it helpful to themselves model good self-care techniques for students. For instance, professors can be transparent about making sure they themselves get to exercise regularly, or about using mental health counseling if needed. Specific discussion of mental health services, and of their availability, may also help students to avoid the effects of vicarious trauma, as knowledge of mental health services is a protective factor.¹⁵⁰

Although not strictly vicarious trauma, it is also important to note here that students often come to our clinics with their own trauma histories; in fact, it is often a student's own trauma history which motivates them to enroll in the clinic to assist clients with similar issues. Of course, working with clients with trauma histories can be triggering for students with their own trauma histories. A crucial aspect of the

¹⁴⁸ Prof. Katz gives the following prompt: *Vicarious trauma, also sometimes called compassion fatigue or secondary trauma, is a term for the effect that working with survivors of trauma may have on counselors, therapists, doctors, lawyers and others who directly help them. Vicarious traumatization refers to harmful changes that occur in professionals' views of themselves, others, and the world, as a result of exposure to the graphic and/or traumatic experiences of their clients. Vicarious trauma occurs in someone who is not the primary person experiencing the trauma. Vicarious trauma happens when a secondary person is exposed to the original victim or offender, likely in the course of their profession.*

In the practice of family law, our clients share some of the most painful and intimate details of their lives. Please use this journal entry to reflect on how you manage your reactions to these stories, and coping mechanisms you are developing to maintain balance as you move through this work.

¹⁴⁹ Sandra L. Bloom, *Caring for the Caregiver: Avoiding and Treating Vicarious Traumatization*, in *SEXUAL ASSAULT: VICTIMIZATION ACROSS THE LIFESPAN – A CLINICAL GUIDE* 459, 466-467 (A.P. Giardino, E. M. Datner, and J.B. Asher eds.) (2003).

¹⁵⁰ Parker, *supra* note 2, at 178, 198.

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Teaching Trauma-Informed Lawyering

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pedagogy of trauma-informed lawyering consists of acknowledging for law students that they may have their own trauma histories that have an effect on them as they proceed in their legal careers, particularly in working with clients with trauma histories. It is important to create a space for students to talk about and/or reflect on their own trauma experience as needed, as they proceed in working with clients with trauma histories.

CONCLUSION

As this article explains, teaching trauma-informed lawyering is a critical aspect of law students' education in the clinical legal educational setting, particularly in clinics which focus on practice areas where clients' trauma experiences are the direct subject of the representation. This article is not meant to be an exhaustive treatise on how to teach these subjects in law school clinics. Rather the message is simple: a little knowledge about trauma goes a long way in helping students adjust their practice skills to competently and zealously represent clients who have experienced trauma. By implementing the four hallmark teaching goals of trauma-informed lawyering, clinical law professors can not only enhance the advocacy of their students while in the clinic, but also convey lasting skills which will set their students on the path to being excellent lawyers throughout their careers.



APPENDIX
ATTACHMENT 39

Trauma-Informed Lawyering

Vivianne Mbaku, Justice in Aging

Introduction

A trauma-informed legal practice aims to reduce re-traumatization and recognize the role trauma plays in the lawyer-client relationship. Integrating trauma-informed practices provides lawyers with the opportunity to increase connections to their clients and improve advocacy.

Key Lessons

1. The widespread prevalence of trauma underlines the importance of civil legal aid attorneys adopting trauma-informed practices.
2. Trauma-informed lawyering leads to better communication between the lawyer and client, discovery of additional legal issues, and better referrals.
3. Trauma-informed lawyering is generally free of cost, but will take additional lawyer time.

One-Third of Adults Experience Severe Trauma in Their Lifetime

The American Psychological Association defines trauma as “an emotional response to a terrible event like an accident, rape, or natural disaster.”¹ An event is defined as traumatic when it renders an individual’s internal and external resources inadequate, making effective coping impossible.² Trauma is very common, with an estimated one third of the U.S. population expected to experience severe trauma in their lifetime.³ Women are much more likely than men to experience traumatic events like rape and stalking, and consequently more likely to report an impact on their functioning related to the traumatic event.⁴ Further, new research connects higher rates of post-traumatic stress disorder (PTSD) among racial and ethnic minorities to the traumatic experience of racism.⁵

Trauma-Informed Lawyering Improves Legal Advocacy

Trauma-informed care recognizes the widespread prevalence of trauma and its impact while aiming to reduce re-traumatization.⁶ The term ‘trauma-informed’ was coined in 2001 by PhD researchers Maxine Harris and Roger Fallot.⁷ Trauma-informed lawyering “asks clients not ‘what is wrong with you?’ but instead, ‘what happened to you?’”⁸

The central goals of trauma-informed lawyering are to reduce re-traumatization and to improve legal advocacy by recognizing the role trauma plays in the lawyer-client relationship. Considering high rates of trauma among the general population, it is imperative that civil legal aid attorneys integrate trauma-informed practices to reduce re-traumatization. Common examples of trauma-informed practice include providing accommodations for client interviewing or extensive witness preparation to alleviate client anxiety. Regardless of

1 American Psychological Association, “Trauma,” available at: [apa.org/topics/trauma](https://www.apa.org/topics/trauma).

2 Sarah Katz & Deeya Haldard, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 364.

3 *Id.*

4 *Id.* at 365

5 American Psychological Association, “Uncovering the Trauma of Racism” [apa.org/pubs/highlights/spotlight/issue-128](https://www.apa.org/pubs/highlights/spotlight/issue-128).

6 Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, available at: nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/.

7 Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, available at: nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/.

8 Sarah Katz & Deeya Haldard, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 363.

its form, a trauma-informed practice assists lawyers in connecting to their clients, creating better legal outcomes and more robust advocacy.

Self-Care is Important to Counterbalance Secondary Trauma

Integral to trauma-informed lawyering is the practice of “employing modes of self-care to counterbalance the effect [a] client’s trauma experience may have on the practitioner.”⁹ The concept of ‘vicarious/secondary trauma’ or ‘compassion fatigue’ has been explored extensively within the legal field. This condition resembles post traumatic stress disorder and is “caused by being indirectly exposed to someone else’s trauma.”¹⁰ Secondary trauma can manifest as avoidance, black and white thinking, and frustration with clients or losing empathy towards clients.¹¹ Further, direct exposure to clients experiencing trauma is not the only way to be affected by secondary trauma. Secondary trauma can develop from listening to others recount a traumatic event or working with others who are dealing with secondary trauma.¹²

The Trauma-Informed Legal Advocacy Project (TILA) of the National Center on Domestic Violence, Trauma & Mental Health encourages reflective practice to help counteract the effect that a client’s traumatic experiences may have on their attorney.¹³ A reflective practice includes “regularly engaging in reflection, both in the context of individual interactions and after big successes or losses.”¹⁴ Changes in organizational culture to foster discussion of secondary traumatic stress and encourage employees to take breaks from work can assist in mitigating the effects of secondary trauma.¹⁵

Here is more information on [secondary trauma and tools to better support employees](#).

Clients Benefit from Transparency and Trust in Trauma Informed Lawyering

A trauma-informed practice provides many benefits to both the attorney and client. Clients benefit from more transparency in the lawyer-client relationship, leading to higher levels of trust in lawyers.

Many clients have had negative experiences with the legal system and may not understand the process. Lawyers are also prone to not explaining their motivations or process during representation. By explaining their role, the role of others in the court, and what can happen during the course of representation, lawyers can alleviate the stress and anxiety of the process. Lawyers should start interviewing by explaining the nature of the meeting and providing as much information about what will happen to ease anxiety. By starting with transparency, the lawyer establishes trust with the client. When the client feels comfortable, they are more likely to share sensitive information that may be integral to their case. Lawyers can then provide proper referrals to additional services and better prepare cases for settlement or trial.

9 *Id.* at 359.

10 American Bar Association, “Understanding Secondary Trauma: A guide for Lawyers Working with Child Victims”, September 10, 2015, available at: americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/september-2015/understanding-secondary-trauma--a-guide-for-lawyers-working-with/.

11 *Id.*

12 *Id.*

13 Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, “Practice Scenarios Series”, available at: nationalcenterdvtraumamh.org/wp-content/uploads/2013/08/TILA_ReflectivePractice_Apr22.pdf.

14 *Id.*

15 American Bar Association, “Understanding Secondary Trauma: A guide for Lawyers Working with Child Victims”, September 10, 2015, available at: americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/september-2015/understanding-secondary-trauma--a-guide-for-lawyers-working-with/.

PRACTICE TIP

The trauma-informed practice takes place in two steps. First, identifying the trauma, and second, adjusting the lawyer-client relationship in relation to the trauma.¹⁶ It is important for attorneys to remember that this process does not include diagnosing a client or trying to be a “therapist” for clients. Attorneys should make proper referrals to mental health services for any client who is struggling.

Identifying Trauma and Adjusting the Relationship

In the first step of identifying the trauma, trauma might be easily identified because it is related to the nature of the legal relationship, i.e. the client seeking assistance with an elder abuse protective order. In other cases, the existence of trauma may not be readily apparent. Lawyers should make efforts to note their client’s body language, tone, and general demeanor. Trauma manifests differently in everyone, and it “may affect the attorney’s ability to get the whole story.”¹⁷ A client may seem closed off, uneasy, agitated, or annoyed. Acknowledging any discomfort is encouraged, as it gives your client the opportunity to voice needs or concerns. Lawyers can then accommodate clients’ needs, and adjust their techniques to provide a better environment for the client. The key here is to not fall back on assumptions, wondering “what is wrong with this person? Why are they so _____?” but to embrace “what is going on with them, what happened? How can I make them more comfortable?”

The second step of adjusting the lawyer-client relationship in relation to the trauma, can take many forms. Offering options to clients to accommodate their reactions to their traumatic experience is one of the easiest changes to the lawyer-client relationship to make. Options like flexibility with meeting time and place, seating arrangements, or whether the door is closed or open are simple ways to adjust the lawyer client relationship while building trust.¹⁸

The Trauma-Informed Legal Advocacy Project also outlines the following strategies as other helpful best practices:¹⁹

- **Take breaks.** Breaks provide a client with the space they need to stay present during a meeting or interview. Offer breaks not only at the beginning of the meeting but also periodically throughout.
- **Explain the process.** Be open about what you are doing, such as taking notes, and ask permission before taking notes. During the interview, use open body language to help avoid creating an objectifying experience. After the interview, summarize the notes you took with the client.

Validate feelings. Clients should know that their feelings matter. By verbally validating, you can help the client become aware of what is happening with them.

CASE EXAMPLE

Len is a new client coming in for assistance with a debt collection case. As you ask him questions, you realize his leg is literally “jumping” he is shaking so much. He seems a bit withdrawn and keeps looking towards the door. You stop legal questioning and note that he seems uncomfortable, and ask if there is anything you can do to make him feel more comfortable. Len shares that he was a victim of torture in his home country and

¹⁶ *Katz* at 382.

¹⁷ *Katz*, at 383.

¹⁸ Trauma-Informed Legal Advocacy Project of the National Center on Domestic Violence, Trauma & Mental Health, available at: nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/.

¹⁹ *Id.*

feels tremendous anxiety when he is seated so far from the door. He also does not like being in rooms with closed doors as he feels he cannot escape. You readjust the seating and move the open conference room in your office. You assure Len that if he had any other concerns to let you know.

Strategies for helping the client feel comfortable:

- You stop legal questioning and note that he seems uncomfortable. You realize that you jumped into the interview without really explaining your role or what you will be doing today.
- You acknowledge that Len seems uncomfortable and ask if there is anything you can do to make him more comfortable.
- Len shares that he was a victim of torture in his home country and feels tremendous anxiety when he is seated so far from the door. He also does not like being in rooms with closed doors as he feels he cannot escape.
- You readjust the seating and move to the open conference room in your office. You assure Len that if he had any other concerns to let you know.
- You then explain the process and what will happen at this interview. You let Len know that if he needs breaks or anything else to let you know.

Conclusion

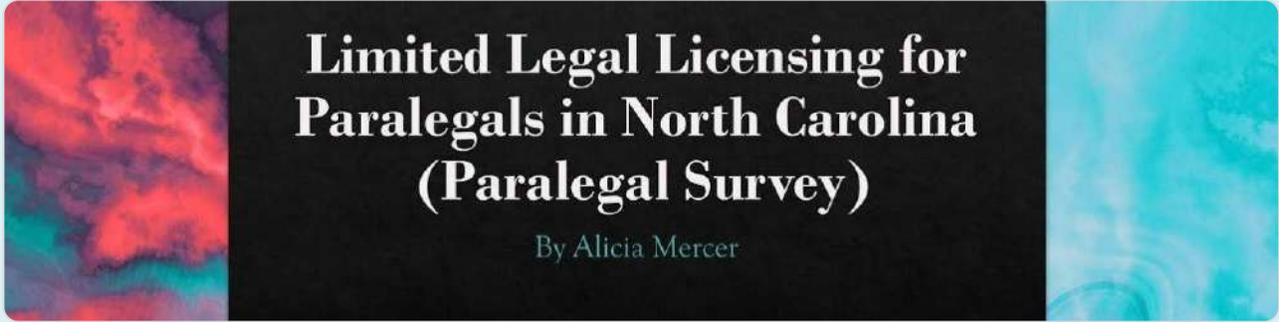
A trauma-informed legal practice not only reduces re-traumatization, it also makes better lawyers. A lawyer who is able to recognize the role trauma plays in the lawyer-client relationship is able to be a better advocate.

Please contact ConsultNCLER@acl.hhs.gov for free case consultation assistance. Sign up for our email list and access more resources at [NCLER.acl.gov](https://www.acl.gov).

This Tip Sheet was supported by contract with the National Center on Law and Elder Rights, contract number HHSP233201650076A, from the U.S. Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201.



APPENDIX
ATTACHMENT 40



Limited Legal Licensing for Paralegals in North Carolina (Paralegal Survey)

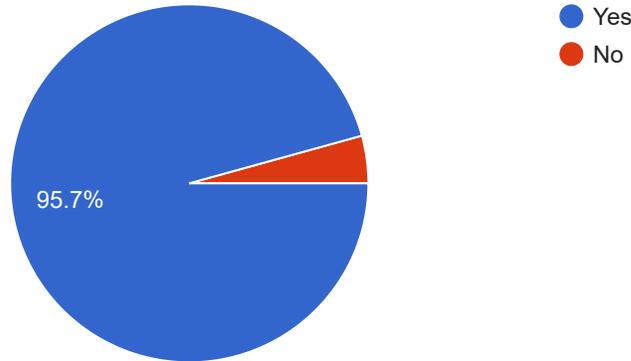
537 responses

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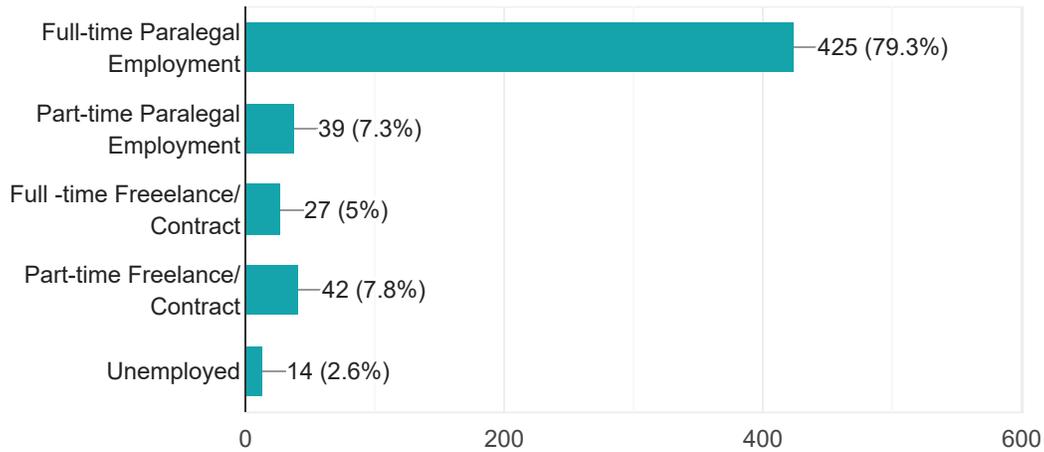
Are you a paralegal or other legal professional engaged substantially in paralegal work? According to the ABA, a paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.

536 responses



How are you presently employed?

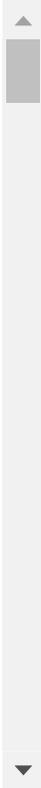
536 responses



Personal Information



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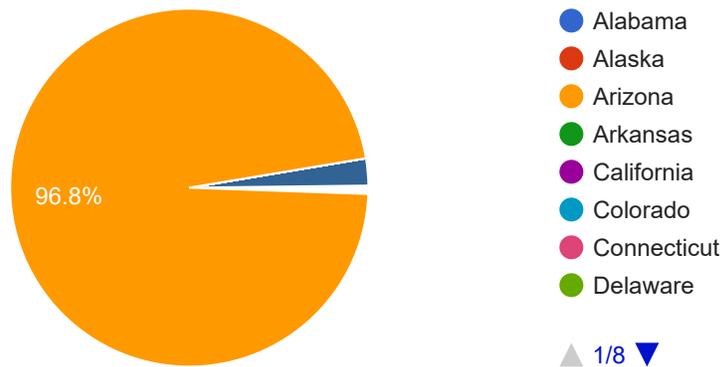
City:

516 responses

- Charlotte
- Raleigh
- Greensboro
- Charlotte
- Durham
- Wilmington
- Cary
- Raleigh
- Wake Forest

Resident State (or U.S. Territory):

532 responses

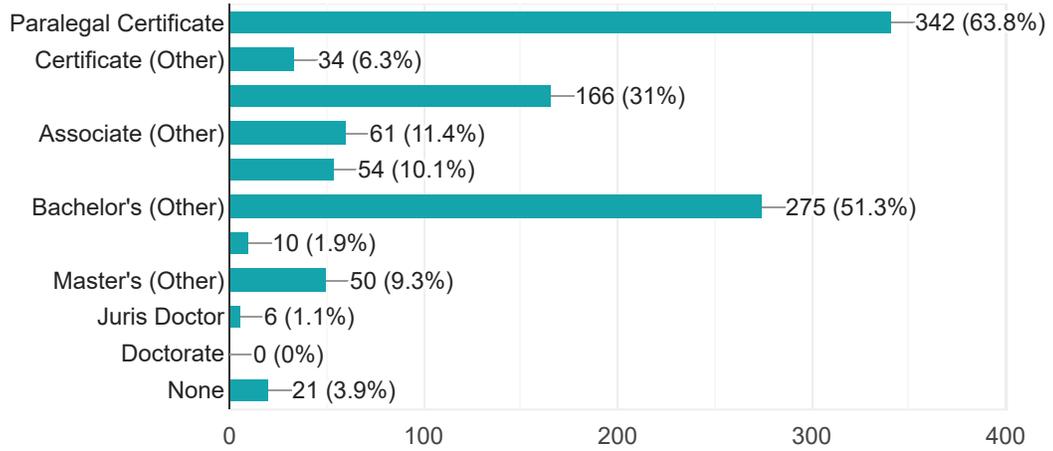


Basic Work History & Education



Education:

536 responses

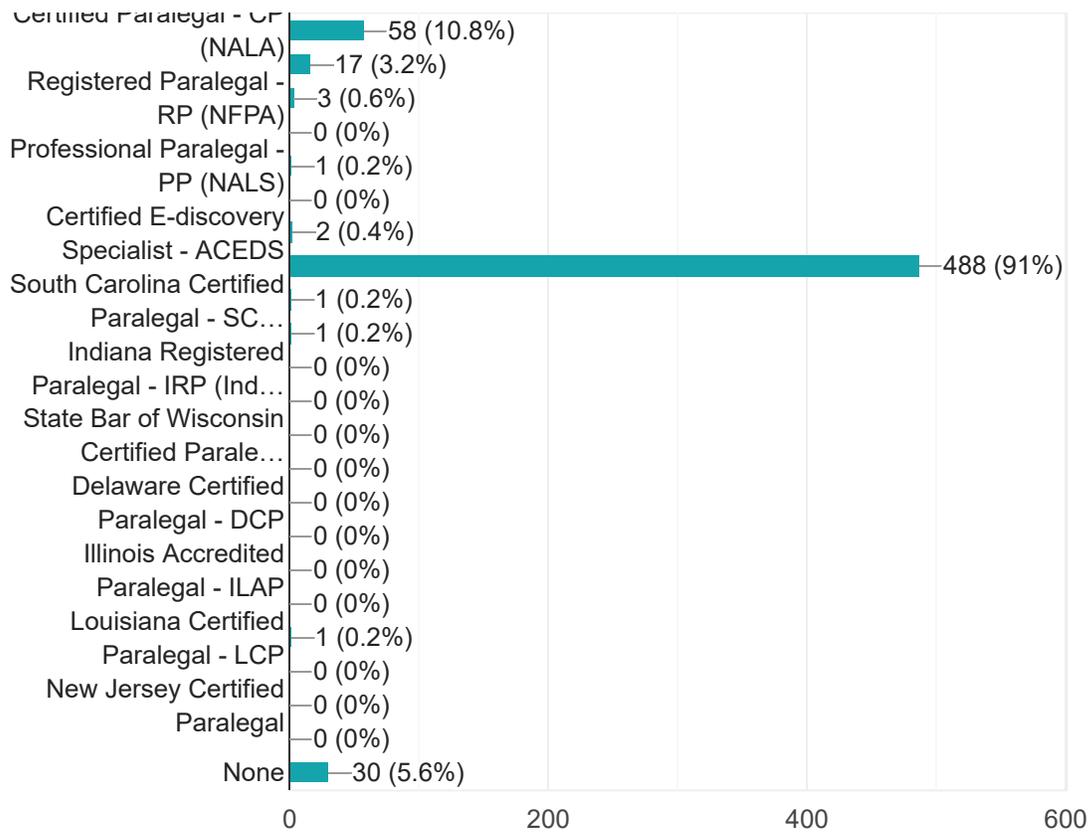


Paralegal Certifications



Paralegal Certifications:

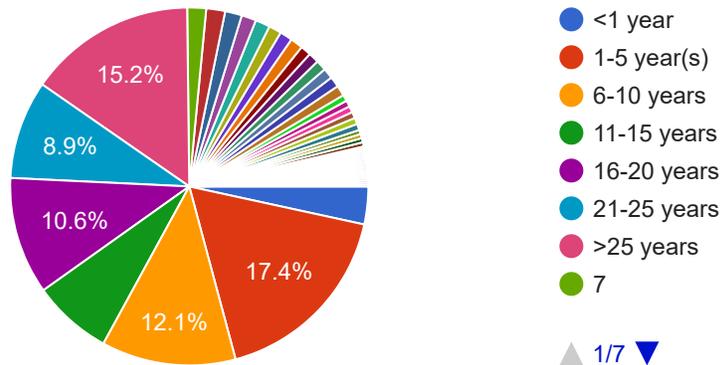
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Experience

Years of Paralegal Experience:

528 responses



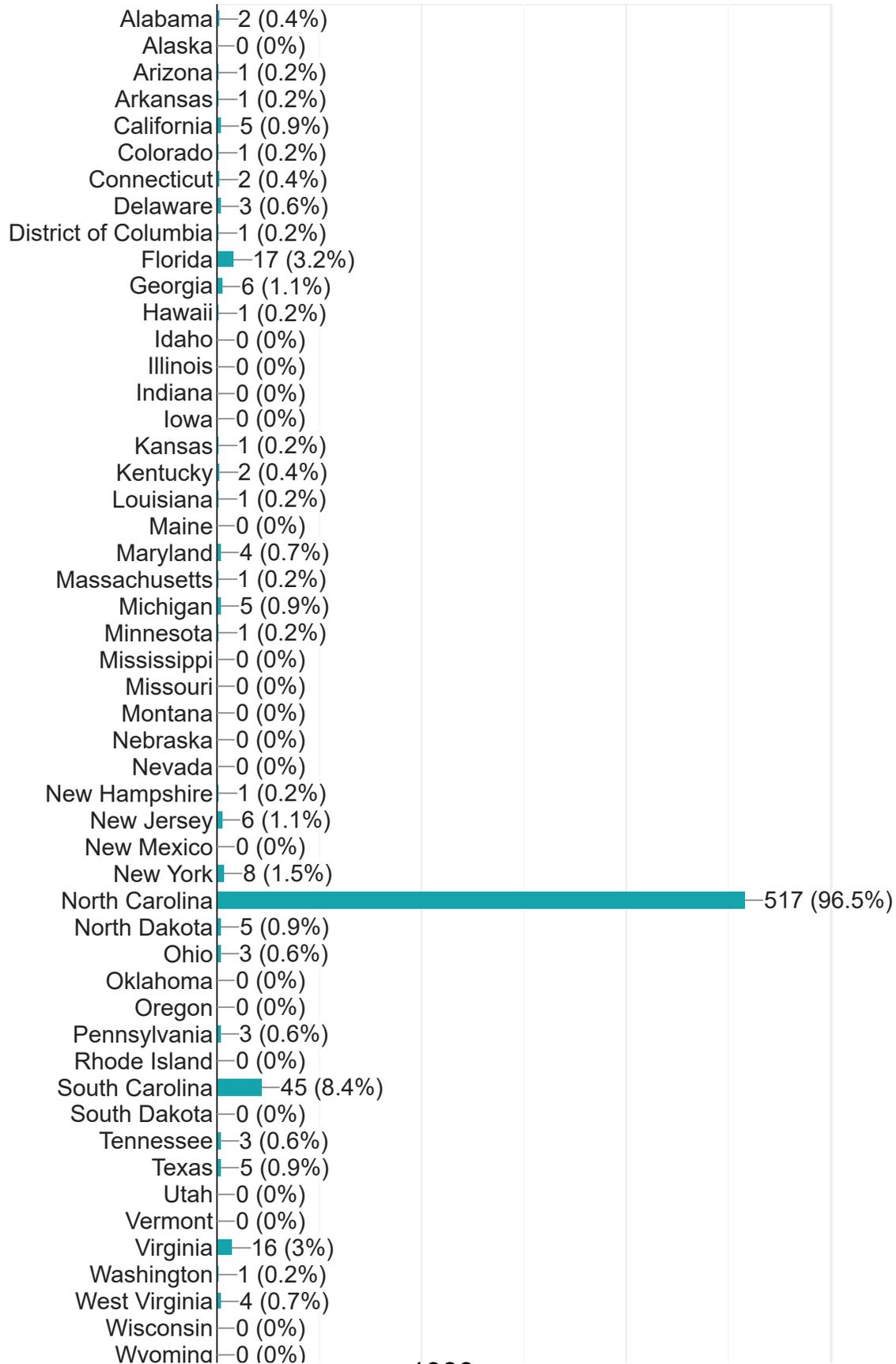
- <1 year
- 1-5 year(s)
- 6-10 years
- 11-15 years
- 16-20 years
- 21-25 years
- >25 years
- 7

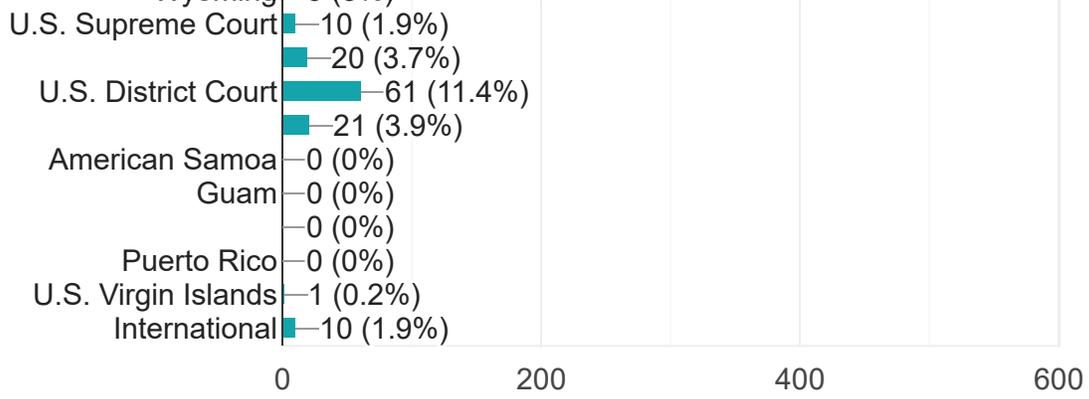
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Check all state, federal, and international jurisdictions in which you have recent and significant practice area experience.

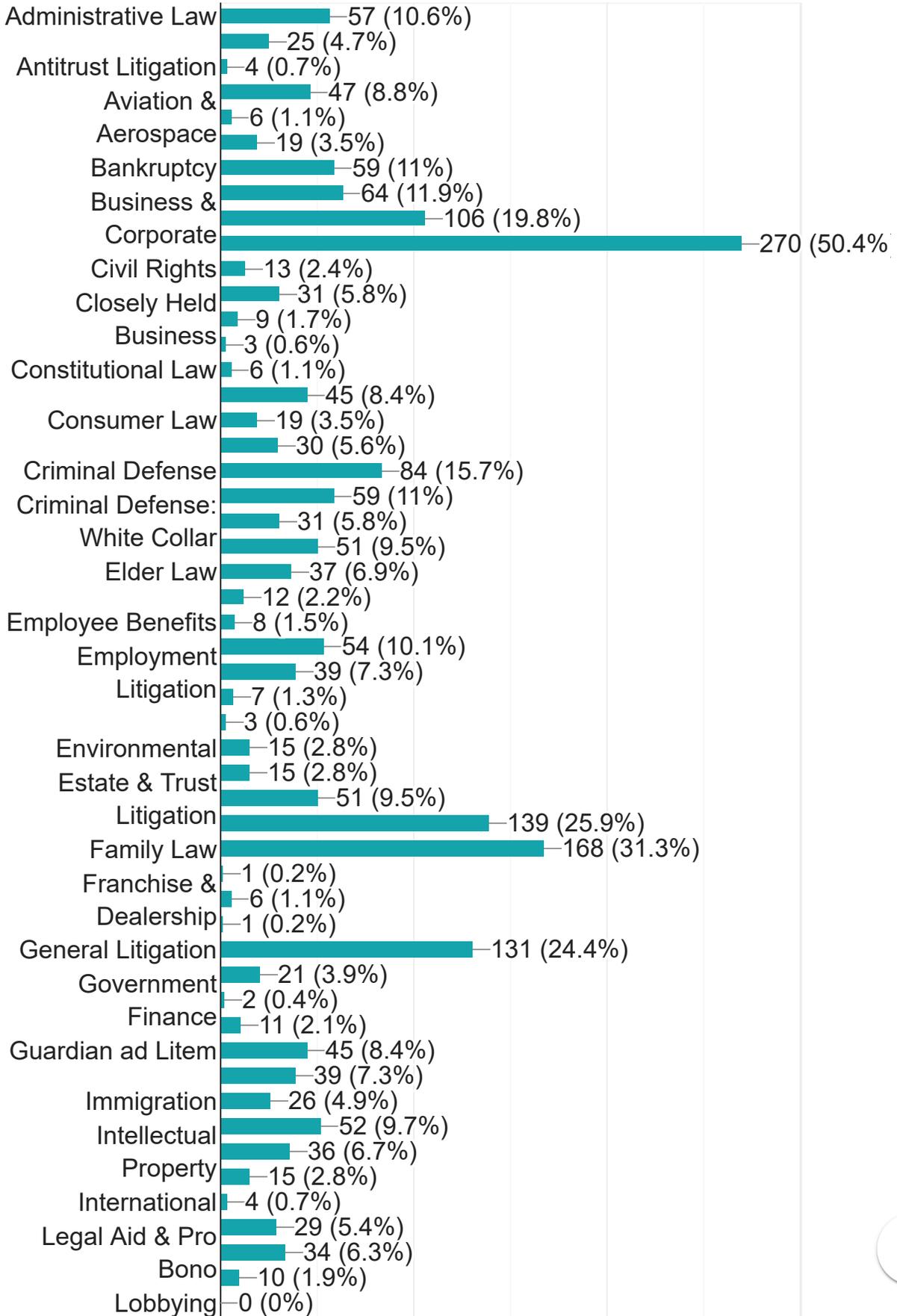
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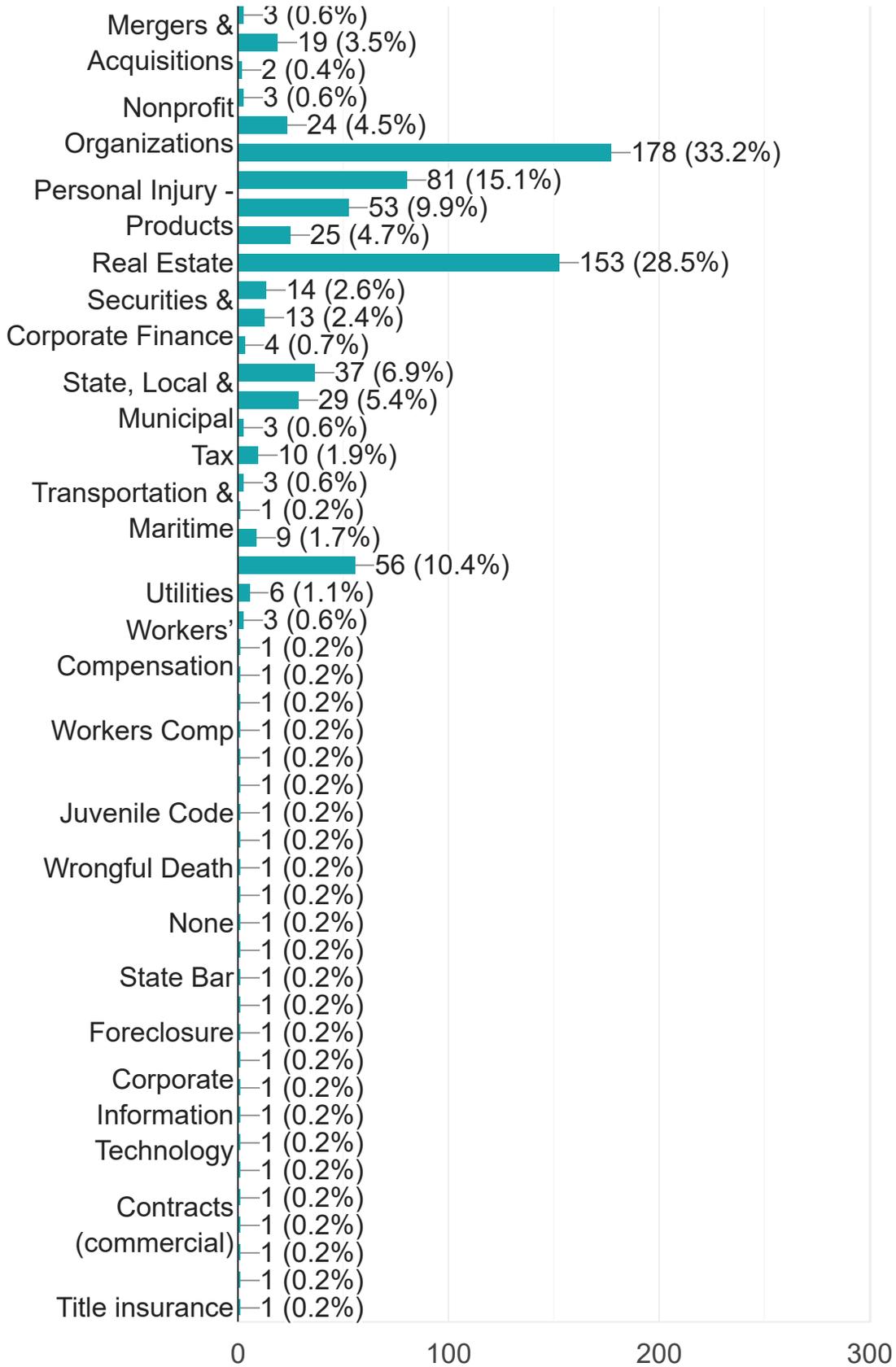




Practice Area Experience:

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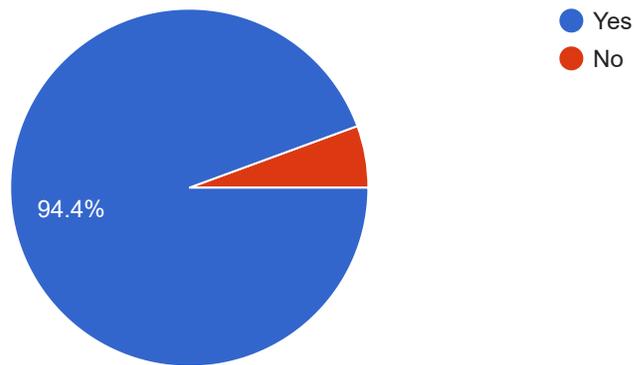




The Limited License Technician Concept

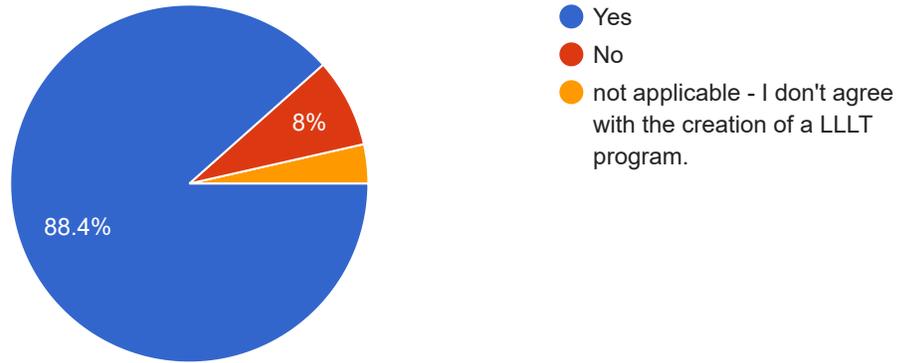
Do you believe that creating a limited license technician program in North Carolina would be beneficial to the general public (bridging the access to justice gap) and the legal community.

536 responses



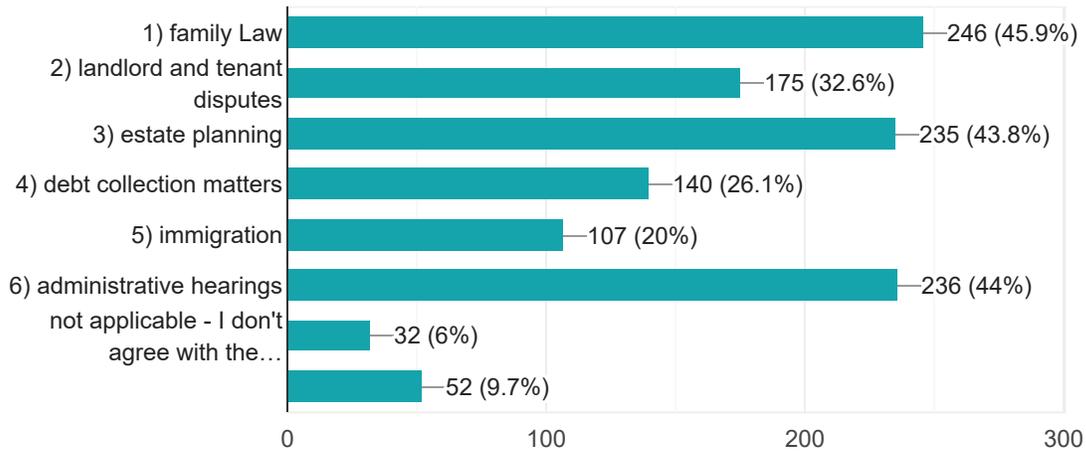
If the state of North Carolina were to permit limited licensing of nonlawyers to serve the general public in limited practice areas, the cost was "reasonable," proper training/education was received/required, and you met the licensing requirements, would you consider pursuing licensure? Please consider the question carefully.

536 responses



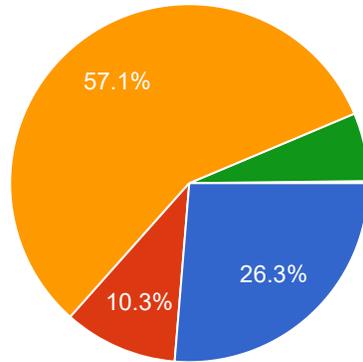
If you were to pursue limited licensing, which areas of practice would you consider?

536 responses



If you were to achieve limited licensing, would you be more likely to use your credential within a law firm / legal department or establish an independent business?

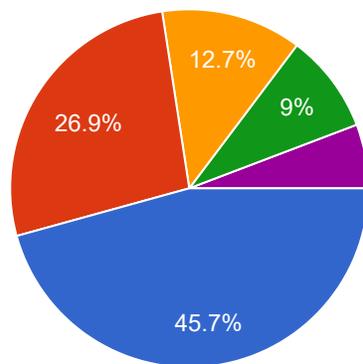
536 responses



- within a law firm or legal department
- establish an independent business
- perhaps both options above, if ethically permitted
- not applicable - I don't agree with the creation of a LLLT pr...
- Perhaps, both if allowed with no conflicts of interest

What application/licensing fee would you consider reasonable when paying for initial licensure? Please consider that any limited licensing program would likely need to be financially self-sustaining in order to be approved. Choose a response that reflects what you would be willing to pay and not what you would prefer the price to be.

536 responses

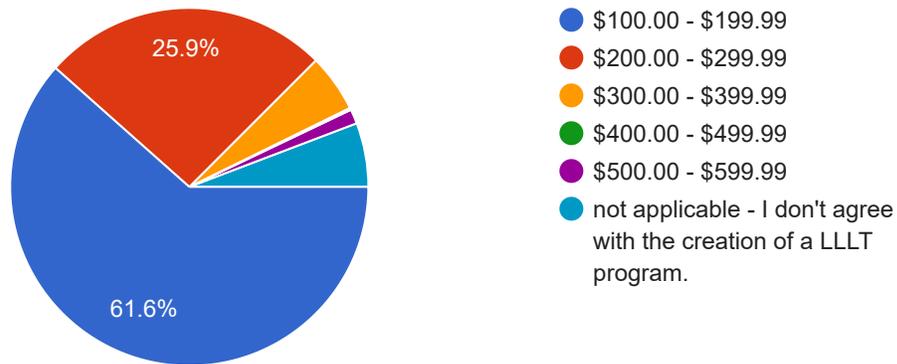


- \$200.00 - \$299.99
- \$300.00 - \$399.99
- \$400.00 - \$499.99
- \$500.00 - \$599.99
- not applicable - I don't agree with the creation of a LLLT program.



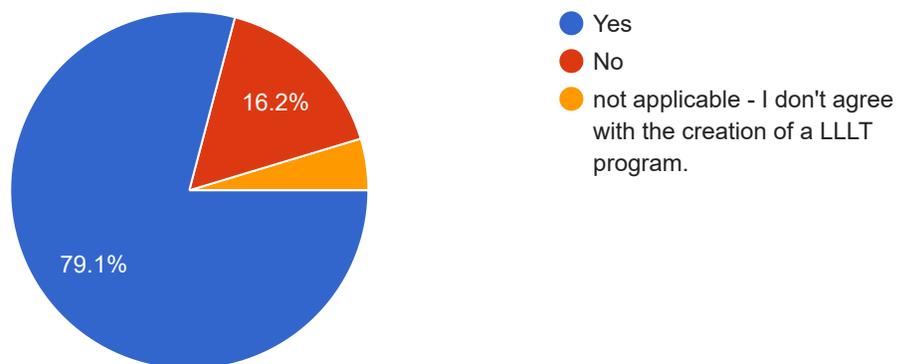
What fee would you consider reasonable for annual dues? Please consider that any limited licensing program would likely need to be financially self-sustaining in order to be approved. Choose a response that reflects what you would be willing to pay and not what you would prefer the price to be.

536 responses



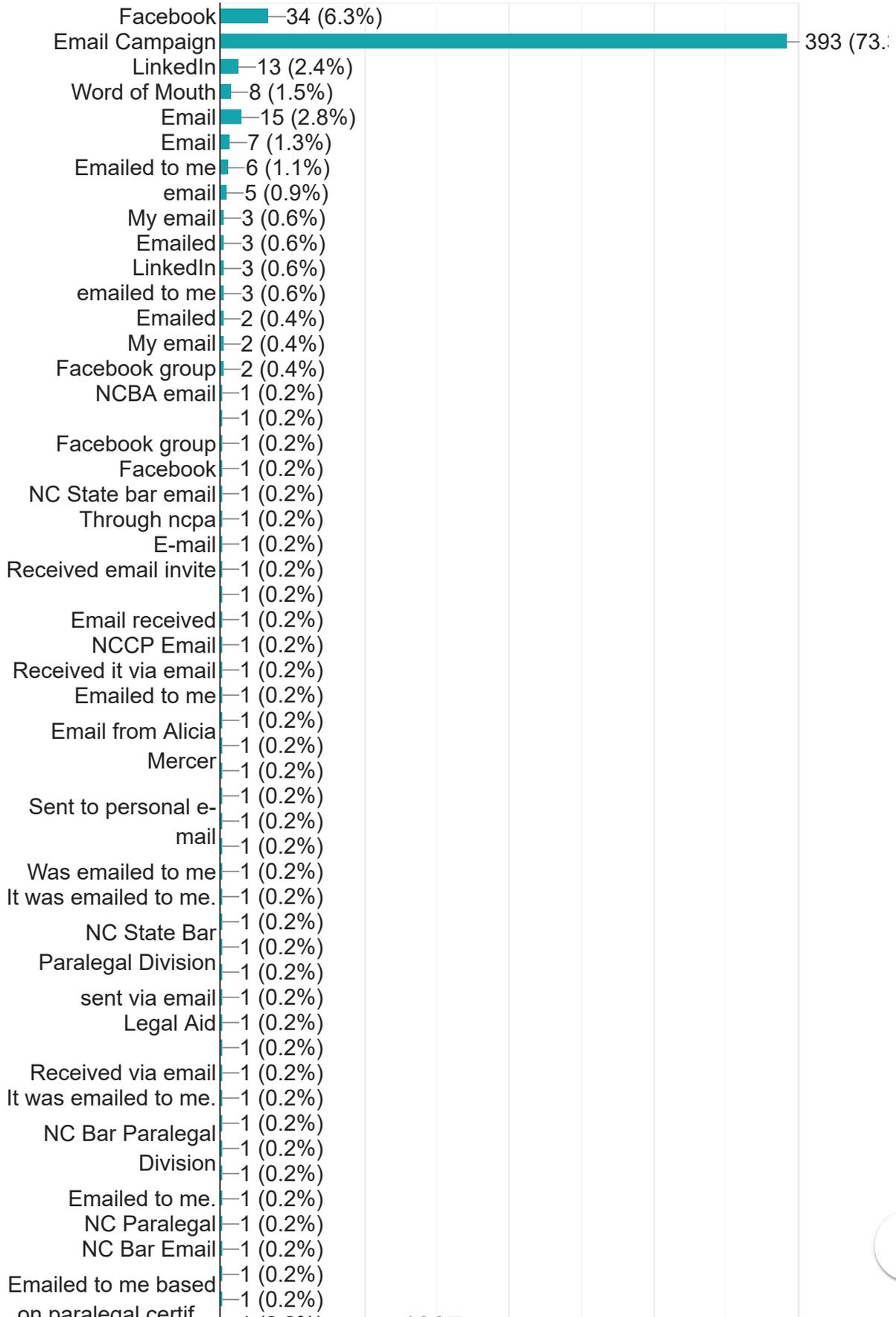
Do you believe that limited licensing should only be available to North Carolina Certified Paralegals? Or, to put it another way, do you think passing the North Carolina Certified Paralegal exam should be a prerequisite to licensure?

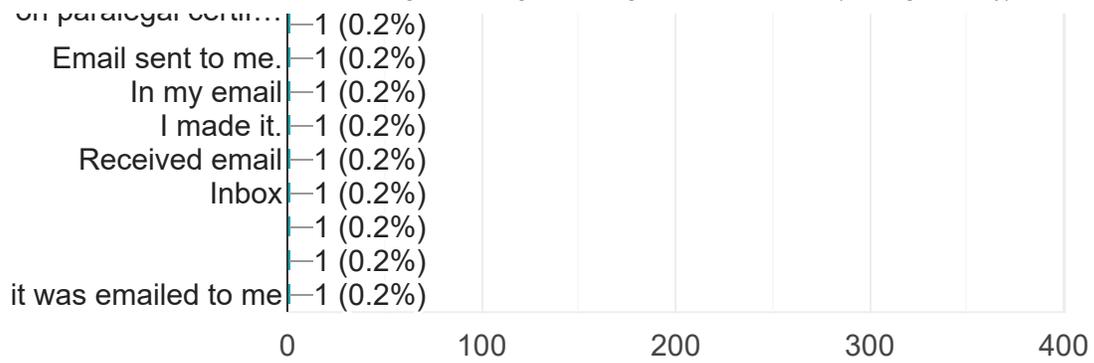
536 responses



Where did you find this survey?

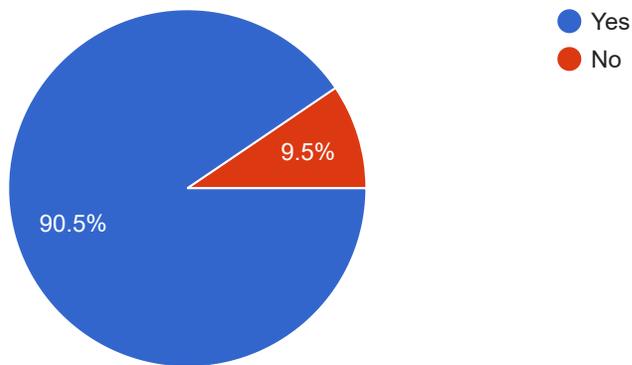
536 responses





Would you like to receive a copy of the LLLT proposal by email after it is sent to the NC State Bar?

517 responses



Do you have any additional comments or information you'd like to add? Your comments (but no personally identifiable information) may be shared with the NC Bar?

536 responses

- No
- None
- N/A
- no
- No.
- n/a
- N/a
- Na
- Not at this time

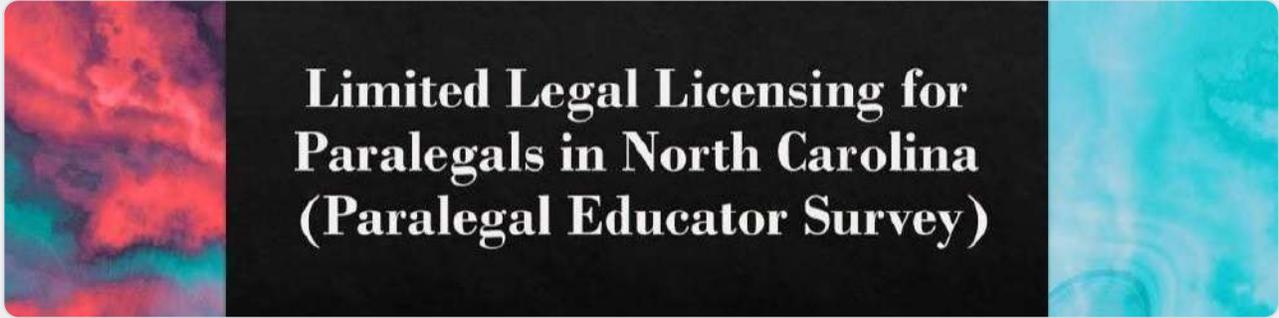
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Google Forms





APPENDIX
ATTACHMENT 41



Limited Legal Licensing for Paralegals in North Carolina (Paralegal Educator Survey)

8 responses

[Publish analytics](#)

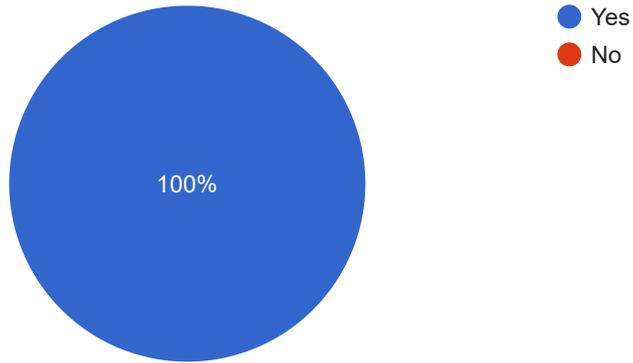
Name:

8 responses



Are you a paralegal educator?

8 responses



What educational institution do you represent (or work for)?

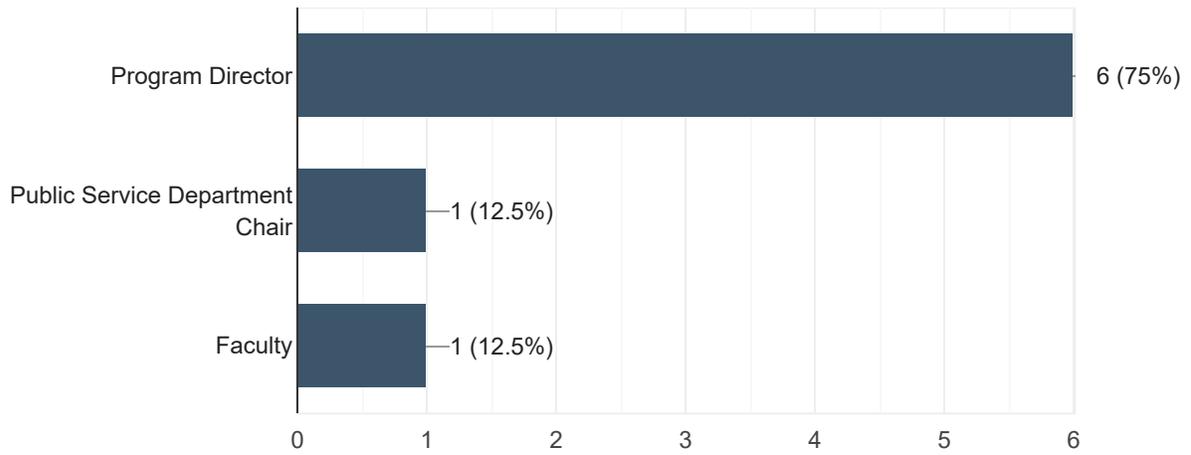
8 responses

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What is your job title?

8 responses



Email address:

8 responses

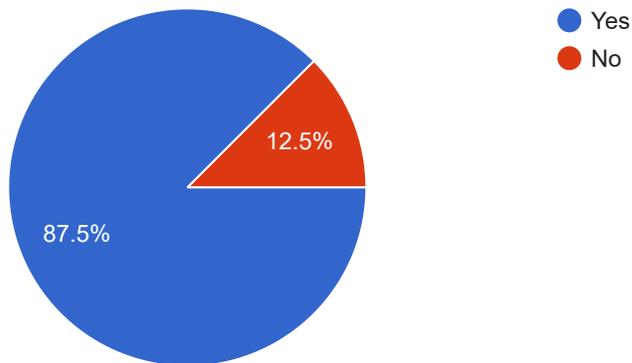
8 empty text input fields for email addresses.

The Limited License Legal Technician Concept



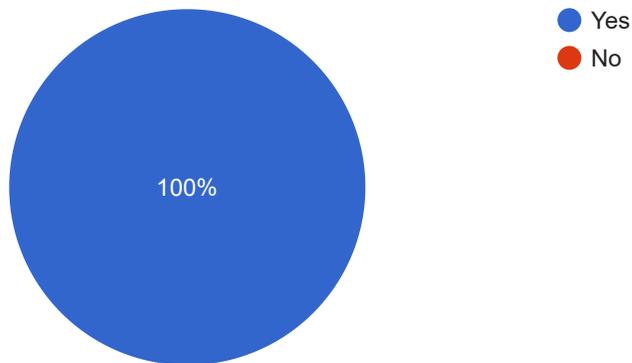
Are you familiar with the access to justice issues facing North Carolinians, which were briefly addressed in our survey description above?

8 responses



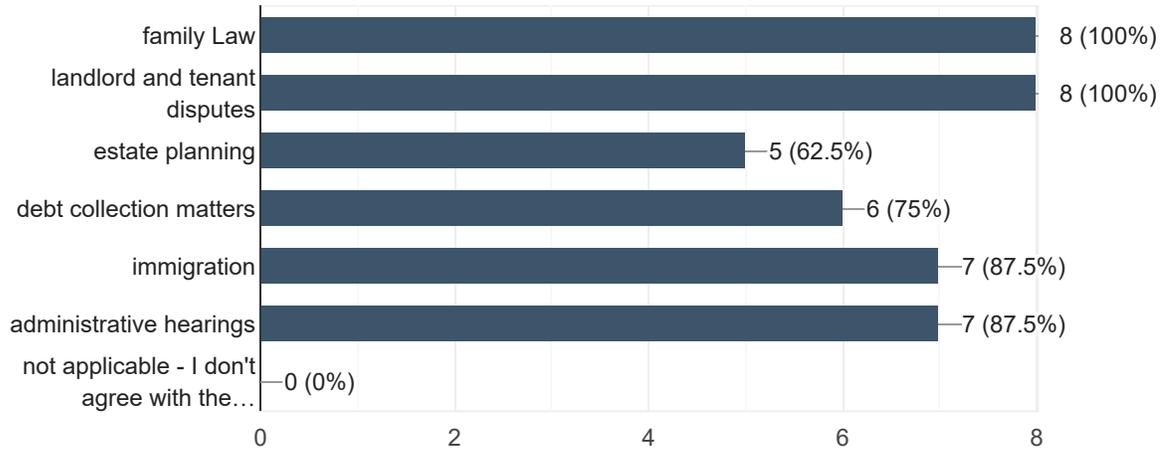
Do you believe that creating a limited license legal technician program in North Carolina would be beneficial to the general public (bridging the access to justice gap) and the legal community?

8 responses



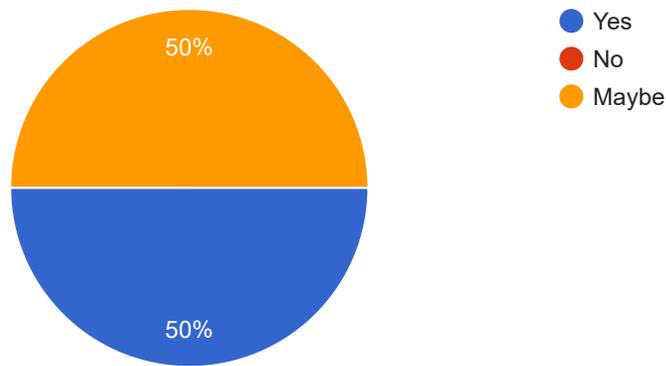
If the state bar were to pursue limited licensing, which areas of practice would you suggest for the program?

8 responses



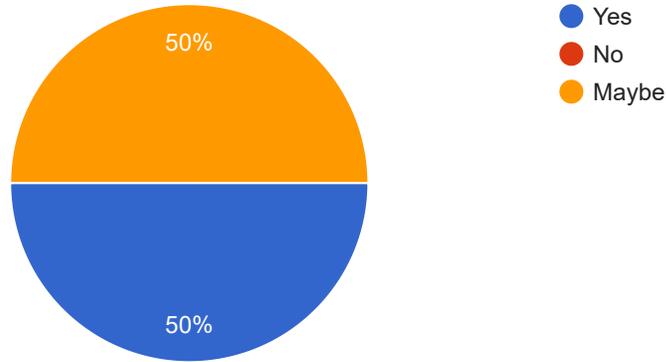
Would your educational institution be willing to work with the state bar to develop curriculum, if necessary, to facilitate the licensing process?

8 responses



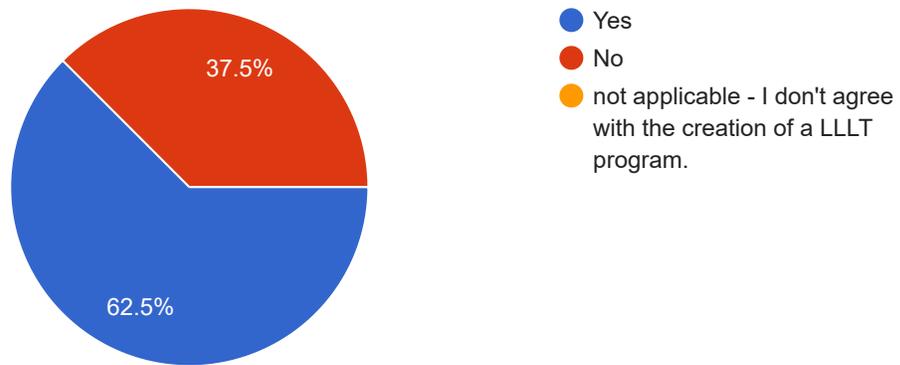
Would your educational institution be interested in developing a state-bar "approved" program for purposes of teaching content related to limited licensing?

8 responses



Do you believe that limited licensing should be limited to North Carolina Certified Paralegals?

8 responses



How did you find this survey?

8 responses

Forwarded from my department chair

Email

Not difficult at all

email

email to me

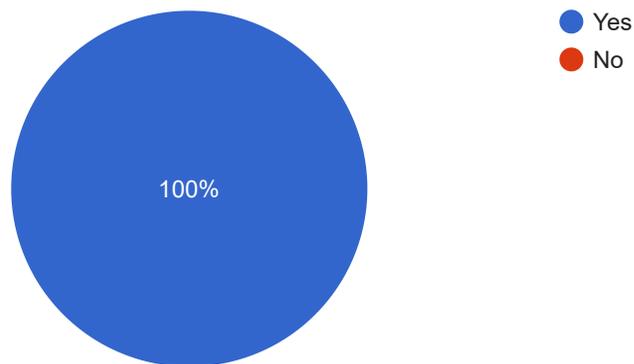
it was emailed to me

LinkedIn Rachel Royal, NCCP and WCC e-mail from Alicia Mitchell-Mercer and S.M. Kernodle (Paralegals)

It was sent to me via email.

Would you like to receive a copy of the LLLT proposal after it has been submitted to the North Carolina State Bar?

8 responses



Is there anything we should have asked? Do you have any additional comments or information you'd like to add?

8 responses

I think this presents an excellent opportunity to needed legal services more accessible to those who need them and to further professionally develop participating paralegals or legal servants.

Nothing I can think to add.

I really would like to see the state do this. So many individuals need legal help especially in family law.

Some of the states with this program no longer support it and have removed it. AAFPE has had numerous discussions through the Listserv about this issue. I would suggest contacting AAFPE for information on these discussions.

What is the opinion of the state bar regarding this LLLT?, Would the legal technician be working under the supervision of an active licensed attorney?

I would love to support this effort in any way I can. I'm on the Access to Justice Committee for AAFPE.

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APPENDIX
ATTACHMENT 42



Comments Regarding ATILS 16 Concept Options for Possible Regulatory Changes

Submitted by:

The National Center for Access to Justice at Fordham University School of Law

**David Udell, Executive Director
Chris Albin-Lackey, Legal & Policy Director**

September 23, 2019

Introduction

The National Center for Access to Justice ([NCAJ](#)) is dedicated to expanding access to justice. We are a source of research and guidance on [best policies](#) for assuring access to justice for those who are most vulnerable in our society.¹ We have long supported the authorization of new roles for non-lawyers to provide critically important civil legal services to individuals, families and communities with the greatest need.² It is through this lens and with an eye toward these goals, that NCAJ submits these comments in response to the call by the California State Bar Task Force on Access Through Innovation of Legal Services (ATILS) for public comment on its regulatory recommendations for enhancing the delivery of, and access to, legal services.

Comments

I. America's Access to Justice Crisis

Access to justice – the meaningful opportunity to be heard – is unavailable to the majority of low income people in the United States even though it is essential to their well-being and enjoyment of their fundamental rights.³ Access to justice can make the difference in keeping a family together, preserving the roof over one's head, having enough to eat, and securing refuge from physical and emotional harm. Access to justice is important to everyone, but it is especially elusive for the poor, people of color, and other marginalized communities.

The grim reality is that civil justice problems cost countless Americans their homes, their children, their jobs, their life savings, and even their physical and emotional safety. Each year, millions of people in America are drawn into civil proceedings without any legal representation or other assistance, and the law itself is often stacked against them. Millions more struggle with legal problems without ever reaching a court. The damage caused by these failures of justice is broad, accelerating poverty and incarceration rates, fracturing families and communities, and undermining confidence in our laws and system of government.

Too often, low income and vulnerable people are unable to obtain the legal help they need, and are not allowed to seek that assistance from the individuals they want to help them. Services essential to people in low income and vulnerable communities are out of reach, reserved to professional attorneys who are neither in the communities that most need their services nor offering their services at rates that could ever be affordable to low-income people. The law prevents people, no matter how critical their unmet needs, from obtaining legal advice or legal representation from anyone who has not acquired a degree in law and obtained authorization by the bar to practice law. As a consequence, people have no opportunity to secure legal assistance of any kind. They are left at unnecessary risk of harm not only in legal proceedings against powerful adversaries, but also in numerous other scenarios that arise outside of courtrooms in which legal expertise, were it available, could make a difference.

Among the kinds of civil legal matters in which individuals risk unnecessary harm are high stakes disputes that include evictions; foreclosures; job terminations; determinations of child custody and child support obligations; and efforts to secure essential medical coverage, access to food, and even physical or emotional safety. These matters involve some of the most basic necessities of life, and the outcomes, when adverse, routinely turn people's lives upside down.

II. Incremental Reforms and Inadequate Progress

We know that initiatives are being pursued by many stakeholders on many fronts to better position low income and vulnerable people to respond to civil legal problems. These include, among many others:

- expanding the provision of free legal assistance and promoting the adoption of a civil right to counsel in areas of law that implicate basic human needs;
- increasing opportunities for alternative dispute resolution;
- simplifying procedural and substantive law;
- adopting innovative models of judging that allow decision-makers to be increasingly proactive in explaining legal and evidentiary issues to unrepresented people;
- training court officials and clerks to respond to the needs of disadvantaged and unrepresented people;
- improving the qualifications of interpreters;
- waiving filing fees; and
- offering clearer notices to educate people with disabilities about their rights.

Some of these approaches, and many others, are described in the NCAJ's [Justice Index](#), an online resource that tracks states' progress, relative to each other, in adopting best policies that improve access to justice. The Index seeks to illuminate for state officials and reformers the best policies for assuring access to justice, and to encourage these stakeholders to replicate these policies in their respective states across the country.⁴

In our view, the diverse reform initiatives that are moving forward in the states to expand access to justice, despite increased attention and best efforts, are not equal to the task of ensuring meaningful access to justice for all. Even where positive steps are taken, the access to justice gap

remains something more akin to a chasm, with seemingly no agreeable solutions among members or the bar in sight.

It is with all of this in mind – the severity of the access to justice crisis and the enormity of the system’s failure to resolve it – that **we recommend developing and testing new models for authorizing practice by non-lawyers**. As the California Bar has recognized, in some jurisdictions courts have already allowed experimentation with models in which certain classes of trained non-lawyers, termed “navigators,” have been authorized to offer information and limited forms of assistance to people facing civil legal problems. Washington State and Utah have gone further, adopting innovative models that authorize certified individuals to offer a greater level of service than navigators in family law cases. But even these steps forward are designed to be limited in scope, and make no pretense of being equal to the task of bridging the justice gap. Much more must be done.

III. NCAJ’s Support for Recommendation 2.0

The California proposal, as drafted, contemplates the development of models within attendant standards that, potentially, can expand access to justice for low-income individuals, families, and communities. The proposals, though tentative, are comprehensive, and NCAJ’s comments do not, at this time, address all of them. Rather, NCAJ would like to express support for the specific provision calling for extending to non-lawyers the authorization to provide legal advice and services. Specifically, NCAJ supports the following proposal:

- 2.0 – Non-lawyers will be authorized to provide specified legal advice and services as an exemption to UPL with appropriate regulation.

We recognize that many arguments have been advanced in public comments, and in literature on the subject, against proposals to narrow prohibitions on unauthorized practice of law. These include concerns that such reforms risk enshrining a two-tier system of justice; that litigants will suffer harm through the provision of incompetent or otherwise inadequate legal services; and that proposals tend to erode the position and societal value of the bar as a profession.

Our response to these and other concerns is twofold. First, we argue quite simply that the scale and severity of the access to justice problem weigh even more heavily than the concerns. Second, we acknowledge that these concerns *are* real, important, and often advanced in good faith. California will bear a heavy responsibility to develop models of service delivery, regulation, and oversight adequate to mitigate these concerns. We advise that the California Bar look, in particular, at the risk-based, consumer-focused model being advanced by the Utah Supreme Court. The present proposals have generated an understandable degree of alarm because they essentially leave these vital questions for another day. With all this in mind, we would urge adherence to the following principles as reform goes forward:

- *Ensure that everyone has access to the help they need at a cost they can afford* – Consideration of reform models should advance this broad idea that people have a right to receive legal assistance within a legal system that is fundamentally not designed to be

understandable and navigable by individuals without legal representation. This is an error in the design of the legal system, not a failure of those who are subject to it.

- *Ensure a match between skill of practitioners and complexity of tasks* – Many tasks involved in the practice of law can be performed as well or better by those who have experienced these issues themselves and benefit from the training needed to resolve them, but who have not attended four years of undergraduate education and an additional three years of law school. Other more complex tasks draw more heavily on formal legal training, which is where lawyers should focus their unique expertise. At the same time, too little is known about the specific types of knowledge and skills that are needed to perform certain legal tasks, in large part because regulatory restrictions on non-lawyer advocacy have prevented these models from being developed. More study is needed, however this is not a reason to fail to go forward with reform; indeed, it is a reason to encourage experimentation. Much as in medicine, the field will discover over time the tasks that individuals are competent to address, the tasks that should be carried out under supervision by lawyers (or referred to lawyers), and the tasks that can effectively be handled by non-lawyers with specific training to conduct specific tasks. The risk that nearly all low-income people face in not having their legal needs addressed is greater, we submit, than the risks that may be associated with developing trained, non-lawyer community advocates empowered to help them.
- *Ensure transparency of qualifications of those offering assistance* – Much as occurs now, the state should require all practitioners to disclose accurately and prominently the type of training and qualifications they possess. This could include degrees, training certificates and other qualified credentials to alert the consumer to their actual expertise. Individuals should not be allowed to claim they are attorneys when they are not.
- *Reduce costs and other barriers to entry* – As the California Bar has acknowledged, the regulation of legal services provision is a delicate and important matter, and while it must not be given short shrift, nor should the state err on the side of erecting unnecessary regulatory barriers that require so much education, or such great costs, as to practically prevent the provision by non-lawyers of more widely accessible legal services.
- *Do not burden nonprofit organizations with excessive new regulatory requirements that will interfere with existing services to the poor* – A top rule of reform in California should be to do no harm to the vulnerable, nor to those nonprofit entities that are providing effective service important in low income communities. In pursuit of a new framework to regulate companies that provide their services through for-profit models, the state must be vigilant to avoid imposing excessive regulatory requirements on non-profit organizations that are already effective in providing services to the poor. Indeed, the Bar should consider an expansive non-profit exemption to any rules that are intended to specifically regulate risks imposed by commercial entities, with the understanding that such non-profits would still be subject to both laws regulating their status as nonprofits as well as existing consumer protection laws.

- *Recognize a definition of access to justice to guide reform* – To assure that new models expand access to justice, the NCAJ recommends that the state of California measure the claimed merit of new models against a definition of access to justice which contains the following elements:
 - that individuals and groups
 - especially those with the fewest resources who are the most vulnerable
 - understand their rights
 - can act effectively to protect their important needs and interests (home, family, sustenance, safety, savings, health, more)
 - through a formal or informal process
 - with a neutral and non-discriminatory decision-maker (or, possibly, through a process with no decision-maker if the proceeding is informal)
 - to produce a fair resolution (where necessary, determining the facts, applying the law, shaping the law)
 - and enforce the result.

[Dated 9-23-19]

¹ See NCAJ’s organizational website, ncforaj.org, and its Justice Index, justiceindex.org.

² See Richard Zorza and David Udell, *New Roles For Non-Lawyers To Increase Access To Justice*, 41 Fordham Urb. L.J. 1259 (2014), available at <https://ir.lawnet.fordham.edu/ulj/vol41/iss4/8>; *Narrowing the “Justice Gap”: Roles for Nonlawyer Practitioners*, Committee on Professional Responsibility, Association of the Bar of the City of New York (June 2013)(David Udell, Chair, Access to Justice Sub-Committee), available at <https://www2.nycbar.org/pdf/report/uploads/20072450-RolesforNonlawyerPractitioners.pdf>; *Press Release, Chief Judge Names Members of Committee Charged With Examining How Non-Lawyer Advocates Can Help Narrow New York’s Justice Gap*, New York State Unified Court System (May 28, 2013), available at, http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/PR13_07.pdf.

³ *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*, Legal Services Corporation (June 2017), available at <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

⁴ *Justice Index* (2016), justiceindex.org. See also, *Overview of Justice Index* (July 25, 2019), available at <https://ncforaj.org/wp-content/uploads/2019/07/Introduction-to-the-Justice-Index-7-25-19-pdf.pdf>