

DOCUMENTING THE JUSTICE GAP IN PENNSYLVANIA

June, 2017

The Pennsylvania General Assembly recently released a report of a performance audit by the Legislative Budget and Finance Committee (“LBFC”) on the use and administration of filing fees under the Access to Justice Act (Act 2002-122) entitled, “The Commonwealth’s Access to Justice Act.” These fees are used to help fund civil legal representation for low income Pennsylvanians experiencing legal problems threatening basic human needs, such as access to safe housing, food and medicine. The \$4 filing fee surcharge authorized by the Act is set to expire on November 1, 2017 unless extended. Act 2012-79 extended a prior 5-year sunset on these fees and directed the LBFC to conduct a performance audit before the expiration of the sunset. The LBFC’s report, released on February 27, 2017, describes a well-monitored delivery system of high-quality civil legal aid services to Pennsylvania’s most vulnerable citizens. Additionally, the report contains specific details on the ongoing funding challenges faced by the civil legal aid delivery system and related consequences.

The report made two recommendations:

1. The General Assembly should consider eliminating the sunset provision of the Access to Justice Act.
2. The IOLTA Board, working through PLAN, should collect data from the Legal Services Programs on clients rejected for services to determine the actual unmet need for civil legal aid in Pennsylvania in order to better inform funding decisions.

In response to the second recommendation, the PA IOLTA Board and PLAN undertook a comprehensive data collection and analysis effort to document the current state of the unmet civil legal needs of Pennsylvania’s indigent population. Some background, our methodology and conclusions are discussed below.

Legal Services Corporation’s “Documenting the Justice Gap in America” 2005, 2009 and 2017

The Legal Services Corporation¹, a nonprofit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans, released a national report entitled *Documenting the Justice Gap in America* (“Justice Gap Report”) in 2005. The report was updated in 2009 and a second update was released on June 14, 2017². When the LBFC issued its 2012 report five years ago, it cited the 2009 version of the Justice Gap Report which found that for every client served by LSC programs, another person who seeks help and is eligible for services is turned away. At that time, data specific to Pennsylvania showed the same trend as the national data.

It is important to recognize that this statistic represents the experience of only those people asking for help. The 2009 *Documenting the Justice Gap in America* report cites numerous other

¹ For more information about the Legal Services Corporation, please visit www.lsc.gov.

² The 2017 version of “Documenting the Justice Gap in America” may be accessed at <http://www.lsc.gov/media-center/publications/2017-justice-gap-report>

studies finding that legal aid programs are actually meeting only about 20% of the need, when taking into account the number of eligible people who need legal help but were either turned away or did not ask. Many people do not seek help from a legal aid office because they do not know about legal aid, they do not realize their problem has a legal solution, they have learned that their neighborhood civil legal aid program is not able to handle their type of case, or for other reasons.

In the spring of 2017, LSC directed all of the legal aid programs it funds across the country to track for six weeks from March 6, 2017 through April 14, 2017 the intake determination and level of service of each person seeking assistance from an LSC-funded program. Those data informed the report issued by LSC on June 14, 2017. According to LSC's newly released 2017 Justice Gap Report, a staggering 71 percent of low-income households experienced in the last year at least one civil legal problem, such as an eviction notice, being wrongly denied benefits, or a family court suit resulting from domestic violence. Of the Americans facing such problems, 86 percent received inadequate or no legal help because they couldn't afford it.

Pennsylvania Data Collection Methodology

The LBFC report was issued a few weeks in advance of the start of LSC's data collection period. Fortunately, LSC's data collection project gave the PA IOLTA Board and PLAN a cost effective way to respond to the LBFC's second recommendation. The PA IOLTA Board and PLAN joined together to assure that for the same time period, the LSC required data, plus some additional data were tracked and that they were tracked for all PLAN-funded legal aid programs, not just for those funded by LSC. Over the six week period noted above, intake staff at 64 offices covering PLAN's nine regional and six specialty legal aid programs documented whether an applicant was accepted or not accepted for service. If the applicant was not accepted, the reason was documented. If they were accepted for service, the level of service was documented.

The following "not accepted" reasons were available for intake staff to select:

- Not financially eligible
- Not a citizen
- Criminal matter
- Otherwise ineligible due to LSC or other funding source
- Conflict of interest
- Legal problem falls outside program's case acceptance guidelines
- Legal problem is restricted by DHS or IOLTA
- Insufficient Resources
- Loss of client contact

The following "accepted" levels of service were available for intake staff to select:

- Fully served - extended representation
- Fully served - brief advice given
- Fully served - information and/or pro se resources given
- Unable to serve fully - insufficient resources - brief advice given
- Unable to serve fully - insufficient resources - information and/or pro se resources given

The data collection tool was an Excel spreadsheet. To ensure consistent data collection across programs and the state, detailed instructions were disseminated to all PLAN programs and there was a webinar training attended by at least one representative of each PLAN program to help program staff understand how to categorize the case acceptance decisions. Additionally, PLAN staff members and an outside consultant were available to answer questions throughout the six week period. At the end of the six week data collection period, PLAN staff with assistance from an outside consultant compiled the data.

Data Highlights

During the six week time period in which data were collected, 14,224 people applied for services at a PLAN affiliated program and received a case acceptance decision.

Not accepted for service

Of the 14,224 applicants that had a case acceptance decision at the time of the data analysis, 8,160, or 57.4%, were not accepted for service.

Of the 8,160 applicants that were not accepted for service, 1,911, or 23.4% were determined ineligible:

- 1,107, or 58%, were ineligible due to their income exceeding the program's income guidelines
- 637, or 33%, were ineligible due to their legal problem being a criminal matter
- 137, or 7%, were ineligible due to LSC's or another funding source's restrictions
- 30, or 2%, were ineligible due to non-citizenship

Of the 8,160 applicants that were not accepted for service, 3,466, or 42.5% presented a civil legal problem that fell outside the program's case acceptance guidelines³.

Of the 8,160 applicants that were not accepted for service, 1,599, or 19.6% presented a civil legal problem that the program did not have sufficient resources to take on.

Of the 8,160 applicants that were not accepted for service, 548, or 6.7% were unable to be served because the client did not follow through or contact with the client was lost.

Of the 8,160 applicants that were not accepted for service, 342, or 4.2% presented a civil legal problem restricted by the Pennsylvania Department of Human Services or the IOLTA Board⁴.

Of the 8,160 applicants that were not accepted for service, 294, or 3.6% presented a conflict of interest for the program.

³ Pennsylvania Legal Aid Network programs update their case acceptance guidelines every three years, or more frequently as needed, to ensure that their resources are targeted to the most urgent legal needs in their respective service areas and that there can be adjustments for emerging needs and changing resources.

⁴ Some examples of restricted legal problems are abortion-related matters, divorce cases, and cases where a right to counsel exists.

Accepted for service

Of the 6,064 applicants that received services, 2,452, or 40.4% were provided only limited services or pro se resources that would not fully resolve their case due to insufficient resources.

Of the 6,064 applicants that received services, 3,612, or 59.6% were provided with representation that fully resolved the applicant's case.

A Note about Undercounting

In response to the increasing need for civil legal aid, some PLAN programs have developed sophisticated telephone systems that help to guide callers to services and information before reaching a live voice. For example, a person calling for representation in a criminal matter, if they followed the prompts, would be referred to the public defender's office or a local county bar association's lawyer referral line. These systems can also help to guide callers to other resources for civil legal matters that the program is not able to handle. These calls, of which there are hundreds, where the person was referred or screened out through such a system could not be counted in the surveying process.

Conclusions

For every person represented by a Pennsylvania Legal Aid Network program, at least two⁵ people asked for help and were eligible for services, but received inadequate or no assistance.

Of the 12,313 people who applied for services and were eligible, only 3,612, or 29%, were provided with representation that fully resolved their case.

⁵ For every person represented by a Pennsylvania Legal Aid Network program, 2.4 eligible people asking for help received inadequate or no assistance.

Appendix A: Data

Total applicants between March 6, 2017 - April 14, 2017

14,224

Unable to Serve	
Applicant ineligible	
<i>Not financially eligible</i>	1107
<i>Not a citizen</i>	30
<i>Criminal matter</i>	637
<i>Ineligible due to LSC or other restriction</i>	<u>137</u>
	1911
Conflict of Interest	294
Legal problem is outside program's case acceptance guidelines	3466
Legal problem is restricted by DHS or IOLTA	342
Insufficient Resources	1599
Loss of client contact	548
Unable to Serve Total	8160

Unable to Serve Fully	
Insufficient Resources	
<i>Legal information or pro se resources given</i>	907
<i>Brief advice given</i>	<u>1545</u>
Unable to Fully Serve Total	2452

Fully Served	
Sufficient Resources	
<i>Legal information or pro se resources given</i>	817
<i>Brief advice given</i>	893
<i>Extended representation</i>	<u>1902</u>
Fully Served Total	3612