

PENNSYLVANIA SENATE JUDICIARY COMMITTEE PUBLIC HEARING

*“Civil Legal Representation of the Indigent
Have We Achieved Equal Access to Justice?”*

**Tuesday, October 29, 2013
Allegheny County Bar Association, 9th Floor Grant Room
436 Seventh Avenue, Pittsburgh, PA 15219
1:00 p.m. to 4:00 p.m.**

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Forest N. Myers, Esq.
President, Pennsylvania Bar Association



**Testimony of Pennsylvania Bar Association Forest N. Myers Before the Senate
Judiciary Committee Regarding Access to Justice
October 29, 2013**

Good afternoon, Senator Greenleaf, Committee members and staff. I am Forest Myers, Pennsylvania Bar Association (PBA) President, representing the 27,000 members of the Association. Thank you for inviting us to testify at this third and final hearing regarding civil legal representation of the neediest among us across Pennsylvania.

My predecessor, Tom Wilkinson, testified at the opening of these hearings. Tom laid out the history of the PBA's support of access to justice and highlighted our support of civil legal aid. He also discussed some of the innovations pursued for achieving that goal. I am here not to repeat his testimony but rather to underscore the ongoing support of the PBA for access to justice for all.

That Tom and I are the bookends of these hearings is fitting. Tom is a big-city lawyer from a large law firm in Philadelphia. I am a solo practitioner from mostly rural Franklin County. Both Tom and I come from counties with significant civil legal aid resources. Both Philadelphia and Franklin counties also have strong pro bono cultures with lawyers and judges who care about the poor, by donating time, money and other resources. Yet far too many people who qualify for legal aid in both counties still go without any help from an attorney.

Your first two hearings highlighted the problem powerfully with stories of people whose lives changed for the better because they received help from a legal aid program or a pro bono lawyer. You also heard stories of people who struggled, often unsuccessfully, because they could not get help from a lawyer. That many of those people had cases that were winnable – had they been helped by any sort of representation – speaks of a great tragedy for those of us who care about justice.

I often hear of how we are only doing legal aid “triage,” working as best we can with limited resources to help as many as we can, knowing some will fail before relief comes. However, there is a difference between medical triage and what is happening today as legal aid programs are cut, further and further, suffering a 10% funding decrease here, a multi-million dollar reduction in IOLTA funds there. In medical triage, relief is on its way. In civil legal concerns, there is often no relief on the horizon. Triage is the normal state of affairs.

Unfortunately, too often justice is a matter of luck. If you are poor in Pennsylvania with a civil legal aid matter, you might be lucky enough to be represented by one of the legal aid programs or by a pro bono attorney and have a great chance to win your case. Our legal aid and pro bono lawyers are very good at what they do. But, as you heard at earlier hearings from MidPenn Legal Services Executive Director Rhodia Thomas, cutbacks to her program make it likely that MidPenn is only helping one in ten persons with legal aid needs who qualify at the poverty level. To win at one in ten odds, luck surely is needed.

These hearings have done an excellent job of bringing the concept of “Civil Gideon” to public awareness, making clear the importance of providing representation to those who are facing crisis situations in critical areas such as the loss of housing or the custody of a child. The question before you today at this third hearing is how we can make the situation better.

The Pennsylvania Bar Association maintains a Pro Bono Office with a full-time attorney and a part-time administrative assistant. Our office leverages resources effectively and makes excellent use of law student, paralegal and attorney volunteers to process nearly 6,000 calls for civil legal aid assistance across the state. Our staff and volunteers direct the neediest to such online resources as the invaluable PALawHelp.org, and they work to find pro and low bono assistance for everyone they can help.

The PBA embraces pro bono service, beyond just having a staffed office. Every officer of the PBA and our Board leadership reports annually on their pro bono service, as do our staff attorneys, and there has always been 100% service. Nearly 75% of the members of our House of Delegates report handling pro bono matters, and those numbers hold similar when lawyers across the state in various counties are polled about their pro bono efforts.

Yet for all of the pro bono service in Pennsylvania, without screening by legal aid programs and without the expertise of legal aid staff who help mentor pro bono counsel, this is only a Band-Aid on a much greater problem.

The Pennsylvania Legal Aid Network, in partnership with our regional legal aid providers and a network of specialty legal aid programs, helps provide the framework and structure for legal assistance for the poor. Pro bono volunteers, encouraged by the Pennsylvania Bar Association and local bars, provide time and financial contributions to help fuel the important work of representing those clients who have critical needs but cannot afford to retain private counsel. Our law schools inculcate the values of pro bono service in the next generation of Pennsylvania lawyers.

It is important that we continue to expand pro bono participation well beyond the core group of lawyers who always can be counted upon to take another client in need. The public

image of lawyers does not always account for the many who are giving generously of their time and expertise to make a difference in people's daily lives. Those PBA members and other members of the legal profession who have devoted many hours to leading the efforts to narrow the justice gap and expand access to civil legal representation are to be commended.

But lawyers cannot do this alone, and increased pro bono will not close the gap without more. Sadly, there is no magic bullet for this problem. Going forward we need to continue to urge that all the key players, including the judiciary, civil legal aid organizations, the organized bar, the legislature and community groups, actively participate and resolve to bridge the civil justice gap. The PBA has supported access to justice during its entire 118-year existence, and I pledge that the PBA will continue to hear that call to justice.

These are tough challenges and these are tough times, to be sure. However, this does not relieve any of us of our obligation to fulfill the promise of equal justice for all.

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TESTIMONY OF KATHRYN M. KENYON, ESQ.
CHAIR, PITTSBURGH PRO BONO PARTNERSHIP
BEFORE THE PENNSYLVANIA STATE SENATE JUDICIARY COMMITTEE
OCTOBER 29, 2013, PITTSBURGH, PA

Senator Stewart Greenleaf and distinguished members of the Senate Judiciary

Committee:

Thank you for inviting me to testify today on the importance of the availability and delivery of high-quality legal assistance programs to low-income individuals and families through legal aid programs. These programs protect families, veterans, and provide equal access to justice.

My name is Katie Kenyon, and I am chair of the administrative board of an organization called the Pittsburgh Pro Bono Partnership. The Partnership is a collaboration of corporate and government legal departments, law firms, the Allegheny County Bar Foundation, and Neighborhood Legal Services Association. Its purpose is to provide attorney and paralegal pro bono legal services to the greater Pittsburgh community. The Partnership especially

encourages new and more creative efforts to provide legal services to persons of limited means and to those organizations, including charities, which work on their behalf. Partnership “signature projects” include legal services to low-income veterans; representation of parties in custody disputes and plaintiffs seeking protection from domestic violence; preparation of simple wills, powers of attorney, and advanced healthcare directives for low-income seniors; and operation of several community legal clinics that help individuals with a variety of legal problems.

I am very proud to be a part of this organization that has a great deal of success in providing critical legal services in innovative ways. Over the past years, as our local legal aid provider—Neighborhood Legal Services Association—has suffered severe funding cuts, laid off staff attorneys, and closed offices, the Partnership has stepped up and created programs that use volunteer attorneys to provide services formerly provided by paid staff attorneys. For example, a Partnership created a program to assist individuals who are facing barriers to employment and housing because of criminal records. Volunteer attorneys, law students, and paralegals work to draft and file expungement petitions and seek final orders that will clear these records and lift the cloud that is blocking opportunities for these individuals to rise out of poverty.

Other Partnership programs that refer cases from NLSA to volunteer attorneys include a program that represents individuals who are appealing denials of public housing applications, and a program that represents victims of domestic violence who are seeking protection from abuse orders.

While attorneys have a professional responsibility to give back, and while we have a number of successful pro bono programs here in Allegheny County, these programs still cannot meet the tremendous need that exists. The programs, while run by volunteer attorneys,

are dependent on legal services attorneys to conduct intake and screening as well as training and mentoring through continuing legal education programs. Volunteer attorneys are typically providing pro bono services outside of their traditional practice and comfort zone so training and mentoring is a critical part of what legal services provides. Funding cuts jeopardize NLSA's ability to help the Partnership launch and implement the various projects and programs. Without NLSA's assistance, the Partnership's Signature Projects would not be able to survive negatively impacting the ability to provide equal justice for all. There are limited programs available to help with hot line or intake calls and while there are clinics available to help, the clinics can only take a small percentage of the people who need and qualify for legal assistance and clinics are some of the hardest programs to recruit and train volunteers.

In addition, there are simply not enough volunteers to meet the gap created when the funding for legal services programs is cut. Every year their intake lines receive calls from thousands of individuals faced with a legal problem; and pro bono lawyers are only available to help some of them. The Partnership also benefits from full-time, paid pro bono coordinators at the Allegheny County Bar Foundation's Pro Bono Center. In addition to receiving referrals from NLSA, the Partnership also manages programs that assist individuals referred from places such as the Court of Common Pleas and community legal clinics. The Pro Bono Center helps create and manage programs and recruit and recognize volunteers. The bar foundation carries a malpractice policy that covers volunteer attorneys who take cases through Partnership programs, and provides free on-line legal research for volunteers. These resources are essential to making pro bono programs possible in Allegheny County. Even if we had a thousand lawyers volunteer today to do pro bono work on behalf of the poor, we could not put them to use without funded legal services programs, and the expertise and support they provide.

I urge you to advance the recommendations of the Pennsylvania Civil Justice Coalition and move toward guaranteeing equal access to justice for all residents of Pennsylvania.

Thank you.

Honorable Gary Caruso
President Judge
Westmoreland County Court of Common Pleas

Senate Judiciary Committee Testimony
Judge Gary P. Caruso, President Judge
Westmoreland Court of Common Pleas

There is no question that there is a critical need for civil legal representation in the very important areas of the law that dramatically affect the personal well-being of the citizens of Pennsylvania. There are many times that persons appear in court unrepresented in matters that can have grave consequences for them. The areas of law that they are attempting to deal with are often complicated, even for those learned in the law, let alone those unfamiliar with it. Lack of adequate funding for legal services is at the core of this problem.

As an example of the significant budgetary problems I can cite to Laurel Legal Services that provides excellent legal services to indigent citizens of Westmoreland County. In Westmoreland County, in 1980, Laurel Legal Services had three (3) offices and thirteen (13) full time equivalent attorneys. In 2013 they have one (1) office and three (3) full time equivalent attorneys. What I find most amazing is that the Laurel Legal Services program budget for 2013-2014 fiscal year is the same as it was in 1980. The program now serves six (6) counties. In 1980 the program served five (5) counties. In the event the state or federal budget is cut again the program will likely lose additional staff. This does not bode well for those that otherwise cannot afford legal representation in civil matters, even in those matters that involve basic human rights such as child custody and necessities such as shelter.

There are great challenges that face a trial judge when handling cases where one or both of the parties is unrepresented. These challenges come in the form of protecting the concept of

“due process” for both litigants, whether unrepresented or represented. We must always keep in mind that we should not penalize a litigant just because they happen to be represented and bend over backwards to assist an unrepresented litigant in the court room. But, nevertheless, we must try to assure that both parties have their right to be heard protected. We must try to avoid a situation where an unwary self-represented litigant loses basic human rights or necessities merely through the unwitting failure to properly use the law, the rules of evidence or the rules of procedure applicable to a particular civil action. This creates quite a balancing act for the trial judge.

One of the areas that I find most disturbing is in the area of mortgage foreclosures. In an overwhelming number of mortgage foreclosures the defendant is unrepresented. They attempt to file an Answer to the Complaint in Mortgage Foreclosure. In most cases the Answer is in the form of general denials which are insufficient under the law to constitute a valid response. The plaintiff will then send to the defendant a request for admissions. Invariably the defendant will not respond to the request, incorrectly believing that they can rely upon the Answer that they had filed. The plaintiff will then file a Motion for Summary Judgment. The defendant again will not respond, or if they do respond, the response will be wholly inadequate. A judgment is entered, no appeal is taken from that judgment and the property goes to sale. Once sold the then owner will file an action in Ejectment. When the defendant is faced with prospect of being removed from their home they then come to court and attempt to avoid the removal by attacking the basis for the original judgment in mortgage foreclosure. This collateral attack on the judgment is impermissible and the judge is constrained to enter an order that they be removed from their home. This is despite the fact that they may have had a meritorious defense to the Mortgage

Foreclosure action in the first instance. I am sure you can see by my explanation of what occurred in such a case, that it would be very difficult for one unlearned in the law to comprehend the process and act to protect their rights without appropriate legal counsel.

It is very difficult for the unrepresented litigant to understand the Pennsylvania Rules of Civil Procedure and each county's Local Rules of Civil Procedure without the benefit of legal training. The unrepresented litigant's failure to understand and follow these rules is often the snare to which they fall prey and thereby suffer serious adverse consequences. Often times there are defenses available to a self-represented litigant that they are not aware of and do not raise, once again to their serious detriment. They do not understand and appreciate the impact or effect of procedural rulings. Many times they are unable to advance their strongest arguments.

When judges and the courthouse staff are faced with these self-represented litigants who are having a difficult time navigating the unknown waters of civil process and procedure, and they plead for help, the temptation is of course to assist them. However, this will often place the judge and judge's staff in difficult ethical dilemmas. Having counsel to represent them will obviate these dilemmas and save a lot of time. We all know that a case with an unrepresented litigant will take more time of a judge and court house staff than one where the parties are represented. I would recommend to this committee for review the excellent statement that was presented to The Senate Judiciary Committee on May 7, 2013 by President Judge Todd A. Hoover of Dauphin County. He has outlined the problems in a concise and deft manner.

It is necessary we recognize that when a party cannot truly afford legal representation in civil cases, that put at risk their basic human rights and necessities, it should be a fundamental right that they have representation. I believe that the failure to fund such projects really has a counterproductive effect on the integrity of the court system and the corresponding confidence that the public has in our justice system. If we do nothing there will be continuing delays in the administration of justice which unfortunately may lead to results that are unfair and unjust.

We must not allow these truly needy persons to be invisible. We are here today to shine a light on them so that they will be visible to you. They are worthy of our concern. They are merely persons who, through unfortunate circumstances, and generally through no fault of their own, cannot afford the cost and expense of hiring counsel either to protect themselves or advance their interests.

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PENNSYLVANIA SENATE JUDICIARY COMMITTEE
“Civil Legal Representation of the Indigent:
Have We Achieved Equal Access to Justice?”
Testimony of Dean Ken Gormley
Dean and Professor of Law
Duquesne University School of Law
Prepared for Senate Judiciary Hearing
October 29, 2013, Pittsburgh, PA

Good afternoon, Senator Greenleaf and members of the Committee. Thank you for the privilege of testifying today. Duquesne University School of Law has a very strong commitment to providing access to civil legal services. The law school’s motto, “the welfare of the people is the highest law,” matches the University’s deep commitment to moral and spiritual values, and service to the community, the region, and the nation.

Duquesne University is deeply grateful to organizations such as Neighborhood Legal Services Association (NLSA), and the Allegheny County Bar Foundation’s Pro Bono Center for providing legal assistance to those most in need in the Pittsburgh community.

I am aware of the crisis in the unmet civil needs of low-income clients, and I am deeply concerned by it. No issue is more fundamental to our nation’s constitutional mission than ensuring equal justice for all. Here at home, the availability of affordable legal representation for low-income members of the Pittsburgh community is indispensable to our

ability to carry out that mission. As Dean, and as a former President of the Allegheny County Bar Association, I am wholly committed to working with the legal community to make meaningful legal representation a reality for all residents of Western Pennsylvania, regardless of their financial means or status in life. Indeed, Duquesne Law School just dedicated a new Center for Clinical Legal Education last month, on 5th Avenue in the Uptown section of the City, as a tangible expression of that commitment.

Yet initiatives like our new Clinic can only put a small dent in the problem. Millions of Americans each year navigate the civil justice system without counsel, in fundamental areas such as housing, family law, and employment. The protracted recession in this country has only increased the need for civil legal aid while diminishing available funds for these crucial services. Most notably, the Interest on Lawyers Trust Account program (IOLTA) – a critical funding source for many civil legal services providers throughout the state – has eroded due to sinking interest rates.

NLSA, in particular, has seen a reduction in funding since 2011 of 25%; this has resulted in a loss of 19 staff positions and closure of offices.

Without additional funding, and given reductions from other funding sources, NLSA is facing the loss of additional attorneys and offices, which will have a devastating effect on our community. Each year over 26,000 people, the majority of them women, children and seniors, ask for NLSA's help with dire legal problems such as protection from abuse, mortgage foreclosure,

wrongful eviction, wage claims, child custody disputes, utility shutoffs, loss of food stamps and denial of other public benefits.

Even with its current staff, NLSA must turn away eligible clients who have meritorious legal concerns. Ironically, there has been an increase in people who qualify and who otherwise would have been accepted, if NLSA had the resources to do its work. Sadly, NLSA has reached the point where staff members must turn off their phones at certain times of the week in order to return the calls of existing clients. The situation is so extreme that I took the extraordinary step this year of allocating a senior faculty member, Professor Nick Fisfis, to assist with NLSA's cases as part of its "Lawyers on Loan" program, to deal with this critical shortage. Yet such stop-gap measures do only a tiny part to address the larger issue.

Ultimately, it is the most vulnerable members of our community who will suffer and go without the legal assistance they so desperately need if NLSA's funding is not increased or at least maintained.

Duquesne's legal clinics collaborate with numerous community agencies to help fill this critical need, but we are always seeking to do more. Currently, we provide legal assistance to low income individuals with unemployment, employment discrimination, housing discrimination, expungement and pardon issues. Additionally, we provide legal assistance to veterans. This semester, in seeking to expand our offerings, we opened a year-long program with KidsVoice, an organization that provides legal assistance to children who are victims of abuse and neglect.

In the winter of 2014, we will open a Family Law Clinic that will represent low income litigants with complex custody and visitation issues. Additionally, we are working on developing a clinic that will assist elderly and low income citizens draft wills, powers of attorney, living wills, and other important documents.

As a community, we must focus on providing equal access to justice and expand access to civil legal services to those most vulnerable in our Commonwealth, particularly in these difficult economic times. Many fellow citizens and families are threatened with issues such as foreclosure, eviction, loss of child custody and physical abuse. Providing funding for these services for low-income citizens amounts to a basic necessity of life. In turn, providing such basic legal services is a key to safety, stability and self-sufficiency, on a broader scale within our communities. I would be eager to participate in a statewide meeting with other law schools and key stakeholders to explore how to contribute to solutions to this crisis.

For all of these reasons, Duquesne University School of Law strongly supports legislative efforts to address this serious shortfall in providing legal assistance to those vulnerable individuals who most desperately need our collective assistance.

Thank you for the privilege of testifying today, and thank you for your continued efforts in this area of importance to all citizens of this Commonwealth.

Honorable Kathryn Hens-Greco
Judge
Allegheny County Court of Common Pleas,
Family Division

Honorable Kathryn Hens-Greco

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October 29, 2013

Remarks on the Pennsylvania Senate Judiciary Committee Public Hearing, Civil Legal Representation of the Indigent.

Good morning, my name is Kathryn Hens-Greco and I serve as a Judge in the Family Court Division of the Allegheny County Court of Common Pleas.

As a young lawyer, I was having a conversation with an older, more seasoned colleague about our Family Court system. I can still distinctly remember his chilling comments. He said: “This is a system that only poor people would put up with because they have no other choice.”

I have never forgotten this, and when given the opportunity, I have tried to make certain that our court systems work hard to use data and technology to better serve the public.

Our current system for litigants without counsel is untenable. Every Tuesday and Thursday morning as I enter the courthouse, I see weary grandmothers and mothers with squirming small children, fathers with a fistful of pay stubs, bewildered teenagers, and angry boyfriends and girlfriends standing in a line that snakes around the Family Court rotunda and out the door. Some of them do not understand English. Some of them cannot read or write.

On these mornings upwards of eighty people stand in line hoping for one of the coveted twenty slots in our First Floor Emergency room. If they are lucky they will have the opportunity to speak with a volunteer lawyer or a hardworking Pitt or Duquesne Law student to help them obtain custody, modify child support, or address an issue of family violence.

The remaining unlucky sixty people are left to navigate the complexities of the court on their own. Our statistics mirror national statistics which show that 80% of Family cases have at least one self-represented litigant. This is unacceptable in a nation dedicated to the rule of law and to the maxim of justice for all.

Everyday I have to decide against someone. However, I have found that a self-represented person’s belief that they just experienced a fair process – that they had the opportunity to be heard – is actually more important to them than my actual ruling. But to exercise those rights, litigants must first figure out how to access the courthouse.

Inside the courthouse, our employees collectively handle conflicts, large and small, in incredible numbers. We managed over 200,000 events in 2012. We offer an array of dispute resolution opportunities, and support family team conferencing and family group decision-making.

I have often seen the word “triage” used to describe the method of addressing the legal needs of the indigent. Indeed, those who provide such legal services are a type of first-responder in their own right. Pennsylvania does not have what has been referred to as a “civil Gideon” - that is, indigent persons do not have a right to counsel in *civil cases* like they do in criminal matters. Absent such a mandate, the next best option would be a statewide plan to provide legal access to those in need.

In 2010, I assembled a committee to begin the process of making access to justice a reality for people without counsel in Family Division. We began researching and creating an on-line e-filing system that would allow attorneys and litigants to access the Family Court from the Women’s Shelter, their home or a library or any smart phone. We know that best practices dictate that when the Bar and the public have access to filing electronically, then the scarce budgetary resources available to both the court and to county Departments of Court Records/Prothonotary are used more efficiently.

Some of the ground work has been done. Forms have been created and evaluated. Ideally this would be a state-wide legal portal - that utilizes the best of technology - that always reflects the most up to date expression of the current laws and rules.

However, our committee quickly realized that technology was only part of the solution.

If we did not address the unique problems of self-represented litigants who lacked access or understanding of an online system, then we would be creating two classes of people: One for indigent people without the ability to understand or access a website, and another class of people who have the necessary skills or the means to hire an attorney.

After more than 2 years of planning, in January our Family Division will open our Universal Intake and Self-Help Center, which will be available during court hours every day. Stage two will be the web-based site for the public to access 24-7 to create and transmit documents electronically.

Still. What most of our self-represented litigants need is a competent lawyer to help them choose knowledgably and thoughtfully, first whether to bring the matter to court, and second, what process will lead to resolution.

In addition to our successful partnerships with Pitt and Duquesne Law Schools, Family Court has also partnered with Neighborhood Legal Services and the Women’s Center to ensure that those seeking Protection from Abuse have access to an advocate and an attorney. We will be working with NLS in the Allegheny County Law Library presenting workshops to answer common family court topics. We have partnered with the Bar Association Pro-bono Projects to ensure those with meritorious appeals have counsel. We have had a long relationship with the private

bar and firms like Dickie McCamey & Chilcote who have provided guardians to represent children in high conflict custody cases.

We have excellent first-responders, and we have a new access plan coming out in a few months. But we also have a responsibility to anticipate the pitfalls and improve the process. Public trust in the rule of law is essential to safe communities. Because if there is not equal access to justice, then the entire system is threatened.

Thank you for attending, thank you for your hard work, and thank you for listening.

I look forward to working with you. Questions?

John Lovelace
President, UPMC for You

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October 29, 2013

Senator Greenleaf, Members of the Senate Judiciary Committee, Staff and Stakeholders:

Thank you for the opportunity to address the Committee and to speak on behalf of public interest advocates and access to justice services in Pennsylvania.

My name is John Lovelace, and I serve presently as President of UPMC *for You*, the largest Medical Assistance Physical Health Managed Care Organization serving HealthChoices enrollees in Western PA, and as the President of Government Programs and UPMC Advantage Plans for the UPMC Health Plan, based in Pittsburgh. We serve more than 400,000 people (seniors, people with disabilities and people with low incomes) in HealthChoices, the Children's Health Insurance Program, Medicare Advantage and Medicare Advantage Special Needs Plans in 40 counties of Pennsylvania. In addition, I serve as Chief Program Officer for Community Care Behavioral Health Organization, the largest Behavioral Health Managed Care Organization in the PA HealthChoices program. Community Care enrolls more than 700,000 children and adults across the Commonwealth.

For many people, their health care status is significantly affected by not only low-income status, but also frequently occurring disruptions in access to care as their eligibility status for Medicaid or CHIP changes and many social determinants of health. Factors such as living accommodations, access to appropriate education, access to transportation, and access to financial supports add to the challenges of their lives and interfere with their ability to fully benefit from the health care services they receive.

In many cases, legal services are necessary to assure that enrollees are able to receive services to which they are entitled, including appeals of eligibility denials, dealing successfully with landlord/tenant disputes, resolving complaints about their health care (or health insurance coverage), restoring utilities and securing educational and vocational training services. UPMC has for several years funded a Medical-Legal Partnership program at UPMC McKeesport that successfully addresses these many issues, and we frequently have opportunities to refer members, or link members, to these and other related services. This is our second year supporting this project financially, and of working with Neighborhood Legal Services to support referrals from clinicians at UPMC McKeesport, with the support of the hospital, as well as referrals from our care management coordination and outreach staff. Typical issues for

resolution include re-establishment of eligibility for health care coverage, housing and utility issues, and access to financial and other supports.

In many situations, challenges faced by enrollees are far beyond the scope and expertise of a health insurance plan, and we are grateful to be able to connect with the resources of the several public interest legal support organizations to address those needs in housing and shelter, entitlements, legal needs, securing connections to utilities and other supports.

Resources such as the Pennsylvania Health Law Project are essential to many consumers in the resolution of health care and entitlement access issues, and also in ensuring that health insurance payers, including, of course, UPMC Health Plan and Community Care, are executing our responsibilities in a timely and accurate manner. While we make every effort to resolve issues and concerns promptly and to the consumer's satisfaction, we are able to work with PHLP and other advocates to identify areas for improvement in health care and to implement those.

Legal advocates serve a key role also in system advocacy. Representatives from legal advocacy organizations represent the collective as well as individual needs of their clients effectively, thus assuring that systematic problems and concerns from the consumer perspective are identified and brought to the fore for correction. Advocates articulate these issues clearly and effectively, and work to hold our system's feet to the fire when appropriate. These responsibilities are executed professionally and serve an invaluable role to effectively represent those who we all strive to serve well.

Advocates also serve a valuable role in helping consumers to successfully return to work training and employment programs, by helping to clear impediments, including restoration of driver's licenses, clearing of court records, and other such barriers that are often insurmountable without effective representation.

We are very pleased to have this opportunity support the work of these many dedicated advocates and organizations. Two of our children work as legal advocates/attorneys in Pennsylvania as well, one in central Pennsylvania with civil matters (including work managing a Medical/Legal Collaborative) and the second in Pittsburgh with the Public Defender's Office. This of course provides a personal perspective on the value of the work, as well as a professional one.

We believe the lives of our clients and consumers are enriched by the individual and system advocacy work of advocates in improving access to justice services in many ways, including those that support access to health care services and better, more stable, lives.

Again, thank you for the opportunity to address this group and this issue. I would be happy to be available for follow-up conversation at your convenience.

Sonya Butts Rainey
*Client of Neighborhood Legal Services Association,
Medical Legal Collaborative for Patients*

Sonya Butts Rainey

Client of Neighborhood Legal Services Association, Medical Legal Collaborative for Patients

My name is Sonya Butts Rainey, and I am very pleased to tell you about how the Medical Legal Collaborative for Patients (MLCP) was there for me when I was really in need of legal services when I was facing eviction.

I am a 46 year old grandmother of a 15 year old disabled grandson who I have cared for since he was three months old. I am originally from York, PA, and I am my husband decided to relocate to McKeesport, PA last December. He has family there, and it was our belief that we would have better job opportunities in the Greater Pittsburgh area, and that it would also be good for our grandson who was in placement with the State in York. Being eager to reunite with my grandson and start visits again, I abruptly took a one bed room apartment with a landlord that I now know to be a slumlord. The apartment was affordable, and the landlord seemed nice at first, and even promised me the opportunity to move into a two bedroom when it became available.

Unfortunately, we quickly learned that this particular landlord has a history of preying on people like myself and family, who have limited income and education, who know little about the law, and who are in various states of crisis, and who even may be dealing with multiple medical issues as I was. One of the reasons that my grandson was in state custody was due to me suffering a stroke, as well as dealing with other serious medical problems when I lived in York, PA. When it came close to the time to reunite with my grandson, it was learned by

the state agency that at least 7 sex offenders were living in the apartment building that we were now living in, and they found other concerns such as drugs. To my dismay, visits at my home with my grandson were suspended again, and the landlord became outraged that we had mentioned sex offenders living in his building.

Prior to that , a 2 bedroom apartment had been identified for me to move into by my landlord, without paying a new security deposit, etc. The move was suppose to happen in August of 2013. We were excited and looking forward to taking the larger apartment owned by the same landlord but in a nicer area, when we were told that he was no longer was going to rent it to us. An agency was even going to pay first and last months rent, and he had been working with us on that. After we had questioned the type of people that he had living in his apartment buildings, and other things, he stopped being nice. In fact, in July 2013, he threatened to take us to court, which was not the first time, and eventually did file an eviction case seeking possession of his apartment for one months rent plus costs.

With all of these things going on, my husband ended up leaving the apartment to avoid having more problems with this landlord, and I who was working at the time at a nursing home, ended up a patient in McKeesport Hospital for five days from all the stress. I could not breathe, and they also found lead in my blood. The doctors were very concerned about me due to my Sickle Cell and Lupas. I had to be placed on oxygen and the doctors were also worried about my heart. While I was admitted to the hospital, my court date came up for my eviction case at the Magisterial District Court. I was so worried about being evicted while in the hospital that I signed myself out against doctor's advice to appear at the hearing. Prior to me leaving, a very

nice hospital social worker told me that they had an attorney in the hospital who was excellent and knowledgeable about landlord and tenant matters. She also told me that the attorney was on vacation but she would make a referral for me.

I was very surprised that the hospital social worker was concerned about my housing situation and was recommending an attorney for me. At the time, I did not fully understand how important this referral would be to an attorney. I did appear at the eviction hearing, and foolishly left the hearing again believing that my landlord was going to work with me. Since I moved in, I had always paid my rent on time, and paid in cash. In fact anywhere I have lived, I always pay my rent first. That is one of the reasons that I really did not know anything about housing law. I only got behind one month after I lost my job for being in the hospital for those five days. Nonetheless, I still gave the landlord a full months rent from my last employment check, and this was one day after the hearing in August. I then paid him a second full months rent two weeks after that in cash but I got my receipts. My rent is \$400.00 per month, so I paid the landlord a total of \$800.00 in a two week period. Unfortunately, on the same day that the landlord accepted my rent, he went right back to the magistrates office, and filed for an Order for Possession to evict me.

At this point, I was really depressed and afraid, and I was losing hope about being reunited with my grandson. I had no job, no money and I was going to be evicted. I was so upset that I was starting to have breathing problems again. Just when I thought that I really hit bottom, I received a call from the attorney that the hospital social worker had told me about days before. Her name is Kimberly Motley-Phillips. Once I began telling her my story, she

arranged to meet with me right away. To my surprise, she had already reviewed all my legal documents, and explained the law and my legal rights to me. She told me that what the landlord was doing to me was clearly wrong, take him to court if he still tried to evict me after taking my money.

I remember sitting in her office feeling so relieved that someone was finally hearing me and promising to help me with my situation. Attorney Motley-Phillips took all my rent receipts and began preparing legal papers to take my landlord to court. She assured me that I had done everything right so far, and that we were going to take the case to a higher court in downtown Pittsburgh. In a matter of days, through the help of Neighborhood Legal Services Association, and Attorney Motley-Phillips, we appeared in the Court of Common Pleas. An attorney accompanied by four law students were there to stand up for me in Court. I have five people standing up for me, and I have never felt so supported before in all my life. Attorney Motley-Phillips prepared papers that asked the judge to stop the Order for Possession and to mark the judgment that has been issued against me in the lower court as satisfied. I could tell the judge was upset with what the landlord did to me. The judge ended up giving me all that my attorneys from Neighborhood Legal Services had asked for.

It was explained to me that my landlord could not legally lock me out as he had threatened to do without going through the whole court process again. I was so relieved about this result, and especially the help that I received from Neighborhood Legal Services Association. If I had not been told about their service through my hospital admission, I am almost certain that I would have been locked out and not even known that help was available.

Now, I have plans to move out of this apartment, and into a four bedroom house that will be available real soon. This will mean that I will be able to be reunited with my grandson, and live in a nice place. Even though my current landlord is at it again, and has served me with another Notice to Vacate, I have maintained contact with my attorney, and I am now much more knowledgeable of my legal rights. In fact, Attorney Motley-Phillips has told me to ignore him, and to allow her to deal with him, and that is what I have done.

I am looking forward to moving into my four bedroom rent to home house real soon, and reuniting with my husband and grandson. I am also very close to having a new job real soon, and my health has been more stable now that I am not letting this landlord get to me. I value the relationship that I have with my attorney, and she treats me like a real person. If I have any future legal problems, I know that I can count on Neighborhood Legal Services Association to have my back.

Shirl Q. Regan
President/CEO
Women's Center & Shelter of Pittsburgh

Pennsylvania Senate Judiciary Committee

October 29, 2013

Public Hearing on Access to Justice

**Testimony of Shirl Q. Regan, President/CEO,
Women's Center and Shelter of Greater Pittsburgh**

My name is Shirl Q. Regan and I am the President and CEO of the Women's Center and Shelter of Greater Pittsburgh (WC&S), which serves over 6,000 victims of intimate partner violence every year in Allegheny County, Pennsylvania. I have spent the past 30 years working as a domestic violence advocate and am grateful for the opportunity to present testimony today regarding the critical need of DV victims for access to free civil legal representation.

WC&S and the Volume of the Problem of DV

WC&S is a nonprofit 501(c)(3) Domestic Violence (DV) program that was founded in 1974 and was one of the first six DV shelters in the United States. For the past 39 years, it has been at the forefront of creating and implementing innovative and effective programming for intervention and prevention of DV. WC&S is a founding and continuing member of the Pennsylvania Coalition against Domestic Violence (PCADV), a statewide organization of 61 DV programs working to ensure that member organizations have the highest standards and provide the highest quality services to victims of DV and sexual assault across Pennsylvania.

In furtherance of its mission to end intimate partner violence in the lives of women and children, WC&S provides a full range of services to victims of domestic violence. In the most recently completed fiscal year, from July 1, 2012 through June 30, 2013, WC&S provided

services to 6,245 unduplicated DV victims, with some of the primary services being provided as follows:

Hotline:

5,941 duplicated crisis callers received 1,548 hours of crisis intervention;

Shelter:

252 adult victims spent 7,029 nights in Shelter,

219 child victims/witnesses spent 7,410 nights with their mothers in Shelter,

252 adult victims received 8,438 hours of resident counseling;

Legal Advocacy:

3,954 adult victims of domestic violence received 8,664 hours of legal advocacy;

Civil Law Project:

259 new cases were opened for civil legal representation of 247 adult victims;

Empowerment Center:

393 adult victims received 3,988 hours of non-resident counseling.

In addition to these DV victims served by WC&S in the year 2012-13, there were thousands of other DV victims who sought help at the other three DV programs in Allegheny County: Crisis Center North in the northwestern suburbs served 1,711 DV victims; the Alle-Kiski Area HOPE Center in the northeastern part of the county served 3,591 DV victims, and Center for Victims, which has a shelter in the Mon Valley, served 4,843 DV victims.

DV Dynamics and the Special Legal Needs of DV Victims

These victims of DV who are served by WC&S and the other DV programs in Allegheny County have unique and critical needs for free civil legal representation due to the nature of the violence that they have suffered. As we have learned at WC&S over the past 39 years, victims of intimate partner violence are at the greatest risk of homicide as they attempt to leave their batterers – and, often that separation is attempted as part of the filing of a court case. Most of the DV victims served by WC&S seek relief from the justice system for the abuse that

they have suffered. Obtaining maximum relief possible is critical to holding batterers accountable and ensuring victim safety.

The intimate partner violence that our DV program addresses is almost always control-based violence. The dynamic in this violence has been well articulated by the Domestic Violence Commission of the American Bar Association as:

“a pattern of assaultive and controlling behaviors, including physical, sexual, and /or psychological attacks and /or economic coercion. Examples (of behavior) include: slaps, punches, pushes, humiliation, severe shaking, forced sex, threats of violence against victim or self, withholding money, isolation, emotional abuse, and/or unlawful restraint, including false imprisonment, stalking, threats, and kidnaping.”

Judicial Checklist, by the Judicial Subcommittee of the American Bar Association’s Commission on Domestic.

Victims who have suffered such abuse often have been isolated from family and friends and are unaware of legal and social options. They usually feel a great sense of shame and are exhausted and stressed due to the repeated trauma that they have suffered. They rarely have access to financial resources. Due to these factors as well as the imbalance in power in their relationship with their abusers, and the on-going threat of future harm, they are almost never able to negotiate for themselves against their abusers and desperately need to be represented by an attorney in any court proceeding. If they are to achieve safety, autonomy, justice, and restoration, it is essential that they have access to free and competent legal counsel.

Lack of Resources to meet current Legal Need

In an effort to ensure that the DV victims we serve have access to such competent legal counsel, WC&S has partnered over the past three decades primarily with Neighborhood Legal Services Association (NLSA) for the delivery of free civil legal representation. NLSA

was originally able to provide free representation for all DV victims in Protection from Abuse cases and for indigent DV victims in a wide array of civil legal cases including the full range of family court relief (custody, support, divorce), eviction and mortgage foreclosure, wills and estates, consumer matters, public benefits, and more.

As funding for legal services organizations such as NLSA decreased over the past years beginning in the 1980s, however, the types of cases that NLSA could handle shrunk to the point where critical needs of DV victims, particularly in the area of Family Law, were unmet. While NLSA has continued to provide critical representation in PFA cases regardless of income of the DV victim, and while Pro Bono efforts increased to try to fill some of the gaps, there remained critical legal needs going unmet for DV victims. And, while there are numerous lawyers practicing law in Allegheny County, representation by private attorneys has been out-of-reach financially for most DV victims.

The free civil legal representation available to address DV victim needs through NLSA that has remained after funding cuts is limited and disjointed. Thus, for example, a legal services or *pro bono* attorney may be available to provide free representation at a PFA hearing and assist a victim in getting, among other things, a temporary support order and a temporary custody order. When the formal support hearing takes place a month or so later and/or when the defendant files a custody action to modify the temporary custody relief in the PFA order, however, the legal services/*pro bono* attorney is no longer able to represent the victim. Similarly, the county Bar Association's Divorce project may be able to handle an uncontested divorce with no property issues, but it cannot assist if the victim needs to continue her spousal support as alimony and/or save her home through an equitable distribution claim. Moreover, many victims of domestic violence are not receiving the wide range of legal services needed to achieve self-sufficiency and

freedom from their abusers. There are insufficient legal services for victims who need long-term representation in divorce, custody, support, and other legal proceedings.

Due to this growing gap in accessible legal services for DV victims, WC&S was able to develop a small Civil Law Project with two full-time staff attorneys to provide civil legal representation for the DV victims. While this small law project has proven essential to helping some of our most needy and endangered clients, it is only able to assist about 275 new clients each year. It can in no way meet the needs of the thousands of DV victims seeking relief in the court systems in Allegheny County.

Thus, in partnership with NLSA and the Allegheny County Bar Foundation's *Pro Bono* Center, WC&S continues to work today to help to patch together a safety net of free civil legal representation for DV victims. This has worked most well for final PFA hearing representation for which 90% of the approximately 3,700 DV victims filing for life-saving PFA relief in Allegheny County are presently able to be represented. NLSA does by far the majority of this representation with its staff attorneys handling over 1,000 final hearings a year and its staff coordinating a large *pro bono* project to handle an equal or larger number. Our WC&S law project handles about 200 final hearings a year and our clerical staff, with help from the *Pro Bono* Center, work to connect the PFA plaintiffs to these attorneys as needed. **This is life-saving, collaborative work and funding must continue to ensure that DV victims can access free legal representation for PFA hearings.** PFA relief has been proven to reduce violence and save lives. (*Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence*, Susan L. Keilitz, Project Director, National Center for State Courts Research Report, 1997).

Beyond preserving the free legal representation for DV victims in final PFA hearings, it is critical that more funding be generated to expand the ability of NLSA and other providers of free civil legal services to meet the full range of legal needs of DV victims. As mentioned above, DV victims are some of the most vulnerable of litigants and the least capable of representing themselves in cases against their abusers. WC&S non-attorney legal advocates, who have accompanied DV victims to court as they try to represent themselves in *Pro Se* motions systems, have watched as these victims have often suffered emotionally and failed to secure needed court relief. In Family Court in Allegheny County, over 1,800 *pro se* litigants a year are able to get clerical help from the court in order to file/present over 3,300 pleadings in court ---- it is estimated that an equal number of individuals without legal representation are cut off from waiting lines without even getting the clerical help. There are thousands of individuals in this county who cannot afford an attorney who are forced to represent themselves. This is not a safe option for DV victims.

Please dedicate and commit the maximum amount of funding possible to ensure that DV victims have access to civil legal representation as they seek critical and life-saving relief for their safety, justice, autonomy and restoration.

Heather Arnet
Chief Executive Officer
Women and Girls Foundation of Southwest Pennsylvania

Heather Arnet
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**Testimony Presented to the Pennsylvania Senate Judiciary Committee
The Honorable Stewart Greenleaf, Chair
October 29, 2013**

Good Afternoon. My name is Heather Arnet and I am the Chief Executive Officer of the Women and Girls Foundation. Women and Girls Foundation (WGF) is an independent, community-based foundation serving Pennsylvania. The mission of the WGF is to achieve equality for women and girls, now and for generations to come. Our vision is for women and girls in Pennsylvania to have equal access, opportunity, and influence in all aspects of their public and private lives. In pursuit of this vision, in recent years we have especially focused our efforts on articulating the impact of the Great recession on women in Pennsylvania, and advocating for their inclusion in economic recovery efforts. For women and their families to be safe and have economic security, they must have access to civil legal aid to low-income women and their families, and most especially to women and children who are victims of domestic violence, are critical to our work.

As women make up 52% of the population of the Commonwealth, and over half of the workforce, tax base, and social service recipients in the state, we feel that it is especially critical that our government consider how budget cuts and state budget investments impact women and families in particular.

Because the social and political inequities that women and girls face in our region are more pronounced than the inequities within the nation as a whole, there is a compelling need for our organizations as well as the overwhelming need for direct service providers who assist women who have nowhere else to turn for help when facing crisis. More women in our region are suffering in poverty compared to their male counterparts. One in every four women will experience domestic violence in her lifetime. Working women are experiencing a gender gap in pay equity which is significantly more imbalanced than the national average. Women are underrepresented in high-paying career fields while overrepresented in low paying career fields. While women earn over 80 cents per dollar nationally, in our region we earn 75 cents for every dollar paid to our male counterparts. To create a community where our mothers and

daughters can live, work, and thrive we must address these issues and properly invest in critical human services such as civil legal aid.

Women in crisis are the primary consumers of civil legal aid services. At Neighborhood Legal Services Association here in Pittsburgh 78% of their clients are women. That makes sense since 75% of those living in poverty in our region are single mothers raising children on their own. Nearly all of the cases Neighborhood Legal Services handles involve a critical legal emergency that impacts the basic necessities of life including personal safety, loss of shelter, unpaid wages, income/employment or loss of essential benefits. Civil legal aid programs in Southwestern PA represent women and children (and some men) in protection from abuse proceedings, custody matters, help resolve wage claims and unemployment compensation matters, assist in the obtainment of healthcare and other life-sustaining benefits. Legal aid helps people who have nowhere else to turn when they are facing eviction, foreclosure or utility shutoffs. Generally speaking, the private bar does not handle the defense of the these types of cases that are often at the root of homelessness.

A recent needs assessment conducted by the United Way of Allegheny County focused on financially struggling adults and families, identified a growing emerging need of the financially struggling adults and families –especially women and their families who are one step away from spiraling out of control. During times of intense change – the death of a spouse, a divorce or major illness—a women’s life can be traumatically impacted. More often than not, women reach out for support during these troubled times to help keep their housing, secure and maintain employment, or provide care for loved ones. Legal aid programs are an essential part of the safety net for these women in need and help to make the difference between a healthy and productive life or finding themselves on a path of continued long-term crisis and potentially a lifetime of poverty.

Last year, and for many years before, Pennsylvania dramatically cut funding for vital – and successful – human service programs. As a result, Pennsylvanians –women and men alike -- face longer wait lists, increased homelessness, cost shifts, closed programs and unemployment. The last few state budgets cut deep into the bone. I urge the Governor and legislature to stop the cuts to legal services and other human service programs and restore funding to what works for legal aid and other human services providers.

David Spurgeon, Esq.
Allegheny County Deputy District Attorney

David L. Spurgeon, Deputy District Attorney
On behalf of District Attorney Stephen A. Zappala, Jr.
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TESTIMONY OF DAVID SPURGEON, ESQ.
DEPUTY DISTRICT ATTORNEY, ALLEGHENY COUNTY
BEFORE THE PENNSYLVANIA STATE SENATE JUDICIARY COMMITTEE
OCTOBER 29, 2013, PITTSBURGH, PA

Good afternoon, Senator Greenleaf and distinguished members of the Senate Judiciary Committee. Thank you for providing me the opportunity to provide testimony on behalf of the District Attorney of Allegheny County regarding the importance of civil legal aid and its vital role in our system of justice.

District Attorney Stephen Zappala regrets he cannot join you today as he is in Harrisburg with Justice Debra Todd and 38 other leaders who constitute the newly formed Pennsylvania Supreme Court Elder Law Task Force. While DA Zappala regrets being unable to attend this hearing personally, his participation in the Court's Elder Law Task Force reflects the importance of your proceedings here, as access to civil justice is one of the three priorities the Task Force is charged with examining and responding to. Civil legal services providers are essential voices in the Task Force, including Neighborhood Legal Services and SeniorLAW Center, and the District Attorney is proud to be working closely with them and other leaders of the judiciary and the Bar in the pursuit of improved access to the courts and to justice for older Pennsylvanians.

Those of us who work in the criminal justice system have a significant stake in the issue before you – ensuring that the poor have access to the civil legal services they require. As prosecutors and practitioners of criminal law, we are very familiar with the critical importance of

civil legal aid in the lives of families and individuals in need, in our work protecting victims of crime and violence, and in our common mission of promoting safe and strong communities.

We in law enforcement have a stake in the health and welfare of members of our communities. By addressing basic human needs such as housing, child custody, health care, and in fighting poverty and homelessness, civil legal aid providers help make our families and communities safer, more secure, healthier, and more stable. Healthier and more stable communities inevitably enhance public safety. Civil legal service providers are a necessary partner in our collaborative strategy for reducing crime and enhancing public safety.

We applaud and appreciate that their work and innovative programs protect crime victims. Whether it be a young mother who is a victim of domestic violence, battered by her partner, a young child who has been neglected or abused, a grandmother facing elder abuse, financial exploitation, or consumer fraud, civil legal aid attorneys provide essential advocacy, representation, and protection, and pursue restitution, victims compensation, and connection to attendant social services to make Pennsylvania victims – women, children and seniors -- whole, secure, and safe.

Civil legal services for indigent clients is a sound investment. Their work helps prevent homelessness, keeps children in safe, habitable homes, provides access to economic supports and health care for families, children and elders. Research demonstrates that a \$1 investment in legal services has an \$11 positive economic impact on the Commonwealth. Civil legal services are also essential supports for those in re-entry, facing civil legal challenges following incarceration, and in turn, help reduce recidivism and have an excellent impact on those of us in law enforcement. The cost of housing an individual in a Pennsylvania prison is at least \$35,000/year.

If the civil legal issues of ex-offenders go unaddressed, they may ravage the lives that impoverished individuals are trying to reconstruct.

We are especially proud of our office's Domestic Violence Prosecution Unit and the District Attorney is committed to prosecuting domestic violence crimes vigorously, with the safety of domestic violence victims as our primary concern. We are honored to partner with our legal aid colleagues who advocate for domestic violence victims to obtain protection from abuse orders, provide counsel and pursue emergency interventions. We know that domestic violence is the most under-reported crime in America, and it takes an extraordinary toll on victims, their children and our communities. The estimated total annual medical cost of domestic violence in Pennsylvania was \$326.6 million. 39% of all female victims of homicide in Pennsylvania were victims of domestic violence. Legal aid works with us to prevent those cruel deaths and the ruinous impact on Pennsylvania families.

Equal justice for all, regardless of income, is the foundation of both our criminal and civil legal systems. We applaud your making civil access to justice a priority, knowing the profound impact it has on our work, our communities and all Pennsylvanians.

Michelle DeBord, Esq.
Managing Attorney
Neighborhood Legal Services Association

**Testimony to the Pennsylvania Senate Judiciary Hearing
Pittsburgh, PA
Tuesday, October 29, 2013**

Michelle DeBord
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Good Afternoon. My name is Michelle DeBord; I am one of the managing attorneys at Neighborhood Legal Services Association (NLSA). NLSA is a non-profit organization which provides civil legal services to the poor and disabled members of our society. We currently operate in four counties in Pennsylvania-Allegheny, Butler, Beaver, and Lawrence.

I have been asked to respond to the issue of how well we as a society are doing in providing for the civil legal needs of low income families and individuals. The short answer is, “Not well.”

In the 35 years that I have been with legal services, the national statistics on the percentage of legal needs of the poor which are being met have not changed; the figure remains at the 20% level nationally with Pennsylvania doing no better. If a baseball, football, or hockey coach didn't improve a 20% winning figure within two years, he would certainly be fired. If a CEO didn't raise the company's profits within one year, s/he should certainly be fired. But who suffers the consequences when we don't increase legal services to the poor for 10 years?

At NLSA, we have lost over a million dollars in funding over the last 3 years or to put it another way we have lost 22.5% of our entire budget.

Translating those financial losses into service losses, it means that we have seen a decrease of 27.6% in the number of persons helped in since 2010, when the funding cuts first

began. Twenty-seven per cent in human terms means that in the current fiscal year 7208 fewer people were given legal assistance of any kind by NLSA than the number receiving services 2010-2011.

This massive decrease in the availability of legal help for the poor occurred during an economic downturn in which our low income citizens were losing jobs in greater numbers and needing more legal services in the form of, for example, representation at unemployment compensation hearings; when formerly middle-class working people needed help in obtaining food stamps and medical and cash assistance; when low income homeowners needed help in saving houses that had been family homes for many, many years and were now threatened by mortgage foreclosure. Families in desperate economic straits are also families in which physical abuse may become more likely - abuse which causes more family members to seek help in obtaining protective orders in family court.

Funding losses of the past 3 years have resulted in the loss of 21 staff members in our four county offices. That is a loss of 1/3 of the staff.

Not only have we lost human resources; but we are about to lose physical resources. We will be closing the Butler County office by the end of the year and possibly also the Lawrence County office. Whatever legal assistance residents of these counties receive going forward will have to come out of the Allegheny and Beaver County offices, whatever access they will have will be through the phone system not a local office.

What this means in terms of actual legal assistance is that some clients who would have received full service representation will now receive only advice. It means that clients served by a Helpline which was designed to provide not only advice but brief service to resolve a client's problem, a phone call or a letter for example (which all studies acknowledge provides much more positive results than simply giving advice) are now rarely going to receive anything more than advice. We have two attorneys in the Allegheny County Helpline where we used to 3 and now each attorney receives an average of 6 new clients per day. It is rarely possible for the attorney to spend half a day tracking down a landlord to resolve a problem; or to spend half a day

convincing a water authority to follow the law and turn the tenant's water back on with a payment from the tenant.

It means that some individuals who, in the past, would get advice on legal issues such as divorce, support, how to obtain a security deposit, what to do about habitability issues to which a landlord will not respond will not be able to speak with an attorney at all but will receive only informational brochures or reduced fee certificates to obtain representation on support and custody cases, a reduced fee certificate which require fees that they often cannot afford to pay.

And finally, it means that some individuals who call for assistance won't even be able to get through to have an intake done because a centralized intake system designed to operate with a minimum of 4 intake workers has faced the lay off of two of its staff and on any given day may operate with even fewer staff. With local offices closing, the burdens on the CIU, will undoubtedly increase.

The number of call backs waiting to be made to people who have left their names and numbers in the call back box for Allegheny County alone can be as high as 50 on some days. It also means that so much time has passed before a caller gets through the system and has an intake done that s/he now faces a situation which has reached a crisis level. In some cases because so little time is left before their hearings they must request a continuance to give the NLSA attorney time to prepare for the hearing - and that continuance may mean weeks or even months living without the unemployment or SSI benefits that the client needs to pay the rent to prevent an eviction, to pay the mortgage to avoid foreclosure, to pay the utilities to keep heat and the lights on in their homes.

What is astonishing is that this significantly reduced staff both attorneys and support staff have been able to maintain a high quality of service.

So, to answer the question, "How well are we doing in providing civil legal service to the poor?" although our staff will continue to provide high quality legal services for the clients who are able to access services but for the large number of individuals who cannot access services, the answer is not well, not well at all!

Andrew Sherer, Esq.

Senior Fellow

Furman Center of New York University Law School

PENNSYLVANIA SENATE JUDICIARY HEARING

OCTOBER 29, 2013
PITTSBURGH, PENNSYLVANIA

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Good afternoon Senator Greenleaf and members of the Senate Judiciary Committee. I am Andrew Scherer. I am a consultant, advisor and expert witness, with expertise in access to justice and the rule of law; delivery of legal services; social, economic and civil rights; housing, property and land rights; and poverty law. I am also a Senior Fellow at Furman Center on Real Estate and Urban Policy, at NYU Law School and an Adjunct Professor at Columbia University Graduate School of Architecture, Planning & Preservation, where I teach Planning Law. In addition, I am a founding member of the National Coalition for a Civil Right To Counsel, the chair of the Civil Gideon Committee of the NY State Bar Association President's Committee on Access to Justice and a frequent lecturer and panelist on expanding access to justice in civil cases. For nine years, I served as Executive Director of Legal Services NYC, the largest civil legal services organization in the United States. Legal Services NYC provides free legal assistance in a broad range of civil legal matters to over 25,000 low-income households in New York City annually. Prior to becoming Executive Director, I worked at Legal Services NYC in various legal positions for twenty-three years.

I am here today to present a national perspective on the crisis in the availability of legal assistance in civil legal matters and to discuss emerging innovations and successful strategies that are being explored and/or implemented in other states to address this crisis. I am pleased to be here to offer my insights and hope they may assist Pennsylvania in its efforts to seek solutions for the civil justice crisis. I applaud you for your commitment to access to justice and for your thoughtful and thorough examination of the issue.

The U.S. Supreme Court held in *Gideon v. Wainwright* that "... [I]n our adversary system of justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."¹ This "obvious truth" that there must be a right to counsel in criminal cases is equally applicable to civil matters in which basic human needs are at stake. The recognition of this "obvious truth" has led to a national effort to establish a right to counsel for indigent people in critical civil cases. It also led American Bar Association President Michael Greco to form a Presidential Task Force

¹ *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963)

on Access to Justice in Civil Cases in 2006 to study the issue, which in turn resulted in the introduction of an ABA resolution calling upon states to create a civil right to counsel in critical cases. In August 2006, the ABA House of Delegates unanimously passed the groundbreaking Resolution 112A, which states:

“RESOLVED, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.”²

The ABA resolution and concurrent report urged states to explore how to create and implement a right to counsel in civil cases. The ABA recognized that an incremental approach was necessary. It suggested that the right should be established for those cases that involve basic human needs and interests that, because of their potential consequences, justify providing attorneys at government expense for low-income persons who otherwise cannot afford counsel. The resolution has spurred legal service programs, bar associations, law schools, private law firms, courts, and other key stakeholders across the nation to intensify efforts to address the growing unmet civil legal needs of the poor and to explore a variety of approaches to creating a right to counsel for low-income individuals. Activities have included: litigation; developing legislation to create model state statutes; conducting local and national unmet needs studies and other social science research to substantiate the benefits of providing counsel; and publishing reports, articles and other writing to educate judges, legislatures, the public and the legal community about the issues.

The great recession significantly exacerbated the crisis in availability of counsel. The economic downturn hit low- and moderate-income people hardest of all, with high unemployment, foreclosures, and reductions in public benefits, housing subsidies and other programs intended to alleviate poverty. These economic hardships led to a growth in a wide range of legal problems while, at the same time, there was a radical decline in funding for civil legal aid - from the federal Legal Services Corporation, state legislatures, state-based “Interest on Lawyer Trust Account” programs, private foundations, local government contracts, private donors, and other sources. This “perfect storm” led to a dramatic increase in the unmet civil legal needs of low-income people and the enormous civil legal justice gap crisis that we are facing today.

The states have responded in a variety of ways to this crisis. Some states have conducted comprehensive legal needs studies to document the extent of the justice gap. A number of states have held public hearings to assess the impact of the recession on the delivery of legal services. These studies and inquiries have all confirmed the 2009 Legal Services Corporation Justice Gap

² American Bar Association, Resolution 112A (Aug. 2006), and Report are available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.aucthcheckdam.pdf

Study conclusion that fewer than one of five low-income individuals with serious legal problems are helped by legal services programs. And that gap is growing.

In response to reduced funding, legal service programs across the nation have been forced to retrench, reduce staff and drastically cut back on services. Many legal services programs can only provide full legal representation in the most egregious cases; many have resorted to triage systems that go wide but not deep by providing limited assistance to many rather than full representation to few in an effort to reach more clients.

One recent national study, the Civil Justice Infrastructure Mapping Project, provides a national portrait of the access to civil justice infrastructure. It describes general patterns observed across the 50 states and the District of Columbia and includes detailed reports for every state. This study demonstrates that access to justice often depends on where a person lives and that in most states, there is a patchwork of independent civil legal services providers and court-based services for unrepresented litigants rather than a coherent delivery system. The study found:

Diversity and fragmentation combine to create an access to civil justice infrastructure characterized by large inequalities both between states and within them. In this context, geography is destiny: the services available to people from eligible populations who face civil justice problems are determined not by what their problems are or the kinds of services they may need, but rather by where they happen to live.³

This study also provides a snapshot of some of the innovative changes in service delivery models made by legal aid providers to address the crisis and reach more clients and by state judicial systems to deal with the swelling population of unrepresented litigants in their courts. Some states have focused efforts to improve court operations to help unrepresented litigants, such as simplifying court forms and procedures and revising the roles of judges, mediators and clerks to have them be more active. Some have implemented court-based self-help computer kiosks and pro se assistance centers staffed by court personnel. These kiosks contain computer programs that assist people in providing the information required for specific court forms or describe the process that people will go through as they pursue or respond to a claim. Some kiosks provide access to interactive document assembly programs that were developed by LSC funded organizations to assist pro se litigants in completing court pleadings using software such as Hot Docs or A2J Docs. About half the states have moved to create Access to Justice Commissions: blue ribbon commission that bring together leaders of the judiciary, the bar, civil legal aid providers and other key stakeholders to work collaboratively on statewide access to justice initiatives.

³ Rebecca Sandefur, Across America: First Report of the Civil Justice Infrastructure Mapping Project , (October 2011)

http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf

The recession also led to a renewed effort to conduct empirical studies of the financial benefits of providing legal services. Some benefits documented by these studies include:

- Saving public money by helping victims of domestic violence obtain protection orders and child custody and support arrangements that enable them to leave an abusive relationship and avoid further violence. This reduces public spending on medical care for injured victims and sustains their work productivity; reduces the need for special education and counseling for affected children; reduces the drain on police resources and prisons for perpetrators; and reduces victims' property losses;
- Saving public money by helping children leave foster care more quickly through family reunification or adoption, which reduces public expenditures for foster care payments, subsidies for medical care, cash benefits and monitoring foster care families;
- Saving public money by protecting patients' health, reducing public funds for health care as well as generating more revenue for hospitals in the form of insurance reimbursement and government benefits; and
- Generating greater economic activity and revenue in states by helping low-income clients secure financial help from federal safety-net programs, such as SNAP, SSI and SSD, which is then spent in local economies, producing income for businesses and jobs.⁴

In many states, economic impact studies have been undertaken to quantify the economic and societal benefits and cost savings from providing legal aid services for states and local governments. These studies have been used to support the case for increased funding. Some of the results from these studies are staggering:

- A 2009 Texas study found that for every dollar spent on providing indigent civil legal services, the Texas economy gained \$7.42 in total spending, \$3.56 in gross output and \$2.20 in personal income. Texas state and local governments benefited from approximately \$30.5 million in yearly fiscal revenues from legal aid's work even though only \$4.8 million in state and local funding supported legal services.⁵

⁴ Laura Abel, *Economic Benefits of Civil Legal Aid*, (September 4, 2012), National Center for Access to Justice at Cardozo Law School, available at http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2013/05/nat_1_mtg_of_access_to_justice_cmmnchairs/ls_sclaid_atj_economic_benefits_of_legal_aid.authcheckdam.pdf. See also, Laura Abel and Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 SEATTLE J. FOR SOC. JUST. 139 (Fall/Winter 2010) available at <http://www.law.seattleu.edu/Documents/sjsj/2010fall/Abel.pdf>.

⁵ The Perryman Group, *The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential* (February 2009), available at <http://www.texasatj.org/files/file/Perryman%20Report.pdf>

- A 2012 Massachusetts study found that the state received an increase of \$48 million in economic revenue and cost savings from the state’s appropriation of only \$10.5 million for legal services.⁶
- Here in Pennsylvania, a 2012 economic impact report found that for each dollar spent on legal aid, there is \$11 of quantifiable revenue and savings for the state. In 2011, there was a total of \$53.6 million from all sources spent on civil legal services that produced \$594 million in income and savings for the state and generated 2,643 jobs for Pennsylvania workers.⁷

New York, where I practice, has, under the leadership of Chief Judge Jonathan Lippman, taken a bold approach to expanding access to legal services, and it began that effort during the height of the economic crisis. In 2010, the Judge Lippman formed a Task Force to Expand Access to Civil Legal Services and announced a proactive plan to hold annual public hearings to assess the extent of the unmet needs of low-income civil litigants and to come up with recommendations to address those needs. The initial round of hearings resulted in a Report and Recommendations that included a proposal to provide \$100 million per year in new funding for legal aid phased in over four years in New York State’s judiciary budget, with an initial \$25 million line item for FY 2011-12 and a further \$25 million increase for the three successive years. This funding formula was created by using 2009 data compiled by New York’s Interest on Lawyers Account Fund (IOLA) that found that, on average, one eligible applicant for civil legal services with a serious legal problem was turned away for every applicant who was served. The plan called for increasing the current overall \$208 million statewide civil legal services funding by half. The amount that was finally approved by the legislature and governor for FY 2011-12 was \$12.5 million. While this was only half of the amount that the Chief Judge had requested based on the Task Force proposal, it was an enormously successful first step, especially in light of severe overall reductions in the judiciary’s budget during that fiscal year.

The funding was distributed, on top of existing funding, to qualified legal services programs by IOLA to address case priorities involving “essentials of life” (housing, family, access to health care and education and subsistence income, including benefits and consumer debts). **For the following year, Fiscal Year 2012-13, the judiciary budget included \$40 million for civil legal**

⁶ See Massachusetts Legal Assistance Corporation’s 2012 FY12 Economic Benefits Statement at http://www.mlac.org/pdf/Economic_Benefits_Fact_Sheet_FY12.pdf

⁷ <http://www.paiolta.org/Grants/The%20Economic%20Impact%20of%20Access%20to%20Justice%20-%20STATEWIDE%20FOCUS-FINAL%204-11-2012.pdf>. ;See, also, http://www.paiolta.org/Grants/Appendix_Statewide%20Economic%20Impacts%20Fact%20Sheet_FINAL_4-11-2012.pdf;

http://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/TPL_mag_Fall12_probono.pdf

services in New York. The Task Force is in the midst of its hearings for this year and it is likely to recommend that the State stay the course set forth in the original report and add an additional \$25 million for civil legal services to the budget.

The Task Force also found that funding civil legal services is good for the state's economy. The Task Force calculated that for every dollar spent on legal services, there is a five dollar return that benefits the New York economy. According to the Task Force, the state also loses approximately \$400 million or more in overall revenue each year due to the inability of unrepresented litigants to access federal benefits.

In addition to its funding recommendations, each year the Task Force has also recommended other measures, some of them quite bold, to address the crisis. Many of these measures have already been implemented, some are still works in progress. These measures include:

- Increasing pro bono assistance through law schools and private lawyers by:
 - Generating more law school clinics, externships, volunteer initiatives, and student subsidies to provide legal services;
 - Devoting court time and resources to supporting pro bono work by creating a range of programs, such as expanding the existing Lawyer-for the Day Programs and Volunteer Attorney Programs in which court personnel train and supervise pro bono lawyers who provide court-based legal advice and assistance to unrepresented litigants;
 - Convening the Deans of the 15 New York law schools and other leaders to make recommendations on how to increase law school involvement and student opportunities;
 - Adopting a rule that requires all applicants to the New York Bar to perform fifty hours of pro bono service before they can be admitted to practice and expanding the scope of the Attorney Emeritus Pro Bono Program
- Encouraging early intervention, prevention and alternative conflict resolution initiatives (e.g., mediation and diversionary programs) and community legal education to avert or reduce litigation.
- Helping unrepresented litigants navigate the court system without legal assistance by:
 - Standardizing court forms, instructions, and procedures; improving the court system's website; and expanding outreach programs
 - Assessing the efficiency of courts by studies and surveys.
- Increasing efficiencies in the delivery system for civil legal services by:
 - Ensuring delivery of client services is accountable, effective, and efficient. Maximizing collaboration among providers to avoid duplicated effort and minimize cost.
 - Promoting greater use of technology and expand strategic partnerships with non-legal entities.

- Licensing of non-lawyer limited practices that may provide a range of assistance, such as providing individualized information regarding court procedures, completing and reviewing forms, performing legal research, drafting letters and related tasks.⁸

CONCLUSION

I started my legal career as a legal services staff attorney in the South Bronx in 1978, near Fort Apache, when the Bronx was literally burning. I saw immediately what an enormous difference having a lawyer made in the lives of our clients. With counsel, they were able to stay in their homes, keep their families together, keep food on the table and improve their communities. I recognized then that the biggest problem faced by legal services was our inability to serve the vast majority of poor people who needed our help. I recognized then, and I continue to believe 35 years later, that there is something fundamentally unfair about a judicial system in which you must pay to play, a system in which you must fend for yourself in legal disputes that affect the most fundamental of human needs – home, family, physical well-being. I recognized then, and I still firmly believe, that due process, fundamental fairness and the rule of law require that we recognize a right to counsel in civil matters that affect critical human needs.

But I also recognize, as does the ABA, that establishing a civil right to counsel is a formidable task that will take time and will likely only be accomplished in incremental steps. The movement toward expanding access to justice will not, alone, establish a right to counsel, but it will move us in that direction and most importantly, it will address, in meaningful ways, the fundamental unfairness that plagues our system of justice. Pennsylvania is clearly engaged in a serious and concerted effort to find its own path to greater access to justice. You will, I am confident, break new ground, advance more fairness and equity in the administration of justice and create models for others to follow. I wish you well and stand ready to assist however I can.

⁸ Jonathan Lippman, New York's Template to Address the Crisis in Civil Legal

Services, 7 Harv. L. & Pol'y Rev. 13 (Winter 2013), available at

<http://www3.law.harvard.edu/journals/hlpr/files/2013/06/New-Yorks-Template-to-Address-the-Crisis-in-Civil-Legal-Services.pdf>

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ANDREW SCHERER is a long-standing leader in the public interest legal community and in the organized bar. He is an accomplished litigator and advocate, the author of a widely respected treatise, Residential Landlord-Tenant Law in New York (originally published in 1994 and updated annually), and of many other published works. He is also a highly experienced professor and public speaker.

Currently, Mr. Scherer works as a consultant and expert witness in matters involving public policy, legal analysis, evaluation and advocacy, particularly with respect to: access to justice, delivery of legal services and the rule of law; housing, property and land use rights; and social, economic and civil rights. His clients include public agencies, nonprofit organizations and private law firms with local, national and international scope. Some current and recent projects include: statewide and regional program evaluations of civil legal services programs (for the Legal Services Corporation and the Massachusetts Legal Assistance Corporation); housing, land and property rights assessment and recommendations in Myanmar/Burma (with Displacement Solutions); social and economic rights and public interest litigation training and advice for the Kenyan judiciary (African Centre for Int'l Legal and Policy Research); coordinator of a working group on NYC Housing Court reform and consultant for a study of NYC small building rental housing (as a Senior Fellow at the Furman Center on Real Estate and Urban Policy at NYU).

Mr. Scherer is also an Adjunct Professor at the Columbia University Graduate School of Architecture, Planning and Preservation, where he has been teaching Planning Law for the past 17 years.

In May of 2010, Mr. Scherer stepped down after nine years as Executive Director of Legal Services NYC (LS-NYC), the largest nonprofit civil legal services organization in the United States. He had been with the organization since 1978. With an annual budget above \$45 million, 17 offices throughout New York City's five boroughs, and 400 staff members, including 225 attorneys and 50 paralegals, LS-NYC handled, during Mr. Scherer's tenure, approximately 25,000 cases each year on behalf of low-income people who are unable to pay for counsel. As Executive Director, Mr. Scherer led the organization through a period of significant growth and development. Accomplishments of his tenure included: significantly increasing services, funding (both private and public), staffing and pro bono participation; successfully completing a major organizational strategic planning and restructuring; and greatly expanding the organization's docket of major litigation.

Prior to his tenure as Executive Director, Mr. Scherer was the Director of the LS-NYC's Legal Support Unit, where he developed the first New York State-accredited continuing legal education program in poverty law. Before that, he was the organization-wide Housing Coordinator, and a staff attorney in the organization's Bronx unit. In those capacities, he was lead and co-counsel in numerous law-reform litigation efforts involving housing policy and the rights of low-income people.

Among his many affiliations, Mr. Scherer is a founding member of the National Coalition for a Civil Right to Counsel, an active member of the New York City Bar Association and a former chair of its Executive Committee, an active member of the New York State Bar Association and the current chair of the Civil Gideon subcommittee of the President's Committee on Access to Justice, and a former co-chair of the NYS Legal Services Project Director Association.

Mr. Scherer has extensive teaching and public speaking experience. In addition to his current teaching position at Columbia, he has taught at City University of NY Law School, New York University Law School and Bennington College. He has lectured widely in the areas of access to justice, housing, property and economic rights in the U.S., Latin America and Asia.

Mr. Scherer received his B.A. from the University of Pennsylvania in 1972 and his J.D. from NYU Law School in 1978. He is fluent in Spanish.

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Testimony to the Pennsylvania Senate Judiciary Committee:
“Civil Legal Representation of the Indigent: Have We Achieved Equal Access to Justice?”
Tuesday, October 29, 2013

Good afternoon. I am grateful to Senator Greenleaf, the members and staff of the Pennsylvania Senate Judiciary Committee, and to the Pennsylvania Civil Legal Justice Coalition for allowing me to join you this afternoon. I also wish to acknowledge Chief Justice Castille’s leadership in this effort to ensure that all Pennsylvanians have equal and meaningful access to their justice system.

I am delighted to be here, and not just because my professional focus centers on promoting effective Access to Justice - or “ATJ” - projects. I also have a personal investment in narrowing Pennsylvania’s justice gap. I began my legal career at the Philadelphia Volunteers for the Indigent Program. Before that, I was a student at Temple Law School and a law clerk with Philadelphia Legal Assistance. Before that, the University of Scranton. And before that, Cardinal Dougherty High School in Philadelphia. Meaningful access to justice in Pennsylvania is meaningful to me not just because of where I am now, but because of where I have been.

In July I met with the Civil Legal Justice Coalition to explore the idea of creating a Pennsylvania Access to Justice Commission. The question we addressed was whether a Commission could be an optimal vehicle to lead, innovate and coordinate efforts to narrow the

justice gap for Pennsylvanians on the society's margins: domestic violence victims, impoverished veterans seeking benefits, families facing foreclosure. We took into account the dynamics of Pennsylvania's ATJ community, and the experiences of other states.

Now, having met with the Coalition and given this question further thought, I believe that an Access to Justice Commission will allow Pennsylvania's ATJ community to institutionalize its deep experience, expertise, and commitment to equal justice. More importantly, a Commission *will* serve as the optimal vehicle to build on past achievements and make concrete progress toward narrowing the civil justice gap.

I will do two things this afternoon.

- I. First, I will briefly look at the ATJ Commission movement from altitude, exploring how and why Commissions have been so effective elsewhere, and how the trend toward embodying our equal justice goals in Commissions has picked up remarkably in the recent past.
- II. Second, I will explain why a Commission is the right answer, right now, in Pennsylvania.

The ATJ Commission Movement: Swift Growth & Remarkable Results

What are Access to Justice Commissions? They are state-based leadership bodies that join the legal aid community, the courts, the organized bar, and other key stakeholders. Commissions are composed of a group of high-level individuals who bring expertise and a

variety of experiences to the cause of equal justice. Thus, commissions are able to act on several fronts to improve the delivery of legal services to those who are most in need.

What are Commissions *not*? Commissions are not superficial solutions. They are not window dressing. They are not “one more commission” thrown at a problem.

Commissions throughout the country have tackled, straight-on, our justice system’s most vexing problem - justice for some, but not all - by developing and implementing new solutions that:

- Increase funding for our civil legal aid infrastructure
- Catalyze new investment by the private bar in pro bono
- Assist self-represented litigants on *their* terms - via help desks, education programs, and simplified court forms
- Engage law students as tomorrow’s ATJ stakeholders

What does the Commission movement look like outside of Pennsylvania? The concept is swiftly growing. The first Commission was founded in Washington State in 1994. In 2000, there were three Commissions. Now, in 2013, there are 30 Commissions. Just in the past 15 months Commissions have launched in Illinois, Indiana, and Virginia. I suspect that three more could launch in the next 15 months. Commissions exist in many states that border or neighbor Pennsylvania, including: New York, West Virginia, Virginia, Maryland, and Washington, DC. Delaware and Ohio are exploring Commissions.

And notably, both the American Bar Association (ABA) and the Conference of Chief Justices (CCJ) have lately renewed their strong institutional support for ATJ movement. The [Conference of Chief Justices resolution](#) (which was adopted jointly with the Conference of State Court Administrators) reaffirms “their support for the aspirational goal that every state and United States territory have an active access to justice commission or comparable body.” Likewise, the [ABA resolution](#) “urges establishment of and support of access to justice commissions or comparable bodies in all states and territories.”

Why an ATJ Commission is Ideal, Right Now, in Pennsylvania

There are three reasons why you may seize on the perfect time for all of Pennsylvania’s ATJ stakeholders to move from unity of purpose - promoting equal access to justice - to unity of action, through the kinds of coordination and focus that a Commission will bring.

The Commission will:

1. Institutionalize what the Civil Legal Justice Coalition’s many members have already accomplished, and in doing that, create a platform for continued innovation;
2. Solidify the partnerships that Pennsylvania’s many ATJ stakeholders, including the courts, have formed;
3. Sustain your work by ensuring effective leadership transition/development.

To explore these ideas in turn:

Institutionalize past successes and create a platform for future innovation. The Commission is the natural evolution of the Coalition’s, and its partners’, considerable work.

The Commission will serve as the means to not only to sustain your past successes, but just as importantly, to develop more solutions toward narrowing the civil justice gap. This has been the case in other states. For instance:

- The [Tennessee Access to Justice Commission](#), created in 2009, has had a catalyzing effect on how the Supreme Court and other ATJ stakeholders approach their mission. Since the Commission was created, efforts to engage the private bar in pro bono have ramped up through [a first-ever statewide summit](#) and the [adoption of plain-language court forms which are accepted throughout the un-unified state court system](#). As to innovation, Tennessee has launched a first-of-its-kind [Faith & Justice Alliance](#) which brings faith communities in as partners in helping to identify and address the legal needs of the congregants, particularly those who are low-income or otherwise vulnerable.
- In Maine, the [Justice Action Group](#) – which functions as the state’s ATJ Commission – on Law Day this past spring launched the [Lawyers in Libraries](#) program. Lawyers in Libraries sent volunteer attorneys to libraries throughout the state in order to deliver educational seminars and participate in clinics, all serving members of the local community with legal needs.

And on an important, related note, the Commission lends prestige and visibility to the goal of securing equal justice. A group composed of leaders from the highest echelons and cutting across different sectors of the profession is going to have clout – especially when it speaks as one.

Solidify a diverse partnership that includes the Supreme Court and the judiciary as long-term stakeholders. Before a Texas Access to Justice Commission formed, the state had a (recently reorganized) strong legal aid infrastructure, bar support, and IOLTA. The Supreme Court was interested in a Commission as a means to formalize its role as an ATJ partner. The Commission, since then, has had a huge impact on expanding support, increasing state funding – [largely with the leadership of former Chief Justice Wallace Jefferson and current Chief Justice Nathan Hecht](#). The Commission has also taken a lead role in engaging corporate counsel as pro bono partners, [supporting the use of technology in delivering legal aid](#), and offering trial skills training to the legal aid community.

To offer a second example of the Commission cementing an ATJ partnership with the courts, as already noted in Tennessee the ATJ Commission has been the vehicle for the Supreme Court to engage on issues of boosting pro bono, [supporting self-represented litigants](#), and in other ways.

Finally, in Illinois Justice Thomas Kilbride, who just stepped down last week from the Chief position as his three-year term came to end, was a driving force in creating the new Illinois Supreme Court Commission on Access to Justice. With (then Chief) Justice Kilbride acting as a key proponent, [the state passed an Access to Justice Act which, among other things, created the funding mechanism for a pilot program to expand civil representation for poor people and military veterans](#). The Commission is continuing its work to expand funding for legal aid.

Sustain long-term viability and continuity by ensuring effective leadership development. ATJ Commissions effectively recruit and develop new leaders to support their mission. In some

circumstances, people who have long been ATJ proponents find that a Commission offers them chances to do high-level work in support of ATJ. This could be particularly useful as many Baby Boomer Generation leaders move into retirement from their “day jobs,” but may wish to stay formally engaged in ATJ work.

In other circumstances, people become acquainted with ATJ issues, invest in the mission, and become new ATJ champions. As noted, in Tennessee and Texas the Commissions have allowed Supreme Court Justices to play more active roles in promoting ATJ. And the flipside to the coin about Commissions allowing more senior members to stay engaged is this: Commissions offer a means to recruit and cultivate more junior ATJ leaders.

Conclusion

The ATJ community in Pennsylvania has already accomplished much. These accomplishments have resulted from collaborative approaches, new ideas, and strong leadership. These three things are core ingredients in creating an Access to Justice Commission. In this way, launching a Commission to build on your successes and to achieve new successes is a natural next step.

Commissions are at work now in states stretching from Maine to Hawaii, in rural states and in those driven by urban centers, in states as densely populated as Massachusetts and as thinly populated as Wyoming. In those states Commissions provide key leadership to the ATJ community. But more importantly, given the dynamics here in Pennsylvania, a Commission

would serve as a platform for innovation and leadership, and would forge a powerful partnership between the state's ATJ stakeholders.

I am quite grateful for allowing me to join you today, and for the time and energy you have committed to this most important cause.

Steven Grumm directs the American Bar Association's (ABA) Resource Center for Access to Justice Initiatives, and also serves as associate counsel to the Standing Committee on Pro Bono & Public Service. Steve provides support to state supreme courts, bar leaders and civil legal aid leaders to nurture the creation and expansion of blue-ribbon commissions on access to civil justice. He also supports the ABA's efforts to promote best practices and innovation in pro bono work. Before joining the ABA Steve served as Director of Public Service Initiatives with NALP. In that role he focused on recruitment, retention, and professional development issues affecting public interest attorneys. Steve began his legal career as a legal aid lawyer in Philadelphia, where he helped to launch a pro bono project focused on community economic development. Steve is a board member and past president of the Washington Council of Lawyers, the District of Columbia's voluntary public interest bar association.

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CIVIL LEGAL JUSTICE COALITION

FINDINGS AND RECOMMENDATIONS

Introduction

The Civil Legal Justice Coalition (the “Coalition”) is a statewide coalition of bar leaders, the public interest legal community, and other key stakeholders that was formed in 2013 to work collaboratively on exploring and implementing strategies to improve access to justice and address the growing crisis in the unmet civil legal services needs of low-income Pennsylvanians. Coalition goals include generating broader awareness of this crisis and highlighting the significant economic and societal benefits that are provided through legal services, as well as studying and proposing strategies and solutions that will alleviate this crisis and improve access to justice.

The Coalition has been working with Senator Stewart J. Greenleaf and the Senate Judiciary Committee in a series of hearings across the Commonwealth on the state of civil legal representation for low-income and disadvantaged residents and access to justice issues.

Senator Greenleaf has called upon the Coalition to suggest findings relating to improving access to justice, and to present those to the Judiciary Committee. In addition, the Coalition will be preparing a report following the hearings to include updated findings.

The findings relate, as appropriate, to the legislature, the judiciary, the executive branch, law schools, the organized bar, and non-profit organizations that deliver legal services throughout the Commonwealth. Some findings related to several governmental branches and/or other partners.

Overview and Disclaimer

At every stage, the efforts to expand access to justice have been collaborative. In preparation for the hearings, and well before the hearings were scheduled, a substantial amount of investigation, research and analysis was conducted, and seminars and forums presented, in connection with addressing the substantial gap in legal services. These investigations have been conducted by many groups, including the Philadelphia Bar Association’s Task Force on Civil Gideon and Access to Justice (Task Force), the Access to Justice Committee of the Pennsylvania Bar Association, the IOLTA Board, Pennsylvania Legal Aid Network (PLAN) and others. The Coalition is a statewide group formed as a result of this work with the goal of reporting comprehensively on the existing gaps in access to justice, and the need to make civil legal representation available to all those in need who cannot afford to retain counsel. The findings set forth here are the culmination of this work.

The findings contained in this document have been endorsed by the Civil Legal Justice Coalition and are being presented to the Senate Judiciary Committee only on behalf of the Coalition. At this time, this document does not represent the official policy or position of the Philadelphia Bar

Association, Pennsylvania Bar Association, Allegheny County Bar Association, Pennsylvania IOLTA Board or the Pennsylvania Senate Judiciary Committee.

1. QUANTIFYING THE NEED FOR CIVIL LEGAL SERVICES FUNDING IN PENNSYLVANIA

To assess the current funding of legal aid in Pennsylvania, the Coalition examined the revenue sources of the Pennsylvania civil legal aid provider organizations that receive IOLTA grant funding. The purpose of this section is to establish a target amount of funding needed to support access to justice in the civil justice system. The purpose of this is not to establish a timeline to get to this goal, which is a multi-year endeavor.

Funding to civil legal aid programs produces an impressive rate of return. An independent study recently conducted for the Supreme Court’s Pennsylvania IOLTA Board concluded that for every dollar invested in legal services in Pennsylvania, there is an eleven dollar return. There is further discussion of this study at the end of this section.

Total annual funding received by the 39 IOLTA-funded legal services organizations, which includes all of the PLAN programs, is \$78,050,000. This total includes revenues from several sources: federal, state, IOLTA, filing fees, local government, United Ways, donations from attorneys, bar associations, foundations and other sources. A limited number of legal aid providers do not receive PLAN or IOLTA-administered funds, and we estimate their revenues to be about \$5 to \$10 million. The Coalition therefore estimates that there is approximately \$85 million of current total funding.

Determining the Funding Need: Relevant Factors to Consider

Current levels of funding have been found by careful study to support service delivery to just 50% of the eligible clients that seek help from a legal aid office⁹; the other 50% are people eligible for legal services and asking for help, but who have to be turned away. In the rural parts of Pennsylvania, the numbers of those turned away are even greater. Other studies have shown that legal aid programs are serving only 20% of the total need, including both those that have and those that have not sought help¹⁰. Judges frequently report that as many as 80% to 90% of parties before them on family law matters, especially custody, are unrepresented.

These studies were conducted before the most recent economy decline, which rendered more people eligible for legal services, with even fewer resources to serve them. Rhodia Thomas, Executive Director of MidPenn Legal Services, testified at the May 7 Judiciary Committee hearing, “We’re doing 5 to 10 percent of the need for the people who are coming to access our services. And also, there’s just a growing number of people who try to access our services who can’t get help who have just given up. So that number we can’t even count, we can’t quantify, because we don’t know how many people there are.”

⁹ Legal Services Corporation, “Documenting the Justice Gap” 2009.

¹⁰ Legal Services Corporation, “Documenting the Justice Gap” 2009.

As of June 30, 2012, the 39 IOLTA-funded organizations employed a total of 383 attorneys, or one lawyer for every 4,198 Pennsylvania residents living in poverty. Compare that to the 62,706 Pennsylvania attorneys¹¹ available to serve those that can afford representation, or one lawyer for every 177 Pennsylvania residents not living in poverty. The disparity is impossible to ignore. Improving this representation ratio is the key to successfully reducing the number of people being turned away.

Additional Funding Necessary to Help More People and Families

As an initial step toward the ultimate goal of serving all eligible clients in need, the Coalition finds that funding must be secured to address the problem that 50% of the eligible clients actually asking for help are turned away due to lack of resources. If \$85 million serves 50% of eligible clients seeking help, and economies of scale are considered, the Coalition respectfully concludes that \$50 million in additional funding, not an actual doubling of funding, would be needed to significantly reduce the number of eligible clients who are currently being turned away by legal aid due to a lack of resources.

An additional \$50 million in funding could enable legal services programs to hire hundreds of additional advocates, which would increase by as much as 64% the number of legal problems solved for an additional 95,000 individuals and families facing legal crises, where basic life necessities, such as shelter, sustenance, safety, health and the custody of children are at risk. While studies show the overall need to be greater, addressing the current level of need based on those eligible for services and asking for help is crucial.

This is not to find that there could be an immediate increase on this scale. Other states have set target funding levels at higher amounts (Maryland and New York both concluded that \$100 million was needed) and have suggested phase-in schedules. The target for Pennsylvania will take a number of years to reach, but it is necessary to set a reasoned target and to make strides to reach that target over a limited period of years.

Funding to Civil Legal Aid Translates to Dramatic Economic Benefits for Pennsylvania

Finally, the economic benefits of funding for legal aid must be underscored. Andrew F. Susko, Esquire, then-Chair of the IOLTA Board, testified at the May 7, 2013 hearing about an independent study, commissioned by the Board, entitled “The Economic Impact of Outcomes Obtained for Legal Aid Clients Benefits Everyone in Pennsylvania.” The study found an eleven-fold return on investment for each dollar spent on legal aid in Pennsylvania. In other words, for each dollar spent on legal aid, there is an \$11 return to Pennsylvania and its residents. For example, emergency shelter costs are saved when clients are protected from domestic violence or from losing their homes to foreclosure or eviction; domestic violence victims and the state also save on medical costs, when victims are protected from domestic violence; and state benefit costs are saved when disabled clients are found to be eligible for federal disability benefits and medical coverage. Studies in a number of other states support these conclusions.

¹¹ Disciplinary Board of Pennsylvania, 2012 Annual Report.

2. MOVING TOWARD ESTABLISHING AN ACCESS TO JUSTICE COMMISSION

The Coalition recommends the establishment of an Access to Justice Commission, as well as further study and recommendations based on this study, including recommendations for the proposed composition, mission and structure of a Commission.

- Over the past few years, there has been a growing movement throughout the nation for states to create Access to Justice Commissions (ATJC). Thirty states have created Access to Justice Commissions and an additional ten states are in the process of evaluating the benefits of creating one.
- An ATJC is a blue-ribbon commission or similar formal entity that brings together leaders of the courts, the bar, civil legal aid providers and other key stakeholders to work in a coordinated and collaborative effort to expand access to civil justice at all levels for low-income and disadvantaged people in the state (or equivalent jurisdiction) by assessing their civil legal needs, developing strategies to meet them and evaluating progress.
- Both the American Bar Association House of Delegates and the Conference of Chief Justices (CCJ), at their recent 2013 annual meetings, adopted resolutions reaffirming their commitment to promote the work of ATJCs.
- The Coalition recommends the establishment of an ATJC for Pennsylvania, so long as two key concerns are addressed in the design of the ATJC. First, it must be designed with careful concern to assuring a cross-section of interests and membership, so that it truly reflects the myriad of interests such a body will address. Second, it must be designed in a way that the operation funding of the ATJC itself is established and is modest. The ATJC should be adequately supported to perform its responsibilities but should not be a drain upon the resources otherwise used to support access to justice itself.
- Further study should address recommendations on the mission, composition, and structure of an ATJC, as well as identify the activities of the ATJC, which may include all of the activities identified below as proposed solutions. The following proposed solutions should be studied and considered further either by the Coalition or by a future ATJC.

3. ADDITIONAL RECOMMENDATIONS TO CONSIDER

The Coalition has identified the following additional proposed solutions for further consideration and study, which may help to substantially increase access to justice and reduce the civil legal justice gap, if implemented. These proposed solutions would need to be adopted and approved by the appropriate body to which they are addressed, as well as endorsed by appropriate key stakeholders, bar associations and other entities.

Proposed Solution 1: To increase pro bono participation, study initiatives intended to expand the delivery of free legal services, such as the following, and then make further recommendations based on this study.

- Amend Pennsylvania Rule of Professional Conduct 6.1 to adopt the language of the ABA’s Model Rule 6.1 that calls for every lawyer to aspire to render at least 50 hours of pro bono service annually.
- Amend the Pennsylvania Bar Admission Rules to require that all applicants perform 50 hours of pro bono service with a qualifying organization as a requirement for admission to Pennsylvania bar.
- Adopt an “emeritus rule” that permits retired lawyers and other lawyers who are no longer engaged in the practice of law to provide pro bono service in conjunction with a qualifying organization, either without having to pay annual attorney registration fees or at a substantial discount.
- Award attorneys CLE credit for pro bono service performed for low income persons in conjunction with a qualifying organization.

Proposed Solution 2: Study whether every judicial district in the Commonwealth should consider adopting minimum standards intended to improve access to justice, and then make recommendations based on this study.

- Further study is required to determine what uniform requirements should be created.
- Examples are self-help centers and materials, on-line forms and innovative technology, clinics, facilitation of discrete-task representation, simplification of forms and procedures, judicial training, and enhanced use of technology, and other methods.
- The study should include how the development and implementation of the tools deemed necessary for access to justice will be funded.

Proposed Solution 3: Further study innovative court programs with demonstrated success to identify which measures, if any, should be recommended for development in every judicial district.

- Examples are foreclosure diversion programs, landlord-tenant diversion programs, and consumer credit diversion programs.
- Further study should include determining whether any programs should be mandatory across Pennsylvania. Intent is to require such programs but to accord counties flexibility in developing the model that works best locally.

Proposed Solution 4: Study whether all Commonwealth administrative agencies that conduct adversarial hearings and render adjudications should review their procedures and forms and simplify and standardize the public’s access to services and benefits.

Proposed Solution 5: Explore how Pennsylvania law schools may help to reduce the gap between the need for legal services and available services and help promote public awareness and understanding.

- Activities may include asking law schools to convene a meeting with key stakeholders to explore how they may contribute to solutions to close the justice gap either alone or in collaboration with others.
- Another possible step would be for Pennsylvania law schools to explore amending their curriculum to include courses or programs of study examining access to justice.

Proposed Solution 6: Undertake a comprehensive study of the feasibility of and costs of providing counsel at public expense for indigent persons in adversarial civil matters involving basic human needs, such as shelter, custody, health and safety.

- This comprehensive study would incorporate all the research, studies and evaluations conducted thus far by the Task Force, PLAN and the other organizations identified in the Overview and Disclaimer section of this report.

Proposed Solution 7: Study the system of legal services programs and delivery to determine whether there are changes that could be made to promote efficiencies in service delivery and to provide easier access across the Commonwealth, including urban and rural areas.

- Proposed changes may include consolidation of intake systems or sharing costs among programs for back-office services, such as accounting and IT.
- Further study may also include evaluating how to increase collaboration and coordination among legal aid providers.

Proposed Solution 8: Study and consider how to increase public awareness of the critical need for expanded access to justice and civil legal assistance to low-income residents and a greater understanding of the rule of law and how individuals may secure access to justice.

- Activities and recommendations may include conducting legal needs studies, communications campaigns, additional public hearings, and other events.

Honorable Dick Thornburgh

Former Governor, Commonwealth of Pennsylvania

Former U.S. Attorney General

“Equal Justice Under Law”

By Dick Thornburgh

I regret that an unavoidable conflict keeps me from presenting my remarks in person, but I submit these written remarks to the Pennsylvania Senate Judiciary Committee, in connection with its October 29, 2013 third and final hearing on Civil legal representation of the indigent and whether we have achieved equal access to justice. I suggest we have not.

The aspiration emblazoned upon the façade of the U.S. Supreme Court — “EQUAL JUSTICE UNDER LAW” — cannot be achieved in a society that does not provide competent counsel to all who require it. Those in need cannot be left to sink or swim in an increasingly complex legal environment. But we can be proud of the steps taken over the years by the legal profession to meet their needs.

It hasn't always been so. Fifty years ago, when I first commenced the practice of law, counsel for indigent persons was provided on a more or less hit-or-miss basis. Various legal aid mechanisms, often funded through the local Community Chest or United Way, were available on a limited basis and bar committees tried to take up the slack where possible. In Allegheny County, where I practiced, I chaired the bar's public service committee, which worked with the courts to supply lawyers in criminal cases and provide referrals in civil cases from a roster of willing volunteers, but all on an ad hoc basis.

That all changed in the 1960s. The landmark case *Gideon v. Wainwright* established a constitutional right to a lawyer in most criminal cases. This led in turn to the establishment of public defender offices in many areas. Following a survey of all 67 counties carried out by the PBA Young Lawyers Division while I served as its chair, which survey highlighted shortcomings in this area, legislation was enacted providing for such an office in every county. Thereafter, during Pennsylvania's 1967-68 constitutional convention, where I served as an elected delegate, I was privileged to co-sponsor a constitutional provision mandating a public defender's office for each county.

About the same time the need for legal services in civil cases prompted the establishment of local legal services organizations such as the Neighborhood Legal Services Association (NLSA), serving Pittsburgh and surrounding counties, of which in 1966 I was an incorporator and original board member.

Federal dollars from that era's so-called "war on poverty," and state dollars beginning in 1973 provided steady and reliable funding for these operations. Some local lawyers saw competition from legal services organizations as a threat to their own practices. These issues were hotly debated, but most local bar associations ultimately approved the concepts underlying these legal services programs and lawyers have long since recognized that the clients represented by civil legal services programs do not have the means to hire their own counsel. In fact, instead of challenging this so called competition, lawyers and bar associations now offer help to legal services programs and to their clients, in the form of financial contributions and pro bono representation of eligible clients. .

Now, of course, organizations like NLSA are firmly established. Recently, our Allegheny County group celebrated its 45th anniversary and assembled alumni from across the nation for a reunion in Pittsburgh, complete with a yearbook-type publication featuring bios and a photograph of an impressive group — those who went on to distinguished public- and private-sector careers from their beginnings as staff or board members of the legal services organization. Nearly 50 alumni of NLSA have gone on to be judges or public office holders.

The efforts to promote access to justice have had their ups and downs, to be sure, but it has long since been recognized that legal services organizations are an important component of our system for the fair and even-handed administration of justice.

Today we face severe challenges in the civil legal services area. Indeed, true crises exist in many communities. Let me share with you some statistics compiled by the Legal Services Corporation (LSC), the national umbrella agency and largest single funder in this field, from its 134 programs across the United States.

- The number of people eligible for civil legal assistance is soon expected to reach nearly 66 million, an all-time high.
- The sharp rise in economic turbulence has been coupled with a shrinking pie of appropriations as federal support has been reduced 17 percent since 2010 to just \$348 million this year, an inflation-adjusted all-time low.
- Legal aid offices have been closed, staff has been laid off and more people have been turned away as fortunes declined. Nearly 1,500 positions are projected to

have been eliminated as of this year, from LSC-funded programs, a more than 15 percent reduction, and these programs have been obliged to turn away more than 50 percent of those seeking aid.

Last year LSC created a Pro Bono Task Force to assess how the effectiveness of its programs might be enhanced by more private-sector participation. I was pleased to have been a member of that task force. The ultimate recommendations included specific ideas as to how lawyers, law schools, legal aid programs, and LSC could enhance services. The task force recognized the incredible and significant contributions to access to justice for low income people, offered by pro bono lawyers across the nation, donating their time and treasure to help others. I commend that report to you, which can be found on the LSC website at http://lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf.

The Task Force also concluded that legal aid programs themselves form the invaluable core for services to low income clients and that pro bono services, while extremely important and valuable, cannot solve the problem; there need to be added resources for legal services programs. Stakeholders should recognize that pro bono lawyers cannot do it all. They will never replace the tireless efforts of legal aid lawyers, who are experts in what they do and who work on the front lines every day. Policymakers should fund programs to support pro bono involvement, but this should not come at the expense of adequately funding legal services.

All of this is designed to further the fulfillment of Judge Learned Hand’s timeless admonition: “Thou shalt not ration justice.” For this is what we do when we fail to provide legal counsel to those who cannot afford to hire a lawyer — we ration justice so that only those who can pay receive the benefit of “Equal Justice under Law” that our Supreme Court has set as a goal for all our citizens.

We can surely do better. And we can do better by leaders in the bar, in the courts and in the legislature stepping up to assure that there are meaningful systems in place to help those who represent themselves and that we continue to strive to assure that those eligible for legal services, having a legal problem involving basic human needs, have counsel available to them.

Bionote

Dick Thornburgh is a former attorney general of the United States and Governor of Pennsylvania.

William M. Carter, Jr., Esq.
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Senate Judiciary Hearing
October 29, 2013

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Remarks of William M. Carter, Jr., Dean, University of Pittsburgh School of Law

Thank you for providing the opportunity for me to comment briefly on this important matter. I serve as Dean and Professor of Law at the University of Pittsburgh School of Law. Previously, I served as a Professor of Law at Temple University and at Case Western Reserve University. Prior to entering academia, I was in private practice at the Washington, D.C. offices of Squire, Sanders & Dempsey and Ropes & Gray.

Access to legal services is a critically important issue and one that has become more acute as both the cost of and need for legal services have risen while governmental support for such services has simultaneously declined. I therefore highly commend all of you for drawing attention to and seeking solutions for this issue and offer my strong endorsement of these efforts.

At the University of Pittsburgh School of Law, we have six full-time legal clinics, several practicums, dozens of externships with non-profit organizations each year, and a Loan Repayment Assistance Program and public service awards that provide financial support to graduates working in public interest or public service positions. We will continue to seek opportunities to partner with the bench and the bar to do our part to fill the justice gap and inculcate an ethos of service in our students and graduates. All of these efforts are important, and I have made expanding our public service and pro bono programming a cornerstone of my deanship. As important as those programs are, however, we know that the scale of the problem of access to justice far outstrips the individual efforts of any single organization. What is needed to truly address this issue is a statewide, collaborative, coordinated effort that provides sufficient funding and a unified strategic vision.

Others have submitted frequent testimony regarding studies documenting the negative impact on individuals and the justice system of the lack of widespread access to affordable legal services for the vast majority of the population. I therefore will not repeat that evidence. I will note, however, that as someone from a family of very limited means and as the only attorney in my extended family, I have personally felt and seen the many disadvantages that the poor and working classes (and, increasingly, the middle class) face when trying to navigate the legal system on their own because they could not find affordable representation. Individuals of modest means most often encounter the civil legal system in a moment of crisis or trauma: for example, the death of a family member, the loss of custody of a child, the filing of a lawsuit against them over health care bills, or the need to create guardianship or trusts for a disabled loved one unable to care for himself. The initial trauma is compounded first by the inability to

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secure affordable legal services to assist with navigating these complex issues and secondly, by then trying out of necessity to navigate them without such assistance. These individuals, because they lack the necessary training themselves, then enter our justice system largely unguided and unaided and (through no fault of their own) increase the strain on already overburdened judges and court personnel.

In closing, I strongly believe that we should see the mission of providing access to justice not as a luxury, but as a necessity in a civilized society. The University of Pittsburgh School of Law stands ready to serve as a partner in this effort. I look forward to your recommendations.

Max W. Laun, Esq.
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TESTIMONY OF MAX LAUN, ESQ.
VICE PRESIDENT & GENERAL COUNSEL, ALCOA
BEFORE THE PENNSYLVANIA STATE SENATE JUDICIARY COMMITTEE
OCTOBER 29, 2013, PITTSBURGH, PA

**Senator Stewart Greenleaf and distinguished members of the Senate Judiciary
Committee:**

Thank you for providing me the opportunity to provide testimony regarding the importance of civil legal aid. My name is Max Laun and I am a vice president and General Counsel for Alcoa. I oversee the day-to-day operations of Alcoa's Legal activities worldwide, and I have been at Alcoa for over 25 years. I also serve as President-Elect and a member of the Board of Directors of Neighborhood Legal Services Association, and as a Trustee of the Allegheny County Bar Foundation.

I can tell you from my experience in the business community and as an attorney for a corporation that businesses abhor uncertainty. You could see evidence of this in the nervousness on Wall Street as the country dealt with the government shutdown, and I know this from my work at Alcoa. Businesses strive to predict outcomes and plan for them accordingly. Part of my job on behalf of Alcoa is to advance business and avoid

uncertainties by negotiating contracts and ensuring regulatory compliance, among other things.

Businesses also rely on predictability in their workforces. Personnel are essential to accomplishing business objectives. So when personnel are forced to miss workdays because of legal issues such as child custody matters, domestic violence, or housing problems, their absence creates instability and uncertainty. These problems can have rippling effects, also. A family who is evicted from their home may subsequently have to deal with school issues for their children, or face the financial pressures of moving such as coming up with a security deposit, paying for a moving truck, and having utilities turned on. The stress of these issues can lead to health problems. One day of missed work can turn into weeks of loss productivity.

Legal services programs fulfill a key role in promoting the greater certainty and predictability business interests look for. Their very essence is to help work out problems of the sort I described above, for eligible families who have nowhere else to turn. This is often by negotiating agreements, which are much more difficult to reach without the involvement of lawyers, and sometimes through the reliable conflict resolution provided by our courts. Smooth and effective conflict resolution is far less achievable through negotiations or through the courts where parties do not have counsel and have to maneuver law and procedures on their own and where feelings can be raw, with even the threat of violence lingering in the background.

I am proud that Alcoa has been a leader in supporting legal services programs through both financial contributions and pro bono volunteerism. The Alcoa Foundation has supported both Neighborhood Legal Services Association and the Allegheny County Bar Foundation with grants to keep their programs in operation. Alcoa's legal department has a robust pro bono program, with volunteer attorneys and paralegals staffing community legal clinics and taking on protection from abuse, child custody and immigration cases, among other things. Our staff members find this work both interesting and professionally enriching, and we find great satisfaction in helping people who are in dire circumstances.

However, the need is far too large for corporate grants and individual pro bono work to adequately meet. Businesses like Alcoa are doing their part, but the Commonwealth must also make a demonstrated commitment to making sure legal services programs continue to function. We need the certainty of dedicated funding for these programs. Stability in workforces helps businesses to thrive and grow.

I urge you to advance the recommendations of the Civil Justice Coalition. Thank you for allowing me to testify today.

A handwritten signature in blue ink, appearing to read "M W Laun".

Max W. Laun

James D. Schultz, Esq.
General Counsel, Office of the Governor

James D. Schultz, Esq.

General Counsel, Office of the Governor

To Senator Greenleaf and distinguished members of the panel: My name is James D. Schultz, and I am General Counsel of the Commonwealth of Pennsylvania. Thank you for the opportunity to provide written testimony on the important topic of providing civil legal aid to Pennsylvania citizens – an issue that has always garnered my support.

A 2011 study by the World Justice Project concluded that the civil legal system in the United States is one of the best in the world. Unfortunately, that same study also found that millions of Americans are unable to access this superb system and the protections it provides. For example:

- The woman frantically trying to escape an abusive husband or boyfriend to protect herself and her children.
- The family struggling to save their home from foreclosure.
- Tenants faced with unhealthy or unsafe living conditions.
- The sick or disabled – fighting to receive needed care or services.
- Seniors trying to access the benefits they have worked their entire lives to secure.
- Countless others faced with problems on a daily basis.

These individuals do not receive the help they need because they *do not know where to turn*, believe they *cannot afford assistance*, or they *do not believe the situation will change*. The issues we face today go far beyond one person, one organization, one side, or one cause.

In the words of Dr. Martin Luther King: “an individual has not started living until he can rise above the narrow confines of his individualistic concerns...to the broader concerns of all humanity.” We in the legal profession have an opportunity to make a difference, to have the greatest impact upon those “broader concerns.” There are rewards to be gained in this profession that are far greater than large financial settlements, corner offices, or short-lived celebrations over “wins” in the courtroom. This is far more than just a job – it is a calling, at least in my eyes. We have the honor, and the duty, to step into court and speak for those who cannot speak for themselves. We have the ability and, I believe, the social obligation to take the law beyond the walls of the courtroom and to connect with people in a way that can directly improve their lives. Better yet, we have a lifelong

career opportunity to pursue improvement – not only in our own lives, but in the lives of people all around us.

One way to pursue such improvement, beyond individual commitment to serve, is to ensure that legal services organizations, including those in the Pennsylvania’s Legal Aid Network continue to receive sustained funding to support their significant cause. In 2002, the General Assembly enacted the Access to Justice Act and created the Access to Justice Account in order to fund the Pennsylvania Legal Aid Network. Presently, \$3.00 of every court filing fee is placed into the Access to Justice Account. Representative Tarah Toohil has introduced House Bill 1337 which proposes to increase the total filing fee amount placed into the Access to Justice Account to \$4.00. I, as well as the Governor, fully support House Bill 1337 and hope to see its passage this session. Providing additional funding for legal aid is an essential step in the expansion of services to those in need. Working together, we can solve one problem at a time, one case at a time, one person at a time.

Barbara Penner, M.S.
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The Economic Effect of Partner Violence for Employers

Our organization, **STANDING FIRM: The Business Case to End Partner Violence**, encourages employers to *stand up and stand firm* against domestic violence as workplace and workforce concern. STANDING FIRM alerts companies to the financial, safety and human costs of domestic violence on the workplace and arms them with tools for taking effective organizational action.

The cost of partner violence to business: About 56% of U.S. women are employed for pay, of whom 21% are victims of domestic violence [called partner violence by STANDING FIRM to underscore that abuse is not just a “domestic” issue but one whose effects extend far beyond the family]. Partner violence (PV) often is not recognized as a business issue by employers, despite clear evidence that it affects the productivity of employees, causes workplace violence risk, and affects employers’ economic bottom line. For example, using available epidemiological data, the estimate is that in a company of 700 employees, of whom 50% are women and for whom the average salary is \$15/hour, a company will spend approximately \$150,000 per year, whether it is aware of it or not, for partner violence-related health care, mental health care and absenteeism costs for victims. This cost calculation does not take into account impacts on productivity, expenses for rare but highly costly workplace safety violations

related to partner violence, or the costs associated with partner violence perpetrators who use company resources (cellphones, cars, phones and time) to harass or intimidate their victims.

Only 13% of U.S. businesses have policies that address partner violence and only 4% train their employees about PV, even though 44% of employed adults report they have experienced negative effects of PV in the workplace. Most employers of any size likely employ PV victims. In a survey conducted by Dr. Patricia Cluss, the director of STANDING FIRM, and others, 42% of female employees in a large regional health care system had been involved in an abusive intimate relationship. When employees are nurses or other key personnel, the cost to cover the unanticipated call-offs that are common for PV victims, are high.

In April, 2013, STANDING FIRM completed a survey of over 400 employed adults in Southwest PA. Results showed that partner violence is an issue that affects workplaces in our region, whether employers are aware of it or not. Thirty eight percent of employees surveyed reported that they have known at least one coworker in the past 5 years who was a PV victim or abuser. Of those individuals, 82% said that their working environment was negatively affected by their coworkers' involvement in an abusive relationship, citing missed work days or shifts, coming in late to work, and frequent or excessive breaks. Respondents reported that coworkers who were victims (41%) or abusers (31%) had trouble completing their assigned work. Forty five percent of respondents were concerned for their own safety at work because of threats from a coworker's abuser.

Many employees disclosed that they themselves are or have been PV victims (24%) or abusers (9%). Sixty five percent of these reported that their involvement in a violent or abusive intimate relationship negatively affected their ability to work. They admitted to similar effects on the workplace as those described by their coworkers: missing work days/shifts, coming in late and/or taking frequent breaks, and having other employees cover for them. Of greatest concern, they reported that their own safety and the safety of other employees at work were in danger because of the threat of a current or former intimate partner coming to work to harass, intimidate or harm them. For most who disclosed being a victim or abuser (56%), employers generally were unaware that the employees were dealing with PV in their personal lives. An overwhelming majority of employees (83%), both those with and those without a personal history of PV, think it is important for employers to address PV as a workplace issue.

Higher risk for employees at the lowest socioeconomic levels: Partner violence occurs across all socioeconomic levels. However, lower income individuals are more likely to be dependent on their jobs and to lack the legal resources necessary to effectively respond to physical threats and abuse. Many individuals do not come forward in the workplace when there is a threat to the workplace, because of fear of losing their jobs. Having been isolated from available social support by their abusers, they often are unaware of support services (e.g., Neighborhood Legal Services, women's shelters) that are available in the community to help. Women who work in low-security settings are at greater risk of being assaulted by their abuser while at work. Women who work in environments that can refer them to legal aid services and shelter services are more

likely to keep their jobs, perform better, and be safer than employees in abusive relationships that do not seek this kind of help. By maintaining employment, the PV victim is more likely to have access to ongoing healthcare benefits and other supportive services that positively affect the lives of victims and their children.

Partner violence-related workplace safety concerns and how Neighborhood Legal Services helps: Approximately one in four homicides in the workplace of female employees in the U.S. each year is due to partner violence. PV perpetrators often come to the workplace to harass or harm their victims, and may kill not only their victims but also coworkers and customers who happen to be in the workplace area. NLSA provides key services that can help reduce the human and financial costs of PV-related workplace safety. But NLSA resources are strained. Often, the legal services program is unable to provide representation in key areas related to the PV problem, such as custody disputes between the perpetrator and the victim. These disputes can often lead to further violence. And while NLSA has had to cut staffing and offices, even its ability to handle the protection from abuse cases has been curtailed. Of a number of business best practices recommended by STANDING FIRM, one is that policies and procedures be adopted and disseminated to employees that affirm companies' willingness to assist employees who have a Protection from Abuse order in place. Employees in low wage jobs may be at the highest risk for this kind of workplace violence, especially those in on-the-street businesses with low security such as in the retail, hospitality and health care industries. When an employed PV victim receives assistance from Neighborhood Legal Services to get a Protection from Abuse order and shares this information with her employer, the organization can bring together Human Resources and Security

resources to protect the victim and her coworkers in the workplace and, at the same time, manage risk related to workplace safety concerns for the business.

Without the safeguards of Neighborhood Legal Services in place to assist low income employees in taking legal action against partner violence perpetrators, employers in Pennsylvania and elsewhere would be less prepared to take action to provide safe workplaces in our region and in our state.

Natalia Rudiak
Councilwoman, City of Pittsburgh

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**Testimony to the Pennsylvania Senate Judiciary Committee
Public Hearing on Access to Justice
October 29, 2013**

Thank you for the opportunity to submit testimony about the importance of access to justice for victims of domestic violence, low-income families and others who have nowhere else to turn when facing a civil legal crisis. I apologize for not being able to be there in person, however I have regularly scheduled City Council meetings on Tuesday afternoon. My name is Natalia Rudiak and I have represented South Pittsburgh on City Council for the last four years, working to bring needed investments to our neighborhoods and to protect them from crime and neglect.

Neighborhood Legal Services Association has been helping victims of domestic violence and low income families in the City of Pittsburgh for nearly 48 years. Staffed by highly qualified lawyers, deeply committed to the practice of poverty law, legal aid attorneys sacrifice higher salaries available to private practitioners and lawyers employed in the public sector in order to provide legal assistance to people who cannot afford a lawyer.

All of the cases that NLSA handles have reached a crisis stage that threatens the fundamental safety and security of low-income individuals living in our community. These issues involve basic quality of life matters such as: the ability to maintain housing; obtaining or maintaining essential benefits to the disabled and children; employment practices; child custody and visitation issues; and protection from abuse and neglect. Although NLSA typically works case by case, its positive impact is cumulative. Generally, legal assistance for one person improves the lives of entire families. When families live in adequate housing, with essential benefits intact, predatory lenders at bay, and fear of domestic violence reduced or eliminated, entire communities are stabilized -- providing great benefit not only to our City but to our entire state through other legal aid programs funded by the Pennsylvania

Last year, our local legal aid organization, Neighborhood Legal Services, represented 2,035 City residents who were victims of domestic violence in final protection from abuse hearings. The City is committed to offering support to employees who are victims of domestic violence including confidentiality, approved time off, and other reasonable accommodations. Additionally, we strive to make sure our police force is appropriately trained to respond to often volatile situations involving family violence. We often rely on our nonprofit partners like legal aid organizations and women's shelters to help shape public policy in these important public health matters.

Civil legal aid is critical to our City's human services safety net as many of our City residents face eviction, need nutritional benefits, face the loss of critical federal benefits, and/or are threatened by mortgage foreclosure. Legal aid helps our residents gain (or retain) these "essentials of life". In our City today, with the complexities of day to day life even for the people of most moderate means, you need an attorney if you want to keep from losing your home or health care or custody of your child, your right to stay in this country or access to public benefits, it allows you to put food on the table. Essentially matters like these hang in the balance in our courts every day. And thousands of Pittsburghers today cannot meaningfully protect their rights because they can't afford to hire an attorney.

By having civil legal representation available for all residents of the City (and the Commonwealth of Pennsylvania will eventually lead us to more funding for other critical human needs such as affordable housing and healthcare. It will also stabilize communities by keeping more people in their homes and avoid the collateral damage of homelessness and eviction and what happens to children when they are pulled out of school because the family home is lost. Foreclosed and abandoned homes erode the cohesion and physical state of safe neighborhoods and provide easy targets for those seeking illegal shelter or to those looking to steal from, or vandalize these properties. By guaranteeing access and representation to litigants in foreclosure situations, we can better help law-abiding families stay in their homes and we can keep neighborhoods cohesive, inhabited and vibrant. These qualities are frequently the cornerstones of neighborhoods that are also safe neighborhoods that our citizenry desires.

The public safety price we will pay for eroding access and representation in these courts is steep and the moral price of such erosion is unaffordable. Unmet legal needs can impose substantial financial burdens on the local, state and the federal government, and society as a whole. For example, the low-income person who's abused and unable to get a divorce and continues to live with the abuser may need emergency medical care at an emergency room that he or she cannot afford, with the taxpayers ultimately absorbing the cost of the medical expenses associated with that care. Moreover, local government, the county and/or state may have to pay for emergency shelter for a low-income person who is wrongfully evicted from his or her home as a result of having no legal representation and being unaware of his or her legal rights. Providing legal services to the low-income community not only benefits the low-income community, but also benefits the courts and society as a whole. It is my hope that that providing access to justice through civil legal representation should be right to all and not just a privilege of the wealthy.

Dr. Jon Pletcher

*Clinical Director, Division of Adolescent Medicine
Children's Hospital of Pittsburgh of UPMC*

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TESTIMONY OF JON PLETCHER, MD
SENATE JUDICIARY HEARINGS
OCTOBER 29, 2013

My name is Jon Pletcher. I am the Clinical Director of the Center for Adolescent and Young Adult Health at Children's Hospital of Pittsburgh of UPMC. I also am an Assistant Professor of Pediatrics at the University of Pittsburgh School of Medicine. Prior to coming to Pittsburgh, I held similar positions at the Children's Hospital of Philadelphia and at Lehigh Valley Hospital in Allentown. In each region, my focus has been on understanding and addressing the barriers to successful transition to adult roles and responsibilities for youth facing long term medical, behavioral, or social adversity. This work has taken from the hospital to outpatient clinics to many community settings and homes in order to best understand how to create interventions and programs to address these needs.

For the youth that I see, the missing link is knowledge about their legal rights. Many do not have strong parent advocates, which makes it all the more important that they have information about their own legal rights as well as the means to secure those rights. Without this access to legal information, their rights simply are undervalued and under recognized by strained educational, medical and social service systems.

There are many examples. In schools, zero tolerance policies can result in youth being excluded from schools without due process or, in the case of students with disabilities, excluded unlawfully because the behavior is a manifestation of the disability. Students can be denied access to schools altogether in violation of the law. Students who are bullied or teased may end up reacting in such a way that they are the ones being punished. Students with disabilities are entitled to a free and appropriate public education with appropriate supports and services so that they can learn but are denied such an education without legal advocacy. The consequences of a failure of our society to provide legal advice are severe: children can and do end up in the juvenile detention system or on the streets.

There are other areas where youth need access to legal information. If they are eligible for Medicaid, they should have access to medical and dental care, including medical screenings and proper diagnosis. But youths may not know they have this right and, if they do, they may not know how to get the access they need. Children who are in foster care or in adjudicated settings are in need of information about their rights in that system, most particularly what happens when they transition within and out of the system. In addition, they need a health care advocate; for

example, when they are injured or need medications to manage pain, they need consent but often no one can access a parent. I have witnessed many youth experience delays in care resulting in disability and pain simply because there was no access to a medical legal advocate.

Youth with disabilities have barriers to transportation to get to doctors, schools or jobs. Because they do not have advocates speaking with them, they are the people most affected but who don't have the capacity to speak out when, for example, underfunded paratransit systems don't show up, show up late or drop people off at the wrong place. Without a parent or the ability to self-advocate many teens and young adults with severe intellectual and other disabilities do not have access to health care due to lack of transportation.

The medical profession has a responsibility and the opportunity to help make legal information available to young adults. Over my career and in my current practice, I have been involved in a number of projects that have tried to make this connection. In the early 2000s, while I was at the Children's Hospital of Philadelphia, we received a grant to support the placement of public interest lawyers from local non-profit legal organizations in clinics at the hospital. This was somewhat successful, but the types of problems faced by our patients required specialized legal knowledge in a number of different areas. This grant also included the development of curricula for the medical professionals which continues to be used today at CHOP and other institutions. At the University of Pittsburgh we have partnered with the Law School's Legal Clinic. The main barrier in this arrangement is one of time and transportation, but also of connecting with the appropriate legal resource.

One model that I believe shows promise is currently employed in Massachusetts. Rather than having one lawyer sitting in the clinic, an on call triage lawyer is able to serve multiple clinics across locations. The hospitals and funders are partners in providing the training to triage lawyers as well as pediatricians to recognize and make appropriate referrals. Certainly there is a role for technology in facilitating medical-legal partnerships.

There are important cultural adjustments that the medical profession needs to make in order to help our clients best connect with the legal profession. We need more training of medical professionals at the medical school level to help them identify legal problems that contribute to health problems. Doctors have to get over assumptions and mistrust of lawyers. For example, there is a fear that when a doctor refers to patient to a lawyer, the doctor is overstepping his bounds, or perhaps even breaking the law. Medical training doesn't necessarily lead to viewing lawyers as resources. Doctors may also fear that they are undermining their own workplaces by subjecting them to the scrutiny of lawyers. In many respects, we are working in parallel universes and we need to connect.

We also need to make sure there are accessible legal resources available when health care providers see a legal need. Currently, when I see that there is a legal problem, I suggest places for my patients to contact, based on my knowledge of the groups that provide legal services. I also provide patients with information about basic legal documents, such as powers of attorney, how to request or appeal an IEP, and how to maintain health insurance.

Medical professionals and our patients are continually confronted with barriers to care that stem from violations of individuals rights. There are longstanding cultural and training barriers to effective medical-legal collaborations. Health care providers should have the ability to collaborate with legal professionals to help address individual health care needs. Furthermore, we must work together in identifying systemic problems that result in patterns of health disparities.

Ellen Kramer, Esq.
Legal Director
Pennsylvania Coalition Against Domestic Violence



Extending a safety lifeline to more than 2.8 million
battered victims and their children since 1976

www.pcadv.org

BEFORE THE
PENNSYLVANIA SENATE JUDICIARY COMMITTEE

WRITTEN TESTIMONY OF ELLEN KRAMER, ESQUIRE
LEGAL DIRECTOR

PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE

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The logo for the "NO MORE" campaign. It consists of the word "NO" in a bold, black, sans-serif font, followed by a blue circle containing a white dot, and then the word "MORE" in a bold, black, sans-serif font.

PCADV appreciates the opportunity to provide our insight and expertise to the Senate Judiciary Committee's inquiry into the state of civil legal representation in the Commonwealth. The Committee has tasked us – and other individuals within the civil justice system – with answering an important question:

Has Pennsylvania achieved equal access to justice?

The unfortunate answer is, quite simply, no.

The Pennsylvania Coalition Against Domestic Violence has first-hand knowledge of the severe shortage of attorneys to represent low-income people, especially victims of domestic violence. The gap in representation for low-income individuals across the Commonwealth – and the nation – creates schism in our justice system, whereby those without resources to hire an attorney are often left without a remedy. And, as a result, low-income individuals face severe consequences in their personal and professional lives and, at the same time, the ultimate costs are often borne by the state in the form of human services, homeless prevention, health care, and criminal justice response.

PCADV is a private, non-profit organization that provides services and advocacy on behalf of victims of domestic violence and their minor children. Our membership includes 60 local domestic violence programs, which serve victims of domestic violence in all 67 counties across the Commonwealth. PCADV and its members have been involved in the legislative and judicial development of Pennsylvania's Protection from Abuse Act from its inception and regularly assist in the development of other state and federal laws that provide rights to victims of intimate partner violence.

PCADV administers the Pennsylvania Civil Legal Representation (CLR) Initiative, made possible with funding from the Pennsylvania Department of Public Welfare. The CLR Initiative trains and supports attorneys placed in twelve local domestic violence programs to provide survivors of domestic violence in fourteen counties with effective, competent representation in civil legal matters. The CLR programs represent victims of domestic violence who are at or below 235% of the federal income poverty guidelines. An additional CLR program, located in Centre County, is funded by federal dollars through an Office on Violence Against Women Legal Assistance to Victims Grant. PCADV provides technical assistance to the CLR Project Staff as well as to other attorneys who represent survivors of domestic violence in custody, divorce, Protection From Abuse, and other civil cases across Pennsylvania.

When a victim of domestic violence escapes abuse, they often face enormous obstacles and barriers that prevent them from establishing a new, violence-free life. In addition to addressing the trauma that they suffered, victims must often re-build their lives from the ground up – find a new home and a new job, establish child custody, and deal with civil and criminal courts. Attorneys can assist victims to navigate this complicated and stressful reality by helping to obtain court-ordered protection from an abusive intimate partner, access necessary supportive services, maintain safe and stable housing, address arrearages or debts accrued in conjunction with the abuse, and ensure the safety of their children. Unfortunately, few victims can afford to hire an attorney and there is rarely sufficient access to pro bono or legal service attorneys.

Without competent legal representation, victims of domestic violence often forfeit their rights, settle for less relief than the law allows, or give up the struggle altogether and return to the abuser.¹²

¹²Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, p. 391 (March 2003).

The Vast Unmet Need for Civil Legal Services is Well Documented

- According to the Administrative Office of Pennsylvania Courts, **41,064 Protection From Abuse actions were filed in 2011 across the state**,¹³ yet CLR programs and Pennsylvania Legal Aid Network serve only a fraction of those who file for protection.
 - The CLR Initiative provides legal service in 15 of the 67 Pennsylvania counties. Each year, CLR programs serve approximately 4,000 victims in PFA, custody, divorce, and support proceedings.
 - The Pennsylvania Legal Aid Network (PLAN) provides legal service in each of the 67 Pennsylvania counties to an estimated 13,000 victims in Protection From Abuse proceedings, but that is still just a fraction of the approximately 40,000 victims that file each year.
- The American Bar Association reports that **47% of low-income households experience a legal problem each year**. That percentage equates to approximately 712,000 Pennsylvanians who are in need of civil legal representation each year.¹⁴
- **One in seven** Pennsylvanians are eligible for free civil legal assistance.¹⁵
- Pennsylvania legal aid intake workers **turn away 50% of applicants due to lack of resources** – and still many others in Pennsylvania do not apply.¹⁶
- Only **1 in 5** low-income individuals who experience a legal problem are able to access assistance.¹⁷
- Nationally, there is only **one civil legal aid attorney per 6,861 low-income individuals**, but there is one private civil attorney for every 525 individuals in the general population.¹⁸ These ratios suggest that, nationally, there are more than **ten times** the number of private civil attorneys providing legal assistance to middle- to high-income individuals as there are legal aid attorneys serving the poor.
- A report funded by the National Center for State Courts and State Justice Institute indicates that “a very high percentage of family law cases now involve at least one self-represented litigant – ranging from **60 – 90%** of all such cases.”¹⁹

¹³ AOPC, *2011 Caseload Statistics of the Unified Courts of Pennsylvania*, available at <http://www.pacourts.us/assets/files/setting-768/file-1764.pdf?cb=1fe78a>.

¹⁴ Results of the Pennsylvania Access to Justice Act. A Report on the Filing-Fee Surcharge Law (AJA Report), FY 2004-2008, at 2, <http://www.paiolta.org/ajareport/Report.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Legal Services Corporation, *Documenting the Justice Gap: The Current Unmet Civil Legal Need 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.

¹⁹ THE FUTURE OF SELF-REPRESENTED LITIGATION: REPORT FROM THE MARCH 2005 SUMMIT, NAT'L CENTER FOR STATE CRTS, available at http://www.ncsconline.org/WC/Publications/Res_ProSe_FutSelfRepLitfinalPub.pdf (2005).

Funding for Civil Legal Services is Rapidly Dwindling

- The Legal Services Corporation (LSC)—the nation's single largest funder of civil legal assistance—continues to experience **severe cuts** to its funding streams. In 2012, LSC received \$348 million from Congress, down from \$420 million in 2010.²⁰
- LSC-funded legal services programs across the nation have been forced to cut 13% of their attorneys, 15% of their paralegals and 12% of their support staff.²¹

Representation for Victims of Domestic Violence Saves Lives

The Report of the Pennsylvania Domestic Violence Task Force presented a number of recommendations to reduce domestic violence in Pennsylvania. Uniform legal representation for indigent victims of domestic violence in abuse, custody, and support cases was one of five key task force recommendations.²²

As the task force identified, uniformity of representation throughout the varied types of inter-related legal proceedings is key to holistically serving a victim's needs, and ensures that the victim is not left with open legal proceedings that they are unable to address on their own. For example, family law often functions on a continuum – a PFA proceeding leads to support, custody, and divorce proceedings, which in turn lead to public benefit support, housing assistance, and other consumer issues. While some victims may be able to secure low-cost or free legal assistance for one type of proceeding, that attorney is rarely able to also represent the client in other related proceedings. Thus, a victim may be able to get a PFA with the assistance of an attorney that includes a support provision to allow the victim to maintain their economic stability. But after the PFA proceeding, if the victim does not file for support with Domestic Relations, the support ordered in the PFA will be ineffective, which may lead the victim to return to the abuser if she or he cannot establish financial stability on their own. In the attached addendum, the Managing Attorney at the Bucks County CLR program further describes how victims often have multiple civil legal needs that, when unmet, compound the barriers that the victim faces. (See Appendix A – Unmet Need for Civil Legal Representation in Bucks County.)

The CLR Initiative provides a level of holistic representation for some victims, but funding constraints severely limits the number of victims that CLR programs can serve. In 2011, PCADV's CLR programs represented over 3,300 new clients in matters ranging from child custody and support to housing, public benefits, employment and protection

²⁰ Staff Reductions Hit Legal Aid Programs, Legal Services Corporation Press Release (Jan. 26, 2012), *available at* <http://www.lsc.gov/media/press-releases/staff-reductions-hit-legal-aid-programs>.

²¹ John G. Levi, Chairman LSC Bd. of Dir., *The widening 'justice gap' and why we must close it*, THE HILL'S CONGRESS BLOG,

The story of one CLR program client demonstrates how important representation is for victims of abuse. In this case, an abused mother was unable to afford an attorney and could not find a pro bono or legal services attorney to represent her in a child custody case against her abuser. Mother was forced to represent herself, but an attorney represented the opposing party. Unfortunately, Mother was greatly affected by the uneven balance in representation. For 6 months, Mother scrambled to address the complicated legal proceeding against a seasoned family law attorney. The breaking point came when Father's attorney filed contempt of court charges against Mother for allegedly not allowing the father to see the parties' baby. While this was untrue, Mother was unable to properly assert her defense and reached out to the CLR program. Luckily, the CLR program was able to take her case. With the CLR attorney at her side, Mother was not found in contempt and her custody action ultimately settled with a favorable outcome that preserved her custody and protected her safety.

orders. CLR programs obtained approximately \$300,000 in on-going child and spousal support awards for those victims. In 2012, 4,530 clients were represented in over 5,135 new legal cases and CLR attorneys secured \$313,000 in on-going child and spousal support awards. Those collections go directly to the client and go a long way to promote safety for victims and their children in addition to reducing victims' need to obtain public benefits.

Civil legal representation is not only life-changing for an individual client, but can also create positive changes within the justice system for other victims of domestic violence. For example, one program assisted a hospitalized client to obtain an Emergency Protection From Abuse order, even though she could not go to the courthouse in person. The CLR attorney approached the local magistrate for help and the magistrate went to the client in the hospital and granted her petition for an emergency order. As a result of this CLR attorney's advocacy, local procedures were established to assist other victims who are incapacitated or who have disabilities.

The benefits of civil legal representation for victims of domestic violence are clearest when similar client cases are compared.

With Representation	Without Representation
<p>In Norristown, Pennsylvania, Lakisha Briggs was threatened with eviction pursuant to a local nuisance ordinance after police responded to her home on three separate occasions.</p> <p>Ms. Briggs was connected with a legal services attorney, who successfully stopped her eviction by raising defenses under the Federal Violence Against Women Act and the First Amendment protection for unencumbered access to police assistance.</p> <p>Not only was the eviction proceeding halted, but also the ACLU was able to step in and assist her to have her public housing benefits restored. And, a lawsuit is currently pending against Norristown, and the officials involved in the attempt to evict her, for violation of Ms. Briggs' legal rights.</p> <p><i>See Briggs v. Norristown</i>, No. 2:13-CV-02191-ER (E.D. Pa. 2013).</p>	<p>Martha's* abuser forced her, along with her two small children, to move with her abuser to Adams County, Pennsylvania – far away from her support network. The violence escalated, and Martha was further isolated from friends and family. Martha got the courage to flee after her abuser violently assaulted her and kicked her repeatedly in the stomach because he thought she was pregnant.</p> <p>Martha sought refuge at a domestic violence shelter, relocated with her children to Norristown, Pennsylvania, and began to put her life back together. But soon thereafter, the abuser began stalking and threatening Martha. Neighbors called police each time he arrived at her home.</p> <p>Shortly after another assault, Martha was informed that she was being evicted pursuant to a local nuisance ordinance because of the many police calls to her residence</p> <p>With no place else to turn, Martha and her two small</p>

	<p>children were homeless.</p> <p>Had Martha been represented, she would have likely avoided eviction altogether on the same grounds Ms. Briggs' legal services attorney raised.</p>
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Civil Legal Representation is Cost-Effective²³

- Civil legal representation saves public money by helping victims achieve financial self-sufficiency through support awards, equitable distribution in divorce and preservation of employment for victims.
 - *CLR programs served 4,530 victims and obtained approximately \$300,000 annually in support awards for victims of domestic violence.*
- Civil legal aid prevents homelessness.
 - *The Massachusetts Legal Assistance Corporation reported that, in 2009, the prevented or delayed eviction for 1,851 households. Without that assistance, an estimated 25% of those clients would have ended up in a homeless shelter.²⁴*
- Civil legal aid reduces the cost of domestic violence services by reducing the rate of domestic violence.
 - *Civil legal representation reduces domestic violence by assisting victims to obtain protection orders. Additionally representation for victims in custody and support assist a victim to leave an abusive partner and become financially self-sufficient.*
- Civil legal aid saves public money by protecting patient's health.²⁵
 - *Reducing domestic violence results in a reduction in public spending for medical services. Every year, approximately \$4.1 billion is spent for victims' health care needs.²⁶ Representation decreases incidents of domestic violence and reduces the attendant costs of health care for injured victims.*
- Civil legal aid protects victims' employability and protects them from being fired.
 - *Victims lose approximately 8 million paid days of work each year, which is equivalent to 32,000 full time jobs.²⁷ Representation sustains a victim's employability, and protects them from being fired as a result of their victimization.*

One CLR program client (a single mom with 3 children, who recently had surgery) was in dire need of an attorney to represent her at a public housing eviction hearing. The Housing Authority alleged that she repeatedly hosted unauthorized overnight guests. This was not the case. The client's family was helping her to recover after her surgery, but they did not spend the night. Unfortunately, the CLR program and the local legal services program were unable to represent her due to program restraints. A CLR attorney did provide general advice about representing oneself in court, calling witnesses, producing evidence, etc. But, in the end, the District Magistrate ruled against her after allowing evidence on the record that clearly violated the Rules of Evidence. The client – along with her three children – was evicted from her residence and lost her public housing assistance. She is appealing the decision to the Court of Common Pleas but is doing so without the assistance of an attorney

²³ See *id.* at 140.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

PCADV thanks the Senate Judiciary Committee for its time and attention to this critical issue in Pennsylvania. As stated above, access to justice has not been achieved in Pennsylvania. An immediate increase in the resources devoted to civil legal services is a necessary step to allow all Pennsylvanians access to equitable justice and, simultaneously, to reduce the cost borne by the public that is created by the gap in representation for indigent victims of domestic violence.

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District Attorney of Bedford County

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October 25, 2013

Senator Stewart Greenleaf, Chairman
Senate Judiciary Committee
Harrisburg Office
Senate Box 20312
Harrisburg, PA 17120-3012

**Re: "Civil Legal Representation of the Indigent: Have We Achieved
Equal Access to Justice?"**

Dear Senator Greenleaf:

Although I am unable to attend the Senate Judiciary Committee Public Hearing scheduled for October 29, 2013, at the Allegheny Bar Association, I am submitting this correspondence for your consideration.

I am a conservative Republican District Attorney who deeply appreciates the work done by legal aid professionals and *pro bono* lawyers throughout our great Commonwealth. My experiences with the *Gideon* rights in criminal court show that we have not achieved everything we promise, and my first instinct is to say that any additional funding or innovative restructuring of the justice system should happen in the criminal justice system. Yet, I have worked with enough poor people to know that having their civil legal aid needs met often keeps them out of the criminal justice system. They say "a tide rises all boats" and we need an increased tide of support for our entire justice system so that those without means truly have access to justice in our society in all areas of the law.

As we celebrate the fiftieth anniversary of the landmark *Gideon v. Wainwright* decision establishing the right to counsel for the indigent in criminal matters, we should pause to consider all of the Pennsylvania lawyers who make access to justice for the neediest among our citizens a reality through their *pro bono* efforts. Although advocates in the field of criminal justice like myself know we still have more work to do there, we have much more to do on the civil side where no such *Gideon* type right has been broadly recognized. In the past, I have handled conflict cases for MidPenn Legal Services and I know, all too well, that they have far too limited resources for the need in my region. The Pennsylvania Supreme Court has supported civil legal aid in a variety of ways, from providing new avenues for funding to setting up a loan forgiveness program for legal services practitioners. But the Court cannot do this alone. Every lawyer in Pennsylvania contributed \$35 this year to civil legal aid through the *IOLTA* portion of our annual licensing fee, but it is the volunteer efforts -whether in direct representation

of clients or further financial support beyond that mandatory payment - that matters most.

As a current Zone Governor and former chair of the Young Lawyers Division of the Pennsylvania Bar Association, I have seen innovative and enthusiastic local bar programming in many counties and encourage everyone to do what each of us can do to promote and support efforts in delivering *pro bono* services.

The Pennsylvania Legal Aid Network, in partnership with our regional legal aid providers and a network of specialty legal aid programs, helps provide the framework and structure for legal assistance for the poor. *Pro Bono* volunteers, encouraged by the Pennsylvania Bar Association and local bars, provide time and financial contributions to help fuel the important work of representing those clients who have critical needs but cannot afford to retain private counsel. Our law schools inculcate the values of *pro bono* service in the next generation of Pennsylvania lawyers.

We have nearly 70,000 attorneys registered in the Commonwealth, and if each lawyer made a personal commitment to provide whatever *pro bono* service they can through direct representation to the poor and financial support of our legal aid programs, things would certainly be better. But *pro bono* alone is not the answer, we need a strong and financially supported legal aid system to partner with and support *pro bono*.

Thank you for your consideration. If you have any questions or need additional information, please feel free to contact me at the Office of the District Attorney, at 814-623-4855.

Sincerely,



William J. Higgins, Jr.
District Attorney

Cc: David Trevaskis, PBA Pro Bono Coordinator
Sam Milkes, PA Legal Aid
Rhodia Thomas, MidPenn Legal Aid

Jane Charlton, Esq.
Pro Bono Attorney

WRITTEN TESTIMONY FOR SENATE JUDICIARY HEARING
REGARDING NEED FOR LEGAL AID FUNDING

My name is Jane Charlton. I am one of the coordinators of a pro bono legal clinic for low income individuals in Allegheny County. The legal clinic meets one evening a month at a local homeless shelter and provides legal consultation in the areas of family law, landlord tenant, unemployment compensation, consumer law/debt and other civil matters. To qualify for the legal clinic, an individual must have an income of no more than 200% of the federal poverty guidelines. Neighborhood Legal Services Association (NLSA) has an income level cut-off that is lower so we frequently have clients who do not qualify for legal assistance from NLSA. The purpose of my testimony is to urge this Committee to recommend more funding to legal aid organizations to meet the huge need for legal services for the poor.

When a low income individual is not poor enough to receive assistance from NLSA, the individual is given the phone numbers of other resources that may be able to provide assistance. I provide intake for our legal clinic, so I hear so many stories from low income individuals who need legal assistance and are shocked that they do not income qualify for legal assistance from NLSA. Many callers say, "I thought that there was a right to an attorney". When I explain that there is no right to representation in a civil matter, I sometimes hear callers exclaim. "Well, what am I supposed to do?" There are times that I think the same thing. The availability of legal assistance for low income people is too limited.

In Allegheny County, NLSA is the backbone of the effort to provide legal services to the poor. While there are several pro bono clinics and projects, it would be very difficult to have the clinics and projects without NLSA's educational and organizational support. NLSA, in conjunction with the Pro Bono Partnership and Pro Bono Office of the Allegheny County Bar Association, holds CLE classes several times a year to educate attorneys in private practice on various poverty law issues. Whenever I attend an NLSA-conducted CLE class, I walk away knowing one thing for sure: The NLSA attorneys are the experts in with regard public benefits and other areas of poverty law. Yes, CLE classes are helpful for pro bono attorneys, but there is

a limit as to how much can be accomplished in a three (3) hour CLE class. There is no substitute for experience. Until an attorney has worked in a given area, their usefulness in that area of law is fairly limited. From an ethical standpoint, an attorney is not permitted to work in an area in which she or he is not competent. For these reasons and others, many attorneys are extremely hesitant to get involved in pro bono work. This presents a serious limitation in the ability of the pro bono clinics to come anywhere close to meeting the gap between the services currently available through NLSA and the actual legal needs of the poor. Private attorneys do not have any experience in public benefits, and are not familiar with the agencies responsible for those benefits. In Pittsburgh, NLSA is in the best position to provide legal services with food stamps, public housing and other public benefits in an efficient and competent manner. It unreasonable to assume that even the most robust pro bono programs can ever substitute for legal aid professionals.

In terms of other unmet needs, three of the biggest areas are family law, bankruptcy and disability benefits (SSI/SSD). There are many private attorneys and law students who unselfishly donate their time and talents to help in these areas (especially family law), but the need is even greater. Frequently, there are time sensitive matters that need immediate attention and cannot wait for the next available pro bono clinic. Even if the issue can wait until the next clinic, it is necessary to have attorneys trained in family, bankruptcy and/or disability law who have time in their busy schedules to take on another responsibility. Yes, sometimes things work out and the low income client is able to get the necessary legal services. But this is not always the case. It is imperative that there is funding for full time attorneys to meet the needs of the individuals in desperate situations who do not qualify for legal assistance today.

There are some matters can be handled well through pro bono projects. The Protection Against Abuse (PFA) Pro Bono Program and the newly launched Expungement Project involve areas of the law where most attorneys can learn quickly and the time commitment of the volunteers is limited. Consequently, the programs are able to assist large numbers of clients and have many attorney volunteers. Even then, as mentioned above, the projects are dependent on the expertise and organizational support provided by NLSA.

While PFA representation for plaintiffs and criminal expungements may be handled well through pro bono programs, there are other matters that require a full-time legal staff. Some of the calls that break my heart the most are situations involving sheriff sales where someone is trying to save their few belongings, but there are no legal services available in time. Likewise, I hear desperation in the voices of immigrant parents who receive custody papers and do not understand what is happening and cognitively impaired homeless persons who are denied SSI benefits and do not know where to turn. These situations exist here in Pittsburgh, and they could be remedied with more funding for full time, legal aid services for the poor. Please urge the lawmakers to provide sorely needed funding for additional legal aid for the poor.

Thank you for your time in studying this important issue.

William Ingold
Client of Neighborhood Legal Services Association

William S. Ingold II
Pleasant Hills, PA
c/o Dan Vitek
Neighborhood Legal Services Association
928 Penn Avenue
Pittsburgh, PA 15222

Testimony to the Pennsylvania State Judiciary Committee

I'm a disabled and decorated Navy veteran, 55 years old. I went on disability four years ago for diabetes and neuropathy and arthritis in knees and back, and a host of medical problems.

I went to Neighborhood Legal Services Association in August 2013. I was being evicted by my landlady and I needed legal advice. I was referred by Veterans Leadership Program. I got a full service attorney with Dan Vitek and I was able to stay where I'm at. He really went out of his way to help me.

My Social Security Disability payments were stopped in June, so I got behind on my rent over the summer. I was very stressed, I was sleeping irregular hours, and even oversleeping. I was a nervous wreck. My landlady is very condescending and very insulting. She wouldn't call my case manager at VLP.

It makes a world of difference when you have an attorney. People treat you differently. She thought I was a push over and she was very difficult. It really helped me to have Dan with me.

Dan gave me legal advice and was able to walk me through everything. We appealed the eviction. I was trying to get help from VLP and my landlady but in the meantime I was running out of time. You only have ten days to come up with the rent or file an appeal, so NLSA helped me filled out the forms for an IFP since I couldn't afford to pay court fees and met me at the city county building and walked me through every step of the way.

My landlady finally worked with the VLP and they were able to send her a check for the back rent.

If NLSA hadn't helped me, it would've made things a lot more difficult. It's just nice to have legal advice every step of the way. Getting that extra time was absolutely helpful in keeping my home. Without that time, I'd be out on the street. Dan was a full service attorney. He got me an appeal and then he negotiated a contract with my landlady about the back rent, and cancelled the legal action against me.

I really appreciate the help and the help was really excellent. Kudos for everybody the NSLA.

Judith A. Muscante

*Client of Neighborhood Legal Services Association,
Medical Legal Collaborative for Patients*

Judith A. Muscante

Client of Neighborhood Legal Services Association, Medical Legal Collaborative for Patients (MLCP)

Greetings. My name is Judith A. Muscante, and I am currently 37 years old. I first had the opportunity to meet my attorney, Kimberly Motley-Phillips three years ago, when my primary care physician at UPMC McKeesport Hospital referred me to her for legal assistance with my Supplemental Security Income (SSI) eligibility.

I was being seen on a regular basis at the Internal Medicine Clinic of McKeesport Hospital for my diabetes. When I was first diagnosed, my doctors suspected that I probably had diabetes as a child, but it was missed. Now as a young wife, I was also found to be in the beginning stages of kidney failure. I was very overwhelmed with this information, and when my doctor told me that I should apply for SSI, I had no idea where to start. He then told me that he was referring me to a Neighborhood Legal Services attorney that was available to me at the hospital to assist me with my case.

I was very surprised but grateful to have been referred to Attorney Motley-Phillips by my doctors at the hospital. She was very nice but professional, and walked me through every stage of the disability process. I felt comfortable contacting her by phone, and even stopping by her office when I was there for medical appointments. Initially, the Social Security Administration denied my application, but Attorney Motley-Phillips assured me not to worry because often this means that they need more medical documentation. She explained the legal process to me,

and agreed to help me with my appeal. This included gathering all of my medical records, even from my kidney specialist. She worked with my specialist, and the doctors from UPMC McKeesport, and they were able to write letters for me to present to the judge at my disability hearing.

I was also very happy to know that Attorney Motley-Phillips was able to represent me at my disability hearing before an Administrative Law Judge back in November of 2011. She prepared both me and my husband for the hearing, and told us what to expect. Having a lawyer to represent me in court at no charge was a big relief. I would not have been able to afford to pay an attorney to represent me. Prior to my diagnosis, I worked as a babysitter of young children in my home, but could no longer do this or any other work once my medical situation worsened. I began to develop vision problems, neuropathy, and even required leg braces to help lift my legs. I was also told by my doctor that I needed a double transplant, that being a kidney and pancreas.

Prior to my SSI hearing coming up in November of 2011, I also relied on this attorney to assist me with obtaining medical insurance. Having insurance was very critical to me being able to afford the life threatening medicines that I needed, and for the testing that was required for placement on the transplant list. Attorney Motley-Phillips and her social worker, Kathleen Parke were able to successfully assist me with my application for Medical Assistance. I had been denied several times, but when they were able to recognize that a letter from my doctors would help my application, they assisted me with that as well, and I was granted health insurance while I awaited my SSI hearing.

I was glad to have Attorney Motley-Phillips represent me at my SSI hearing in Pittsburgh. The hearing went well, and I was granted monthly benefits on the spot. That helped improve my family situation greatly. Additionally, now that I have SSI benefits, I do not have to worry about health insurance. I automatically get medical assistance as a SSI recipient.

My attorney also helped me with a foodstamp denial in recent times. They always give me a hard time with any of the public benefit programs because my husband works as a cook, and his income fluctuates. Prior to meeting Attorney Motley-Phillips, I probably would not have thought about asking for legal assistance for help with foodstamps.. Now because of my very positive experience with Neighborhood Legal Services Association, I would recommend them to others, and wish that all hospital and clinics would have attorneys like her there for the patients.

Attorney Motley-Phillips contacts me from time to time to ask about the transplant list,, and she even visited me in my hospital room when I was feeling really low sick. She heard that I was there and just stopped by my room. I am still trying to get approved for a transplant, but it is not the insurance getting in the way at this time. I am glad that I have a lawyer who really cares about me, and I am glad that she was available in the hospital. Otherwise, I may have missed the benefit of her services, and they have greatly improved my life.

Kathleen Jasek, MSN, RN, ACM
UPMC McKeesport Hospital

Testimony of Kathleen Jasek, MSN, RN, ACM
UPMC McKeesport Hospital
1500 5th Avenue
McKeesport, PA 15132

**Submitted to Senator Stewart J. Greenleaf Hearings on Civil Legal Representation of the
Indigent: Have we achieved equal access to justice?**

**October 29, 2013
Pittsburgh, PA**

I am Kathleen Jasek, and I am here to express my support for equal access for civil legal services for indigent patients, and others who are unable to afford free or low cost civil legal services. I appreciate the opportunity to lend my support to such a great and needed cause. I want you to know that I had hoped to appear in person, but an unexpected family emergency and work related obligation have made that not possible. Nonetheless, I do not want to miss this opportunity to lend my support to such a great cause, as civil legal services for the indigent, so I am offering a written letter of support which I hope will be acceptable.

I have been in nursing over 40 years, more than half of that as a registered nurse at UPMC McKeesport Hospital. I participated in the creation of the Care Management Department back in 1996, which is responsible for the coordination of care from admission through discharge. Currently, I am the Director of Collaborative Management, Social Services, Pastoral Care, Central Bed Coordinator, and serve as Nursing Administrator. About three years ago, I was asked by the President of the hospital where I work to participate on the ground floor of a new project that the hospital was considering being a larger part of, and that was the Medical Legal

Collaborative for Patients (MLCP). UPMC McKeesport Hospital had agreed to form a collaborative with Neighborhood Legal Services Association, the first program of its type in a major hospital in Pennsylvania, where an attorney would be onsite several days per week and available to offer legal advice and services to our low income patients who meet certain income guidelines (125% of the poverty threshold as stated by the Department of Health and Human Services).

I was very excited to work with the Medical Legal Collaborative for Patients. Since I have such a long history at the hospital, I am very familiar with the many needs of the staff as well as the community that the hospital services, I felt from the beginning that bringing legal services to our low income patients would be a good resource for all. Therefore, I was very interested in learning more about this project, and I was able to meet and work with Attorney Kimberly Motley-Phillips, early in the process along with others from both the hospital and Neighborhood Legal Services to figure out the best way to get the legal services to our patients. The Medical Legal Collaborative concept is that of one that is aimed at bringing legal advocacy into the health care setting with the aim of addressing social factors that can significantly impact the outcome of patient health.

In order to better screen for social factors that impact the health of our patients, Attorney Motley-Phillips, came up with a screening questionnaire, and various training presentations, that are offered to both medical and support staff throughout the hospital on a regular basis. The legal education presentations have addressed health insurance eligibility, food stamp terminations, social security disability denials, utility shut-offs, housing law, power

of attorneys, elder abuse and more. The more that staff has become familiar with the legal issues through these workshops, and just meeting with Attorney Motley-Phillips one on one, the better they are at identifying legal issues and barriers in what is usually a short time to do address just the medical needs. So we have welcomed the support of having an attorney on site to help us provide even better care for our low income patients.

In terms of the people that I supervise directly, Attorney Kimberly Motley-Phillips has been a significant contributor for assisting and providing direction to Social Work and Care Management teams, as an avenue for the legal services that the Care Management and Social Work team has limited knowledge of and/ or is outside the scope of practice within a hospital setting.

At UPMC McKeesport Hospital, the social workers that I supervise have many roles. They must assist and coordinate community outreach for social service assistance. Their main duties are to identify high risk patients according to departmental criteria, to promote effective coordination of services and resource utilization. They must also have a safe discharge plan in place which starts on admission. They also participate actively on the multi-disciplinary team with physicians, nurses and other care providers and contribute to patient treatment planning. This is why a large percentage of the referrals that go to the Medical Legal Collaborative for Patients, are referred by the social work team.

Finally, the care management team works in tandem with social work, and they look to all outside entities to assist with outstanding patient discharge planning and the legal services provided by Neighborhood Legal Services Association, via Attorney Kimberly Motley-Phillips. Attorney Motley-Phillips has been very effective in assisting us. This has increased patient satisfaction, by being able to access an attorney free of charge on site, while receiving medical services. The efficiency aspects for care delivery have improved as well.

In conclusion, I strongly support civil legal services for indigent people, especially in a hospital setting. It is now hard for me to imagine not being able to think about contacting Attorney Phillips if a person has been denied health insurance, or if a patient needs a financial power of attorney, or is being evicted from their housing while in the hospital, just to name a few scenario's that have come up. In fact, I am hoping that more funds will be available in the future, and that the Medical Legal Collaborative for Patients can be offered in more hospitals within our system.

Thank you for allowing me to offer my letter of support for increased civil legal services.

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Submitted to Senator Stewart J. Greenleaf Hearings on Civil Legal Representation of the Indigent: Have we achieved equal access to justice?

October 29, 2013

Pittsburgh, PA

It is my distinct honor to have the opportunity to provide this testimony to advocate for supporting the medical-legal collaborative work provided by Attorney Kimberly Motley-Phillips and Neighborhood Legal Services Association, and over civil legal servants, of low income patients and their families.

My background involves working as an Internist (primary care physician) working directly with patients in the in-patient and out-patient settings. I am also the program director of a residency program training young doctors to acquire the professional skills to become the future physicians, and who are also well rounded individuals who are sensitive to their patients, families and community.

We practice at the UPMC McKeesport Hospital, which is a 231 bed acute care teaching hospital, located in McKeesport, PA. As a teaching hospital, medical education and training through a number of programs such as the Medical Legal Collaborative for Patients (MLCP) are supported. The hospital delivers a full range of medical services to residents of the Monongahela, Youghiogheny, and Turtle Creek valleys. We provide badly needed medical and social services to our community. With the decline of the steel industry in the 1980s, this area has a disproportionate number of elderly and low income families, so the hospital is always looking for innovative ways to better care for the most vulnerable patients that we serve, such as the Medical Legal Collaborative for Patients.

I have been a practicing physician in this area for over 12 years and have frequently come across tragic situations when medical care was not provided due to lack of resources and lack of social support. While in some occasions the resources were not available, in many other situations, lack of care was because of lack of legal expertise to take advantage of laws or programs that could

benefit our patients, but were outside our expertise and comfort zone. By being able to collaborate to have an attorney on site at the hospital several days a week, has been very beneficial to our patients and staff.

The Medical Legal Collaborative for Patients (MLCP) is a collaborative effort between UPMC McKeesport Hospital and Neighborhood Legal Services Association. I have the pleasure of working with Attorney Motley-Phillips, who is our onsite attorney. It is not typical to put doctors and lawyers on the same team, but through Attorney Motley-Phillips persistence and legal education trainings, more doctors and other medical staff are beginning to understand and recognize the importance of this partnership, and the impact that social determinants can have on health. As a result, once legal problems are identified, the patient is referred to Attorney Motley-Phillips for direct legal services. Many of our patients would never even think to seek legal services on their own. Prior to partnering with Neighborhood Legal Services Association, I am not sure that many doctors would not either. So being able to access legal service while also dealing with a medical problem is clearing a benefit to both our staff and patients.

We are blessed to have the services of the Neighborhood Legal Association over the last few years. In particular they have been extremely helpful in the following areas:

- a- Maintaining and restoring utilities for families in need. A simple example is that patients' lives can be dependent on Oxygen or Insulin that can only be maintained with electricity.
- b- Providing guidance on housing assistance. Dangers of homelessness are self-explanatory. We in this area experience very tough winter conditions, and it is heart breaking to see patients die of environmental conditions when we as a society are mandated to take care of the weak and needy of our brethren.
- c- Guiding individuals who meet the criteria for medical assistance to receive medical insurance coverage, including assistance with medications.
- d- Guiding patients to the appropriate process to initiate living wills and appointing financial and medical power of attorney attorneys to avoid the chaos and conflicts when and if tragedies strike.

These are just few examples of the great service the Neighborhood Legal Association has been providing to our patients. Maintenance of this service is vital for meeting the needs of our community.

Ibrahim Isaac Ghobrial, MD

Honorable Stephanie Domitrovich
Judge, Erie County Court of Common Pleas

Senate Judiciary Committee Testimony
Judge Stephanie Domitrovich
Erie County Court of Common Pleas

Hello, I am Stephanie Domitrovich, an elected state trial judge of over twenty-three years in Erie County, Pennsylvania. I am concerned about the perception of justice in the eyes of the constituents we serve when these citizens are unrepresented by counsel in civil matters. Lawyers are equipped through their schooling and experience to represent the interests of their clients, and lawyers undisputedly are most familiar with the court process and the substantive law.

I believe most constituents enter the courthouse desiring that they could afford counsel, and most judges prefer to have cases with represented parties rather than unrepresented parties. However, the expense of litigation, which is a necessary ingredient for lawyers to have a livelihood, may interfere with litigants being able to hire counsel. On numerous occasions, I have heard over and over again from unrepresented litigants that they wish they could have afforded to hire counsel because they feel lost in a court system where they have rarely appeared. And I believe that their state of financial inability to hire counsel seriously damages their perception of justice and faith in our court process and encourages them to seek “ghost” counsel who prepare or provide samples of paperwork behind the scenes for unrepresented parties at a minimal fee. Armed with what appears to an unrepresented litigant as “perfectly great work” in tow, unrepresented parties operate under the false premise that the judge will level the playing field in court to provide them more latitude than represented parties when judges ethically are not permitted to do so.

Private counsel is an expense that many unrepresented litigants simply cannot afford. Without the possibility of effective legal representation, many unrepresented citizens risk losing necessities of life in civil actions which can be as fundamental to them as the loss of their liberty. As indicated by New Hampshire Supreme Court Chief Justice John Broderick, “the self-represented are no longer just the poor, but their ranks now include more members of the middle class and a rising number of small businesses.” Chief Justice Broderick further indicated “the vast majority of the self-represented enter our courthouses without lawyers because they can’t afford one, not because they don’t want or need one.” The rights of our individual citizens as well as our society at large are impacted when no counsel is afforded them in civil litigation.

Many other states have expanded free counsel for litigants in civil cases. In 2009, California adopted Civil Gideon, which gave legal counsel in eviction, foreclosure, domestic abuse, predatory lending, child custody, disability and elderly abuse cases. California’s Civil Gideon applies to litigants who are 200% below the poverty line. Citizens of Ohio can delay foreclosure by demanding counsel, and judges have the power to appoint law firms to represent Ohio homeowners. The State of Washington appoints counsel as a reasonable accommodation for citizens who are disabled. The State of New York provides legal counsel for unrepresented litigants in evictions, discrimination claims, housing denials, and building condemnations. New York has established a system for providing civil legal services for the economically disadvantaged by using public funding and has created important precedent for the future. These states have had much success with their Civil Gideon programs.

I firmly believe Civil Gideon is the solution. Civil Gideon will provide counsel to enhance the perception of justice in the laws enacted by the Legislature and for the court process

we work within. I also believe Civil Gideon will alleviate and reduce the large amount of frivolous pleadings by unrepresented parties. As aptly stated by Chief Judge Jonathan Lippman, Chief Judge of the State of New York and Chief Judge of the Court of Appeals, “Civilized societies are ultimately judged by how they treat their most vulnerable citizens.” Our constituents and citizens deserve to be represented by counsel in civil matters which affect the perception of justice in the eyes of the citizens we serve.