

**Testimony of Jonathan M. Smith
On Behalf of the Consortium of Legal Services Providers
Before the Committee of the Whole
Regarding the Fiscal Year 2010 Budget Gap Closing Plan**

July 24, 2009

The District of Columbia is facing an extraordinary budget crisis. With declining revenues and increasing demands for services, the Executive and the Council have a set of very tough choices to make. Cuts will be necessary and it will be impossible for the District to avoid reducing programs that are important to some or all residents.

As the District Council confronts these tough choices, the Consortium of Legal Services Providers¹ asks that the burden of closing the budget gap be spread among all residents and that cuts not be concentrated in programs that serve those most in need. The Administration's proposed cuts rely heavily on the reduction of services to individuals, families and communities living in poverty. We urge the Council to take a different path and spare programs that are necessary for very low income District residents to meet basic human needs, including access to civil legal assistance.

The Administration has proposed that funding for civil legal assistance be cut by \$1.8 million, just over half of the amount authorized by the Council earlier this year. The cut, if enacted, will have a dramatic negative impact on the ability of persons living in poverty to have access to the justice system to help them resolve legal issues related to housing, health care, family relations, employment, personal integrity, nutrition and other fundamental matters.

Three years ago, the District of Columbia joined the majority of states in providing local support for civil legal assistance. The funds are awarded to the D.C. Bar Foundation in two parts. Most of the funds are used to deliver services in communities of highly concentrated poverty, to increase representation in housing matters and to operate a shared interpreter bank which improves the access that language minorities have to the legal system. The other portion is used to fund a loan assistance repayment program for poverty lawyers

For those funds used to support lawyers in the community, the Foundation runs a competitive grant process. Each program must reapply on an annual basis and is judged against all new and existing applicants. While the District support makes a difference, it comes nowhere near close to funding all meritorious applications.

The Mayor's proposed cuts will cost the legal services network between 18 and 20 poverty lawyers. If each lawyer can handle 50 matters in litigation and 100 matters for assistance short of representation each year, around 3000 District residents will not get necessary

¹ The Consortium of Legal Services Providers consists of non-profit organizations that deliver free civil legal assistance to District of Columbia residents. Consortium members assist tens of thousands of clients each year across a continuum of services including direct representation before a court or administrative tribunal, self-help support and advice and broad-based advocacy.

legal help that would have been available but for the cut. (If you figure that the average family size is four, more than 12,000 residents will be adversely affected).

The legal services network is already contracting. Funding from the Interest on Lawyers' Trust Account program is down over \$1 million and revenue from foundations and law firms is shrinking. The picture is likely to be worse in 2010. The Consortium of Legal Services Providers polled its members and initial results show that providers have lost 17 lawyers and 8 other line staff (paralegals/social workers) over the last year. Several programs have dipped deeply into reserves.

1. Legal Services provides critical assistance at a time of growing need

Chronic poverty in the District has for a very long time created a need for civil legal services. Approximately one in five District residents live below the federal poverty line. The legal needs of persons living in poverty are immense. Poor persons are more likely to encounter the legal system in cases where the stakes are high than persons of means – without a lawyer, they are in danger of losing their homes, their food stamps, their access to health care, or the custody of their children. In addition, persons living in poverty are more likely to experience language and culture barriers that keep them from meaningfully asserting their rights.

Virtually every case handled by a legal services lawyer will have collateral economic consequences. Common, routine matters frequently have cascading adverse economic affects. The following are but a few of the hundreds of scenarios that illustrate this point:

- If a woman is fired because her abuser threatens her at work and she doesn't have a lawyer to get her job back, she and her children are now without an income and may face eviction and possible homelessness.
- If a child is improperly denied Medicaid, she could go untreated for common conditions, like ear infections, exposure to lead paint, or mold, that will later impair her ability to learn, leading to expensive special education interventions.
- If a family is evicted when it could be avoided and the family is rendered homeless, job loss, disruption of education and other setbacks are a predictable consequence.
- If an illegal debt collection practice results in the repossession of a car, the owner could lose his job and his family's income.

The District is fortunate to have an effective and creative legal services community and a generous and committed bar. Despite the strengths of the existing network, even before the recession, we were meeting only about 10% of the need. Since the recession hit demand has

gone up and resources have shrunk, expanding the gap between what is necessary to serve every client and what we can provide.

With the recession, matters have grown worse. Unemployment is high and rising, families are in greater need and community based organization are lacking resources to help. Legal services organizations are already doing more with less and increasingly desperate clients arrive at their door.

2. Legal services saves the District money

The District receives an exponential return on its investment in legal services. While we have done no local study, studies from other jurisdictions found that for every dollar spent on legal assistance, the government saves between \$4 and \$7. The following are a few examples of why this is the case:

- Access to counsel in DV cases improves safety. As a result DV survivors are less likely to be victimized and there will be reduced costs for public safety, medical treatment, job loss and interruption of education for minor children in the home.
- Preventing avoidable evictions reduces homelessness and shelter and other costs.
- With regularity we help children who are receiving medical treatment through the Alliance (a 100% DC-funded program) enroll in Medicaid (a 70% federally-funded program). Each case saves the District thousands of dollars each year.

3. Legal Services lawyers facilitate the orderly administration of justice

Our democracy is founded on the ideals of equality and fairness; however, those ideals are realized only to the extent that the least powerful in our society have effective means to enforce them. Courts are important, although not exclusive, guarantors of these rights, yet our judicial institutions are largely beyond the reach of most persons living in poverty.

Our legal system is designed for lawyers. Substantive legal principles and procedural rules are often complex and interrelated in ways not obvious to those not trained in the law. While there are courts with relaxed rules designed for unassisted litigants -- such as small claims court -- they are of very limited jurisdiction. In most cases, it is nearly impossible to negotiate the system to resolve the simplest matter without a lawyer.

The following are but a few illustrations of matters that could only be resolved with the assistance of counsel.

- A family who is facing eviction because the landlord failed to pay the mortgage and has a right to stay under District law will be evicted unless the tenant understands the intersection between the District's Housing Act and foreclosure laws and is able to navigate the procedural rules of the Superior Court.
- A worker who is wrongfully terminated and then denied unemployment on trumped up allegations of misconduct faces potentially complex substantive and evidentiary issues in her appeal.
- A senior who is the victim of fraudulent conduct that steals equity from his home lacks the capacity to secure essential documents to prove the fraud or to file the complex law suit necessary to recover his home.
- A child of an immigrant family suffering from asthma who is improperly denied Medicaid may remain ill or grow worse without guidance through the regulatory maze.
- A woman living with violence will find it nearly impossible to enforce a civil protection order on her own without the help of a lawyer.

Throughout the legal services community there are dozens of stories each week of crises that are averted only because a lawyer was available to help.

4. Loan forgiveness is important to support lawyers who make great sacrifices to do this work

Motivated by the highest ideals of the legal profession – that the law be applied to achieve justice both in form and substance – poverty lawyers make significant sacrifices so that they can do this work. The average starting salary for a lawyer in a legal aid organization is less than \$40,000 per year, while comparable starting lawyers in large law firms earn \$160,000 or more.

The impact of low salaries is compounded by the burden of law school debt. It is not uncommon for a new lawyer to owe \$100,000 or more in student loans. This burden forces many committed graduates to forgo a public service career or to leave a non-profit position after only a few years.

The District of Columbia Poverty Lawyer Loan Assistance Repayment program has been of incalculable assistance to new lawyers. It has allowed many to enter and stay in civil legal assistance.

Loan Forgiveness Promotes Diversity in Legal Services

The Loan Forgiveness Program assists legal services organizations to recruit staff with diverse economic, racial and ethnic backgrounds. As a consequence of discrimination and persistent economic inequality, disproportionately minority graduates either lack family resources that might assist them to pay loan debt or have financial obligations to assist other family members. Overwhelming loan debt is often an insurmountable barrier to a public interest career.

Diversity in race and in economic background is important to legal services work. A diverse staff ensures that the program has cultural competence and credibility with the community being served. The perspective of an attorney who grew up in poverty or has experienced discrimination or knows first-hand the treatment of an immigrant community is an invaluable asset.

The lack of diversity in the legal profession remains a serious concern and statistics on minority graduation from law school are not encouraging.² The program assists legal services programs to more effectively compete with more lucrative options both in hiring and retaining staff from a mix of racial, ethnic and economic backgrounds by removing one of the largest obstacles -- crushing student debt.

Loan Forgiveness Improves Retention of Experienced Staff

Legal services lawyers work in complex and specialized areas with important issues at stake. It often takes years of practice, training and mentoring for an attorney to become expert in an area. Unfortunately, the combined effects of low salary and high loan payments cause many good lawyers to leave when they begin to have families, think about purchasing homes or grow tired of worrying about their economic well-being. Loan forgiveness encourages experienced staff to remain with a program and use the expertise that they have developed over time.

The District's motto is *Justia Omnibus*, or Justice For All. It is a noble and fitting motto. However, it can only be achieved if all District residents can meaningfully assert their rights and fairly resolve their disputes without regard to their income or wealth.

² <http://www.abanet.org/legaled/statistics/charts/minorityjddegreesawarded.pdf>.