

Testimony on: **D.C. Council Bill B21-0879:**
**“Expanding Access to Justice Act of
2016”**

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**D.C. Council Committee
on the Judiciary**
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Consumers for a Responsive Legal System (“Responsive Law”) would like to thank the Committee for the opportunity to present this testimony. Responsive Law is a national nonprofit organization (based in the District, with a director and several board members who are active members of the D.C. Bar) working to make the civil legal system more affordable, accessible and accountable to the people. We have testified to state bar associations and legislatures as well as the American Bar Association on a range of issues affecting users of the legal system. We participated in the ABA Commission on the Future of Legal Services and we have examined innovations in legal service delivery here and abroad.

The bill creates a new funding program for counsel in housing matters provided by nonprofits and law school clinics for tenants with very low incomes. As a consumer advocacy organization, our primary goal in matters of the structure and funding of civil legal aid is to expand sources of legal assistance consistent with the longstanding goal of protection for the consumer.

The bill is in the spirit of the Access Resolution passed in 2015 by the Conference of Chief Justices and the Conference of State Court Administrators endorsing the “aspirational goal” of 100% access to “effective assistance for essential civil legal needs.”¹ Our comments

¹ The resolution urged both Conferences’ members “to provide leadership in achieving that goal and to work with their Access to Justice Commission or other such entities to develop a strategic plan with realistic and measurable outcomes.” <http://bit.ly/1SQHvKf>. (All web sources cited were retrieved October 17, 2016.)

address the central question of what “effective assistance” can mean and how the pilot or demonstration projects funded by the legislation can be most helpful in learning more about that.

“Effective assistance” should be broadly defined to encourage a wide search for solutions since there will never be enough lawyers for full representation for all.

Stable housing is the foundation for the rest of life. And the need for various kinds of help to secure the housing situation for low-income renters is undoubted. Low-income D.C. residents told the Consortium of Legal Services Providers in hundreds of surveys and dozens of focus groups this year that housing is their top concern.² And when problems involve the court, small help is available. Any visitor to the D.C. Superior Court Landlord-Tenant Branch can note the overwhelming number of unrepresented people there every day. The D.C. Access to Justice Commission and individual legal service providers have for years documented the numbers.³

The bill has a good statement of the importance of housing (§ 101(f)) and a usefully broad definition of “legal services” (§ 102(e)). But in its details, the bill narrows the focus significantly.⁴ Most important, the statement of findings offers a sweeping conclusion that “in most

² *The Community Listening Project*. April 2016. <http://bit.ly/1VYARmw>, retrieved October 17, 2016. The broader national picture, and vivid details from close study of Milwaukee, are in Matthew Desmond’s *Evicted* (2016).

³ D.C. Access to Justice Commission, *Justice for All? An Examination of the Civil Legal Needs of the District of Columbia’s Low-Income Community* (2008) (finding only three percent of tenants in landlord-tenant court were represented by counsel). <http://bit.ly/KmnICH>. Almost a decade later the numbers are about the same, according to Legal Aid here. Jasper Scherer, “D.C. Council to Consider Free Legal Help for Poor Residents in Housing Cases.” *Washington Post*, Oct. 14, 2016. <http://wapo.st/2dQBdx5>.

⁴ The bill in § 102(a) limits assistance to six types of proceedings (five for tenants and one for homeless shelter residents). Excluded are discrimination, unreasonable lease terms or enforcement (such as limits on tenants’ rights in regard to guests or unreturned deposits), or any problem affecting a class.

civil cases involving fundamental human needs, assistance from a lawyer—and typically full representation—is necessary” and “essential” (§ 101(d) and (c)) and the overall goal is to demonstrate “the value of the provision of counsel” (§ 101(h)).

Increased attorney capacity for housing work is welcome; many new clients will be grateful. But lawyers for low-income people with housing problems will remain a scarce good. If funds to implement the bill reach \$1-2 million per year, even at low legal services salaries such sums will sustain at most a few dozen new attorneys. Including law firm attorneys contributing time pro bono, and clinical law students, there will never be enough “licensed legal professionals” (those who may participate in the projects the bill will fund) to cope with the scale of need.⁵

Valuable learning from the funded projects can be strengthened by increased statutory emphases on innovation and evaluation.

Alternatives in addition to individual full representation, deployed through effective triage schemes, are essential, and spread of better approaches to practice is hindered by lack of data. So we urge the Council to enlarge the payoff of the new projects by greater emphasis on both innovation and research.

⁵ “Licensing” and related rules confining “law practice” to those holding the license are central puzzles in the search for ways to increase the supply of “effective assistance.” As Responsive Law advisor and the Director of the Stanford Center on the Legal Profession, Deborah L. Rhode, put it in a paper for the Commission on the Future of Legal Services (see note 9 below), “from the standpoint of the public, the objective is more access to justice, not necessarily to lawyers.” The profession has long argued that protection of the public requires the present regulatory scheme. Responsive Law in February 2016 proposed improvements to the D.C. Court of Appeals Rule 49 that limits the practice of law, based on our review of creative ideas tested in other states and other countries that have been found both helpful and consistent with consumer protection. Those included allowing certain services by college students volunteering at court as in the Navigator Program in New York courts, by expert nonlawyer staff at nonprofits, and services modeled after McKenzie Friends in the U.K. Our comments are at <http://bit.ly/2eC6eXz>.

This is just what the California legislature did in 2009 in enacting the Sargent Shriver Civil Counsel Act creating that state's pilot projects.⁶ California attempted to maximize the learning from their pilot projects in several ways.

- First, the legislature set some parameters of the projects—ideas considered worthy of subsidy to incentivize wider trial and evaluation in diverse contexts across the state. For example, perhaps to overcome various types of often-remarked fragmentation, project designs were required to be joint efforts of legal services and courts and to include close collaboration among providers in intake and case referral. In addition, to target funds and learning results, the legislation specified 10 case selection criteria.
- To increase the chances of gaining knowledge of the most value, the legislation directed the selection committee (drawn from providers, courts and others) to evaluate competing “applicants' capacity for success, innovation, and efficiency” in their review of the merits of the plans.
- Finally, the statute gave details of questions that should be answered by the required evaluation (including attention to effects on the courts as well as for clients and providers) and of study design features such as comparisons with others not assisted. Funded projects were required to cooperate in providing access to information needed for the study.⁷

We recommend the Committee revise the bill in ways that will heighten the chance of learning from the funded projects.⁸

⁶ California Government Code §§ 68650-51.

⁷ Ten projects (six in housing courts) were studied for four years. Study director Kelly Jarvis at NPC Research of Portland, Oregon, says their draft study is under final review in California.

⁸ The bill funds the practice of existing providers going forward so the project proposal and the reporting requirements have no time frames. Innovation within that framework should be welcome, and subject to evaluation. To allow for altogether novel approaches the bill could also

- If certain features of expanded and improved legal service practice are considered of special interest to learn about, they should be included in project characteristics in § 201, not left to the uncertainties of the proposal process.
- If promising organizational forms not presently established ought to be tried in order to evaluate their merits, the definition of eligible providers in § 301(c) could be expanded.
- Learning goals should be strengthened by adding them to requirements in § 301 for the Bar Foundation's plans and revising reporting in § 302(a). Sections should also be added assuring funds for evaluation and requiring access to necessary information. Annual reporting may be needed for some administrative data, but schedule for reports on results should be tailored to the nature of the projects eventually funded and the time required to maximize the learning opportunities they present. And § 302(a)(3) should be revised to require the Bar Foundation to develop an evaluation plan mapping out questions that will be answered and the data to do so. As appropriate research skills may not be available in providers or the Bar Foundation, the bill should allow for outside contracting for evaluation work (data-gathering, analysis, reporting), a standing panel of experts for help in design and oversight, or at least should require consultation with appropriate experts at key points.

Conclusion: Optimum use of limited resources requires knowledge of what works.

The legislation should meet the dual obligation accompanying public funds that do not altogether solve a recurring problem—to help at least some people, and to learn how to do better at meeting the remaining need.

create a category for proposals seeking support for a time-limited trial period, also of course subject to evaluation.

Legal help with housing problems is vital, and new capacity will be well used by the District's highly regarded legal services network. The present legislation can be readily modified to better meet the second goal, by adding incentives that can expand the definition of "effective assistance" with new ways of meeting urgent housing legal needs and by adding project elements that better assure solid study of both current practice and promising innovations.

As the ABA Commission on the Future of Legal Services recommended, "Outcomes derived from any established or new models for the delivery of legal services must be measured to evaluate effectiveness."⁹

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We appreciate the opportunity to testify and would be happy to answer questions. In addition Responsive Law has the support of a distinguished 11-member policy advisory board with wide knowledge and practical experience on related subjects of law practice, legal services, new approaches being tried worldwide and sound research methods. (See list at <http://bit.ly/2dloaEI>.) Our staff and board would be pleased to work with our advisors to assist the Committee in developing additional text for the bill.

⁹ *Report on the Future of Legal Services in the United States* (August 2016), p. 56. <http://bit.ly/2ehXotB>. The Commission also published a series of useful summaries of the state of knowledge of legal needs and responses old and new. See, especially, Rebecca Sandefur, "What We Know and Need to Know About the Legal Needs of the Public," (concluding "We can imagine a more rational and more democratic approach, where we decided what needs to target after informed public discussion, based on information about the likely costs and benefits. To have that discussion, we will need a better understanding of what existing legal needs actually are, when they truly go unmet, and how they affect us, as individuals and as a society."), Tonya L. Brito, et al., "What We Know and Need to Know About Civil Gideon" and Deborah L. Rhode, "What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers." All are at <http://bit.ly/2eNloXZ> and were also published in Vol. 67 (2016) of the *South Carolina Law Review*.