

A Continuum of Legal Services: Can 100% Access be Achieved Through Diversified Programming?

By Monte T. Mollere

The ability of poor and modest means individuals to access legal representation in civil matters is a challenge not only to these individuals, but one faced daily by Louisiana courts, civil legal aid organizations and the private bar. One study estimates that only a small fraction of the legal problems experienced by low-income people (less than one in five) are addressed with the assistance of a private attorney or legal aid lawyer.¹ The difference between the level of legal assistance available and the level that is necessary to meet the needs of low-income individuals has been termed the “justice gap.”² In 2015, the Conference of Chief Justices and the Conference of State Court Administrators set out to address the justice gap issue in a resolution, “Reaffirming the Commitment to Meaningful Access to Justice for All.” The resolution reads, in part:

*NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs. . . .*³

While the resolution recognizes 100 percent access to justice may be aspirational, the concepts included in the six short paragraphs have become the subject of significant conversation and enthusiasm throughout the nation’s civil justice community. That enthusiasm and optimism (and sometimes skepticism) have not been lost on Louisiana’s civil justice community as it strives to increase access to the courts.

The resolution suggests that “100% access” is not simply a display of unbridled

optimism, but the basis exists in the “significant advances in creating a continuum of meaningful and appropriate services to secure effective assistance for essential civil legal needs. . . .”

This “continuum” of services presents the possibility of a range of resources in which our justice system might match needs to the most appropriate level of services, thus conserving limited resources and reaching more individuals in the justice gap. The continuum will be most effective when all members in the justice system participate. The Louisiana State Bar Association’s (LSBA) access to justice efforts have long encouraged involvement of civil justice system stakeholders and development of resources that can support and strengthen this continuum.

On one end of that continuum is the litigant who cannot afford an attorney, but may be able to help himself with access to more reliable legal information, forms or expanded self-help services provided by the court. The central portion of the continuum may focus on full representation by legal aid or pro bono attorneys to individuals who don’t have the capacity to assist themselves. The other end may focus on individuals with both capacity and some financial resources to benefit from a measured amount of legal advice from an attorney.

The resolution suggests that the work of the private bar must be included in the spectrum through “discrete task representation by counsel.” More commonly known as limited scope or unbundled representation, this practice has been facilitated by changes in Louisiana court rules. Through modest means panels and incubator programs, attorneys can also provide services to litigants who otherwise

could not afford market-rate legal services, but who may be able to afford some legal services or advice and successfully pursue their legal matters.

Viewing the provision of legal services to the poor through this continuum requires examining traditional ways of serving the poor and providing pro bono services. It also requires changes by the courts, private bar and civil legal aid providers. The LSBA’s access to justice activities regularly assess the greatest “gaps” in service to the poor and how best to close them. Our recent work with self-represented litigants, technology, the LIFT incubator program and pro bono provide a fine structure for this continuum. As the Supreme Court-established Louisiana Access to Justice Commission focuses its work on issues of modest means, funding, language access and self-represented litigation, it will only build on this structure, make the resources in this continuum more robust and move Louisiana closer to a goal of 100 percent access to justice.

FOOTNOTES

1. Legal Servs. Corp., “Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low-Income Americans” (2009), p. 16.

2. Legal Servs. Corp., “Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low-Income Americans” (2009), p. 1.

3. Resolution 5: Reaffirming the Commitment to Meaningful Access to Justice for All, Conference of State Court Admins. 1 (2015).

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