



**Judiciary Committee
Connecticut General Assembly**

**Report of the Task Force to Improve
Access to Legal Counsel in Civil Matters**

Submitted pursuant to Subsection (f) of Section 1 of Special Act No. 16-19
An Act Creating a Task Force to Improve Access to Legal Counsel in Civil Matters
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EXECUTIVE SUMMARY

The Task Force To Improve Access To Legal Counsel In Civil Matters was charged under Special Act No. 16-19 to identify the consequences of unmet civil legal needs of Connecticut residents, and make recommendations regarding steps to help the people of our State meet essential human needs.

For many Connecticut residents, effective legal assistance can have a profound impact upon their ability to secure or protect essential human needs. Those include safety from domestic violence, stabilizing family life, remaining in one's home, securing adequate health care, obtaining subsistence income or other essential government services, securing an education and securing protection in consumer transactions. Connecticut owes a duty to all of its people to address the human suffering that follows from injustice in civil matters. The fair administration of justice is a fundamental obligation of the State.

Yet many Connecticut residents cannot afford the legal assistance they need to protect essential human needs or face other barriers to accessing available legal services. The State's four flagship civil legal services offices turn away thousands of income-eligible residents seeking representation in the areas in which those offices provide services, such as housing and family law, and are unable to provide representation in other areas of essential human needs, such as removal defense and veterans' rights. These offices are also constrained by funding restrictions to refuse representation to persons whose household incomes exceed the threshold for legal aid but who nevertheless cannot afford counsel. Other specialized legal aid offices, law school clinics, bar associations and pro bono programs provide important supplemental representation, but do not alter the longstanding reality that too many residents cannot afford counsel when they seek it. Many other residents do not even attempt to secure counsel as a result of barriers of language, culture, disability, or otherwise.

It costs the State and its people millions of taxpayer dollars to address the injustices that follow from lack of access to civil legal assistance. That cost, which we pay in fiscal burdens as well as diminished social health, outweighs the cost of providing legal help needed to meet essential human needs.

The right to speedy and meaningful access to justice is one of the cornerstones of the American justice system. In 2016 the General Assembly significantly cut the Judicial Branch's budget which forced the Branch to cut costs by closing courthouses and significantly reducing court personnel. These cuts have tremendous consequences for individuals and families. Accordingly, the Task Force recommends against any further cuts to the Branch's budget as it will result in reducing access to justice, which runs directly counter to the very purpose for this Task Force.

Prior studies and reports, within the State and without, have proposed numerous thoughtful and nuanced recommendations, but they have not resulted in sufficient change. Acknowledging that the State confronts significant short-term resource constraints and that there is no single solution for the lack of sufficient counsel for poor and middle-income residents, we have attempted to identify bold, structural reforms, no matter how aspirational, as well as incremental systems modifications that we believe are achievable as early as the 2017 legislative session. Those that we believe the General Assembly needs to address are listed below. In addition, the Task Force recommends various other vehicles to address non-legislative reforms to the existing legal aid network that will also improve the system.

LEGISLATIVE RECOMMENDATIONS

We have identified a series of recommendations to the General Assembly that will enable our State and its residents to improve our fiscal and social well-being consistent with the financial burden these recommendations would entail. They are:

1. Establish a statutory right to civil counsel in three crucial areas where the fiscal and social cost of likely injustice significantly outweighs the fiscal cost of civil counsel:
 - a. Restraining orders under General Statutes § 46b-15;
 - b. Child custody and detained removal (deportation) proceedings;
 - c. Defense of residential evictions;
2. Increase State funding appropriations for civil legal services through the organization designated by the Judicial Branch pursuant to General Statutes § 51-81c.
3. Enact fee-shifting statutes in foreclosure, eviction, and debt collection actions, regardless of whether the underlying consumer contract or lease contains an attorney's fee provision.
4. Enact a statute to authorize the Office of the Attorney General to redirect a portion of funds recovered in penalties and fines by the Office of the Attorney General to legal services providers in accordance with General Statutes § 51-81c.
5. Enact a Statute That Would Allocate a Portion of the Connecticut Unfair Trade Practices Act Penalties and Punitive Damages Awards to Organizations that Provide Legal Services to Low-Income Residents.
6. Enact a statute directing State agencies to provide state-owned computers at locations accessible to the public so they have access to on-line self-help resources for the protection of legal rights
7. Enact a statute directing State agencies to make surplus State office space available for low-cost legal services providers.
8. Enact a statute directing State agencies to reduce the impact of bureaucracies and administrative systems on the people of the State, by:
 - a. utilizing technology, including mobile technology, to make their processes easier, more efficient and more convenient for individuals;
 - b. evaluating the readability of their communications, and to use plain language on websites, guides, and other public notices; and
 - c. utilizing virtual systems to improve customer service and address questions more efficiently.
9. Enact a statute requiring an independent "user impact" analysis for new legislation that may influence the way a bureaucracy delivers services to individuals, thus allowing lawmakers to recognize the burden of any change to State bureaucracies when considering proposed legislation.
10. Enact a statute directing State regulatory agencies to require regulated industries to report on the impact on users of their systems.
11. Enact a statute establishing an accredited representative pilot program allowing trained non-lawyers to assist in matters ancillary to eviction defense proceedings and consumer debt cases in accordance with General Statutes § 51-81c.
12. Appropriate funding for legal assistance providers to establish pilot "Legal Check-Up" programs
13. Enact a statute commissioning studies of the fiscal impact of all legislative enactments intended to enhance access to justice in civil matters.
14. Address the Needs of Connecticut's Low Income Veterans.
15. Funding for New Initiatives.

TASK FORCE'S CHARGE

The fiscal and social health of our State depends on supporting and protecting those who suffer from life's dislocations. Too many people in our State are unable to function as employees, consumers and taxpayers because civil problems weaken them and their families. To its credit, Connecticut is blessed to have many programs and organizations devoted to this important issue. It is a testament to the conviction of so few to the plight of so many. But we are barely scratching the surface in terms of satisfying the need to secure meaningful access to justice for all.

Last session the Connecticut legislature passed Special Act No. 16-19, *AN ACT CREATING A TASK FORCE TO IMPROVE ACCESS TO LEGAL COUNSEL IN CIVIL MATTERS*, which reads in part:

Section 1. (*Effective from passage*) (a) There is established a task force to study the nature, extent and consequences of unmet legal needs of State residents in civil matters. The task force shall examine, on a state-wide basis, the impact that the lack of access to legal counsel in civil matters is having on the ability of State residents to secure essential human needs.

The statute charges us to submit a Report with findings and recommendations that:

(f) ... include suggested mechanisms to: (1) Secure access to justice and legal representation in civil matters by increasing the availability of legal assistance with civil matters throughout the State; and (2) encourage increased pro bono service by the State's legal community.

This report presents the Task Force's findings and recommendations, each summarized in this report and supported in greater depth in our appendix:

Legal services come at a cost. But the lack of meaningful access costs more. This report addresses the great need for civil legal assistance to the people of this State, the fiscal and other gains to be achieved by helping to avoid unjust outcomes in civil matters, and the path forward to reaching those goals.

OUR DELIBERATIVE PROCESS

Our Task Force was appointed over the course of the summer of 2016. With our legislative charge to report by December 15, we faced a challenge to assemble, study, evaluate and make findings and recommendations. Our members, and our supporting team of Deborah Blanchard from the Judiciary Committee and students from the UConn, Quinnipiac and Yale Law Schools, worked mightily: Pauleen Consebido, Jami DeSantis, Jeffrey Dorman, Noah Kolbi-Molinas, Caitlyn Malcynsky, and Melissa Marichal.

We assembled in late summer and proceeded with a series of meetings through the Fall. The detailed work was done by four “Working Groups” that examined in depth several core areas of our charge: Goals and Principles, led by Dean Jennifer Brown of Quinnipiac Law School; Dismantling Barriers, led by Professor Michael Wishnie of Yale Law School; Dealing with Demand, led by Judge Gerald Fox; and Existing Programs, led by Attorney James T. Shearin. In addition, the Task Force chairs worked with the support of Caitlyn Malcynsky to prepare the section on Empirical Measures of Success. Each Working Group conducted extensive investigations and research, deliberated over their conclusions, and generated a report, included in the appendix to this Final Report, and recommendations, which are set out below.

The full Task Force then reviewed the recommendations of each Working Group and reached consensus on those that are presented in this report.

The Task Force and all Working Groups were subject to the Freedom of Information Act under General Statutes § 1-200. All documents related to this Task Force are public records, including the Working Groups full reports, available on the General Assembly’s website dedicated to this Task Force to Improve Access to Legal Counsel in Civil Matters:

https://www.cga.ct.gov/jud/taskforce.asp?TF=20160729_Task%20Force%20to%20Improve%20Access%20to%20Legal%20Counsel%20in%20Civil%20Matters, as well as the website of the Secretary of State. All meetings of the Task Force and the Working Groups were open to the public, and all agendas and minutes associated with such meetings posted online for public viewing. All meetings were properly noticed for public hearing and, in some instances, filmed and broadcast by CT-N.

WHY ACCESS TO LEGAL SERVICES MATTERS

This Task Force was charged “to study the nature, extent, and consequences of unmet legal needs of State residents in civil matters” and to identify the impact that the lack of access to legal counsel in civil matters is having on the ability of State residents to secure essential human needs. In other words, our first task was to identify why providing legal services to the poor matters.

To satisfy that charge we identified and explored three key issues:

1. The human consequences of unmet legal needs in civil matters

When parties in civil matters lack counsel, profound human needs can be put at risk: safety and bodily integrity for survivors of domestic violence; parent/child relationships in family matters; shelter and security in eviction and foreclosure cases; a decent and safe livelihood in employment and labor matters; health and wellness in cases seeking access to healthcare; the ability to learn and grow when access to education is implicated; access to subsistence income and related governmental benefits, and so on. For individuals facing deportation in immigration matters, *all* of these fundamental human needs may be jeopardized without a lawyer.

2. The social impact of unmet legal needs in civil matters

The consequences that flow from our attempt to administer civil justice without sufficient involvement of lawyers are felt both in the short and the long term. Short-term consequences will often be limited to the immediate parties or to persons and entities directly associated with the parties (e.g., employers, landlords, or neighbors). The long-term consequences of leaving parties without counsel can be catastrophic. The public trust in our court system will be undermined as hard-working judges struggle to balance equity with efficiency, to protect the rights of unrepresented litigants while also maintaining their own impartiality, and to render decisions that are consistent with law in the absence of lawyers who can identify and argue for that precedent. Indeed, the very notion of an adversarial system – an even playing field in which the truth emerges from hard fought, well-argued legal disputation – is put at risk when only one or neither party has a lawyer.

Access to justice and trust and confidence in the courts go hand-in-hand. As a Maryland Task Force on Access to Civil Counsel noted:

A healthy justice system depends upon the public’s trust and confidence in the courts. The public’s trust and confidence grows from the experience individuals have in dealing with the courts and the justice system – the extent to which they understand how to proceed, the extent to which they feel they were heard, the extent to which they feel they had a fair chance to present their case, the extent to which others did not have an unfair advantage over them in the proceedings. In short, the public’s trust and confidence in the courts depends on whether individuals perceive they had meaningful access to justice.

Our society’s trust in the rule of law is at risk when civil matters proceed and are resolved – whether by courts or administrative bodies – without counsel to assist both the parties and the decision-makers.

At the same time, we must recognize that the social cost of injustice does not fall equally, and traditionally has had a disproportionate impact on ethnic minorities. Progress will be required in many areas to cure that illness in our society, but one of the most important is maintaining our efforts to promote diversity in the opportunities for social progress. The Connecticut Bar Association, with local and affinity bars, Lawyers Collaborative for Diversity, the Judicial Branch, law firms and corporate legal departments, needs to continue their efforts to create a more diversified and inclusive bar to serve all of Connecticut's communities. The Connecticut Bar Association and the New Haven County Bar Association have and are in

the process of creating pipeline programs to reach diverse inner city middle school and high school students to encourage their entry into the legal profession in Connecticut. These initiatives should be supported by the legal community.

3. The fiscal consequences of unmet legal needs in civil matters

We know that vast numbers of people face important legal problems without the representation of counsel. This burdens both public entities (courts, schools, law enforcement, prisons, public health, and State agencies such as the Department of Children and Family Services) and private entities (employers, hospitals, shelters, landlords, opposing lawyers in pro se matters, and attorneys performing pro bono work). These public and private entities incur added costs when legal problems that might have been handled swiftly and cleanly with the involvement of counsel spiral out of control to cause collateral legal and non-legal problems, due to the absence of counsel.

Historically, arguments over social interventions have not been subject to the level of empirical measurement that has, for many decades, been an integral part of scientific research. But in recent years it has become a more commonplace point of reference in the social sciences as well. At a certain level, measuring the “hard” value of providing legal services presents a challenge, because at their most basic legal services for civil needs serve an immeasurable goal: the nation’s interest in justice. How much should a society spend in order to be a just place for its people to live? But fortunately, it is also possible to assign measurable indicators to the outcomes and impact of legal services. Intuition suggests, and early studies certainly confirm, that spending on civil legal services is a money-saver. Most immediately, it reduces public spending on the social safety net that must spend significant amounts of taxpayer funds to deal with the results of civil losses that can come from unjust outcomes: homelessness, family disintegration, educational failure and unemployment. And in the longer run, it should be provable that people and families who are helped past catastrophic civil outcomes become contributing members of society: consumers, workers, and taxpayers.

THE MOST PRESSING NEEDS

Recognizing the importance that providing legal services to the poor has on society, both from a quality of life and an economic standpoint, we turned next to examine how the challenge is currently being met.

We surveyed the field of existing programs that address the legal needs of the poverty population (typically defined as those below 125% of the federal poverty level (“FPL”)), to identify approaches that are working here and elsewhere, the relative success of each, and the corresponding costs. Additionally, we considered how to make the process more efficient and effective to determine and handle all the relevant legal needs of the poor, perhaps on a more holistic basis.

We collected information on the existing programs that service the poverty population, both private and public. We conducted website searches, polled task force members, contacted members of the Judicial Branch, the Connecticut Bar Foundation (“CBF”), the Connecticut Bar Association (“CBA”), legal service providers, and law schools, all to make sure we covered the landscape to get as much information as we could on existing Connecticut programs. We also surveyed the Connecticut General Statutes to capture the existing government efforts already in place to provide legal services in one form or the other to the poor, be it through the Probate Court, Superior Court or the Executive Branch. We investigated organizations outside of the State of Connecticut to determine what other avenues exist for the provision of legal services to the poor. In addition, we reviewed published studies on access to justice issues and programs.

A list of the Connecticut statutes governing the civil legal services provided to the poor is attached as Exhibit A. The list of programs we have identified, within and without Connecticut, is included in the appendix to this Report, available on the Task Force website.

We recognized at the outset of our work that as a result of the lack of an institutionalized, unified approach to providing access to justice, Connecticut’s landscape currently consists of a patchwork of well-meaning and, for the most part, well-run organizations that tackle various aspects of the access-to-justice problem in various ways, but none on a system-wide basis. As such, the legal needs of the poor are often determined anecdotally and unreliably, and the manner in which these needs are met is fragmented and often unfocused.

One important observation we made was that there is no single defined way to determine what priorities must be set to help the greatest number of people. Priorities are either defined by the mission of the organization, by the level of funding that might exist at any given point in time, by the charitable purpose that a funding source might require, by what a particular client situation might present, or by a cause a particular group or individual might want to champion. Determining which of the many human basic needs we ought to be addressing and in what order, does not exist. Connecticut’s last Legal Needs Study, funded by the Connecticut Bar Foundation and its legal service providers, was commissioned in 2008 and should be updated.

Accordingly, the Goals and Principles working group sought to identify the “essential human needs” most at risk when State residents cannot secure legal counsel, and then prioritized those needs so that the most pressing areas of concern will guide this report and, we hope, the work of the General Assembly that follows. They are:

Physical Safety and Freedom from Domestic Violence

For some people, the specter of domestic violence haunts them even within their own homes. Domestic violence is a serious public health problem. In addition to the substantial costs to the victims, society bears a notable burden in the form of, among other effects, criminal and civil justice, healthcare, and children’s risks.

Nationally, the cost of domestic violence annually exceeds \$5.8 billion, including \$4 billion in direct health care expenses. Domestic violence is not an isolated, individual event. Rather, one episode of violence builds upon past episodes and sets the stage for future episodes. Domestic violence is a national epidemic affecting individuals in every community, regardless of age, economic status, sexual orientation, gender, race, religion or nationality -- and Connecticut is no exception. According to the Connecticut Coalition Against Domestic Violence, Connecticut has averaged fourteen (14) domestic violence deaths annually between 2000 and 2015. The number of family violence incidents annually in Connecticut average approximately 19,000-21,000 over the past two decades. The Connecticut Judicial Branch has experienced an average of nearly 9,000 restraining order applications annually from 2010 through 2013. Of that number, approximately 5,000 orders are granted through an ex parte status each year.

Restraining orders are an important recourse for victims seeking judicial intervention in abusive relationships. (For purposes of this discussion, the term “restraining order” refers only to an order issued under General Statutes § 46b-15 upon application of a family or household member, as opposed to civil orders of protection issued under General Statutes § 46b-16a or protective orders issued in criminal matters.) Survivors of domestic violence rate the filing of an application for a restraining order as one of their most effective tools to stopping domestic violence, second only to leaving the abuser. Studies confirm that access to counsel in restraining order proceedings can make a substantial difference in the outcome. According to one study, 83% of victims represented by an attorney successfully obtained a restraining order, as compared to just 32% of victims without an attorney. Increasing a victim’s chance for obtaining a restraining order is one of the most straightforward ways in which legal assistance can reduce domestic violence. Cases involving domestic violence are often difficult and complex, and survivors without proper legal representation are frequently further victimized by unfavorable outcomes, including a loss of economic self-sufficiency. Survivors often must face their abuser in court to obtain a restraining order, receive child support, or testify in criminal proceedings. This can be financially and emotionally difficult for many survivors, particularly without the assistance of counsel.

Data from the National Network to End Domestic Violence 2015 Point in Time Study reports that domestic violence providers experienced a critical shortage of funds and staff to assist victims in need. Connecticut programs reported that in addition to housing and emergency shelter, legal advocacy was the service most in demand that they could not meet, with 87% of service providers reporting victims seeking this service. In July 2016, Connecticut’s legal services providers joined with other nonprofits in a new statewide direct services project that uses a network of attorneys and advocates to provide coordinated civil legal representation and advocacy for victims affected by sexual and/or domestic violence. This collaborative system offers a full spectrum of advocacy. While effective, this project is limited in scope as the demand for legal assistance continues to outstrip the availability of representation.

Direct costs of domestic violence on both public and private entities include medical and mental health costs, costs to the State when children are placed in foster care because of domestic violence in the home, and employer costs from absenteeism and reduced productivity. As the Massachusetts Task Force found regarding fiscal incentives to prevent domestic violence, “[g]ood employees are key to good employers, which in turn are critical to a healthy local economy. Therefore, it is in the best interests of employers to urge the Commonwealth to support the speedy resolution of these social issues through more and better civil aid.” An independent analysis focusing on the State of New York found that providing legal assistance to female domestic violence survivors would save the State \$85 million annually. In Maryland, a Task Force estimated that the State’s legal aid organizations, even at current funding levels, “saved the State at least \$1.3 million by preventing domestic violence, thereby averting medical costs and increasing productivity.” In Massachusetts, a study found that the marginal cost of investing in legal services for low-income population would be offset by the savings of short-run direct and indirect domestic violence costs. Massachusetts found that “each \$1 of

investment in civil legal services saves at least the same amount in medical costs borne by the State based on the current Medicare reimbursement rates.”

Family Integrity and Relationships

Family stability is clearly an essential human need and when jeopardized, collateral consequences are severe. According to the Connecticut Judicial Branch, in 2016 the areas of advice most commonly sought through the Branch's family Volunteer Attorney Programs included divorce, child support, custody, modification, and visitation. Children receive court-appointed attorneys and guardians ad litem in custody and visitation proceedings, but parents do not have a corresponding right to counsel. Foster and adopting parents can seek advice, but not legal representation from the Connecticut Association for Foster and Adoptive Parents. When parties appeal from Department of Children and Families (DCF) administrative decisions, such as substantiations of neglect, they have no statutory right to court-appointed counsel, even though the administrative decision can result in placement of the parent or custodian's name on a child abuse registry.

Connecticut's neighbor, New York, established a right to counsel in family law matters in the landmark case, *Matter of Ella B.*, 30 N.Y.2d 352, 285 N.E.2d 288, 834 N.Y.S.2d 133 (1972). The case noted the imbalance of experience and expertise between the unrepresented parents and the State. "It is fundamentally unfair, and a denial of due process of law, for the State to seek removal of the child from an indigent parent without according that parent the right to the assistance of court-appointed and compensated counsel." New York codified the right to assigned counsel in a range of family law proceedings in New York Family Court Act § 261. Under New York Family Court Act § 262, indigent persons have a right to counsel in cases involving: child custody and visitation; abuse and neglect; foster care placement and review; termination of parental rights; destitute children; adoption; paternity; domestic violence; and contempt of court for violating a prior court order.

In Connecticut, legal services are not so readily available. In limited types of cases, such as the establishment of paternity, termination of parental rights, or removal of guardianship, indigent parents are eligible for counsel at State expense. But in most cases there is no right to court-appointed counsel, and unrepresented litigants are common in family matters. The absence of counsel to help parties reach reasonable and complete settlements and to assure adequate representation in litigated matters endangers them. Connecticut's efforts to afford advice and counsel in family matters, while extensive, leave many parties unrepresented in cases of critical and fundamental importance.

Immigrants, especially those who are undocumented, must often face these challenges with the additional overlay of uncertain immigration status. However, there is no right to counsel in immigration matters and the capacity of existing programs is extremely limited. Some limited representation is available to indigent immigrants from Connecticut Legal Services, Greater Hartford Legal Aid, New Haven Legal Assistance Association, Apostle Immigrant Services, and law school clinics at Quinnipiac, University of Connecticut, and Yale, but the vast majority of these programs do not offer representation in removal proceedings.

Like cases arising in Superior or Probate Court, the outcomes of removal proceedings have a direct impact on the stability of families and the development of Connecticut's children; deportation proceedings can result in the long-term and even permanent separation of immigrants from their families. In addition to the devastating impact of physical separation and loss of parental care, detained immigrants and their families may also lose vital income, employment, and housing.

New York City has recently established a right to counsel program in detained removal proceedings through the city's New York Immigrant Family Unity Project. By funding immigrant defenders in these cases, and placing those defenders as staff attorneys in existing public defender and civil legal aid offices, this

program has successfully reunited more than half of its clients with their families and increased the chances of detained immigrants winning their cases by as much as 1,000 percent. The program is also estimated to save the State and local businesses a significant amount each year by (1) reducing reliance on the foster care and public health insurance systems and (2) preventing losses in tax revenue and unnecessary employee turnover.

Housing Stability

Few would dispute that housing is an essential human need. Yet, these evictions often lead to homelessness, leave a scar on the tenant's credit record, and fail to address underlying health and safety conditions that will be inherited by the next tenant in that unit. Spencer Wells, *Baltimore Eviction Rate among Highest in Country: A Study of Rent Court, Nonprofit Quarterly*, December 10, 2015, <https://nonprofitquarterly.org/2015/12/10/baltimore-eviction-rate-among-highest-in-country-a-study-of-rent-court/> Without counsel, tenants face tremendous obstacles to defend their rights in eviction proceedings, such as the power imbalance between the parties, tenants' lack of information about their rights, and barriers such as low literacy, mental illness, and limited English proficiency. As a result, tenants without counsel do not fare well in the Court process, too often entering one-sided agreements that inevitably and unnecessarily result in eviction. Eric Angel, *D.C. Bar Foundation Funds New Project to Provide Counsel to Tenants in Subsidized Housing*, *Legal Aid Society: Making Justice Real* (March 19, 2015), <http://www.makingjusticereal.org/d-c-bar-foundation-funds-new-project-to-provide-counsel-to-tenants-in-subsidized-housing>

The impact of even short-term homelessness and housing insecurity can be devastating. Children who experience homelessness are less likely to graduate from high school or attain the same level of education as other children, “leading to long-term losses in productivity and earning potential.” Child development experts have noted the important role of government programs – along with healthy and secure relationships with parents – in supporting children's wellbeing. Financial assistance to families in the form of cash payments or subsidized housing, childcare, or food, all help to alleviate the immediate effects of instability. But not all families are eligible for this public safety net, and not all families entitled to public housing can secure and maintain it without the help of lawyers. This can lead to serious worsening of living conditions or even homelessness. Living without a home or in unhealthy or unsafe conditions “can lead to stress, loss of productivity or work altogether, negative impacts on children and their education, and so on.” As Spencer Wells argued, “[e]viction is both a literal loss of a home and a metaphorical separation of families from the economic mainstream of the U.S., a form of secular ostracism.” The social costs of substandard housing, rental instability, and homelessness outlined by Matthew Desmond in his recent book, *Evicted*, are multiple:

1. Health care costs to treat stress-related diseases such as depression, suicide, and interpersonal violence;
2. Health care costs to treat environmental diseases such as asthma, lead poisoning, and mold-related infections;
3. Low school achievement and employment opportunity;
4. Neighborhood deterioration and the cost of code enforcement and blight removal;
5. Social service expenses associated with the provision of short term housing, home search services, and relocation;
6. Remedial schooling; and
7. Criminal justice enforcement.

Governmental spending to support housing stability actually saves money in the long run. Rent subsidies, for example, reduce the cost of local government by reducing the number of non-payment evictions and homeless services. Keeping families out of housing court and children out of homeless shelters improves school attendance and performance. Robust school attendance rates often benefit local schools as State funding formulas reward truancy prevention. Complementing public support for housing with legal counsel to represent

residents in housing and foreclosure matters would further enhance the benefits society and families derive from homelessness prevention.

New York City has achieved substantial fiscal savings from providing counsel in housing matters. The first annual impact report from New York's Office of Civil Justice (OCJ) found that "27 percent of tenants facing an eviction case in court were represented by a lawyer in the past year, compared to only 1 percent in 2013." The lawyers' work is having a positive impact, as "[r]esidential evictions by city marshals declined 24 percent in 2015 compared to 2013, even though the number of eviction cases filed remained relatively stable." Citing a study by the Right to Counsel Coalition, Oscar Perry Abello argues that although "the city might pay \$3,000 for representation that keeps a family in their existing apartment, if instead they're evicted and end up cycling in and out of homeless shelters, that same family might cost the city more than \$43,000 per year." This disparity in costs means that a New York City program providing counsel in housing court would not only pay for itself (saving the city homeless shelter, healthcare, and other costs), it could save an additional \$320 million in city spending. In Maryland, a State commission estimated that the State's legal aid organizations saved the State \$3.6 million in shelter costs by helping clients avoid homelessness. In Massachusetts, research found that the monetary benefits of representing eligible beneficiaries in eviction and foreclosure proceedings far outweigh the costs of providing these services. This means that for every dollar spent on counsel in eviction and foreclosure cases, the Commonwealth saves more than two dollars on the costs associated with providing other services such as shelter, healthcare, and law enforcement.

Consumer Protection and Fair Proceedings in Small Claims and Superior Court

Every year, tens of thousands of people in Connecticut receive court papers alleging that they owe money to a financial institution – most often a credit card company, a hospital, or an institution that has purchased debt. The cases are usually filed in small claims court, which makes it inexpensive and informal for the collecting entity to pursue the case. The collecting entities virtually always are represented by counsel. Additional causes of action are also filed in small claims including but not limited to security deposit disputes, landlord tenant disputes regarding payment of rent, and general civil cases (excluding libel and slander) that fall within the small claims jurisdictional limit.

According to Judicial Branch statistical data, 75,871 small claims cases were filed between January 2015 and September 2016, many of which are consumer debt collection claims. 45,772 or 60% resulted in default judgments for the plaintiff. Those defendants, for reasons we do not know, did not respond to the complaint. Pro se defendants typically end up required to pay whatever the represented company wants. On the rare occasion that a defendant points to a lack of evidence to prove the debt, or argues that the plaintiff (if a secondary collection agency) may not even own the debt, the defense is unsuccessful, often despite a lack of proof that the debt is really owed to the plaintiff.

Similarly, thousands of consumer debt collection cases are also filed in Superior Court each year because the amount in demand exceeds the \$5,000 jurisdictional limit for filing in small claims. From 7/1/2015 to 6/30/2016, there were 10,424 debt collection cases added to Connecticut's Superior Court civil docket. As of August 2015, Judicial Branch statistical data reports that 51% of these consumer collection cases contained at least one non-appearing defendant. This means that many of these cases were adjudicated as default judgments because the defendant did not participate in the court process (by failing to file an appearance with the court or by failing to file a responsive pleading).

Lack of representation in such cases is common nationally. Studies conducted in Texas, Indiana, Maryland, and New York show a rate of only 0 to 6.8 % of defendants in debt collection cases had a lawyer. In Connecticut, researchers recently observed a small claims trial in which the defendant denied owing the debt, and noted the lack of documentary proof. The small claims magistrate requested written briefs from the pro se

defendant and the plaintiff's lawyer regarding the quality and quantity of proof required. The pro se defendant was left at an obvious disadvantage, with no experience or training in how to draft a legal brief.

At present there is almost no affordable legal help available to defendants in such matters. In an effort to help mitigate this deficit, the Judicial Branch, in cooperation with the Connecticut Bar Association (CBA), secured the services of pro bono attorneys and established volunteer attorney programs for pro se parties in small claims. Additional programs have been established by the Judicial Branch for Superior Court contract collection cases. Because these programs are available to any pro se party with a legal question in the area of small claims, and because many defendants simply default in these actions, the programs have mostly been utilized by plaintiffs and landlords. Clearly, debt collection actions can destabilize low-income families and prevent families, already in trouble, from climbing out of a financial hole. For example, many landlords run credit checks on prospective tenants, and judgments against defendants in debt collection cases can prevent low-income tenants from qualifying for affordable rental units.

THE BARRIERS TO JUSTICE

Connecticut citizens face four principal barriers to access to counsel: (1) inadequate funding of legal services for the poor; (2) lack of affordable attorneys for individuals who are ineligible for legal aid, but unable to afford market rate representation; (3) geographical, cultural, institutional, informational and other impediments facing those in need of legal help; (4) bureaucratic impediments that cause routine needs to devolve into legal problems.

First, most individuals who *are* income-eligible for legal aid are unable to secure representation in cases addressing basic human needs. A 2008 survey found that more than 70% of the low-income households in Connecticut had experienced a legal problem during the previous year, yet only 1 in 4 successfully obtained outside help because demand far exceeded the availability of services.¹ Lack of funding for legal services has worsened since the 2008 financial crisis. Historically, nearly two-thirds of the funds that support lawyers for indigent persons in civil cases came from the revenue generated by Interest On Lawyers' Trust Accounts (IOLTA), but that amount has declined substantially in recent years.²

One hundred percent of the federal poverty level (FPL) for a family of four is \$24,300. Eligibility for most legal services is set at 125% of the FPL. According to census data, between 2007 and 2015, Connecticut's poverty population (incomes under the FPL) grew from 7.9% to 10.8% (approximately 375,000 people), with much higher rates of poverty among the Black and Latino populations and with the greatest concentration in Connecticut's cities. Connecticut's child poverty level grew during that same period from 11.1% to 14.5% (over 110,000 children living in poverty; an estimated increase of 25,000 children over eight years). Connecticut providers who service the economically disadvantaged report unanimously that these needs continue to increase. There are a number of reasons for these significant increases. First, those living just above the FPL have increased in number and their demand upon available legal services, for instance for the private bar, have reduced the amount of services available for those at or below the FPL. Second, fiscal restraints on Connecticut and its larger cities have limited available benefits and, at a minimum, made them harder to obtain.

There are no other funding sources that can make up for the shortfall. Other funding sources are sporadic, diffuse, unreliable, and insufficient. Private foundation dollars, one of the principal sources of funding for many private organizations, has declined over the last several years, from level of funding which already inadequate to meet the existing needs. Funding sources like the Interest on Lawyers' Trust Accounts ("IOLTA") have also decreased dramatically. Over the last eight years, IOLTA receipts went from a high in 2007 of almost \$21 million to a low in 2015 of approximately \$2 million. The Judicial Branch, with the support of the Governor and General Assembly, stepped up to replace some of that funding through the allocation of certain court fees and direct grants, but the total in 2015 amounted to only \$14.7 million. As a result, the CBF, which is a significant funding arm for ten legal service providers, is only operating at 68% of 2007 revenue.

There is no system-wide data as to how many potential clients cannot be serviced. The 2008 Legal Needs Study, referenced above, estimated 307,000 legal needs by low-income people annually. Given the increase in the poverty population, and the increase in the range and number of legal issues discussed above, the 307,000 number has likely grown exponentially. At best, Connecticut's current network of providers tackles

¹ CENTER FOR SURVEY RESEARCH & ANALYSIS, CIVIL NEEDS AMONG LOW-INCOME HOUSEHOLDS IN CONNECTICUT 3, 22, 27(2008), <http://ctlegal.org/sites/default/files/files/2008ConnecticutLegalNeedsStudy.pdf> [hereinafter CSRA CIVIL NEEDS].

² MELANIE B. ABBOTT & STEPHEN WIZNER, REPORT TO THE CONNECTICUT JUDICIAL BRANCH ACCESS TO JUSTICE COMMISSION 1 (2013), <https://ncforaj.files.wordpress.com/2013/03/report-2-15-13-to-the-access-to-justice-commission-2-15-13.pdf> [hereinafter Justice Commission].

approximately 30,000 legal issues each year based upon data provided to the CBF and by extrapolation to the other providers. That means greater than 92% of the legal needs of Connecticut's poorest and most vulnerable citizens go unanswered. According to the justice index compiled by the National Center for Access to Justice at Cardozo Law School, Connecticut has 1.45 civil legal aid attorneys for every 10,000 people living in poverty.

As a result, the number of applications for legal assistance dwarfs the supply of available help of services and, as confirmed to us by the organizations we interviewed, the current network of programs is turning away or underserving tremendous numbers of people who need their services. This conclusion is borne out by statistics from the Judicial Branch, which estimates that 80-85% of family court cases and 75% of housing court cases involve at least one pro se party. This conclusion is also consistent with what is occurring in other States. For example, one of New York City's largest legal service providers, the New York Legal Assistance Group, confirmed that it, and the other providers in New York City, are not close to meeting the needs of their poverty population.

To address this urgent and overwhelming need, many of the public and private agencies enlist the services of the Connecticut Bar Association and others to assist with the delivery of legal services.³ For example, the Probate Court, through the CTLawHelp.org Pro Bono portal, has created a panel of 150 attorneys to help fulfill its growing needs. The Department of Children and Families ("DCF") has created a panel of pro bono private attorneys to handle education deprivation claims for impoverished children under DCF's care. The Connecticut Veterans Legal Center (CVLC) uses its in-depth knowledge of veterans' issues to teach members of the private bar how to handle cases. In 2015, CVLC's pro bono panel consisted of 650 volunteers who devoted an estimated \$900,000 in time. Statewide Legal Services of Connecticut, Inc. ("SLS"), which processes 15,000 matters a year, refers many other cases to a large panel of pro bono attorneys. In 2015, it matched 700 clients with volunteer attorneys. Several law firms have also formed relationships with one or more legal service programs to handle issue-specific pro bono cases, such as Robinson & Cole's relationship with CLS, GHLA, and the Connecticut Coalition Against Domestic Violence.

The private organizations also leverage their services by working with law school clinics. Quinnipiac University School of Law offers a civil justice clinic and tax clinic. Its Civil Justice Clinic operates within the law school's Legal Clinic, an on-campus law office that provide no-cost legal services to low-income people in New Haven, Hartford and Bridgeport. And the Tax Clinics at Quinnipiac and UConn Law Schools serve low-income taxpayers throughout Connecticut. One of the other clinics at the University of Connecticut School of Law is the Asylum and Human Rights Clinic, serving individuals living in Connecticut who fled from fear of persecution in their home country, and are seeking asylum in the United States. UConn Law School also collaborates with GHLA to support three fellows who devote time to expand GHLA's services to Community Health Services, a community health clinic, as well as its Center for Children's Advocacy Clinic, which works in conjunction with the CCA legal staff in representing individual children in cases involving abuse/neglect, families with service needs, special education, juvenile justice, and access to medical/mental health care. Yale Law School also offers a myriad of clinics that provide service to the poor ranging from a Mortgage Foreclosure Clinic, Landlord Tenant Clinic, Worker and Immigrant Rights Advocacy Clinic, and Veterans Legal Services Clinic to name a few. Much of the Yale Law School's clinic program is operated in conjunction with area legal services. These law school clinics provide a practical learning experience to future members of the bar while servicing the legal needs of the area's poorest citizens.

³ Connecticut Rule of Professional Conduct 6.1 provides that lawyers "should" render public interest legal services, but it does not actually require it. It also provides that this goal may be met by working with charitable groups or organizations or by financially supporting organizations that provide legal services to persons of limited means. The estimated pro bono hours, while substantial, are hard to calculate because there is no mandatory reporting requirement in place.

But, these measures do not begin to address the desperate need of tens of thousands of people. More, much more, is necessary.

Second, approximately 330,000 households in Connecticut have incomes above the federal poverty level but below the basic cost of living. (Connecticut United Way, report on Asset Limited, Income Constrained, Employed persons, or “ALICE.” ALICE Study of Financial Hardship: Connecticut, 1, Nov. 2014. http://alice.ctunitedway.org/files/2014/11/14UW-ALICE-Report_CT.pdf) The majority of these households—which comprise nearly 25 % of Connecticut’s population—do *not* qualify for free legal services, nor are they able to afford market rate legal representation. Consequently, when members of these households encounter legal problems, they are forced to navigate a complicated legal system on their own or forego participation in the judicial process altogether. The result is that many of these individuals, who often face well-resourced opposing parties such as banks, landlords, or government attorneys, are unable to vindicate their legal rights and obtain meaningful access to justice.

Third, many low-income individuals who are eligible for free legal services are unaware of or unable to obtain available legal services. Forty-three percent of low-income households with a legal problem in Connecticut did not seek assistance because the households did not know about legal aid options. In addition, many low-income households may not recognize the legal nature of the problems they face. Only 27% of low-income households surveyed in the 2008 study felt they had a serious legal problem in the previous year, yet when asked about 41 specific civil legal problems, 77% indicated they had experienced at least one legal problem.⁴ Individuals may also be discouraged from seeking legal help because the legal profession fails to reflect or include members of their community. As the American Bar Association's Commission on the Future of Legal Services has observed, the percentage of minorities and persons with disabilities in the total population of the U.S. is far greater than the percentage of minorities and persons with disabilities in the legal profession. Judy Perry Martinez & Andrew Perlman, Report on the Future of Legal Services in the United States 32 (American Bar Association 2016). Furthermore, Connecticut’s main legal services offices do not offer representation in some categories of cases for which there is significant demand among low-income households, such as removal defense and veterans’ cases. In addition, physical and mental disabilities and limited financial resources also inhibit the effort of some low-income individuals to secure representation. Of course, even if these families were aware of their legal problems and understood their legal aid options, the fiscal constraints noted above make it unlikely that their needs could be met through any legal aid entity anyway.

Fourth, as a country founded on law, America is more reliant on rules than other countries. While ideally rules and regulations would offer streamlined, standardized practices that are easily understood, in many instances this is not the case. Rather, those with legal issues often find themselves facing a maze of bureaucracy that is often difficult to navigate. Individuals often face complicated forms, "legalese" difficult to understand, websites that do not include necessary forms or information, difficulty reaching an actual live person or the correct person and hours of operation that are not convenient, among other bureaucratic challenges.

Individuals trying to navigate the bureaucratic process consume a significant amount of legal resources. While there are many reasons for this, some of which may be necessary, often many of these resources could best be used elsewhere. This places further burdens on an already burdened system, especially in regard to cost and time. The challenge is then to determine how the bureaucratic process can be made more user-friendly, so that individuals are not seeking legal resources unless absolutely necessary.

⁴ CSRA CIVIL NEEDS, *supra*, note 1 at 27 and 28.

Another factor complicating access to legal services is bureaucratic language. People cannot successfully navigate bureaucracies if they do not understand what is required of them. Although 43% of the U.S. population is at or below basic literacy levels, many government agency websites, notices and instructions are written at a high reading level and include specialized jargon.

Given the amount of legal resources consumed and the danger of disenfranchising individuals who are merely trying to have their basic needs met, bureaucracies must become more user friendly.

WHAT SHOULD THE GENERAL ASSEMBLY DO

To dismantle these barriers and provide meaningful access to justice for a greater number of people, while also taking account of cost, efficacy, political feasibility, and the seriousness and prevalence of the issues, we recommend the following measures the State should implement:

Recommendation 1. Establish a statutory right to civil counsel in three crucial areas where the fiscal and social cost of likely injustice significantly outweighs the fiscal cost of civil counsel.

The General Assembly should establish a civil right to counsel, as an initial step, in the following areas:

- a. Restraining orders under General Statutes § 46b-15;
- b. Child custody and detained removal proceedings (deportation); and
- c. Defense of residential evictions;

The General Assembly should begin by establishing a right to counsel pilot program for at least one or more of three areas of critical need: restraining order, family unity (child custody and detained removal proceedings), and residential eviction cases. For each of these areas, Connecticut could fund staff attorneys located in existing public defender and legal aid offices, as New York City has done through its program to represent low-income detained immigrants, and as both New York and Washington, D.C. have done through their programs to represent indigent individuals facing eviction; or Connecticut could replicate the models of providing a roster of private counsel in the manner of the child protective unit currently through the Office of the Public Defender. A hybrid of these two approaches may also be appropriate.

Similar pilot programs have proven successful in other states. In Massachusetts and Texas, state bodies tasked with expanding the right to civil counsel approved funding for pilot programs for eviction and foreclosure matters. In California, the Sargent Shriver Civil Counsel Act established three-year pilot programs for the right to counsel in cases including domestic violence, deprivation of child custody, housing, and elder abuse matters. In New York City, a program guaranteeing the right to counsel for detained immigrants has been extremely successful and recently extended to western New York.

Our reasoning for focusing on these three areas is explained below.

Restraining Order Proceedings (§46b-15).

Every day, indigent pro se parties enter our family courts seeking relief from abuse. Often these parties are unable to advocate effectively for themselves or articulate a sufficient basis to support the relief they are seeking from the court. Similarly, other indigent parties must defend themselves against allegations of domestic abuse. In both instances, these indigent litigants are ill-equipped to articulate the merits of their positions to the court because of a language barrier, lack of understanding of the statutory standard, or some other reason.

Indigent domestic violence victims who are represented during the hearing are more likely to prevail in obtaining an order for relief from abuse from the court, and protecting their children and themselves from further harm.⁵ Further, indigent respondents also benefit from representation during the court hearing on the applicant's application. Respondents may face very serious consequences as the result of restraining order

⁵ TASK FORCE TO STUDY IMPLEMENTING A CIVIL RIGHT TO COUNSEL IN MARYLAND, REPORT OF THE TASK FORCE TO STUDY IMPLEMENTING A CIVIL RIGHT TO COUNSEL IN MARYLAND 20 (2014), <http://www.mdcourts.gov/mdatjc/taskforcecivilcounsel/pdfs/finalreport201410.pdf> [hereinafter Maryland Task Force Report].

proceedings including the potential loss of a residence if shared with the applicant, and the ability to have contact with their children. A similar right to counsel program already exists in New York pursuant to New York Family Court Act § 262 and was recommended by the Maryland Access to Justice Commission in 2014.

Child Custody and Detained Removal Proceedings.

The absence of guaranteed counsel in child custody proceedings has a significant impact not only on parents' rights, but also on the stability of families and the growth and development of Connecticut's children. Just as in abuse proceedings, pro se parties in custody matters are often unable to advocate effectively for themselves. In cases where both parties are pro se, this often leads to a lack of resolution and future litigation, resulting in prolonged instability in the lives of the children at issue. In cases where only one party is represented by an attorney, that party—who almost always has significantly more resources at their disposal—will often prevail and obtain their desired outcome, regardless of whether it is in the best interest of the child(ren). A right to counsel for all indigent parties with legitimate interests in custody matters will minimize these undesirable outcomes, and ensure that each side in a custody dispute is able to articulate effectively why the resolution they seek is in the best interest of the child(ren).

A group that is especially vulnerable to family disruption through involvement with the legal system are immigrants. Connecticut residents who are immigrants and face the possibility of deportation (now called “removal”) risk losing what the United States Supreme Court has called “all that makes life worth living,” including their livelihood, their family, their freedom, and even their lives. To keep families together and limit the collateral consequences of removal proceedings, the State should fund a pilot right to counsel program for detained immigrants.

In 2013, New York City launched the nation's first such program for detained immigrants in removal proceedings, the New York Immigrant Family Unity Project (NYIFUP). Initially established as a one-year pilot program, New York City's program now serves all income-eligible detained immigrants in New York City Immigration Court as well as all detained New York City residents with removal cases in Newark and Elizabeth, New Jersey, and has recently expanded to western New York as well. As of August 2015, 52% of clients from the pilot phase of the project had been reunited with their families, with NYIFUP attorneys winning 71% of their trials. Representation has increased a detained client's chance of success by as much as 1,000%, compared with success rates for unrepresented detained immigrants prior to the launch of NYIFUP.⁶

Although removal proceedings are conducted by a federal agency, a resident's detention and deportation have the potential to impose significant social and economic costs on Connecticut for years after deportation. Financial costs include spending on foster care, public health insurance, and lost tax revenue. Local business costs include those associated with unnecessary employee turnover and re-training. Indeed, a 2014 study estimated that if NYIFUP were expanded to cover all New York State residents in detained removal proceedings, the program could result in \$1.9 million in annual savings for New York and \$4 million in annual savings for employers.⁷ Establishment of a right to counsel program in Connecticut's detained removal proceeding, can both save money and help protect vulnerable families.

Eviction Proceedings.

⁶ NATIONAL IMMIGRATION LAW CENTER, *BLAZING A TRAIL: THE FIGHT FOR RIGHT TO COUNSEL IN DETENTION AND BEYOND* 15 (2016), <https://www.nilc.org/wp-content/uploads/2016/04/Right-to-Counsel-Blazing-a-Trail-2016-03.pdf>.

⁷ CENTER FOR POPULAR DEMOCRACY ET AL., *NEW YORK IMMIGRANT FAMILY UNITY PROJECT: GOOD FOR FAMILIES, GOOD FOR EMPLOYERS, AND GOOD FOR ALL NEW YORKERS* (2014), https://populardemocracy.org/sites/default/files/immgrant_family_unity_project_print_layout.pdf.

Given the prevalence of housing-related legal issues among low-income Connecticut residents, the high percentage of cases in which landlords are represented, but tenants are not, the huge difference having a lawyer can make for a tenant being sued for eviction, and the devastating effects of eviction, homelessness, and prolonged housing instability, it is imperative that access to counsel for low-income tenants in eviction proceedings be improved dramatically. While significantly expanding access to counsel for tenants in eviction proceedings will require considerable initial funding, there is ample evidence that doing so will eventually save Connecticut far more than it will cost. To demonstrate the efficacy of such a resource-intensive initiative, we recommend establishing a smaller-scale pilot program similar to those that have recently been undertaken in New York City, Massachusetts, and Washington, D.C. Specifically, we recommend establishing a program where legal services providers would (1) use court records to identify pending eviction cases where need is greatest and legal assistance could make a significant difference, (2) contact the tenants in those cases and offer full representation, and then (3) track the outcomes in those cases where representation is provided and compare them to similar cases where representation was not provided.

Recommendation 2. Increase State funding appropriations for civil legal services through the organization designated by the Judicial Branch pursuant to General Statutes § 51-81c.

The population of income-eligible residents in need of free legal services far exceeds the current supply.⁸ The major sources of current funds, IOLTA revenue and court fees, are vulnerable to market fluctuations. The temporary increase in public funding after the 2008 financial crisis helped to offset losses from other funding sources, but it failed to raise legal service funding to pre-recession levels or address the inherent vulnerabilities of the current funding system.⁹ Given this reality, the General Assembly must appropriate additional funds for legal services. The simplest and most established way to do so is through added appropriations to the Judicial Branch for it to distribute through the organization it chooses pursuant to General Statutes § 51-81c (the IOLTA statute).

Recommendation 3. Enact fee-shifting statutes in foreclosure, eviction, and debt collection actions, regardless of whether the underlying consumer contract or lease contains an attorney's fee provision.

Connecticut has some statutes with fee-shifting provisions, including laws governing minimum wage and overtime enforcement and civil rights violations; current statutes permit "reverse fee-shifting" in foreclosure, eviction and debt collection actions in which the consumer contract or lease at issue already has an attorney's fees provision. We recommend that the General Assembly amend or adopt new fee-shifting statutes in areas of significant unmet legal needs, such as allowing an award of reasonable attorney's fees to prevailing defendants in foreclosure, eviction, and debt collection actions, regardless of whether the underlying consumer contract or lease contains an attorney's fees provision. There would be no direct cost to Connecticut taxpayers in creating fee-shifting statutes, and they would help close the justice gap by encouraging private attorneys to represent tenants, homeowners, or consumers who would not otherwise be able to afford an attorney, and by discouraging landlords, mortgagors, and debt collectors from bringing non-meritorious suits. By reducing the overall number of case filings, and reducing the number of unrepresented parties in the judiciary system, such statutes would also increase judicial economy.

Recommendation 4. Enact a statute to authorize the Office of the Attorney General to redirect a portion of funds recovered in penalties and fines by the Office of the Attorney General to legal services providers in

⁸ ABA COMMISSION ON THE FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 15 (2016), http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

⁹ Ross Garber, Kristin Hoffman, Ben Solnit, CT Legal Aid Fights to Keep Services Amid Cuts, HARTFORD COURANT, July 21, 2015, <http://www.courant.com/opinion/op-ed/hc-op-garber-legal-aid-needs-money-0721-20150720-story.html>.

accordance with General Statutes § 51-81c.

The Office of the Attorney General contributes substantial sums each year to the State's general fund through settlements and judgments in litigation. In FY 2015, for example, the Attorney General's Office generated \$201.8 million for the general fund. These monies are generally unrestricted upon deposit in the general fund and available to be allocated at the discretion of the General Assembly through the exercise of its appropriation authority. (Some funds recovered by the Attorney General, such as restitution for consumers or recoveries for Medicaid and other government programs, are not deposited in the general fund or are restricted and unavailable for general discretionary appropriation.) The Task Force recommends that the General Assembly authorize the Attorney General to direct a portion of funds that he would otherwise deposit in the general fund to the support of legal services, for example by directing such funds to the Connecticut Bar Foundation for distribution through its legal services grant program. Should it wish to provide such authority, the General Assembly should do so by statute establishing a maximum dollar amount that may be so directed in each fiscal year, as well as such other limitations and restrictions as it deems appropriate.

Recommendation 5. Enact a Statute That Would Allocate a Portion of the Connecticut Unfair Trade Practices Act Penalties and Punitive Damages Awards to Organizations that Provide Legal Services to Low-Income Residents.

Many states, including Alaska, Iowa, Illinois, Missouri, Oregon, Texas, and Utah, provide that a portion of any punitive damage award go directly to the state. The Texas Chief Justice Pope Act (2013) is an example of how this funding model would work. The Connecticut Bar Foundation, Connecticut Bar Association, and other relevant actors should work with the General Assembly to enact a similar statute, in this instance to direct the state's portion of any award (or at least part of the state's portion) to legal services providers.

1. **Recommendation 6.** Enact a statute directing State agencies to provide state-owned computers at locations accessible to the public so they have access to on-line self-help resources for the protection of legal rights.

A robust state-supported and state-hosted online access to justice database and interactive website combining the best of the models adopted to date would be very effective. Connecticut has the technology infrastructure in place to meet this goal. The statistics are impressive that people who can access information about certain less-complicated problems can often resolve them themselves. However, they need access to the tools to accomplish it. Computers and internet service are not available to all individuals, nor are they necessarily capable of working through an on-line tool. Assistance by the State in providing ready access to on-line services and replicating the Judicial Branch's Service Centers with dedicated personnel would undoubtedly solve many legal needs of the poverty population and most assuredly reduce more costly efforts by legal service providers and the court system. This effort could be undertaken at minimum expense since the existing legal service providers have already created CTLawHelp.org. This web site, funded by the [Connecticut Bar Foundation](#) and the [Legal Services Corporation](#), seeks to further the goal of equal access to justice by providing information and self-help materials on legal issues affecting people with low income. Local libraries should be able to help in this endeavor.

Recommendation 7. Enact a statute directing State agencies to make surplus State office space available for low-cost legal services providers.

Other than personnel, the largest cost for every legal service provider is office space. Substantial money can be saved and redirected to service delivery if Connecticut were willing to provide vacant office space to existing providers.

Recommendation 8. Enact a statute directing State agencies to reduce the impact of bureaucracies and administrative systems on the people of the State.

The General Assembly should require all Government agencies to reduce red tape and simplify and streamline their customer service processes in order to improve efficiency and the overall citizen service experience. Connecticut can learn from the private sector, especially those industries that have obtained market advantage by improving customer service. Among the measures the state should consider are:

- focusing on customer service in call centers
- offering an inviting “customer front door”
- getting customers off the phone and onto the web
- handling calls more intelligently
- Making More Effective Use of Customer Data and Segmentation

Agencies should use web analytics to study users’ traffic on agency services websites. Web analytics is the study of the patterns of users’ travel through a website. It measures what webpages people visit; how long they stay; where they move from and to; and where they are when they quit the site. This information gives powerful insights into the parts of the website that are successful in reaching the user (more often visited; more time spent on the page); which webpages successfully move users forward toward a goal (pages from which the users follow the appropriate link to a successful outcome, such as a purchase); and webpages that fail, because they are the page the user is looking at when the user departs. Anywhere that web-based systems are used to guide people toward important civil outcomes, web analytics can be used to improve the user’s experience.

Agencies can also use skills-based routing, “virtual hold” (scheduled call-back) and business priority routing in order to be more efficient. Virtual systems have been praised for being able to identify the reasons why callers are calling, which then allows the system to route the individual to the most appropriate person to handle the issue. Virtual systems also allow individuals to receive call backs at times that are more appropriate and when there is less call volume/shorter wait time. Furthermore, it has been acknowledged that in order to be effective, representatives from different areas need to work together. An effective system can include the following:

- Break down the journey using customer perspective as a central focus.
- Map the journey against current internal operations.
- Identify the “wow moments” and pain points, such as unnecessary wait times or delays in communication.
- Prioritize pain points based on what matters most to customers.
- Radically redesign the journey to address the pain points and focus on customer needs.

Recommendation 9. Enact a statute requiring an independent “user impact” analysis for new legislation that may influence the way a bureaucracy delivers services to individuals, thus allowing lawmakers to recognize the burden of any change to State bureaucracies when considering proposed legislation.

Connecticut can further help its citizens avoid bureaucratic costs and frustrations by considering the impact of new legislation. The General Assembly should enact a statute that requires the legislature to request an independent user impact analysis prior to voting on new legislation that may have influence on the way a bureaucracy delivers services to individuals. This will help lawmakers to be cognizant of the importance of user when considering proposed legislation. Currently, bills are required to have a fiscal analysis to address financial impact and a racial impact statement to analyze whether proposed legislation would have an impact on racial disparities. Often proposed legislation can have an unintended consequence that non-partisan staff analysis would recognize when studying a bill. A user impact statement should analyze whether proposed

legislation would facilitate or make it more difficult for individuals to obtain those services to which they are entitled, and this impact would need to be considered when voting on legislation.

Recommendation 10. Enact a statute directing State regulatory agencies to require regulated industries to report on the impact on users of their systems.

Connecticut regulates industries that are natural monopolies, as well as industries whose impact on customers and society hold strong public welfare implications. As much as those industries are accountable for their price structures and terms of service, they should be accountable for the burdens they place on citizens and users who must deal with their systems.

Connecticut's regulatory agencies should require reporting on user experience by all regulated industries, including in all the measures mentioned above in Recommendation 8.

Recommendation 11. Enact a statute establishing an accredited representative pilot program allowing trained non-lawyers to assist in matters ancillary to eviction defense proceedings and consumer debt cases in accordance with General Statutes § 51-81c.

At this time, the Task Force does not recommend adoption of a broad program for non-lawyer representatives in Connecticut, such as the Limited License Legal Technician program in Washington State. We recommend the exploration of alternative pilot programs. Non-lawyer accredited representatives are already authorized to handle many matters before federal and State administrative agencies in Connecticut. Federal agencies that allow non-lawyer accredited representatives include the U.S. Department of Justice, Executive Office of Immigration Review; U.S. Department of Homeland Security (DHS), Citizenship and Immigration Services; U.S. Department of Veterans' Affairs (VA); and the Social Security Administration. Non-attorney accredited representatives can also appear on behalf of a client in many State administrative hearings, including before the Departments of Social Services and of Labor. As to immigration and veterans' benefits cases, there are already over 50 VA-accredited representatives and 43 DHS-accredited representatives authorized to practice in Connecticut, including eight Veterans' Service Officers employed by the Connecticut Department of Veterans Affairs.

The General Assembly should establish an accredited representative pilot program for matters ancillary to eviction defense and consumer debt cases, modeled after the regulatory frameworks established in the above agency and court proceedings. Unpaid rent collection, tenants' security deposit claims, and other small claims related to the landlord-tenant relationship frequently arise in small claims court. The issues of fact and law are relatively simple, the amounts in question are small, and persons could benefit from non-lawyer assistance. Consumer debt collection practices involve similar imbalances in power due to the lack of legal representation.

The General Assembly should also explore permitting accredited representatives to charge reasonable or at least nominal fees, as has long been permitted in immigration court proceedings. We recommend allowing qualified lay experts, working in association with an attorney in specified practice areas of high need, to assist litigants in exchange for reasonable fees. If a pilot were successful, the General Assembly could consider expanding the accredited representative program to other cases.

Recommendation 12. Appropriate funding for legal assistance providers to establish pilot "Legal Check-Up" programs.

The General Assembly should provide funding, at least on a pilot basis, to legal services providers for a

legal health checkup program that will enable limited-income residents to determine what benefits and services they are eligible to receive. The checkup should contain questions about income, housing, education, employment, health, family and community support, and demographics. The answers will allow the reviewing attorney, paralegal, or social worker to determine whether a resident has any pending legal issues or is at risk for encountering any issues in the near future, and whether the resident is eligible to receive any services or assistance that may help them with their issues, legal or otherwise. The checkup serves the functions of (1) reaching eligible individuals in need of legal assistance who would not otherwise seek out such assistance, (2) preventing problems from developing into crises where legal assistance *is* required, and (3) helping citizens obtain resources and benefits that will better enable them to satisfy basic human needs.

Recommendation 13. Enact a statute commissioning studies of the fiscal impact of all legislative enactments intended to enhance access to justice in civil matters.

Nearly every recommendation in this report turns, at least in part, on our assessment of its likely contribution to improving society. Implementing empirical studies and analyzing the data created – at both a qualitative and quantitative level – has many benefits. Such data can assist to identify existing problems and their current impacts, suggest possible avenues for solutions and change, and – over time with longitudinal study – assess the success of institutional changes.

If decision-makers can rely on demonstrable proof that a dollar spent on civil legal services will translate into multiples of that dollar in savings and increased economic activity, civil legal services can become the best bet among many fiscal priorities. There have been many reports of the outcomes of legal aid, mostly focusing on cases resolved with success as defined by their stated goal at opening of clients reporting satisfaction with their service. These studies generally support the proposition that legal services expenditures are a good investment for a funding agent seeking to save social costs and achieve justice.

But they stop short of two key findings. The first is that they nearly always stop measuring at the result of the case, and do not establish whether the immediate results have any lasting impact of value to the clients and to society. The second is proof of the difference in outcome of the same case with and without legal representation, so that it can be established that it was the legal services alone, rather than some other trait of the “winning” cases, that led to their more positive results. That can be achieved only with Randomized Control Trials (RCTs). For any step that we recommend dedication of resources, we also recommend that a plan be established to measure the success of that step. Especially, the people of Connecticut should learn what the “return on investment” is for every dollar spent on access to justice. In particular, we believe that any agency or provider undertaking a new program should consider instituting with it a Randomized Control Trial wherever ethically allowed, and that the State of Connecticut, along with the network of legal service providers seek to institute Randomized Control Trials for existing programs where it is feasible and ethical to do so.

We expect that those studies will prove that when individuals and families facing challenges to their basic human needs are able to receive legal assistance, it not only saves them far more in harm than the cost of those services, but also saves society far more than it costs.

Recommendation 14. Address the Needs of Connecticut's Low Income Veterans.

We collectively bear a special responsibility to serve the unmet legal needs of low-income veterans in Connecticut. To this end, we recommend that the Connecticut General Assembly adopt a resolution favoring amendments to the statutory authority and mission of the U.S. Department of Veterans Affairs to allow for funding for legal services to veterans, or for entities that provide legal services to veterans, such as the Connecticut Veterans Legal Center, as the VA has begun to do in a modest way in its Supportive Services for

Veteran Families program. In addition, we acknowledge the leadership of Sen. Richard Blumenthal, Ranking Member, Senate Veterans Affairs Committee, in pursuing such amendments, and recommend the General Assembly urge Sen. Blumenthal and other members of the state's congressional delegation to continue this effort. Further, we recognize the vital services provided to the state's veterans by the Connecticut Veterans Legal Center, and recommend the General Assembly consider encouraging the state's other civil legal aid agencies to offer representation to income-eligible clients in VA benefits cases, discharge upgrade matters, and other such veteran-specific matters. Finally, the General Assembly currently funds approximately eight full-time employees in the CT Department of Veterans Affairs who are VA accredited representatives and who provide free representation to CT veterans in VA benefits matters. The legislature should consider funding staff attorneys and additional accredited representatives located within CVLC or other civil legal aid offices, where the latter may be supervised by an attorney as well.

Recommendation 15. Funding for New Initiatives.

The second set of recommendations in this report are addressed not to the General Assembly but to the Judicial Branch, the legal services community, and the legal profession. But many of these recommendations require funding, and in several instances could not be undertaken without diverting existing resources away from the crucial need to serve vulnerable populations.

We therefore ask that the General Assembly provide funding for the following initiatives:

- a) Legal assistance to persons with disabilities;
- b) Raising the financial ceiling for non-LSC funded legal services providers;
- c) Incubators to support solo practitioners serving the poor and moderate income communities;
- d) Tri-annual State-wide priority setting studies;
- e) Medical-legal partnerships; and
- f) Studies of new methods of legal services delivery.

WHAT MORE CAN WE DO

Our work has led us to other observations and recommendations we intend to pursue collectively and individually with the various constituencies who devote their time, talent and treasure to ensuring that all persons have meaningful access to justice regardless of economic means.

Recommendation 1. Further Expand the Efforts of the ATJC.

The Access to Justice Commission (ATJC) was created by the Chief Justice and made a series of recommendations in 2013 that have resulted in improving the situation for many litigants. For example, as a result of the ATJC's work, the Judicial Branch adopted Practice Book § 3-8 to facilitate some provision of legal services to those who might not otherwise be able to afford a full time lawyer, permitting limited scope representation ("LSR"), i.e., representation for a particular phase or project in a litigation. As of December 2016, the Judicial Branch reports there have been 1,767 limited scope appearances filed in superior court civil, family and family support magistrate cases. Over 19 other states have adopted court rules that facilitate limited scope representation in contested litigation with a form of limited appearance. The success of limited appearances for family matters became the impetus for the Judicial Branch's second proposal, this time to the Judicial Branch's Civil Commission and Rules Committee of the Superior Court to further amend Connecticut Practice Book § 3-8 to include all civil cases. The amended rules permitting an attorney to file a limited appearance in all civil matters (including housing and small claims) became effective on January 1, 2016. Despite the increasing interest in unbundled services, the efficacy of these reforms is still unclear and more research is required; some studies show perceived benefits but others suggest that unbundling may not enhance actual fairness as measured by case results. Moreover, more should be done to promote LSR, including working with the state and local bar associations to promote LSR. The ATJC should carefully study the implementation of limited scope representation programs to determine whether they should be modified.

A significant part of the Judicial Branch's efforts towards providing equal access to justice for all of Connecticut's citizens has been the movement to increase awareness regarding the importance of pro bono service. These pro bono efforts have, in part, focused on the number and diversity of attorneys who perform pro bono work. An important component has been enacting changes in the Rules of Professional Conduct to permit retired attorneys and in-house attorneys to perform pro bono service under the supervision of an organized legal aid society, a State or local bar association project, or a court-affiliated pro bono program. To that end, Practice Book § 2-55 was amended on June 14, 2013, and took effect on January 1, 2014, to include the following language, under newly created subsection (e): "An attorney who has retired pursuant to this section may engage in uncompensated services to clients under the supervision of an organized legal aid society, a state or local bar association project, or a court-affiliated pro bono program." Likewise, Practice Book § 2-15A (c) was amended on June 15, 2012, and took effect on January 1, 2013, to include the following language, under newly created subdivision (5): "Notwithstanding anything to the contrary in this section, an authorized house counsel may participate in the provision of any and all legal services pro bono public in Connecticut offered under the supervision of an organized legal aid society or state/local bar association project, or of a member of the Connecticut bar who is also working on the pro bono representation." This initiative should be promoted.

In addition to the LSR and pro bono program discussed above, the Judicial Branch has Court Service Centers and public information desks which, in 2015, provided assistance and services to 354,673 court patrons, 265,375 of whom were pro se parties. The Connecticut Judicial Branch has also established eighteen court-based advice-only Volunteer Attorney Programs (VAPs) in the areas of family law (Hartford, Stamford, and Waterbury), foreclosure law (Hartford, New Haven, Bridgeport, New Britain, New London, Stamford, and Waterbury), contract collections law (Bridgeport, Hartford, New Haven, New London and Waterbury) and small claims in conjunction with the CBA in (Hartford, Middletown, and New Haven). The program should be expanded by establishing VAPs in the areas of housing law, immigration law, employment law, and public

benefits law. The undertaking has helped well in excess of 12,000 litigants since it began. Additional outposts should be created.¹⁰

The ATJC report was a significant undertaking and made a series of noteworthy recommendations, many of which are still pending, each of which would, if adopted, have a significant impact on addressing access to justice issues. Those recommendations should be reviewed and adopted if still appropriate. These include:

- a. Instituting a review of Connecticut's Unauthorized Practice of Law rule and the Student Practice rules with the purpose of identifying revisions that expand the ability of law students to provide pro bono assistance to persons of limited means;
- b. Exploring with the Connecticut Bar Association, local bar associations, and law schools' legal clinics the feasibility of establishing modest means programs to assist low income individuals who need legal assistance but who do not qualify for, or cannot obtain, free legal services; and
- c. Working with Connecticut law schools to identify additional ways in which to engage law students in providing legal assistance to persons of limited means through clinics, externships and other training programs;

To these we would add:

- d. Study additional ways in which it might be able to facilitate providing legal services to the poor. This might entail quicker resolution time, reducing the amount of time spent at court appearances, and promoting limited appearances and information.
- e. We encourage the ATJC's ongoing efforts to increase access to justice at the appellate level. In the last several years, the percentage of appeals at the Connecticut Appellate Court, in which at least one party was pro se, has remained around 35%.

Recommendation 2. Continue to enhance Judicial Branch systems to facilitate access.

The Judicial Branch has taken many steps in the last decade to make the courts and their systems accessible to both represented and unrepresented parties. There is more that can be done, especially in those dockets with significant numbers of pro se parties.

One of the areas of significant progress by the Judicial Branch is in the field of Online Dispute Resolution (ODR), an idea that has recently gained traction in several other jurisdictions. JJ Prescott of the University of Michigan was the leader of an online court project at the University of Michigan. (see https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2777059) While not appropriate for all legal matters, ODR has much promise and many positive attributes. The ODR process developed for the University of Michigan's project is a fairly simple one, provided one has access to the internet and is comfortable using technology. In short, an individual looking to resolve a minor dispute will go to the online system and submit a request to the court, offering detail regarding the matter and answering questions from the court. The online system will then route the case information to the appropriate people (law enforcement, clerk, prosecutor, judge). The individual receives text messages and is emailed updates as the process progresses and is ultimately

¹⁰ Under the ATJC, the Judicial Branch has also collaborated with Connecticut's public libraries to conduct outreach to public librarians and academic librarians with a goal of developing an ongoing program of training, information sharing, and, when possible, resource exchange.

closed. (See ODR overview at <http://getmatterhorn.com/how-it-works/>) In short, ODR offers many advantages, including:

- informal, flexible and not bound by strict rules of procedure and evidence;
- low or no cost of participation; any costs shared by parties;
- well suited to low-dollar and high-volume transactions;
- well suited to geographically disparate parties;
- well suited to disputes where parties may not emotionally be able to be in the same room;
- well suited to accommodating physical disabilities;
- process is confidential; and
- lawyers are often not required.

Recommendation 3. Improve Access to Counsel for Persons with Disabilities.

The Justice Index, which evaluates and ranks all 50 states along a number of access to justice measures, currently ranks Connecticut sixth on its “disability access index.” The rankings are determined by Connecticut’s performance on 13 practices tied to assuring access to the justice system for indigent persons with physical disabilities, mental health issues, or cognitive limitations. Connecticut’s relatively high ranking is a function of its adoption of 11 of 13 practices described by the Index.

Nevertheless, and despite the admirable work of existing legal services organizations dedicated to assisting persons with disabilities in Connecticut, this group faces significant barriers to access to counsel. We recommend adopting the two practices described in the disability access index that Connecticut has not yet adopted: (1) requiring courts to give preference to sign language interpreters who have been trained in a legal setting, as 28 other States have already done; and (2) providing counsel to litigants with disabilities as a form of “reasonable accommodation”. Three States provide for appointment of counsel as a form of accommodation. In Maryland, court rules provide that in a suit brought against a person with a disability, if there is no guardian or other fiduciary, the court is obligated to appoint an attorney to defend the individual. In Oregon, the State Department of Justice advised that where a “mentally impaired party does not understand the judicial proceedings,” appointment of counsel at no cost to the party qualifies as an appropriate accommodation. In Washington, representation by counsel must be available “to make each court service, program, or activity, when viewed in its entirety, readily accessible to and usable by an applicant who is a qualified person with a disability.” We recommend promulgation of a similar rule that would ensure that qualified disabled persons who are not able to afford an attorney and who do not otherwise have a guardian or fiduciary are provided an attorney at no cost in suits brought against them.

We also recommend funding improved outreach to disabled persons. In addition to funding community partnerships, Connecticut should consider funding mobile, wheel chair accessible legal help centers that could travel directly to rural communities and to immobile individuals that would otherwise be unable to reach community-based legal assistance programs.

Recommendation 4. Encourage Lawyers Employed by the State to Perform Pro Bono Services.

We note that several hundred attorneys employed by the State of Connecticut currently do little or no pro bono work. This is not for lack of desire or commitment to service to the bar and public. However, these lawyers – Assistant Public Defenders, Assistant States Attorneys, Assistant Attorneys General and counsel employed within Executive Branch agencies and others - lack malpractice insurance coverage for claims that might arise from pro bono activities, unless they accept a referral from a legal service program that provides referral coverage. (Statutory immunities protect State government attorneys from claims arising out of conduct that is within the scope of their employment and not wanton, reckless or malicious. The Office of the Attorney

General provides for the defense of such claims.) In addition, these attorneys' compensation is funded by the taxpayers and their job duties defined and limited by statutes and/or employment agreements, including in some instances collective bargaining agreements. Their current terms of employment do not encompass pro bono activities. Consideration by the Executive Branch should be given to appropriate means to facilitate pro bono work by these attorneys.

Recommendation 5. Raise the Financial Eligibility Ceiling for Non-LSC Legal Services Organizations to 200% of the Federal Poverty Level.

Connecticut Legal Services, Greater Hartford Legal Aid, and New Haven Legal Assistance Association do not receive Legal Services Corporation funding and therefore are not obligated to refuse assistance to residents whose household incomes are more than 125% of the federal poverty level. These organizations nonetheless adhere to this restriction. Instead, they should follow the lead of legal services organizations in other areas where the cost of living is higher than average and increase their financial eligibility limits to 200% of the federal poverty level. This would ensure that, at least in some instances, these organizations would not be forced to turn away low-income residents with otherwise meritorious claims or defenses in cases where basic human needs are at stake. To the extent permitted by law, we further recommend that the Connecticut Bar Foundation permit its non-Legal Services Corporation grantees to serve persons with incomes up to 200% of the federal poverty level.

Recommendation 6. Work with Bar Associations, Law Schools, and Non-profits to Establish Subject-Matter Specific Lawyer Incubators.

Since the first Lawyer Incubator was established at the City University of New York in 2007, Lawyer Incubators have emerged as a popular model to help newly-admitted lawyers kick-start their careers and acquire the skills necessary to launch a practice that services low and moderate-income individuals. This model is especially compelling because it can both help address the immediate crisis of lack of representation and an oversupply of lawyers. It will also foster a community of lawyers with sustainable practices that serve underserved populations. The UConn Law School plans to open an incubator early in 2017 with the support of the Hartford County Bar Association, and the Justice Legal Center at the Center for Family Justice in Bridgeport is expected to open in January 2017 and will house 4-6 lawyers for 2 years. The General Assembly should join with other stakeholders concerned with current rates of legal unemployment and the access to counsel crisis to support these and other incubators, including in subject-matter specific areas.

Recommendation 7. Commission a Study of the Potential Rule Changes to Support Funding.

Further study should be undertaken to determine how Connecticut might use its leverage to help the organizations find and secure available public grants and private foundation dollars. Two years ago, for example, the Superior Court changed Practice Book § 9.9 to permit a court, in the absence of another designation, to direct class action residual funds to be disbursed for the purpose of funding legal aid. The United States District Court did the same with its adoption of Local Civil Rule 23. As a result, the CBF has received over \$142,000 in additional funding for the legal service programs.

Recommendation 8. Pursue Available Private Funding for Legal Services.

There are a number of fellowships, grants, and other funding available for legal services that are not used by Connecticut legal services providers. For instance, the Immigrant Justice Corps, established under the leadership of Chief Judge Robert Katzmann of the U.S. Court of Appeals for the Second Circuit, provides dozens of two-year fellowships every year for recent law school graduates to work in existing legal services offices in the tri-state area. To date, no IJC fellows have been assigned in Connecticut. Similarly, Equal Justice

Works has recently dedicated significant resources to providing post-graduate fellowship to represent veterans. We recommend that legal services providers and other advocates engage in a concerted effort to seek additional federal and private funding for legal services.

Recommendation 9. Consider Consolidation in the Legal Aid Network.

While the amount of collaboration between legal service providers is impressive, it is also clear that the overlap of organizations presents some duplication of efforts and certainly replication of overhead and administrative charges. Further, organizations compete for public and private dollars to no one's benefit. And, no one program has the right answer to measuring cost effectiveness leaving the various delivery models untested. As such, we recommend that further study be undertaken to determine whether consolidation or more formalized collaboration might reduce expense and free up time and effort to devote more resources to providing services, whether more private money can be raised through joint efforts, and how we might better measure cost effectiveness to improve efficiency where we can. The CBF, working with existing programs, is in the best position to undertake this task if it received the funds to do so.

Recommendation 10. Commission Tri-Annual State-wide Priority-setting Studies.

Given that the need is overwhelming, presumably critical dollars have to be spent where the need is the most severe. Studies funded by Connecticut should be undertaken every three years to help the CBF and civil legal aid providers determine priorities to help shape what services are provided. And we must devise a system to address those priorities as they change.

Recommendation 11. Fund Medical-Legal Partnerships or Other Community-based Legal Partnerships.

Connecticut should fund medical-legal partnerships or other similar legal partnerships with organizations located in low-income communities, focusing on areas with especially limited access to reliable transportation, large non-English speaking populations, and infrequent contact with legal service providers. Scholarly work, such as that of Rebecca Sandefur of the American Bar Foundation and the University of Illinois at Urbana-Champaign has shown the success of medical-legal partnerships and other similar partnerships with organizations such as libraries and places of worship.¹¹ Whether located at a medical clinic or other community-based organization, the basic idea driving such programs is to connect legal aid with people through a local organization they already trust and where they may even already go to seek help with a legal problem. Through this approach, these programs reach more individuals, while also building trust between the community and legal service providers.

Such programs have already been implemented in Connecticut. In Hartford, UConn School of Law and Greater Hartford Legal Aid (GHLA) recently established the Justice in Our Community Fellowship to fund three law-student fellows supervised by GHLA attorneys in operating a legal information and outreach table at Community Health Services, a federally-qualified health center located in Hartford's North End. Similarly, in New Haven, the Yale Health Law and Policy Society (YHeLPS) and New Haven Legal Assistance Association (NHLAA) have also recently established medical-legal partnerships at the HAVEN Free Clinic and the Yale-New Haven Hospital. Through these two programs, law student volunteers supervised by Yale and NHLAA attorneys receive referrals from the clinical staff and pursue remedies through direct service and policy reform. Both initiatives have received positive feedback from clients and community partners. By providing additional funding, these partnerships should be expanded and established in new locations.

¹¹ See Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 U. ARK. LITTLE ROCK. L. Rev. 721, 731 (2015), <http://onlinedigeditions.com/publication/?i=294409>.

Recommendation 12. Study of New Legal Services Delivery Methods.

Many new lawyers have difficulty finding jobs practicing law, while many Americans cannot afford a lawyer. We must find ways to bridge this gap. Many changes are underway in the methods by which entities are delivering legal information and legal services, especially through the internet. Some of these are disruptive to traditional law firm business models. They also challenge traditional regulatory regimes. At the same time they promise savings to clients who might be satisfied by the level of information or service obtainable by such systems. RocketLawyer, Shake, and LegalZoom offer online legal document creation services and “education centers” for individuals and small businesses searching for help with their legal needs. The Judicial Branch and the Connecticut Bar Association should study the impact of these new service delivery models and provide guidance on how the State should respond to them.

Respectfully submitted:

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William H. Clendenen, Jr. & Timothy Fisher

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EXHIBIT A

**CONNECTICUT STATUTES ESTABLISHING A
RIGHT TO COUNSEL IN CIVIL MATTERS**

Social and Human Services:

Conn. Gen. Stat. §17a-274(d): Right to counsel for ward in involuntary placements with the Department of Developmental Services.

Conn. Gen. Stat. §17a-275: Provides that if placement is with Department, state pays attorney fees; otherwise, petitioner pays.

Conn. Gen. Stat. §17a-498: Right to counsel for mental health commitment, and "[t]he reasonable compensation of appointed counsel shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund."¹²

Public Health:

Conn. Gen. Stat. §19a-685(c): Right to counsel for commitment for drug/alcohol treatment. "If funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund."

Conn. Gen. Stat. §19a-131b(g): Right to counsel for quarantine matters. "The reasonable compensation of appointed counsel shall be established by, and paid from funds appropriated to, the Judicial Department, but, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund."

Conn. Gen. Stat. §19a-221(f): Right to counsel for subject of municipal quarantine order.

Conn. Gen. Stat. §19a-265(h)(2): Right to counsel for subject of emergency commitment due to with active tuberculosis.

Probate Courts:

Conn. Gen. Stat. §45a-77: Powers and duties of Probate Court Administrator re appointment of counsel under Probate Court Regulations, sections 13, 138, 13C and 14.

Conn. Gen. Stat. §45a-620: Discretionary appointment of counsel for child in guardianship proceeding, but right to counsel for child where abuse/neglect alleged or suspected by court. Right to counsel for respondent.

¹² Conn. Gen. Stat. §17a-498(b)(1).

"The cost of such counsel shall be paid by the person whom he or she represents, except that if such person is unable to pay for such counsel and files an affidavit with the court demonstrating his or her inability to pay, the reasonable compensation of appointed counsel shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund. In the case of a minor, such affidavit may be filed by a suitable person having knowledge of the financial status of such minor."

Conn. Gen. Stat. §45a-649a(a): Right to counsel for respondents in conservatorship cases. If the respondent or conserved person is indigent, an attorney appointed under this section shall be paid a reasonable rate of compensation. Rates of compensation for such appointed attorneys shall be established by the Office of the Probate Court Administrator. Such compensation shall be paid from funds appropriated to the Judicial Department. If funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be paid from the Probate Court Administration Fund."

Conn. Gen. Stat. §45a-673: Right to counsel for respondent in guardianship cases involving adults with intellectual disabilities. "If the respondent is indigent or otherwise unable to pay for counsel, the cost for such counsel shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund." Conn. Gen. Stat. §45a-681 extends RTC to review proceedings and has same provision about payment.

Conn. Gen. Stat. §45a-681(a)(6): Right to counsel for respondent in review of guardianship or limited guardianship of adults with intellectual disabilities.

Conn. Gen. Stat. §45a-694: Right to counsel for respondent re consent to sterilization. Paid by court, however, if unable to pay, compensation from Probate Administrator.

Conn. Gen. Stat. §45a-717(b): Right to counsel for parents and children *in* termination of parental rights matters.

Family Law:

Conn. Gen. Stat. §46b-12: Orders re appointment of counsel or guardian ad litem for minor child in a family relations matter. See 46b-54.

Conn. Gen. Stat. §46b-54: Discretionary appointment of counsel for child in dissolution cases or any case where the "custody, care, education, visitation or support of a minor child is in actual controversy."

Conn. Gen. Stat. §§46b-129(b), 46b-135(b): Right to counsel for parents in neglect cases.

Conn. Gen. Stat. §§46b-129(c)(2), 46b-129a(2): Right to counsel for children in neglect cases. Conn. Gen. Stat. §46b-129a(2) specifies that the office of Chief Public Defender must assign an attorney knowledgeable about representing children, or court can assign if there is "immediate need for the appointment of counsel during a court proceeding." Counsel fees paid by PD's office unless parents or estate of child are able to pay, "in which case the court shall assess the rate the parent or guardian is able to pay and the office of Chief

Public Defender may seek reimbursement for the costs of representation from the parents, guardian or estate of the child."

Conn. Gen. Stat. §46b-136: Right to counsel for children in all juvenile matters. Also authorizes discretionary appointment of counsel for children, parents, or any person having control of the child or youth in any juvenile proceeding "if such judge determines that the interests of justice so require."

Conn. Gen. Stat. §§46b-160(e)(2), 51-296(c)(1)(A): Right to counsel for respondent in paternity cases

Conn. Gen. Stat. §§46b-231(m)(7), 51-296(c)(1)(A): Right to counsel for defendant in family law civil contempt cases, PB Section 25-63.

Courts:

Conn. Gen. Stat. §51-296(a): Right to counsel in habeas hearings and appeals.

Conn. Gen. Stat. §51-296(c)(1)(A): Governs "Legal services and guardians ad litem to children, youths and indigent respondents in family relations matters in which the state has been ordered to pay the cost of such legal services ..."

Conn. Gen. Stat. §51-297: Determination of indigence; definition, investigation, reimbursement for services, appeal