

**Task Force to Improve Access to Legal Counsel in Civil Matters**  
Dismantling Barriers Working Group **Long Outline**

**I. Barriers**

**A. *Unavailability and unattainability of counsel***

1. Lack of free or affordable attorneys for litigants over certain percentage of poverty level but unable to afford market rate representation
  - a) Group demographics
    - (1) Income range
      - (a) 126-200% of poverty - ?
      - (b) Minimal federal social safety net
    - (2) Ethnic, racial, and linguistic backgrounds
      - (a) Disproportionately African-American and Latinx
      - (b) Disproportionately Spanish-speaking
    - (3) Educational attainment
      - (a) Disproportionately high-school educated or less
    - (4) Mental health
      - (a) High rates of mental health issues, many of which are untreated or undertreated
    - (5) Physical Disabilities
    - (6) Women, Transgender, Gender Nonconforming
    - (7) Veterans
    - (8) Elderly
    - (9) Immigrants
  - b) Legal needs of group
    - (1) Housing
      - (a) Eviction defense
      - (b) Foreclosure defense
      - (c) Ejectment
      - (d) Denial or preservation of public housing or housing subsidies
      - (e) Affirmative housing conditions
      - (f) Housing discrimination
    - (2) Family law
      - (a) Contested divorce
      - (b) Child custody, adoption, guardianship
      - (c) Child support
      - (d) Domestic violence
      - (e) Restraining orders
    - (3) Debt collection
    - (4) Public benefit denial or termination
      - (a) Food stamps
      - (b) TANF
      - (c) Unemployment insurance
      - (d) Social Security, SSI, SSDI

- (e) Veteran's Benefits (disability, pension, GI)
  - (f) Medicare, Medicaid, Husky Healthcare, VA healthcare
- (5) Private insurance disputes
- (6) Educational matters related to the establishment or preservation of individual education plans
- (7) Workers' rights
  - (a) Unpaid minimum wages & overtime
  - (b) FMLA violations
  - (c) Workers' compensation
  - (d) Discrimination
  - (e) Wrongful termination
  - (f) Worker misclassification
  - (g) Sexual harassment
- (8) Immigration
  - (a) Affirmative applications
    - (i) Family-based petitions and visas, temporary protected status, adjustment of status, naturalization, asylum, U- and T-Visas, DACA, etc.
  - (b) Removal defense
  - (c) Detention
- (9) Personal Injury
  - (a) Sexual assault and harassment
  - (b) Discrimination
- (9) Veterans claims
  - (a) Discharge upgrade/record correction
  - (b) VA disability benefits, healthcare (see above)
- (10) Probate
  - (a) Estate planning
  - (b) Property/estate disputes
  - (c) Involuntary commitment proceedings
- (11) Civil and administrative proceedings in which a party faces incarceration and counsel is not provided by law
- c) What percentage of overall litigants fall into this category?
- 2. Legal services providers don't have enough resources to serve every litigant who does qualify for their services
  - a) A 2008 survey commissioned by the Connecticut Bar Foundation found that Only 1 in 4 low-income people with a civil legal program successfully sought outside help
  - b) Reasons for insufficient resources
    - (1) Lack of funding
      - (a) From federal government
      - (b) From state government
      - (c) From private sector

- (i) Donations from firms and other businesses
    - (ii) Foundation-based grants
    - (d) From law schools/institutions
  - (2) Lack of attorneys
    - (a) Lack funding to pay salaries for additional staff attorneys
    - (b) Lack of fellowship funding
    - (c) Lack of loaned associates from firms
  - (3) Lack of support staff
    - (a) Paralegals
    - (b) Intake specialists
    - (c) Social workers
  - (4) Usually only handle a limited number of case types
    - (a) Types of cases that legal services providers don't handle that low-income residents frequently need assistance with include immigration and veterans law.
    - (b) LSC-funded organizations barred by law from assisting with certain cases
      - (i) Undocumented litigants and nearly all immigration-related matters
      - (ii) Prisoners' lawsuits
      - (iii) Class actions
      - (iv) Fee-generating cases
- 3. Many (potential) litigants who qualify for free legal services aren't aware of them
  - a) 43% of eligible households experiencing legal problems did not seek assistance due to unawareness of legal aid
  - b) Onus (almost always) on litigant to secure counsel in civil cases
    - (1) This makes securing counsel unlikely because:
      - (a) Providers don't have the resources to (or otherwise aren't) performing sufficient outreach in client communities
      - (b) Reluctance of low-income individuals to seek legal help
        - (i) Discomfort with professional class
        - (ii) No friends or family members in legal profession
        - (iii) No offices in their neighborhoods
        - (iv) Language barriers
      - (c) Inability of low-income individuals to seek legal help
        - (i) Lives are often chaotic and unpredictable; hard to plan
        - (ii) Lack of resources for commuting to office, appointments, etc.
        - (iii) Lack of informal connections to legal professionals

## ***B. Inaccessibility of legal system***

1. Complexity
  - a) Complicated and unintuitive forms, pleadings
    - (1) High default rates because parties do not understand when they need to appear in court
  - b) Superfluous paperwork/filing requirements
  - c) Legal jargon in both routine paperwork and judgments
  - d) Judge not allowed to help pro se litigants/inform them of their rights
  - e) Forms and broader procedures fail to accommodate the needs of those with mental illness and/or learning disabilities thereby making it especially hard to navigate the system and proceed pro se
  - f) Online platforms do not offer all individuals enough time to complete steps before timing out
2. Physical barriers
  - a) Court houses, government offices, and law offices (especially those housed in older buildings), are not always accessible for those with disabilities
3. Inconvenience
  - a) Getting to and from court for hearings, filings, etc. (particular challenging for those with physical and mental disabilities)
4. Cost
  - a) Lower and moderate income litigants can't afford to be at court/dedicate time and effort to researching and preparing their case because they can't afford to miss work/pay for childcare and travel/lose income
5. Language and cultural barriers
  - a) Added difficulty of navigating legal system and vindicating rights as a non-English speaker
    - (1) Reading and understanding un-translated forms
    - (2) Poor translation of forms
    - (3) Communicating with clerks
    - (4) Availability/quality of translators
    - (5) Communicating with judges, mediators, and opposing counsel
  - b) Fear/distrust of courts
    - (1) Especially great among lower-income communities and communities of color, and other communities that have had negative experiences navigating the legal system in the past
    - (2) Courts/judges seen as enemy
      - (a) Stems in large part from these communities' experience with criminal justice system
      - (b) Other bad prior experiences with legal system
    - (3) Lawyers seen as exploitative
      - (a) Bad prior experiences with attorneys
      - (b) Bad prior experiences with opposing counsel

6. Biases, both conscious and unconscious, held by judges, clerks, mediators, and other court staff
  - (1) Legal decision makers (judges, mediators, opposing counsel) are overwhelmingly non-Hispanic white, affluent or middle-class
  - (2) Legal decision makers are often uninformed about the experiences and particular challenges of people of color, individuals with mental health issues, disabled persons, immigrants, veterans, women, LGBTQ persons, and other underrepresented populations
  - (3) When controlling for other factors, outcomes are still inferior for black and Latino litigants (and possibly other groups)
7. Lack of decision makers and attorneys with sufficient familiarity with the challenges faced by at-risk litigants
  - (1) Judges or other decision makers often not aware/sympathetic to litigants' challenges
  - (2) Decision makers and attorneys often fail to identify all the forms of assistance available to a particular individual
  - (3) Risk of being taken advantage of particularly high

## **II. Strategies for Dismantling Barriers**

### ***A. Unavailability and unattainability of counsel***

1. Lack of free or affordable attorneys for litigants over certain percentage of poverty level but unable to afford market rate representation
  - a. Establish mandatory pro bono requirements
  - b. Create more non-Legal Service Corporation-funded LSO's
  - c. Incentivize the use of a sliding scale
  - d. Adopt regulatory reforms and innovations
    - (1) Permit alternative business structures such as non-lawyer firm ownership
    - (2) Allow for the unbundling of legal services
    - (3) Authorize low-cost online dispute resolution systems and other internet-based platforms
  - e. Authorize Limited License Legal Technicians (LLLTs) or other accredited representatives for certain categories of matters, such as occurs in CT now for accredited representatives in VA hearings and immigration matters
  - f. Adopt alternative fee arrangements (AFA)
2. Legal services providers don't have enough resources to serve every litigant who does qualify for their services
  - a. Increase state funding
    - (1) Create universal representation programs for essential civil legal needs – especially where basic human needs are at stake

- (a) Such programs may include representation in housing and immigration court (*see, e.g.*, New York City's New York Immigrant Family Unity Project (NYIFUP) – a public defender system for indigent detained immigrants funded with public and private dollars)
    - (2) Create fellowship programs for recently-graduated law students (*see, e.g.*, Immigrant Justice Corps established by Chief Judge Robert Katzmann)
  - b. Increase and develop loaned associate programs
    - (1) Create incentives for firms to participate
  - c. *Cy pres* awards and other residual funds
    - (1) Reform state rules and statutes regarding class-action settlements and judgments in order to make it easier for courts to distribute residual funds to LSO's allocate
  - d. Tort punitive damages
    - (1) Enact a statute that allocates a portion of punitive damage awards to LSO's
  - e. Partner with law schools
    - (1) Develop and support law student pro bono programs
    - (2) Encourage post-graduate law school-funded fellowships
    - (3) Encourage students to consider participating in federal loan forgiveness program for individuals pursuing public interest careers
    - (4) Support law firm incubators
- 3. Many (potential) litigants who qualify for free legal services aren't aware of them
  - a. Increase promotion and outreach
    - (1) Affirmative outreach
      - (a) Have courts provide LSOs with list of serious/meritorious cases and initiate contact with client
      - (b) Partner with non-legal organizations
        - (i) Medical-legal partnerships
  - b. Improve referral services
  - c. Legal checkups
    - (1) Create guidelines for legal checkups
    - (2) Encourage routine legal checkups
  - a. Educate the public about the court system and available services
    - (1) Training programs
    - (2) Online resources

## ***B. Inaccessibility of legal system***

- (1) Complexity
  - a. Streamline the litigation process and eliminate superfluous paperwork/filing requirements

- b. Increase legal assistance prior to litigation and before disability benefit denials
    - (1) Assist with the approval process
  - c. Allow judges to inform pro se litigants of their rights and assist them through the court process
  - d. Provide courthouse facilitators
  - e. Reduce the complexity of forms and online platforms
    - (1) Remove legal jargon and replace with plain-language
    - (2) Standardize forms across agencies and courts
    - (3) Allow forms to be completed online
    - (4) Ensure those with limited education can understand the form and instructions
    - (5) Accommodate the needs of those with mental illness and/or learning disabilities
  - f. Reduce the number of situations in which only one side of a case is provided with counsel e.g. immigration, housing, and family court
- (2) Physical barriers, inconvenience and cost
  - a. Expand physical and virtual/remote access to courts
    - (1) Increase locations with a focus on reducing commute times
  - b. Ensure all court and government offices are accessible to those with physical disabilities
  - c. Reduce in-person filing and hearing requirements
  - d. Create a transportation cost fund
  - e. Provide on-site childcare at courts and Department of Social Service's Benefit Centers and other local offices
  - f. Reduce the number of times individuals must appear in court in order to address the merits of their case
- (3) Difficulty of navigating legal system and vindicating rights as a non-English speaker
  - a. Ensure that all forms are available in Spanish and other languages common to the population that the court or agency serves
  - b. Ensure that qualified translators and interpreters are available
  - c. Improve the quality of court interpreters
  - d. Create a standard protocol for court clerks and state agency representatives to use when communicating with non-English speaking individuals
- (4) Fear/distrust of courts
  - a. Create community-specific outreach programs
- (5) Biases held by judges, clerks, mediators, and other court staff
  - a. Require implicit bias training
  - b. Adopt methods, policies, standards, and practices to advance diversity and inclusion
- (6) Mental health

- a. Create or support programs that specialize in serving individuals with mental health issues
  - b. Require mental health training
- (7) Veteran, Homeless, Elderly, and Disabled populations
  - a. Create or support programs that specialize in serving individuals from these populations
  - b. Expand medical-legal partnerships
  - c. Require trainings on challenges faced by these populations and available services