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Report to the Connecticut Judicial Branch Access to Justice Commission

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I. Introduction

There has long been a mismatch between the legal needs of the poor and near-poor in the United States and the legal services available to help them with their legal problems. Since 2007, the recession has exacerbated the problem, as more people have faced unemployment, which has affected their ability to pay for housing, their credit obligations, their need for benefits, and their family relationships. The economic downturn has also negatively affected the money available to provide free legal services to persons of limited means. As a result, many more people find themselves with serious legal problems that they must attempt to address without the benefit of a lawyer.

A. Background

In 2007, Connecticut's Chief Justice Chase T. Rogers formed the Judicial Branch's Public Service and Trust Commission to develop a long-term Strategic Plan to begin to address this problem. In 2011, Chief Justice Rogers formed the standing Access to Justice Commission, which will work in tandem with the Strategic Plan. The mission of the Access to Justice Commission is to develop recommendations to help ensure equal access to justice for all people, including low- and moderate-income individuals, people with different physical or developmental abilities, the elderly, individuals with limited English proficiency, and ethnic, cultural and racial minorities.

This report has been prepared at the request of the Connecticut Access to Justice Commission. It focuses on the civil legal needs of the poor and near-poor in Connecticut, including low-income working families, who are not receiving assistance from Legal Services Corporation (LSC)-funded organizations and other legal assistance organizations (such as Greater Hartford Legal Aid), but who cannot afford a lawyer to assist them with their important legal needs. This report describes the current needs of these individuals and their impact on the courts. The report will then briefly describe some recent initiatives to address this problem, some of which are described in other reports.¹ The primary focus of this report is to identify additional initiatives that might be undertaken to afford greater access to justice in Connecticut. The report concludes with specific recommendations for how individuals might better obtain access to justice notwithstanding their limited resources. These recommendations would mainly assist individuals with legal problems that are likely to find their way to the state courts, although there are significant additional unmet legal needs in Connecticut that will be mentioned below. Some of these other unmet legal needs could also be addressed through recommendations described in this report.

Sources consulted for this Report include, *inter alia*, the reports previously prepared by State of Connecticut Judicial Branch Public Service and Trust Commission and the Access to Justice Commission and their subcommittees. We also spoke with the administrative judges of the Connecticut Civil Court, Family Court, Juvenile Court and Probate Court. In addition, we spoke

¹ See, e.g., Connecticut Judicial Branch, Access to Justice Commission, First Annual Report (October 2012), http://www.jud.ct.gov/committees/access/ATJ_AnnualReport.pdf (and attached reports); 2011 State of Connecticut Judicial Branch Public Service and Trust Commission & Access to Justice Commission Initiatives; State of Connecticut Judicial Branch, Stage IV Implementation of Strategic Plan (Oct. 2011), http://www.jud.ct.gov/Committees/pst/PST_Phase4_Implementation.pdf.

with Steven Eppler-Epstein, Executive Director of Connecticut Legal Services, Krista Hess of the Connecticut Superior Court, Christine Rapillo, Director of Delinquency Defense and Child Protection, Cynthia Teixeira, Statewide Manager, Dispute Resolution Program, Housing Session, and Edward Heath of Robinson & Cole, who serves on the Access to Justice Pro Bono subcommittee. We also consulted individuals who administer Modest Means panels in Oregon and New Orleans, various websites, and reports on the access to justice efforts being undertaken in a variety of other states.

B. An Overview of the Problem in Connecticut

As of 2011, approximately 10.9% of Connecticut's 3.5 million residents lived at or below the federal poverty guidelines.² One in five speaks a language other than English at home. More than 38% of Connecticut residents have an education level of twelfth-grade or lower. An estimated 8.3% of adults under age 65 are disabled.³

In order to qualify for free legal services from an LSC-funded organization, an individual's income typically can be no more than 125% of the poverty level or 187% of the poverty level with some additional qualifications.⁴ In 2012, 125% of the poverty level was \$28,813 for a family of four.⁵ Not surprisingly, many Connecticut residents cannot afford a lawyer even if their income exceeds 125% of the federal poverty guidelines.

In addition, many individuals who qualify for free civil legal services do not obtain them. A 2008 survey commissioned by the Connecticut Bar Foundation found that more than 7 in 10 of households in poverty had a civil legal problem within the last year (most commonly reported were housing, employment and consumer issues).⁶ The survey showed that only 1 in 4 low-income people with a civil legal problem successfully sought outside help.⁷ Many were unaware of existing legal aid programs for the poor.⁸ Still others are unable to receive assistance because the demand far exceeded the availability of programs. This is not a problem unique to

² U.S. Census Bureau, American FactFinder, Selected Economic Characteristics, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_DP03&prodType=table.

³ *Id.*

⁴ Connecticut Legal Services operates under these guidelines. Some other legal services agencies in Connecticut operate under somewhat higher guidelines, at least in some circumstances.

⁵ Connecticut Department of Social Services, Selected Annual Poverty and State Median Income Guidelines (2012), <http://www.ct.gov/dss/lib/dss/PDFs/PovSMI.pdf>. In fact, this eligibility level is extremely low, as the federal poverty guidelines are identical throughout the continental United States, even though the cost of living is higher in Connecticut than in many other states. Moreover, the calculation is based on a 40-year-old methodology that no longer reflects the real cost of living in the United States. *See, e.g.*, U.S. Bureau of Labor Statistics Working Paper, Thesia I. Garner & Kathleen S. Short, CREATING A CONSISTENT POVERTY MEASURE OVER TIME USING NAS PROCEDURES: 1996-2005 (2008), <http://www.bls.gov/osmr/pdf/ec080030.pdf>.

⁶ Center for Survey Research & Analysis, Civil Legal Needs Among Low Income Households in Connecticut 6, 8 (Dec. 2008) (on file with authors).

⁷ *Id.* at 22.

⁸ *Id.* at 27. Because demand for services so far outstrips supply, legal services agencies must balance community outreach efforts against a concern about encouraging demand that will require agencies to turn away even more people seeking assistance.

Connecticut: It is estimated that nationwide, for every client served by an LSC-funded program, one person is turned down due to insufficient resources.⁹ Less than 1 in 5 low-income individuals receive the legal assistance they need.¹⁰

This problem has only gotten worse during the recession. Nearly two-thirds of the funds that support lawyers in civil cases historically came from the revenue generated by Interest On Lawyers' Trust Accounts (IOLTA). In 2007, the Connecticut Bar Foundation received \$20.7 million in IOLTA revenue for distribution to Connecticut legal aid providers. Due to the state's failing housing market, that number has steadily declined. The projected revenues for 2013 are under \$2 million.¹¹ As the IOLTA funds dropped in Connecticut, the state Legislature passed HB 5388 (P.A. 12-89), which provides approximately \$4.8 million additional funding for legal aid programs. Nevertheless, as the need for legal services increases, the legal services programs cannot come close to keeping up with the needs of low income people, even when those individuals are in crisis.

Connecticut attorneys have stepped in and annually provide tens of thousands of hours of pro bono legal services for free or reduced rates to people who are unable to pay for lawyers. These efforts have been undertaken individually, through law firm pro bono programs, through programs organized or coordinated by bar associations, and through Judicial Branch programs. Law school clinics at the three Connecticut law schools and law students have also engaged in a variety of efforts to assist individuals of limited means. Unfortunately, these efforts have proved inadequate to meet the extensive need for legal services of individuals who genuinely cannot afford legal representation. Indeed, even if the pro bono effort were doubled, it would not fill the large gap in the need for legal services.

This has led to a steep rise in the number of self-represented individuals in Connecticut courts who are often unable to adequately present their claims and defenses in important legal matters that are of critical importance to them and their families. A more detailed description of the number of self-represented individuals in the various courts is described in Section II below.

II. Current Needs in Various Connecticut Venues

Some of the current needs of individuals who cannot afford a lawyer in Connecticut are described below.

A. Superior Court, Civil Division

Judge Linda Lager, Administrative Judge of the Civil Division of the Superior Court, provided data referencing more than 30 categories of civil cases in which one or more parties were self-represented during the period from January 2006-August 2011. (*See* Appendix A.) The data show that certain categories of cases have extremely low numbers of SRLs (*e.g.*, zoning

⁹ Legal Services Corporation, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 1 (Sept. 2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

¹⁰ *Id.* at 3.

¹¹ E-mail from Sandy Klebanoff, Executive Director, Connecticut Bar Foundation, to Leslie C. Levin, Prof. of Law, University of Connecticut School of Law (Feb. 1, 2013) (on file with authors).

and taxation), while other categories have relatively high numbers of SRLs (e.g., summary process, foreclosure, small claims and administrative appeals).

Judge Lager commented on the four categories of civil (non-family) cases in which self-representation is especially prevalent and problematic.

1. Housing

Approximately three-quarters of Housing Court litigants (primarily tenants, but also some landlords) are self-represented in Summary Process (eviction) proceedings. While these matters are of particular importance to low-income tenants, the problem of self-representation is not as acute as it might be because of a compulsory court-annexed ADR program in which Mediation Specialists mediate disputes between tenants and landlords. Mediation is available and required in all summary process actions. There currently are six Mediation Specialists, all of whom ride circuit on designated days in housing courts throughout the state.

Cynthia Teixeira, Manager of the Dispute Resolution Program for Housing Matters, provided data about the mediation of summary process cases. For cases in which the parties appear, at least two-thirds of defendants (tenants) are SRLs, and approximately 40% of plaintiffs (landlords) are SRLs. During the period 2002-2012, 82,859 cases were mediated, of which 76,209 (92%) were resolved in mediation and 6,650 (8%) cases were not resolved in mediation. (See Appendix B.)

Despite the assistance of Mediation Specialists in resolving housing disputes, SRLs talking to a housing mediator are not likely to uncover legal claims (such as reasons why no rent was due, or procedural errors by the landlord).¹² In addition, while a housing specialist can mediate the facts presented, she cannot help the tenant prepare a case for court, and identify the facts that prove the tenant's legal positions or bring (or compel) essential testimony or other evidence.

Cases brought by tenants to recover security deposits, formerly filed in the Housing Court, now are handled by Small Claims Court.

2. Foreclosure

During the period from January 2006-August 2011, the number of self-represented homeowners in foreclosure cases ranged from just under 4,000 in 2006 to more than 11,000 in 2009.

Currently, there is a Foreclosure Mediation Program in which court personnel mediate these cases. The Foreclosure Mediation Program is provided for by statute that mandates mediation for all foreclosure actions with return dates on or after July 1, 2008, in all judicial

¹² A recent study of summary process eviction cases in Massachusetts demonstrated the positive impact of legal representation on outcomes for tenants. D. James Grenier, Cassandra Wolos Pattanayak & Jonathan Philip Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. ____ (forthcoming 2013).

districts. As discussed below, there is also a *pro bono* Volunteer Attorney Advice Program (VAP) for Foreclosure Dockets in the New Haven and Bridgeport Superior Courts. The VAPs were created as part of the implementation of the Judicial Branch strategic plan for addressing the rising numbers of SRLs in the courts. In the two VAPs, volunteer attorneys provide “unbundled” legal advice to self-represented homeowners in foreclosure proceedings on scheduled “advice days.” The VAP supplements the Foreclosure Mediation Program and is especially helpful to homeowners in cases in which mediation fails to resolve the foreclosure action.

3. Small Claims

The third largest category of cases in which SRLs appear is Small Claims. As noted, security deposit cases are heard in this court and while some are mediated in Hartford by law students in the UConn Law School Mediation Clinic, most are not. Judge Lager believes that there is a “huge need” for legal assistance for self-represented small claims defendants in debt collection cases, especially in the negotiation of settlements and payment plans.

In addition, in 2010, a typical year, 6% of Small Claims cases (116) were transferred to the regular civil docket, and of these nearly 60% involved at least one SRL. Typically, these cases were filed *pro se* by low-income plaintiffs, and were transferred to the regular civil docket by represented defendants. Judge Lager stated that there is a particular need for representation of SRLs in those transferred cases because the rules of civil procedure and evidence are applicable.

4. Administrative Appeals

The largest number of administrative appeals to the Superior Court are from the Unemployment Compensation Commission. According to Judge Lager, there are approximately 250 Unemployment Compensation appeals to Superior Court each year, and in more than 95% of those appeals the appellant is self-represented. The Attorney General represents the Commissioner of Labor in all appeals. These cases require briefing and oral argument, which most self-represented appellants are not capable of doing competently.

B. Superior Court, Family Division

Judge Lynda Munro, Administrative Judge of the Family Division of the Superior Court, provided an overview and needs assessment of the issues facing SRLs in the Family Division.

Judge Munro estimates that 90% of family cases are uncontested dissolutions of marriage, and that a “very high” percentage of those cases involve SRLs. There are also a “significant” percentage of contested cases in which one or both parties are self-represented.¹³

¹³ These court statistics do not show all the people who cannot file a case in court because they do not have a lawyer. Individuals who are not well-educated and people with mental health problems will never even become SRLs unless the opposing party files a case.

Legal aid programs can only assist a fraction of low-income people with domestic violence cases. There is also a need for legal representation for parents in custody and visitation disputes. Children receive court-appointed attorneys or guardians *ad litem*, but parents do not.

Judge Munro emphasized that the Family Relations Courts rely heavily on lawyer “free time,” especially for pre-trial mediation, Volunteer Attorney Advice Days, and court appointments. “If lawyers stopped giving us free time,” she noted, “we’d grind to a halt.”

Judge Munro pointed to a particular obstacle in recruiting volunteer pro bono lawyers—the inefficiency of the courts. She noted that lawyers often wait for hours to meet with Family Services Officers and have their cases called. This is a major deterrent to lawyers being willing to assist SRLs. The delay problem is exacerbated by the shortage of interpreters for non-English speaking litigants. Parties and lawyers often have to wait for hours, or even reschedule matters for another day, because of the shortage of interpreters.

In addition to volunteer attorneys, including Volunteer Attorney Programs, SRLs in family cases have the assistance of court-annexed mandatory ADR with Family Relations Officers who are trained mediators; Court Service Centers that provide assistance with forms and access to the internet and other self-help materials; and, in the New Haven and Hartford Judicial District, assistance to SRLs from law student volunteers.

C. Superior Court, Juvenile Matters

Judge Christine Keller, Administrative Judge of the Superior Court Juvenile Matters Division until August 2012, reported that there are very few SRLs in Juvenile Court. She believes that the Juvenile Courts are “in the best shape” when it comes to legal representation of individuals who appear before them. The right to appointed counsel in Juvenile Court is established by statute. She indicated that “most people who make a proper application for court-appointed lawyers and whose household incomes qualify them receive them.” In child protection cases (abuse, neglect, termination of parental rights), all children have court-appointed lawyers, regardless of income, as do parents who are income-qualified. In delinquency cases all children have court-appointed counsel if they are income-qualified, and if they are not and the parents refuse to pay, the court may assign a lawyer and order the parents to reimburse the public defender for the cost of the representation, especially if the charges are serious.

In practice, three categories of individuals are not routinely provided court-appointed lawyers:

(1) Non-parties, such as relatives other than parents who wish to be heard, and foster parents, do not receive court-appointed lawyers. Foster and adopting parents can seek advice (but not legal representation) from the Connecticut Association for Foster and Adoptive Parents.

(2) Individuals do not automatically receive court-appointed counsel for appeals in juvenile matters. If the court-appointed trial attorney does not wish to take the appeal, a second attorney is paid to review the file. If that attorney concludes that an appeal would lack merit, the

prospective appellant does not receive a court-appointed lawyer. Some litigants in these circumstances pursue *pro se* appeals.

(3) Persons appealing from rulings in administrative proceedings concerning Department of Children and Families (DCF) operations, such as substantiations of neglect, which can result in a parent's or custodian's name being placed on a child abuse registry, have no statutory right to court-appointed counsel.

D. Probate Court

Judge Paul Knierim, the Probate Court Administrator, stated that Probate Courts have years of experience with SRLs because most of their cases involve uncontested matters. He believes that appearing in Probate Court without counsel is easier than it is in Superior Court for several reasons:

(1) Probate matters are "heavily form-driven," which makes it easier for non-lawyers to navigate the system.

(2) Educating SRLs about the forms and procedures is built into the way that Probate Court judges and clerks approach their work.

(3) Probate Court proceedings are generally informal, since no record is made and adherence to the rules of evidence is not required.

Currently there are two areas in which SRLs have been presenting problems for the Probate Courts:

(1) Challenges to conservatorships since 2009 when the law imposed stricter due process requirements.

(2) Applications for removal of parents as guardians and for terminations of parental rights (often brought by a grandparent or other family members seeking guardianship of children).

In both situations, the individuals whose rights are being challenged are entitled to court-appointed attorneys, but the petitioning parties are not entitled to appointed counsel. This poses a problem for the court because of the adversarial nature of the proceedings and the need to follow the rules of evidence and other procedural requirements.

Judge Knierim reported that in order secure help from the bar for unrepresented litigants, each Probate Court maintains a list of attorneys who are willing to accept appointment to represent unrepresented parties. In cases where appointment is legally required, the pay is modest (about \$50 per hour). In unusual circumstances when an individual probate judge sees that an SRL is "in over his head," the judge may ask a lawyer to represent the individual, typically without fee. Judge Knierim believes that this should be "an extraordinary act" for a judge.

The Connecticut Supreme Court has approved new Probate Court Rules of Procedure that will go into effect on July 1, 2013. The new rules specifically address court appointment of attorneys to represent parties when appointment is required or authorized by law. The new rules also specify that the rules of evidence apply in all hearings in which facts are in dispute.

E. Immigration

The paucity of free legal services for indigent immigrants in immigration-related matters in the Department of Homeland Security, the Immigration Court, the Board of Immigration Appeals, and the U.S. Circuit Court of Appeals, is a serious problem. SRLs in these venues confront complex laws and often unfriendly administrative tribunals.

Undocumented immigrants are ineligible for LSC-funded services. Greater Hartford Legal Aid, New Haven Legal Assistance Association and Integrated Refugee and Immigrant Services provide legal services to undocumented immigrants, but the level of available services is far less than the need. Law school clinics at the University of Connecticut and Yale are also providers of legal services to undocumented immigrants, but they are only able to represent a relatively small number of clients.

The number of SRLs in court understates the problem, because there are also countless immigrants eligible to apply for various kinds of relief from the federal government who cannot file those applications because they do not have the advice or representation of counsel. While immigration proceedings do not directly affect the Connecticut state courts, the lack of counsel for undocumented immigrants is a significant access to justice problem in Connecticut.¹⁴

F. Bankruptcy

SRLs also need assistance in bankruptcy court. Some of the bankruptcy courts have a pro bono list, but the pro bono list is reportedly exhausted a month or two into each year. Individuals filing in the Hartford Division are directed to contact Statewide Legal Services.¹⁵

G. State Administrative Law

There are numerous areas in which low-income people need—but cannot get—legal help dealing with state agency matters. Two of particular importance are:

- (1) Education law for disabled children: There is only very limited representation available to low-income children with mental health issues that should require

¹⁴A study of hundreds of thousands of asylum decisions from 1999-2005 demonstrated that the chance of winning asylum was strongly affected by whether or not the applicant had legal representation. Jaya Ramji-Nogales, Andrew Schoenholtz & Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295 (2007).

¹⁵United States Bankruptcy Court, District of Connecticut, Frequently Asked Questions, <http://www.ctb.uscourts.gov/faqs.htm#Do%20I%20need%20an%20attorney%20to%20file%20bankruptcy>.

schools to provide services but sometimes are undiagnosed, or (worse) can result in school discipline and suspension rather than services. Lawyers make a significant difference to these low-income children.

- (2) Denial or termination of subsistence benefits including food stamps and medical coverage: There are hundreds of thousands of people receiving state benefits, and each dispute over eligibility is a legal dispute. Even when eligibility for Medicaid is not in doubt, there can be disputes about whether Medicaid will cover a doctor's recommended course of medical care, or limit assistance to a less-costly approach.

H. Civil Legal Assistance for Prisoners

Since the State stopped funding the Connecticut Prison Association, there has been only very limited legal help available to inmates with civil legal issues.

I. Other Non-Litigation Legal Needs

There is a dearth of *pro bono* legal services available for low income individuals who need legal information, advice and counseling; non-or pre-litigation legal representation, such as legal letters, telephone calls, informal negotiation, and extra-judicial dispute resolution, such as mediation. Many matters might never reach courts if legal services were available to low income individuals.

III. Some Recent Connecticut Initiatives to Increase Access to Justice

A variety of initiatives already have been undertaken in Connecticut to help the poor and near-poor obtain assistance navigating the legal and judicial process. Some of the initiatives are briefly described below.

A. Court Service Centers

The Connecticut Judicial Branch has established fully staffed Court Service Centers (CSCs) located in thirteen Superior Court locations and partially-staffed Public Information Desks (PIDs) in eleven Superior Court locations.¹⁶ CSCs and PIDs provide publications, forms, and literature about external resources, such as legal aid providers, women's shelters, etc. The CSCs and PIDs feature publicly available computers with Internet access, allowing people to retrieve information on cases statewide. The CSCs also offer workspace, printers, fax machines, notary public services and staff assistance that includes helping self-represented people to complete forms, directing them to appropriate information, and providing information on local resources. The Judicial Branch has created posters in English and Spanish about the roles of the CSCs and PIDs, and that information is also posted online.

B. Form and Information Simplification

¹⁶ State of Connecticut Judicial Branch, Court Service Center Locations, www.jud.ct.gov/csc/loc.htm; State of Connecticut Judicial Branch, Public Information Desks, <http://www.jud.ct.gov/pid/>.

The Judicial Branch's Legal Services Unit reviews all new forms and existing forms that are being revised or reprinted for plain language principles. Plain language letters in English and Spanish directed to SRLs describing various services, what to expect in court, contact information for local and state legal aid providers, and other general information are available in clerks' offices, Court Service Centers and at Public Information Desks.

C. Access to Information by Self-Represented Litigants via Technology

Forms and publications explaining certain court protocols and processes in plain language have been posted on the Judicial Branch's Internet webpage. A general "Self-Help" link from the Branch's webpage provides multiple links to forms, videos, publications, etc. Along with daily case dockets and calendars, there are links to video tutorials explaining how to file certain forms; an area dedicated to the Americans with Disabilities Act and the Judicial Branch's related services; links to the Practice Book and state statutes, as well as certain state court decisions. A webpage has been created for Frequently Asked Questions grouped by nineteen areas (*e.g.*, Housing, Small Claims, Victim Services, court records). Numerous webpages and forms are available in Spanish.

D. Volunteer Attorneys Programs

Collaboration with local bar associations resulted in the creation of Volunteer Attorney Programs (VAPs) (often called "Lawyer of the Day"). Attorney participation is generally limited to training and advice provided to self-represented individuals. The VAPs do not income-qualify participants, but these individuals do not have access to legal counsel.

Lawyers who participate in the VAPs provide unbundled legal advice to SRLs in family matters in the Waterbury, Hartford and Stamford Judicial Districts, and in foreclosure cases in the New Haven and Bridgeport Judicial Districts. They perform this *pro bono* service on designated Attorney Advice Days. About 2800 SRLs have participated in the five VAPs since they began in 2012. Approximately 100 volunteer attorneys participate in the programs.

The feedback from SRLs and judges has been uniformly positive. In surveys of SRLs who received free legal counseling and advice through the VAPs, the litigants were unanimous in reporting that the assistance they received was either "extremely helpful" (93%) or "very helpful" (7%). The majority of judges (83%) reported that the SRLs were better prepared than SRLs who had not met with a volunteer attorney prior to their court hearing.

E. Other Pro Bono Initiatives

A variety of other pro bono initiatives have been undertaken to provide legal assistance to individuals who cannot afford legal services. One of the most important is the development of the CtLawHelp Pro Bono Portal, which attempts to gather information in one place that Connecticut lawyers can access to find pro bono training and service opportunities.¹⁷ Call4Law, a legal helpline, uses volunteer attorneys to provide 45-60 minute telephone consultations to

¹⁷ CTLawHelp, Pro Bono Portal, <http://probono.ctlawhelp.org/>.

clients who have been pre-screened by Statewide Legal Services.¹⁸ The Judicial Branch's Public Service and Trust Commission's Pro Bono Committee is working to engage more lawyers and law students in pro bono efforts.¹⁹ The Rules Committee of the Connecticut Superior Court has adopted rules changes, effective January 1, 2013, to allow in-house counsel not admitted in Connecticut to perform pro bono work under certain circumstances.²⁰ There is also a proposed rule that would make it easier for retired lawyers to provide pro bono assistance when working under the auspices of a legal aid program.²¹

F. Pro Bono Survey

In 2012, the Connecticut lawyer registration form began to ask lawyers to voluntarily complete a survey in which they would indicate whether they provided pro bono assistance to "disadvantaged members of the community" and if so, how many hours of pro bono service they provided. Preliminary information suggests that there has been a high response rate to this survey.

G. Limited Scope Representation/Unbundled Legal Services

One method of addressing the challenges created by the increase in self-represented litigants is to allow lawyers to provide unbundled legal services, or limited-scope representation (LSR), to individuals who would otherwise attempt to represent themselves. In an unbundled legal services arrangement, lawyer and client enter into an attorney-client relationship, the specific aspects of which are defined by agreement between them. The lawyer will agree to perform certain discrete tasks, possibly including providing advice and counsel, negotiating or assisting with the drafting of documents. Some limited scope representation is permitted in Connecticut,²² but does not extend to court appearances.

Some Connecticut attorneys have organized their practices around providing LSR to their clients.²³ Pro bono work can also be done on a limited scope representation basis.²⁴ Lawyers can use a variety of technological aids to streamline the work done for clients, allowing lawyers to represent a larger number of clients while spending less time on each case. There is a proposal before the Rules Committee of the Judicial Branch that would expand the ability to provide LSR in the litigation context (see V.B.2 below).

¹⁸ CTLawHelp, Pro Bono Portal, <http://probono.ctlawhelp.org/catalog/call4law>.

¹⁹ A more complete description of its efforts can be found in its annual report. State of Connecticut Judicial Branch, Public Service and Trust Commission Pro Bono Committee Annual Report (June 2012), http://jud.ct.gov/Committees/pst/probono/ProBono_Annual_Rpt_2012.pdf.

²⁰ Connecticut Practice Book 2-15A (2013); Connecticut Rules of Professional Conduct Rule 5.5 (d) (2013).

²¹ Minutes, Public Service and Trust Commission Pro Bono Committee, Dec.13, 2012, http://www.jud.ct.gov/committees/pst/probono/Pro_Bono_Minutes_121312.pdf.

²² See, e.g., Connecticut Rules of Professional Conduct Rule 1.2 (c), 6.5 (2013).

²³ See, e.g., Alejandra Navarro, "Law A La Carte," QUINNIPIAC.LAWYER, Spring 2012, at 12; Susan W. Wakefield, *Buying Legal Services A La Carte*, CONN. L. TRIB., June 14, 2010, at 18; Basil Legal Services, Terms and Conditions, https://www.basil-legal.com/Terms_and_Conditions.html.

²⁴ Connecticut Rules of Professional Conduct Rule 6.5 (2013).

IV. Descriptions of Initiatives in Other States

The following provides an overview of some of the initiatives in other states that may be of interest in Connecticut.

A. Revenues for Legal Services

States have attempted to raise additional funds for legal services in a variety of ways. In 2011, Missouri enacted a statute that gives the state a lien equal to 50% of the punitive damages awards in tort cases (other than those for improper health care services), after attorney fees are paid. After a proceeding, the court may receive the funds and deposit them into the state's civil services legal fund.²⁵ Likewise, Iowa provides that a portion of the punitive damages award in certain cases may be allocated for "purposes of indigent civil litigation programs."²⁶

Some states seeking additional funding to increase access to justice have used residual funds from class-action settlements. Massachusetts's state class action rule allows residual funds from class action settlements to be directed, *inter alia*, to the Massachusetts IOLTA Commission to support programs that promote access to justice for low-income residents.²⁷ Similarly, in Pennsylvania, judges are required to use the *cy pres* doctrine to direct at least 50% of the residuals from class action funds and unclaimed estates and trusts to the Pennsylvania Legal Aid Network.²⁸ An Indiana Supreme Court rule provides that not less than 25% of unclaimed class action residuals should go to the Indiana Bar Foundation to support pro bono efforts.²⁹ Several other states have also created programs that permit access to unclaimed funds for legal aid purposes.³⁰

B. The Role of Judges

Judges have a role and a challenge in presiding over matters in which one or more of the parties are SRLs. In many such cases the strictly umpireal role of allowing the parties to present and object to evidence, and to apply the law to the facts through argument, may be inadequate to insure that SRLs have a fair opportunity to present their cases.

In 2012, the Conference of Chief Justices and the Conference of State Court Administrators passed a Resolution recommending that states adopt an Amendment to the Model Code of Judicial Conduct that explicitly provides: "A judge may make reasonable efforts to

²⁵ MO. REV. STAT. § 537.675 (2012).

²⁶ IOWA CODE ANN. 668A.1 (West 2012).

²⁷ MASS. R. CIV. P. 23(e)(2) (2012).

²⁸ PA. R.CIV.P. No. 1716 (b) (effective July 1, 2012), <http://www.pabulletin.com/secure/data/vol42/42-21/972.html>.

²⁹ Indiana Trial Rule 23(F)(2) (2012).

³⁰ See, e.g., CA CODE CIV. PROC. §384 (2012) (directing courts to order the payment of residual funds to one of a number of classes of recipients, including "nonprofit organizations providing civil legal services to the indigent"); HAWAII R. CIV. PROC. 23 (f) (2011) (allowing court to order residual funds to go to "nonprofit tax exempt organizations eligible to receive assistance from the indigent legal assistance fund"); N.C. GEN. STAT. §1-267.10 (b) (2010) (providing that unclaimed residual funds shall be paid "to the Indigent Person's Attorney Fund and to the North Carolina State Bar for the provision of civil legal services for indigents").

facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.” The Resolution further recommends that “states modify the comments [to the Rules of Judicial Conduct] regarding specific actions judges can take to exercise their discretion in cases involving self-represented litigants.”³¹

C. Modest Means Programs

Modest means programs seek to connect individuals of limited means who cannot obtain free legal assistance with an attorney who will work at a reduced hourly rate or a low capped fee. Participating attorneys typically provide a free or very reduced fee initial consultation (*e.g.*, \$ 35) and agree to a low hourly fee or reduced flat fee. The American Bar Association estimates there are as many as 90 modest means panels in the United States.³² Connecticut has one modest means program in the state, which is administered by the New Haven County Bar Association.³³

Modest means programs are usually organized and administered by a local or state bar association, which handles the screening of clients and referrals to lawyers. Potential clients must be income-qualified to participate in the program. For example, in order to participate in the Akron Bar Association’s Modest Means Program, clients may not earn more than 200% of the Federal Poverty Guidelines.³⁴ In that program, participating attorneys may not charge more than \$ 60 per hour. In the Oregon State Bar Association program, lawyers may charge a sliding scale of \$ 60-\$ 100 per hour.³⁵ The fee determination is made based on client income, but additional assets, such as a 401K or an IRA, will increase the amount the client is expected to pay.

Some modest means programs are limited to a single practice area, such as family law. The New Haven program offers representation in the areas of criminal defense, family law, landlord/tenant, small claims and unemployment compensation. The Orange County (CA) program is more expansive and also offers legal assistance in the areas of bankruptcy, consumer, elder, family, landlord/tenant, and immigration law.³⁶

Lawyers who participate in modest means programs must meet certain qualifications, which may include a specified number of years of practice, experience in certain areas of practice, the absence of a discipline history, and malpractice insurance.

D. LSR/Unbundled Legal Services

³¹ Conference of Chief Justices/Conference of State Court Administrators, Resolution 2, In Support of Expanding Rule 2.2 of the ABA Model Code of Judicial Conduct to Reference Cases Involving Self-Represented Litigants, Adopted July 25, 2012, <http://ccj.ncsc.dni.us/resol2Rule22ModelCode.html>.

³² ABA, Lawyer Referral and Information Service Modest Means Panel, http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/blueprints_for_better_access/lawyer_referral_and_information_service_modest_means_panels.html.

³³ New Haven County Bar Association, <http://www.newhavenbar.org/displaycommon.cfm?an=1&subarticlenbr=38>.

³⁴ Akron Bar Association Modest Means Referral Program, <http://www.akronbar.org/Files/Master%20Documents/MMRP%20Application.pdf>.

³⁵ Oregon State Bar, Modest Means Program, http://www.oregonstatebar.org/_docs/forms/modestmeans.pdf.

³⁶ Orange County Bar Association Lawyer Referral & Information Service, Modest Means Program, http://www.lrisoc.org/modest_means.asp.

Many states allow lawyers to engage in limited-scope representation of otherwise unrepresented litigants in court and in non-litigation activities. Some interesting state initiatives relating to LSR include:

(1) The Minnesota State Bar Association provides sample Retainer Agreements, fee agreements, practice tips, and other information to support lawyers undertaking limited-scope representation.³⁷

(2) Alaska's Court Self-Help Centers identify cases that appear likely to benefit from dispute resolution efforts and recommend that they receive unbundled pro bono assistance, often leading to quick resolutions.³⁸ Attorneys meet with the parties, give them candid assessments of their cases, and help them settle their disputes. If settlement can be reached a judge is available to enter it on the record.³⁹

(3) The California State Bar has targeted lawyer referral services as a key to the expansion of limited scope representation.⁴⁰ It has sent a brochure to certified lawyer referral services encouraging lawyers to provide LSR and explaining the business benefits of doing so. At least one California bar association has created an LSR referral program and advises the public on a webpage about the availability of LSR services.⁴¹

E. Law School Incubator Programs

In 2007, CUNY Law School created the first law school incubator program, establishing what was in essence a law office for its graduates to provide legal services to low-income clients. Recent CUNY graduates worked under the supervision of licensed practitioners to provide assistance to clients whose legal problems might otherwise have gone unaddressed. The new lawyers used the incubator program to help them progress toward their goal of establishing themselves as solo practitioners working to aid low-income, underserved communities. Participants in the Incubator program work over an 18-month period to learn business practices, including billing, recordkeeping and use of technology, along with areas of the law, including immigration, labor and employment law. Since then, a number of other law schools have created similar programs, including Brooklyn Law School's Incubator and Policy Clinic, California Western School of Law, Chicago-Kent, Cleveland-Marshall, University of Maryland, University

³⁷ John Del Vecchio, *Sharing the Experience: Assisting the Self-Represented Party*, BENCH & BAR, <http://mnbenchbar.com/2010/09/sharing-the-experience/>; see also MBSA Pro Se Implementation Committee, <http://www2.mnbar.org/committees/pro-se/>.

³⁸ Annie Feight, *Alaska Program Resolves Divorces Quickly, Amicably*, NPR, April 4, 2012, <http://www.npr.org/2012/04/04/149973224/alaska-legal-program-resolves-divorces-quickly-amicably>.

³⁹ Chief Justice Walter L. Carpeneti, Alaska Court System, State of the Judiciary: 2012, Feb. 29, 2012, <http://courts.alaska.gov/state12.htm> (reporting 85% settlement rate in project involving family law cases).

⁴⁰ Richard Zorza, *Lawyer Referral Services are the Key Gateway to Unbundled Services and California Leads the Way*, Oct. 16, 2012, <http://accesstojustice.net/2012/10/16/lawyer-referral-services-are-the-key-gateway-to-unbundled-services-and-california-leads-the-way>.

⁴¹ E.g., Contra Costa County Bar Association, Community, Limited Scope Representation, <http://www.cccba.org/community/family-immigration-law/limited-scope-representation.php>; Contra Costa County Bar Association, <http://www.cccba.org/attorney/pdf/lim-scope-article-2009-08-24.pdf>.

of Missouri-Kansas City, Pace Law School, and Thomas Jefferson School of Law.⁴² These programs are typically housed in a single building and can accommodate 8-15 lawyers at a time who pay reduced rent while building their practices.⁴³

F. Pro Bono Requirement for Applicants to the New York Bar

In May 2012, Chief Judge Jonathan Lippman of the New York Court of Appeals announced that applicants to the New York bar would be required to complete 50 hours of pro bono work as a condition of bar admission. The stated goal of the pro bono requirement is to close the justice gap in New York.⁴⁴ The actual rule, which will apply to bar applicants starting in 2015, construes “pro bono” broadly and includes not only work for persons of limited means, but also work for non-profit organizations and for judicial, legislative, executive or other governmental entities. The pro bono requirement can be satisfied with work performed in law school legal clinics and judicial internships.⁴⁵

The mandate has been controversial. It may adversely affect lower-income students who already have limited time because they must work during law school. It will also place a burden on law schools, which will need to provide a means for tracking pro bono hours and certifying completion of pro bono work.⁴⁶ The Nassau County Bar Association came out against the proposal because it opposes compulsory pro bono service.⁴⁷ The plan has also been met with skepticism from Esther Lardent, president of the Pro Bono Initiative, who said the poor may end up saddled with legal assistance from prospective lawyers who did not want to be there.⁴⁸

One open question is to what extent the pro bono requirement will actually help low income individuals obtain legal services. Chief Judge Lippman estimates the new requirement will add as many as 500,000 hours of pro bono legal service each year.⁴⁹ But as noted, the requirement can be fulfilled by providing law-related services to a variety of potential beneficiaries other than persons of limited means. In addition, many law students already serve as judicial interns and in law school clinics, so it remains unclear how many hours of service will actually be added because of the mandate. The rule also allows students to fulfill the 50-hour obligation anywhere in the world, which means its impact on the legal needs in New York is

⁴² Karen Sloan, *Cleveland solo incubator reflects students' choice of careers*, NAT'L L. J., Dec. 4, 2012, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202580245761&Cleveland_solo_incubator_reflects_students_choice_of_careers_&slreturn=20121105141918.

⁴³ *Id.*; *UMKC Solo and Small Firm Incubator Launches*, <http://law2.umkc.edu/Incubator/index.htm>.

⁴⁴ Joel Stashenko & Christine Simmons, *Lippman Unveils Rule Detailing Bar Admission Pro Bono Mandate*, N. Y. L. J., Sept. 20, 2012, http://www.lawjobs.com/newsandviews/LawArticle.jsp?id=1202571894656&Lippman_Unveils_Rule_Detailing_Bar_Admission_Pro_Bono_Mandate&slreturn=20120830113851.

⁴⁵ N.Y. COMP. CODES. R. & REGS. Tit. 22, § 520.16 (2012).

⁴⁶ Daniel Wiessner & Joseph Ax, *NY announces first-in-nation pro bono mandate for lawyers*, THOMSON REUTERS, Sept. 20, 2012, <http://newsandinsight.thomsonreuters.com/Legal/News/2012/09>.

⁴⁷ *Nassau County Bar Association Opposes Mandatory Pro Bono Service*, Newsli.com, Sept. 20, 2012, <http://www.newsli.com/2012/09/20/nassau-bar-association-opposes-mandatory-pro-bono-service/>.

⁴⁸ Anne Barnard, *Top Judge Makes Free Legal Work Mandatory for Joining State Bar*, NY TIMES, May 1, 2012, <http://www.nytimes.com/2012/05/02/nyregion/new-lawYERS-in-new-york-to-be-required-to-do-some-work-free.html>.

⁴⁹ *Id.*

uncertain.⁵⁰ Many remain optimistic, however, that the New York program will serve as a model for the other states and lead to a significant reduction in the current legal services gap.⁵¹ Indeed, formal initiatives are underway in California and New Jersey to consider whether to adopt pro bono requirements for bar admission in those states.⁵²

G. Annual Reporting of Pro Bono Hours and Financial Contributions

Eighteen states either require or encourage annual reporting by attorneys of their pro bono hours.⁵³ In some states, attorneys are also asked about financial contributions to organizations that provide legal services to persons of limited means.⁵⁴ This reporting requires lawyers to consider, on an annual basis, whether they are devoting appropriate time to pro bono service. It also provides a way to determine how much pro bono work is being performed by lawyers admitted in the jurisdiction.

H. JusticeCorps

Two states have implemented Justice Corps programs in which college students are trained to help self-represented litigants navigate the courts. California's JusticeCorps is the only AmeriCorps program of its kind that recruits, trains and places undergraduate college students in service to assist members of the public in court-based legal access self-help centers.⁵⁵ After training in family law, small claims, and housing law, the JusticeCorps members help litigants complete forms and understand court procedures. Since its inception in 2004, California's JusticeCorps has trained 1,000 volunteers who have "provided 258,000 instances of assistance in up to 24 different languages."⁵⁶ The Illinois JusticeCorps program, modeled after California's, is a project of the Chicago Bar Foundation. A partnership among law schools, the state courts, the CBF, and legal aid providers, the Illinois program trains Chicago-area law students and college students to work in self-help centers in courthouses, helping people navigate the judicial process. The pilot program, described by the Chicago Bar Foundation as "hugely successful," provided assistance to people dealing with mortgage foreclosures.⁵⁷ The program was expanded in 2012

⁵⁰ Wiessner & Ax, *supra* note 46.

⁵¹ Stashenko & Simmons, *supra* note 44.

⁵² Liz Tobin Tyler & David S. Udell, *Is the New York 50 Hour Requirement Changing the Future of Law Student Pro Bono*, BLOOMBERG LAW, Jan 11, 2013, <http://about.bloomberglaw.com/2013/01/11/is-the-new-york-50-hour-requirement-changing-the-future-of-law-student-pro-bono/>.

⁵³ American Bar Association, Reporting of Pro Bono Service, <http://apps.americanbar.org/legalservices/probono/reporting.html>. In addition, two more states are considering voluntary pro bono reporting and seven states have rejected any reporting. *Id.*

⁵⁴ Court of Appeals Maryland, Lawyer Pro Bono Legal Service Report, <http://www.anasys-apr.com/probono/Reports/Final%20Pro%20Bono%20Report.pdf>.

⁵⁵ California Courts, JusticeCorps, <http://www.courts.ca.gov/programs-justicecorps.htm>; Fact Sheet, JusticeCorps Program, http://www.courts.ca.gov/documents/JusticeCorps_FactSheet.pdf.

⁵⁶ *Id.*

⁵⁷ Chicago Bar Foundation, <http://www.chicagobarfoundation.org/courts/illinois-justicecorps>. Law students are placed at the courts to assist homeowners, at legal services agencies to help lawyers representing homeowners, and at agencies providing mediation services. Email from Danielle Hirsch, Director of Advocacy, Chicago Bar Foundation, to Melanie B. Abbott, Assoc. Prof. of Law, Quinipiac School of Law (Jan. 2, 2013) (on file with authors).

with funding from AmeriCorps and now places college students in civil courthouses to provide more general assistance to unrepresented litigants.⁵⁸

I. Other non-lawyer providers of legal services

A few states have recognized that non-lawyers with appropriate training can increase access to justice for SRLs. This may not be a popular development in the view of some lawyers, but most lawyers have proven to be unable or unwilling to offer legal services at a price that many low-income individuals can afford. As Gillian Hadfield, the Kirtland Professor of Law and Economics at the University of Southern California, and an expert in the economics of legal markets and institutions, has stated:

[T]here is no way to solve the crisis of civil access to justice without fundamental change in the way the judiciary regulates the practice of law. More precisely, there is no way to generate the kind of legal help that ordinary New Yorkers need solely through the expenditure of public money on legal aid and the provision of pro bono and other charitable assistance. No way. Any solution that makes a dent in the problem will also have to involve expanding the types of people and organizations that are authorized to provide legal help.⁵⁹

Non-lawyers are already permitted to represent individuals in immigration court and in many federal agencies. For example, non-lawyer Accredited Representatives may represent individuals in immigration court, before the Board of Immigration Appeals (BIA), and before the USCIS, as long as they are accredited by the BIA and are working for a qualified non-profit organization.⁶⁰ The Social Security Administration permits non-attorney representatives to represent individuals pursuing Social Security disability claims if the non-attorneys satisfy certain requirements, including passing a written examination.⁶¹ Non-lawyers may also represent parties who appear before a Department of Labor administrative law judge or appellate board.⁶²

Some states also allow non-lawyers to represent individuals in connection with their legal problems in limited situations. Twenty-one jurisdictions authorize non-lawyers to perform some limited legal services.⁶³ Allowable activities by non-lawyers include drafting legal documents, participation in administrative hearings, and participation in ADR.

At least three states allow licensed non-lawyers to perform certain legal work to increase access to justice. In California, Legal Document Assistants, who have the same education as

⁵⁸ *Id.*

⁵⁹ Summary of Testimony of Gillian K. Hadfield, Task Force to Expand Access to Civil Legal Services in New York, Chief Judge's Hearings, Oct. 1, 2012, <http://richardzorza.files.wordpress.com/2012/10/hadfield-testimony-october-2012-final-2.pdf>.

⁶⁰ 8 U.S.C. §1291.1 (2012).

⁶¹ 42 U.S.C. § 406 (e) (2012).

⁶² *E.g.*, 20 C.F.R. § 802.202 (2012).

⁶³ ABA Standing Committee on Client Protection, 2012 Survey of Unlicensed Practice of Law Committees (May 2012), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2012_upl_report_final.authcheckdam.pdf.

paralegals, are trained to prepare legal documents for SRLs, but they may not give legal advice.⁶⁴ California also permits Unlawful Detainer Assistants, who are non-lawyers, to help individuals complete forms in eviction proceedings.⁶⁵ In Arizona, Certified Legal Document Preparers perform similar functions; they may provide general legal information but may not provide legal advice.⁶⁶ In June 2012, the Washington Supreme Court went even further, adopting a rule that permits Limited License Legal Technicians to help consumers with document preparation and to provide legal advice.⁶⁷

V. Recommendations

A. Revenue Generating Recommendations

1. *The Connecticut Judicial Branch should implement a rule change requiring that some portion of unclaimed residual funds be disbursed to organizations providing legal services for state residents of limited means.*

In 2010, the Connecticut Bar Association adopted a resolution “that Connecticut’s state and federal courts direct any residue remaining in class action settlements to the Connecticut Bar Foundation for the purpose of providing legal services to the poor.”⁶⁸ The Connecticut Bar Foundation has also urged courts making distributions of residual funds to direct those funds to the CBF and has asked lawyers to request such a distribution, pursuant to the *cy pres* doctrine.⁶⁹ A rule change would automatically direct unclaimed residual funds to organizations that provide legal services to persons of limited means, such as Connecticut Legal Services, New Haven Legal Assistance, and Greater Hartford Legal Aid.

2. *The Access to Justice Committee should create a subcommittee to consider whether to advocate for statutory changes that would allocate a portion of punitive damage awards in some cases to organizations that provide legal services to persons of limited means.*

The question of whether to allocate a portion of certain punitive damage awards to legal services organizations is complex and deserves serious study. If it is determined that such a change in the law is desirable, the Access to Justice Commission should work with the legislature to try to effect such a change.

3. *The Judicial Branch should continue to emphasize to the state legislature and to the federal government that the judicial system relies on robust*

⁶⁴ California Business and Professions Code § 6400 (2012).

⁶⁵ *Id.*

⁶⁶ Arizona Judicial Branch, Certification and Licensing, Legal Document Preparers, <http://www.azcourts.gov/cld/LegalDocumentPreparers.aspx>.

⁶⁷ Washington State Bar, Limited License Legal Technicians, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Admissions/Limited-Licenses-and-Special-Programs/Non-Lawyers-and-Students/Legal-Technicians>.

⁶⁸ Connecticut Bar Foundation, *Cy Pres Awards*, <http://www.ctbarfdn.org/cypresawards>.

⁶⁹ *Id.*

legal aid services to the poor, that existing funding should be supported, and that opportunities should be sought to identify additional funding to lessen the gap between the legal needs of persons of limited means and the available legal services.

B. Other Rule/Law Changes

1. *The Judiciary should amend Connecticut Code of Judicial Conduct Rule 2.6 to enable judges to assist self-represented litigants.*

Connecticut Code of Judicial Conduct Rule 2.6 should be amended by adding the following subsection (c): “A judge may make reasonable efforts to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.”

This change, if adopted by the Connecticut judiciary, would encourage and justify judges in taking an active role in assuring that SRLs have a fair opportunity to present their cases.

2. *The Connecticut Superior Court Rules Committee should adopt the proposed rule changes regarding limited scope representation*

The Connecticut Bar Association’s Limited Scope Appearance Subcommittee has issued a report recommending changes to the state’s rules of professional conduct and the Connecticut Practice Book that would permit LSR in litigation (including limited appearances in court).⁷⁰ These rule changes would impose requirements for limited appearance engagement agreements; make clear that all information obtained in the scope of an LSR will be confidential; clarify disclosure obligations to the court and to opposing parties; and clarify withdrawal procedures. These changes would permit lawyers to provide more pro bono and low cost legal assistance to individuals of limited means. The CBA House of Delegates endorsed that report at a meeting on October 15, 2012, and forwarded it to the Superior Court Judges’ Rules Committee for consideration. In November, the Rules Committee tabled the report, pending input from the state’s administrative chief judges and further review by the Committee members.⁷¹ We recommend that these rule changes be adopted to help SRLs better navigate the litigation process.

3. *The Connecticut Judicial Branch should convene a task force that includes, inter alia, representatives from the Connecticut Bar Examining Committee and from Connecticut law schools to consider whether to implement a pro bono requirement for applicants to the Connecticut bar.*

The American Bar Association has been asked to incorporate a 50 hour pro bono requirement into the national ABA accreditation standards for law schools,⁷² but in the absence of a specific national accreditation standard that requires every law student to provide pro bono

⁷⁰ Report of the CBA Task Force on Limited Scope Representation, revised Oct. 8, 2012 (on file with authors).

⁷¹ Thomas, Scheffey, *Limited Scope Representation Debate Rises Again*, CONN. LAW TRIB., Nov. 21, 2012, <http://www.ctlawtribune.com/PubArticleCT.jsp?id=1202579199954&thepage=1>.

⁷² Tyler & Udell, *supra* note 52.

service, we believe the Connecticut Judicial Branch should take its own step forward to implement a pro bono requirement as a condition of admission to the Connecticut Bar

More than 800 individuals apply to the Connecticut bar each year and a 50-hour pro bono requirement as a condition of admission could yield over 40,000 hours of pro bono service annually. Admittedly, not all of that pro bono work would be performed in Connecticut unless pro bono service in Connecticut were made a part of the bar admission requirement. Moreover, if a pro bono requirement were adopted, it would be important to define pro bono less broadly than it is defined in New York so that it actually generates substantial additional legal assistance for persons of limited means. Such a requirement should not impose substantial additional burdens on the Connecticut law schools, which will presumably already be monitoring pro bono work in order to help their students who will be applying to the New York bar demonstrate compliance with that state's requirement.

4. *The Connecticut Judicial Branch should institute 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.*

Law students often volunteer to work in courts and elsewhere offering help to SRLs seeking assistance with particular legal issues. Connecticut's student practice rules allow law students certified by their law schools to perform a variety of specified tasks under the supervision of members of the Connecticut bar.⁷³ Some concerns have been expressed, however, that students who help SRLs outside of law school clinical settings may run afoul of the rules concerning the unauthorized practice of law. Those rules prohibit non-lawyers from "[g]iving advice or counsel to persons concerning or with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or liabilities."⁷⁴ Students who, for example, offer assistance to SRLs seeking help with completing forms to obtain a divorce may find themselves unintentionally crossing the line between providing clerical assistance and giving legal advice as they attempt to explain terminology to the SRLs with whom they are working. Consideration should be given to revising the definition of the unauthorized practice of law to provide a safe harbor for law students who provide pro bono assistance to individuals of limited means by helping them complete certain forms.

* * * * *

There is one other rule change that deserves consideration, but that we are not recommending at this time. Specifically, the definition of "pro bono" in Connecticut Rules of Professional Conduct Rule 6.1 does less to encourage pro bono service for persons of limited means than the rules in many other states. For example, unlike ABA Model Rule 6.1, which states that a "substantial majority" of a lawyer's pro bono work should benefit persons of limited means, Connecticut Rule 6.1 does not highlight the need for pro bono services for persons of limited means. Instead, it only lists service for persons of limited means as one of several possible ways to perform pro bono. Nor does Connecticut Rule 6.1 contain a suggested annual

⁷³ Connecticut Practice Book § 3-14 *et seq.* (2013).

⁷⁴ Connecticut Practice Book 2-44A (a)(2) (2013).

number of pro bono hours to be performed each year, in contrast to the ABA Model Rule's recommendation of at least 50 hours annually. Changes to Rule 6.1 to remedy these deficiencies would convey an important symbolic message and likely have some practical effect. We believe, however, that the other recommendations that appear above are easier to achieve and more likely to directly increase access to justice in Connecticut.

C. Programmatic Recommendations

1. *The Judicial Branch should work with Connecticut bar associations to expand the VAPs to other judicial districts*

The VAPs should be expanded by establishing Foreclosure VAPs in the Hartford and Stamford Judicial Districts, and both Foreclosure and Family VAPs in the New London and Norwich Judicial Districts. Krista Hess, Program Manager for Superior Court Operations for the Judicial Branch, notes that the challenge in doing so would be activating the local bars in these cities and recruiting and retaining volunteer attorneys in those programs. She proposed recruiting retired attorneys to participate in the VAP.

2. *The Access to Justice Commission should work with Connecticut bar associations to develop additional modest means panels in Connecticut.*

The Access to Justice Commission should explore with the Connecticut Bar Association and local bar associations 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. As noted, the New Haven County Bar Association has such a program, which is run relatively inexpensively. Martha Messier, the New Haven Bar Association's lawyer referral and program coordinator, can provide information about how to establish modest means programs elsewhere.

If other modest means programs are established, they should give priority to providing reduced fee representation in the areas where the courts see the most self-represented individuals who would benefit from legal representation—*i.e.*, family, landlord-tenant, and unemployment compensation appeals to Superior Court. Consideration should be given to whether the modest means programs should focus on providing unbundled legal services or full-service representation to clients. If properly administered, these programs can not only assist individuals who need help with their legal needs and ease the burden on courts, but can also provide some income for underemployed lawyers.

3. *The Access to Justice Commission should work with bar associations to identify and implement initiatives that promote LSR for the benefit of persons of limited means.*

Connecticut lawyers must be able to accommodate consumers' increased interest in consulting and retaining lawyers on terms other than the traditional full-service model.⁷⁵ This option is especially important for persons of limited means. The Access to Justice Commission should identify additional ways in which LSR can be used in pro bono programs (both in the

⁷⁵ Report of the CBA Task Force on Limited Scope Representation 4 (as revised Oct. 2012).

courts and in other contexts) and to encourage for-profit low bono practices⁷⁶ to increase access to justice in Connecticut.

As part of this effort, the Access to Justice Commission should encourage the Connecticut Bar Association and Statewide Legal Services to expand the CtLawHelp website to include a section describing the types of LSR services that can be helpful to low-income residents. The Pro Bono Catalog, already available on the website, can be supplemented to indicate the types of cases for which LSR would be appropriate and the Training page could add a tab identifying the programs which would help to support lawyers providing LSR.⁷⁷

Bar associations should also be encouraged to provide programs and materials that equip lawyers to establish LSR practices for persons of limited means. Lawyers already engaging in LSR practices should be recruited to assist with the development of training events or materials to inform other lawyers about the practice opportunities presented by LSR cases.

4. *The Connecticut Judicial Branch should ask lawyers to voluntarily report, on an annual basis on their attorney registration forms, how much time they devote to pro bono service.*

Connecticut's recent effort to survey lawyers about their pro bono efforts devoted to persons of limited means establishes a baseline for tracking pro bono service. We recommend that the solicitation of voluntary reporting be continued on an annual basis in order to track trends in pro bono participation and to remind attorneys of the importance of providing pro bono assistance to persons of limited means.

5. *The Access to Justice Commission should work with Connecticut law schools to identify additional ways in which to engage law students in providing legal assistance to persons of limited means.*

(a) Clinics and externships. Law schools should be encouraged to develop additional clinics that provide legal assistance to low-income Connecticut residents. The law schools should also work with the Connecticut bar associations and their alumni organizations to develop law student externship programs that would enable students to assist attorneys who take on pro bono or "low bono" cases.

(b) Education about LSR and low bono practices. The Access to Justice Commission should also work with law schools to make information about LSR and its potential for increasing access to justice more prominently available to students as part of their legal education. The law schools should provide information about low-bono and LSR practices through information sessions and other programs designed to make students aware of these practice opportunities.

(c) Incubator programs. The law schools in Connecticut should consider the development of incubator programs. The combination of the training provided for recent graduates seeking to start solo or small firm LSR practices in the current challenging

⁷⁶ In "low bono" practices, lawyers provide discounted-rate arrangements to clients of limited means. See, e.g., www.lowbono.org.

⁷⁷ CtLawHelp.org. Pro Bono Portal, <http://probono.ctlawhelp.org/training>.

employment climate, and the potential for increasing access to legal services for low-income residents, make these options worthy of further study.

(d) Bi-annual conferences. The Access to Justice Commission should work with the Connecticut law schools to establish a conference to promote communication and collaboration among the law schools, legal services providers, the courts, and the bar to further efforts to meet the civil legal needs of low-income residents in Connecticut.⁷⁸ In addition to promoting collaboration and the exchange of ideas, the conference would identify curricular innovations that address the needs of low-income litigants and encourage the development of programs and projects through which law students can effectively respond to the civil legal needs of persons of limited means.

6. *The Connecticut Judicial Branch should form a task force to consider whether to permit limited non-lawyer practice by trained and certified laypersons to provide legal assistance to individuals of limited means.*

The Judicial Branch should establish a task force to consider whether to permit non-lawyers to provide legal assistance to persons of limited means in discrete areas, similar to the Limited License Legal Technicians in Washington.

VI. Conclusion

The Connecticut Judicial Branch, the bar associations, legal services organizations, and the law schools have undertaken many important initiatives to increase access to justice in Connecticut. Unfortunately, there is still an enormous unmet need for legal services, and much remains to be done. As Professor Hadfield has noted:

[I]t is a major mistake for the legal profession to focus exclusively on how to solve the access process with more money—public or charitable money—and volunteer pro bono efforts alone. The reason is that the scale of the problem is such that any reasonable amount of public funding or legal aid or pro bono work can never be more than a partial solution.⁷⁹

It is only through a mix of approaches—including some bold initiatives—that the judiciary, the bar, and law schools can effectively address the serious unmet legal needs of persons of limited means in Connecticut.

⁷⁸ This recommendation is based on a similar recommendation made in New York. *See* The Task Force to Expand Access to Civil Legal Services in New York: Report to the State Judge of the State of New York (2012), http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf.

⁷⁹ *See* Summary of Testimony, *supra* note 59.