

DELAWARE ACCESS TO JUSTICE COMMISSION

REPORTS OF THE:

**Subcommittee on the Efficient Delivery and Adequate
Funding of Legal Services to the Poor**

**Subcommittee on Judicial Branch Coordination in
Helping Pro Se Litigants**

**Subcommittee on Promoting Greater Private Sector
Representation of Underserved Litigants**

Overview

On December 15, 2014, the Supreme Court of the State of Delaware established the Delaware Access to Justice Commission. The Commission was created to identify barriers to the judicial system in Delaware and to develop recommendations to improve access to justice for the citizens of Delaware. To meet this goal, the voting members of the Commission consist entirely of private citizens—outstanding community and business leaders, lawyers and other professionals from across the state, who have the flexibility to make whatever policy recommendations they believe will be best for Delaware.

The Commission pursued its mission through three different civil subcommittees: (i) the Subcommittee on the Efficient Delivery and Adequate Funding of Legal Services to the Poor; (ii) the Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants; and (iii) the Subcommittee on Promoting Greater Private Sector Representation of Underserved Litigants. The fourth subcommittee focused on long-term reforms to address racial inequities in the criminal justice system. Their work is ongoing and is not included in this report.

Summary of the Findings and Recommendations of the Subcommittee on the Efficient Delivery and Adequate Funding of Legal Services to the Poor

This subcommittee was asked to: (i) analyze the efficiency of the delivery of legal services by Delaware organizations that provide such services to low-income people; (ii) suggest areas where that efficiency might be improved; (iii) determine whether there would be funding gaps even if existing resources were used in the most efficient manner; and (iv) identify and recommend sources of increased funding for Delaware's legal aid organizations. The subcommittee's report appears after the first tab. A summary of the subcommittee's findings and recommendations appears below.

Findings

1. Legal aid organizations have the resources to serve the civil legal needs of only one-eighth of Delaware's low-income population, leaving a large justice gap. An unrepresented party is at a distinct disadvantage, regardless of the merits of her case.

2. The three legal service providers—Community Legal Aid Society, Inc., Delaware Volunteer Legal Services, and Legal Services Corporation of Delaware—are primarily responsible for the delivery of civil legal services to low-income Delawareans and are very effective in providing legal services to low-income people.
3. Our analysis indicates that any consolidation amongst the three legal services providers will not result in systemic cost savings.
4. We recognize and support the efforts of the three organizations to bring joint-fundraising activities under the umbrella of the Combined Campaign for Justice.
5. Accessing the legal system can be a daunting task and facilitating access into the Delaware legal services system is in need of much improvement.
6. Even with improved efficiencies to the legal aid system, the justice gap will remain large.
7. Interest on lawyer trust accounts will continue to be an important source of funding for legal aid organizations, but this funding is depressed due to record low interest rates and, due to variability in interest rates, is a volatile source of funding.
8. While advocacy should be made for increased legislative funding, the State's budgetary outlook clouds the prospects for material increases in such support.
9. Legal aid to low-income people is a societal issue that requires support beyond members of the legal community.

Recommendations

1. The legal aid providers may derive operational efficiencies by using a common party for payroll, accounting, technology support, grant writing, and fundraising.

2. Consideration should be given to selecting the best-in-class portal/triage system and best case management system for use across all three service providers.
3. While improvement of the current system is under review, the pace of that consideration and technology implementation needs to be greatly accelerated.
4. The Delaware Courts should establish internet portals and stand-alone kiosks to facilitate litigant access to court services and provide real-time assistance for navigating the litigation process.
5. With the addition of a full-time development director, the Combined Campaign for Justice should be able to increase its funding support to legal aid organizations by increasing the percentage of Delaware bar members who contribute to the campaign, improving the retention rate of those who currently contribute, and increasing the average contribution made by contributing members.
6. Untapped sources of funding to support Delaware's legal aid organizations include an increase in *pro hac vice* fees, allocation of class action residual ("*cy pres*") funds to legal aid organizations, and foundation and other private sector support for funding legal aid organizations.
7. To improve the efficiency of and increase funding available to organizations that provide legal aid to low-income Delawareans, coordinated and effective leadership will be required from the legal aid organizations themselves, the Courts, the Delaware bar, and the ATJ Commission.

Summary of the Findings and Recommendations of the Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants

This subcommittee had three objectives. Objective 1—examine whether the judiciary is effectively coordinating its approach to helping pro se litigants, including exploration of technology solutions. Objective 2—explore ways the courts can coordinate their pro se assistance efforts more effectively and consider conversion of currently underutilized law libraries into pro se assistance centers that are not court specific. Objective 3—consider whether Delaware should allow limited legal representation in specific areas where litigants have difficulty

obtaining affordable legal services and a compelling human need, such as cases involving evictions or family law. The subcommittee's report appears after the second tab. A summary of the subcommittee's findings and recommendations appears below.

Objective 1 Findings

1. Each court in Delaware is responding to the increasing needs of the pro se litigant with the creation of both on-site and online materials.
2. There is some coordination across individual courts in the area of training as a result of recommendations made by the 2009 Fairness for All Task Force Report, but the response to pro se litigant needs has not otherwise been coordinated.
3. The Delaware courts website, courts.delaware.gov, has an abundance of information for the pro se litigant, which demonstrates a successful use of technology to help pro se litigants.
4. Despite the great amount of information for the pro se litigant on the courts website, it can be difficult to find needed information. A recent website redesign took the first step towards making the website easier to navigate for the pro se litigant.
5. The pro se litigant information offered on the website is primarily text, which can be lengthy, and perhaps not easily understood by all self-represented litigants.
6. The courts website provides very little for the Spanish speaking pro se litigant.
7. More resources on-site and online are needed to meet the needs of pro se litigants.
8. Judicial officers and operational staff interviewed were all willing to work towards cross-court collaboration in meeting the needs of the pro se litigant, but a front line court staff survey created by the Pro Se Subcommittee revealed a less optimistic response to potential cross-court collaboration.

Objective 1 Recommendations

1. Plain language and a mix of graphics and video would make the Delaware Courts website easier for the pro se litigant to navigate as well as more helpful.
2. The Pro Se Subcommittee recommends changing “Delaware State Courts Citizen Help,” “Citizen Help,” and “Help” to “Self Help” on the website.
3. Make the “Help” link at the top right of the homepage more prominent.
4. Rearrange the “Delaware State Courts Citizen Help” Section so that users will have more information visible to them without being overwhelmed by text.
5. Additional Pro Se Litigant Information that is often requested should be included in the “Delaware State Courts Citizen Help” section.
6. There are a few resources for Spanish speaking people on the website, the court should make these accessible from the homepage in the Spanish language, and the website should also include information in Spanish that explains the interpreter services they are entitled to have.

Objective 2 Findings

1. The Delaware law libraries are currently underutilized.
2. The law librarians already offer assistance to pro se litigants and view the addition of a Pro Se Center within the library as a natural evolution of that process.
3. Delaware’s law libraries in each of the three counties are able to be converted into pro se assistance centers because they already have the physical space and some of the resources necessary for a Pro Se Center.
4. Pro Se Centers must offer certain services at a minimum to begin to meet the needs of pro se litigants.

5. Some investment will be needed for the conversion of the law libraries into Pro Se Centers.
6. To increase efficiency and security, the layout of the law libraries should be altered to serve their new mission as Pro Se Centers.
7. Electronic filing services are vital to a self-help center because they facilitate a one stop shopping approach to court business. However, the addition of e-filing services will likely require an additional increase in staff, more cross-training of that staff on the various courts' rules, and more security in the Pro Se Centers.

Objective 2 Recommendations

1. Convert Delaware's law libraries into Pro Se Centers and invest in the Pro Se Centers so they function successfully.
2. When the necessary investments have been made in the Pro Se Centers, additional, but preferred, services may be offered in the Pro Se Centers. These services are focused on providing the pro se litigant with more in depth assistance through helpful programs and community information.
3. A single administrator, chief law librarian or attorney should have authority over all three Pro Se Centers.
4. The Pro Se Centers should be staffed by a rotation of court employees.
5. Staff members of the Pro Se Centers must have even temperaments and be willing to assist pro se litigants on matters that may be outside of their own court's jurisdiction.
6. The Court should consider utilizing its process improvement partnership with the University of Delaware Alfred Lerner College of Business and Economics in the early stages of the Pro Se Centers' development to ensure the Pro Se Centers will be effective and efficient from inception.
7. Because electronic filing services are vital to a self-help center, the Court should consider offering e-filing services in its Pro Se Centers.
8. The Court should provide information to the public through social media.

9. The Court should consider partnering with the Delaware Public Libraries to improve pro se services.

Objective 3 Findings

1. Rule 1.2(c) and Rule 6.5 of the Delaware Rules of Professional Conduct refer to limited scope representation and the responsibility to determine conflicts.
2. The Delaware Family Court Rules of Civil Procedure also address limited scope representation by requiring written entries of appearance for each matter for which the attorney will represent the client.
3. There are two Delaware ethics opinions on the subject of limited scope representation.
4. The Bench Bar Committee on Limited Scope Representation presented recommended changes to the Delaware Rules of Professional Conduct in 2010 to then Chief Justice Myron Steele. These recommendations were not adopted.

Objective 3 Recommendations

1. The Pro Se Subcommittee will continue to explore the expansion of limited legal representation in Delaware with the objective of making more definitive recommendations for the Court by, among other things, identifying developments since the 2010 recommendations of the Bench Bar Committee on Limited Scope Representation to then Chief Justice Myron T. Steele.
2. The Pro Se Subcommittee will continue to work with other subcommittees of the Access to Justice Commission to consider areas of limited legal representation such as legal technicians and whether modification of the professional rules to allow para-professionals in the legal field should be made.

Summary of the Findings and Recommendations of the Subcommittee Promoting Greater Private Sector Representation of Underserved Litigants

This subcommittee was asked to examine ways to: (i) assist solo practitioners and small law firms that represent clients of limited means, including investigation of whether there are private sector businesses that can help small legal practices in Delaware operate more effectively; and (ii) increase the level of pro bono services provided by the bar. The subcommittee's report appears after the third tab. A summary of the subcommittee's findings and recommendations appears below.

Solo/Small Firm Findings

1. Most solo and small firm practitioners are satisfied with their practices.
2. Solo and small firm practitioners do, however, confront challenges in the management of their practices, including lack of support staff, lack of back-up assistance when away from the office, generation of revenue, and lack of information technology support.
3. At this time, there are few companies like healthcare management service organizations that offer a complete back office solution for small legal practices in Delaware.

Solo/Small Firm Recommendations

1. The Delaware State Bar Association should continue to work on the establishment of a Law Office Management Assistance Program.
2. The Office of Disciplinary Counsel should continue to offer free CLEs on useful topics for solo and small firm practitioners.
3. Law school students and new solo and small firm attorneys should have the opportunity to take classes on law firm management.

Pro Bono Service Findings

1. Family law and consumer law are the areas with the greatest need for pro bono services from the bar.

2. Although many attorneys perform pro bono work, fewer attorneys provide more than twenty-five hours of pro bono service a year.
3. Lack of available time or prioritized time is the primary barrier to the provision of pro bono services by Delaware attorneys.
4. Secondary barriers to attorneys' provision of pro bono services include fear, a perceived lack of expertise, and a lack of awareness of the available pro bono opportunities and resources.
5. Depending on the nature of their practice, attorneys face additional barriers to pro bono service.

Pro Bono Service Recommendations

1. In 2017, institute a standing pro bono leadership committee to focus on pro bono family law representation in 2018 and pro bono consumer law representation in 2019.
2. Beginning in 2017, develop statewide pro bono practice groups, starting with family law, to share ideas and information.
3. Starting in the first half of 2018, hold an annual pro bono summit/fair.
4. Create a pro bono challenge for attorneys to meet a clear, measurable, and collective pro bono target.
5. By the end of 2018, create a single source for pro bono information and increase awareness of the variety of pro bono opportunities and assistance available.
6. Remind the bar early and often of areas of critical need and ways to address those needs.
7. Devote more time to consideration of a legal technician program.

DELAWARE ACCESS TO JUSTICE COMMISSION

REPORT OF THE SUBCOMMITTEE ON THE EFFICIENT DELIVERY AND ADEQUATE FUNDING OF LEGAL SERVICES TO THE POOR

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EXECUTIVE SUMMARY

The justice gap is the difference between the level of legal assistance available and the level that is necessary to meet the needs of low-income people. Based on survey data and Delaware's 2015 population, over 140,000 Delawareans are eligible for free legal services under a 125% poverty level standard. However, legal aid organizations have the resources to serve the civil legal needs of only one-eighth of Delaware's low-income population, leaving a large justice gap. Those not able to get legal counsel must represent themselves, and an unrepresented party is at a distinct disadvantage, regardless of the merits of his or her case.

The Delaware Access to Justice Commission (the "Commission") was formed in 2014. It established three subcommittees to address civil law issues that affect Delawareans. This is the report of the Subcommittee on the Efficient Delivery and Adequate Funding of Legal Services to the Poor. This Subcommittee was charged with: (1) analyzing the efficiency of the delivery of legal services by Delaware organizations that provide such services to low-income people; (2) suggesting areas where the efficiency might be improved; (3) determining whether there would be funding gaps even if existing resources were used in the most efficient manner; and (4) identifying and recommending sources of increased funding for Delaware's legal aid organizations.

Three non-profit organizations—Community Legal Aid Society, Inc. ("CLASI"), Delaware Volunteer Legal Services ("DVLS"), and Legal Services Corporation of Delaware ("LSCD")—are primarily responsible for the delivery of civil legal services to low-income Delawareans. Given their financial and personnel resources, these organizations are very effective in providing legal services to low-income people. CLASI, LSCD, and DVLS have a high degree of cooperation and coordination. Our analysis indicates that any consolidation amongst the three legal services providers will not result in systemic cost savings. On the other hand, some operational efficiencies may be obtained by having certain non-legal services provided by a common party. For example, it may be possible to derive operational efficiencies through common payroll, accounting, technology support, and grant writers and fundraising staff. We recognize and support the efforts of the three organizations to bring joint-fundraising activities under the umbrella of the Combined Campaign for Justice ("CCJ"). We also recommend that consideration be given to selecting the best-in-class

portal/triage system and best case management system for use across all three service providers. This would allow for economies of scale in system acquisition and maintenance.

Accessing the legal system can be a daunting task. Facilitating access into the Delaware legal services system is in need of much improvement. The current primary portal is telephone based and has limited availability. In today's world, this system should be operating 24/7 and be available online as well as by telephone. While improvement of the current system is under review, the pace of that consideration and technology implementation needs to be greatly accelerated. In addition, the Delaware Courts must improve court access for low-income Delawareans who are self-represented. They should establish internet portals and stand-alone kiosks to facilitate litigant access to court services and provide real-time assistance for navigating the litigation process.

Even with improved efficiencies to the legal aid system, the justice gap will remain large. Interest on lawyer trust accounts ("IOLTA") will continue to be an important source of funding for legal aid organizations. However, IOLTA funding is depressed due to record low interest rates and, due to variability in interest rates, is a volatile source of funding. Delaware's legislative support for legal aid is above the national average. While advocacy should be made for increased legislative funding, the State's budgetary outlook clouds the prospects for material increases in such support.

Delaware law firms and individual members of the Delaware bar, through their contributions to the CCJ, are among the nation's leaders in providing funding to a state's legal aid organizations. With the addition of a full-time development director, the CCJ should be able to increase its funding support to legal aid organizations by increasing the percentage of Delaware bar members who contribute to the campaign, improving the retention rate of those who currently contribute, and increasing the average contribution made by contributing members.

We believe there are a number of untapped sources of funding to support Delaware's legal aid organizations. First, *pro hac vice* fees are a significant source of legal aid funding in other states. An increase in those fees in Delaware could be dedicated to legal aid organization funding. Second, class action residual ("*cy pres*") funds are allocated to legal aid

organizations in over half the states, with a number of states requiring as much as 50% of *cy pres* funds going to legal aid organizations in those states. We strongly recommend that a similar allocation of *cy pres* balances to legal organizations be established in Delaware by legislative action. Thirdly, and very importantly, foundation and other private sector support for funding legal aid organizations must be actively and aggressively pursued. Legal aid to low-income people is a societal issue that requires support beyond members of the legal community. We endorse the efforts of DVLS, LSCD, CLASI, and the CCJ, with the support of the Longwood Foundation, to create the position of Chief Development Officer for the CCJ. This position will allow for the focused and efficient seeking of grants and foundation and other private sector funds that can be used across the three primary legal services organizations.

Lastly, to improve the efficiency of and increase funding available to organizations that provide legal aid to low-income Delawareans, coordinated and effective leadership will be required from the legal aid organizations themselves, the Courts, the Delaware bar, and the ATJ Commission.

I. INTRODUCTION

“Equal justice under law is not merely a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal in our society...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.” U.S. Supreme Court Justice Lewis Powell, Jr.

“The majority of Americans who come to court do so without a lawyer, left by their economic circumstances to face life-altering events—such as losing their home, the custody of their children, or even the privilege to reside in the United States—without legal assistance. More than 50 million Americans technically qualify for federally funded legal assistance, but over half of those who actually seek such assistance are turned away because available funding is so low. Similarly, for those living just above the qualifying line, even basic legal needs are beyond reach. There continues to be a substantial “justice gap” between truly meeting the needs of low- and moderate-income people and the resources available for civil legal services.” (U.S. Department of Justice, 2016).

A. The Justice Gap

A comparison of the two quotes shown above suggests that there is a clear divergence between the ideal and the real in the American legal justice system. Empirical and anecdotal evidence supports the premise that there is a justice gap in America. The justice gap is the difference between the level of legal assistance available and the level that is necessary to meet the needs of low-income people. Consider the following:

- Less than one in five legal problems experienced by low-income people is addressed with the assistance of a private attorney or a legal aid lawyer.
- Due to lack of funds, one federally-supported legal aid organization, with a nationwide presence, provides services to less than half the people who seek its help.

- National and state studies have consistently found that approximately 80% of the legal needs of low-income people go unmet.

As noted in “Call to Action: Achieving Civil Justice for All, Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee” (2016) (the “Call to Action”), litigants with meritorious claims and defenses often fail to achieve fair legal outcomes because it is beyond their financial means to litigate. That report stated, “The idealized picture of the adversarial system in which both parties are represented by competent attorneys who can assess all legitimate claims and defenses is, more often than not, an illusion.”

B. The Importance of Access to Legal Assistance

Closing the justice gap is more than a philosophical ideal. The legal issues that people face can have life altering implications. A 2014 American Bar Association-sponsored study by Rebecca L. Sandefur (“Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study”) found: (1) people reported that almost half of the civil justice situations they experienced resulted in significant negative consequences such as feelings of fear, a loss of income or confidence, damage to physical or mental health, or verbal or physical violence or threats of violence; (2) only 20% of the people reported seeking legal aid from a third party outside their immediate social circle due to cost or because they did not understand their situations to be legal; and (3) legal situations most commonly reported involved livelihood and financial stability and rental housing, such as eviction or problems with housing conditions. Low-income people were far more likely than middle- or high-income people to incur at least one civil justice situation annually. People in low-income households are more likely than others to experience negative consequences from civil justice situations, including adverse impacts on health, confidence, and income. The provision of legal assistance lowers rates of domestic violence. Use of an attorney increases the probability for a person to maintain child custody, for potential child support, and for alimony. It reduces the likelihood of eviction, loss of government benefits, and asset repossession. There is substantial evidence that the outcomes for unrepresented litigants are often less favorable than those for represented litigants.

There are clear societal benefits from the investment in an effective legal aid system. Legal services for victims reduce costs due to medical care for physical injuries and mental health care, lost productivity, and lifetime earnings. Effective legal assistance to victims can result in savings to insurance companies, hospitals,

law enforcement and the criminal justice system, domestic violence shelters, and homelessness systems. A Massachusetts study found that for every dollar spent representing families and individuals in housing court, Massachusetts would save \$2.69 in other services such as emergency shelter, health care, foster care, and law enforcement. A New York City study found that it costs \$2,500 to provide a lawyer for a family facing eviction, or \$45,000 to shelter that homeless family.

As the “Call to Action” noted, “Navigating civil courts, as they operate now, can be daunting. Those who enter the system confront a maze-like process that costs too much and takes too long.” Finding ways to enable low-income people to more effectively navigate this maze is one of the goals of the access to justice movement.

C. The Delaware Access to Justice Commission

As noted by the U.S. Department of Justice, the mission of access to justice (“ATJ”) initiatives is to help the justice system efficiently deliver outcomes that are fair and accessible to all, regardless of wealth and status. In the view of the American Bar Association (the “ABA”), ATJ commissions try to expand access to civil justice for low-income and other disadvantaged people by identifying legal needs, developing strategies to meet them, and evaluating programs. Key issues addressed by ATJ commissions include: funding for civil legal aid; civil legal aid planning, delivery, and support; right to counsel in civil legal matters; self-representation; pro bono and public service; limited scope representation; language access; and lawyer-loan repayment programs.

There are at least 37 registered ATJ commissions in the United States. The Delaware ATJ Commission was established on December 15, 2014, by order of the Supreme Court of the State of Delaware. The Delaware ATJ Commission established three subcommittees to address civil law issues that affect Delawareans: (1) the Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants; (2) the Subcommittee on Promoting Greater Private Sector Representation of Underserved Litigants; and (3) the Subcommittee on the Efficient Delivery and Adequate Funding of Legal Services to the Poor. This report presents the findings and recommendations of the Subcommittee on the Efficient Delivery and Adequate Funding of Legal Services to the Poor.

D. This Subcommittee’s Charge

The scope of this Subcommittee’s charge is to:

- Analyze the efficiency of the delivery of legal services by Delaware organizations that provide such services to low-income people;
- Suggest areas where that efficiency might be improved;
- Determine whether there would be funding gaps even if existing resources were used in the most efficient manner; and
- Identify and recommend sources of increased funding for Delaware’s legal aid organizations.

In the sections that follow, this report first examines the justice gap in Delaware, followed by an overview of the funding of legal aid to low-income Delawareans. The report then discusses the major providers of legal aid to low-income people in Delaware. The efficiency of the delivery of legal aid services in Delaware is evaluated, with recommendations made for improvement. Finally, suggestions for increasing funding to legal aid organizations in Delaware are made.

II. THE JUSTICE GAP IN DELAWARE

A. Poverty in Delaware

In 2015, Delaware’s population was approximately 946,000 people. An estimated 11.7% of that population—over 110,000 people—lives below the federal poverty level. This percentage has been relatively stable for a number of years. The federal poverty level is a function of both income level and number of persons living in a household. As a point of reference, based on 2016 federal financial eligibility guidelines, the federal poverty level for a three-member household is \$20,160. That is an increase of \$370 over the 2014 federal poverty level of \$19,790 for a family of two adults and one child in the 48 contiguous states and the District of Columbia.

B. Poverty, Justice Gap, and Access to Justice in Delaware

The poverty level is important in the context of the justice gap since the eligibility for free civil legal assistance is largely a function of a person or family’s income relative to a specified multiple of the federal poverty level. That is, access to free legal assistance through legal aid organizations is, in most cases, limited to people whose income is less than 125% of the federal poverty level. For 2016, that would be \$25,200 for a three-person household. For certain types of legal

situations, the limit can be 200% or 300% of the poverty level. Based on the extension of various survey findings to Delaware's 2015 population, over 140,000 Delawareans are eligible for free legal services under the 125% poverty level standard and over 260,000 Delawareans would be eligible for free legal services under the 200% poverty level standard.¹

Of course, not all who qualify for free legal aid receive it. According to the Delaware Bar Foundation ("DBF"), legal aid organizations are able to serve the civil legal needs of only 1/8th of Delaware's low-income population, leaving a very large justice gap. That gap results in people either not availing themselves to the courts or representing themselves in court. There is considerable evidence of pro se or self-representation. Data for FY 2014 from Delaware's Court of Common Pleas shows that defendants were pro se in 99% of consumer debt cases, 92% of debt action cases, and 66% of breach of contract cases. Self-representation is also rife in Delaware's Family Court where, in FY 2014, litigants represented themselves in 79% of custody cases, 72% of divorce cases, 47% of guardianship cases, 75% of protection from abuse ("PFA") cases, 88% of PFA contempt cases, and 97% of visitation cases.

Self-representation is asymmetric between defendants and plaintiffs. Based on 2014 data from Delaware's Court of Common Pleas, plaintiffs have attorneys in 85% of the cases while defendants have attorneys in only 11% of the cases. This asymmetry creates an imbalance of power between the litigants. The court itself is limited in its ability to introduce some degree of countervailing power to enhance the fairness of the process. Thus, the unrepresented party may be at a distinctive disadvantage, regardless of the underlying merits of his or her case.

III. FUNDING LEGAL AID IN DELAWARE

A. Delaware's Expenditure on Legal Aid

As a state, Delaware is rather generous compared to other states in the overall support given to legal aid to low-income people. Based on an analysis done in 2012, Delaware's per capita low-income person expenditure on legal aid

¹ Although the class of moderate income people is as large as the number of people in poverty, they are not qualified to receive help from traditional programs for legal assistance. People who do not meet the government definition of poor but who lack the resources to afford private legal services are called the "legally indigent."

was in the top quintile in the United States. Delaware's expenditure per capita was \$51.39.

Delaware's support for legal aid to low-income people exceeds the national average in most categories of funding source. In 2014, for example, Delaware's legal aid funding exceeded the national average in the categories of support from state legislative funding, Interest on Lawyer Trust Accounts ("IOLTA"), and the legal community.

B. The DBF and the Combined Campaign for Justice

Two Delaware organizations have special but limited positions in the legal aid funding process in Delaware: the Delaware Bar Foundation ("DBF") and the Combined Campaign for Justice ("CCJ"). Each will be discussed in turn.

DBF administers Delaware's IOLTA program, which is a major source of funding for legal aid in Delaware. IOLTA refers to interest accruing on lawyers' aggregated escrow accounts that contain client deposits which are small in amount or held for a short period of time. Interest collected on participating accounts is transferred to the DBF and distributed in the form of grants that are intended to promote and improve legal services to the poor. DBF evaluates grant applications from legal aid organizations and makes funding recommendations to the Delaware Supreme Court, which approves the funding. In June 2010, the Delaware Supreme Court entered an order making participation in the IOLTA program mandatory and requiring that IOLTA funds be held in financial institutions approved by the DBF. Those institutions must provide interest-rate comparability to IOLTA accounts, which assures that those accounts receive a competitive interest rate. In FY 2014, DBF awarded grants totaling \$650,000.

DBF also recommends the allocation of other funds to Delaware's legal aid organizations. For example, the DBF allocates funds received from the State through a line item in the State budget, which for FY 2013-2017 has been \$600,000 per year. The DBF also recommended the allocation of funds from a number of legal settlements that involved the State and private-sector parties.

The Combined Campaign for Justice is a coordinated effort by the Delaware State Bar Association and Delaware's legal aid organizations to raise contributions from members of the Delaware bar. The CCJ has proven to be very successful, with Delaware law firms and individual members of the Delaware bar being generous in their annual giving. In fact, through the CCJ, Delaware law firms and

individual members of the Delaware bar have the highest per capita giving by attorneys amongst all the states in the nation. Total annual giving has approximated \$1 million in recent years.

IV. DELAWARE'S LEGAL AID ORGANIZATIONS

The legal aid network in Delaware consists of the Delaware courts (the "Courts"), the Delaware State Bar Association ("DSBA"), the DBF, Legal Help Link, and three non-profit legal service organizations: Community Legal Aid Society, Inc. ("CLASI"); Legal Services Corporation of Delaware ("LSCD"); and Delaware Volunteer Legal Services, Inc. ("DVLS").

General legal information is provided online by the Courts through the Delaware Courts Online Citizen Help Center (the "Help Center"). The Help Center has links to Delaware's various courts, where additional information particular to each court can be obtained. The Help Center also provides information on access to legal representation through the legal aid organizations and guidance for self-represented litigants.

The Legal Help Link ("LHL") is a collaborative effort among DVLS, CLASI, and LSCD, as well as the DSBA and the Delaware Law School ("DLS") at Widener University. DVLS manages and runs the day-to-day operations of the LHL, while DLS provides human resources and facilities. LHL is designed to enable prospective clients determine if they are eligible for client services. Eligible callers are transferred to the applicable organization. If none of those organizations handles the type of case at issue, or if the caller is not income-eligible, LHL staff will complete a Lawyer Referral Service form for the DSBA. Callers are also referred to various social service organizations for non-legal issues. Calls for the Senior Legal Hotline also come through the LHL.

LHL receives between 30,000 and 40,000 calls a year. Upon eligibility, low-income Delawareans are referred to DVLS, LSCD, or CLASI. Due to budget constraints, LHL has been operating only 5.5 hours a day, four days a week. DVLS is exploring the use of technological improvements for LHL, particularly the use of online screening. However, an advantage of LHL is the availability of a client talking with a live person. Thus, any technological improvements will most likely be a supplement to, rather than a replacement of, LHL.

LHL receives funding from the IOLTA program. For FY 2017, DVLS has requested an \$88,000 grant from DBF for the LHL program.

A. CLASI

CLASI is a private, non-profit law firm. It provides legal services in each of Delaware's three counties to low-income clients who have housing, public benefits, consumer, immigration, and family law problems. It also provides legal assistance to the elderly, disabled, and victims of housing discrimination.

CLASI has a 37-person staff, including 15 attorneys and 12 paralegals. Twenty-seven of the 37 staff members are based in New Castle County.

CLASI's budget for 2017 is approximately \$4.0 million, with 81% of that budget for personnel costs. CLASI's funding comes from a variety of sources, including IOLTA, Federal and State grants, and private contributions, including support from the CCJ.

In 2015, CLASI handled 2,729 cases and presented 103 legal education workshops to approximately 4,300 community members. Also in 2015, CLASI attorneys and paralegals assisted 159 clients, affecting at least 474 household members, in housing matters, including evictions, access to housing programs, and housing quality issues. In 2015, CLASI prevented eviction for 50 households, keeping 157 people, including 88 children, from becoming homeless.

In FY 2015, the overall success rate after trial for victims who filed for Protection from Abuse Orders ("PFAs") was 35%. CLASI represented 15% of the victims who filed for PFAs and those clients were successful in 85% of their trials.

CLASI in FY 2015 also provided advice and/or representation to 305 victims of domestic violence. Victims represented by CLASI obtained 114 PFAs. It represented 470 households headed by single women with children, representing 36% of CLASI's total caseload. It assisted 210 clients with public benefits problems, providing help to 295 children living in client households.

In 2015, CLASI assisted 108 clients with Medicaid and Medicare problems, helping 288 household members. It also represented 528 elderly with their legal problems.

B. LSCD

LSCD is a private, non-profit corporation that was established to provide free legal services to poor and low-income Delawareans. It receives a grant from Legal Services Corporation by way of an appropriation from the U.S. Congress. LSCD was created to receive federal funding that, because of congressional restrictions, would not otherwise be available to other legal aid organizations.

Priority legal needs addressed by LSCD involve problems that significantly affect a person's income or assets, health, housing, or safety, education, family integrity, or ability to live independently. The types of cases handled by LSCD include: bankruptcy petitions; consumer finance problems, e.g., repossessions, deceptive trade practices, fraud, debt collection activities, and fair credit reporting actions; housing problems, e.g., eviction, foreclosure, unsafe conditions, code violations, and utility cut-offs; and unemployment benefit programs.

The model used by LSCD for the delivery of legal services to low-income Delawareans is a staff attorney model, with the use of paralegal and other support staff, and the use of Private Attorney Involvement—a panel of private attorneys who have agreed to provide services to LSCD at reduced rates. LSCD has 18 staff members, including 9 attorneys, with 14.5 of the staff in Wilmington and the remainder in Dover.

In 2015, LSCD provided legal services in over 1,420 cases, helping over 3,850 people. Thirty-five percent of those cases involved consumer/finance issues and 61% housing issues, with the bulk of those cases being landlord/tenant matters or mortgage foreclosure.

LSCD is funded by the federal Legal Services Corporation, IOLTA, the CCJ, and various other sources. Its budget for FY 2017 is approximately \$1.6 million, with 47% of that amount coming from Legal Services Corporation and 26% from IOLTA. Eighty-two percent of LSCD's expenditures are personnel-related.

C. DVLS

DVLS is dedicated to providing quality pro bono legal services to low-income Delawareans. DVLS recruits, trains, and mentors attorneys who are willing to serve as pro bono counsel for indigent individuals with meritorious legal

problems. It has approximately 700 pro bono volunteers. In addition, as noted above, DVLS also manages the LHL.

DVLS provides assistance in the following types of cases: PFA and other family law matters for victims of domestic violence; private housing matters; custody, visitation, and divorce cases; and estate planning. It does not handle consumer law issues. Legal assistance in family law cases involving domestic violence is the area of greatest need for DVLS clients.

In CY 2015, 3,396 individuals received representation, advice, or referral through DVLS programs and LHL. In that same time period, pro bono attorneys closed 538 cases and provided more than 2,300 hours of service. DVLS staff attorneys closed 219 cases and logged over 1,000 hours of services. If a billing rate of a modest \$250 per hour were applied to those hours, the value of services rendered would be over \$800,000.

DVLS's budget for FY 2017 is approximately \$756,000, with personnel costs representing over 92% of the overall budget. It has requested that over 45% of the overall budget be funded by the IOLTA program. In addition to IOLTA, DVLS receives funding from United Way, CCJ, State grant-in-aid, other grants, and private donations.

V. EFFICIENCY OF DELIVERY OF LEGAL AID IN DELAWARE

A. Evidence on the Efficiency of Delivery of Legal Aid

Evidence on whether the delivery of legal services to low-income Delawareans is efficient is largely anecdotal. There appear to be no quantitative metrics for measuring and evaluating such efficiencies.² That being said, the following observations, based on interviews with numerous parties involved in the Delaware legal system, are worth note.

First, CLASI, LSCD, and DVLS are in frequent communication with one another and coordinate their operations. This coordination results in limited redundancies in the providing of legal services to low-income Delawareans. The three organizations act in a manner that supports cooperation rather than

² The State of Washington has developed Performance Standards for Legal Aid. Those standards could be adapted to the needs of legal aid organizations for self-assessment and peer review. However, the results from that instrument would be predominantly qualitative and subjective.

competition, whether it is for clients or funding. Frequent consultations among the three service providers facilitate the setting of service priorities, intake and screening guidance, and referral procedures.

Second, at least some funding sources are unique to a given legal service provider. For example, only LSCD is eligible to receive federal funds from the Legal Services Corporation. That funding limits the types of legal services LSCD provides and, thus, limits other sources of funding to LSCD. However, the other legal services organizations are able to pursue some of the funding that is precluded to LSCD. Thus, it does not appear that consolidation amongst any of the legal services providers would result in systemic cost savings.

Third, there is a portfolio effect by having three more-or-less independent legal service providers. That is, the alternate funding sources that are, at least in part, unique to the different organizations should smooth the provision of legal services to the poor over time. When a particular organization has reduced or eliminated funding for a particular program, the other organizations may be able to pick up the slack through their own funding sources or human resources.

Notwithstanding the above, this Subcommittee has identified areas where the efficiency of the overall system of delivery of legal services to low-income Delawareans can be improved. Those recommendations are presented in the next section of this report.

B. Recommendations for Efficiency Improvement

1. Operational Efficiencies

Personnel costs represent the vast majority of the expenses of the legal aid providers. Based on the discussion above, this Subcommittee does not identify any consolidation of the legal aid organizations that would result in personnel cost savings. However, all three organizations stressed the need for additional non-legal staff support that, in turn, would allow skilled attorneys to focus on the delivery of legal services and increase the impact of legal aid funding. It may be possible to consolidate some administrative or back-office services. For example, it may be feasible to have common payroll, accounting, and technology support across the primary legal service providers.³ While the three legal services

³ We have not investigated whether restrictions imposed on LSCD funding might limit how much pooling of services can be done.

organizations do some joint grant writing, grant writers and fundraising staff common to the three organizations is also worthy of consideration, as is the recruitment of volunteers to support these areas.⁴ The Subcommittee is aware that the three organizations have obtained a grant for the CCJ to hire a development director that would seek private-sector funding for all three service providers. That is a very worthwhile endeavor and the concept should be considered for other activities, as well.

The Subcommittee notes that DBF has a funds allocation role while the CCJ has a funds raising role. There would be little if any cost savings from merging of their activities. The on-going role of the ATJ Commission is unclear. However, if the ATJ Commission is going to adopt on-going administrative duties, it could then consider whether those duties should incorporate the roles now played by the DBF and CCJ. Alternatively, the ATJ Commission could further study the roles played by the DBF and CCJ and make recommendations of other activities these organizations might provide.

The Subcommittee sees some inefficiencies in the technology used by the three legal services organizations. If there is one best portal/triage system or one best case management system, it should be used across all three service providers. This would allow for economies of scale in system acquisition as well as in system maintenance. We recognize, however, that these organizational changes should be led and adopted on a voluntary basis through coordination among the management teams at the legal aid organizations. We also note that the DBF has been investigating alternative portal systems and plans in the relatively near future to make its recommendations to the legal aid organizations.

2. Legal Access Efficiencies

The ability of low-income people to receive needed legal services must not be hampered by difficulty in accessing those services. As noted above, LHL is the primary portal for entry and triage into the Delaware legal aid system. It operates solely by telephone on a limited availability and relies primarily on a law student workforce, which is becoming increasingly less available. While LHL has the advantage of having a live-person with whom to talk, the LHL provides legal system access that is woefully inadequate in a world that operates on a 24/7 basis

⁴ Many organizations, such as the University of Delaware, have full-time grant writers and graduate students in need of professional experience who could be tapped as sources of volunteer grant-writing talent.

and increasing use of the internet and mobile phones. While consideration is being given to online access to the legal system, the pace of that consideration and technology implementation needs to be accelerated. There are systems utilized in other states that provide for online inquiry concerning legal services eligibility and direction to the appropriate service organization. Such a system should be a priority for implementation in Delaware.

The Courts must improve court access by low-income Delawareans, particularly those who are self-represented. As noted in the “Call to Action”, courts must simplify court-litigant interface and screen-out technical complexities to the greatest extent possible. Courts should establish internet portals and stand-alone kiosks to facilitate litigant access to court services. Courts should provide real-time assistance for navigating the litigation process. The growing prevalence of smart phones enables participants to join audio or video conferences from any location. To the extent possible, courts should expand the use of telephonic communications for civil case conferences, appearances, and other straightforward case events. These comments were made by the “Call to Action” across all courts and the extent to which they are applicable to Delaware must be evaluated and responded to.

3. Legal Services Efficiencies

This Subcommittee agrees that representation by an attorney is to be preferred in most situations to self-representation. However, we are also confident that, regardless of the incremental funds that can be allocated to the legal aid organizations or however successful Delaware will be in attracting more pro bono lawyers, there will remain a substantial justice gap, thus failing to assist a substantial number of income-eligible Delawareans. Additional support must be provided to self-represented litigants. We recognize that there is another subcommittee that is examining the matter of pro se litigants. We will largely defer to their analysis and recommendations on this matter, but not before noting the following.

First, consideration should be given to expanding the pool of people who are qualified to provide legal and quasi-legal services to low-income Delawareans. That pool could include lawyers who have been licensed in other states but now reside in Delaware and who are not practicing law here. That pool could also include licensed legal assistants and navigators, such as are found in Washington and in New York. These people would **not** provide legal advice or representation. Rather they would help low-income people in need of legal services better navigate

what is for many a totally bewildering legal system. It may be desirable to limit this assistance to specific types of legal issues. In a somewhat similar vein, limited scope practice, or the unbundling of legal services, may provide for attorneys who want to design their practices to satisfy discrete legal issues rather than full representation.⁵

Second, efforts to make low-income people aware of potentially available legal services should continue. Presentations to social services organizations and different forms of advertising, e.g., social media, printed materials, and radio and television, will enable people to be aware of legal services and where to turn for assistance.

Third, consideration should be given to an expansion of the right of legal assistance to a broader array of legal issues confronting Delawareans, in general, and low-income Delawareans, in particular. In 2015, the Civil Justice Strategies Task Force (“CJSTF”) of the State Bar of California recommended that the State Bar support efforts to secure universal representation, starting with the following four areas: (1) landlord/tenant; (2) family; (3) domestic violence; and (4) immigration. As the CJSTF report noted, there is a nationwide movement underway to guarantee a right to counsel in certain civil legal cases.⁶ The right to counsel is modeled after the U.S. Supreme Court case of *Gideon v. Wainwright*, which guaranteed a right to counsel in criminal cases and, thus, is sometimes called “Civil Gideon.”

The CJSTF report also noted that the ABA unanimously adopted a resolution supporting the right to counsel in cases involving basic human needs. The resolution was co-sponsored by 13 state bar associations and later its goals were adopted by six additional states.

Specification of the areas of law to which Civil Gideon should apply in Delaware is beyond the scope of this report. But determination by the ATJ Commission of those areas of law and the criteria that litigants would have to meet

⁵ We note that the legal aid organizations support the idea of expanding opportunities for those able to provide legal services. In particular, they suggest that one concrete way to do this is by making some changes to expedite the Supreme Court Rule 55 provisional admission process for law school graduates and lawyers admitted elsewhere to practice under supervision in a limited fashion for CLASI, DLS and LSCD.

⁶As reported in The New York Times on September 26, 2016, the New York City Council in September 2016 held a hearing on a bill that would make New York City the first jurisdiction in the country to guarantee an attorney for any low-income tenants facing eviction.

to qualify for assistance is highly recommended. The provision of legal counsel in cases subject to Civil Gideon would be funded by the State through the Administrative Office of the Courts. The Courts could then engage attorneys by either contract or employment. The broader the types of cases covered by Civil Gideon, the greater would be the impact on reducing the justice gap in Delaware.

V. ADEQUATE FUNDING FOR LEGAL AID IN DELAWARE

It is clear to this Subcommittee that regardless of the improvement in the efficiency of the delivery of legal services to low-income Delawareans, a significant justice gap will remain. The total FY 2017 budget across LHL, DVLS, CLASI, and LSCD is approximately \$6.44 million, with the bulk of that money going to personnel costs, particularly the cost of attorneys. More attorneys are needed to help close the justice gap and the way to retain more lawyers is a combination of additional pro bono counsel and the employment of additional attorneys by the three legal aid organizations. In this section, we first review and make recommendations regarding current funding sources for legal aid in Delaware. We then review and make recommendations regarding funding sources not currently used in Delaware but that are used in other states. The goals are to both increase the level of funding and the stability or smoothing of funding. The latter is very important since it facilitates planning and support for particular categories of legal issues faced by low-income Delawareans. Finally, we make recommendations pertaining to organizing efforts to increase funding for legal aid in Delaware.

A. Current Sources for Funding of Legal Aid in Delaware

The primary current sources of funding for legal aid to low-income Delawareans include IOLTA, State legislative funding, other public funding, and the CCJ.

1. IOLTA Funding

Delaware has a very successful IOLTA program, especially in comparison to other states. In 2014, the Delaware IOLTA program provided almost \$8 of funding per poor person in Delaware. That figure is well above the national average.

The IOLTA program should be continued, as should efforts to assure that investible fund balances and interest rates earned are maximized. But the IOLTA

program is not without its problems. First, the amount of interest available for allocation will depend on the level of investible balances. Those balances fluctuate over time. Second, and more of a factor in recent years, the funds available for allocation to the legal aid organizations are dependent on the level of interest rates earned on investible fund balances. Record low interest rates in the United States are exacerbating IOLTA earnings. While interest rates may rise in the future, there is no assurance as to when that will occur or the levels to which interest rates may rise. Thus, IOLTA will always be a volatile source of funding for legal aid organizations.

2. State Legislative Funding

Delaware's State annual legislative-based funding for legal aid organizations exceeds the national average on a per poor-person basis. As noted earlier, Delaware has provided in its operating budget a \$600,000 annual allocation to legal aid organizations for each year FY 2013 through FY 2017. In addition, the State has provided additional funding through Grants-in-Aid, e.g., CLASI received \$200,000 in FY 2017. Regarding the funding provided in the operating budget, the allocation is a "one-time contingency" and must be formally renewed by the legislature. The longstanding appropriation for Delaware's legal aid service providers was eliminated in the FY 2018 Budget Act, but other funding was earmarked for FY 2018 only. Future appropriations are uncertain.

In addition to the operating budget appropriation, the State has provided funding through the Grants-in-Aid bill. Unfortunately, there were 20% across the board budget cuts in the FY 2018 Grants-in-Aid bill; CLASI's funding was cut from \$200,000 in FY 2017 to \$160,000 in FY 2018. Grants-in-Aid funding was also reduced for DVLS, from \$82,112 in FY 2017 to \$65,689 in FY 2018.

There is no doubt, however, that a strong case can be made for the need for increased funding. Thus, while the need is evident, current fiscal realities make increased funding uncertain.

3. Other Public Funding

Other public funding is available from the State and Federal governments. Delaware's legal aid organizations have been quite successful in securing this type of funding. Delaware's per capita legal aid funding from other public providers is almost \$12, which is well in excess of the national average.

State funding is available from grants provided by various State agencies. The level of funding available under these grants varies considerably over time. However, Delaware's legal aid organizations have been active in seeking and successful in receiving such grants. Dedicated grant writers representing the legal aid organizations on a collective basis may facilitate the securing of additional State-related grants. However, the amount of potential funding from such an effort is not at all clear.

Federal funding for legal aid comes from a number of sources. As noted earlier, LSCD receives federal-based funding from Legal Services Corporation. In addition, the legal aid organizations compete for other federal grants. It is not clear what the untapped funding from federal grants may be. However, as is the case with State-related grants, dedicated grant writers seeking funding that could extend to a given legal aid organization or across all legal aid organizations may prove to be successful and is one that we highly recommend.

4. CCJ Funding

Through their contributions to the CCJ, law firms and individual members of the Delaware bar have been generous in supporting funding of legal aid organizations. The per capita poor person contributions of the Delaware legal community to the CCJ in 2014 exceeded \$8, which is well above the national average, with approximately \$1 million in total raised. In terms of sources of funding in recent years, approximately 25% comes from Delaware law firms, an estimated 25% from individual members of the bar, and the remainder from foundations, special gifts, and attorneys who are not members of the Delaware bar. Support from Delaware law firms and individual members of the Delaware bar is the second largest source of legal aid funding in Delaware.

The hiring of a dedicated development officer for the CCJ provides an opportunity to significantly increase fundraising by the CCJ. There are approximately 4,400 members of the Delaware bar, with 773 contributing to the CCJ in 2015, for a participation rate of less than 20%. At present, the retention rate on attorney giving, i.e., the percentage of attorneys who give in one year and then again in the following year, is approximately 75%. The dedicated development officer should seek to increase the participation rate and the retention rate, as well as the average amount donated by the individual lawyers. As an example, if the participation rate was increased to 75% and the average amount contributed by the additional participants was \$250.00, over \$630,000 additional funding would be available for legal aid to low income Delawareans.

B. New Funding Sources for Legal Aid in Delaware

Compared to many other states, Delaware's sources of funding for legal aid services to low-income people comprise a rather narrow list. Sources of legal aid funding that have been successfully tapped in other states but are either untapped or used to a minimal extent in Delaware include: court filing fees or fines; *pro hac vice* fees; *cy pres* rule or statute; annual bar dues; and foundation and other private support.

1. Court filing fees and fines and tax supplements

Court filing fees and fines provide a source of legal aid funding in 33 states and the District of Columbia, but not in Delaware. Delaware court filing fees and fines already include add-ons for a variety of social services. Including legal aid organization support in that list merits consideration. In addition to being a source of incremental funds, it should be a relatively stable funding source. A drawback to this approach is that it may further burden those who can least afford the fine or fee increase. Thus, any filing fee or fine increases should be evaluated with a considerable measure of caution.

Among the legal issues faced by low-income people are those related to domestic violence and housing. Consideration should be given to initiating or expanding tax or fee surcharges that have bearing on those issues. For example, a portion of the fee for marriage licenses is used to support services to victims of domestic violence. At present, \$15 of the \$25 fee for a certified marriage license/certificate copy is allocated into the Domestic Violence Fund, to be administered by the Criminal Justice Council. CLASI and DVLS have been recipients of grants from that fund. In FY 2016, CLASI and DVLS received a total of more than \$90,000 from the fund. An additional \$10 per license/certificate copy could provide an additional \$60,000 per annum for aid to victims of domestic violence.

Similarly, there could be an increase in the real estate transfer tax that could be distributed to legal aid organizations for assistance to low-income people with housing-related legal problems.⁷

⁷ We note that the stability of funds from these sources may be uncertain since they are dependent on supplemental special fund transfers.

2. Pro hac vice fees

Pro hac vice fees are paid by non-members of the Delaware bar for the privilege of practicing before the Delaware courts. Twelve other states allocate to legal aid organizations a portion of the *pro hac vice* fees they collect. Given the preeminence of the Delaware Courts, the desire of non-Delaware lawyers to practice before the Courts on a case-by-case basis should be very inelastic to any increase in *pro hac vice* fees, thus assuring both incremental funding and stable levels of funding. Further, unlike some other court fees, *pro hac vice* fees are generally not regressive. Those who retain non-Delaware counsel to represent them before the Delaware Courts are typically well-funded. Their cases tend to be more complicated and use Court and State resources that might otherwise be available for low-income Delawareans.

Pro had vice fees are estimated to total \$1.66 million for FY 2016 and represent fees collected from approximately 4,000 attorneys. Increasing the fee by just \$50, with the increment allocated to the CCJ for distribution to the three legal aid organizations, would provide \$200,000 in incremental funding for legal aid to low-income Delawareans.

3. Cy pres funds

The *cy pres* doctrine originally referred to the disposition of funds in a situation where a gift was made by will or trust and the named recipient of the gift does not exist, has dissolved, or no longer conducts the activity for which the gift was made. Under the *cy pres* doctrine, the estate or trustee would contribute the funds to an organization that comes closest to fulfilling the intent of the gift. The use of the term has evolved so that it now generally refers to the allocation of residual funds from class action settlements or judgments. The residual funds, which arise for a variety of reasons, are unclaimed or cannot be economically distributed to class members or other intended recipients.

As noted in a 2016 Report to the House of Delegates of the ABA's Standing Committee on Legal Aid & Indigent Defendants, Commission on Homelessness & Poverty, Commission on Interest on Lawyers' Trust Accounts, National Legal Aid and Defender Association (the "2016 Report"), it is not uncommon for excess funds to remain after a distribution to class members. Those funds may result from an inability to locate class members or class members failing or declining to file claims or cash settlement checks. They also arise when the cost of distributing funds to class members exceeds the amount to be distributed.

The 2016 Report went on to state, “The fundamental purpose of every class action is to offer access to justice for a group of people who on their own would not realistically be able to obtain the protections of the justice system. This purpose is closely aligned with the mission of every civil legal aid and access to justice initiative across the nation.”

Federal and state courts throughout the United States have long recognized that allocating *cy pres* funds to legal aid organizations is a valid and legal use of those funds. Twenty-one states now provide for such an allocation by either statute or court rule.⁸

The 2016 Report stated that awards of class action settlement funds should follow 5 principles: (1) compensation of class members should come first; (2) *cy pres* awards are appropriate where cash distributions to class members are not feasible; (3) *cy pres* recipients should reasonably approximate the interests of the class; (4) *cy pres* distributions should recognize the geographic make-up of the class, and where circumstances dictate should be made on the basis of such factors; and (5) legal aid and access to justice organizations should be considered *cy pres* recipients.

Consistent with the above, at its annual meeting in August 2016, the ABA adopted the following resolutions:

RESOLVED, That the American Bar Association urges state, local, territorial and tribal jurisdictions to adopt court rules or legislation authorizing the award of class action residual funds to non-profit organizations that improved access to civil justice for persons living in poverty.

FURTHER RESOLVED, That before class action residual funds are awarded to charitable, non-profit or other organizations, all reasonable efforts should be made to fully compensate members of the class, or a determination should be made that such payments are not feasible.

⁸ Among the states that have enacted relevant statutes are California, Illinois, Nebraska, Oregon, South Dakota, and Tennessee. States that have adopted relevant court rules include Colorado, Hawaii, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Montana, New Mexico, North Carolina, Pennsylvania, Washington, and Wisconsin.

According to the 2016 Report, a number of states have promulgated either laws or court rules requiring that a minimum percentage of *cy pres* awards be allocated to non-profit organizations that promote access to legal services for low-income individuals. Some of those states and the percentage allocations are as follows: Colorado, 50%; Illinois, 50%; Indiana, 25%; Kentucky, 25%; Montana, 50%; Oregon, 50%; Pennsylvania, 50%; South Dakota, 50%; and Washington, 50%.

Extrapolating the *cy pres* experience in other states to Delaware is problematic for a number of reasons. First, the *cy pres* programs in other states are relatively new and steady-state funding data is not available. Second, it is not clear what the level of *cy pres* funds is in Delaware or whether that level is stable over time. Data on the dollar value of class action settlements in Delaware is not readily available. However, at least one other state has been very progressive in addressing funding needs of legal aid organizations and has a robust *cy pres* program. If the experience of that state were extended to Delaware, over \$150,000 would be available for allocation to Delaware's legal aid organizations. Given the class action litigation that takes place in Delaware, particularly in the Court of Chancery, it is quite likely that the potential funding from this source exceeds that amount.⁹

The Delaware Department of Finance is of the view that class action residuals are unclaimed property and subject to Delaware's escheat laws. Thus, we recommended that provisions for the distribution of *cy pres* funds to legal aid organizations be established through legislation. The legislation would provide clarity for litigants and the courts and would encourage parties to include appropriate *cy pres* provisions in settlement agreements. It could also encourage adoption of a *cy pres* doctrine by the federal courts sitting in Delaware.

Administratively, *cy pres* funds could go to the CCJ for distribution by the DBF or directly to the DBF for further distribution to Delaware's legal aid organizations. Alternatively, they could go to the ATJ Commission for determination of further distribution. In any case, the ATJ Commission should be charged with developing an educational campaign for the *cy pres* program. The

⁹ While the discussion above has targeted residual funds from class action settlements, the funding sources behind the *cy pres* concept have been applied to other areas, as well, in other states. Those areas include unclaimed trusts and estates, sanction awards, and white collar criminal cases.

ATJ Commission can draw on the educational and other informational materials already prepared by other states that initiated *cy pres* programs.

4. Bar Dues

Nineteen states provide for a portion of state bar dues to be allocated to civil legal aid funding. In seven states, that allocation is mandatory. In eight states, the contribution is voluntary and attorneys are allowed to opt-out. Fifteen states provide for a voluntary add-on.

It is likely that a bar dues allocation in Delaware, whether mandatory, voluntary with an opt-out, or voluntary with an add-on, would, to some extent, pirate funds away from the CCJ. Of course, it is not possible to estimate the extent of that potential pirating. If Delaware were to implement any bar dues-type program it should be a voluntary add-on fee. Such an approach would minimize the pirating impact. In any event, it is not likely that any bar dues program will provide a material increase in legal aid funding as those individual lawyers who do not contribute to the CCJ would most likely not opt-in. As noted earlier in this report, an effective director of development for the CCJ should be able to significantly increase funds available for legal aid to low-income Delawareans. Those efforts should be monitored. If they are successful, there might not be a need for a bar dues-type program. If not, a bar dues-type program can be reconsidered at the appropriate time.

5. Foundation and private support

Delaware's legal aid organizations recognize that foundation and other private support is a largely untapped source of funding. That realization led to the securing of a Longwood Foundation grant to create the position of Chief Development Officer-Combined Campaign for Justice (the "CDO"). The position was filled in late 2016.

The responsibilities of the CDO include: (1) an annual fundraising campaign; (2) major gifts and planned giving; (3) grant writing and application; and (4) communications. While it is unclear what the potential level of funding is from this initiative, it is critically important and holds the prospect of being a significant source of legal aid funding, as has been shown to be the case in a number of other states. It has the advantage of tapping previously unsolicited sources of funds and recognizes that the legal aid to low-income people is a societal issue that requires support beyond members of the legal community.

Further, the use of a central person to represent the various legal aid organizations is a very efficient use of resources. Thus, this Subcommittee strongly endorses this effort.¹⁰

C. Organizing Efforts for Increased Funding for Legal Aid

States that have been most successful in securing additional and stable funding for legal aid to low-income people are characterized by strong leadership for those efforts. That leadership in Delaware must come from four sources: the legal aid organizations; the Courts; the Delaware bar; and the ATJ Commission.

The legal aid organizations know their funding needs and the real-life stories behind those needs. They need to tell those stories to those people, e.g., legislators, members of the bar, foundations, and the public, who have power over the allocation of funding to support legal aid to low-income Delawareans.

The courts, usually through the leadership of the chief justice of the state supreme court or its equivalent, in other states have played a very prominent and critically important role in securing funding for legal aid organizations in their states. The Delaware Courts, through the Chief Justice of the Delaware Supreme Court, must be a strong advocate for legal aid funding if efforts to increase resources are to be successful. This is particularly true in the areas of *pro hac vice* fee increases, lawyer contributions to the CCJ, and *cy pres* awards. That support is also needed for technology improvement and expansion of the base of pro bono attorneys and legal and quasi-legal assistance to pro se litigants.

The DSBA must be an active and forceful advocate for increased funding to legal aid organizations. Its members must be willing to think outside the box in a search for shared solutions to the justice gap problem.

Finally, the on-going role of the ATJ Commission must be determined. In other states, ATJ commissions have been major agents for change and have, in some cases, absorbed responsibilities previously housed in other organizations, such as the courts.

All of the above should provide their support to:

¹⁰ In a similar vein, LSCD has suggested that the ATJ Commission might want to consider whether it or the Administrative Office of the Courts should apply for a grant from the National Center for State Courts, for strategic planning and assessment purposes.

- Secure, in general, additional and more stable funding for civil legal aid;
- Proposals for the right to civil legal counsel for designated types of legal issues;
- Develop rules or statutes for the *cy pres* doctrine;
- Improved use of technology and access to the legal system by self-represented litigants; and
- Encourage private sector financial support for organizations that provide legal assistance to low-income Delawareans.

Report of the Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants

Delaware Access to Justice Commission

Voting members

Lewis H. Lazarus, Esq., Partner, Morris James LLP (Chair)

I. Connor Bifferato, Esq., Managing Director, The Bifferato Firm P.A.

Curtis P. Bounds, Esq., Director, Bayard P.A.

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Jason C. Jowers, Esq., Partner, Morris James LLP

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Claudia Pena Porretti, Executive Vice President, Latin American Community Center

Gerald I. H. Street, Esq., Managing Partner, Street & Ellis, P.A.

Non-voting members

Hon. Kim E. Ayvazian, Retired Master, Court of Chancery

Hon. Kenneth S. Clark, Jr., Judge, Court of Common Pleas

Hon. Peter B. Jones, Judge, Family Court

Hon. Bonita Lee, Deputy Chief Magistrate, Justice of the Peace Court

Hon. Lynne M. Parker, Commissioner, Superior Court

Staff of the subcommittee

Addie P. Asay, Esq., Staff Attorney, Family Court

Kathryn Coombes, Special Projects Analyst, Administrative Office of the Courts

Jody Jacobetz Huber, Esq., Staff Attorney, Justice of the Peace Court

Alda Monsen, Retired Law Librarian, Leonard L. Williams Justice Center Law Library

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EXECUTIVE SUMMARY

FORMATION OF THE PRO SE SUBCOMMITTEE

The Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants (“Pro Se Subcommittee”) was created by a December 15, 2014 Amended Order,¹ which established the Delaware Access to Justice Commission and its subcommittees, one of which was the Pro Se Subcommittee. The Pro Se Subcommittee was charged with the following:

Objective 1: Examine whether the judiciary is effectively coordinating its approach to helping pro se litigants, including exploration of technology solutions.

Objective 2: Explore ways the courts can coordinate their pro se assistance efforts more effectively and consider conversion of currently underutilized law libraries into pro se assistance centers that are not court specific.

Objective 3: Consider whether Delaware should allow limited legal representation in specific areas where litigants have difficulty obtaining affordable legal services and a compelling human need, such as cases involving evictions or family law. This will include consideration of whether modification of the Delaware Rules of Professional Conduct is necessary and whether Delaware should allow para-professionals to represent litigants in certain cases.

The Pro Se Subcommittee gathered information through a variety of methods including meeting with members of individual courts, implementing surveys, and researching national best practices.

¹Amended Order, available at <http://courts.delaware.gov/supreme/docs/ATJ-Order-2014Dec15.pdf>.

SUMMARY OF FINDINGS

Objective 1: Examine whether the judiciary is effectively coordinating its approach to helping pro se litigants, including exploration of technology solutions.

- I. Each court in Delaware is responding to the increasing needs of the pro se litigant with the creation of both on-site and online materials.
- II. There is some coordination across individual courts in the area of training as a result of recommendations made by the 2009 Fairness for All Task Force Report, but the response to pro se litigant needs has not otherwise been coordinated. Coordination of training has included the following:
 - Adoption of Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants.²
 - Ongoing education for judicial officers in handling pro se litigant cases since 2009.
 - New Employee Training has included a Legal Advice vs. Legal Information session since 2013.
- III. The Delaware courts website, courts.delaware.gov, has an abundance of information for the pro se litigant, which demonstrates a successful use of technology to help pro se litigants.
- IV. Despite the great amount of information for the pro se litigant on the courts website, it can be difficult to find needed information. A recent website redesign took the first step towards making the website easier to navigate for the pro se litigant.
- V. The pro se litigant information offered on the website is primarily text, which can be lengthy, and perhaps not easily understood by all self-represented litigants.
- VI. The courts website provides very little for the Spanish speaking pro se litigant.

² Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants, available at <http://courts.delaware.gov/supreme/admdir/ad178guidelines.pdf>.

- VII.** More resources on-site and online are needed to meet the needs of pro se litigants.
- VIII.** Judicial officers and operational staff interviewed were all willing to work towards cross-court collaboration in meeting the needs of the pro se litigant, but a front line court staff survey created by the Pro Se Subcommittee revealed a less optimistic response to potential cross-court collaboration.

Objective 2: Explore ways the courts can coordinate their pro se assistance efforts more effectively and consider conversion of currently underutilized law libraries into pro se assistance centers that are not court specific.

- I.** The Delaware law libraries are currently underutilized.
- II.** The law librarians already offer assistance to pro se litigants and view the addition of a Pro Se Center within the library as a natural evolution of that process.
- III.** Delaware's law libraries in each of the three counties are able to be converted into pro se assistance centers because they already have the physical space and some of the resources necessary for a Pro Se Center.
- IV.** Pro Se Centers must offer certain services at a minimum to begin to meet the needs of pro se litigants. To best serve pro se litigants, Pro Se Centers must provide the following:
- Computers to access court forms.
 - Printed court forms.
 - Some guidance from staff on completion of court-sanctioned forms.
 - Research materials addressing the applicable law, court rules, and court procedures in English and Spanish when possible.
 - Sufficient staff to service the pro se litigants.
- V.** Some investment will be needed for the conversion of the law libraries into Pro Se Centers. To provide the services that must be offered in a pro se center, the following needs to be done:

- Increase staffing at the law libraries so there will be sufficient staff to meet the needs of pro se litigants.
- Add work stations for the additional staff.
- Draft written protocols governing the triaging of pro se litigants and the conduct of staff in Pro Se Centers.
- Create signage, in both English and Spanish, directing pro se litigants to the Pro Se Centers as well as signage within the Pro Se Centers directing pro se litigants to relevant locations.
- To increase efficiency and security, the layout of the law libraries should be altered to serve their new mission as Pro Se Centers.
- Additional computers should be added to the Pro Se Centers, which will require expanded contracts for vendors like Westlaw.
- Court forms and form instructions should be routinely analyzed and updated to ensure accuracy and utility.
- Additional resource materials for the pro se litigant should be purchased in both English and Spanish when possible.
- A Pro Se Center website, as part of the Delaware courts website, should be developed.

VI. Electronic filing (“e-filing”) services are vital to a self-help center because they facilitate a one stop shopping approach to court business. Those e-filing at the Pro Se Centers may have questions about what they are filing, and so staff should be prepared to offer e-filing assistance. Staff may also need to accept payments as low income filers may not have credit cards and would need to pay in cash or money order. If accepting payments, additional security will need to be considered.

Objective 3: Consider whether Delaware should allow limited legal representation in specific areas where litigants have difficulty obtaining affordable legal services and a compelling human need, such as cases involving evictions or family law. This will include consideration of whether modification of the Delaware Rules of Professional Conduct is necessary and whether Delaware should allow para-professionals to represent litigants in certain cases.

I. Rule 1.2(c) and Rule 6.5 of the Delaware Rules of Professional Conduct

refer to limited scope representation and the responsibility to determine conflicts.

- II. The Delaware Family Court Rules of Civil Procedure also address limited scope representation by requiring written entries of appearance for each matter for which the attorney will represent the client.
- III. There are two Delaware ethics opinions on the subject of limited scope representation.
- IV. The Bench Bar Committee on Limited Scope Representation presented recommended changes to the Delaware Rules of Professional Conduct in 2010 to then Chief Justice Myron Steele. These recommendations were not adopted.

SUMMARY OF RECOMMENDATIONS

Objective 1: Examine whether the judiciary is effectively coordinating its approach to helping pro se litigants, including exploration of technology solutions.

Continue improving the Delaware Courts website to better serve pro se litigants

- I. Plain language and a mix of graphics and video would make the Delaware Courts website easier for the pro se litigant to navigate as well as more helpful.
- II. The Pro Se Subcommittee recommends changing “Delaware State Courts Citizen Help,” “Citizen Help,” and “Help” to “Self Help” on the website.
- III. Make the “Help” link at the top right of the homepage more prominent.
- IV. Rearrange the “Delaware State Courts Citizen Help” Section so that users will have more information visible to them without being overwhelmed by text.
- V. Additional Pro Se Litigant Information that is often requested should be included in the “Delaware State Courts Citizen Help” section.

- VI. There are a few resources for Spanish speaking people on the website, the court should make these accessible from the homepage in the Spanish language, and the website should also include information in Spanish that explains the interpreter services they are entitled to have.

Objective 2: Explore ways the courts can coordinate their pro se assistance efforts more effectively and consider conversion of currently underutilized law libraries into pro se assistance centers that are not court specific.

Convert Delaware's Law Libraries into Pro Se Centers

To investigate whether the three law libraries in each Delaware county could be converted into pro se assistance centers, the Pro Se Subcommittee formed a smaller working group led by Jason C. Jowers, Esq. This group produced a report, "Locating Delaware Pro Se Centers in Law Libraries," which includes much more detailed findings and recommendations on the potential use of law libraries as pro se assistance centers. That report is attached as Exhibit C.

- I. Delaware's Pro Se Centers should be housed in Delaware's law libraries in each of the three counties and certain investments must be made if the Pro Se Centers are to function successfully.
- II. When the necessary investments have been made in the Pro Se Centers, additional, but preferred, services may be offered in the Pro Se Centers. These services are focused on providing the pro se litigant with more in depth assistance through helpful programs and community information.
- III. A single administrator, chief law librarian or attorney should have authority over all three Pro Se Centers.
- IV. The Pro Se Centers should be staffed by a rotation of court employees.
- V. Staff members of the Pro Se Centers must have even temperaments and be willing to assist pro se litigants on matters that may be outside of their own court's jurisdiction.
- VI. The Court should consider utilizing its process improvement partnership with the University of Delaware Alfred Lerner College of Business and

Economics in the early stages of the Pro Se Centers' development to ensure the Pro Se Centers will be effective and efficient from inception.

- VII. Because electronic filing (“e-filing”) services are vital to a self-help center, the Court should consider offering e-filing services in its Pro Se Centers.

Adopt social media

- VIII. The Court should provide information to the public through social media.

Partner with the Delaware Public Libraries.

- IX. The Court should consider partnering with the Delaware Public Libraries to improve pro se services.

Objective 3: Consider whether Delaware should allow limited legal representation in specific areas where litigants have difficulty obtaining affordable legal services and a compelling human need, such as cases involving evictions or family law. This will include consideration of whether modification of the Delaware Rules of Professional Conduct is necessary and whether Delaware should allow para-professionals to represent litigants in certain cases.

- I. The Pro Se Subcommittee will continue to explore the expansion of limited legal representation in Delaware with the objective of making more definitive recommendations for the Court by, among other things, identifying developments since the 2010 recommendations of the Bench Bar Committee on Limited Scope Representation to then Chief Justice Myron T. Steele.
- II. The Pro Se Subcommittee will continue to work with other subcommittees of the Access to Justice Commission to consider areas of limited legal representation such as legal technicians and whether modification of the professional rules to allow para-professionals in the legal field should be made.

METHODOLOGY

The subcommittee determined that it should employ a variety of different methods by which to gain information about the needs of self-represented litigants. These methods included meeting with members of each individual court, staff surveys, public surveys, researching best practices in other states, visits to Delaware resource centers and resource centers in Maryland, and general research on best practices related to self-represented litigants. These methods are explained in more detail below, categorized by the three objectives with which the subcommittee was tasked by the Access to Justice Commission.

Objective 1: Examine whether the judiciary is effectively coordinating its approach to helping pro se litigants, including exploration of technology solutions.

Methodology:

- Members interviewed groups from each Delaware State Court regarding their court's efforts to assist pro se litigants. These interviews typically involved at least one judge from each court, as well as one or more members from the operational staff, including court clerks and/or managers.
- Information from these interviews was compiled and is represented in summary form in a chart and is attached as Exhibit A. This information includes services provided, staffing and resources utilized, training, language access issues, community outreach, development of forms and potential collaborative initiatives.
- Members toured existing pro se or assistance centers located in several courts.
- Members reviewed the pro se materials provided by courts.
- Members collected statistical data from courts regarding pro se litigant usage of services
- Members utilized an online survey in order to survey front-line staff members about their experiences with pro se litigants and their opinions as to what would be helpful. Those survey questions are attached as Exhibit B.

- Members reviewed the Fairness for All Task Force report for previously collected information and recommendations regarding pro se litigant assistance.
- Members reviewed the state court website to determine what information and materials were provided on the site and how it could potentially be improved in order to leverage technology to assist pro se litigants.
- Members interviewed judges and court staff regarding potential collaboration in an effort to understand the barriers that exist to cross-court collaboration and areas of common ground.

Objective 2: To explore ways courts can coordinate their pro se assistance efforts more effectively and to consider conversion of currently underutilized law libraries into pro se assistance centers that are not court specific.

Methodology:

- Members researched national best practices for self-help centers.
- Members of the subcommittee traveled to Ann Arundel County, Maryland and Howard County, Maryland to interview law librarians there and visit the pro se centers housed within those law libraries.
- Members of the subcommittee held a follow-up call and discussion with law librarians from the 2 Maryland counties listed above to further discuss their visit, best practices and how Delaware could utilize some of Maryland's practices in developing our own law libraries into Pro Se Centers.
- Members conducted online research into what other states and jurisdictions do to utilize law libraries to assist pro se litigants.
- Members interviewed the three Delaware law librarians to gather information about current practices, law library usage and ideas for pro se assistance.
- Members reviewed law library usage statistics
- Members visited the law libraries in New Castle, Kent and Sussex Counties to explore their space, contents and resources.

- Members developed a comprehensive report, Locating Delaware Pro Se Centers in Law Libraries, attached as Exhibit C, which outlines their investigation, findings and recommendations for the potential use of law libraries as pro se assistance centers.

Objective 3: To consider whether Delaware should allow limited legal representation in specific areas where litigants seem to have difficulty obtaining affordable legal services and where litigants have a compelling human need, such as eviction cases or family law. This will include consideration of whether modification of the Delaware Rules of Professional Conduct is necessary and whether Delaware should allow para-professionals to represent litigants in certain cases.

Methodology:

- Members researched limited legal representation programs in other states.
- Members researched the current limited legal representation program in Delaware and volunteered for the program in order to gain experience in the process.
- Members researched the ethical issues surrounding representation of pro se litigants, including the historical work of a 2010 Bench Bar Committee on Limited Scope Representation.
- Members participated in a teleconference with court employees based out of Colorado to discuss the Colorado Limited Legal Technician program and the potential of a similar program here in Delaware.

FINDINGS

In accordance with the 2014 Amended Order establishing the Access to Justice Commission, the Pro Se Subcommittee gathered information focused on the courts' pro se services, coordination of those services across courts, and whether Delaware should allow limited legal representation in specific areas. Using information gathered from interviews with members of each court, staff surveys, visits to Delaware and Maryland resource centers, and general research on best practices related to self-represented litigants, the Pro Se Subcommittee makes the following findings.

Objective 1: Examine whether the judiciary is effectively coordinating its approach to helping pro se litigants, including exploration of technology solutions.

I. Each court in Delaware is responding to the increasing needs of the pro se litigant.

Interviews with judicial officers and staff from each court revealed to the Pro Se Subcommittee that all courts are adapting to the growing needs of pro se litigants.³ The most common strategies across courts being having staff available to assist pro se litigants in person, and creating user friendly materials like fill in court forms and instruction packets with step-by-step information for topics such as divorce that are available on-site and online. Staff also monitors usage of court forms/instructions, and will make changes if necessary to increase their utility for the user.

³ A chart containing a summary of the information gathered at court interviews is attached as Exhibit A.

| Court | Onsite Services | Onsite Materials | Website/Technology Services |
|--|---|---|--|
| Justice of the Peace Court (“JP Court”) | Public access terminals, police liaison for traffic cases, assistance offered by front desk clerks. | Public access computers, forms, brochures on process for various civil cases. | Court forms, FAQs, portal to pay online tickets, e-filing, rules, directives, contact information. |
| Court of Common Pleas (“CCP”) | Front desk clerks provide information. | Forms, brochures, payment information. | Online forms, tutorials, online fine payment, how-to-video for civil trials, sample forms. |
| Family Court | Full resource center in each county staffed by Family Court employees. | Forms & instructions packets, FAQs, information on related services provided. | All instruction packets and forms, how to prepare your case, links to partner agencies. |
| Superior Court | Front desk staff and law librarians provide individual assistance. | Forms, form instructions, sample forms, administrative directives, library resources. | Information materials, iCourtClerk. |
| Court of Chancery | Register in Chancery assists walk-in filers. | Sample civil action case types, information packets. | Webpages dedicated to guardianships and civil action forms. |
| Supreme Court | Packets, guides, and forms offered at front desk. | Packets, guides, and forms offered at front desk. | Information including guides, forms, and information regarding preparation of briefs. |

II. There is some coordination across individual courts in the area of training, but the response to pro se litigant needs has not otherwise been coordinated.

While the courts' strategies in responding to pro se needs have been similar, they are created and carried out separately by individual courts. Furthermore, knowledge of procedures or subjects outside of their own court is not something a judicial staff member is offered or expected to know. A pro se litigant with an issue involving two courts would have to have get court information and/or forms by visiting both courts' locations and web pages. Another example of this individual court focus would be the Limited Legal Assistance Program coordinated by the Administrative Office of the Courts. It is offered every Monday by appointment and provides the self-represented litigants with 15 minutes of free legal assistance from a volunteer attorney, which is something that could serve any pro se litigant, but the assistance is limited to Family Court matters.

One area where coordination between the courts is present is in training for both judicial officers and staff as a result of the Fairness for All Task Force recommendations, which were released in a 2009 Report of the Task Force.⁴ In May 2011, the Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants⁵ were adopted to provide guidance to judicial officers in their efforts to balance pro se litigants' perceptions of procedural fairness while maintaining neutrality in the courtroom. The annual educational retreats for all judicial officers have also had sessions devoted to handling pro se litigant issues in the courtroom.

As for the judicial staff, since 2013, New Employee Training has included an hour long session on legal advice versus legal information. Staff members are introduced to the topic, given information to understand the difference between advice and information, and work through strategies on how to respond to litigants who may be asking for legal advice. However, as was shown in the survey completed by front line staff members of JP Court, Family Court, Superior Court, and Court of Chancery, more training is needed for judicial staff. When asked if

⁴ Delaware Courts: Fairness for All Task Force Report, available at <http://courts.delaware.gov/docs/FAIRNESSFINALREPORT.pdf>.

⁵ Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants, available at <http://courts.delaware.gov/supreme/admdir/ad178guidelines.pdf>.

they've received training about how to provide assistance to self-represented litigants, 40.54% of the 74 front line staff members who answered said they had not received training. Another question on the survey asked the front line staff members if their court provides materials to self-represented litigants, and of the 102 who answered, 37.25% said their courts did not provide pro se materials even though all courts have materials for the pro se litigant.⁶

III. The Delaware courts website has an abundance of information for the pro se litigant as well as a few programs and resources which demonstrate a successful use of technology to help pro se litigants.

As the chart above indicates, much of what is available for the pro se litigant on the courts website are forms, instructions on how to fill out forms, FAQs, online payment, and general information like court locations and hours. Each court maintains its own webpage and there are some successful examples of different technologies being put to use for the benefit of the pro se litigant. The iCourtClerk and Ask a Law Librarian programs allow individuals to email a question regarding Superior Court to iCourtClerk or any question regarding the Delaware courts to the law librarians. Neither offers legal advice to the pro se litigant, and while iCourtClerk is meant to answer questions about Superior Court, if the question isn't pertinent to Superior Court, the staff member will answer the question if possible or appropriately direct the person. A video on how to conduct a civil trial is also available on the website, and the JP Court has interactive forms for Debt, Return of Security Deposit, Replevin, Trespass, and Landlord Tenant Summary Possession which serve to assist users in form completion.

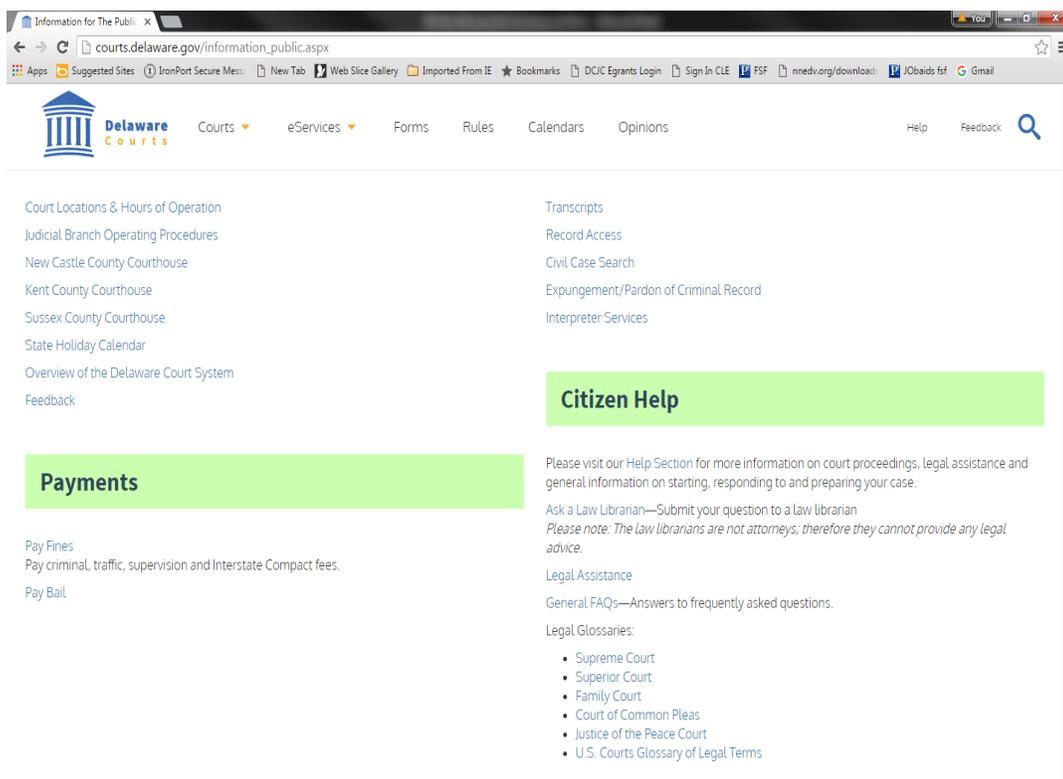
IV. Despite the great amount of information for the pro se litigant on the courts website, it can be difficult to find needed information. A recent website redesign took the first step towards making the website easier to navigate for the pro se litigant.

A redesign of the courts' website, which went live in March 2016, coincided with the Pro Se Subcommittee's investigation. Along with aesthetic changes and steps towards making the website more uniform across the courts that all design and maintain their own web pages within the website, the redesign also made the

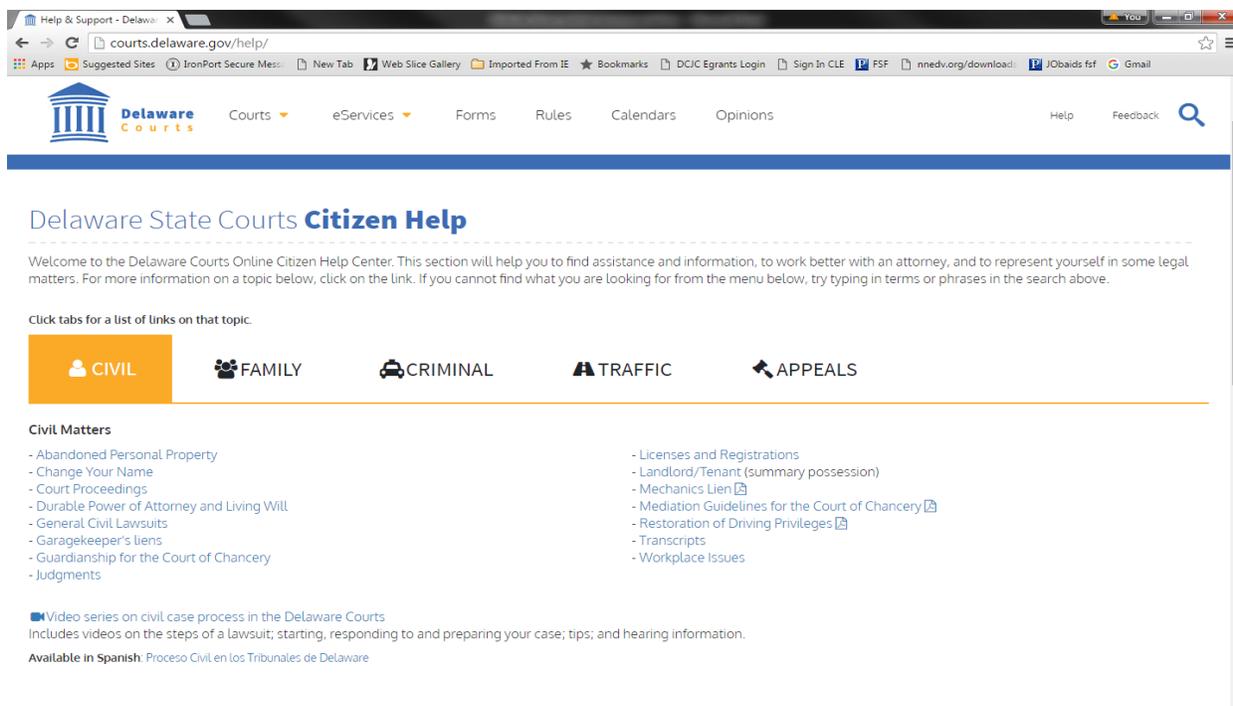
⁶ The Front Line Court Staff survey is attached as Exhibit B.

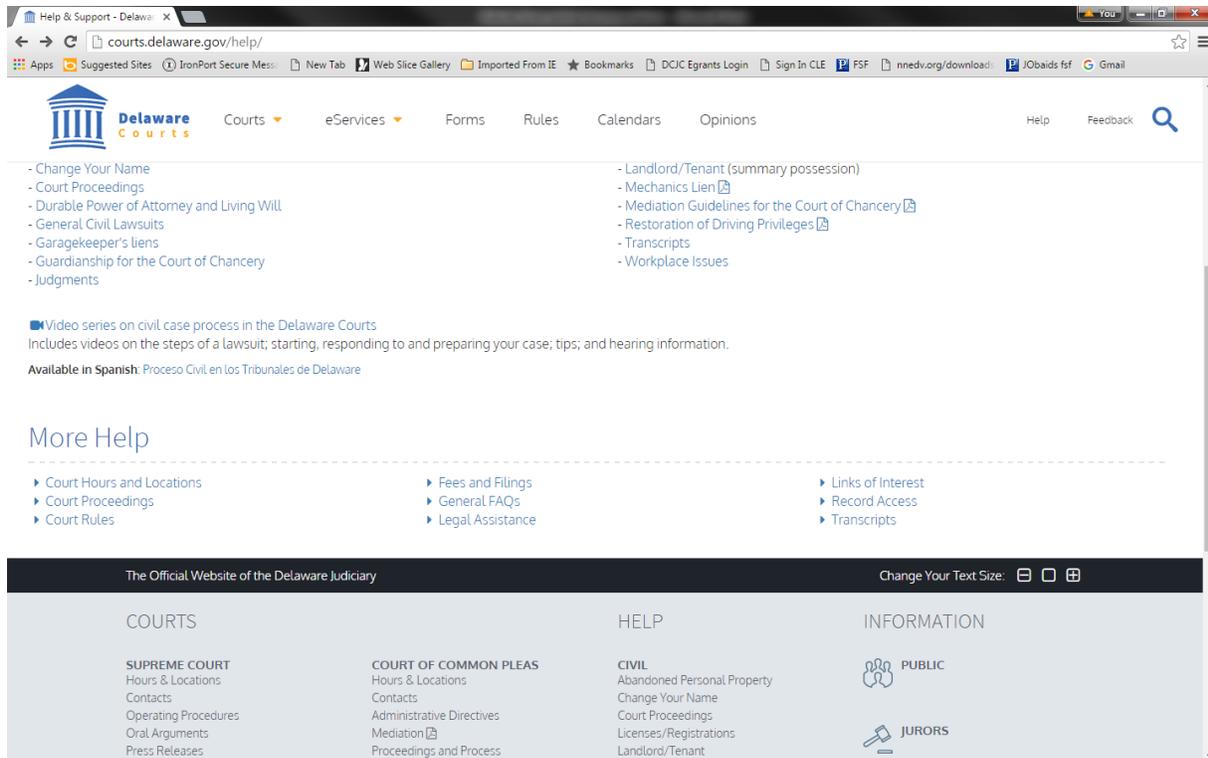
website mobile friendly which will surely be an improvement for the many users who access the internet through mobile devices. Members of the Pro Se Subcommittee were able to participate in the website redesign process by offering suggestions on how the website could be altered to better serve the pro se litigant. Some of these suggestions were accepted and as a result, the Citizen Help section of the website offers more links to resources and legal glossaries for the different Delaware courts. These glossaries and links were present on the courts website before they were placed in the Citizen Help section, but they were buried within the website.

The redesign of the website now allows users to begin a search for needed information by selecting either “The Public”, “Jurors”, “Attorneys”, or “Media.” By selecting “The Public,” the user is taken to a page with “General Court Information,” “Resources,” “Payment,” and “Citizen Help.” “Citizen Help” is the section that provides the most information for the pro se litigant. This may serve as a helpful guide for the pro se litigants who do not know which court he/she should go to for information. However, pro se litigants may not be drawn to “The Public” tab to find needed information, and subcommittee members could find no other way to get to the “Citizen Help” section from the homepage.



As the screenshot of the “Citizen Help” section shows above, some resources for the pro se litigant are presented along with a link to the “Help Section” which provides “more information on court proceedings, legal assistance, and general information on starting, responding to and preparing your case.” Once a user enters the “Help Section,” they will see it also has the heading “Delaware State Courts Citizen Help” which makes the two separate sections a bit difficult to describe because while they are linked, they are on different pages and all of the information found on “Citizen Help” (screenshot above) is not also found on the “Delaware State Courts Citizen Help.”





As shown in the screenshots above of the entire “Delaware State Courts Citizen Help” section, there are links to specific court matters and the section “More Help” on the bottom also offers more general information and some of the links that were also available in “Citizen Help.”

V. The pro se litigant information offered on the website is primarily text, which may not be easily understood by all self-represented litigants.

Most of the information available for the self-represented litigant is instructions or descriptions that can be lengthy and confusing for a pro se litigant who has difficulty reading. Furthermore, for any average person, legal and Latin terms will likely be unknown, but there are few definitions or explanations of these terms easily found on the website.

VI. The courts website provides very little for the Spanish speaking pro se litigant.

A Spanish speaking person would have to have some understanding of English to navigate the Delaware courts website. There is nothing in Spanish on

the homepage of the website, and while there are some brochures and information packets that are translated into Spanish, as well as the Spanish translation of the video on preparing for a civil court trial that can all be found within the website, these are tucked away in the individual courts’ websites, and would be hidden to a person with no English language proficiency.

VII. More resources on-site and online are needed to meet the needs of pro se litigants.

The Delaware Courts have adjusted to the growing needs of the pro se litigants through strategic use of existing staff and resources, but more resources like staff, materials, and training are needed to improve pro se services and to keep up with the growing demand.

The need for pro se resources is most keenly felt in JP Court, CCP, and Family Court where most litigants are pro se. While Superior Court, Court of Chancery, and Supreme Court do not have quite so many pro se litigants, representatives from their courts still found pro se filers to be a drain on front line staff and offered suggestions on what resources would be helpful in serving pro se litigants.

In the interviews with court representatives and the Pro Se Subcommittee, the courts identified the following highest demand claim types for the self-represented litigant as well as the resources that would improve their pro se services:

| Court | Highest Demand Claim Type | Needed Resources |
|------------------------------|---|--|
| JP Court | Landlord tenant and truancy. | Assistance in presenting case at trial, limited access to attorney for legal assistance. |
| Court of Common Pleas | Consumer debt, name change petitions, construction litigation, appeals from JP Court. | Information regarding legal services, interpreters, instructional packets. |

| | | |
|--------------------------|---|--|
| Family Court | Protection from Abuse orders, guardianships, divorce, custody/visitation. | Information regarding legal process, answers to questions that rise to the level of legal advice. |
| Superior Court | Expungements, board appeals, habeas corpus, petitions for return of property, redesignation of sex offender tier. | Assistance in form completion. |
| Court of Chancery | Guardianships. | Form completion. |
| Supreme Court | Post-conviction appeals. | Help with briefs, arbitration for prisoners and adult guardians, videos, web enhancements to manage expectations of litigants. |

In the front line staff survey, responding survey members also offered suggestions on additional materials that would be helpful to the pro se litigant which included more sample forms and easier to understand instructions, as well as computer terminals available on-site. Assistance in filling out forms and volunteer attorneys on-site to answer legal questions were also additional services many of the respondents thought would be helpful.

VIII. Judicial officers and operational staff interviewed were all willing to work towards cross-court collaboration in meeting the needs of the pro se litigant, but the front line court staff survey revealed a less optimistic response to potential cross-court collaboration.

The representatives of each court interviewed by the Pro Se Subcommittee all said that they were willing to work together to consider cross-court collaboration for improved services for the self-represented litigant. When asked in the front line court staff survey if they'd be interested in receiving training to help self-represented litigants in other courts though, 70% of respondents said they would not be interested. While only 30 respondents actually answered this question, it is important to keep in mind that staff willingness and attitudes towards

serving pro se litigants will have a significant influence on the quality of pro se services.

Objective 2: Explore ways the courts can coordinate their pro se assistance efforts more effectively and consider conversion of currently underutilized law libraries into pro se assistance centers that are not court specific.

To investigate whether the three law libraries in each county in Delaware could be converted into pro se assistance centers, the Pro Se Subcommittee formed a smaller working group led by Jason C. Jowers, Esq. This group produced a report, “Locating Delaware Pro Se Centers in Law Libraries” that is attached as Exhibit C. This report includes much more detailed findings and recommendations on the potential use of law libraries as pro se assistance centers.

I. The Delaware law libraries are currently underutilized.

With the availability of online materials, the law libraries are rarely used by judicial officers or attorneys for research. However, pro se litigants continue to make use of the law libraries, but not in great numbers. While the Leonard L. Williams Justice Center (formerly the New Castle County Courthouse) law library is open during the regular business hours of the courthouse, the Kent and Sussex Law Libraries have limited hours and permission must be granted for an individual to use the Kent Law Library.

II. The law librarians already offer assistance to pro se litigants, and view the addition of a Pro Se Center within the library as a natural evolution of that process.

Not only do the law librarians assist pro se litigant patrons of the law libraries, but they also coordinate the Ask a Law Librarian program which allows individuals to email questions about the courts and receive a response from one of the librarians. The librarians also field emails and phone calls from pro se litigants independently of that program.

III. Delaware’s law libraries in each of the three counties are able to be converted into pro se assistance centers because they already have the physical space and some of the resources necessary for a Pro Se Center.

The law librarians in each county already provide assistance to pro se litigants who make use of the law libraries. There are 6 computers in the New Castle County law library, three computers in the Kent County law library, and three computers in the Sussex law library as well as a printer at each law library. These computers access the Delaware Courts website, Lexis, and Westlaw and so are already able to assist pro se litigants with research and court information. The law libraries also have a significant amount of hard copy research material, some of which is for the pro se litigant.

IV. Pro Se Centers must offer certain services at a minimum to begin to meet the needs of pro se litigants.

To serve pro se litigants in a helpful and efficient way, Pro Se Centers should provide the following:

- Computers to access court forms.
- Printed court forms.
- Some guidance from staff on completion of court-sanctioned forms.
- Research materials addressing the applicable law, court rules, and court procedures in English and Spanish when possible.
- Sufficient staff to serve the pro se litigants.

V. Some investment will be needed for the conversion of the law libraries into Pro Se Centers.

To be able to provide the services that must be offered in a Pro Se Center, the following must be done:

- Increase staffing at the law libraries so there will be sufficient staff to meet the needs of pro se litigants.
- Add work stations for the additional staff.

- Draft written protocols governing the triaging of pro se litigants and the conduct of staff in Pro Se Centers.
- Create signage, in both English and Spanish, directing pro se litigants to the Pro Se Centers as well as signage within the Pro Se Centers directing pro se litigants to relevant locations.
- To increase efficiency and security, the layout of the law libraries should be altered to serve their new mission as Pro Se Centers.
- Additional computers should be added to the Pro Se Centers which will require expanded contracts for vendors like Westlaw.
- Court forms and form instructions should be routinely analyzed and updated to ensure accuracy and utility.
- Additional resource materials for the pro se litigant should be purchased in both English and Spanish when possible.
- A pro se center website, as part of the Delaware courts website should be developed.

Objective 3: Consider whether Delaware should allow limited legal representation in specific areas where litigants have difficulty obtaining affordable legal services and a compelling human need, such as cases involving evictions or family law.

I. Rule 1.2(c) and Rule 6.5 of the Delaware Rules of Professional Conduct refer to limited scope representation and the responsibility to determine conflicts.

- Rule 1.2(c) (“A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”)
- Rule 6.5: (“A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter: (1) is the subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter. (b)

except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.”)

- II. The Delaware Family Court Rules of Civil Procedure also address limited scope representation by requiring written entries of appearance for each matter for which the attorney will represent the client.**
- III. There are two Delaware ethics opinions on the subject of limited scope representation.**

Delaware State Bar Association Opinion – 2006-1: A lawyer may be required to perform beyond the term of a limited scope representation agreement if the court requested, or the Client’s circumstance warranted such action. In most circumstances, an agreement to withdraw from representation would not violate any ethics requirement, as long as the lawyer provides adequate advice to Client concerning the scope of representation. In Family Court, the Court’s permission may be needed to withdraw from simple divorce petitions in certain circumstances.

Delaware State Bar Association Committee on Professional Ethics Opinion 1994-2: A legal services organization may properly limit its involvement in matters to advice and document preparation, but must disclose any significant assistance it provides to an otherwise pro se litigant. If it prepares pleadings or other documents, or provides advice or assistance on an ongoing basis, it should disclose the extent of its involvement.

- IV. The Bench Bar Committee on Limited Scope Representation presented recommended changes to the Delaware Rules of Professional Conduct in 2010 to then Chief Justice Myron Steele. These recommendations were not adopted.**

The Bench Bar Committee’s recommendations, attached as Exhibit D, were made to clarify issues with regards to the parameters of limited scope representation. In particular, the Bench Bar Committee addressed “ghost writing”, a procedure for the entry and withdrawal of limited scope representation, and ensuring informed client consent.

RECOMMENDATIONS

Objective 1: Examine whether the judiciary is effectively coordinating its approach to helping pro se litigants, including exploration of technology solutions.

The Pro Se Subcommittee has found that all Delaware Courts are responding to the rising needs of the pro se litigant by creating and providing information like guides for filling out court forms and by assigning staff to assist pro se litigants who come to the court. The Pro Se Subcommittee has also found some promising examples of successful strategies employed by the Delaware Courts to respond to the needs of the pro se litigant. Some of these responses have been in the realm of technology, such as programs like Ask a Law Librarian and the Justice of the Peace Court's interactive forms available on the courts website, while other responses have been practical but forward thinking actions such as the Superior Court staff monitoring of pro se litigant use of court forms and making necessary changes to ensure the public understands how to fill out the form.

Overall, the responses to the pro se need have not been coordinated across courts, and coordination may be the key to decreasing the burden felt by each court brought on by the rising need of the pro se litigant. With its recommendations, the Pro Se Subcommittee seeks to provide ways forward in terms of coordination so that the burden will be less for both the courts and the pro se litigants they serve. An evident way for the courts to coordinate pro se services would be through the courts website at courts.delaware.gov. The website already offers information on each court that the pro se litigant can find in one place, but improvements can be made so that the pro se litigant information is easier to find and understand.

Improving the courts.delaware.gov website to better serve pro se litigants

The Pro Se Subcommittee recommends the creation of a website, able to be accessed off of the Delaware Courts website, which is focused solely on providing information, resources, and assistance to the pro se litigant. This website would ideally function as the virtual Pro Se Center, and be maintained by Pro Se Center staff. However, this is an ambitious goal that is likely not possible in the short term due to the time, collaboration, and funding it would require. Fortunately, relatively

simple modifications to the Delaware courts website can be made to better serve pro se litigants.

I. Plain language and a mix of graphics and video would make the website easier for the pro se litigant to navigate as well as more helpful.

During the Pro Se Subcommittee's interviews with representatives from each court, we learned that staff members have devoted time to assisting pro se litigants who have difficulty reading. This was instructive in allowing for the recognition that some pro se litigants will have very little education, but even for those who have high levels of education, legal terminology may still be difficult to understand because it may actually be written in a different language. To ensure comprehension for all, whether necessary because of a lack of education or lack of familiarity with legal terminology, information on the courts website should be written in plain language. Latin and legal terms should either be left out or an explanation should be provided alongside of potentially confusing terms, and plain language should be used uniformly in all sections of the website. Plain language could be employed in modifications like changing "Restoration of Driving Privileges" to "Getting back your driver's license" or plain language could be used in descriptions easily found next to terms/words that may be difficult. For example, "Durable Power of Attorney and Living Will" could have the added description of "Allow someone to make your legal and financial decisions."

The courts website relies primarily on text to relay information. More graphics to direct users, as well as videos which provide instruction on popular topics, would be helpful in making the website more navigable for everyone and assisting those with difficulty reading. The creation of videos does not have to be an expensive undertaking. The Delaware courts already have the ability to create and share videos as demonstrated by the live oral arguments of the Supreme Court that are posted on the Supreme Court webpage. As will be discussed in further detail below, partnering with the Delaware Public Libraries would also provide the courts with the ability to make and edit videos for free. Scripts and willing court staff are all that would be needed to produce a video.

If there is discomfort with being on camera, computer based training programs such as Articulate Storyline and Adobe Captivate could also be used to

instruct pro se litigants without enlisting an “actor.” Importantly, these videos should be in prominent, easy to find places on the website such as within the “Delaware State Courts Citizen Help” section discussed in the next recommendation. A video on civil procedures was prepared for pro se litigants, but this video is difficult to find on the website.

II. The Pro Se Subcommittee recommends changing “Delaware State Courts Citizen Help,” “Citizen Help,” and “Help” to “Self Help” on the website.

This recommendation is made to create consistency and decrease confusion. A user may click on “The Public” on the homepage which would take them to the “Citizen Help” section which also includes a link to the “Help Section” which actually takes the user to the “Delaware State Courts Citizen Help” section found on another page. From the homepage, a user may click on “Help” which is in the top right of the homepage, and from there, the user will also be taken to the “Delaware State Courts Citizen Help” section. Trying to follow this description may perhaps serve to highlight the confusion. All of these pages provide assistance to the pro se litigant, and despite how similar the phrases are, the differences make navigating the website much more confusing, particularly for those who are already anxious about their involvement with the courts.

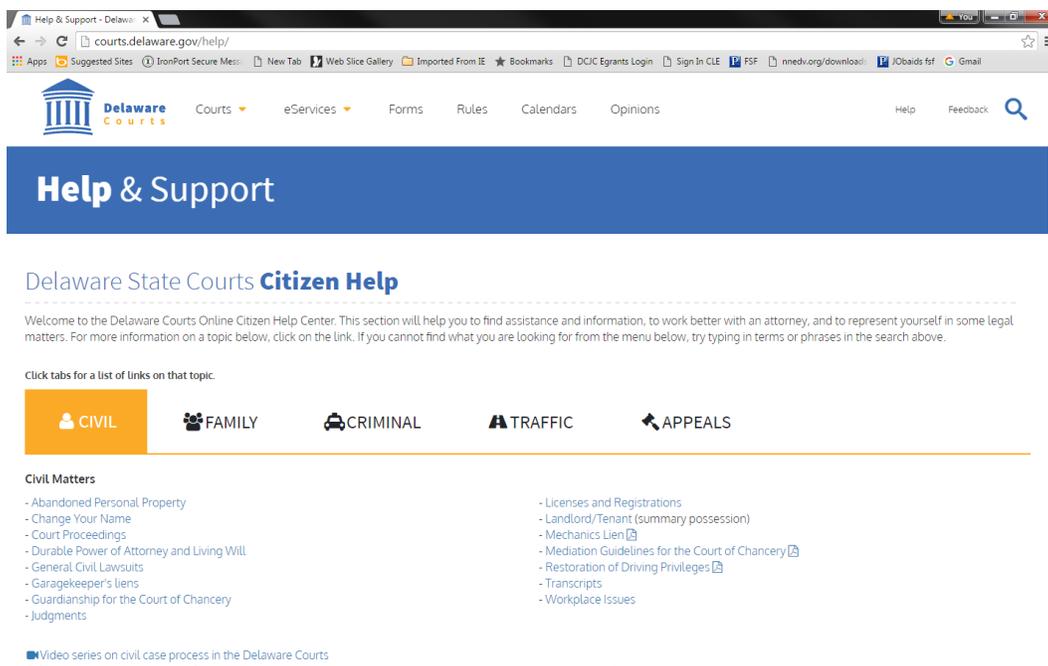
The Pro Se Subcommittee believes that the inclusion of “self” makes it more apparent that these sections are meant to assist a person by providing needed information for whatever interaction they may be having with the courts. We also prefer “self” over “citizen” because the use of “citizen” may be misunderstood by some users or inhibiting to those who are not American citizens, but do have some involvement with the courts. Because the current “Citizen Help” section includes a link to the “Help Section,” and it would be strange to have a Self Help section with a link to a self help section, we recommend deleting the line “Please visit our Help Section for more information on court proceedings, legal assistance and general information on starting, responding to and preparing your case” in favor of “More self help resources on court proceedings, legal assistance and general information on starting, responding to and preparing your case,” with the phrase “More self help resources” being linked to the Self Help page.

III. Make the “Help” link at the top right of the homepage more prominent.

Whether or not the recommendation of changing “Help” to “Self Help” is approved, the Pro Se Subcommittee does think the “Help” link on the homepage needs to be more prominent. It is not very visible, and may be mistaken for a link to technical help in regards to the website.

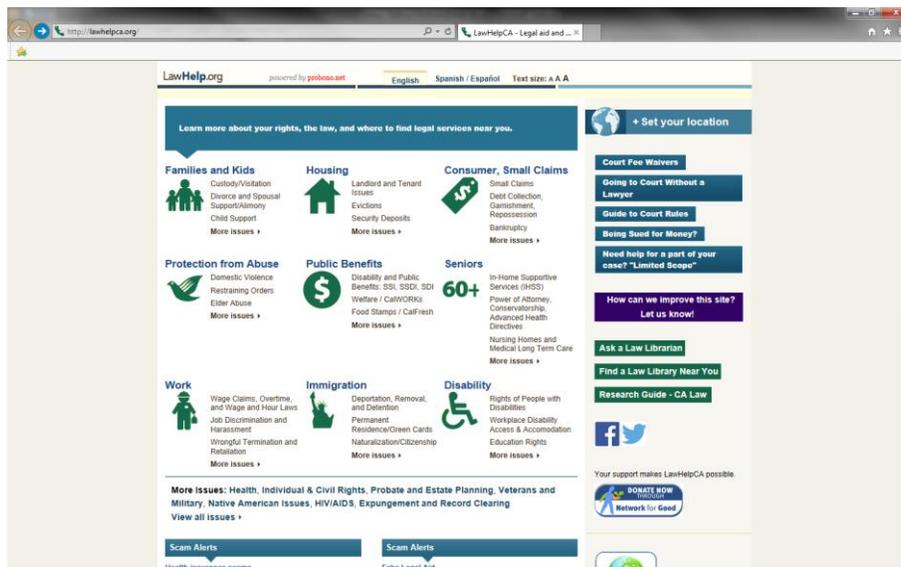
IV. Rearrange the “Delaware State Courts Citizen Help” Section so that users will have more information visible to them without being overwhelmed by text.

The Citizen Help section currently provides information under the following five tabs: “Civil,” “Family,” “Criminal,” “Traffic,” and “Appeals.”



After clicking on one of the tabs, the user is shown a list of links with further information in that area. The Pro Se Subcommittee recommends reformatting the page so that the five tabs, aided by small icons or graphics and a short list of the most popular issues in that area, will be visible to anyone who clicks on “Citizen

Help.” An example of this format can be found on the LawHelp California website at <http://lawhelpca.org/>.



V. Additional Pro Se Litigant Information that is often requested should be included in the “Delaware State Courts Citizen Help” section.

Along with the five tabs, the Pro Se Subcommittee also recommends the following additional tabs with some of the following links visible under the tab and the additional related links accessible in a longer list of resources after clicking on the tab. For those links listed below that do not actually have a link, we recommend that the Courts create this information to be available in plain language.

| TABS | LINKS |
|---------|---|
| Seniors | <ul style="list-style-type: none"> • Delaware Aging and Resource Center • Delaware Elder Law Handbook • End of Life Planning • Laws & Regulations • Legal Services • Advance Directives and Living Wills • Power of Attorney • Legal Assistance • Long Term Care Ombudsman |

| | |
|------------------------|--|
| | <ul style="list-style-type: none"> • Office of the Public Guardian • Register of Wills: New Castle, Kent, Sussex |
| Subpoenas | <ul style="list-style-type: none"> • Family Court subpoenas • Superior Court subpoena • Delaware Code: Courts and Judicial Procedure |
| Landlord/Tenant | <ul style="list-style-type: none"> • How to file and defend a Summary Possession Action • Who is considered a “tenant” (we recommend JP Court create this information) • Landlord Tenant Summary Possession Interactive Form • Return of Security Deposit Interactive Form • Landlord Tenant Code • Manufactured Home Owners and Community Owners Act • Mediation for landlord tenant disputes (this information is already available in the JP Court website, but we recommend it be more easily found through a link. |
| Veterans | <ul style="list-style-type: none"> • Veterans Treatment Court • Veterans Treatment Court Program Manual |
| En Español | <ul style="list-style-type: none"> • This link should include all of the information on the website that has already been translated into Spanish as well as a link to the Court Interpreter Program. |
| Codes/Laws/Regulations | <ul style="list-style-type: none"> • Delaware Code • Delaware Administrative Code • Individual Town and County Codes • http://www.generalcode.com/ecode360/DE • State Codes |
| Judgments | <ul style="list-style-type: none"> • Family Court • Court of Common Pleas • Justice of the Peace Court • The links above should also include FAQs created by the individual court which contain answers to the following questions: “How do I remove a judgment? How long do judgments last? How does this impact my credit score and for how long? How do I pay off a judgment? Whom should I contact for more information? Someone settled their judgment with me; how/when do I notify the courts?” |
| Bankruptcy | <ul style="list-style-type: none"> • US Bankruptcy Court District of Delaware • Link to helpful bankruptcy information/resource guide |

| | |
|------------------------------------|--|
| Civil and Criminal Records Request | <ul style="list-style-type: none"> • Links to information provided by the courts that answer the following questions: How and where do I get these records? How much do they cost? Can I view someone else’s record? What is the difference between criminal history and criminal record? |
| Mediation/Arbitration | <ul style="list-style-type: none"> • Links to information on the different courts mediation programs |

These additional tabs and links were selected because the law librarians receive the most questions concerning these topics. It should be noted that the En Español tab would provide information that has already been translated into Spanish. There is very likely more information Spanish speakers need. Ideally, the entire website would be translated into Spanish. Because this would be an enormous task with a fee that would require regular monitoring to ensure all information in Spanish is up to date, the subcommittee recommends at least making the Spanish translations that are available easier to find.

Based on the law librarians input, we also recommend information on the following be included in the “Criminal” tab section, and all should link the user to court provided plain language explanations of what this information is, how to learn more, and answers to any other FAQs:

- Superior Court Rule 61
- Sentence Modification
- Criminal Code
- Delaware Trial Handbook
- SENTAC Benchbook

The “Family” tab should also include links to the following subjects with general information and answers to FAQs provided by Family Court in plain language:

- Subpoena
- Telephonic Conference

- Motion to Compel
- Rule to Show Cause
- Expedited/Emergency Relief

Other information to include on this page that would be helpful for the pro se litigant would be a prominent link to the overview of the court system found at <http://courts.delaware.gov/overview.aspx> along with a [court structure chart](#) which would provide a visual representation of the court system.

Currently, “Links of Interest” which takes the user to a list of state agency links are included at the bottom of the Delaware State Courts Citizen Help page, but this is not obvious through its title. As other state resources may be useful to the pro se litigant, we recommend this link be made more prominent and perhaps be altered to “Links to State Agencies.”

Lastly, the “Legal Assistance” link is provided at the bottom of the Delaware State Courts Citizen Help Page. This link provides useful information regarding representing yourself as well as potential legal services for which a pro se litigant may be eligible. We recommend separating the information found through that link into two links titled “Representing Yourself” and “How to find an Attorney.” We believe more descriptive titles will allow this information to be more easily found.

The Pro Se Subcommittee is recommending that this additional information be included on the Delaware State Courts Help Page based on its findings through the courts and the law librarians concerning what pro se litigants are using and asking for. The Subcommittee was unable to produce a mockup of a reworked Delaware State Courts Help Page at the time of this writing, but we expect that there will be necessary changes in our recommended layout as changes are adopted due to design concerns. We look forward to working with the Judicial Information Center (“JIC”) on the design if approved.

VI. There are resources for Spanish speaking people on the website. The court should make these accessible from the homepage in the Spanish language, and the website should also include information in Spanish that explains the interpreter services they are entitled to have.

The website is not navigable for someone who does not speak English. Without the funds needed to translate the entire website, there are some steps that can be taken to provide some assistance to Spanish speaking litigants. There is information translated into Spanish tucked away in the website—information from Family Court and CCP along with a Spanish translation of the video on preparing for a civil case. This information should be accessible from the homepage perhaps by a link that says—in Spanish—“Information for Spanish speakers.” Furthermore, while there is an Interpreter section in the website, that information is geared towards the interpreter, and entirely in English. Spanish speakers would benefit from knowing what to expect when coming to court in terms of how they will be heard.

Objective 2: Explore ways the courts can coordinate their pro se assistance efforts more effectively and consider conversion of currently underutilized law libraries into pro se assistance centers that are not court specific.

Convert Delaware’s Law Libraries into Pro Se Centers

I. Delaware’s Pro Se Centers should be housed in Delaware’s law libraries in each of the three counties and certain investments must be made if the Pro Se Centers are to function successfully.

Conversion of the law libraries into Pro Se Centers is a logical and efficient progression in the courts efforts to meet the needs of the pro se litigant. The law libraries already have the physical space and the infrastructure for many of the pro se services that the Pro Se Centers must offer, and the law libraries are currently underutilized. While some investments will be necessary to convert the law libraries into Pro Se Centers, the existing resources in the law libraries reduce the amount of investment that would be needed in other locations. The following are required resources for a successful Pro Se Center:

- Computers to access court forms.

- Printed court forms.
- Some guidance from staff on completion of court-sanctioned forms.
- Research materials addressing the applicable law, court rules, and court procedures in English and Spanish when possible.
- Sufficient staff to service the pro se litigants.

To be able to provide these services in a Pro Se Center, the following must be done:

- Increase staffing at the law libraries so there will be sufficient staff to meet the needs of pro se litigants.
- Add work stations for the additional staff.
- Draft written protocols governing the triaging of pro se litigants and the conduct of staff in Pro Se Centers.
- Create signage, in both English and Spanish, directing pro se litigants to the Pro Se Centers as well as signage within the pro se centers directing pro se litigants to relevant locations.
- To increase efficiency and security, the layout of the law libraries should be altered to serve their new mission as Pro Se Centers.
- Additional computers should be added to the Pro Se Centers which will require expanded contracts for vendors like Westlaw.
- Court forms and form instructions should be routinely analyzed and updated to ensure accuracy and utility.
- Additional resource materials for the pro se litigant should be purchased in both English and Spanish when possible.
- A pro se center website, as part of the Delaware courts website should be developed.

II. When the necessary investments have been made in the Pro Se Centers, additional, but preferred, services may be offered in the Pro Se Centers. These services are focused on providing the pro se litigant with more in depth assistance through helpful programs and community information.

The Pro Se Subcommittee recommends the following optional, but preferred, services:

- Interpreter services.
- Limited legal representation programs.
- Available e-filing with guidance if necessary.
- Information from community and social services.
- Training seminars for pro se specific topics.
- The ability to perform criminal background searches of convictions.

If these optional, but preferred, services are to be available, the Pro Se Subcommittee recommends the following investments:

- Renovations of law library spaces to provide for glass-enclosed office spaces for attorney consultation for limited legal representation programs.
- Interpreter staffing will be necessary to provide interpreter services, and an additional employee workstation may be necessary.
- Sufficient staffing to permit e-filing if the Pro Se Centers offer e-filing.

III. A single administrator, chief law librarian or attorney should have authority over all three Pro Se Centers.

The new head will need to digest much of the literature available on Pro Se Centers, and should be selected as soon as possible to ensure the needed aspects of a Pro Se Center will be in place. A legislative change may be necessary to address this post, the governance of the head of the Pro Se Centers over Pro Se Center matters, and the budget for the Pro Se Centers.⁷

IV. The Pro Se Centers should be staffed by a rotation of court employees.

A successful Pro Se Center must be staffed by more than one person. Furthermore, if e-filing is offered, more staff will be needed than if it is not. Determining who will staff the Pro Se Centers though, may be the most complex issue to consider during the formation of the Pro Se Centers. Because the creation of new employee positions for the Pro Se Centers is unlikely, having existing

⁷ See 10 Del. C. § 1941 (“The law library in each county maintained for the use of the judges of the courts shall be under the control and supervision respectively of the judges of the Court of Chancery and of the Superior Court residing in the county, who are empowered from time to time to purchase such law books as shall be necessary for the maintenance of the library.”).

employees from different courts serve as staff is the most practical option. Reasonable minds can differ in how to structure the rotation.

The eventual head of the Pro Se Centers and court administrators should at least consider a model where different courts are earmarked for different days. While a pro se litigant should always be allowed to use the Pro Se Center during business hours regardless of the day, they could be encouraged to come on a designated day. For example, Monday could be JP Court day, Tuesday could be Superior Court day, Wednesday could be Court of Common Pleas day, etc. If Monday is designated JP Court day, a JP Court staff person would be scheduled to rotate through the Pro Se Center that day. While all staff rotating through the Pro Se Center would be cross-trained on the other courts' procedures, having designated days may make the process more efficient. Based on tracking of the number of pro se filings, some courts, such as JP Court, likely deserve more designated hours in a week than other courts.

Staffing needs will have to be carefully addressed by court administration as employees may be merit and non-merit, exempt and non-exempt, and some employees may be members of different unions. The provision of virtual assistance may need to be considered if there are issues that cannot be resolved in getting court employees to physically rotate through the Pro Se Centers.

V. Staff members of the Pro Se Centers must have even temperaments and be willing to assist pro se litigants on matters that may be outside of their own court's jurisdiction.

Those who work in the Pro Se Centers must have even temperaments suited to working with members of the public who may be highly emotional. As recommended above, Pro Se Center staff should be guided by written protocols governing the triaging of pro se litigants and their own conduct. Staff members must adhere to these guidelines because they recognize that the assistance they provide plays a role in the pro se litigants' perception of the procedural fairness of the courts. Furthermore, Pro Se Center staff should be prepared to assist with all court matters. For example, if a staff member is on a rotation from Superior Court, and a pro se litigant has questions about a JP Court matter, that staff member must be prepared to assist that person.

VI. The Court should consider utilizing its process improvement partnership with the University of Delaware Alfred Lerner College of Business and Economics in the early stages of the Pro Se Centers' development to ensure the Pro Se Centers will be effective and efficient from inception.

At the early stages of the development of the Pro Se Centers, the new head of the Pro Se Centers and the law librarians should be guided by the process improvement partnership the Court has with the University of Delaware Alfred Lerner College of Business and Economics. Utilizing this partnership for the development of the Pro Se Centers will ensure the processes of the Pro Se Centers will be effective and efficient from inception. As pro se litigants begin to take advantage of the services offered at the Pro Se Centers, necessary changes may also need to be identified for improved efficiency and so an ongoing process improvement partnership would serve the Pro Se Center staff and users well.

VII. Because electronic filing (“e-filing”) services are vital to a self-help center, the Court should consider offering e-filing services in its Pro Se Centers.

If pro se litigants can arrive at one location, receive information and assistance, and have the ability to file on site, they are more likely to utilize the Pro Se Center. The type of electronic filing services available at the Pro Se Centers will naturally depend upon the type of filing services used by the courts represented in the center. Under the current operating systems of the courts, litigants could electronically file civil cases in the Justice of the Peace Court, Court of Common Pleas, Superior Court, and the Court of Chancery. Furthermore, as the Delaware courts move to one type of e-filing system for all courts, e-filing should become easier for both Staff and pro se litigants.

Adopt social media

VIII. The Courts should provide information to the public through social media.

Twenty seven states, Washington D.C., Guam, Puerto Rico, and the Federal Courts use some form of social media to communicate with the public.⁸ The Pro Se Committee recommends that the Delaware Courts join those states by using social media as another way to communicate necessary and helpful information to the pro se litigant and general public. Facebook and Twitter accounts can be used as a platform to share basic and historical information about the Delaware courts as well as feature useful information for pro se litigants. Using social media would also provide opportunities for collaboration with legal aid agencies, the Delaware State Bar Association, and state agencies to ensure that the pro se litigant has more opportunities to find the resources that may be useful.

The National Center for State Courts has an abundance of resource materials and staff contacts to instruct state courts on judicial use of social media in its Social Media and the Courts Network available at: <http://www.ncsc.org/Topics/Media/Social-Media-and-the-Courts/Social-Media/Home.aspx>. Other states' social media accounts can also be monitored for further information and examples.

If there is discomfort with the judicial branch using social media, the social media accounts could be housed within the Pro Se Center (meaning the accounts' name would be some iteration of Delaware Pro Se Center) instead of the Delaware Courts. Regardless of the accounts' association, the administration could be a duty of the law librarians and/or pro se resource center staff who follow guidelines created and approved by court administrators.

⁸ A list of the states participating in social media, with links to those accounts, is available at: <http://www.ncsc.org/Topics/Media/Social-Media-and-the-Courts/State-Links.aspx?cat=Social%20Media%20and%20the%20Courts>.

Partner with the Delaware Public Libraries.

IX. The Pro Se Subcommittee recommends partnering with the Delaware Public Libraries to improve pro se services.

Leslie C. Leach, Librarian at Skadden and member of the Pro Se Subcommittee, has met with Alta Porterfield, the Community Resource Administrator & Statewide Coordinator with the Delaware Division of Libraries to discuss the work of the Pro Se Subcommittee and potential areas for coordination. The libraries already partner with state agencies and non-profits across the state to enhance public outreach and access to information. Partnering with the Delaware Courts would be a mutually beneficial development.

Some of the benefits of partnering with the libraries are:

- Joining the library partners' listserv which would enable the courts to provide the libraries and partners with pertinent court information as well as receive useful information from other partners.
- Libraries have meeting space that would be available for the courts' use for community outreach programs and could potentially provide space for pro se clients and attorneys to meet.
- Video conferencing is also available on Thursdays in each county.
- Pro Se information could also be posted and available in printed form in libraries.
- The Wilmington, Dover, and Georgetown libraries have available video recording and editing software for partner use.
- The law libraries' holdings may be added to the statewide library catalog. These holdings won't be available for circulation, but the public will be able to learn what types of materials would be at each of the libraries (or Pro Se Centers). Cataloging this information will require volunteers and/or funding.

The Public Libraries would not only provide the courts with a new avenue to provide the public information, but they would also enable the courts to bolster the programs it is already able to provide as well as create new ones. For example, the Limited Legal Assistance Program is only available in the Leonard L. Williams Justice Center. With video conferencing, volunteer attorneys would be able to reach pro se

litigants in Kent and Sussex Counties. Public Libraries also have evening and weekend hours which may be more convenient for the public, and greatly reduce the administrative difficulty and cost in opening the courthouses to the public after business hours.

Objective 3: Consider whether Delaware should allow limited legal representation in specific areas where litigants have difficulty obtaining affordable legal services and a compelling human need, such as cases involving evictions or family law. This will include consideration of whether modification of the Delaware Rules of Professional Conduct is necessary and whether Delaware should allow para-professionals to represent litigants in certain cases.

- I. The Pro Se Subcommittee will continue to explore the expansion of limited legal representation in Delaware with the objective of making more definitive recommendations for the Court by, among other things, identifying developments since the 2010 recommendations of the Bench Bar Committee on Limited Scope Representation to then Chief Justice Myron T. Steele.**
- II. The Pro Se Subcommittee will continue to work with other subcommittees of the Access to Justice Commission to consider areas of limited legal representation such as legal technicians and whether modification of the professional rules to allow para-professionals in the legal field should be made.**

THE EXHIBITS TO THIS REPORT ARE
AVAILABLE AT:

<http://courts.delaware.gov/supreme/access.aspx>

DELAWARE ACCESS TO JUSTICE COMMISSION

REPORT OF THE SUBCOMMITTEE ON PROMOTING GREATER PRIVATE SECTOR REPRESENTATION OF UNDERSERVED LITIGANTS

Voting Members

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EXECUTIVE SUMMARY

On December 15, 2014, the Supreme Court of the State of Delaware established the Delaware Access to Justice Commission (“Commission”) to identify the critical needs related to access to justice in Delaware and to develop realistic and cost effective solutions to those identified needs. The Commission established four subcommittees, including the Subcommittee on Promoting Greater Private Sector Representation of Underserved Litigants (“Promoting Representation Subcommittee”), to assist it in carrying out its mission. As directed by the Commission, the Promoting Representation Subcommittee examined ways to: (i) assist solo practitioners and small law firms that represent clients of limited means, including investigation of whether there are private sector businesses that can help small legal practices in Delaware operate more effectively; and (ii) increase the level of pro bono services provided by the bar.

Based on its examination of these issues, the Promoting Representation Subcommittee makes the following findings and recommendations:

Solo/Small Firm Findings

1. Most solo and small firm practitioners are satisfied with their practices.
2. Solo and small firm practitioners do, however, confront challenges in the management of their practices, including lack of support staff, lack of back-up assistance when away from the office, generation of revenue, and lack of information technology support.
3. At this time, there are few companies like healthcare management service organizations that offer a complete back office solution for small legal practices in Delaware.

Solo/Small Firm Recommendations

1. The Delaware State Bar Association (“DSBA”) should continue to work on the establishment of a Law Office Management Assistance Program (“LOMAP”).
2. The Office of Disciplinary Counsel (“ODC”) should continue to offer free CLEs on useful topics for solo and small firm practitioners.

3. Law school students and new solo and small firm attorneys should have the opportunity to take classes on law firm management.

Pro Bono Service Findings

1. Family law and consumer law are the areas with the greatest need for pro bono services from the bar.
2. Although many attorneys perform pro bono work, fewer attorneys provide more than twenty-five hours of pro bono service a year.
3. Lack of available time or prioritized time is the primary barrier to the provision of pro bono services by Delaware attorneys.
4. Secondary barriers to attorneys' provision of pro bono services include fear, a perceived lack of expertise, and a lack of awareness of the available pro bono opportunities and resources.
5. Depending on the nature of their practice, attorneys face additional barriers to pro bono service.

Pro Bono Service Recommendations

1. In 2017, institute a standing pro bono leadership committee to focus on pro bono family law representation in 2018 and pro bono consumer law representation in 2019.
2. Beginning in 2017, develop statewide pro bono practice groups, starting with family law, to share ideas and information.
3. Starting in the first half of 2018, hold an annual pro bono summit/fair.
4. Create a pro bono challenge for attorneys to meet a clear, measurable, and collective pro bono target.
5. By the end of 2018, create a single source for pro bono information and increase awareness of the variety of pro bono opportunities and assistance available.

6. Remind the bar early and often of areas of critical need and ways to address those needs.
7. Devote more time to consideration of a legal technician program.

To pursue its objectives, the Promoting Representation Subcommittee split into two working groups. One working group focused on ways to help solo practitioners and small law firms and the other working group focused on ways to increase the level of pro bono services provided by the Delaware bar. The work, findings, and recommendations of the working groups are set forth below.

I. WAYS TO HELP SOLO PRACTITIONERS AND SMALL LAW FIRMS

A. Methodologies

To identify ways to assist solo practitioners and small law firms that represent clients of limited means, the working group employed a variety of methods. These methods included a survey of attorneys, an analysis of disciplinary records by the ODC, a review of LOMAPs in other states, meeting with the DSBA about its planned LOMAP, and research regarding the existence of private sector businesses that could handle the back office functions of small legal practices. A draft of this report was also submitted to the DSBA for their review and comments.

1. Survey

The working group prepared a survey to identify the challenges solo and small firm practitioners face and the type of assistance they would find helpful. A link to the survey was emailed to all attorneys with an active registration statement with the Delaware Supreme Court. 195 people responded to the survey. The survey results appear at Appendix Exhibit A. The survey was not prepared in a scientific manner and should not be viewed as scientifically or statistically accurate.

2. ODC analysis

The ODC analyzed its records for sanctions imposed upon Delaware attorneys between January 1, 2013 and July 31, 2015 to determine if there were any trends in violations of the Delaware Lawyers' Rules of Professional Conduct ("Rules of Professional Conduct"). The ODC's analysis appears at Appendix Exhibit B.

3. LOMAP review

The working group reviewed LOMAPs of multiple states, including Maryland, Massachusetts, Washington, and Arizona. The working group also met with Mark Vavala, the DSBA Executive Director, Alison Macindoe, the former DSBA Director of Law Office Management and Johnna Darby, the former DSBA Executive Director, about the DSBA's LOMAP plans.

4. Private sector business research

To determine whether there are companies that can assist small legal practices in Delaware with back office management like the companies that provide outsourcing and back office solutions to medical offices, the working group conducted internet research, spoke with a certified legal manager (Tom Herweg, CLM and CPA, former Executive Director of Morris James LLP) and the former law office management director at the DSBA, and utilized the experience of its solo and small practice members.

B. Findings

Based upon the methodologies described above, the Promoting Representation Subcommittee makes the following findings.

1. Solo and small firm practitioners are generally satisfied with their practices

The survey reflects that 85% of those who responded to the question regarding their satisfaction as a solo or small practitioner were generally satisfied as a solo or small firm practitioner.¹ Solo practitioners liked the independence, flexibility, and autonomy of their practices.²

2. Solo and small firm practitioners do, however, face challenges in the management of their practices

Of those who responded to the survey question regarding the greatest challenges in their practice, the following challenges were identified as a 4 or 5 on a scale of 1 to 5, with 5 having the most impact:³

¹ Appendix Exhibit (hereinafter cited as "App. Ex.") A at 8.

² *Id.* at 9-10.

³ *Id.* at 15.

| Percentage of Respondents | Challenge |
|---------------------------|---|
| 49% | Lack or absence of support staff |
| 41% | Absence or lack of back-up help when out of the office for illness, vacation or other personal issues |
| 37% | Generation of revenue |
| 30% | Absence of or insufficient technology support |
| 29% | Absence of sounding board |

When asked which management or administrative issues they found most challenging, respondents identified, among other things, the need for and supervision of competent support staff, billing, accounting, and recordkeeping.⁴

The ODC's analysis of its disciplinary records shows that the majority of sanctioned violations between January 1, 2013 and July 31, 2015 were attributable to solo practitioners.⁵ The Rules of Professional Conduct most frequently violated include: (i) Rule 1.1 (competence); (ii) Rule 1.3 (diligence); (iii) Rule 1.15 (safekeeping property); and Rule 8.4 (misconduct).⁶ According to the ODC, most of these violations were related to law practice management issues.

3. At this time, there are few companies like healthcare management service organizations that offer a complete back office solution for small legal practices in Delaware

Many medical practices hire companies to provide practice management and administrative support services. The services offered include billing and collection, coding, accounting and financial management, and contract management. While some members of the working group were familiar with healthcare management service companies, they were not aware of similar companies that serve small legal practices in Delaware. There are a number of companies that provide different types of support services (including accounting, benefits, photocopying, information technology, marketing, records management, and word processing support) to Delaware legal practices, but there appear to be few companies that offer a complete back office solution. Based on the

⁴ *Id.* at 16-19.

⁵ App. Ex. B.

⁶ *Id.*

communications of the former director of the DSBA LOMAP with other practice management advisors, it appears that this is also the case in other states.

The working group did identify one out-of-state company that advertises remote back office support, including accounting, billing, and software support, for small to medium size law firms. A working group member spoke with this company and learned that the company had recently begun working with a medium-size law firm in Delaware. The name of this company has been provided to the DSBA as a possible resource for its LOMAP.

C. Recommendations

The Promoting Representation Subcommittee makes the following recommendations for ways to assist solo and small firm practitioners.

1. The DSBA should continue to work on establishment of a LOMAP

The DSBA is in the process of establishing a LOMAP that will focus on assisting firms of one to ten attorneys. The program started in July 2016. The DSBA has indicated that many of the LOMAP recommendations set forth below are in the works, including vendor discounts, CLEs specifically for small firm and solo practitioners, and resources for the starting, running, and closing of a law firm. A subcommittee member met with the DSBA in April to see how things are going.

Based on its LOMAP review, the subcommittee recommends that in designing its LOMAP, the DSBA consider these states' LOMAPs:

- Maryland (<http://www.msba.org/practicemanagement/default.aspx>)
- Massachusetts (<http://masslomap.org/>)
- Washington (<http://www.wsba.org/Resources-and-Services/LOMAP>)
- Arizona (<http://www.azbar.org/professionaldevelopment/practice20/>)

These LOMAPs offer, among other things, helpful information and checklists on firm start-up, firm dissolution, acceptance of credit cards, marketing, technology, and social media.

The subcommittee believes it would be helpful if the DSBA LOMAP could:

- Offer information and advice to solo and small firm practitioners through a website and consultations with DSBA staff or experienced attorneys who

volunteer their time once per month for an hour to meet with a solo or small firm practice to answer any questions they may have or serve as a mentor.

- Hold a lunch hour series once per month to deal with solo and small firm issues such as:
 - Client relations
 - Data management and security
 - Disaster prevention and recovery
 - Financial management
 - Staff issues and concerns/Human resources
 - Marketing/Social Media concerns
 - Office technology
 - Time management
 - Trust accounting and bookkeeping
 - Work and wellness (yoga/meditation)
 - Starting your own firm/winding down your firm/retirement/transition
 - Succession Plan
 - Managing client files and records/managing financial books and records
 - How to deal with ODC complaints
- Offer webinars in the areas identified above.
- Have a website with checklists on the areas identified above, sample forms, such as a Sample Fee Agreement and Sample Closing Letter, and a resource library with helpful articles.
- Offer assistance by way of discounts from accounting firms for pre-certifications of annual report of compliance.
- Hold networking events so that other solo and small firms can get together and share stories and successes.
- Contract with vendors to collaborate with solo/small firm practices to provide discounted services on insurance, software, copying, court service of process, etc.

Survey respondents also expressed interest in assistance with the collection of unpaid fees, health insurance issues, and information technology issues like

website creation and maintenance and cloud providers.⁷ By offering the services described above to solo and small firm practitioners, the DSBA LOMAP can help address the challenges identified by solo and small firm practitioners in the survey. Through the DSBA LOMAP, solo and small firm practitioners will be able to access information and advice about managing their books and records, handling staffing issues, using office technology, and other issues they confront on a regular basis.

2. The ODC should continue to offer free CLEs on useful topics for solo and small firm practitioners

Since October 2014, the ODC has organized and offered free CLEs (each worth 1.5 ethics credits) on useful subjects for solo and small firm practitioners. A list of these CLEs appears at Appendix Exhibit C. The CLEs are currently held in the jury service rooms of the New Castle County, Kent County, and Sussex County courthouses. Because turnout tends to be best on Fridays in the fall, winter, and spring, the ODC tries to schedule the CLEs at those times.

The CLEs are intended to offer useful and practical advice for solo and small firm practitioners. The ODC recruits attorneys to address various law firm management topics, including information technology issues, records management, disaster planning, and staff supervision. The ODC also offers free CLEs that provide practical guidance to practitioners on how to maintain their firm's books and records in compliance with Rule 1.15. Judith Scarborough, CPA, teaches those CLEs.

In designing the free CLEs for 2016 and 2017, the ODC considered the results of the Solo/Small Firm Practitioner Survey and the suggestions of the working group. Survey respondents expressed interest in free CLEs addressing subjects of interest to solo and small firm practitioners, such as law firm management solutions, technology solutions, Rule 1.15 compliance, and lead conversion and retention.⁸ Working group members suggested topics such as the best technology for a small practice, case management systems versus Outlook, 401(k) and other benefits to employees, understanding unemployment tax, head count tax in Wilmington and other taxes, bill collection, and insurance issues. In 2017, the ODC will offer free CLEs on Avoiding Disciplinary Complaints (one presentation in each county), Law Office Management (one presentation in each county), and Books and Records (one presentation in each county). Like the

⁷ App. Ex. A at 21-22.

⁸ *Id.* at 23.

DSBA LOMAP, these free CLEs will help solo and small firm practitioners with challenges they have identified in their practices. The ODC will monitor law firm management related disciplinary issues to determine whether the DSBA LOMAP and free CLEs have a beneficial effect and whether particular CLEs or services should be offered.

3. Law school students and new solo and small firm attorneys should have the opportunity to take classes on law firm management

To address the law firm management challenges solo and small practitioners face, the working group explored whether a class on law office management was or could be offered at Delaware Law School. Working group members contacted Stephen E. Friedman, Associate Dean for Academic Affairs and Professor of Law at Delaware Law School and Charles Slanina, Esq. Dean Friedman provided the syllabus for Small Firm/Solo Law Office Management, a course previously offered at the Law School. The syllabus is attached at Appendix Exhibit D. The course was taught by Slanina.

In school years 2011-2012 and 2012-2013, the course was offered both semesters. In Spring 2014, the course was again offered. The class was capped at 20 students and was full or almost full each time it was offered. Unfortunately, the class has not been offered since Spring 2014 due to declining student enrollment and an increased focus on bar exam preparation. The law school might offer a one credit law firm management class in the future.

The chief disciplinary counsel, who is also a subcommittee reporter, provided Dean Friedman with an overview of the most common law office management issues encountered by small firm and solo practitioners that result in disciplinary sanctions, including maintenance of the law firm's books and records, conflict check system, and supervision of staff. The chief disciplinary counsel strongly encouraged the law school to offer a law firm management class and offered to be a resource to any professor who teaches such a class in the future.

The working group also discussed a fundamental course on law office management for solo and small firm practitioners in light of the recently reinstated fundamentals requirement for newly admitted attorneys. Almost 80% of survey respondents thought it would be helpful for newly admitted solo and small firm practitioners to do a mandatory, free CLE on law firm management issues.⁹

⁹ *Id.* at 27.

Margot Millar of the Commission on Continuing Legal Education informed the working group that the fundamental courses included Fundamentals of Law Practice Management and Technology. Under Rule 4(D) of the Delaware Rules for Continuing Legal Education, attorneys admitted after December 1, 2015, within four years from that January 1st, must attend all of the following fundamental courses: (1) Fundamentals of Lawyer-Client Relations; (2) Fundamentals of Family Law; (3) Fundamentals of Real Estate; (4) Fundamentals of Civil Litigation; (5) Fundamentals of Will Drafting and Estate Administration; (6) Fundamentals of Law Practice Management and Technology; and (7) Fundamentals of Criminal Law and Procedure. The DSBA offered the first Fundamentals of Law Practice Management and Technology on May 10, 2017.

II. INCREASING THE LEVEL OF PRO BONO LEGAL SERVICES PROVIDED BY THE BAR

A. Definition of Pro Bono

In examining ways to increase the level of pro bono services provided by the bar, the Promoting Representation Committee frequently discussed how to define pro bono. Under the Delaware Lawyers' Rules of Professional Conduct, lawyers may fulfill their voluntary responsibility to provide public interest legal service "by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."¹⁰ Members of the Promoting Representation Subcommittee and attorneys that the Promoting Representation Subcommittee communicated with throughout this process recognize that many attorneys are active in community and charitable activities and serve on community and charitable boards that are not related to the legal system. Given the goals of the Delaware Access to Justice Commission and the name and objectives of this subcommittee, the Promoting Representation Subcommittee used "free or reduced fee legal services provided to persons of limited means or organizations that address the needs of persons of limited means" as the definition for pro bono throughout its work.

The Promoting Representation Subcommittee recognizes that there are other ways lawyers can provide pro bono services under Rule 6.1. The Promoting Representation Subcommittee also recognizes, and applauds, lawyers' participation, and leadership, in community and charitable activities unrelated to the practice of law.

B. Methodologies to Identify the Areas of Greatest Unmet Need

The working group that looked at ways to increase the level of pro bono services provided by the bar split into two groups. One group examined the areas of greatest unmet need for pro bono services. The other group identified the greatest barriers to lawyers providing pro bono services and possible solutions to those barriers.

To identify the areas of greatest unmet need for pro bono services, the working group employed a variety of methods. These methods included review of

¹⁰ Delaware Lawyers' Rules of Professional Conduct Rule 6.1.

information already collected from the courts, review of pro se filings in the courts for fiscal year 2014, and meetings with Delaware legal service providers.

1. Information collected by the Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants

The working group received information from the Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants, which met with representatives of the Supreme Court, Court of Chancery, Superior Court, Family Court, Court of Common Pleas, and Justice of the Peace Court to determine their views of the areas of greatest need for legal services within their respective courts.

2. Pro se filings for fiscal year 2014

The working group collected pro se filing information from the courts for fiscal year 2014 (in one case calendar year 2014). While the court data on pro se representation is instructive, the working group notes that pro se representation does not necessarily equate with unmet need for legal services for the poor. Some (perhaps few) pro se litigants may choose to forego a lawyer, even if they could afford one.

The Supreme Court did not track pro se filings in fiscal year 2014, but subsequently determined the number of pro se civil appeals and types of pro se appeals. The Supreme Court pro se numbers are attached at Appendix Exhibit E.

The Court of Chancery filing figures for calendar year 2014 are attached at Appendix Exhibit F.

The Superior Court does not track pro se filers in civil cases, but noted that the number of pro se filers in the Superior Court is not high compared with other courts.

The Family Court filing figures are attached at Appendix Exhibit G. Divorce figures are attached at Appendix Exhibit H.

The Court of Common Pleas pro se filing figures for New Castle, Kent and Sussex counties are attached at Appendix Exhibit I.

The Justice of the Peace Court does not have a mechanism for tracking pro se filings, but noted that attorney involvement in civil cases is extremely low (less than 5%).

The United States District Court for the District of Delaware does not track pro se filings.

3. Meetings with legal service agencies

The working group met with Delaware Volunteer Legal Services, Inc. (“DVLS”), Community Legal Aid Society, Inc. (“CLASI”), Legal Services Corporation of Delaware, Inc. (“LSCD”), and the Office of Child Advocate (“OCA”) to gain their perspectives on the areas of greatest unmet need. The working group also received Delaware Legal Help Link data from calendar year 2014, which is attached at Appendix Exhibit J. Delaware Legal Help Link is a phone line for those in need of legal services. DVLS operates the phone line on behalf of all the legal service agencies.

C. Findings on Areas of Greatest Unmet Need

Based upon the methodologies described above, the Promoting Representation Subcommittee finds that the following areas have the greatest need for pro bono services.¹¹

1. Family law, including divorce (with at least one ancillary matter), protection from abuse petitions, custody (including custody modification), and guardianship

The Family Court indicated that legal services were most needed in divorce, protection from abuse, custody/visitation, and guardianship proceedings. The Family Court filing figures reflect the following areas with the highest concentration of pro se civil filings: (i) custody and custody modification; (ii) divorce; (iii) protection from abuse; and (iv) guardianships.¹² Statewide, in fiscal year 2014, over 50% of divorce filings with at least one ancillary matter were filed

¹¹ Although the Justice of the Peace Court and legal service agencies identified landlord/tenant law as an area of need, they did not view additional volunteer attorneys as the best way to meet this need. The speed of the cases makes placement with volunteer attorneys difficult. Chief Magistrate Davis indicated that a list of volunteer attorneys available to help with appeals to a three-judge panel in the Justice of the Peace Court could be helpful. Justice of the Peace Court staff attorney Jody Huber, who is also the lead reporter for the Subcommittee on Judicial Branch Coordination in Helping Pro Se Litigants, indicated that the focus should be on helping tenants to help themselves, which falls within the scope of her subcommittee and which could include having volunteer attorneys available to answer tenants’ questions.

¹² App. Ex. G.

by pro se petitioners, higher than the percentage of represented petitioners.¹³ The legal service agencies also identified family law matters (divorce, protection from abuse, and custody) as one of the areas with the greatest demand for pro bono legal representation. The DVLS Legal Help Link figures reflect a high level of demand for legal services in protection from abuse, custody/visitation, divorce, and guardianship.¹⁴

2. Consumer law, including consumer debt, debt, breach of contract, and subrogation

The Court of Common Pleas indicated that legal services were most needed in consumer debt cases. The Court of Common Pleas data reflects that the highest number of pro se litigants were in the following matters: (i) consumer debt; (ii) debt; (iii) breach of contract; and (iv) subrogation.¹⁵ The legal service agencies identified consumer debt matters as one of the areas with the greatest demand for pro bono legal representation.

D. Methodologies to Identify the Most Significant Barriers to Attorneys' Provision of Pro Bono Services

To increase the level of pro bono services provided by the bar, the working group believed it was important to begin with identification of what discouraged or prevented attorneys from providing pro bono services. Once those barriers were identified, the Promoting Representation Subcommittee could formulate potential solutions. Although the purpose of this report is to summarize the barriers we found and suggest solutions, it is important to note that there are many inspiring examples of legal organizations and individual lawyers who are succeeding today in contributing a significant amount of time and valuable pro bono service to the poor.

To identify barriers to attorneys providing pro bono services, the working group employed various methodologies including a survey, focus group sessions with different types of attorneys, and meeting with the organizations that rely upon a large number of volunteer attorneys. A draft of this report was also submitted to the DSBA, OCA, DVLS, CLASI, and LSCD for their review and comments.

¹³ App. Ex. H.

¹⁴ App. Ex. J. The DVLS Legal Help Link figures also reflect that wills and estates, which are not within the jurisdiction of Family Court, are an area of need.

¹⁵ App. Ex. I.

1. Survey

The working group prepared a survey to identify any barriers to attorneys' performance of pro bono work and potential solutions to those barriers. For purposes of the survey, pro bono was defined as free or reduced fee legal services provided to persons of limited means or organizations that address the needs of persons of limited means. A link to the survey was emailed to all attorneys with an active registration statement with the Delaware Supreme Court. 281 people responded to the survey. The survey results appear at Appendix Exhibit K. The survey was not prepared in a scientific manner and should not be viewed as scientifically or statistically accurate.

2. Focus groups

Working group members conducted focus groups to gain additional insights into the barriers to attorneys' performance of pro bono work and potential solutions to those barriers. Working group members held focus group sessions with: (i) attorneys at large law firms; (ii) attorneys at law firms with five to twenty attorneys; (iii) attorneys in Kent County and Sussex County; (iv) government attorneys; and (v) in-house attorneys. Focus group participants understood that their identities would remain anonymous.

3. Meetings with DVLS and OCA

Working group members met with two of the organizations that use the largest number of volunteer attorneys, DVLS and OCA, to learn about their experiences in the recruitment and retention of volunteer attorneys.

4. Discussions with other subject matter experts

Working group members spoke with Steve Crossland, chair of the Washington Limited License Legal Technician Board, and Paula Littlewood, executive director of the Washington State Bar Association, about Washington's new limited license legal technician program. Working group members also spoke with Larry Zutz, President of USI, Delaware and Judy Grater, Client Services Specialist, USI Insurance Services, LLC about legal malpractice insurance for pro bono work.

E. Findings on the Most Significant Barriers to Attorneys’ Performance of Pro Bono Services

Based upon the methodologies described above, the Promoting Representation Subcommittee makes the following findings. Although the list of specific obstacles is extensive, most of the obstacles lawyers face regarding pro bono service fit into one of three main categories: lack of prioritized time, fear, and perceived lack of knowledge. Addressing these three obstacles, will require significant and sustained leadership from the Court and from various sectors of the bar.

1. Although many attorneys perform pro bono work, fewer attorneys provide more than twenty-five hours of pro bono service a year

Almost 75% of survey respondents indicated that they had performed pro bono work in the past twelve months.¹⁶ However, more than half of the survey respondents had performed less than 25 hours of pro bono service in the past twelve months.¹⁷ 26% of the survey respondents performed no pro bono service in the past twelve months.¹⁸ If this survey is statistically reflective of the bar as a whole, it appears that more than half of the members of the bar are spending, on average, fewer than 30 minutes each week providing pro bono service to the poor.

| Percentage of Respondents | Hours of pro bono service in last 12 months |
|----------------------------------|--|
| 26% | 0 |
| 26% | Less than 25 hours |
| 48% | More than 25 hours |

The results did not significantly vary between respondents who identified themselves as litigation attorneys versus respondents who identified themselves as transactional attorneys:¹⁹

¹⁶ App. Ex. K at 10.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ App. Ex. L.

| Percentage of Litigation Respondents | Hours of pro bono service in last twelve months |
|---|--|
| 23% | 0 |
| 28% | Less than 25 hours |
| 49% | More than 25 hours |

| Percentage of Transactional Respondents | Hours of pro bono service in last twelve months |
|--|--|
| 28% | 0 |
| 25% | Less than 25 hours |
| 48% | More than 25 hours |

Notwithstanding the similarity in these responses, 73% of transactional attorneys who responded to the question asking if they were reluctant to provide pro bono services in the litigation context responded affirmatively.²⁰

2. Lack of available or prioritized time is the primary barrier to attorneys’ performance of pro bono services

Increasingly, lawyers are facing fierce and competing demands on their time, which makes it difficult to prioritize pro bono service. 76% of survey respondents ranked lack of available time as a 4 or 5, with 1 having no effect and 5 having the most effect, among potential reasons for why they could not perform more pro bono work.²¹ Focus group participants also identified lack of time as the primary barrier to their pro bono work.

Although there are several positive examples of excellent leadership in this area, significant doubt continues to exist about whether all law firm and law department leaders genuinely support a culture of pro bono in the face of law firm economics and law department priorities. New lawyers are likely to want to do pro bono work, in part to get practical experience, but may be reluctant to do pro bono work out of concern that it might impact their career development and/or remuneration. The “middle lawyers” (in between the newest members of the bar

²⁰ App. Ex. M.

²¹ App. Ex. K at 11-13.

and the leaders of firms/departments) may have the greatest difficulty managing their time due to heavy workloads and competing work/life priorities.

3. Secondary barriers to attorneys' provision of pro bono services include fear, a perceived lack of expertise, and a lack of awareness of the available pro bono opportunities and resources

Lawyers are concerned whether they have the expertise and support to competently deliver pro bono services, and they worry representations that start as limited in scope may grow to be more than they can handle. A single CLE may not be sufficient for lawyers to be confident that they can competently represent a client in a legal area that is new to them. Many in-house counsel do not have paralegals or administrative assistants with skills in creating or filing pleadings. Lawyers are also concerned about whether the scope of representation is predictable and worry that what seems like a simple matter may turn into something more complicated that exceeds the level of training they have received.

Almost 35% of survey respondents ranked lack of subject matter knowledge/experience as a 4 or 5 among potential reasons for their lack of pro bono work.²² The focus group sessions also reflect that lack of subject matter expertise and training, as well as a lack of awareness of the different types of pro bono opportunities, training, and training materials available discourage attorneys from pro bono service.

Despite the many communications that exist today regarding pro bono needs, opportunities for service and training materials, it appears that many lawyers remain unaware of specific opportunities for service and of the tools available to help them. A number of attorneys were unaware, for example, of the Limited Pro Bono Legal Assistance Program at the Leonard L. Williams Justice Center (formerly the New Castle County Courthouse) in which volunteer attorneys answer family law questions of eligible litigants for a few hours a week. Other attorneys did not know that they could earn CLE credit for certain types of pro bono work.²³ Attorneys also expressed interest in access to subject matter experts

²² *Id.* at 12.

²³ Continuing Legal Education Rule 9(D) (providing that attorneys can earn one hour of CLE credit for every six hours of pro bono legal services performed, with a maximum of six hours of CLE credit in every two-year compliance period).

when working on pro bono matters outside their areas of expertise, even though agencies like OCA and DVLS provide such access to their volunteers.

It is possible that there are too many sources of duplicative, uncoordinated information. Although the service providers appear to collaborate well with each other, the bar appears to be confused by disparate and inconsistent messaging. Thus, there appears to be a need for a more efficient, effective, well-known and widely used, single-source of information that provides members of the bar with: relevant and varied pro bono opportunities; relevant, impactful and easily-digestible training materials and templates; and information regarding malpractice insurance coverage via DVLS, statutory and case law immunity for OCA matters and court appointments, and the availability of insurance for other matters.

4. Depending on the nature of their practice, attorneys face additional barriers to pro bono service

Depending on the nature of an attorney's practice, she will face additional barriers to pro bono work. Within the large firm focus group, participants indicated that real support and expectation of pro bono service is sometimes questionable from the highest firm levels and most powerful partners. Some firms give billable hour credit for pro bono hours and track pro bono hours, but other firms do not.

Within the focus group for smaller firms, participants indicated that economic pressures, such as healthcare costs and information technology expenses, make it more difficult for them to do pro bono work without negatively impacting their firm's finances. The survey directed to solo/small firm practitioners also reflects that a number of respondents believe their status as solo or small firm practitioners negatively impacts their ability to do pro bono work because they need to generate revenue, spend time on administrative matters, and lack back-up coverage. A few respondents indicated, however, that working as a solo/small firm practitioner positively impacted their ability to provide pro bono services because they had more flexibility.

Attorneys in Kent County and Sussex County, which have a significantly smaller bar than New Castle County, noted that the survey results probably did not accurately reflect the real number of pro bono hours spent in Kent and Sussex. They also noted that court appointments accounted for much of their organized pro bono hours. Sussex County attorneys indicated that there are few organized opportunities, like Wills for Heroes, to do pro bono work.

Many in-house attorneys are not Delaware lawyers and remain unclear about the unauthorized practice of law, despite Supreme Court Rule 55.1. A number of in-house attorneys are not based in downtown Wilmington where the Leonard L. Williams Justice Center is located. In-house attorneys may also lack company support, administrative staff assistance, and electronic filing access for pro bono work. While more than 75% of survey respondents indicated that a lack of malpractice insurance was not a significant factor in their willingness to do pro bono work, 35% of in-house attorneys who identified the reasons preventing them from performing more pro bono services over the past year ranked malpractice insurance as a 4 or 5 (with 1 having no effect and 5 having the most effect).²⁴ Subcommittee members with in-house experience have indicated that companies do not typically buy employed lawyers professional liability (“ELPL”) insurance so that in-house counsel can perform pro bono work.

Due to 29 *Del. C.* § 2509, government attorneys are barred from performing many types of pro bono work. Section 2509 provides that “[n]o member of the Department of Justice shall act as attorney or counsel in any controversy in which the State, a county or a municipality has an interest in the member’s official capacity.” Malpractice insurance is also an issue for government attorneys.

F. Recommendations

Rather than divide the bar, we recommend ideas that we hope would serve to further unite the bar, create friendly competition regarding pro bono service, and better recognize and reward those individuals and organizations who are leading in creating a culture that values pro bono service. We have attempted to organize our recommendations by what can be done in the short term versus what will take longer to complete.

The Promoting Representation Subcommittee does not recommend mandatory pro bono service. According to the survey, more than 50% of respondents had a somewhat negative or very negative view of a mandatory pro bono requirement.²⁵ This reaction was reinforced in various subsequent focus group discussions. OCA and DVLS representatives expressed concern with forcing attorneys to do something they do not want to do and the negative impact that could have on the pro bono clients of unwilling attorneys. A majority of the voting members of the Promoting Representation Subcommittee also do not

²⁴ App. Ex. K at 11-12; App. Ex. N.

²⁵ App. Ex. K at 25.

recommend instituting a mandatory pro bono hour reporting requirement as part of annual registration.

1. In 2017, institute a standing pro bono leadership committee

In 2017, institute a standing committee with membership from the Court, leaders of law firms and law departments, leaders of the Pro Bono Inn of Court, and leaders of the service providers (e.g. DVLS, LSCD, CLASI, and OCA) whose charge would be to educate (and challenge) leaders of the bar regarding the current critical needs for pro bono service and to create, support and sustain both existing and new statewide infrastructures necessary for maintaining a high level of pro bono participation from members of the bar. It is likely that the bar will respond most effectively if a Justice of the Delaware Supreme Court were a member and sponsor of such a committee. The committee should focus on pro bono family law representation in 2018 and pro bono consumer law representation in 2019.

The focus on each area of law would include identification of existing training and practice guides, preparation of additional training and practice guides if necessary, establishment of a system of resource attorneys, training, meeting with firm leaders about increasing representation in the designated area of law, encouraging the participation of transactional attorneys, and setting goals for representation.

2. Beginning in 2017, develop statewide pro bono practice groups to share ideas and information

Develop pro bono practice groups, networks, and/or listservs where lawyers in different firms and departments with interest in providing pro bono service in similar substantive areas can easily contact each other to share ideas and information. This could serve as a platform where lawyers new to the substantive legal area could quickly reach an experienced practitioner for guidance. This might also be a forum where lawyers in different firms and legal departments could connect and develop cross-organizational teams to take on specific matters. Start with family law.

3. Beginning in the first half of 2018, hold an annual pro bono summit/fair

Beginning in the first half of 2018, hold an annual event, similar to the Pro Bono Summit held on June 28, 2016 sponsored by the Delaware Supreme Court and the Carpenter-Walsh Delaware Pro Bono Inn of Court, where organizations

providing pro bono services to the poor (e.g., DVLS, LSCD, CLASI, OCA), law firms, law departments, and individual lawyers gather to share best practices, identify upcoming needs and opportunities for service, create teams to work on specific pro bono matters, exchange the latest versions of training materials, find a mentor for specific type of pro bono matter, celebrate successes, and recognize individuals and organizations who are leaders in creating a culture of pro bono service. The pro bono summit could focus on family law in 2018 and consumer law in 2019. The key here is to create and sustain dialogue, collaboration and teamwork across law firms, corporate law departments, government agencies, the courts and the service providers in a collegial manner. The Pro Bono Inn could assist in developing the programming for such an event.

4. Create a pro bono challenge for attorneys to meet a clear, measurable, and collective pro bono target

Set one or more clear, measurable and collective pro bono targets for the members of the Delaware bar. For example, a challenge might be: over the next three years, members of the Delaware bar will individually or collectively (as a firm, as a law department) donate [XXX] hours of time to the provision of legal service to the poor. Law firms, law departments, and individual attorneys wishing to participate in the challenge could voluntarily report their hours to the Court or the Pro Bono Committee. Progress could be shared annually at the Bench and Bar and perhaps at an annual Pro Bono Fair. To ensure the success of a pro bono challenge, effective marketing and bench and bar leadership will be important.

5. By the end of 2018, create a single source for pro bono information and increase awareness of the variety of pro bono opportunities and assistance available

Create a central, consolidated, non-territorial database (similar to what is available in other jurisdictions) of helpful information for attorneys performing pro bono work. Attorneys who perform pro bono work should have free access to this database. The database should include, among other things, a calendar with upcoming pro bono training sessions, information about the different types of pro bono opportunities available, training materials, and forms and templates. In states like Massachusetts and Minnesota, one or more legal service agencies and a bar association work together to create and maintain these databases. The Delaware Bar Foundation recently signed a contract with Pro Bono Net to create an online legal services portal for Delaware. The portal is expected to provide access to information and resources for pro bono opportunities.

Routinely and effectively remind all Delaware lawyers regarding the existence of such a database and the related opportunities and resources. Make attorneys aware of the diversity and breadth of pro bono opportunities available. Make attorneys aware of the amount of resources and help available. OCA and DVLS have experienced people to answer the questions of their volunteers. DVLS also has training binders with helpful information and forms for custody and visitation cases, protection from abuse cases, and wills. The OCA has helpful information and materials online for their volunteers. The Promoting Representation Subcommittee is working on the creation of training binders in the other area of greatest need, consumer debt. Scanned versions of all of these materials should be included in or linked to the pro bono information database.

Educate attorneys that even in the absence of malpractice insurance from an employer, there are ways to provide pro bono legal services without the risk of malpractice liability. Attorneys who volunteer for a legal aid organization like DVLS will be covered by those organizations' professional liability policies. Attorneys who volunteer for the OCA are indemnified from liability for acts within the scope of their appointment, unless the act or omission was done with gross or wanton negligence, maliciously, or in bad faith.²⁶ Attorneys who are appointed by the Family Court to represent an indigent parent in dependency and neglect proceedings are entitled to qualified immunity under the Tort Claims Act.²⁷ It is also important to note that malpractice claims related to the provision of pro bono services are rare. A Westlaw search did not reveal any Delaware cases in which an attorney who provided pro bono services was successfully sued for malpractice.

6. Remind the bar early and often of areas of critical need and ways to address those needs

Routinely and effectively remind all Delaware lawyers of areas of critical unmet need and how Delaware lawyers can address those needs (either with their time or financial contributions to the Combined Campaign for Justice). Publicize pro bono opportunities as far in advance as possible so that lawyers can schedule the event before their calendars fill with other matters.

²⁶ 29 Del. C. § 9008A.

²⁷ *Hanson v. Morton*, 67 A.3d 437, 442 (Del. 2013).

7. Devote more time to consideration of a legal technician program

Even if pro bono services increase, there will still be people with legal needs who cannot afford an attorney. Although indigent people may not have a lay person represent them in court, non-lawyer officers or employees of artificial entities may represent those entities in the Justice of the Peace Court. To address the access to justice gap, an increasing number of states are considering the adoption of legal technician programs. Legal technicians have been described as the nurse practitioners of the legal profession. The subcommittee has investigated the legal technician program of Washington, which leads the legal technician movement, and believes there should be further investigation of a legal technician program in Delaware.

In an order dated June 15, 2012 and effective on September 1, 2012, the Supreme Court of Washington adopted Admission to Practice Rule 28, the Limited Practice Rule for Limited License Legal Technicians (“LLLTs”). This order, Admission to Practice Rule 28, Regulations of Admission to Practice Rule 28, and the Rules of Professional Conduct for LLLTs are available at <http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians>.

LLLTs are currently limited to certain types of family law matters (e.g., child support modification, dissolutions, some domestic violence actions), but in the future they may also be able to work in other areas of law such as elder law and landlord/tenant law. In the area of family law, LLLTs may: (i) obtain facts and explain the relevancy of those facts to the client; (ii) inform the client of deadlines, service and filing procedures, documents that must be filed, and how the matter is likely to proceed; (iii) provide the client with self-help materials prepared by a Washington lawyer or the LLLT Board; (iv) review and explain documents the client has received from the opposing party; (v) select, complete, and file approved forms; (vi) perform legal research; (vii) draft legal letters and documents beyond the approved forms if the work is approved by a Washington attorney; and (viii) advise the client of documents that may be necessary for the case and assist the client in obtaining those documents.²⁸

²⁸ Admission to Practice Rule 28(F), available at http://www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LLLT/APR%2028%20and%20Regs%203-31-2015.ashx.

LLLTs cannot represent clients in court or negotiate on behalf of their client with another party.²⁹ LLLTs may work in a law firm, open their own office, or own a minority interest in a firm with a lawyer. A thirteen-member LLLT Board oversees LLLTs.³⁰

Educational requirements for LLLTs include: (i) an associate level degree or higher; (ii) 45 credit hours of core curriculum instruction in paralegal studies as approved by the LLLT Board with instruction to occur at an ABA approved law school or ABA approved paralegal education program³¹ (1 credit hour = 450 minutes of instruction); and (iii) completion of the practice area curriculum (5 credit hours in basic domestic relations subjects and 10 credit hours in advanced and Washington specific domestic relations subjects).³² There is a limited time waiver of the associate level degree and core curriculum requirements if an applicant can show that they have passed a LLLT Board approved national paralegal certification exam, have an active Board approved national paralegal certification, and have 10 years of substantive law-related experience supervised by a licensed attorney.³³

LLLTs must also: (i) be at least eighteen; (ii) pass the legal technician exam; (iii) pass a character and fitness review, which includes a background check; (iv) complete 3,000 hours of paralegal experience involving substantive legal work in any practice area under the supervision of a lawyer; (v) demonstrate financial responsibility (professional liability insurance or proof of indemnification if employer is a government entity); (vi) pay an annual license fee; and (vii) complete 10 hours of approved continuing education each year.³⁴ The LLLT educational and licensing requirements are intended to be less than \$15,000.

Washington spent a number of years developing the LLLT program. There was initially resistance to the LLLT program, with some attorneys concerned about loss of business and others concerned about the quality of work provided by LLLTs. According to Steve Crossland, chair of the Washington Limited License Legal Technician Board, and Paula Littlewood, executive director of the Washington State Bar Association, there is increasing acceptance and enthusiasm

²⁹ Admission to Practice Rule 28(H).

³⁰ Admission to Practice Rule 28(C).

³¹ Washington expanded this to schools approved by the LLLT Board because parts of the state lack ABA-approved paralegal programs.

³² Admission to Practice Rule 28(D); Regulation 3(B).

³³ Regulation 4.

³⁴ Admission to Practice Rule 28(D), (E); Regulation 5(D), 11(A), 12(A), 14(A).

for the program in Washington. Crossland and Littlewood recommend an open and transparent process for consideration of a legal technician program. Based on our conversations with members of the Delaware legal community about legal technicians, there is a general lack of awareness about the existence and possible role of legal technicians. Crossland and Littlewood also indicated that strong court support is critical for adoption of a legal technician program.

Since the first LLLT exam in June 2015, 14 people have completed the program and are licensed in Washington.³⁵ The program is still in its early stages. At this point, it is difficult to tell how effective the program will be in addressing the access to justice gap. As the program continues, there will be additional data that will shed more light on how well the program operates. The Public Welfare Foundation recently completed a preliminary evaluation, which is available at <http://www.publicwelfare.org/new-ways-to-increase-access-to-justice/>, of Washington's LLLT program.

Given the early stages of the Washington LLLT program (which is still well ahead of any other state legal technician programs), the current lack of data on the effectiveness of the program, the current lack of awareness in the Delaware legal community about legal technicians, and the potential concerns of the bar, we recommend further investigation of a legal technician program. We recommend that the pro bono leadership committee to be established monitor the progress of legal technician programs in Washington and other states. Depending on the progress and success of those programs, the pro bono leadership committee can create a new subcommittee to examine the possible adoption of a legal technician program. Subcommittee members should include Family Court judges and practitioners (as family law is an area of need and where the Washington LLLT program has started), at least one paralegal (as paralegals are a likely source of legal technicians), and representatives from Delaware Law School and other law schools in the region. Among other things, the subcommittee could increase awareness of legal technicians in the Delaware legal community, consider adoption of a modified version of the Washington LLLT program (some states have expressed concern that the educational and practice requirements are too rigorous or that legal technicians should have additional powers like the ability to negotiate on behalf of their clients), explore a regional approach to an affordable curriculum

³⁵ Jessica Prokop, *Legal technicians provide family law assistance*, The Columbian, June 27, 2016, <http://www.columbian.com/news/2016/jun/27/legal-technicians-provide-family-law-assistance/>.

and standards for legal technicians, and consider the regulation of and rules for legal technicians.

THE EXHIBITS TO THIS REPORT ARE
AVAILABLE AT:

<http://courts.delaware.gov/supreme/access.aspx>