

## 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.