



**DOCUMENTING
THE JUSTICE GAP
IN MICHIGAN
Update**



*Prepared by
the State Bar of Michigan in Collaboration with
Michigan's Legal Services Corporation Funded Providers*

Spring 2012 (Updated: Spring 2017)

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I. 2012 Alert – New Developments

This updated “Documenting the Gap” report looks at those Michigan legal aid programs that are funded by the Legal Services Corporation. It provides a comparison of the unable to serve data from 2005 to 2009 and is helpful to see that there continues to be a significant gap between the civil legal needs of the poor and the capacity of the legal system to meet those needs. Those whose attention is directed to this problem must be alerted to three new and even more alarming factors that have occurred since the 2009 data was collected for this report:

- The effects of the recession on Michigan’s resident have dramatically increased the number of people in poverty. **The number of persons who qualify for free legal aid** because their annual income is below 125% of the federal poverty limit (\$25,525 in 2017 for a family of three) **has increased about 44% in Michigan from 2000 to 2015 to almost 2 million persons.** The poor economy also brings about an increase in certain legal problems; Michigan’s high foreclosure rate has caused the need for legal help in foreclosure prevention to increase and is just one example of how a bad economy creates legal problems that, if unaddressed, can lead to family upheaval and community erosion.
- **The impact of recent Legal Services Corporation funding cuts remain challenging.** LSC funding was cut 4% for 2011 and 15% for 2012 and LSC funded programs also faced decreases in state funding. This caused them to lose over 40 staff, including 25.5 lawyers, 3 paralegals and 15.5 support staff.² While one-time additional funding has assisted in restoring the number of lawyers and number of cases to 2011 levels, staffing levels and case levels can be expected to drop again without ongoing sustainable funding.
- **LSC funded programs faced a 2.8% funding cut in 2017 from 2015.** These cuts have a very serious impact on legal services programs in the state – more layoffs and office closures and further reductions in service delivery may occur. The capacity of LSC organizations to support their pro bono programs will also be significantly challenged.

The report that follows includes information on stark difference between the ratio of lawyers for people in the general population and the ratio of legal aid lawyers for poor persons that existed in 2009. Modified to reflect the recent staffing cuts and the increase in poverty population, those figures show that **there is now one lawyer for about every 276 people in the general population, but only one legal aid lawyer for every 10,282 poor persons³.** A chronically challenging situation has now turned to crisis status.

II. Introduction

Since the creation of the Legal Services Corporation by Congress in 1974, four national studies

¹ The information in this document is an abridged and updated version of the LSC “Documenting the Justice Gap in America” report issued in September 2009.

² The loss of access to justice for Michigan’s poor population is much greater than described in this report because the civil legal aid community is larger than the LSC funded programs. The Michigan State Bar Foundation provides funding to the LSC programs and to some of the other legal aid programs whose funding has also been cut. .

³ Poor persons is defined as a person or family with income at or below 125% of Federal Poverty Guidelines.

have demonstrated that the poor are seriously underrepresented in their civil legal needs. The degree of unmet need in Michigan has never specifically been documented through a rigorous, social science methodology, but comparisons to studies throughout the country, as well as figures showing the tremendous disparity between the number of lawyers available for the general population and the lawyers available for the poor, have provided some indication that there is indeed an enormous gap here.

With the publication of results of the fourth national study concluded in 2009 and the availability of Michigan information used in that study, Michigan's justice gap can be measured more accurately.

The assessment leads to the conclusion that the civil justice gap in Michigan is still an extremely serious matter that calls for a renewed commitment to broad resource development for Michigan civil legal aid providers.

II. Analysis of the National and Michigan Data

The first significant report in 1980 found that over 40 percent of the nation's poor lived in areas not served by legal services programs. Because of this, LSC identified a goal of providing at least a minimum level of access to legal aid in every county in the nation. "Minimum access" funding would not be sufficient of itself, but would be a preliminary foundation upon which other resources could be built. The minimum access funding was achieved with a FY 1981 appropriation of \$321,300,000.

In 1994, the American Bar Association released the results of the Comprehensive Legal Needs Study, conducted through a well-established, rigorous social science methodology. That study documented the existence of a major gap between the civil legal needs of low-income people and the legal help they received. Among its findings were the following:

- Nationally, on the average, low-income households experienced approximately one civil legal need per year.
- Only a small portion of these legal needs results in legal help of any type. Help was received from a legal aid provider or the private bar for roughly one in five of all problems identified.

In August 2005, the Legal Services Corporation issued *Documenting the Justice Gap in America – The Current Unmet Civil Legal Needs of Low-Income Americans*. Accompanied by an overview and a press release, the 33-page report offered current data to show that the justice gap identified in the 1994 American Bar Association study continues at the same – or higher – order of magnitude, with help from legal aid providers or the private bar available for only one in five problems identified. Not even 80 percent of the civil legal needs of the poor are being met.

The 2009 LSC report, which updated and expanded LSC's groundbreaking 2005 report, showed that a continuing, major justice gap exists in our nation, and for every person helped by LSC-funded legal aid programs, another person is turned away. The 2009 report replicated the methodologies and analysis used in the 2005 report, which included 1) information collected by LSC grantees over a two-month period in 2009 to document the clients that came to their offices that the programs could not serve due to lack of resources; 2) an analysis of seven studies

undertaken from 2007 – 2009 in individual states about the civil legal problems faced by their low-income residents; and 3) the total number of legal aid lawyers compared to the total number of attorneys providing civil legal assistance to the general population in the country. Additional data was also collected on the number of unrepresented litigants.

Notable findings from the 2009 Justice Gap Report:

- **For every person LSC helped, one was turned away because LSC lacked the staff and resources to assist them.**
- **Few legal problems of low-income people are dealt with by a legal aid attorney or private attorney.**
- **In 2008, over 35% of cases closed by LSC organizations involved family law issues, 25% involved housing (other than foreclosure), and 13% involved consumer problems.**
- **2007 data estimates that there is one legal aid attorney available for every 6,415 low income persons with incomes at or below 125% of federal poverty guidelines.**
- **In contrast, 2007 data estimates that there is one private attorney available for 429 people above 125% of federal poverty guideline.**

A. Unable to Serve Report

Despite the remarkable increase in support from non-federal sources, the national average shows that for every client served in 2009 by an LSC-funded program, at least one person who sought help was turned down because of insufficient resources. The LSC count found that almost one million cases (944,376) per year were being rejected because programs lacked sufficient resources to handle them. The 2009 Justice Gap Report also notes that the data is under-inclusive because it was collected from LSC programs only; it includes people who received some but not all services needed; and it does not count people who didn't ask for help because they don't recognize their situation as a legal problem, don't know about legal aid, or have other barriers to requesting service.

How do Michigan's low-income citizens fare in the justice gap? For the time period from March 16 through May 15, 2009, Michigan's LSC-funded programs⁴ voluntarily provided their "Unable to Serve" reports to the Justice Initiatives Division of the State Bar of Michigan. The results of the report were staggering. The figures show that while Michigan's legal services organizations were able to provide some level of legal assistance to almost two-thirds of those that asked for help, the organizations had to turn away more than a third of all persons that asked for legal help in 2009. Of the two-thirds of clients that were provided some level of legal assistance by the legal services organizations, almost half of those clients did not receive the level of legal assistance that was needed to resolve the case because the legal services organizations did not have the necessary resources to do so⁵.

Each day, hundreds of people with significant legal needs are denied civil legal services because of the

⁴ Michigan's 2017 LSC-funded programs include Lakeshore Legal Aid, Legal Aid of Western Michigan (LAWM), Legal Services of Eastern Michigan (LSEM), Legal Services of Northern Michigan (LSNM), Michigan Advocacy Program (MAP), and Michigan Indian Legal Services (MILS).

⁵ In 2009, Michigan's legal services providers were "Unable to Serve" 33.92% and "Unable to Fully Serve" 32.77% of those requesting legal help, resulting in a total of 66.69% of people asking for help but not receiving any legal assistance or the level of legal assistance needed to resolve their legal issue(s).

lack of resources of legal services organizations. The 2009 survey of Michigan's LSC funded programs showed that the lack of legal services is particularly acute for those with housing problems where 63% of those who needed help with eviction and foreclosure defense or help with obtaining legally required repairs did not receive the level of service needed to resolve their issues. In an even more egregious situation, 80% of those who needed legal help with employment issues did not receive the level of representation needed to resolve their legal issues. These figures do not even count poor persons who did not seek legal help either because they did not recognize their situation as one open to a legal solution, or were not aware that their local provider may handle that kind of case.

Michigan's legal services providers should be credited for the overall higher levels of service they are able to provide as compared to national figures, with two-thirds of those that ask for help receiving some level of service in Michigan, as compared to only one-half that ask for help nationally. This may be attributed in part to the service delivery innovations that came from a strong state planning process that improved technology, strengthened pro bono services, coordinated and regionally centralized intake services, and secured funding for a continued state support system. The strong delivery system may also be due to the fact that Michigan has been successful in expanding its non-federal funding through aggressive state, local, foundation, and private funding efforts like that obtained through the Access to Justice Campaign. The Campaign supports over 40 civil legal service providers, only 6 of which receive federal LSC funding.

B. 2006-2009 Analysis and Comparison of State Legal Needs Studies

Over the past four years, seven states conducted large-scale, survey-based studies to determine the kinds of legal problems experienced by low-income residents and the extent to which these needs are being met. The seven studies were conducted by independent research entities. The states that produced the studies were Virginia (2007), Utah (2007), Wisconsin (2007), Nevada (2008), Alabama (2009), Georgia (2009), and New Jersey (2009). All studies were conducted with precise social science survey standards.

The seven state studies add to a body of knowledge that has been expanding since the 1994 ABA study. The methodologies of the studies were compared to one another to determine the extent to which it is possible to draw nationally-applicable conclusions from them. The findings were also compared to those in the 1994 ABA study to assess the continuing validity of the 1994 findings. The consistency of findings from state to state reinforces their validity and indicates that they are likely to be predictive of needs at the national level. Analysis of the seven state studies shows that their findings are broadly consistent with one another. The consistency of findings from state to state reinforces the validity of the studies and likely to be an accurate prediction of the legal needs of the poor at the national level.

Each of the seven state legal needs studies analyzed in the 2009 Justice Gap Report provides a detailed picture of the unmet legal needs of our nation's poor. The studies confirm that only a small fraction of the legal problems experienced by low-income people (less than one in five) are addressed with the assistance of either a private attorney (pro bono or paid) or a legal aid lawyer.

Key points of comparison are:

- **The seven recent states studies found that low-income households experience a per-household average of legal needs ranging up to three legal needs per year.**
- **All seven state studies found that only a small fraction of the legal problems experienced by low-income people (less than one in five) is addressed with the assistance of a private or legal aid lawyer.**
- **Those studies that ask respondents to rank the importance of the problems they experienced show that even if the legal problems included are limited to those considered to be “very important” or “most serious” or that “caused trouble” by the household experiencing it, a large majority of the problems are not addressed with the help of lawyers.**

The key finding of the seven recent state study findings are consistent with the findings in the nine studies reported in the 2005 Justice Gap Report and the 1994 ABA study.

C. Attorneys per capita Legal Aid Lawyers Compared to Private Lawyers

Another perspective on the justice gap is provided by examining the numbers of legal aid attorneys serving the nation’s low-income people. For the 2009 Justice Gap Report, ABA and LSC staff collected data on the number of legal aid attorneys in the country in 2007. The number of legal aid attorneys included attorneys with both LSC and non-LSC programs. The national study counted all legal aid lawyers (not just LSC-funded lawyers) and used 125% of federal poverty guidelines as the definition of “low-income.” In 2007, there were 4,231 attorneys in LSC-funded programs and an estimated 3,700 attorneys in organizations that did not receive LSC funding, resulting in a total of 7,931 legal aid attorneys in the U.S. In 2007, 50,876,000 people were estimated to be living at or below 125 percent of poverty guidelines, resulting in a ratio of one legal aid attorney per 6,415 low-income people.

For comparison, there were a total of 1,130,136 attorneys in the U.S. in 2009. The ABA estimates for the number of attorneys in private practice were obtained for 2007, which totaled 849,862, or about 75% of the total amount of attorneys. An estimate of the number of attorneys providing personal legal services to the general population used the ABA’s information that 68% of attorneys in private practice are solo practitioners or are in firms with ten attorneys or fewer. Attorneys in this demographic historically, according to the ABA, specialize in meeting the personal legal needs of private individuals and families. This analysis indicates that there are roughly 577,906 attorneys in the U.S. providing personal legal services to the general population. Therefore, the approximately 577,906 attorneys providing personal legal services to the general population of 247,826,000 in 2007 resulted in a ratio of one attorney per 429 people in the general population. The ratio of attorneys for the general population is 15 times greater than the ratio of legal aid attorneys to the low-income population they serve. Needless to say, the difference between the level of resources available to the general population and those available to the low-income population is enormous.

Using recent State Bar of Michigan data, in 2017 there were a total 35,193 lawyers practicing in Michigan. To maintain consistency with the ABA methodology, 75% of the total number of lawyers in Michigan was estimated to be in private practice, which equaled 26,395, and 68% of those

attorneys were estimated to provide personal legal services to the general population, which equaled 17,948. With an estimated 9,698,396 Michigan residents, there was one attorney for every 540 Michigan residents in the general population.

In 2015, the Michigan State Bar Foundation (MSBF) estimated that 190.8 full-time attorneys were employed by its grantees. The State Bar estimates that an additional 94 attorneys were employed at the ATJ programs that were not MSBF grantees. Consequently, there were 285 "legal aid" attorneys in Michigan available to provide services for an estimated 1,961,687 people living at or below 125% of the federal poverty level, resulting in one legal aid attorney for every 6,883 low-income people in Michigan. The ratio of attorneys to Michigan's general population, 1:540, versus the ratio of "legal aid" attorneys to Michigan poor population, 1:6,883, is striking.

Nationally, the ratio of attorneys for the general population is about 15 times greater than the ratio of legal aid attorneys to the low-income population they serve. In Michigan, the ratio of attorneys for the general population is about 13 times greater than the ratio of legal aid attorneys to the low-income population they serve. While the legal needs of the poor do not differ substantially from those of middle income, the resources available to them represent only a small fraction of those available to the general public.

III. Conclusion

The challenges confronting the nation, as well as Michigan, in providing equal access to justice are large and complex. The serious shortage of civil legal assistance identified in the 2005 and 2009 Justice Gap Report have been exacerbated by the sharp increase in Michigan's poverty population and the disturbing loss of capacity caused by recent funding cuts.

We have a duty to communicate to our Congressional representatives what is required of LSC funding levels to ensure that economical and effective legal assistance is provided and there is necessary access to civil legal assistance. The federal government plays a vital role in providing a pathway to equal justice for all, consistent with its role in maintaining the formal civil justice system and providing an orderly forum for the resolution of disputes. LSC serves as the primary conduit for the federal government's share of civil legal assistance, supporting and ensuring a basic framework of civil legal aid providers throughout the country and it is more necessary now than ever to secure adequate federal funding from which to build a sufficient legal and pro bono delivery system in Michigan and throughout the United States.