

Unequal Access to Justice:

*A Comprehensive Study
of the Civil Legal Needs
of the Poor in Indiana*



A Report by
Indiana Legal Services, Inc.
Indiana Bar Foundation
Indiana State Bar Association

2008



Executive Summary

This report, “Unequal Access to Justice: A Comprehensive Study of the Civil Legal Needs of the Poor in Indiana (2008)” (hereinafter, the “Final Report”) represents the culmination of the Legal Needs of the Poor Study (the “Study”) jointly undertaken by Indiana Legal Services, Inc. (“ILS”), the Indiana Bar Foundation (“IBF”), and the Pro Bono Committee of the Indiana State Bar Association (“ISBA Pro Bono Committee”) (collectively the “Study Sponsors”) in 2007 and 2008.¹

The Study demonstrates that the greatest legal needs of the poor are in the areas of consumer finance, family law, housing, public entitlements, and health. Despite the variety of programs, services, and individuals providing legal services to low-income Hoosiers free of charge or at substantially reduced rates, the demand for these services far exceeds the supply.² This is particularly true in the area of family law.

The Study process included four phases. Phase I was a telephone survey, conducted by Survey Research Center (“SRC”) at IUPUI, of approximately 1,200 low-income Hoosiers, *i.e.*, individuals below 125% of federal poverty level

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the Indiana State Bar Association or the Board of Directors of the Indiana Bar Foundation and, accordingly, should not be construed as representing the policy of either organization.

The information obtained from all sources in the Study indicates that the current greatest legal needs of the poor are in the areas of consumer finance, family law, housing, public entitlements, and health. Almost every component of the Study points to the conclusion that consumer finance and family law are currently the primary legal needs of the low-income population.

(“FPL”) and individuals between 125% and 200% of FPL. Phase II consisted of questionnaires to a broad-based constituency, which included private and pro bono attorneys, judges, clerks of court, pro bono plan administrators, service providers, ILS employees, ILS Board Members, ILS clients and potential clients, and other interested persons such as employees of social service and government agencies assisting the poor. Phase III consisted of focus groups and priority-setting meetings with stakeholders around the state. This Final Report is Phase IV. The Conclave on the Delivery of Pro Bono Services in Indiana (“Conclave”), held on April 25, 2008, was also a concurrent part of the Study process.

A comparison of the 2008 data from low-income Hoosiers with data collected by ILS in 1999 demonstrates that there have been significant increases in reported problems relating to utilities, housing, consumer finance, problems with Medicare and Food Stamps, and problems finding or keeping employment. Importantly, the state’s low-income population increased between 1999 and 2008 – from 559,484 to 757,813 Hoosiers living below the poverty level, a 35% increase, and from 1,518,047 to 1,820,046 below 200% of FPL, an almost 20% increase. By comparison, Indiana’s population overall grew by 6.8% between 1999 and 2007.

Legal problems were more prevalent among the poorer respondents. Eighty-six percent (86%) of the respondents with incomes below 125% of FPL reported at least one legal problem, while 70% of respondents with incomes between 125% and 200% of FPL reported at least one legal problem. The differences were particularly large in the categories of utilities, debt/consumer finance, health care, and public entitlements. In terms of specific problems, the poorer respondents reported not receiving child support, suspension of a child from school, and unfair school policies significantly more often than the respondents with incomes between 125% and 200% of FPL. Some problems, including property tax problems, foreclosure or the threat of foreclosure, and Section 8 housing eligibility-related problems were more frequently reported among respondents with incomes between 125% and 200% of FPL.

The information obtained from all sources in the Study indicates that the current

Information gathered from pro bono plan administrators and by ILS during preparation of this Final Report . . . suggest[s] that as many as 62% of those income-eligible applicants applying to plan administrators, and 75% of those income-eligible applicants applying to ILS, were unable to receive attorney representation necessary to fully meet their legal needs.

greatest legal needs of the poor are in the areas of consumer finance, family law, housing, public entitlements, and health. Almost every component of the Study points to the conclusion that consumer finance and family law are currently the primary legal needs of the low-income population.

Similarly, the fastest-growing legal needs of the poor are in the areas of consumer finance, housing, and family law. Given the current economic outlook, it seems likely that these needs will continue to increase and that a great deal of legal assistance will be needed. Housing was rated the second fastest-growing problem by pro bono plan administrators, and the third fastest-growing problem by responding attorneys. Responses indicate that evictions and foreclosures were already a major problem for low-income Hoosiers at the time of the survey, and all evidence indicates those problems have likely increased since. Every one of the pro bono administrators responding to the survey included family law in their list of the five fastest-growing legal problems of the poor. Over 60% of judges and clerks, and approximately 65% of attorneys, identified family law in their list of the five fastest-growing legal problems of the poor; both groups ranked it second only to consumer finance.

In order to more fully understand the legal needs of the poor, additional data should be collected about immigrants, people of Limited English Proficiency (“LEP”), farm workers, and victims of domestic violence. Although the legal needs of these individuals were addressed in the Study, it was difficult to directly reach these groups of individuals through surveys, questionnaires, or even focus groups.

The most obvious reason that the legal needs of the poor are not being met is that there are not enough attorneys serving this population. The ratio of attorneys to Hoosiers living below 125% of FPL is approximately *one attorney per 8,850 potential clients*.³ If Hoosiers with incomes between 125% of FPL and 200% of FPL are also considered, the ratio increases to approximately *one attorney per 16,100 potential clients*. In contrast, the ratio of private attorneys providing paid civil legal services to the general Indiana population was found to be about *one attorney*



Executive Summary

per 688 potential clients. Information gathered from pro bono plan administrators and by ILS during preparation of this Final Report corroborates this discrepancy, suggesting that as many as 62% of those income-eligible applicants applying to plan administrators, and 75% of those income-eligible applicants applying to ILS, were unable to receive attorney representation necessary to fully meet their legal needs. The insufficient number of pro bono and public service attorneys representing the poor in comparison to the need for legal assistance was a theme throughout the responses to the various surveys, questionnaires, and focus groups making up the Study. Attorney responses indicate that this is a particularly serious problem in the area of family law.

Information obtained during the Study suggests there are several reasons for the relatively small number of private sector attorneys who represent low-income Hoosiers on a pro bono basis. Many attorneys struggle to maintain a profitable practice (particularly in rural areas and small towns), are reluctant to take a case outside of their area of expertise, fear malpractice suits, fear involvement in never-ending cases (particularly in family law), and identify a general lack of incentives to provide pro bono representation.

Other barriers to providing legal services to Indiana's low-income population include insufficient coordination between civil legal service providers and the pro bono districts, insufficient coordination between civil legal service providers and social service providers, lengthy waits for legal assistance, conflicts of interest created when there is an insufficient number of providers to handle the legal needs of low-income individuals in an area, and a number of client-related factors. Perhaps the most important client-related factor identified by respondents is a lack of information; fully 60% of those contacted by telephone indicated they were unaware of free legal services programs in Indiana. Other client-related factors that respon-

As a result of the information obtained through this Study, the Sponsors recommend that Indiana should now undertake a strategic planning process . . . to develop a comprehensive set of detailed recommendations and statewide plan of action to better meet the needs of the poor.

dents identified are insufficient knowledge and information, delays in seeking help, lack of transportation, lack of telephone service, immigration status, LEP, inability to take time off from work, difficulties with paperwork, domestic violence, and having an income slightly too high to be eligible for legal aid and pro bono services.

As a result of the information obtained through this Study, the Sponsors recommend that Indiana should now undertake a strategic planning process, considering the information and data obtained in the Study and reported in this Final Report, to develop a comprehensive set of detailed recommendations and statewide plan of action to better meet the needs of the poor. In connection with the strategic planning process, the Sponsors further recommend the creation of a statewide Access to Justice Commission which should include representatives from the judiciary, the executive branch, the legislative branch, the IBF, the Pro Bono Commission, the ISBA Pro Bono Committee, existing legal service providers, the private bar, the law schools in Indiana, social service providers whose clients are low-income, and other interested parties. An Access to Justice Commission could function as an umbrella organization, uniting and coordinating the efforts of the various entities working to address the legal needs of the poor. The Access to Justice Commission's initial charge should include evaluating the current system and initiating a strategic planning process to coordinate and thereby improve the efficacy of our efforts to meet the legal needs of the poor. Because such a process will necessarily involve a critical review of the existing patchwork of methods for meeting the legal needs of the poor, the Commission should involve all of the various stakeholders, but its composition and operation should demonstrate an independence from any one entity within the existing system.



Executive Summary

Endnotes

¹ The Final Report is available on all of the Study Sponsors' websites: Indiana Legal Services, Inc., www.indianajustice.org; Indiana Bar Foundation, www.inbf.org; and the Indiana State Bar Association, www.inbar.org.

² The "legal" needs identified and discussed in the Final Report are not limited to those resulting from entanglement in the court system, as most individuals' legal problems begin before the initiation of a court case. Virtually all of the issues identified in the Report, if not directly involving legal action, could eventually rise to involvement with the court system; many of these issues could be addressed earlier through preemptive counseling and assistance, or preventive education.

Additionally, "pro bono," or legal assistance provided at no cost to a low-income person by a member of the private bar, is only one means of addressing the legal needs discussed in the Final Report. For example, staff attorneys at Indiana's various civil legal service providers (including ILS) provide representation at no cost to low-income people, but because those attorneys are paid for that work, they are not included in the traditional definition of "pro bono." Similarly, in addition to traditional legal representation, the legal needs identified in the Final Report may also be addressed by programs that facilitate self-representation, preventive educational programs, and other innovative initiatives intended to help meet the legal needs of the poor.

³ These statistics were derived as follows: ILS currently has 51 staff attorneys statewide. Including public interest attorneys from other civil legal service providers that directly represent low-income individuals, there are almost certainly fewer than 75 attorneys statewide who are employed to represent the poor free of charge on a full-time basis. In terms of pro bono work performed by the private bar, the total number of hours reported by pro bono districts to the Pro Bono Commission for 2007 was 33,101 hours. This number is almost certainly an underestimate; if it is increased by 50% and converted to full-time attorney equivalents, the result is about 28 full-time pro bono attorneys. Assuming that the legal assistance provided by the four Indiana law schools' clinics to low-income clients equates to 10 full-time public interest attorneys, the total supply of free attorneys available to the poor in Indiana would be the equivalent of 113 full-time attorneys. We divided the approximately 1,000,000 Hoosiers living below 125% of FPL by 113. We also added in the additional Hoosiers living between 125% and 200% of FPL for the second statistic.



Indiana Legal Services, Inc.

151 N. Delaware Street, Suite 1640
Indianapolis, IN 46204
317-631-9410
www.indianajustice.org



230 E. Ohio Street, Suite 400
Indianapolis, IN 46204
317-269-2415
www.inbf.org



INDIANA STATE BAR ASSOCIATION

One Indiana Square, Suite 530
Indianapolis, IN 46204
317-639-5465
www.inbar.org