

# Innovations in Civil Legal Services

Co-Sponsored by  
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The Legal Counsel for the Elderly, Inc., a nonprofit agency sponsored by the AARP, is a national support center specializing in the delivery of legal services to older persons.

**Innovations in Civil Legal Services Workshop**  
**Thursday, November 13, 2003**  
**1:30 PM to 3:00 PM**

**Agenda**

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**1:30 PM – 1:36 PM**                      **Introduction by Patti Pap, Jan May, & Monica Holman**

**1:36 PM – 1:50 PM**                      **Raun Rasmussen**  
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**Presentation: The Child Care Network Support Project**

**1:50 PM – 2:04 PM**                      **Mary Lee Hall & Clare Bressani**  
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**Presentation: Witness for Justice**

**2:04 PM – 2:18 PM**                      **Aurora Martin**  
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**Presentation: Inter-Program Diversity Committee**

**2:18 PM – 2:32 PM**

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**Presentation: Language Access Project**

**2:32 PM – 2:46 PM**

**Michele Hall Edwards**  
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**Presentation: e-Files**

**2:46 PM – 3:00 PM**

**Clare Maudsley**  
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**Presentation: Unlawful Detainer Assistance Program**

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# Innovation Description

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**Program Director:** John C. Gray

**Contact Person:** Sarah Dranoff

**Subject Area:** Child Care/Community Development

**Project Title:** Child Care Network Support Project

A. **Problem:** There is an urgent need for affordable quality care. Home based child care businesses, licensed by the state, can help address this need. But running family day care is a daunting undertaking. Getting paid by city and state agencies is difficult; licensing problems recur; and landlords illegally try to evict child care providers for running a business out of their apartments. Child care networks --community based organizations that provide training and support for family day care providers-- can help. But these networks are underfunded, understaffed, and lack the legal expertise needed to address complex public agency regulations. And, they have their own legal and organizational needs. By helping child care networks help their providers, legal services offices can help improve the quantity of child care providers and the quality of the care they provide.

B. **Innovation:** SBLS developed a comprehensive program of training and legal support for home based child care providers and the networks that serve them. Training is provided on payment, licensing, housing, record-keeping and tax issues; litigation and advocacy is conducted on matters that have state-wide importance, including payment, licensing, and insurance; and transactional legal work is done to help networks incorporate and child care providers open day care centers.

- C. **Result:** More than \$150,000 in back payments for child care providers has been collected from city and state agencies; hundreds of child care providers and network staff have received training; payment, licensing and other agency policies state-wide have been modified; scores of licensed child care providers have been allowed to stay in business when eviction proceedings have been defeated and/or licensing disputes resolved; four new community based organizations that support child care providers have been incorporated as non-profit organizations and are flourishing; and South Brooklyn Legal Services staff are widely sought as city- and state-wide experts in the child care field.
- D. **Replication:** The work is easily replicable and funders (private and public) are willing to fund work that increases the quantity of child care providers and the quality of their care.
- E. **Materials Available:** Fact Sheets and Training Materials (all of which are State-specific);
- a. Raun Rasmussen, "Courts Say Tenants May Run Child-Care Centers From Apartments," *New York Law Journal*, Vol. 228; Pg. p. 4, col. 4, 23 September 2002. This article is reprinted with permission from the September 23rd edition of the New York Law Journal © 2002 NLP IP Company. All rights reserved. Further duplication without permission is prohibited.
  - b. David Ehrenberg and Raun J. Rasmussen, "How Legal Aid Programs Can Support Family Child Care," 36 *Clearinghouse Review* 334 (Sept.-Oct. 2002). This article was originally published by *Clearinghouse Review*. Reprinted with permission. © National Center on Poverty Law.
  - c. Stephanie Upp et al., "Child Care and Community Economic Development: Critical Roles for Legal Services", 34 *Clearinghouse Review* 3 (May-June 2002).

# **Courts Say Tenants May Run Child-Care Centers From Apartments**

**By Raun Rasmussen**

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Courts Say Tenants May Run Child-Care Centers From Apartments

BYLINE: By Raun J. Rasmussen

BODY:

In a recently reported decision, Housing Court Judge Jose Rodriguez held that a landlord could not enforce a "no commercial use" lease clause to stop a tenant from running a childcare business in her rent-stabilized apartment as long as she was licensed to provide such care. [n1]

Judge Rodriguez found that state Social Services Laws regulating home-based childcare prohibit the enforcement of private contracts that purport to prevent tenants from providing childcare in their apartments. The law in this area has evolved in response to the conflict between private residential leases, most of which contain commercial use restrictions, and the state's policy of encouraging home-based childcare.

There is a huge unmet demand for childcare services in New York state, fueled in part by the federal welfare reform legislation of 1996. The need for both childcare and employment opportunities for welfare recipients has caused policy makers to encourage people to enter childcare as a profession.

New York state promotes home-based childcare through its Family Day Care Provider Program, [n2] which allows people to become licensed or registered home-based childcare providers by completing a training program and arranging an inspection of their homes. Stringent regulatory provisions require detailed training, high staff-to-child ratios, emergency exits and fire safety measures, employee background checks, ongoing staff development, and other health and safety standards designed to insure that the childcare provided is both high in quality and safe.

For more than 40 years, courts have addressed the conflict between state-supported family daycare and "no commercial use" provisions in residential leases by analyzing whether the provision of childcare in an apartment constitutes a violation of a "substantial obligation" of

the tenancy sufficient to justify eviction. Recently, courts have held that public policy concerns, reflected in state laws regulating childcare, prohibit the enforcement of those private lease restrictions.

In 1949, in *Park East Land Corp. v. Finkelstein*, the Court of Appeals established the test that is still used to determine whether a commercial use violates a substantial obligation of a rent-regulated tenancy. [n3] The Court held that a tenant who violated a lease provision related to occupancy standards could not be evicted where no harm to the landlord or other tenants was claimed. Rent regulation permits evictions only "to prevent extreme hardship and inequity to the landlord, inconvenience to other tenants or outright illegal action by the tenant. [N]one of those extraordinary elements are present in this case."

A Brooklyn Municipal Court first addressed the home-based childcare issue in 1960 in *Diament v. Issacs*. [n4] Although the landlord failed to prove the tenant ran a childcare business in her apartment, the court concluded that, even if the landlord had proved that fact, "the court would still be of the view that it would not constitute a 'substantial' violation of the tenancy." Citing *Park East*, the *Diament* court noted that "[t]he test ... must be whether or not the use complained of materially affects the character of the premises. The ... care of three small children during the daytime hours, [does not] constitute[] a substantial violation of the tenancy."

The issue arose again in 1971 in *Vittorio Properties, Inc. v. Alprin*, [n5] where the landlord claimed that the tenant of a rent-controlled apartment violated a substantial obligation of the tenancy by caring for six children in her apartment, five days a week, for pay. Relying on *Park East*, the court stated that the test must be "whether or not the use and occupancy complained of materially affects the character of the building." Because, the court noted, residential premises were being used for music studios and doctors' offices without changing the character of the building, it "cannot be said that the use of the demised premises by respondent for the daycare of six small children for remuneration has changed or will change the character of the building."

The courts in *Diament* and *Vittorio* concluded that the provision of childcare in a residential apartment does not "materially affect the character" of the building, but neither cited authority for this amorphous test.

*Park East* and its progeny appear to require actual harm to the landlord or other tenants before a violation of a substantial obligation will be found. But the Court of Appeals rejected this formulation of the test in *Park West Village v. Lewis*. [n6] There, the tenant used her apartment to conduct a full-time psychotherapy practice. Although no harm to the landlord or other tenants was proved, the Court concluded that "the tenant's use of the apartment ... is completely at odds with the character of the complex as a whole."

The tenant argued that *Park East* required the landlord to demonstrate "actual harm." But the Court responded: "We note simply that proof of actual harm or lack thereof was only one of the many factors that was considered by the court in that case."

The business of caring for children in an apartment is arguably more similar to a residential use than is a psychotherapy practice, but it is hard to see how either "materially affects" the residential character of a building. Where the provision of childcare is involved, it seems likely that a landlord must plead some harm before a court will consider whether a tenant has significantly breached a substantial obligation of the tenancy.

In *Sorkin v. Cross*, the Court seemed to agree with this conclusion. [n7] There, the landlord claimed that the rent-stabilized tenants violated a substantial obligation of their tenancy by "operating a business consisting of caring for children, other than family, in their apartment." The Court cited *Park East*, *Park West*, and the strong public policy favoring childcare, and held that the care of children in an apartment is "consistent with residential use and serves to advance the public policy of this state. ... The landlord has not shown that the family daycare services herein disturb other tenants, damage the property, or overburdens utilities at the expense of the landlord. Where a tenant is otherwise in compliance with laws, codes, rules, and regulations, the conduct of family daycare ... does not constitute a violation of a substantial obligation of the tenancy.

Although all of the childcare decisions discussed above based their holdings on the "substantial violation" test set out in *Park East*, they also noted the strong public policy in favor of the provision of home-based childcare.

In *Quinones v. Board of Managers of Regalwalk Condominium I*, however, decided in 1998 by the Appellate Division, Second Department, public policy became the decisive factor. [n8] The court squarely held that the Social Services Law and regulations that encourage and regulate home-based childcare barred the enforcement of a contractual provision that prohibited a condominium owner from providing childcare in her apartment.

The *Quinones* court first considered whether Social Services Law 390 (12), which prohibits municipalities from enacting childcare regulations with respect to fire safety, sanitation or health that are more onerous than state law, should also prohibit enforcement of private contracts that restrict the provision of childcare in residential units. To decide this issue, the court relied on *Crane Neck Ass'n, Inc. v. N.Y.C./Long Island County Servs. Group*, in which the Court of Appeals addressed the legality of local restrictive covenants that prohibited group homes for the mentally retarded. [n9]

Based on the long-standing state policy favoring deinstitutionalization and community placement, the Court held that "even if the use of the property violates the restrictive covenant, that covenant cannot be equitably enforced because to do so would contravene a long-standing public policy favoring the establishment of such residences for the mentally disabled."

Although the statute the Court considered was expressly directed at discouraging local governments from excessive litigation against residences, it held that the public policy inherent in the legislation also reached private contracts.

Relying on Crane Neck, the Appellate Division in Quinones held that Social Services Law §390, and numerous other provisions of state law describing and supporting additional childcare services in the state, prohibit private contract restrictions on the provision of childcare in homes.

In his recent decision in Ocean Avenue Associates v. Samuel, Judge Rodriguez held that the reasoning and holding of Quinones also prohibit the enforcement of restrictions on the provision of childcare contained in rent-stabilized leases.

In Ocean Avenue, the landlord sued for eviction claiming that the tenant violated her rent-stabilized lease by "running a day-care center in the subject premises." Although the landlord claimed that the use of the apartment for daycare "destroys the residential character of the building," apparently no facts were pleaded to support such an allegation. The Court concluded, "Arguably, the care for children in small groups in a residential property is one of the only possible uses for remuneration that is in keeping with a building's 'residential character.'"

The decision also explicitly addressed the policy argument as it applies to rent-stabilized apartments. The Court quoted at length from the Social Services Law and regulations, and concluded, "[t]he language of the statute lends itself to no other possible reading but that the legislature anticipated, expected, and desired that the care of children would occur in private homes. ... If the legislature intended to exempt rent stabilized apartments it would and could have done so, the fact that there are no residential exceptions to this statute permits the construction that such childcare may take place in any apartment so long as the care provider is in compliance with the rules that permit the care in the apartment." [n10]

As a result, Judge Rodriguez concluded, "the care for children in a residence is permissible, whether or not a prohibitive lease clause exists." [n11]

More than 50 years of case law makes clear that providing childcare in a rent-regulated apartment, absent harm or injury to the landlord or other tenants, does not constitute a significant breach of a substantial obligation of the tenancy, nor does it adversely affect the "character" of a residential building.

Recent policy-based decisions complement these protections for rent-regulated tenants, and provide strong defenses for tenants who live in apartments that are not rent-regulated.

FootNotes:

[n1]. 65 Ocean Avenue Associates v. Samuels, NYLJ, July 3, 2002, p.25 (Civ. Ct. Kings County). South Brooklyn Legal Services represented the tenant in this proceeding.

[n2]. See generally, 18 N.Y.C.R.R. §§413 et. seq.

[n3]. 299 N.Y. 70 (1949).

[n4]. 24 Misc.2d 1026, 209 N.Y.S.2d 406 (Mun. Ct. Kings County 1960).

[n5]. 67 Misc.2d 439, 324 N.Y.S.2d 152 (Civ. Ct. Bronx County 1971).

[n6]. 62 N.Y.2d 431 (1984).

[n7]. *New York Law Journal*, April 24, 1996, p.25 (Civ. Ct. N.Y. County).

[n8]. 242 A.D.2d 52, 673 N.Y.S.2d 450 (2d Dep't 1998).

[n9]. 61 N.Y.2d 154 (1984).

[n10]. *It is sufficient for a childcare provider to present proof that she is currently licensed or registered to invoke the policy argument. Even if a childcare provider's license has "expired," the State Administrative Procedure Act (SAPA) provides that an "existing license does not expire until the application has been finally determined by the agency."* SAPA § 401.2. Thus, a provider who has applied for renewal of her license will be deemed to have a current license. See, e.g., *Matter of Queens Farms v. Gerace*, 60 N.Y.2d 65, 68, 467 N.Y.S.2d 561 (1983) (affirming finding of Commissioner of Agriculture and Markets that milk dealer's license had not expired pursuant to SAPA §401.2, where application for license renewal had been made).

[n11]. Because the respondent had not presented her license to the Court, Judge Rodriguez refused to dismiss the proceeding and set it down for a hearing to develop the facts on that issue. Upon a motion to renew respondent presented her childcare license and the case was discontinued.

LOAD-DATE: September 30, 2002

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# South Brooklyn Legal Services' Child Care Network Support Project: How Legal Aid Programs Can Support Family Child Care

*By David Ehrenberg and Raun J. Rasmussen*

In this article we describe the work of South Brooklyn Legal Services' Child Care Network Support Project in providing educational, transactional, and other advocacy and legal services to child care networks and the home-based child care providers who are their members.<sup>1</sup> We write to encourage other legal aid offices to undertake this important work. Our two years of experience tells us that committing even modest resources to advocacy on behalf of child care providers can have significant results for the entire child care community.

Our office began its child care work several years ago with a National Association of Public Interest Law fellowship that focused on getting child care benefits for parents who were trying to meet welfare's work requirements or to make the transition off welfare. Obtaining subsidized child care benefits for parents and their children is the traditional focus of the few legal aid offices that do child care work in New York City.

After two years of this work we decided, for several reasons, to shift our efforts to the provider side. First, a client member of our program's board of directors asked us to help her incorporate her child care network. In meeting with her and some of the network's members, we realized that the issues facing this small,

newly formed organization and the providers whom it intended to serve were quite complicated. Child care providers needed help with liability insurance issues, tax obligations, threats of eviction from landlords who wanted them to stop providing child care in their apartments, and the license renewal process. And then there were payment problems. Providers often cared for children of parents who received child care subsidies for months without payment from the welfare department. Running a business under these circumstances was nearly impossible, and the networks lacked the legal expertise and advocacy resources to solve many of these problems.

Second, legal work on behalf of child care providers was a way to help clients make the transition from welfare to work by simultaneously helping increase the supply of child care services that new workers needed and create new job opportunities. Helping "microentrepreneurs" was community development work we were excited about doing. Our clients' determination to succeed, against daunting obstacles, inspired our work in support of their efforts.

## **I. Family Day Care**

Most states have three main categories of nonparent child care providers: child care

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<sup>1</sup> Our project is funded with a generous grant from the New York Foundation.

centers; regulated home-based child care; and “kith and kin” (sometimes called “license-exempt”) child care providers, who are usually relatives or friends of the parents whose children need care. Regulated home-based child care providers (known as “family day care providers” in New York) are a critical part of this mix; they provide high-quality care for children and employment opportunities for those leaving welfare. Family day care providers can earn living wages and develop professional skills that lead to long-term employment opportunities in child care and other fields. As a recent study of child care in low-income communities concluded, “[b]y improving outcomes for at-risk children, supporting employment activities for their parents, and stimulating economic development in their communities, family child care has the potential to be a powerful tool for neighborhood growth and development.”<sup>2</sup>

New York State’s family day care regulations allow a person to become a licensed or registered home-based child care provider after completion of a training program and inspection of the home.<sup>3</sup> Family day care providers in New York may care for a maximum of eight children without another adult present. Group family day care providers with at least one assistant may care for up to fourteen children. State regulations require initial training, ongoing staff development, emergency exits and fire safety measures, and employee background checks; also, the provider must meet other health, safety, and early childhood education standards ensuring that the child care is both high in quality and safe for the children.<sup>4</sup> While the quality of care varies from provider to

provider, family day care is a highly regulated industry that should not be confused with baby-sitting. Family and group family day care providers care for roughly 31,000 children in New York City.<sup>5</sup>

Despite the huge demand for child care and the availability of family day care employment opportunities, the work is difficult to sustain. Family day care jobs are poorly paid and physically and mentally demanding. Child care workers have “the highest concentration of poverty-wage workers in any industry.”<sup>6</sup> To succeed in creating a business that provides a living wage, stable employment, and high-quality child care services, most family day care providers need substantial support in the form of business and legal training and access to advocacy and other backup services.

In New York City child care networks offer the best source of immediate, ongoing support for family day care providers. Networks are community-based organizations that supply technical assistance, training, supervision, lending libraries, and a variety of other services to family day care providers. Because professional isolation is a serious occupational hazard for family day care providers, child care networks and other community groups “link providers to each other and to resources and services to support, strengthen and professionalize their businesses.”<sup>7</sup>

## II. Family Child Care Networks

New York City has just over 100 family child care networks. City or state agencies fund some of these organizations through contracts to run programs such as the Child and Adult Care Food Program (a program similar to the free school lunch

<sup>2</sup> Amy Gillman, *Surdna Found., Strengthening Family Child Care In Low-Income Communities* 4 (2001).

<sup>3</sup> See generally N.Y. COMP. CODES R. & R. tit. 18, §§ 413 *et seq.* (2002). Many other states have licensing schemes for home-based child care providers. “Registration” applies to small family child care homes (up to eight children); “licensing” applies to large family child care homes (up to fourteen children).

<sup>4</sup> See generally *id.* §§ 413, 416–417.

<sup>5</sup> Telephone interview with staff at Child Care Inc., May 14, 2002.

<sup>6</sup> MARCY WHITEBOOK & DEBORAH PHILLIPS, FOUND. FOR CHILD DEV., *CHILD CARE EMPLOYMENT: IMPLICATIONS FOR WOMEN’S SELF-SUFFICIENCY AND FOR CHILD DEVELOPMENT* 3 (Working Paper Series 1999).

<sup>7</sup> Gillman, *supra* note 2, at 8.

program that covers preschool children) or to secure child care slots for low-income parents.<sup>8</sup> Many of the largest networks are part of a federally funded child care resource and referral agency. Such agencies are located in every state; they refer parents to child care providers and offer training and technical assistance to local providers.

New York City child care networks vary widely in their services and in their level of professionalism. Some are based in multiservice organizations located in midtown Manhattan and offer a wide variety of resources. Others are run from neighborhood storefront offices and have much more limited resources but greater day-to-day contact with their provider members and the community. Some offer services to more than 300 providers; others, fewer than 50. But no matter what type of organization they are, child care networks are providers' primary source of assistance.

Networks have introduced us to family day care providers and their problems. They have coordinated the scheduling and outreach for training sessions; distributed fact sheets and other information bulletins that we have prepared; acted as referral agents for their providers; and helped us remain informed about the most important issues facing their providers. Although our project was set up to support networks, we have accomplished this goal primarily by working with the networks to help solve problems for their providers.

Across the country, myriad local, state, and national groups provide varying kinds of assistance to child care providers and are thus potential partners for legal

aid offices interested in offering legal help to child care providers.<sup>9</sup> The Child Care Law Center in California is the foremost law office working nationally on both parent and provider side issues.<sup>10</sup> They have partnered with the Welfare Law Center and the NOW Legal Defense Fund to create a national child care collaborative.<sup>11</sup> The Children's Defense Fund in Washington, D.C., is an invaluable source of information on state and federal developments.<sup>12</sup> The National Association for the Education of Young Children, which has affiliates across the country, and the National Association of Family Child Care are extremely important.<sup>13</sup> Redleaf National Institute offers tax and legal information tailored for family child care providers and their advocates.<sup>14</sup> The National Association of Child Care Resource and Referral Agencies can refer interested parties to a resource and referral agency in a particular community.<sup>15</sup> These groups can inform interested parties about child care providers' problems and about local advocacy organizations; the information from these groups can help interested parties decide what role legal services can play to support these groups' efforts.

### III. Problems That Family Child Care Providers Encounter

Like other small businesses, getting paid for services that they provide is a major problem for family day care providers. They also encounter problems with licensing agencies, housing and land-use barriers, questions about liability and liability insurance, and tax difficulties.

#### A. Payment Problems

Many New York City child care pro-

<sup>8</sup> See generally 7 C.F.R. § 226 (Child and Adult Care Food Program), 45 C.F.R. § 98 (Child Care Development Block Grant).

<sup>9</sup> For an excellent introduction to legal services work in the child care area, see Stephanie Upp et al., *Child Care and Community Economic Development: Critical Roles for Legal Services*, 34 CLEARINGHOUSE REV. 3 (May–June 2000).

<sup>10</sup> See [www.childcarelaw.org](http://www.childcarelaw.org).

<sup>11</sup> These organizations maintain a listserv on child care issues; interested persons may join the listserv at <http://lincproject.duindns.org/mailman/listinfo/list>.

<sup>12</sup> See [www.childrensdefense.org](http://www.childrensdefense.org).

<sup>13</sup> See [www.naeyc.org](http://www.naeyc.org) and [www.nafcc.org](http://www.nafcc.org).

<sup>14</sup> See [www.redleafinstitute.org](http://www.redleafinstitute.org).

<sup>15</sup> See [www.naccrra.org](http://www.naccrra.org).

viders care for children whose parents are guaranteed child care assistance from the New York City Human Resources Administration.<sup>16</sup> Payments from this agency are notoriously hard to come by. Providers must fill out lengthy forms and make numerous trips to local welfare offices even though their time is spent caring for children; payments are routinely delayed for several months after a child first enters care. Once payment begins, rates are often improperly low and payments can stop altogether for many reasons, including a parent's move from one stage of the welfare-to-work continuum to the next, even if she continues to be eligible for the child care subsidy. Because family day care providers typically operate on a thin margin, payment problems and bureaucratic requirements can quickly sink a child care business.

We have worked closely with family day care providers and parents to help them jointly negotiate the confusing subsidy system. Although neither agencies nor advocates typically seek assistance from providers in resolving payment problems, the most professional providers are often the strongest advocates. When parents and providers work together, with assistance or training from advocates, payment problems can be resolved more quickly.

A recent analysis of the child care subsidy system concluded that the routine practices of child care funding agencies often cause severe payment problems that prevent parents from maintaining stable child care arrangements.<sup>17</sup> Our experience confirms this finding. Excessive paperwork and caseworker error can make it impossible for a parent or provider to get payments started even after a caseworker has authorized those payments. These chronic payment problems mean that children are often forced out of care due to nonpayment and experience the instability of moving from one provider to another, while providers never recover the lost income.



MARILYN NOLT

We have worked closely with family day care providers and parents to help them jointly negotiate the confusing subsidy system. Administrators of child care subsidies, parents, and advocates often view the child care providers who offer subsidized care as passive recipients of child care subsidies. But the most professional providers become actively involved as advocates for parents throughout the application and payment process and can be ideal partners for advocates who are attempting to eliminate barriers to obtaining child care subsidies.

During the past two years we have worked with approximately forty providers to obtain more than \$130,000 in retroactive child care payments. We have encountered a distressing number of computer errors, caseworker misinformation, and other easily remedied causes of payment problems.

Although we are glad to have obtained substantial back payments for a small number of providers, our primary goal has been to train parents, providers, and network staff to do this work on their own. Accordingly we have developed a

<sup>16</sup> N.Y. SOC. SERV. LAW §§ 332-a, 410-w (Consol. 2002); N.Y. COMP. CODES R. & R. tit. 18 § 415.5 (2002).

<sup>17</sup> GINA ADAMS ET AL., URBAN INST., NAVIGATING THE CHILD CARE SUBSIDY SYSTEM: POLICIES AND PRACTICES THAT AFFECT ACCESS AND RETENTION (2002).

three-hour self-advocacy training that focuses on the specifics of the payment system, including the nuts and bolts of the paperwork requirements. Basic advocacy techniques, such as keeping copies of paperwork, taking notes of conversations (including date, name of person, and phone number), and developing and nurturing relationships with individual caseworkers are all part of the training. We have conducted this training for scores of providers and advocates on network staffs. We have also supplemented the training by convening meetings with social service agency staff where providers can air grievances and begin to develop working relationships with caseworkers. We are developing a provider advocacy guide that expands on the training materials and fact sheets that we already distribute.

### **B. Litigation to Correct Illegal Payment Policies and Practices**

Although litigation is not our tool of choice, we will sue to challenge policies or practices that are hurting more than one client. One such lawsuit is *Pabon v. Turner*.<sup>18</sup> Ms. Pabon came to us when her child care provider threatened to cut off child care because she was not receiving the proper rate of pay. When we investigated, we discovered a systemwide problem: the Human Resources Administration was routinely underpaying child care providers throughout the city because it was multiplying weekly child care rates by 4 to come up with a monthly total rather than by 4.33, the actual average number of weeks in a month.

Although the difference between the two figures may seem small, the resulting underpayment was costing child care providers hundreds of thousands of dollars each year in child care payments. For example, a provider who cares for a 2-year old full time is entitled to be paid \$127 per week. Under the challenged payment procedure, the provider would

receive \$508 ( $\$127 \times 4$ ) each month. Using the proper calculation ( $\$127 \times 4.33$ ), the provider would receive approximately \$550 each month, an increase of \$42 per month per child, or \$504 per year. These additional payments can mean the difference between survival and failure of a home-based child care business.

After advocacy failed, we sued to obtain retroactive child care payments for Ms. Pabon's child care provider and to force the Human Resources Administration to change its illegal underpayment practice. Shortly after we filed the case, the defendants agreed to pay the provider more than \$12,000 in retroactive payments. Since the underpayment practice was likely to be repeated, we refused to drop the case. The agency then adopted a policy directive that instructed welfare centers throughout the city how to calculate payments properly.<sup>19</sup> There are problems with the directive—most notably that it allows but does not require retroactive payments. Overall, however, resolution of this problem has put hundreds of thousands of dollars into the hands of child care providers across the city and made it more likely that those providers will be able to continue their business of caring for children.

### **C. Licensing Problems**

Home-based child care providers often encounter problems with regulatory agencies in obtaining or renewing their licenses. A simple abuse of agency power has caused some of these problems. The Office of Children and Family Services is the state agency charged with regulating family and group family child care.<sup>20</sup> The New York City Department of Health, under contract with the state agency, performs routine inspections of family day care homes, follows up on complaints about child care providers, distributes and collects applications, and performs other coordinating services for the licensing and registration process. Once the Department

<sup>18</sup> *Pabon v. Turner*, Index No. 403347/00 (N.Y. Sup. Ct. N.Y. County 2000) (Clearinghouse No. 54,894).

<sup>19</sup> N.Y. Family Independence Administrative Policy Directive No. 00-83, Generating Supplemental Child Care for Employed Individuals (Sept. 28, 2000).

<sup>20</sup> N.Y. SOC. SERV. LAW § 390.2(d) (Consol. 2002).

of Health collects the paperwork and performs an initial inspection, it is supposed to forward the provider's packet to the state agency for a final determination. A provider who receives an adverse determination has a right to a fair hearing before an impartial hearing officer.<sup>21</sup>

When we began the project, many providers told us that inspectors from the Department of Health had told them to close their businesses for failure to meet technical regulatory requirements. Many complied immediately, resulting in lost income for them and significant disruption for the children in their care. Research showed that the inspectors had no authority to order a family child care business to close absent an imminent threat to children's health and safety.<sup>22</sup> Unfortunately most providers and networks were unaware of the law: the practice for many years had been simply to comply with whatever the health inspector said. The provider would close and wait while her application for renewal slowly made its way to the state agency. Only after the state denied the license renewal—often months or even a year later—did the provider receive notice of her right to challenge the decision at a fair hearing.

We began working closely with the city health inspectors to make sure that they did not force anyone to close her business unless there was an emergency. We have also spent numerous hours training networks and their providers on these issues. The result is a substantial decrease in the number of such cases, and most network staff are aware of their providers' rights when dealing with the licensing agencies.

Licensing delays also cause serious problems. The requirements of the Quality Child Care and Protection Act, enacted in September 2000, have exacerbated delays caused by understaffing at the regulatory agency, miscommunica-

tions between city and state Agencies and the providers, and general bureaucratic incompetence.<sup>23</sup> The Act was intended to improve child care quality by requiring criminal background checks and additional training for day care providers, increased oversight, and increased penalties for out-of-compliance providers. However, in the nearly two years since this law took effect, the additional requirements have overwhelmed the regulatory agencies. As a result, the licensing process in New York has derailed, with disastrous consequences for some providers.

For example, some local social service offices refused to pay providers at all until they received a new license; others paid providers at lower, unlicensed rates. Similarly the state Department of Health, which administers the Child and Adult Care Food Program, made it extremely difficult for networks and their providers to be reimbursed for food expenses if the providers' licenses had expired.

A misunderstanding of the law caused all of these problems. Under the New York State Administrative Procedure Act, when a licensee has applied for the renewal of a license concerning an activity of a continuing nature, "the existing license does not expire until the application has been finally determined by the agency."<sup>24</sup> Thus any provider who has applied for renewal should be treated as fully licensed, no matter how long the renewal process takes. Despite our substantial efforts to inform agency staff about this requirement, providers continue to suffer illegally. As a result, we filed litigation to challenge resulting underpayments.<sup>25</sup>

Our client in the case, Ms. Mohamed, has been a licensed child care provider for more than ten years. In December 2000, as state law required, she applied to renew her license, which was due to expire in February 2001. Unfortunately for

<sup>21</sup> N.Y. COMP. CODES R. & R. tit. 18, §§ 416.18, 417.18 (2002).

<sup>22</sup> Id. § 416.18(a)(7).

<sup>23</sup> N.Y. SOC. SERV. LAW § 390 (Consol. 2002).

<sup>24</sup> N. Y. Admin. Procedure Act § 401.2 (Consol. 2002).

<sup>25</sup> *Mohamed v. Eggleston*, Index No. 401003/02 (N.Y. Sup. Ct. N.Y. County 2002) (Clearinghouse No. 54,895).

Ms. Mohamed, the state did not complete the renewal process until October 2001, nearly a year later. When Ms. Mohamed sought payment from the Human Resources Administration in April 2001 for the care of two children, her caseworker told her that, since her license had expired, she could no longer be paid at the licensed rate, even though the agency had already agreed, in writing, to pay her at the licensed rate. When Ms. Mohamed refused to accept a lesser amount, the caseworker refused to pay anything for more than three months of care provided to those children. Ms. Mohamed was forced to stop providing care for them since she could not get paid for her services.

After informal advocacy failed to produce any results, we sued both agencies to correct the Human Resources Administration's misunderstanding of the law, to obtain long overdue child care payments for Ms. Mohamed, and to compel the state licensing agency to maintain accurate computer records that would reflect the fact that a provider had applied for renewal. After we filed the case in March 2002, the Human Resources Administration immediately agreed to the back payments to Ms. Mohamed. We have settled the case; the agencies have agreed to modify their procedures to ensure that providers are given documentation that their licenses are in effect throughout the renewal process and that agency personnel understand the law and apply it correctly. The agencies have also agreed to maintain and make available a child care providers' list that accurately reflects the providers' license status and to install a phone line and assign a staff person to handle inquiries and problems from individuals and agencies concerning license status.

Both *Pabon* and *Mohamed* raise interesting and complex issues regarding standing to sue, the nature of the "right" to be

compensated for providing child care, and the lack of any kind of administrative or fair hearing remedy for unpaid child care providers. We plan to explore and develop these areas of the law as we continue to work on payment and licensing issues on behalf of child care providers.

#### D. Housing Issues for Child Care Providers

Many landlords force child care providers to cease operating their businesses by simply threatening an eviction proceeding. Many landlords charge providers substantial monthly fees in addition to their rent for the "privilege" of running a child care business in an apartment. Neither eviction threats nor extra charges are legal in rent-regulated or other leased apartments in New York State.<sup>26</sup> A major thrust of our housing-related work has been to educate child care providers about their legal protections so that they will not close down their businesses in response to a landlord's eviction threat.

We include housing issues in our "Legal Issues of Child Care" training that more than 400 family and group family day care providers have attended.<sup>27</sup> The child care networks organize the training sessions and perform them in their community offices. We have also widely distributed a fact sheet about providers' rights when renting apartments and have given advice to dozens of providers and networks. The project has prevented the commencement of numerous eviction proceedings simply by explaining the law to providers, landlords, and their lawyers. We have also successfully defended child care providers in court when a phone call does not deter an eviction proceeding. Fortunately for these providers, New York law makes it difficult for landlords to evict child care providers even when their residential leases forbid "commercial uses" in their apartment.

<sup>26</sup> Generally apartments are rent-regulated in New York if they are located in buildings with six or more apartments. Statutorily prescribed bases for "good cause" (e.g., breach of lease, nuisance) are required to commence an eviction proceeding. Statutes in other states also protect family child care providers. E.g., in California any lease or rental agreement provision that purports to restrict use of residential rental property for family child care in any way is void. CAL. HEALTH & SAFETY CODE § 1597.40(b) (2002).

<sup>27</sup> The training also focuses on insurance, incorporation, and public benefits issues.

New York courts hold that state laws promoting and regulating child care “pre-empt” zoning regulations and private contracts that purport to prohibit the provision of child care.<sup>28</sup> In *State of New York v. Town of Clarkston* the court holds that a challenged local zoning ordinance purporting to regulate home-based child care is preempted by the “comprehensive scheme of highly detailed family daycare regulations []” enacted to implement the law.<sup>29</sup> That reasoning is extended to prohibit the eviction of child care providers who reside in condominiums and rent-regulated apartments.<sup>30</sup> Thus, when a child care provider can prove that she is licensed, “the legislature has basically preempted the area of home based child care by enacting legislation that permits what is prohibited in the lease ...”<sup>31</sup>

The courts also hold that the provision of child care in an apartment, when no harm was claimed to other tenants or the landlord, does not violate a substantial obligation of the tenancy even when a lease clause prohibits commercial use.<sup>32</sup> These cases rely on the decision of New York’s highest court in *Park East Land Corp. v. Finkelstein*.<sup>33</sup> There the court held

that a tenant who violated a lease provision related to occupancy standards was not allowed to be evicted where no harm to the landlord or other tenants was claimed. Rent regulation, the court held, permitted evictions only “to prevent extreme hardship and inequity to the landlord, inconvenience to other tenants or outright illegal action by the tenant ...”<sup>34</sup> Although a landlord could always sue to evict a tenant who caused a nuisance, an allegation that the tenant was violating the lease by running a child care business, without allegations of harm, failed to state a claim to evict.

Courts throughout the country approach these issues in a variety of ways.<sup>35</sup> For example, some states determine that home day care is a “residential use” not prohibited by covenants that exclude commercial businesses.<sup>36</sup> Others strictly construe covenants that prohibit the commercial use of residential premises and force child care providers to close their doors.<sup>37</sup>

### E. Insurance

Another major focus of our work is liability insurance. Damages actions against providers are rare but not unheard of. In

<sup>28</sup> See *Quinones v. Bd. of Managers of Regalwalk Condominium I*, 673 N.Y.S.2d 450 (2d Dep’t 1998); *People v. Town of Clarkston*, 559 N.Y.S.2d 736 (2d Dep’t 1990).

<sup>29</sup> *Town of Clarkston*, 559 N.Y.S.2d at 740, citing N.Y. COMP. CODES R. & R. tit. 18, § 417. See also *Barrett v. Dawson*, 71 Cal. Rptr.2d 899 (Cal. Ct. App. 1998) (law prohibiting restrictive covenants that limit family day care homes in residential neighborhoods is constitutional).

<sup>30</sup> *Quinones*, 673 N.Y.S.2d at 454 (“the [Condominium] Board may not enforce such [private] restriction against the plaintiffs”); 65 Ocean Ave. Assocs. v. Samuel, N.Y. LAW J., June 2, 2002, at 25 (Civ. Ct. Kings County).

<sup>31</sup> 65 *Ocean Avenue Assocs.*, N.Y. LAW J., at 25.

<sup>32</sup> *Sorkin v. Cross*, N.Y. LAW J., Apr. 24, 1996, at 25 (Civ. Ct. N.Y. County); *Young v. Alexander*, N.Y. LAW J., Sept. 7, 1994, at 27 (City Ct. New Rochelle, Westchester County); *Vittorio Properties Inc. v. Alprin*, 324 N.Y.S.2d 152 (Civ. Ct. Bronx County 1971) (Clearinghouse No. 6,507); *Diamant v. Isaacs*, 209 N.Y.S.2d 406 (Mun. Ct. Kings County 1960).

<sup>33</sup> *Park East Land Corp. v. Finkelstein*, 299 N.Y. 70 (1949).

<sup>34</sup> *Id.* at 76–77.

<sup>35</sup> A thorough survey of the law on these issues is beyond the scope of this article. For a national survey that discusses restrictive covenants and home based child care, see *Children’s Day Care Use as Violation of Restrictive Covenant*, 81 A.L.R.5th 345 (2002).

<sup>36</sup> See, e.g., *Terrien v. Zwit*, 238 Mich. App. 412, 605 N.W.2d 681 (1999); *Stewart v. Jackson*, 635 N.E.2d 186 (Ind. Ct. App. 1994).

<sup>37</sup> See, e.g., *Metzner v. Wojdyla*, 886 P.2d 154 (Wash. 1994); *Walton v. Carignan*, 407 S.E.2d 241 (N.C. 1991); *Woodvale Condominium Trust v. Scheff*, 540 N.E.2d 206 (Mass. 1989); *Chambers v. Gallaher*, 364 S.E.2d 576 (Ga. 1988); *Williams v. Tsiarkezos*, 272 A.2d 722 (Del. Ch. 1970); *Matthews v. Olson*, 212 So. 2d 357 (Fla. Dist. Ct. App. 2d Dist. 1968); *Berry v. Hemlepp*, 460 S.W.2d 352 (Ky. 1970).

the past two years four providers who had already been sued and many more who were likely to be sued have contacted our office. Unfortunately none had liability insurance; even worse, each owned her own home and was in serious danger of losing it.

While the cost of insurance is a barrier for some providers, many do not purchase insurance because they believe that they can limit their liability in other ways. For example, many networks helped their providers write contracts with parents that bar suits against the provider in case of an accident. Both providers and network staff have been surprised to learn that such contracts are not enforceable in court. Many other providers rely on their homeowners' insurance to cover them in case of an accident, but insurance company staff with whom we have spoken say that they will not cover liability related to a home-based child care business.<sup>38</sup>

We have received dozens of inquiries from providers who believe that incorporating will limit their liability; many have invested significant time and money to incorporate. In our experience, however, most family day care businesses are so intertwined with the providers' personal lives that incorporation would be unlikely to protect their personal assets. Child care takes place in the provider's home; children eat the provider's food, sleep on the provider's bed, and use the provider's furniture. Untangling the business and the personal sufficiently to allow a corporation to stand as a separate entity for liability purposes would be virtually impossible. The cost to the provider of attempting to separate her business from her personal life would be substantial. Purchasing liability insurance is a simpler, more effective solution.

## **F. Record Keeping and Tax Issues**

To our surprise, tax issues have also been a major focus of our work. Many fam-

ily day care providers pay thousands of dollars more in tax each year than they need to pay; they are also much more likely to be audited than an average taxpayer. Therefore it is in providers' interests to understand their tax responsibilities and the deductions to which they are entitled.

Family day care providers may deduct all of their business expenses when calculating their tax obligation. Because a family day care business is so intertwined with the provider's personal life and expenses, however, documenting business expenses can be difficult. In addition to deducting the portion of household food expenses, cleaning supplies, chairs, light bulbs, and the like that they spend on children in care, providers may deduct a portion of their rent and utilities. By calculating the "time-space percentage" (an estimate of what percentage of their home, both in terms of time and floor space, is regularly used for the business), providers may often deduct as much as 35 percent of their rent and utilities. A provider who pays \$800 per month in rent and utilities and takes this single deduction will save well over \$1,100 in taxes. By taking all the deductions to which they are entitled, many family day care providers can save between \$1,000 and \$2,000 each year. For a financially vulnerable small business, these savings can make a big difference.

Not surprisingly most child care providers with whom we speak are unaware of the deductions to which they are entitled. Most tax preparers do not know about these deductions either and do not claim them for their clients. This is so, in part, because different tax rules apply to child care providers. The most important distinction is that other small businesses, when using the time-space percentage to deduct household expenses including rent, may count only rooms exclusively used for business. Very few child care providers would qualify for a

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<sup>38</sup> Although New York lacks an insurance law provision that specifically addresses family day care, other states may have such statutes. E.g., in California homeowners are protected by statute against "arbitrary cancellation" of their insurance "solely on the basis that the policyholder has a license to operate a family day care home." CAL. INS. CODE § 676.1 (2002).

deduction under these terms since care is usually provided in rooms that double as living space. However, child care providers need only use rooms regularly for business to count them in the time-space percentage. If a tax preparer is unaware of this distinction, the provider stands to lose from a few hundred dollars to over a thousand.

Family day care providers should also be concerned about their tax responsibilities because they are among the most likely groups in the country to be audited. Family day care providers should submit Form 8826 (“Business Use of Your Home”) and Schedule C (“Profit or Loss from Business”), both of which trigger a disproportionate number of audits. Many providers qualify for the refundable earned income tax credit, another target of Internal Revenue Service audits. Providers who file these forms and request the earned income tax credit are twenty times more likely to be audited than an average taxpayer.<sup>39</sup> The Internal Revenue Service’s taxpayer education and communication department has formed a “Child Care Provider Welfare to Work Taskforce,” which will focus on increasing tax compliance by low-income child care providers.

To educate providers about these issues, we have developed a four-hour program that covers their basic tax responsibilities as well as deductions and record-keeping techniques. The training is not intended to encourage providers to file their own tax returns. Instead it allows them to prepare their records and make key calculations before they go to a tax preparer for assistance. If a provider has all the required figures and records, her tax preparer is much more likely to file the necessary forms and take the deductions to which she is entitled.

#### IV. Network Issues

Initially we expected our project to work primarily on the technical and transactional needs of the networks, and not for their providers. However, we quickly

found that the networks’ problems were indistinguishable from those of their providers. For example, when providers cannot get their licenses, networks lose providers and are unable to serve enough children to meet the requirements of their Head Start or other government contracts. Providers turn first to network staff when they need help with legal or other problems. As a result, the networks expend enormous resources dealing with problems of individual providers. Giving the networks a place to direct their providers for help and information on specific issues is a significant service.

Helping providers with their problems was also a good way for us to learn quickly about the legal issues in the child care field. As we have gained expertise and credibility, networks seeking assistance in resolving their own organizational problems approach us far more regularly. We have worked with networks in two areas: providing technical and staff development assistance; and helping new networks incorporate, apply for federal tax exemption status, and plan their organizational development.

##### A. Technical Assistance and Staff Development

Network staff are often former child care providers or social workers with a background in child development. Some have been active in the field for so long that they are able to help their members on a wide variety of issues. However, issues facing child care providers have not been the focus of much legal advocacy, and most network staff do not have expertise in payment issues, housing law, licensing law, liability issues, and the legal implications of a variety of their providers’ other problems. We have trained network staff on all these issues. We write bi-monthly issue papers that highlight recurring problems and their solutions and mail them to the city’s 110 networks. We are developing a resource book for network staff and advocates on the legal issues in which we have been involved.

<sup>39</sup> David Cay Johnson, *Affluent Avoid Scrutiny on Taxes Even as IRS Warns of Cheating*, N.Y. TIMES, Apr. 7, 2002, at A1

## B. Start-Up Networks

We are helping five newly formed networks to incorporate, apply for federal tax-exemption, set up boards of directors, and apply for organizational grants. The organizations plan to train and support family day care providers under the new state Educational Incentive Program. The program makes available to providers up to \$2,000 in scholarships to pay for credit-bearing college courses, classes leading to a credential or certificate, or noncredit-bearing training and conferences related to child care or small business development. The scholarships are paid directly to the organization that conducts the training. Because the program pays networks to offer the training and support that they have provided free in the past, it is an extremely important source of support for child care networks, many of which have limited budgets. In addition to helping these new networks to

organize, we plan to seek pro bono assistance from New York City law firms for the networks' ongoing legal needs.

WITH ONE FULL-TIME PARALEGAL, SOME SUPERVISORY backup, and occasional support from a staff attorney, we have developed strong working relationships with several child care networks, their providers, and other child care advocates. By finding our "niche" in the child care advocacy community—one to which we bring a combination of legal analysis and advocacy skills as well as a commitment to supporting employment and community development opportunities—we have helped numerous child care providers and their networks improve their businesses and create some systemwide change along the way. We encourage other legal aid offices to join in this engaging and productive work.

# HEALTH INSURANCE FOR CHILD CARE PROVIDERS

Many family day care providers qualify for free or low-cost health insurance from New York State, but do not apply or are found ineligible because they do not know that some of their income can be deducted. As a self-employed child care provider, **you may subtract your business expenses from your income** to see if you are eligible for Family Health Plus or Child Health Plus.

## What are Family and Child Health Plus?

**Family Health Plus** is a New York State program that provides free health insurance to adults.

**Child Health Plus** is also funded by New York State and provides free or very low-cost health insurance for children under age 19. Adults are not covered under Child Health Plus.

## How much can I earn and still be eligible?

To qualify for Family or Child Health Plus, your income must be below certain limits depending on your family size. See the chart on the back to determine if your income falls below the limit.

Remember that family child care providers can deduct business expenses from their income to see if they are eligible.

## How can I figure out what my income is after business expenses?

When you apply you will have to show how much you earned during the last four weeks. **Do not** count payments you get from the Child and Adult Care Food Program. You can then deduct **five dollars per child per day** (\$25 per child per week) as a business expense. You are entitled to this deduction without receipts or any proof of specific expenses.

If you believe that your expenses are higher than \$5 per child per day you can deduct more. To claim more you will have to show your tax return from last year.

## Why is \$5 per child per day so important?

For many providers the \$5 per child per day deduction will make the difference between qualifying or not qualifying for Family or Child Health Plus. For example, a provider who cares for 4 children can claim \$20 per day of business expenses without proof (4 children x \$5 = \$20 per day). This means that if she cares for the children five days per week she can claim \$100 of expenses every week (\$20 per day x 5 days = \$100). If she cares for the children for 50 weeks a year she can claim \$5,000 of business expenses. In addition she would not report the money she received from the Child and Adult Care Food Program (CACFP). In all, she may get to deduct nearly \$10,000 from her income every year.

## What should I do if I'm not allowed to claim these deductions when I apply?

Even though you are allowed to deduct business expenses, not every "enrollment facilitator" (the person who helps you fill out the paperwork) knows about these rules. If the enrollment facilitator doesn't know about this deduction, tell her/him it is explained on page 10 of "**01 OMM/ADM -6**" from November 2, 2001 and page 151 of the **Medicaid Reference Guide (MRG)**. You should bring this fact sheet with you so you can show her/him where to look.

## What if they still won't let me claim my business expenses?

If your enrollment facilitator still won't let you claim your business expenses ask him/her to call South Brooklyn Legal Services at (718) 237-5540 or your network director. If s/he refuses, call South Brooklyn Legal Services later and we may be able to help you.

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Remember to ignore the CACFP and subtract \$5 per day per child from your income before you check if you are eligible.

### **FAMILY HEALTH PLUS**

Maximum Yearly Income After Expenses and Before Taxes (Effective January 2003)

Family Size:	<b>Single Adult</b>	Couples with No Children	Family Size 2	Family Size 3	Family Size 4	Family Size 5	Family Size 6
Yearly Income:	\$8,980	\$12,120	\$18,180	\$22,890	\$27,600	\$32,310	\$37,020
Monthly Income:	\$749	\$1,010	\$1,515	\$1,908	\$2,300	\$2,693	\$3,085
Weekly Income:	\$173	\$233	\$350	\$440	\$531	\$622	\$712

For each additional person after 6, add \$4,710 for Yearly, \$393 for Monthly, and \$90 for Weekly.

### **CHILD HEALTH PLUS**

Maximum Yearly Income After Expenses and Before Taxes (Effective January 2003)

Family Size:	Child only families*	Family Size 2	Family Size 3	Family Size 4	Family Size 5	Family Size 6
Yearly Income:	\$22,452	\$30,300	\$38,160	\$46,008	\$53,856	\$61,704
Monthly Income:	\$1,871	\$2,525	\$3,180	\$3,834	\$4,488	\$5,142

For each additional person after 6, add \$7,860 for Yearly, and \$655 for Monthly.

\*Child only families are those where the caregiver is not financially responsible for the child, such as where a child lives with a family member who has legal custody or guardianship but has not adopted the child.

# *Housing Issues for Family Child Care Providers*

## **Is it legal to run a family child care business in my apartment?**

Yes, it is legal to run a child care business out of your home, even if your lease prohibits you from using your apartment as a commercial space. New York courts have decided that child care is an important public service that landlords cannot prohibit. However, you have different rights depending on what type of apartment you live in.

## **Your rights in rent regulated apartments**

There are two types of rent regulated apartments in New York City: rent controlled and rent stabilized. If you live in a rent regulated apartment your landlord cannot evict you or raise your rent because you run a child care business. The landlord may tell you that it is illegal for you to run a business out of a residential space, but this is not true for child care. **It is not a violation of your lease to run a child care business out of a rent regulated apartment.**

Your landlord may also tell you that, because you run a business, you are using more heat or hot water than other tenants and that you have to pay more for those utilities. This is illegal too.

If you live in a rent stabilized apartment you are guaranteed a lease renewal every two years. Your landlord **cannot** refuse to renew your lease because you run a child care business. If you live in a rent controlled apartment you will not receive a lease, but you are entitled to stay in the apartment and run your child care business as long as you pay your rent.

If your landlord is trying to force you out of your apartment tell him or her that child care businesses are permitted by the courts of New York and see if you can resolve the conflict easily.

No matter what the reaction is, you can continue to operate your childcare business. If your landlord attempts to use physical force to stop you from doing so, call the police immediately.

Rent stabilization and rent control offer you considerable protection from eviction and rent increases. However, if the children in your care are creating a nuisance, bothering your neighbors or damaging the building the landlord can try to evict you.

## **How do I know if my apartment is rent regulated?**

If your building has six or more units in it and was built before 1974 your apartment is probably **rent stabilized**. If you or a family member has lived in the apartment continuously since before June 30, 1971, your unit is probably **rent controlled**.

## **What if I have a lease but my apartment is neither rent controlled nor stabilized?**

In this case you are still allowed to operate your family day care business and to stay in the apartment until your lease expires. During this time the landlord cannot increase your rent or utility charges or try to stop you from running your business.

However, once your lease has expired the landlord does not have to renew it. At that time you could be asked to leave the apartment, pay a higher rent, or close your business.

## **What if I do not have a lease?**

If you do not have a lease, or if your lease has expired but you are still paying rent each month, your landlord can ask you to leave the apartment

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or pay a higher rent at any time, for any reason, whether you run a child care business or not. You will typically be given 30 days notice before the landlord can start a case in court to have you removed from the apartment. You do not have to leave the apartment until the landlord has a court order telling you to leave. If the landlord tries to evict you without a court order you are protected by the **Unlawful Eviction Law**.

## **The Unlawful Eviction Law**

If you have a lease or have lived in an apartment for at least 30 consecutive days without a lease you are protected by the **Unlawful Eviction Law**. This law makes it illegal for anyone - a landlord, superintendent, marshal or sheriff - to evict or try to evict you without a court order.

Under this law it is illegal for a landlord to force you to move by:

- Using or threatening to use force to remove you from the apartment
- Cutting off essential services such as heat, water or electricity
- Removing your possessions from your home
- Removing the door to your apartment
- Removing, plugging or changing the locks without giving you a copy of the new key
- Doing **anything** that interferes with the enjoyment of your home and that is meant to make you move out

If your landlord attempts to do any of these things call the police at 911.

## **What if I live in government-funded housing?**

If you live in a New York City Housing Authority project, a Section 8 building or any other government-funded housing program, your lease probably prohibits you from running a business in your apartment. The law is not clear in these situations but you may have the right to continue to operate your family day care business. Consult an attorney.

## **What if my landlord is worried about being sued?**

Some landlords whose tenants run family day care businesses worry that they will be sued if a child is hurt in an accident on their property, even if you were the one providing care.

If your child care business is covered by liability insurance you can add your landlord to your policy for a relatively small amount, generally not more than \$30 per year. This will protect your landlord from suit in the same way insurance protects you. If liability is a concern for your landlord, offering to include him or her on your policy may be a way to avoid conflict.

## **What if I need to redesign or childproof my apartment for my business?**

Family day care providers must make their apartments safe for young children. You may make small changes to your apartment if they are needed. However, if you rent your apartment you cannot **significantly** alter your apartment without permission. For example, you can install a child safety gate in your kitchen doorway. However, if you want to add a door or additional lighting in the ceiling you will need permission from your landlord.

No matter what type of apartment you live in, if you are told to stop your business or move out, do not assume that you have no options. Do not simply shut down your child care business, move out or accept a higher rent because your landlord tells you to.

If you are being threatened with eviction or are being forced to pay higher rent because you run a child care business, contact South Brooklyn Legal Services' Child Care Network Support Project at (718) 237-5540.

# *Insurance for Family Day Care Providers*

## **WHAT IS LIABILITY INSURANCE?**

Liability insurance protects you and your family in case you are sued because of an accident related to your work as a child care provider. When you buy liability insurance you agree to pay the company a "premium" every year you want to be insured. In exchange, the company takes responsibility for damages and lawyers' fees that result from a lawsuit, up to the liability limit of your policy.

## **DO I NEED LIABILITY INSURANCE?**

Every child care provider should seriously consider buying liability insurance for her business. By taking care of other people's children, a family day care provider puts herself at risk of being sued if something goes wrong. A provider can be sued because of an accident or something done by another person, even if the provider could not have prevented the problem.

The costs of being sued can be enormous. A provider who owns her own home, car or other valuable possessions could lose much of what she owns. A provider who doesn't have these assets can still be forced to pay a part of her future wages if she loses in court. Even if you eventually win a lawsuit, paying a lawyer to defend you can be very expensive.

Most child care providers will never be sued. However, if you are unfortunate enough to be brought to court, liability insurance will be money very well spent.

## **WHAT DO I GET FROM LIABILITY INSURANCE?**

Liability insurance is a way to lessen the risks you take on by caring for children in your home. If you are sued because of an accident and have insured

yourself, the insurance company will pay the cost of hiring a lawyer for you. If you then lose in court, your insurance company will pay any amount you owe up to the "liability limit" you paid for. Many liability insurance policies will also pay the medical expenses for a child who is hurt while in your care. Most companies provide these protections for accidents that occur both in and outside of your home.

## **WHAT IS THE LIABILITY LIMIT?**

The "liability limit" is the maximum amount that the insurance company will pay if you lose a lawsuit. The more you pay the insurance company in premiums the higher your liability limit will be. For example, if you buy a policy that has a liability limit of \$100,000 and you lose a suit and are ordered to pay \$150,000, the insurance company will pay up to the \$100,000 limit. You would then have to pay the remaining \$50,000.

## **HOW MUCH DOES LIABILITY INSURANCE COST?**

The cost depends on the amount of coverage you want, the number of children you care for, and the company that you buy from. In general, the more you pay in premiums the more you are covered in case of an accident. However, premiums vary from company to company for the same coverage, so it pays to shop around.

The maximum coverage is generally \$1,000,000, and can cost from about \$680 to \$960 per year depending on the number of children you care for. The lowest amount of coverage is usually \$25,000, and costs between about \$290 and \$416 per year. The less expensive options will still pay your lawyers' fees if you are sued, but will give you less protection if you lose in court.

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## WHAT SHOULD I LOOK FOR IN A POLICY?

Before you buy insurance, read the policy carefully to be sure that you understand what it will and will not cover. If anything is not clear, ask your insurance company or broker. Here are some important things to look for:

### Form of Insurance

There are two types of liability coverage: "claims made" and "occurrence" form. Be sure to buy "occurrence" form! This type of insurance will cover you for any incident that happened during the period that you were paying the premiums, even if you are sued years after you stopped paying for the insurance or providing care. As long as you were covered when the accident happened, you will be covered no matter when the claim is made.

"Claims made" form only covers you for claims that come in while you are still paying the premiums. This type of insurance will not cover you if an incident happens while you are paying the premiums but are sued after you have stopped paying for the insurance. You should not buy "claims made" form.

### Third Party or Additional Insured Coverage

Make sure that your policy includes this! It covers other people who may be involved in an incident, such as your assistant, substitute, landlord, other children, or family members.

### Sexual Abuse Coverage

Your policy should say specifically that you will be covered if you or your assistant are accused of abusing a child.

### Off Site Coverage

Be sure that your insurance will cover you if a child is hurt in your care outside of your home (at the park, store, library, etc., but not in a car).

## DOES MY HOMEOWNER'S INSURANCE COVER MY BUSINESS?

You should never rely on your homeowner's insurance to cover your family day care business. The only way to be sure you will be covered is to buy liability insurance that is specifically designed for your business.

However, if you have a homeowner's policy and are sued, there may be situations in which your policy will provide coverage. If you are being sued and

only have homeowner's insurance, contact your insurance company to see if they will represent you. If they refuse, call South Brooklyn Legal Services' Child Care Network Support Project.

## I AM AN ACD PROVIDER, AM I ALREADY INSURED?

ACD provides liability insurance to some providers for those children who they care for through their ACD contracted programs. Talk to your program to find out whether you are insured through ACD and if so, what the insurance covers. This insurance **does not** cover children in your care with ACD or HRA vouchers or private pay children.

## WHAT ARE MY INSURANCE OPTIONS?

### THOMCO

THOMCO specializes in day care insurance and is currently the only insurance company that offers a pre-written child care liability policy in New York City. Their premiums start at \$290 per year, for which you are covered up to \$25,000 for up to 6 children. THOMCO has a variety of other, more expensive, options which provide more coverage. For more information about THOMCO insurance call toll-free: 1-800-476-4940.

### Other Options

If you choose to look for other insurance, you will probably have to go through an insurance broker, who can write a new policy for you. Several insurance companies will work through a broker. South Brooklyn Legal Services cannot recommend one company over another.

Some companies do not want to give both homeowner's and liability insurance to the same client. Look to two different brokers for your homeowner's and your liability policies to reduce the risk of losing your homeowner's insurance. If you are interested in purchasing liability insurance, take the time to look into all of your options, and choose the company that best meets your needs.

## ACCIDENT INSURANCE

"Accident insurance" is another insurance option for family day care providers. It is much cheaper than liability insurance, but offers much less protection. Accident insurance will cover medical costs for a child hurt while in your care. However, **it will not protect you at all if a parent decides to sue you.**

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## Innovation Description

**Program Name:** Legal Aid of North Carolina, Farmworker Unit

**Address:** P.O. Box 26626, Raleigh, NC 27611

**Phone:** (919) 856-2180

**Fax:** (919) 856-2187

**Email:** [www.legalaidnc.org/fwu](http://www.legalaidnc.org/fwu)

**Program Director:** George Hausen

**Contact Person:** Mary Lee Hall

**Subject Area:** Connecting Marginalized Clients to the Wider Community

**Project Title:** Witness for Justice

- A. **Problem:** Most migrant farmworkers in North Carolina live in rural labor camps and, by design, are isolated from the larger community. In 1999, when Witness for Justice began, agricultural employers routinely threatened to have legal services attorneys and paralegals arrested when conducting outreach to clients in labor camps, despite legal authority to the contrary. The Farmworker Unit, like other legal services programs serving these workers must conduct outreach to the workers in order to make them aware of its services and of their legal rights. Because of the extreme isolation of workers, they commonly are not connected to services or churches or groups in the larger community because they are unaware of their existence and lack transportation. Their isolation and dependence on their employers make it difficult for them to assert their rights even when those rights are violated in an egregious manner.
- B. **Innovation:** Witness for Justice Volunteers from churches and schools, accompany legal services staff on outreach visits to workers in migrant labor camps, lending their moral authority to the outreach and giving the workers connection to others in the community. Volunteers help to extend the outreach that can be done in a season by the Farmworker Unit staff, can volunteer to provide workers with needed items such as emergency

food, and help to enlarge public awareness of the conditions under which migrant farmworkers live and work.

- C. **Result:** In its five year history, approximately 20 Witness for Justice volunteers have worked extensively with the Farmworker Unit, visiting workers in labor camps, offering friendship and assistance to the workers. The notion of using volunteers from parishes to decrease the isolation of the workers has been adapted by the National Farmworker Ministry in North Carolina in a program that pairs one or more parishes with the residents of a labor camp for a season. Witness for Justice volunteers are asked to donate a weekday evening every other week for a period of several months or a season to accompany one or more staff members in camp outreach. Volunteers have also invited workers to fiestas, provided food or blankets when needed, and, through their presence, lessened the isolation felt by workers living in the camps.
  
- D. **Replication:** The program is easily replicable in most states with migrant farmworkers. Similar programs could be developed with any extremely marginalized, isolated, or hidden group of clients to help bring more public awareness of the problems of those clients and to facilitate connections between those clients and others in the community at large. Witness for Justice recruits volunteers mostly from churches and colleges because interest in migrant farmworkers exists in those sectors already. For other populations, other pools of volunteers might be more appropriate.
  
- E. **Materials Available:** Under development. For what is currently available, please visit our website, [www.legalaidnc.org/fwu](http://www.legalaidnc.org/fwu) . Click on Witness for Justice and you will be able to email our Witness for Justice coordinator.

**Legal Aid of North Carolina, Inc.  
Farmworker Unit**

**Witness for Justice Program**

The Witness for Justice program began in the spring of 1999, when the Farmworker Unit, then part of Legal Services of North Carolina, faced serious problems gaining access to its clients living in migrant labor camps. We created the Witness for Justice program to recruit volunteers from churches and the community at large who could accompany us on our outreach visits to labor camps, witness the conditions and any efforts by the camp owners or local authorities to thwart the visits, and offer support and connection to the world beyond the labor camp to the workers. We borrowed the concept from the acclaimed international program Witness for Peace<sup>1</sup> that first utilized volunteers from the United States to live with people in villages along the Honduras-Nicaragua border during the Contra War to bear witness to the violence which these communities were experiencing and to, by their presence, create a bulkhead for peace.

We believe that this model could be employed in a number of other settings in basic field programs as well. The key components of the model are 1) a condition or problem experienced by a program's clients that is widespread; 2) the condition or problem is largely hidden from public view; 3) the volunteers witness the problem, without impinging upon client confidentiality, and offer support and friendship to the persons experiencing the problem; and 4) the volunteers bear witness to the problem in their schools, churches, or social groups.

**Background of Witness for Justice**

In the early summer of 1998, the LSC migrant program in North Carolina, Farmworkers Legal Services of North Carolina, experienced severe difficulties in gaining access to its clients in migrant labor camps operated by growers utilizing H-2A workers. Two of the program's attorneys narrowly escaped immediate

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<sup>1</sup> For more information about Witness for Peace, see [www.witnessforpeace.org](http://www.witnessforpeace.org)

arrest for trespassing while checking on the progress of a client who had suffered an injury for which he had filed a workers compensation claim. The program had assisted him with that claim and receiving medical treatment. Although the attorneys were allowed to leave the camp without arrest, they were informed by the sheriff that warrants were ready should they attempt to enter the camp again. North Carolina law, as early as the late 1800's held that a farmworker or any worker living in employer provided housing is in a landlord-tenant relationship with his employer, not an employer/employee relationship as regards the housing unless the housing is within the curtilage of the employer. All the covenants of the landlord/tenant relationship apply, including the covenant of quiet enjoyment, which includes the tenant's right to have the visitors of his/her choice. Subsequent decisions, the latest in the early 1990's, have followed these principles.

The District Attorney, faced with demands from the grower that he prosecute the lawyers and a legal memo from the program outlining the state of the law, determined to ask the state Attorney General for an advisory opinion as to whether a criminal prosecution for trespass would be likely to succeed.

One of the issues raised by District Attorney and pressed by the grower and the H-2A employers' association was that the workers had waived their rights as tenants under state law by signing the H-2A contract. The growers association had inserted language in the contract to the effect that no tenancy was created; that language had been approved by the U.S. Department of Labor as a part of the H-2A certification process. Through NLADA's Litigation Assistance Project, Skadden Arps provided a pro bono assistance to brief that issue. The Unit furnished a brief on the landlord/tenant and constitutional issues. In the late summer of 1998, the Attorney General issued an opinion favorable to the Unit's position, holding that a trespass action would likely be unsuccessful because under the law the workers were tenants and as such had the right to choose their visitors and any purported waiver of their rights as tenants by virtue of signing contract language to the contrary would probably be void as a matter of public policy under state law.

At the same time as the access issue was brewing, the Legal Services Corporation was investigating Farmworkers Legal Services of North Carolina over its outreach to H-2A workers in Mexico earlier that year. In September, LSC announced that it would no longer fund FLSNC. Some FLSNC staff left; others applied for a job with the new Farmworker Unit being formed by LSNC, the new LSC migrant recipient. Grower opposition to representation for migrant farmworkers, however, did not change and the forward line of battle was drawn over the issue of legal services' access to workers in labor camps.

Using the Attorney General's opinion, the Farmworker Unit asked the U.S. Department of Labor to refuse to approve the tenancy waiver language in the 1999 North Carolina H-2A contracts because it violated state law. In the course of a discussion between the LSNC Farmworker Unit, USDOL and the growers' association, the growers' association made it clear that, despite the law, they would seek to have any legal services staff visiting the labor camps of their members charged with trespassing.

Thus, in planning for the 1999 season, the Farmworker Unit had to confront the possibility that its staff could be arrested in the course of doing their jobs. Realistically, the staff knew that growers infrequently are aware of camp outreach visits until after the fact, since the outreach occurs outside of normal working hours, in the evenings, and that many local sheriff's deputies would be persuaded by the Attorney General opinion not to arrest. Yet, arrest remained possible given the vagaries of local deputies and their connections to farmers, so the first line of defense was to get bail money available and to make sure that one staff member was reachable by telephone each evening when others were conducting outreach. The second was, with the help of the North Carolina Academy of Trial Lawyers' Criminal Section, to enlist private lawyers to defend any arrested staff members. The third was the Witness for Justice Program.

### **Beginnings of the Program**

Our original idea for Witness for Justice was for priests, nuns, pastors, or persons active in their parish's ministries to others in the community to accompany us on our camp outreach visits. We felt that growers would be more

reluctant to press trespass charges against such people and, hopefully, against us as well, if they accompanied us. There have been no arrests or serious threats of arrest for trespass since we began Witness for Justice. Moreover, the volunteers have proved that they are worth far more than merely deterrents to arrest of our staff.

We asked that volunteers be willing to give one evening every other week for several months during that first season, and recruited a handful of volunteers who did that. One of them, a businessman originally from Central America, who was active in his parish, would bring useful gifts, such as work caps, for workers on his visits; another, a woman who did not speak Spanish, organized her parish to provide food to workers who lacked money to buy groceries because they had not been provided with the work they were promised. In the fall, she also located blankets for workers who had arrived thinking that bedding would be supplied, when in fact it was not. A third, a young man working in a technical field in the process of applying to grad school, utilized his high school Spanish to make friends during his visits and went with us every week. At the end of the first season, we realized that the Witness for Justice volunteers helped to make our outreach more complete. More than the gifts of clothing, food, and blankets, the workers were impressed that persons from the larger community, who had nothing to sell them or were not offering any service, were reaching out to them in friendship.

### **Witness for Justice Development**

Like any volunteer program, Witness for Justice involves some expenditure of staff time. Since its inception, Witness for Justice has been a part of the work of a Jesuit Volunteer assigned to our office. Our Community Education Coordinator has provided some continuity as the JV's change from year to year, but Witness for Justice is primarily the work of our JV's. It has been a good fit externally, as the JV is a part of a local group of Jesuit Volunteers that have ties to local parishes and groups working on social justice issues, and internally, as the JV is also responsible for other camp outreach logistics, and the Community Ed coordinator supervises that part of the JV's work. The

Community Ed coordinator keeps the program running during August, the transition month between JV's, and orients the new JV to the program and various contacts.

Since 1999, the Witness for Justice program has added some more formal features and undergone some refinements. We still recruit volunteers from parishes of various denominations, but in addition, we recruit students at area colleges. Some volunteers contact us because of our website. We do not require that volunteers speak Spanish, although it is helpful. Since the volunteers accompany us, we meet them and they go with us in our vehicle to the camp. We usually leave our office at 6:00 or later and volunteers meet us there, or, if they are from an area closer to the camp, we meet them at a prearranged public location like a store or church parking lot.

We hold an orientation for volunteers whenever we have a new group of recruits. We encourage volunteers to look at our website, [www.legalaidnc.org/fwu](http://www.legalaidnc.org/fwu), before the orientation, as it has a lot of information about farmworkers in North Carolina and their legal rights in general as well as links to other sites with farmworker information. Sometimes the orientation is on a weekday night in a conference room in our building and we provide pizza and soft drinks. Other times, we go to a church or a campus to orient a small group of volunteers.

The orientations last about 2 hours and give the volunteers basic factual information about farmworkers, their legal rights, our role as legal services attorneys for farmworkers, and what they can expect at the camps. The JV and the Community Ed coordinator plan orientations, and one of the Unit's lawyers attends and makes a presentation. We use parts of one or more videos, and some oral presentations and provide more written materials. We go over client confidentiality and our Unit's camp visit policy with the volunteers. We review what we will do if a grower, crew leader, or camp owner appears and asks us to leave and what we will do if, through some odd congruence of events, we are arrested for trespass at the camp. Although we have now concluded that the likelihood of arrest is quite small, we do disclose the possibility to the volunteers.

We still ask for a commitment of at least one weekday evening every other week for several months as a volunteer. Occasionally, a potential volunteer will decide as a result of the orientation that s/he does not want to be a Witness for Justice.

We do have attrition of volunteers, although we have had several who have been quite faithful over the course of a season or two. Continuing recruitment is a key component of the program. The JV and the Community Ed Coordinator work together on recruiting volunteers, usually by speaking at church or school gatherings or getting articles about Witness for Justice in church newsletters or school papers or list serves.

Witness for Justice volunteers are especially helpful to us in the fall, when our summer interns have departed and we have still several months of intensive camp outreach. Once we have had a chance to see a volunteer in the labor camp setting and like the way they communicate with the workers, we can pair the volunteer with only one staff person, rather than 2, for a camp visit, enabling us to stretch our staff further. We try to utilize volunteers for educational camp outreach rather than in response to complaints from potential clients. Experienced volunteers, however, are able to be a part of a team responding to a call from a worker with a problem; they visit with the other workers in the same manner as a staff person would engage the non-client workers, while the staff person talks privately with the client.

### **Future Plans for Witness for Justice**

Our 2003-4 Jesuit Volunteer and our community education coordinator have plans to improve Witness for Justice. Among their ideas are recruiting students from colleges in areas further from our office, but near farm labor camps, creating more written materials for the volunteers, and being more active with suggesting follow-up projects for parishes and student groups to provide more support for workers.

# Innovation Description

**Program Name:** Columbia Legal Services

**Address:** 101 Yesler Way, Suite 600, Seattle, WA 98104

**Phone:** 206.464.1122

**Fax:** 206.626.5366

**Email:** [aurora.martin@columbialegal.org](mailto:aurora.martin@columbialegal.org)

**Program Director:** Ada Shen-Jaffe

**Contact Person:** Aurora Martin

**Subject Area:** Diversity

**Project Title:** Inclusion, Diversity, and Multi-Cultural Competence - Institutional Developments to Bridge the Gap Between Reality, Theories, and Desired Change

- A. **Problem:** Promoting and managing diversity in all aspects of program – client services, workplace, community, and justice system.
- B. **Innovation:** Creation of an inter-program legal services diversity committee, focusing on three goals: devising strategies to ensure diversity in the client services, diversity education in the workplace, and development of program resources for affinity groups through a safe haven and a highly trained team of staff to help diffuse and problem-solve issues of diversity staff may encounter within/outside the program.
- C. **Result:** Much of the work has been educational at this point, with various offices engaging in scheduled diversity-related discussions or events (e.g., focus groups on selected readings, films); increased awareness about issues of cultural sensitivity and communication. The Diversity Committee eventually will become an advisory body to the three programs. Additionally, it is anticipated that the committee will expand its inter-program membership to the broader civil equal justice community in Washington, with the intention of collaborating and consulting with others on statewide and regional diversity initiatives.

D. **Replication:** The committee is exploring ways in which to expand participation to the larger civil equal justice community in Washington.

E. **Materials Available:**

- a. Draft Model Guidelines on Inclusion, Diversity and Multicultural Competence as a Justice Imperative
- b. Diversity Questionnaire

## **(Draft Model Guidelines)**

### **Inclusion, Diversity and Multicultural Competence as a Justice Imperative**

Institutional support for the values underlying inclusion, diversity, and multicultural competence as a justice imperative is an essential attribute of equal access to justice. ATJ network members necessarily recognize that a justice system that is inclusive, fosters respect of diversity, and works to achieve multicultural competence is a goal of the highest priority. These Guidelines are intended to help organizations and entities review, assess, and identify areas in which each can take affirmative and lasting steps toward this goal.

There are three primary areas for application of these guidelines:

1. How an entity performs its duties in service to its constituents;
2. How the entity behaves with respect to its internal operations (i.e. with its employees, staff, volunteers, leadership, governance and management); and
3. How the entity promotes the values underlying inclusion, diversity and multicultural competence as a justice imperative.

#### **Step I:**

Adoption of a framework for the organization or entity to evaluate and determine whether the organization is effectively addressing barriers or obstacles (including indigent status) that may result in unfair and disparate treatment of clients, employees, prospective employees, leadership, governing bodies, or others with whom the organization interacts. Such factors or characteristics include (but are not limited to):

1. Age
2. Disability
3. Religion
4. Creed
5. Ethnicity
6. Social Class
7. Sexual Orientation
8. Indigenous Status
9. National Origin
10. Gender/Gender Identification
11. Marital or Familial Status
12. Educational level/literacy/English language proficiency as appropriate
13. Geographic factors as appropriate including isolation or remoteness
14. The extent to which some populations experience so-called “compounded bias” because they reflect multiple factors;
15. etc.

## **Step II:**

Adoption of a periodic, systemic process, consistent with the organization's mission, for deterring whether those who the organization or entity serves are substantially affected by any of the factors or characteristics listed in the framework adopted under Step I.

## **Step III:**

Development of an Inclusion, Diversity and Multicultural Competence (IDM) Work Plan and implementation program for making and measuring progress within an organization or entity. There are some resources available that describe such initiatives and efforts in Washington and around the country (see resources listing attached). The following is a list of areas for assessment, work plan development and implementation for the organization or entity to incorporate the inclusion, diversity and multicultural competence values into its internal operations:

1. Recruitment and hiring of diverse staff;
2. Retention of diverse staff, and creating and sustaining an organizational culture that sets out and supports inclusion, diversity and multicultural competence through constant learning, inquiry, research and educational efforts, and through training, orientation, technical assistance, etc.;
3. Provision of targeted learning opportunities, support for and provision of resources for education and training which strengthen the organization's capacity to provide its services in a manner which is consistent with the goals identified by the organization in Step II.
4. Leadership development and succession planning within the organization that reflects inclusion, diversity and multicultural competence-related goals and values;
5. Development of mechanisms that incorporate an inquiry and assessment regarding the values underlying inclusion, diversity and multicultural competence into organizational decision-making, deliberation, or policymaking consistent with the framework adopted in Step I and the determinations made under Step II. For example, if there is a large fundraising initiative planned, decisions about how to proceed should be made in the context of inclusion, diversity, and multicultural competence factors. One inquiry may be, will the fundraising campaign identify diverse groups whose membership or constituency would support the organization or does the campaign inadvertently create barriers to diverse participation? Or, better yet, how can the "opportunity" presented by a new fundraising initiative be used to creatively think "out of the box" to identify diverse resources and develop relationships with those who might support inclusion, diversity and multicultural competence within the justice community and system? The goal is to have

- inquiry and analysis related to inclusion, diversity and multicultural competence be automatic and second nature to all aspects of the organization's life.
6. Provide leadership throughout the overall justice system, the equal justice community and the community at large to ensure significant progress and accountability in promoting inclusion, diversity and multicultural competence as a justice imperative.
  
  7. Evaluation and accountability mechanisms for periodic review and assessment of the organizations' progress in efforts to carry out the goals of inclusion, diversity and multicultural competence. (Note that the Access to Justice Board has identified this as an area for future revision of both its State Plan for Civil Legal Services Delivery and its Performance Standards).

**(Draft Model Resolution)**

Inclusion, Diversity and Multicultural Competence as a Justice Imperative

Whereas (name of institution, organization or individual) is committed to equal justice for all as a cornerstone of our democracy;

Whereas (\_\_\_\_\_) recognizes that a justice system that is inclusive, fosters respect for diversity, and works to achieve multicultural competence in the increasingly diverse communities throughout the state of Washington, is a goal of the highest priority;

Whereas (\_\_\_\_\_) recognizes that the justice system reflects and presents barriers and obstacles to equal justice based on inability to afford legal assistance, and on other facts that lead to unfair and disparate treatment;

Whereas (\_\_\_\_\_) recognizes and embraces the public duty to ensure that the justice system works to overcome disparate treatment based barriers and obstacles to the justice system;

Whereas (\_\_\_\_\_) recognizes that the goal of a justice system in which inclusion, diversity and multicultural competence are an imperative can only be reached if all members of the equal justice community and the community at large agree to be accountable for progress under guidelines that are commonly adopted;

Now, therefore, be it resolved that (\_\_\_\_\_) adopts the attached Guidelines for Inclusion, Diversity and Multicultural Competence as a Justice Imperative.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

## Questionnaire

Name (optional): \_\_\_\_\_

Position/title (optional): \_\_\_\_\_

Name of Organization: \_\_\_\_\_

Years with Organization: \_\_\_\_\_

### **I. Defining Diversity**

1. What do you think are the hallmarks of an organization that promotes “diversity” in the workplace?
  
  
  
  
  
  
  
  
  
  
2. Do you think your organization (statewide, regionally and/or locally) embodies your vision of a diverse workplace? Please explain.
  - a. In what areas do you think your organization has been effective in promoting diversity in the workplace?
  
  
  
  
  
  
  
  
  
  
  - b. What areas do you think need improvement
  
  
  
  
  
  
  
  
  
  
3. Do you know if your organization has a “diversity policy” (e.g. regarding hiring, promotion, retention)? If so, do you think your organization adheres to its diversity policy? Please explain.

## **II. Personal Experiences/Support**

4. Have you ever felt mistreated by co-workers or any other person within your organization because of factors related to diversity? Please explain.
  - a. How did you respond to the situation?
  - b. Did you communicate your experience to a co-worker or any other person connected to the organization?
  - c. Were you satisfied with the outcome of the situation? Please explain.
  - d. If you were not satisfied, what do you think could be improved?
  
5. Do you think you would benefit from the creation of a *support group/safe haven* where you could air your concerns about diversity-related issues with others in your organization who may have similar concerns? Please explain.
  - a. Do you have suggestions how the support group/safe haven would work (e.g. central location, facilitator, etc.)? Please explain.
  - b. Do you have any concerns about the creation of a support group/safe haven?



## Innovation Description

**Program Name:** Community Legal Services, Inc.

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Philadelphia, PA 19102

**Phone:** (215) 981-3700

**Fax:** (215) 981-0436

**Email:** [puyehara@clsphila.org](mailto:puyehara@clsphila.org)

**Program Director:** Catherine C. Carr

**Contact Person:** Paul M. Uyehara

**Subject Area:** Providing services to limited English proficient clients

**Project Title:** Language Access Project

A. **Problem:** In the past, CLS has not delivered services well to limited English proficient (LEP) clients. Many such clients were unaware that they could obtain help from us. When clients did come in, CLS often failed to ensure that quality language services were provided. Instead, we either did without interpreters or allowed untrained individuals to interpret for clients, particularly for non-Spanish speaking LEP clients. Since most staff lacked training on how to work with interpreters, they were unable to discern when improper techniques were being used. In addition, the program didn't adjust the type of services offered to account for potential differences in the legal needs of LEP and immigrant/refugee clients. Not surprisingly, the number of LEP clients served was less than it should have been given demographic data.

B. **Innovation:** CLS created the Language Access Project and staffed it with two attorneys and a paralegal, all working half time on project tasks. LAP was charged with three tasks: 1) increase program capacity to deliver services to clients in languages other than English; 2) substantially increase the number of LEP clients coming in for help; and 3) raise language rights issues through advocacy and direct representation.

A comprehensive policy was written on providing services to LEP clients, beginning with the proposition that it is the program's responsibility to deliver quality legal services to clients in their preferred language. The Language Access Project procured contracts to provide staff with professional interpreting, both in-person and by telephone, and translation services on an as-needed basis in a broad number of languages to serve clients when in-house bilingual help is not available. Protocols were established on how to arrange for in house interpreting and to access contracted language services. Staff members were authorized to use such services without need for supervisory or management approval. We published a staff directory listing the language skills of bilingual staff. Staff members were trained in the protocols and how to work with an interpreter. Technical staff upgraded our Kemps intake software to better tabulate clients by language and record interpreting needs.

LAP staff, as well as non-project staff, consciously built relationships with community based organizations and targeted outreach to LEP communities. These relationships provided an informal, direct intake system for many organizations. We were able to increase awareness of our services in communities that had been underserved.

CLS also developed expertise in Title VI language rights and began taking up cases and issues to push governmental agencies to improve language access and otherwise provide better services to refugees and immigrants.

- C. **Result:** We were able to increase intake from Spanish speaking clients about 29% during the first three years of the project, while intake from non-Spanish speaking LEP clients increased 258%. The program is providing more actual representation to LEP clients, as distinguished from advice or referrals. Language ability is a significant factor in hiring new staff (last year 5 of 12 hires were bilingual, while 3 others had less than proficient second language ability) and we added three additional members to the board of directors who are bilingual or immigrants and/or work for organizations serving such groups.

The increased intake has also supported greater attention to issues of importance to LEP clients. We have and continue to engage in successful advocacy on language issues. For example, LAP staff were instrumental in efforts to: produce a report critical of the state court system's treatment of LEP litigants, force the welfare department to

reform its practices, and push LSC to issue guidance to field programs on language access. We have presented numerous trainings on Title VI advocacy, language rights, interpreting, and immigrant rights issues at local, state and national events. Staff in most of the major units are actively engaged in language rights issues.

D. **Replication:** Our approach can be utilized by programs across the country that are committed to making themselves accessible to LEP clients.

E. **Materials Available:**

- a. Paul Uyehara, "Making Legal Services Accessible to Limited English Proficient Clients," originally published in *Management Information Exchange Journal*, Vol. XVII, No. 1, Spring 2003. This article was originally published by Management Information Exchange Journal. Reprinted with permission. © Management Information Exchange.
- b. Paul Uyehara, "Opening our Doors to Language Minority Clients," originally published in *Clearinghouse Review*, Vol. 36, No. 11-12, March – April 2003. This article was originally published by Clearinghouse Review. Reprinted with permission. © National Center on Poverty Law.
- c. Community Legal Services, "Language Access Policy," Updated 29 October 2003.



## LANGUAGE ACCESS POLICY

### I. GENERAL POLICY

- A. **Policy.** CLS delivers quality legal services to clients in their preferred language. CLS shall provide language services as needed to ensure that limited English proficient (“LEP”) clients have meaningful access to CLS services.
- B. **Responsibility.** It is the responsibility of the program and not the client to ensure that communications between staff and clients are not impaired as a result of the limited English proficiency of the client.
- C. **Non-discrimination; supplemental services.** The program shall not provide legal services to LEP clients that are restricted, delayed or inferior as compared to services provided to English proficient clients. The program may need to provide supplemental services to LEP clients that would not ordinarily be provided to an English proficient client so that they can reasonably benefit from CLS services.
- D. **Notice.** CLS shall post waiting room notices in multiple languages that free bilingual or interpreting services are available, and CLS shall note on its website and in materials distributed to potential clients or to those who may refer clients that CLS will provide bilingual help or interpreters at no cost as needed and that immigration status is not relevant to determining client eligibility.

### II. LANGUAGE DATA

- A. **Kemps.** All staff who open files or receive open files from other staff must ensure that the intake sheet and Kemp's data correctly identify the primary language of the client and the need for an interpreter.
  - 1. **Primary Language:** A person’s preferred or primary language is the language in which they are most comfortable speaking. A client able to speak English may have a primary language other than English. If not obvious, the preferred or primary language should generally be chosen by the client herself. When in doubt as to which language is primary, enter the foreign language.
  - 2. **Interpreter box:** Check this box if the client is not fluent in English and therefore needs interpreting or bilingual services to assure effective communication. A check mark signals the need for language services. The

box should be checked for any client who cannot communicate *fluently* in English himself — regardless of whether past interpreting assistance was performed by CLS or some other party. Note that a client whose primary language is not English may or may not need an interpreter.

- B. **File notes.** All case handlers must make conspicuous notes in case files to indicate each client’s primary language, the need for an interpreter, and whether correspondence and other documents should be translated.
- C. **File notes - translation.** Staff shall inquire of all LEP clients, and record in Kemps notes and on the file whether the client is able to *read* in English, read in her preferred language, and which language is preferred for written communication such as correspondence. This information is essential to determine when document translations are needed to assure good communications.
- D. **Timekeeping.** All time spent by bilingual staff providing language services in cases must be recorded in Kemps under the Interpreting activity code for the client’s file. Time spent on language services not related to specific client files (e.g. interpreting at an outreach session or translating community education materials) must be recorded as well (the time can be charged to Special Grants - Language Access Project file number with the Interpreting activity code).

### III. IMMIGRATION AND CITIZENSHIP STATUS

- A. **General rule.** A client’s presence as a citizen, immigrant, refugee or other status, lawful or otherwise, is not relevant to determine eligibility for service except to the extent that the legal issue is based upon a particular status.
- B. **Status inquiry restriction.** Staff shall not inquire as to the citizenship or immigration status of a client unless it is directly relevant to the client’s case or problem or if the information is necessary to determine the client’s eligibility for referral to another program.
- C. **SSN.** Clients are entitled to service without the need to provide a Social Security number. Staff should follow existing protocol to “create” the required last 4 digits for clients who do not have or decline to provide a SSN (see attached Pennsylvania Legal Services protocol).
- D. **Confidentiality.** When a client’s status is relevant to the case or problem, staff are required to treat it as privileged information not to be disclosed to third parties without the client’s expressed consent. The consent must be documented in the file.

#### IV. BILINGUAL CASE HANDLERS

- A. **Bilingual case handlers preferred.** The preferred method of providing services to LEP clients is to use bilingual case handlers and support staff who are proficient in the client's preferred language. This method is much more efficient than the use of interpreters and translators.
- B. **Language sensitive case assignment.** Systems to assign clients to case handlers at intake and following intake should provide for assignment of clients to bilingual staff to the extent feasible, subject to controls to avoid overburdening bilingual staff, or creation of significant delays in service to clients based upon language ability.
- C. **Hiring.** CLS considers second language proficiency as a preferred quality in considering applicants for employment for all positions that have client contact. CLS seeks to enhance its ability to deliver services in multiple languages through the hiring of bilingual staff.
- D. **Workload adjustments.** Workload adjustments shall be made to reflect the additional work which may be required of bilingual and monolingual staff in delivering services to LEP clients.

#### V. DETERMINING NEED FOR LANGUAGE SERVICES

- A. **Types of language service:** Language services includes: assignment of bilingual advocates to LEP clients; interpreting by staff, contracted professional in-person and telephone based interpreters; volunteer community based interpreters; and translation services.
- B. **Initial assessment.** Staff at the point of first contact with clients shall make an initial assessment of the need for language services, and shall procure such services if they are needed to effectively communicate with the client at that stage of the process.
  - 1. **Determining primary language.** If difficulty is encountered by staff in identifying the primary language of the client, staff should use "I Speak" cards, multi-lingual interpreter posters, or call the telephone based interpreting service for assistance.
  - 2. **Subsequent assessment.** Case handlers who have subsequent contact with LEP clients shall review language needs.
- C. **Client request.** Language services shall be provided to any client upon request at no cost, unless it is apparent that the request is wholly unfounded.

1. Staff shall encourage LEP clients to use language services whenever there is any doubt as to the client's English language proficiency.
  2. Staff are prohibited from encouraging or requiring clients to bring others with them to interpret.
- D. **Staff decision.** Services shall also be provided when staff determines that such services appear necessary in order to communicate effectively with the client, despite the lack of a request from the client. Failure to provide language services when needed could impair the program's ability to provide quality legal services and may present ethical issues for the case handler.
1. In such cases, language services should be provided even if the client says it is not necessary.
  2. Staff may need to explain that language services will be provided to assist the case handler in providing quality legal services.
  3. Staff are encouraged to seek assistance from supervisory personnel or the Language Access Project to respond to such situations if difficulties are encountered.
- E. **Translation.** Translations shall be provided for LEP clients who can read better in languages other than English.
1. Translations need not be provided to clients unable to read in their primary language, unless this will facilitate communication with others who are assisting the client.
  2. Translations of client documents to English shall be procured as needed. Should any question exist as to the nature or relevance of the document, staff should consider obtaining a sight (oral) translation first to determine if the cost of a written translation is justified.
- F. **Staff authority.** All staff are authorized to procure language services without the need for pre-approval from supervisory or administrative staff.

## VI. WHO MAY PROVIDE LANGUAGE SERVICES

- A. **Program responsibility.** The program must assure that competent language services are provided at no cost to the client and as an essential component of providing

quality legal services.

- B. **Staff language competency.** Bilingual staff providing services in the client's language must be fluent in that language, with the exception of occasional, emergency or minor communications such as making an appointment.
- C. **Preferences - interpreters.** Interpreting service should be provided in the following preferential order:
  - 1. In house bilingual staff with interpreter training;
  - 2. Contracted professional in person or telephone based interpreters, the selection of which shall follow protocols for obtaining interpreter services;
  - 3. Community based organization or referring agency staff
    - a. Only at the insistence of the staff or client and after notice that CLS prefers to provide free in-house or contracted professional services;
    - b. Kemps notation of circumstances is required.
  - 4. Client friends and relatives. The use of adult relatives or friends of the client as interpreters shall be strongly discouraged by the case handler.
    - a. Such interpreters are unlikely to have the linguistic skills needed to accurately interpret, nor training in interpreting technique.
    - b. Relatives may have hidden conflicts of interest, or may impair candid communication about personal business between the client and advocate.
    - c. Such interpreters are permissible only after notice of our willingness to provide free professional assistance and at the client's insistence, both of which must be documented in Kemps and reported to LAP.
    - d. It may be necessary for the advocate to bring in an interpreter in addition to that provided by the client when necessary to assure good communication.
  - 5. Child interpreters prohibited. The use of minor children or other clients to interpret is prohibited absent exceptional or emergency circumstances, which must be documented in the file and reported to Language Access Project

staff.

D. **Training.** Staff must be trained before working with interpreters.

E. **Translations**

1. Translations should be done by in house staff when available, in accordance with the translation protocol.
2. Translations may also be done, in accordance with protocol, by contractors.
3. No preapproval is needed to procure translation services.

## VII. SCOPE OF LANGUAGE SERVICES

A. **General rule.** Language services shall be provided to the extent necessary to assure the quality of legal services rendered while minimizing delay or discomfort to the client.

B. **Interpreting**

1. Conduit function. Interpreters are expected to function solely as a conduit between the advocate and the client. Advocates should not expect interpreters to communicate with the client in the absence of the advocate with the exception of in-house interpreters who ordinarily communicate directly with English speaking clients for others.
2. When required. Staff should use interpreters to communicate with LEP clients during telephone calls, for intake, and for client interviews and meetings.
3. Hearings. Monolingual advocates should consider the need to bring an interpreter to hearings to facilitate client communication even if a court interpreter will be present to interpret the proceedings.

C. **Translations**

1. Vital forms
  - a. CLS shall prepare and make available vital forms in an English/Spanish version, and obtain translations over time in other languages regularly encountered. The other languages shall be

determined based on demographic, intake and other data and shall be reviewed periodically.

- b. Examples: intake sheet; retainer agreement; release forms; and any forms signed by the client.
  - c. For other languages, staff should ensure that sight translation of English forms is provided in the client's preferred language.
2. Letters and other documents
    - a. Routine correspondence to the client and to others should generally be translated.
    - b. Translation of large documents such as a brief or bankruptcy petition should be provided at the discretion of the case handler, provided that any document that is to be signed by the client, at a minimum, shall be sight translated.
  3. Community education - CLS shall undertake a process to translate all general client education materials into Spanish, and then into the other languages designated for vital forms.

## VIII. TRAINING

- A. **General rule:** CLS shall provide language access training to all existing staff who have regular contact with clients and to all such newly hired staff.
- B. **Scope:** The training will cover this policy, protocols for use of language services, how to work with interpreters, and other topics that are needed.
- C. **Bilingual staff:** CLS shall provide training for bilingual staff who may be called upon to provide interpreting assistance to other staff on the techniques used in interpreting, interpreter ethics, and other topics as needed.

## IX. MONITORING AND ASSESSMENT

- A. **Staff Responsibility**
  1. Staff assigned to the Language Access Project shall be primarily responsible for monitoring program compliance with this policy.

2. LAP staff shall report regularly to the Executive Director.

**B. Client Needs and Program Resources**

1. At least annually, CLS shall
  - a. generate intake statistics by primary language and by unit to determine the extent to which the program and its units are providing services to LEP clients
  - b. tabulate the number of bilingual staff on the payroll, and the number of languages spoken
  - c. tabulate the amount of staff time used to provide language services, the costs to procure outside language services and the extent to which services are utilized throughout the program
2. Every five years, CLS shall review available demographic data regarding the potentially eligible client population in terms of its linguistic makeup.
  - a. Such data will be compared to the existing client base to determine if apparent disparities exist
  - b. Legal management and the Language Access staff shall consider whether special efforts are needed to provide greater service to underserved language groups

- C. Annual Review.** The language access policy and the supporting protocols shall be reviewed annually and amended as needed.

**Addenda:**

1. Spanish and Cambodian Interpreting and Translating protocol
2. Language Services at CLS for Clients with Limited English Proficiency (protocol on telephone interpreting, in person interpreting and translation)
3. Quantum Request for Interpreting Services form
4. Language Line Document Translation Service Fax Order Form
5. CLS Staff Language Directory
6. Pennsylvania Legal Services Eligibility Manual excerpt: protocol for Developing an Unknown Social Security Number

# Opening Our Doors to Language-Minority Clients

By Paul M. Uyehara

*Mr. C, a 62-year-old recent Albanian immigrant, came to our office for help with a welfare problem. He showed pride and determination in explaining his problem in slow, broken English. His lawyer suggested an interpreter might help, but Mr. C said it was not necessary as he could understand and just needed a little time to find the right words in English. After talking about the problem some more, the attorney complimented Mr. C on his English but explained that an interpreter was needed since each of them had to understand everything the other was saying. Mr. C appeared aggravated and exclaimed, "It's impossible! It's too much trouble."*

*The attorney called a telephone-interpreting service, and an Albanian interpreter was on the speakerphone in about thirty seconds. Mr. C's face lit up. He explained that he never imagined we could get an interpreter so quickly! He said that, of course, speaking in Albanian was much easier for him, but no one had ever provided an interpreter before, and so he was doing his best in English. He did not want to cause any trouble or have to come back later.*

In 1998, after one of only two remaining neighborhood offices of Community Legal Services closed, and Philadelphia Legal Assistance was created in response to the new Legal Services Corporation (LSC) restrictions, a joint committee of staff from

the two programs reviewed client services. A key finding of the committee was that the programs were serving language and cultural minorities poorly. We were seeing an increasing number of clients such as Mr. C., for whom we could not provide the best representation without offering language services. Asian clients, estimated to constitute perhaps 7 percent of the population, accounted for only 1 percent of the programs' clients. And the closure of our Northeast office, which had served a diverse low-income area with substantial numbers of white, African American, Latino, and Asian families, had an interesting impact. That office had housed a clinic that handled custody and support matters for the entire city. The proportion of the clinic's clients who were Latino dropped from about 23 percent to about 14 percent when the clinic moved downtown from northeast Philadelphia. Committee members were also concerned that clients who spoke neither English nor Spanish were receiving poor service even when they did get in the door. Both programs lacked reliable, quick access to competent interpreting and translating services. The report recommended that the programs comprehensively increase outreach and services to underserved language-minority populations.

With support from the William Penn Foundation, Community Legal Services created the Language Access Project in

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1999 and assigned two lawyers and a paralegal to staff the project, all on a part-time basis. The project's charge was to implement the committee's recommendations to expand service to immigrants and limited-English-proficient clients by delivering services in languages other than English and Spanish, reaching out to immigrant communities, reviewing case-acceptance practices, and advocating on language rights issues. The work of the Language Access Project led to an increase in Community Legal Services intake among non-Spanish-speaking limited-English-proficient language groups of some 250 percent over three years, while overall intake among limited-English-proficient clients (including Spanish speakers) increased by about 50 percent during the same period.

To assist other programs that have yet to undertake such changes, I set out below some of the issues that arose and lessons we learned as we pushed Community Legal Services in a new direction to improve service to our total client population. I focus particularly on ways to approach the essential first step of being able to deliver services in other languages. Our approach is only one among various options that can lead to improved service to language-minority communities; others may adopt other methods.<sup>1</sup> Working effectively with increasingly diverse client groups requires addressing issues other than language.<sup>2</sup> For most programs, how-

ever, improvement in language capacity is essential.

## I. The Impetus for Change

Multiple factors are pushing legal aid programs to improve service to language-minority clients. The increase both in the foreign-born population and in the number of geographic areas where immigrants reside has made the issue relevant for many more programs than in the past. At the same time the increasing understanding of language access as a civil rights issue is causing legal aid programs to examine their own practices before demanding linguistic access to other government services for their clients.

### A. Demographic Trends

The population of the United States has changed dramatically since the creation of legal aid programs in the 1960s and 1970s. Some changes are readily apparent, while others may have gone virtually unnoticed. The foreign-born portion of the population has more than doubled since 1970 (see fig. 1), and immigrants now make up a larger proportion of the population than at any time since 1930.<sup>3</sup> Moreover, these changes have accelerated; the foreign-born population has increased by 57 percent just since 1990.<sup>4</sup> Spanish emerged as the predominant language spoken by the foreign-born only in 1970 and has become the dominant second language since then.<sup>5</sup> An esti-

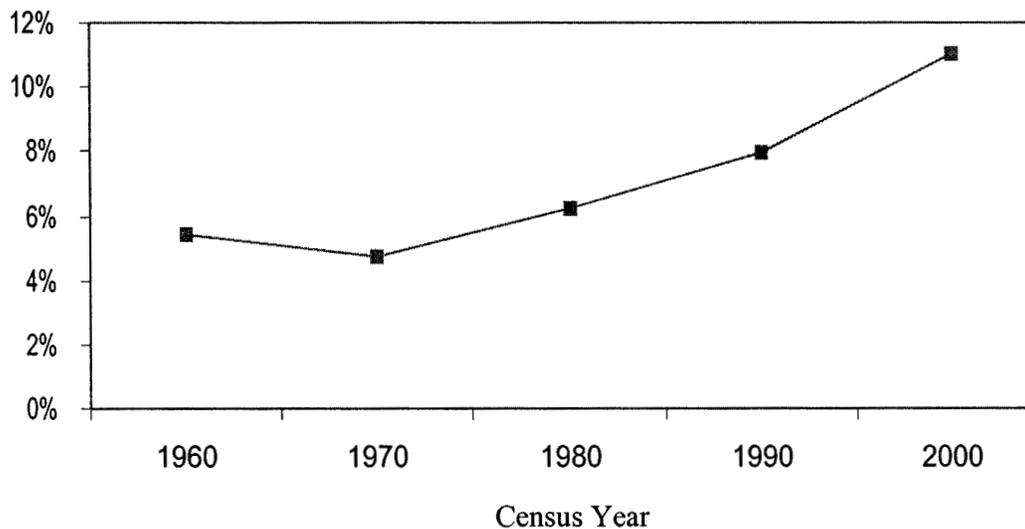
<sup>1</sup> See, e.g., Joann H. Lee, *A Case Study: Lawyering to Meet the Needs of Monolingual Asian and Pacific Islander Communities in Los Angeles*, 36 CLEARINGHOUSE REV. 172 (May-June 2002) (exploring a model that relies on an extensive network of bilingual staff and partnerships with other providers of legal services and community organizations to staff Asian language intake lines and outreach clinics).

<sup>2</sup> See Zenobia Lai et al., *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 UCLA ASIAN PAC. AM. L.J. 1 (2000) (Greater Boston Legal Services community lawyering approach to advocacy for clients in Boston Chinatown).

<sup>3</sup> See U.S. CENSUS BUREAU, Table DP-2: PROFILE OF SELECTED SOCIAL CHARACTERISTICS: 2000 (2002), [http://factfinder.census.gov/servlet/QTTable?\\_ts=62968974469](http://factfinder.census.gov/servlet/QTTable?_ts=62968974469); CAMPBELL J. GIBSON & EMILY LENNON, HISTORICAL CENSUS STATISTICS ON THE FOREIGN-BORN POPULATION OF THE UNITED STATES: 1850 TO 1990 (1999), <http://landview.census.gov/population/www/documentation/twps0029/twps0029.html>. The accompanying graph was also prepared from data found in these sources.

<sup>4</sup> Compare U.S. CENSUS BUREAU, *supra* note 3, with U.S. CENSUS BUREAU, Table DP-2: PROFILE OF SELECTED SOCIAL CHARACTERISTICS: 1990 (2002), [http://factfinder.census.gov/servlet/QTTable?\\_ts=62968106571](http://factfinder.census.gov/servlet/QTTable?_ts=62968106571).

<sup>5</sup> Compare Gibson & Lennon, *supra* note 3, tbls. 5-6, with U.S. CENSUS BUREAU, CENSUS 2000 Supplementary Survey tbl. P034 (2000), [http://factfinder.census.gov/servlet/DTable?\\_ts=62969168047](http://factfinder.census.gov/servlet/DTable?_ts=62969168047) (2001).

**Figure 1.—Foreign-Born Portion of Population**

[Source: U.S. Census Bureau.]

mated 60 percent of those who speak a language other than English at home, regardless of country of birth, are Spanish speakers.<sup>6</sup> The Latino population in the United States increased by a factor of almost 40 between 1960 and 2000, but more than a third of this population entered the country or was born after 1990.<sup>7</sup> Similarly the Asian-Pacific Islander population has exploded through immigration, with the number of foreign-born in this group tripling in the 1970s and then doubling in the 1980s. Two-thirds of the current Asian-Pacific Islander population is foreign-born, and about half of this group arrived in the 1990s.<sup>8</sup>

The changes are not simply the result of increased numbers. New Americans

are settling all across the country and are no longer confined to states such as California or cities such as New York that have traditionally had sizable immigrant populations. Limited-English-proficient communities are now found in rural as well as urban areas, in the Midwest and South as well as on the coasts.<sup>9</sup> The foreign languages that newcomers speak have also changed as greater numbers of immigrants arrived from Latin America, Asia, Eastern Europe, and Africa, outnumbering immigrants from Western Europe.<sup>10</sup> Communities that have been unaccustomed to the presence of immigrants are learning to accommodate substantial immigrant populations. Areas long accustomed to large immigrant pop-

<sup>6</sup> U.S. CENSUS BUREAU, CENSUS 2000 SUPPLEMENTARY SURVEY, *supra* note 5. The Census Bureau estimates that in 2000 more than 26 million people 5 and older spoke Spanish at home.

<sup>7</sup> U.S. CENSUS BUREAU, CENSUS 2000, Table PHC-T-1 tbl. 4 (2001), <http://www.census.gov/population/cen2000/phc-t1/tab04.pdf> (2001).

<sup>8</sup> U.S. CENSUS BUREAU, CENSUS BRIEF, FROM THE MIDEAST TO THE PACIFIC: A PROFILE OF THE NATION'S ASIAN FOREIGN BORN POPULATION (2000); U.S. CENSUS BUREAU, *supra* note 7.

<sup>9</sup> *E.g.*, Yilu Zhao, *Wave of Pupils Lacking English Strains Schools*, N.Y. TIMES, Aug. 5, 2002, at A1.

<sup>10</sup> In 2000 the top five languages other than English spoken at home, regardless of country of birth, were Spanish, Chinese, French (including Patois and Cajun), Indic (Hindi, Bengali, Punjabi, Marathi, and Gujarati), and German. U.S. CENSUS, CENSUS 2000, Table P034, *supra* note 6. Compare this to the top five languages spoken by foreign-born residents in 1960: German, Italian, Spanish, Polish, and Yiddish. GIBSON & LENNON, *supra* note 3.

ulations have had to adjust to different languages.

These demographic changes have naturally changed the composition of the low-income population as well. Poverty rates among the foreign-born are higher than among the native-born, and among the foreign-born population the poverty rate for noncitizens is more than twice that of naturalized citizens.<sup>11</sup>

The dramatic growth in immigration and immigrants' settlement in areas unaccustomed to such populations have other significance. More than 21 million of those 5 and older, or more than 8 percent of the total U.S. population in that age bracket, speak English less than "very well," a 50 percent increase in those with limited English proficiency since 1990.<sup>12</sup> Many are not U.S. citizens; the number whose status is undocumented was estimated at 8.5 million in 2000.<sup>13</sup> Immigrants with varying cultural backgrounds and familiarity with different kinds of legal systems are a special challenge for advocates. Providing quality legal services for the low-income segment of the newcomer population requires sensitivity to issues of language, citizenship, and culture. Especially after the wave of mergers that LSC has spurred among legal aid programs, not surprisingly programs now serve at least one substantial language-minority population. The demographic changes mean that programs that fail to create or upgrade language policies will increasingly exclude or provide inferior services to clients on the basis of the clients' ability to speak English.

Programs that cannot deliver better services to limited-English-proficient clients also risk becoming detached from

the needs of a changing client community. The legal problems that these clients experience may involve language or immigration status or may arise out of cultural norms with which advocates have little experience. Programs that fail to respond to new issues or to learn to deliver services in new ways risk losing their relevance.

## B. Poor Communication = Poor Lawyering

At the center of virtually everything advocates do with and for their clients is communication, both oral and written. Communication is essential to obtain facts, understand a client's goals and concerns, give advice, negotiate, and litigate. When advocate and client are not fluent in the same language, the simplest tasks can become difficult for both. Assuring that the two can communicate well when one is not proficient in English is a matter of professional responsibility, and this responsibility falls on the program, which is, after all, paid to deliver quality legal services. Misunderstood facts or goals can obviously lead to erroneous pleadings or legal strategies, implicating malpractice or ethics questions.

## C. The Civil Rights Angle

Just as demographic realities have changed, so has the legal setting in which we operate, in that the rights of language minorities are receiving increased attention. Programs that fail to provide linguistically accessible services may violate clients' civil rights under federal, state, or local laws barring discrimination based on national origin. Title VI of the Civil Rights Act of 1964 bars discrimination

<sup>11</sup> Of foreign-born residents, 16.8 percent were below the federal poverty level in 1999, compared to 11.2 percent of the native-born. Lisa Lollock, *The Foreign Born Population in the United States: March 2000*, U.S. CENSUS BUREAU, CURRENT POPULATION REP. P20-534 (2001).

<sup>12</sup> Compare U.S. CENSUS BUREAU, TABLE DP-2: PROFILE OF SELECTED SOCIAL CHARACTERISTICS: 2000, *supra* note 3, with U.S. CENSUS BUREAU, TABLE DP-2 PROFILE OF SELECTED SOCIAL CHARACTERISTICS: 1990, *supra* note 4.

<sup>13</sup> MICHAEL FIX ET AL., URBAN INST., THE INTEGRATION OF IMMIGRANT FAMILIES IN THE UNITED STATES 12 (2001).

based upon national origin by recipients of federal funds.<sup>14</sup> Language is a recognized proxy for national origin.<sup>15</sup> Discrimination need not be intended to violate Title VI regulations.<sup>16</sup> Pres. William J. Clinton issued an executive order in 2000 mandating that federal agencies adopt language access policies for themselves and require recipients of their funding to ensure that persons of limited English proficiency have meaningful access to government-funded programs and benefits.<sup>17</sup> Numerous federal departments and agencies have issued policy guidance regarding language access, under both the Clinton and Bush administrations. LSC has not yet issued guidance on services to limited-English-proficient clients but is considering doing so.<sup>18</sup>

Many legal aid programs receive financial support, directly or indirectly, from federal sources other than LSC, such as the Department of Justice; the programs also sometimes receive funds from state or local government programs that are in turn funded by the federal government. Of course, even programs that are not covered by such requirements would likely have difficulty articulating any sound reasons why they should not adhere to the same civil rights standards that apply to federally funded programs. This is especially true if the program may pursue language-based complaints on behalf of clients against entities that are subject to Title VI. Programs that are unable to deliver legal services effectively to limited-English-proficient clients will naturally

encounter more challenges when seeking to advocate on their behalf.<sup>19</sup>

## II. Assessing Needs

In redirecting its activities to ensure that the needs of language-minority clients are met, a legal aid program must consider the nature of the client community and its own resources.

### A. Client Language Needs

The first step in making programs more accessible to clients with limited English proficiency is to conduct a language-focused assessment of both the client community and the program. The program should gather data on its existing caseload to determine the proportion of clients whose English proficiency is limited, the primary languages that they speak, and the extent to which the program is using language services. Programs that cannot gather this information may survey staff members, especially the intake staff, informally. Fiscal personnel can tabulate expenditures for contracted language services. The program should also compare how many clients receive full legal representation and how many receive limited services such as brief advice or a referral. These numbers should indicate the language spoken by clients who find their way to the intake stage and those who are actually being represented.

Also gather information about the geographic area that the program serves. Demographic information from the 2000

<sup>14</sup> “No person in the United States shall, on ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d (2002).

<sup>15</sup> *E.g.*, *Gutierrez v. Mun. Court of S.E. Judicial Dist.*, 838 F.2d 1031 (9th Cir. 1988), *vacated as moot*, 490 U.S. 1016 (1989).

<sup>16</sup> *Lau v. Nichols*, 414 U.S. 563 (1974) (Clearinghouse No. 3,321) (failure to provide special language instruction to Chinese students violates Title VI regulations).

<sup>17</sup> Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 16, 2000).

<sup>18</sup> The Legal Services Corporation (LSC) requested comment on whether it should issue guidance on providing services to limited-English-proficient clients. 68 Fed. Reg. 1210 (Jan. 9, 2003). The notice raises some interesting issues about whether LSC-funded programs are recipients of federal financial support for Title VI purposes and points out that the programs are contractually obligated to avoid national-origin discrimination.

<sup>19</sup> *See, e.g.*, Victor Goode & Phyllis Flowers, *Invisibility of Clients of Color: The Intersection of Language, Culture, and Race in Legal Services Practice*, 36 CLEARINGHOUSE REV. 109 (May–June 2002).

census is available online at [www.census.gov](http://www.census.gov). Look for data on households or individuals who do not speak English “very well” and for tabulations by primary language, by race, of foreign-born individuals, and of poverty.<sup>20</sup> Community organizations and other agencies may also have useful data. The point is to identify the languages spoken in your service area and their relative prevalence. Also, understanding the geographic distribution of language groups is important.

Since sorting 2000 census data simultaneously by English language ability and by income does not appear doable, generating a direct tally of the low-income limited-English-proficient population may not be possible. However, one can calculate separately the size of each category in an area as small as a census tract or block group and thus locate at least roughly potential clients with limited English proficiency. Race-specific poverty calculations in specific geographic areas also are available, and these data may help locate concentrations of low-income Latinos and Asians. U.S. Census Partnership and Data Services specialists in each regional census office can guide or train on data gathering, and customized data reports are also available.<sup>21</sup>

With these data in hand, compare the eligible client population with the clients that the program actually represents, to determine if any groups are underserved. Does the percentage of the income-eligible population that is limited-English-proficient roughly correlate with the percentage of clients whose English proficiency is limited? Is the program serving clients from geographic areas that data suggest should contain high concentrations of low-income limited-English-proficient families? Do some language groups appear to be receiving services at a higher rate than others? If disparities are evident, consider

### Finding Census Figures

Go to <http://quickfacts.census.gov/qfd>.

Click on your state.

Select a county. A chart will show demographic information for that county and the state as a whole, including the percentages of Asians; Latinos; foreign-born; people speaking a language other than English at home; and poverty based on the 2000 census.

Click on the “Browse More Data Sets” link, then on “Social Characteristics,” to view county statistics regarding the foreign-born population and region of origin; those who speak English less than very well for Spanish and two general language groups; poverty; and breakdown of Asians and Latinos by country of origin.

whether the manner and methods of delivering client services, or the types of services provided, are making the program less accessible to limited-English-proficient clients generally or to specific language groups. Aside from the obvious—that limited-English-proficient clients are not seeking service because of language barriers or lack of familiarity with the program—numerous issues deserve consideration. These include

- location of offices and availability of public transportation (Are your offices more convenient for some groups than others? Are offices located in an area unfamiliar to or uncomfortable for some groups?);
- the impact of requiring telephone communication to obtain services (Many programs rely on centralized telephone intake systems. Can someone who does not understand English (or Spanish) penetrate the system? Is service available to someone without a phone? Clients whose English proficiency is limited may prefer in-person contact because they assume that interpretation is not available by phone or is provided more easily in person);

<sup>20</sup> Data on language spoken at home can be located for an area as small as a block group by clicking on Summary File 3 from the U.S. Census Bureau home page, [www.census.gov](http://www.census.gov), clicking on Access to all Tables and Maps in American FactFinder, selecting Enter a Table Number, entering table QT-P16, and selecting the desired geographic area.

<sup>21</sup> Contact information for regional census staff is available at [www.census.gov/field/www/](http://www.census.gov/field/www/). State data centers have additional information, including customized data. See [www.census.gov/sdc/www/](http://www.census.gov/sdc/www/).

- areas of law in which the program provides services (Specific language or nationality groups may encounter particular legal problems. For example, fraudulent or incompetent preparers of tax returns seem to appear more frequently in immigrant communities. Community Legal Services has encountered an apparently unusual number of Russian-speaking immigrants with trade school disputes. Become familiar with the particular legal needs of different language groups. Consider developing expertise in immigration law and advocating language access at other agencies with which limited-English-proficient clients interact);

- type of assistance offered (How is the decision made to offer a client full representation, limited service, referral, or advice only? Some restricted levels of service may be of little value to a client unable to send a letter, read a response, or file an application in English. Referrals to linguistically inaccessible pro bono programs may be of little value. Consider being more flexible in determining what type of help to offer clients whose English proficiency is limited. Offering the same services to different groups can have an unintended discriminatory impact); and

- community partnerships (Forge relationships with community organizations, including those based on ethnicity; grassroots groups; religious organizations; and service providers that work closely with immigrant and other limited-English-proficient communities).

Completion of this initial assessment should inform a program's knowledge of the languages in which it must develop capacity and the extent to which barriers may be blocking access to its services.

### **B. Program Resources and Practices**

A program must assess the resources that it has to serve limited-English-proficient clients, its current policies and practices, and language barriers to its services. Which staff members are proficient in a second language? Are arrangements in place to obtain trained interpreters and translators for other languages widely spoken in the service area? Does the program

have any policies regarding identifying and tracking a client's primary language, providing language services, using staff members for language services, and encouraging or permitting clients to provide their own interpreters? Policies aside, what practices do staff members actually follow? Are language-access matters the responsibility of any specific staff member?

The program should comprehensively evaluate its delivery of services to limited-English-proficient clients. Review all stages and aspects of client services—including intake, referral, advice, representation, advocacy, community education, and outreach—to identify potential barriers.

### **III. Policy**

After assessing client needs, existing program resources, and the state of program practices, a legal services program must establish policies to promote meaningful access for limited-English-proficient clients. The program policy can begin with a general rule, for example, "The program delivers quality legal services to clients in their primary language." Through bilingual staffing or free, competent language assistance to clients, the policy should make clear that the program, not the client, is responsible for eliminating language barriers. Services for limited-English-proficient clients should not be limited, unreasonably delayed, or otherwise inferior to the services that other clients receive.

The program should craft a comprehensive written policy, distribute it to all staff members, and make it available to the public. However, before thinking about how to flesh out the policy, the program must assemble the components needed to deliver services in other languages.

#### **A. Gathering Language Resources**

The essential element for a language access program is creating a network of staff members and services to interpret and translate for a wide range of communities with limited English proficiency. Although special attention must be given to the language groups encountered most frequently, the program must also have an adequate system for serving less frequently encountered language groups

since all clients are entitled to meaningful access.

### 1. Bilingual Staff

The first element of language services, especially for high-volume languages, is built upon in-house bilingual staff. Identify these individuals and determine their proficiency levels in both English and the second language. Consider a formal assessment of their language capability.<sup>22</sup> Compile and circulate a staff language directory that lists those with second-language ability and categorizes them according to skill in speaking and writing. Bilingual staff members can function both as case handlers and as interpreters or translators when qualified. Bilingual case handlers, in particular, are the best way to serve limited-English-proficient clients since the case handlers can communicate directly with the client without the attendant loss in communication from having even a good interpreter. Bilingual staff members are also more efficient in that they make additional time for interpreting unnecessary.

Establish a protocol that addresses the use of staff members for interpreting and takes into account their other job duties, training, and skill level. Remember that bilingual staff members, including native speakers, need training to function as interpreters. Programs unable to hire staff members dedicated to language services should consider adjusting the compensation and duties of those who do provide such services so that they are not unfairly burdened. The protocol should specify the order in which staff members should be called—considering their skill, training, and availability—for language help.

Since most programs lack staff members who can cover the array of lan-

guages that clients speak, hiring new staff members with second-language ability should be a high priority. Diversifying staff members based on language skills increases the cultural awareness among staff members and enhances the program's ties to a variety of client communities and organizations.

### 2. Outside Contractors

As in-person interpreters for languages that staff members cannot cover adequately and as backup for bilingual staff members, professional outside contractors are almost certainly indispensable. The program may want alternatively to enter into formal arrangements with community-based organizations, student groups, and volunteers to provide language services. Take care, however, not to depend on unpaid support from community organizations, which have their own programs to operate. These organizations can be essential for outreach and referral but do not expect their staff to function as an unpaid adjunct to the legal aid program. Reliance on donated help from community groups may discourage referrals and thereby undercut outreach. No matter who serves as an interpreter, quality must be assured. The potential for questionable linguistic or interpreting skills on the part of a volunteer interpreter is compounded by the delicacy of questioning, criticizing, or dismissing a volunteer or community partner for unsatisfactory work. When a program pays for services, it more easily can demand quality work and avoid taking advantage of other agencies.

A telephone interpreter service is an essential component of a language access policy. Telephone services can cover a large number of languages and are particularly necessary in programs that

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<sup>22</sup> One way to accomplish this would be to have someone who is clearly very fluent in a second language observe a simulated interview in which the staff member acts as an interpreter; the observer should assess the staff member's vocabulary, speed, accuracy, pronunciation, and diction, in both languages. Similarly the staff member can be asked to translate documents so that the staff member's translation skills can be assessed. Alternatively an outside company or educational institution under contract may test the staff member's written and oral skills. A certification examination may be available to test skills in the language in question. Note, however, that court certification may be too high a standard. Such examinations require simultaneous interpretation, which is beyond the capacity of even most comfortably bilingual people.

### A Teenager as Family Translator

I am 16 years old, and my family moved to the United States from China about nine years ago. I speak Cantonese at home because my parents still have a lot of difficulty speaking English. I am the oldest child in my family, which means my family expected me to help them translate. Translating is a lot of pressure! Translating from one language to another is very different and difficult. Every time when I'm translating for my parents I'm afraid I will translate something wrong, and that my mistakes will hurt my family. . . .

Not only is translating hard, but it also causes a lot of tension between me and my parents. My parents do not like to rely on me, and they know that I am tired of translating for them. Recently my father and I argued because I didn't want to miss school to go to the DMV [Department of Motor Vehicles] to help him get his California ID renewed. And when I tell my parents that I don't know how to translate something, they get upset. Sometimes, I don't think they trust me.

*Grace Zeng, Testimony Before the California Senate Judiciary Committee and the Assembly Select Committee on Language and Access to Government Services, Feb. 26, 2002.*

[Source: Chinese for Affirmative Action, San Francisco, Cal.]

depend on telephone intake systems or that encounter a wide range of languages. Good telephone services can have an interpreter of most languages on the phone in less than a minute. They can also identify a client's language and the general nature of the client's need until an in-person interpreter can be obtained. They are likely to be more cost-effective for day-to-day communication with clients since they usually charge by the minute. In-person interpreters, whose rates are likely to be hourly and to include a minimum charge and travel, may be more economical for long discussions.

Telephone interpreters should not be the only source of interpreters, for they do have drawbacks. Because these interpreters are not physically present, they are unable to observe visual cues that may signal concern or misunderstanding. Much legal representation is based on documents, which a telephone interpreter cannot view. The quality of voice transmissions over a speakerphone usually makes comprehension more of a challenge at both ends of the conversation. And, of course, the disembodied voice is impersonal and may contribute to the unease of

a client already uncomfortable discussing personal problems with a lawyer.

### 3. Translation

Translation of written documents (to be distinguished from interpretation, which refers to oral communication) raises some separate issues. Generally documents should be translated for clients with limited English proficiency so that the clients have the opportunity to read and understand forms, correspondence, and pleadings just as English-speaking clients have. But because translation is not only quite expensive but also, in some situations, of limited benefit, consider when it may be unnecessary. Sight translation, in which a qualified interpreter reads a document and tells the client what it says, may in some instances be a reasonable alternative to written translation.

Programs should review their forms, community education materials, and other documents to determine which should have priority for translation (e.g., those that the client will sign or that are used to obtain the client's consent or explain the client's rights). Programs should keep a supply of these translated forms in languages that are regularly encountered.

Select translators with the same care as interpreters but understand that different skills are needed. For example, bilingual staff members may have the language skills needed to interpret competently yet lack the more formal educational background (in either English or the foreign language) typically needed to translate competently. Because translation involves written communication without opportunity for clarification, it requires a higher level of precision in both content and grammar. (Conversely interpretation requires a higher level of conversational skill.)

To assess accuracy, have a second translator review the work of a primary translator from time to time. As with written communication in English, the translator, as well as the staff member who composes the writing to be translated, must be conscious of the client's literacy level in the client's primary language so that written communication occurs at an appropriate level.

Look into upgrading word processing software. Keyboards, dictionaries, and grammar checkers in other languages can simplify translation. However, translation software that automatically translates from one language to another should be used, if at all, only for initial drafts of translations. Since words have multiple possible meanings depending on context, translation software cannot be relied upon to translate accurately; a translator's review is also necessary.

## B. Policy Components

Clearly post, and publicize through flyers and other means, the program's policy to provide bilingual help or free interpreting and translating services, and inform clients of the policy when they contact the program initially. In waiting rooms, display multilingual posters informing clients that free interpreting services are available. Supply intake and reception staff members with language identification cards that the staff can give to non-English-speaking clients; these cards, in numerous languages, instruct clients to point to the language that they speak so that an interpreter can be called.<sup>23</sup>

Maintaining records and enhancing the program's ability to gather data on clients' primary languages is important. Intake forms should be formatted to record the primary language of clients who need language services. To be useful, the data field that identifies the primary language should be mandatory; the software should not default to English. The database should offer a full range of languages from which to select. If the choices are too limited (English, Spanish, and other), reports that the database generates will be unable to distinguish among non-Spanish-speaking clients of limited English proficiency or to yield data on the range of languages that clients speak. Computer and paper client files must

always include language information so that the need for language services is evident when a file moves from one staff member to another.

Consider carefully who should provide interpretation services. Many programs are deficient in this area. As a general rule, trained professionals must be used; they must, of course, be fluent in the second language as well as in English, and fluency in two languages at the level needed for legal interpreting is rare. Dual fluency by itself is not sufficient, however; a qualified interpreter must also be trained in the various modes and proper uses of interpretation (e.g., consecutive, simultaneous, and sight translation) and in the various roles assumed by interpreters (e.g., conduit, clarifier, cultural broker) as well as the ethical standards governing interpreters.<sup>24</sup> Furthermore, an interpreter should have the requisite training and experience to function as a legal interpreter, so that she is familiar with the court system, stages of litigation, and legal jargon. Optimally the interpreter should be certified as a legal or court interpreter. However, many states have not yet developed certification standards and procedures, and those with such standards and procedures cover few languages. Even if certification as a court or legal interpreter is unavailable, other forms of certification may be available in a particular jurisdiction.

A client's relatives and friends generally should not be permitted to function as interpreters. They seldom have any training and may not be proficient in both languages. The use of friends and family extends past bad habits of making the client, rather than the program, responsible for overcoming language barriers. Another reason for caution is that the client and a relative may have conflicting interests that are not readily apparent. The client's right to privacy is also undermined when relatives or friends interpret. Any

<sup>23</sup> A government version of one format for a language identification card, as well as a host of other resources and information, is available at <http://www.lep.gov/>.

<sup>24</sup> A model ethical code for court interpreters can be found in WILLIAM E. HEWITT, NAT'L CTR. FOR STATE COURTS, COURT INTERPRETATION: MODEL GUIDE FOR POLICY AND PRACTICE IN THE STATE COURTS 199–210 (1995).

policy must clearly forbid staff from requiring or encouraging clients to procure their own interpreters.

All the reasons not to use a client's friends and relatives for interpreting are more pronounced when applied to the client's minor children. Using minor children to interpret is a notoriously poor practice that is a clear sign of a program's lack of commitment to linguistic accessibility. Young children are likely to be deficient in language skills, often in both languages. They often miss school to act as interpreters. They are least likely to understand the legal system and most likely to feel qualified to answer for the client rather than simply be a neutral intermediary. Relying on children may undermine family structure as well as burden the child psychologically. Programs should strongly discourage, if not outright prohibit, the use of minor children as interpreters.

Carefully consider how to determine when an interpreter is needed. The easy case is when staff members are clearly unable to communicate with a client due to a language barrier. However, even a client who is able to answer questions sufficiently to fill out an intake form may still need an interpreter, particularly for more in-depth communications. Consider the needs and desires of both the client and the staff member, and when in doubt, use an interpreter.

Clients often decline language services for the wrong reasons. Some refrain from requesting an interpreter so as not to impose a burden on the program, while others may take pride in how much English they have learned without realizing their deficiencies. Intake staff and receptionists must be trained to notify clients of the availability of free language services and never to give the impression that communicating effectively with staff members is the clients' responsibility. Clients should not decline services for fear of having to pay or of facing delay in receiving help. They should also understand that interpreters are bound by rules of confidentiality.

This not to say that use of "professional" interpreters is necessarily prob-

lem-free. Some language communities are so small that a client may reasonably fear that the professional interpreter is someone who knows the client or the client's family, and this can cause great embarrassment. The client may have had bad experiences with poorly trained interpreters. Or the client may prefer the comfort of using a friend or relative to interpret and at the same time to help handle a difficult situation.

A program's policy should be cognizant of why clients may be reluctant to use a professional interpreter and should address these concerns with clients. However, the client should not always have the final word on whether an interpreter is used. Case handlers must be assured that they have an accurate understanding of what the client is saying and that the client has an accurate understanding of what the case handler is saying. Failure to use a professional interpreter may make communication unreliable to the extent that the program cannot assist the client in a way consistent with professional standards. For this reason, program staff must be free to call in an interpreter when help is needed to understand the client, even if the client appears to understand the staff and states that an interpreter is unnecessary.

A comprehensive policy should also deal with the distribution of cases involving limited-English-proficient clients. Cases in which an interpreter is used typically require three times as much time for any tasks involving communication with the client. Even when the case handler is bilingual, the case takes more time because of the need for translation work and for interpreting whenever others are involved. Immigrant clients also are more likely to lack a basic understanding of the U.S. legal system and their options within it. Another reason that higher levels of service may be required is that adequately serving clients with limited English proficiency on an advice-only or other limited-service basis is more difficult. For these reasons, case handlers should receive extra credit for assisting limited-English-proficient clients through interpreters, and

bilingual staff should receive similar appropriate adjustments.

All of the program's policies and procedures on language access should be written and distributed to all staff members. Note that many other issues arise in setting language access policies. Ideas about policy concerns and existing standards can be found in the guidance published by federal departments and agencies.<sup>25</sup>

#### IV. Staff Training

Staff training is essential for successful implementation of a language access program for a number of reasons. The language policy is likely to be a new concept to staff members, so that an initial round of training is necessary to explain the policy and to emphasize its importance. Training is an opportunity to discuss the policy's rationale and to build staff support for its implementation. Current staff members may need to be pushed to change habitual and no longer acceptable ways of doing business. Ongoing training should be planned for some time to assure uniform understanding and application of policy and to allow the staff to discuss the policy's strengths and weaknesses.

One reason to formalize a language policy is to facilitate training. Staff members need to read the policy as well as hear about it and discuss it. They also need to refer back to it later when issues arise. Consider creating a highly visible file folder that contains the policy, the staff language directory, instructions for obtaining in-house and outside language support, a language identification card, and tips on how to work with an interpreter.

Training on how to work with interpreters is essential. Interpreter training is

a necessity for bilingual staff members who have any role to play as interpreters. And training on the use of interpreters is needed for all staff members who may have occasion to work with interpreters. The methods used by trained interpreters are not difficult to understand, but neither are they obvious or comfortable for the untrained. For example, interpreters expect to function simply as a conduit between two parties to a conversation, not to participate in a three-way conversation. They speak in the same person as the speaker: "I would like to get child support" rather than "she says she would like to get child support."<sup>26</sup> Trained staff members speak directly to the client rather than to the interpreter, while the untrained tend to converse with the interpreter and treat the client as the object of discussion. Untrained bilingual staff members who act as interpreters, especially those accustomed to interviewing clients on their own, may be having side conversations with the client to help ascertain the facts and be omitting information or questions of importance.

Training in working with interpreters is particularly important because in many jurisdictions and in certain languages the interpreter's competence cannot be assumed. Programs should strive to rely upon in-house, language-qualified staff and professional outside interpreters rather than family and volunteers. But, in practice, "professional" may mean little more than "paid." Some individual interpreters, as well as personnel sent by interpretation and translation services, may not be fully fluent in English or in the second language. Or they may have adequate language skills but lack training in interpreting or translating methods and familiari-

<sup>25</sup> See, e.g., Department of Justice Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons and Language Assistance Self-Assessment and Planning Tool, at [www.lep.gov/recv.html](http://www.lep.gov/recv.html).

<sup>26</sup> Eliciting a factual narrative from a client with limited English proficiency can become very confusing when such conventions are not followed, as distinguishing the client's statements from her reference to a hearsay statement from a third party is difficult: "She said men never take care of their children." Trained interpreters refer to themselves in the third person to distinguish the interpreter's statement from the speaker's: "The interpreter would like to interject that the client asked the interpreter if the client could trust a lawyer."

ty with ethical standards. Staff members who are trained in what high-quality interpreting entails can recognize poor interpretation, even when they do not understand the language.

## V. Monitoring

Once a policy is drafted, resources are in place, and staff members are trained, the program should monitor itself to assure compliance with the policy and to continue efforts to improve services to limited-English-proficient clients. One or more staff members should be assigned oversight responsibility. Monitoring can take various forms; several suggestions follow.

With intake forms modified to code for primary language, track service delivery to clients, broken down by language, including changes in service over time, comparison among different offices or units, and the like. This type of analysis reveals information such as which units are serving large numbers of limited-English-proficient clients, which are reaching particular language groups, and which are doing well with outreach. The data can also show where the policy is not being followed, which offices or units need to undertake more effort to break down barriers, and where program resources should be directed. Also:

- Consider creating a time-keeping system code for staff time spent on interpreting or translating duties. Gathering such data may show where resources are needed.
- Monitor the use of contracted language services to see which languages are being used, which offices or units are using services, and whether services are being used properly (e.g., use of telephone interpreters for long conversations or relying on outside help when in-house staff members are available may be inappropriate).
- Observe whether translation services are being provided in tandem with interpreting services, as would normally be expected.
- Solicit input from clients and client organizations to help assess whether lan-

guage-appropriate services are being delivered.

- Set up your client grievance system so that clients can complain about language problems, and the staff members responsible for monitoring language access will receive these complaints.

Monitoring should address the overall question of whether specific language-minority communities are not seeking help from the program. If a significant disparity continues between the low-income population, broken down by language, and the makeup of the clients who seek service, targeted outreach may be necessary to open the door to groups that are not being served and to mitigate historic inequities in service delivery. Forge community partnerships by meeting with ethnic associations, grass-roots groups, religious organizations, and service providers who work closely with language-minority communities. Introduce and promote your program's services and express the program's particular interest in improving and expanding its work with limited-English-proficient clients. Consider advertising or writing a column in ethnic newspapers and searching out opportunities for appearing on ethnic radio and television programs. Set up new community education programs aimed at limited-English-proficient clients and conducted in their language. Consider establishing new intake sites or systems to reach certain groups.

Monitoring must be ongoing and cyclic. Programs should revisit questions raised during the initial assessment, such as whether particular methods of delivering service, case selection, or priority areas of practice may cause language-based inequities. The monitoring function should include an annual review and revision of policy.

One or more individuals should be designated to be responsible for language access. Assessing language needs, establishing policy, training staff, and monitoring implementation of the policy require a significant amount of staff time and resources over an extended period. With many staff overburdened, manage-

ment must carve out time for the designated staff to get the job done.

## VI. Conclusion

In this article I have offered a mere starting point for legal aid programs undertaking a serious effort to make themselves accessible to clients with limited English skills. I intended to introduce legal aid programs to a basic approach that we at Community Legal Services found useful, together with just enough explanation to convey a minimal understanding of some of the issues that are likely to arise. In the interest of brevity, I omitted some important issues and mentioned others only in passing. For example, entire books have been written on the ways in which cul-

tural differences can inhibit communication or working relationships. However, treatises are not necessary to confirm that many programs need improvement in this area or to guide those programs determined to deliver services in a more equitable manner.

Once programs begin to break down language barriers to service, more work lies ahead. We need to develop skills and capacity to work effectively with clients of diverse backgrounds. Cultural differences can impede delivery of quality legal services as much as language. Bridging cultural and linguistic differences between programs and clients should be a priority for all of us.<sup>27</sup>

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## MAKING LEGAL SERVICES ACCESSIBLE TO LIMITED ENGLISH PROFICIENT CLIENTS

by Paul M. Uyehara, Language Access Project<sup>1</sup>  
Community Legal Services, Inc.



Not to be forgotten in the discussion about attacking racial discrimination as a program priority is the emergence of language-based discrimination as a civil rights issue. Legal services providers need not step outside their office doors to find practices which effectively allocate scarce resources

to clients based upon their ability to speak a particular language. Opening the program's doors to limited English proficient (LEP) clients is the first step to advocating for language rights.

Community Legal Services undertook this task in 1999 by assigning two attorneys and a paralegal, all on a part time basis, to the newly created Language Access Project, which reports directly to the executive director. The Project was directed to build internal capacity to deliver services in a full range of languages, increase the number of LEP clients served through outreach, and take up advocacy issues important to immigrants and other LEP groups. As a result of the work of the Project, intake from LEP clients increased more than 50% in three years.

Demographic trends and recent improvements in federal policy have increased the importance of providing access to legal services for LEP clients. The foreign-born population has increased as a proportion of the U.S. population with each census, rising from less than 5% in 1970 to more than 11% in 2000, and the population has spread far beyond traditional immigrant centers. Substantial LEP populations now exist in states across the country, in rural areas as well as cities, including many areas that in the past had been almost exclusively English speaking. Legal services programs must act quickly to assure that they reduce language-based barriers to new client populations.

There are a number of reasons to motivate change. Programs without language access policies are likely to

### Quick Indicators of Basic Language Access Deficiencies

- The program encourages relatives or friends to interpret for clients.
- The intake database lacks a mandatory data field for the client's primary language.
- No formal arrangements are in place to obtain professional interpreters.
- Neither bilingual nor monolingual staff have been trained on interpreting techniques.
- No articulated policy on delivering services to LEP clients exists.
- Case handlers send untranslated letters (or no letters at all) to clients who don't read English (or Spanish).

deliver second rate services to LEP clients, who may not understand legal advice or be able to carry out self help instructions delivered in English. Case handlers face obvious difficulties in obtaining the facts and determining the client's goals when unable to communicate effectively with the client. Misunderstood facts, advice or client goals that result from language barriers a program fails to overcome might well form the basis for a legal malpractice claim, ethics complaint or Rule 11 motion. In addition, any provider receiving federal financial assistance, direct or not, is obligated by fairly detailed government "guidances" to assure that they have in place comprehensive policies and practices to provide services to LEP clients or risk loss of funding for discriminating against clients on the basis of national origin. These guidances have been promulgated by a number of federal departments and agencies acting under Title VI of the Civil Rights Act of 1964.

To assess just where your program measures up on language access, take the quick self test in the accompanying box. If you find that many of these practices

apply to your program, or that you have never even considered the issues, now is a good time to start implementing new policies and practices. Here are some basic suggestions for getting started.

### Setting Policy

At the outset, it is critical to understand that if your program is fairly typical in its absence of good language policy, basic attitudinal changes are required. Simply setting and distributing a policy will not solve the problem. Instead, some initial assessment is needed, followed by policy setting, staff training, monitoring and fine tuning. To accomplish the sustained attention needed to implement the changes, the first step is to designate one or two people in the program with specific responsibility and appropriate authority to make the program language accessible.

The designated staff should conduct an initial assessment of the program's services to language minority clients. Assuming that you can tabulate clients in the database by primary language, some statistics should be gathered to determine the proportion of clients served and the nature of services provided, according to the clients' language. If the database does not track clients' language, or it is too limited (e.g., English, Spanish, Other), anecdotal information from intake staff and other case handlers can still provide insight, as can fiscal information on spending for language services. The language breakdown of the actual client population served should then be compared, at least in a gross fashion, to the breakdown of the universe of eligible clients as divined from census data or less formal estimates of numbers of LEP low income persons.<sup>2</sup> The language resources, such as bilingual staff or outside interpreters, used to provide help to LEP clients should be identified and existing protocols gathered. Program staff should be surveyed to identify language barriers to service.

A new approach should be evident from the first formulation of the goal of the new policy, which may start with something as simple as this: *ABC Legal Services is committed to delivering quality legal services to clients in their primary language.* Of course, much more is needed to flesh out the contours of the policy, but this initial goal statement should be meaningful to staff and clients alike. It emphasizes that the program carries the burden of communicating with the client, rather than the other way around, which is how things typically operate. The policy will require that the program overcome any language barriers by providing services through a bilingual case handler or by providing free,

competent language services at all stages to allow communication between monolingual staff and the client. The goal statement also explains that services will be provided in the client's primary language rather than in English, which helps orient the staff as to the nature of the undertaking.

Policy and protocols need to be set up to carry out the goal of providing quality legal services to LEP clients:

- Use professional interpreters and translators. Programs that would never allow an untrained, untested or incompetent lawyer, paralegal, expert witness or social worker to be involved in providing legal services to a client do not blink an eye at allowing virtually anyone to serve as an interpreter when a non-English speaking client shows up in the office. Yet interpreting is an extremely skilled profession which requires years of education to acquire fluency in two languages in addition to training in proper interpreting techniques. Friends, relatives, and most particularly children of clients should generally not be permitted to interpret for the advocate. With rare exceptions, they will lack sufficient skill in English or the client's language and are likely to be unaware of the manner in which interpreting is done. Some may have hidden conflicts of interest with the client, or feel uncomfortable answering for the client. The client is entitled to confidentiality and privacy, neither of which is well served by allowing nonprofessionals to interpret.
- An interpreter is needed whenever the client *or* the case handler thinks one would be helpful. Sometimes it is immediately obvious that an interpreter is needed. In other cases, the need may be less clear. The vocabulary and sentence structure needed to fill out an intake form in English is much easier than that needed to explain the details of the problem. Clients often deny that an interpreter is needed, but for the wrong reasons — like fear that asking for an interpreter will result in a delay (or even denial) of services. Case handlers must assure that *they* can understand the client completely even if the client claims to understand the case handler, bearing in mind the ethical responsibility of the program to assure that it is able accurately to understand the facts of the case and the client's intentions.

- Case handlers need authority to procure language services when needed. In order to get people in the habit of using the services, programs should not erect bureaucratic barriers. Staff should not need approvals to obtain language services.
- Translation policy must be carefully developed as well. (“Interpreting” involves oral communication, while “translation” is used for written communication.) Good interpreters are not necessarily good translators and vice versa. Some balancing of costs and benefits is appropriate in setting policy on what kinds of documents should be translated. Certainly, programs ought to assure that staff send translated letters to non-English speaking clients in the same situations that would result in a letter to an English speaking client. On the other hand, translating a brief or a set of bankruptcy schedules may not be worth the cost. “Sight translation,” in which an interpreter orally reads a document to the client, may sometimes be a suitable alternative, with an interpreted summarization of the document by the advocate serving as a last resort.
- Data gathering related to language is important for monitoring. The intake sheet should be modified to include a mandatory primary language field, which does not default to English. The field should offer a comprehensive list of languages from which to choose. Fiscal staff should gather staff specific data on spending for language services.

### Training

Staff training is essential to change practices in serving LEP clients and it begins with the new language policies. The procedures to follow to obtain interpreter assistance must be written up and explained. Skills training on how to work with an interpreter is also needed for any staff that come into contact with clients, including support staff as well as advocates. The methods used by trained interpreters are not difficult to understand, but they are also neither obvious nor comfortable for the untrained. For example, interpreters expect to function simply as a conduit between two parties to a conversation rather than to participate in a three-way conversation. Trained staff will look at the client and ignore the interpreter while the untrained naturally look at the interpreter and tend to treat the client almost as a bystander. Don’t forget that bilingual staff who act as in-house interpreters also need training on how to interpret; the proper techniques will not be

### Language Services Components

- Bilingual staff case handlers
- Staff interpreters/translators
- Professional in-person interpreters
- Professional telephone interpreters
- Professional translators
- Volunteer interpreters/translators

followed by them either without training. Case handlers also need to be prepared for the fact that a properly interpreted interview will likely take three times longer than one in which everyone is speaking the same language.

### Language Services Components

The foundation of the language accessible legal services office is a system of bilingual case handlers, interpreters and translators capable of handling both common and infrequently encountered languages for the program’s service area. The most efficient and effective way to deliver services to LEP clients is to minimize the need for interpreting by using bilingual advocates. Bilingual staff not only allow for services to be delivered directly in the client’s language, but are likely to bring more cultural awareness and connections to community organizations than monolingual staff. Programs can increase capacity here by placing greater emphasis on second language fluency in hiring new staff. However, in most cases, the need for capacity in several languages throughout the program will still require the use of outside help.

Arrangements need to be made to retain professional in-person interpreters for client interviews and meetings in order to cover the breadth of languages spoken within the client population. In-person interpreting tends to work better than telephone-based interpreting because the parties can see each other and view documents together. On the other hand, telephone interpreting services ought to be used to interpret conversations that would occur on the telephone with an English speaking client. Telephone interpreting is also helpful for brief, in-person discussions with the client, particularly when the program lacks advance notice of the need to arrange for an interpreter to come to the office. A telephone interpreter can be obtained in less than a minute and in an amazing number of languages, whereas it may take a day or more to schedule an in-person interpreter, with less frequently used languages

Programs in many areas of the county need to aggressively address language issues to remain relevant to emerging client populations and capable of meeting their critical legal needs.

taking more time. Bear in mind that telephone interpreters usually bill by the minute and at a rate that makes them much more expensive per hour than an in-person interpreter, who is likely to bill by the whole hour, perhaps with a minimum time charged. It tends to be cheaper to use a telephone interpreter for a conversation of less than, say, a half hour, than to bring in an in person interpreter who will bill for at least an hour, if not two.

A system also needs to be set up to obtain translation services to handle written work. Again, in-house staff can be a starting point, provided that the program assures that translators possess the high level of written skill required for competent translation. However, programs will need external resources to cover all languages that may be encountered. With the convenience of e-mail and the fax, national services can be utilized to bring translations in a wide variety of languages even to isolated programs. Quality checks done from time to time by back up translators are recommended to screen for poor translations. And do not forget to be sensitive to the client's literacy level, just as should be done with English speaking clients.

Translations are needed for program brochures, handouts and forms in addition to client correspondence. The program's policy of providing free interpreting and translating services should be printed up in a multilingual format, posted, and distributed publicly. Commercial language services offer handy tools like multilingual signs and posters advising that interpreters are available, and language identification cards to use when the client's language cannot be discerned (a government version of one format, as well as a host of other resources and information, can be viewed at: <http://www.lep.gov/>).

As with other services, program managers should shop around for price and quality. Setting up a shared contract, such as with other legal services and public interest programs in the region, may supply the volume that may allow for reduced rates. But be sure that staff

are aware that the skill level of the interpreters within and between different language services providers varies to a surprising extent, thus reinforcing the need for staff training so that advocates know how to spot deficient interpreting techniques and methods to respond to them.

Caution should be exercised in connection with the use of volunteer interpreters and translators. Remember that it is not easy to find a person who possesses the requisite language skills and training to handle legal interpreting, where conversational level skill in either language will not suffice. Volunteers, including some staff at community-based organizations, may themselves speak English with less than the fluency required. Others may be operating at a fluent level in English, but only be able to speak the native language of their parents at the level of, say, an eight-year-old. The possible existence of linguistic or interpreting skills problems with a volunteer interpreter is compounded by the touchiness of questioning, criticizing or dismissing a volunteer or community partner for unsatisfactory work.

Programs also need to be careful about automatically expecting staff at ethnic organizations to provide free interpreting. Not only can there be skill problems, but you might inadvertently create a disincentive for referring language minority clients to your program by requiring the agency staff not only to make the referral, but also to take the time to serve as a free interpreter for your legal services program. When services are compensated, we can demand quality work and avoid taking advantage of other agencies. Nevertheless, carefully planned arrangements between community organizations seeking to provide convenient services to members of language minority groups and legal services providers interested in reaching out to under served populations can be beneficial to all.

### Monitoring

Once basic policies are set and protocols established, ongoing monitoring, feedback and policy adjustment over a period of time will be required to change the habits of staff. When primary language is added as a data field, managers can begin to gather data on services to LEP clients. The program may find that some offices or units have more contact with particular language groups that may reflect the presence of bilingual staff, location, outreach efforts, the relevance of the services offered, and the extent to which clients learn that they can get help without speaking English. Other offices or units in a program may continue to serve only

one or two language groups. Reports on spending for language services should also be studied for patterns on use or disuse. For example, billing records might indicate where staff seem to be using interpreters but no translators, which would prompt a question about whether the case handler is neglecting to have client letters translated.

Monitoring should provide indicators of the extent to which staff are complying with the new policy. Some staff will need to be reminded or retrained on proper policy and the protocols to retain interpreters. There is no doubt that it will take concerted effort to break old habits and this is particularly true with offices that see relatively fewer LEP clients, making it even more of a challenge for staff to become familiar with the use of the language services.

The monitoring can be incorporated into larger program reviews about what clients are being served. Many programs are failing to provide services equally across language groups. The ability to monitor services to clients by language will greatly help programs that want to enhance services to LEP clients. The data can be compared to demographic data to look for disparities between the low income populations and the client population based upon language. It may help to suggest where a program should seek consciously to build relationships with ethnic organizations or consider the particular needs of a specific group of clients that ought to be better served. In addition, the monitoring results should suggest adjustments that are needed in policy, which ought to be consciously reviewed annually for several years. Input from client organizations serving LEP populations will facilitate the process and provide important perspective from the consumer angle.

### **A Word about Costs**

Legal services programs, chronically pinched for money and staff to handle client needs, are understandably reluctant to engage in programs designed to bring in more clients. With programs seeming to spend inordinate amounts of time on turning away clients who want a lawyer, some say, what's the point of bringing more clients in? Is this so we can reject people on an equal opportunity basis? And how do we justify reaching out to clients that we know will cost more to represent?

There is not much difference between the existing non-policies of many legal services programs and hanging a sign on the door that says Free Legal Services for English (or Spanish) Speaking Poor People — All Others Go Away or Bring Your Own Interpreter. Since language is a recognized proxy for national origin, fail-

ing to provide equal services to LEP clients — even unintentionally — may be a civil rights violation, pure and simple. If you don't receive any federal funding, you may not be violating any law, but then you'd have to feel comfortable with private clubs restricted to white men to use that as an excuse. The law mandates that recipients of federal funding provide meaningful access to people who don't speak English.

Programs in many areas of the county need to aggressively address language issues to remain relevant to emerging client populations and capable of meeting their critical legal needs. The rights of language minorities are routinely violated by institutions upon which poor people depend, making language an issue ripe for advocacy. But we also need to get our own houses in order as we start filing complaints against others who don't provide language appropriate services.

Costs of course will vary widely depending on the demographics of your service area and the availability of interpreters. Philadelphia has a sizeable LEP population — about one in six residents speaks a primary language other than English — as well as a good number of resources for language services. Last year, we were spending about \$1,500 per month for outside language services, an amount which is a fraction of a percent of our budget. Over the past few years, we have increased services to several language groups by more than 100%, and we are now able to provide quality service to entire populations that in the past rarely received any service from us. And expanding our client base has drawn our staff into new areas of advocacy on issues of importance to immigrants and language minorities — such as providing interpreters for court hearings, making welfare offices accessible, and challenging eligibility requirements for non-citizen drivers' licenses and identification cards. The money was well spent in reducing language barriers to our program. Although we have a ways to go still, the hardest part was getting started.

1 The Language Access Project of Community Legal Services welcomes questions and comments from program directors, which may be directed to the author at [puyehara@clsphila.org](mailto:puyehara@clsphila.org) or (215) 981-3718. The Samuel S. Fels Fund provided financial support for the preparation of this article.

2 The Social Characteristics Profile (Table DP-2) of Census 2000 data (available by state or county at [www.census.gov](http://www.census.gov)) provides a generalized but useful starting point for assessment of potential client population by primary language and ancestry.

# Innovation Description

**Program Name:** Legal Aid and Defender Association, Inc.

**Address:** 645 Griswold, Suite 2600  
Detroit, Michigan 48226

**Phone:** (313) 964-4111 x6346

**Fax:** (313) 964-1932

**E-Mail:** [mhall@ladadetroit.org](mailto:mhall@ladadetroit.org)

**Program Director:** Deierdre Weir

**Contact Person:** Michele Hall-Edwards

**Subject Area:** Technology

**Project Title:** E-Cabinet

- A. **Problem:** The need to avoid the cost of storage for paper files for open, but especially closed files. Also, as a result of staff reductions, we had a need to make the use of staff time more efficient and effective. We saw filing, retrieval, searching for lost files and general maintenance processes as a major target for time gains. Finally, we saw an opportunity to address the "emergency coverage" situation where the attorney assigned to cover a hearing is unable to attend. We needed a procedure that would allow another casehandler to retrieve the file from a remote location.
- B. **Innovation:** Equipment and technologies were identified that were integrated by 3<sup>rd</sup> party vendors (Ricoh) to create eFiles. We are able to scan 50 pages per minute for standard documents. Then storing those scanned images with as much "labeling" as desired using Scan Capture software in electronic format (.pdf). The files are stored on a secure, mirrored, dedicated web server and accessible from any browser with Internet access and a password through the eCabinet interface.

In addition to these technologies, we developed policies and procedures to support capture of **all** client case documents into electronic format.

Client's now have virtual files. We elected NOT to do any scanning of files open before implementation of this project.

- C. **Result:** Employee hours spent looking for files and replacing them is eliminated for eFiles. Attorneys are able to do key word searches on contents of their case files and locate documents quickly. Files are not lost. Managers can review attorney work from remote locations. Still in early stages, however costs of closed file storage will begin to reduce and eventually be eliminated.
- D. **Replication:** The technologies are readily available with the only limitation being budget considerations. The appropriate policies will depend on current culture. Many meetings were held with managers and staff prior to the first pilot and then the project was implemented fully within one law group.
- E. **Materials Available:** We developed an eCabinet Manual for use in filing and retrieval of eFiles. There are also several user and administrative manuals available from the Ricoh website [http://www.ecabinet.net/support/tech\\_documentation.shtml](http://www.ecabinet.net/support/tech_documentation.shtml).

# Innovation Description

**Program Name:** Legal Aid Society of San Diego, Pro Bono Program

**Address:** 1475 6<sup>th</sup> Avenue, 4<sup>th</sup> Floor, San Diego, CA 92101

**Phone:** (619) 471-2674, (619) 471-2731

**Fax:** (619) 471-2774

**Email:** [ClareM@lassd.org](mailto:ClareM@lassd.org), [RebeccaS@lassd.org](mailto:RebeccaS@lassd.org)

**Program Director:** Gregory E. Knoll, Esq.

**Contact Persons:** Clare H. Maudsley, Pro Bono Program Manager,  
Rebecca Sigrist, Esq., Supervising Attorney

**Subject Area:** Housing Law

**Project Title:** Unlawful Detainer Assistance Program  
Continuum of UD Legal Services.  
Hotline - Legal Clinics in Courthouses – I-CAN!  
Computer Kiosk, with Unique Vide Conferencing Link  
Providing Live Assistance by Hotline – Representation  
at Trial by Volunteer or Staff Attorney.

- A. **Problem:** About 1,000 Unlawful Detainer Complaints are filed against tenants every month in San Diego County. The overwhelming majority of these tenants are indigent and unfamiliar with the law. Due to the current housing market with very limited low income housing available, many tenants have defenses to an eviction or may simply need time to relocate. Given the time constraints, it was hard to provide effective assistance to a large number of tenants. It was difficult for a hotline operator to assist a tenant to complete an answer and fee waiver over the phone. Housing staff attorneys needed to prioritize their time to provide legal representation to tenants with the strongest defenses. Consequently, many tenants fell through the cracks.
- B. **Innovation:** The Legal Aid Society of San Diego, Inc., Pro Bono Program (LASSD's Private Attorney Involvement component) developed the Unlawful Detainer Assistance Program to provide a continuum of UD services to the maximum number of tenants.

First, as notified on the UD summons, tenants have always called the LASSD Consumer Response Team (hotline) ("CRT") for legal assistance, where, after being screened for eligibility, they receive basic legal advice about the UD process. The innovation is that, in addition to giving legal advice, the CRT now refers the tenant to the I-CAN! computer kiosk and the Pro Bono Program UD clinic, both located in the courthouse for assistance to complete a UD answer and fee waiver. The UD Court Clerks also refer tenants to the I-CAN! and the UD Clinic.

I-CAN! is a kiosk and web-based legal services system designed to provide convenient and effective access to vital legal services, developed by the Legal Aid Society of Orange County. I-CAN! creates professional looking, ready-to-file UD Answers and Fee Waivers, along with instructions for service and filing. I-CAN! asks tenants a series of questions in English, Spanish or Vietnamese at a 5<sup>th</sup> grade reading level. The software can be expanded to include any language. The tenant answers using a touch screen with easy to follow menus. I-CAN! requires the user to input very little information themselves, due to language difficulties. Tenants respond by selecting from a menu of possible answers.

The unique feature of the UDAP program in San Diego is that the I-CAN! has a videoconferencing link to the CRT via the push of a button so that the tenant can receive live, immediate assistance to answer questions. This has given tenants confidence to use I-CAN! successfully. Also, those who do not speak English can receive assistance from bilingual CRT operators, to input any necessary information in English.

In addition to the I-CAN!, the Pro Bono Program also holds a UD clinic in the courthouse for limited hours. Staffed by Pro Bono Program staff and volunteers, we advise tenants about the UD process and assist them to complete court forms. LASSD's Housing Team attorneys are available to the Pro Bono Program by telephone, as needed. In addition, we give tenants advice on budgeting, cleaning up their credit, etc. and provide them with a workbook – "Money Options" – donated to LASSD through its partnership with Visa that teaches tenants how to manage finances and improve their credit.

The Pro Bono Program and the CRT refer appropriate tenants to the LASSD Housing Team or to a volunteer attorney for legal representation. The Pro Bono Program recruits, trains and mentors the volunteers with assistance from the Housing Team attorneys. We have formed partnerships with the Latino, Pan-Asian and African American minority bar associations in San Diego County. These organizations have committed to provide volunteers for Pro Bono Program services, which enables us to

provide culturally sensitive assistance to clinic participants in their own language.

- C. **Result:** The UDAP, utilizing the CRT, Pro Bono Program, onsite UD Clinic, I-CAN! computer kiosk, volunteer attorneys and the Housing Team utilizes efficiently LASSD's resources and provides access to a greater number of tenants in need on a timely basis. In the first year of operation, we have installed an I-CAN! computer kiosk in one San Diego Courthouse, available whenever the courthouse is open and the videoconferencing link with the CRT is open from 9-4:30 daily. We also run a UD Clinic for limited hours in two courthouses. We hope to identify funding to install additional I-CAN! computer kiosks and open further clinics in the remaining courthouses in San Diego County.

The Court is an enthusiastic partner of the UDAP and has provided facilities and some funding. The Court particularly liked the videoconferencing link to the CRT via I-CAN! which provides continuous live assistance to users. The Court has found that the UDAP facilitates the operation of the Court when tenants present complete and legible documents for filing. The landlords' bar has also been very supportive. They appreciate that they now receive legible answers with the defenses articulated. Also, they benefit when they deal with tenants familiar with UD law.

We have recruited a large number of volunteers to the UD Clinics, in particular, young attorneys who are looking for client contact and trial experience. Further, our partnerships with local law schools and paralegal colleges attract law students and trainee paralegals who assist in completing the forms and help tenants use I-CAN!

- D. **Replication:** This program can be replicated without significant investment by other programs. Many other programs have implemented parts of this innovation, but have not integrated all of the components to provide this comprehensive service to clients.

You can view the I-CAN! program on the internet at [www.legal-aid.com](http://www.legal-aid.com). The internet documents are currently customized for Orange County, California. There are also legal forms for other areas of law available on this website.

Our partnership with Legal Aid Society of Orange County, the developer of the I-CAN! is critical to the program. LASOC has worked with us to smooth out technical difficulties, particularly with the I-CAN! printer and in

integrating our computer system with the videoconferencing link between the I-CAN! and the CRT.

We had to meet the Court's need that all indigent litigants in UD actions receive some level of assistance in the UD Clinic. Further, the Court also wanted to ensure that the landlord's bar was amenable to the creation of this program in the courthouse. We resolved this by meeting with the landlord's bar, requesting their input and inviting them to provide informational material to indigent landlords, i.e. roommate situations. Also, we use non-LSC funding in one courthouse to provide facilitator-like services to assist all indigent litigants to complete UD forms.

Please contact Clare Maudsley, Pro Bono Program Manager and Rebecca Sigrist, Pro Staff Attorney if you have any questions or would like additional information.

- E. **Materials Available:** Information on I-CAN! prepared by LASOC. Sample of Answer and Fee Waiver generated by I-CAN!. Copies of the training material and UD Clinic forms can be made available on a discretionary basis.

# Filing Instructions for an Answer-Unlawful Detainer

## Things you must do *right away!*

### **Make sure you have all your court forms.**

- ✓ You should have:
  - 1 original Answer-Unlawful Detainer and 1 copy of the Answer-Unlawful Detainer.
  - 1 original Proof of Service and 1 copy of the Proof of Service.

### **Sign the original Answer-Unlawful Detainer.**

- ✓ Each defendant who is filing an Answer-Unlawful Detainer must sign the Answer on the backside of the form on the two signature lines.
- ✓ All copies will be marked “copy” in top right corner of the Answer-Unlawful Detainer.

### **Have the plaintiff (your landlord) served.**

- ✓ Someone — **not you** — must mail the copy of the Answer-Unlawful Detainer and a copy of the completed Proof of Service to the plaintiff (your landlord) or their attorney if they have one.
- ✓ The person who serves a copy of the Answer-Unlawful Detainer and the Proof of Service must:
  - be 18 or older,
  - and not be a defendant in the lawsuit.
- ✓ The server must fill out and sign the Proof of Service.
- ✓ After the server fills out the Proof of Service, make sure he/she makes a copy and mails it with the Answer-Unlawful Detainer.

### **You might need to fill out a Fee Waiver.**

- ✓ If you cannot afford to pay the filing fee, you can fill out a form called an “Application for Court Fees and Costs” and “Order on Application for Court Fees and Costs”. Each person who is filing an Answer-Unlawful Detainer must file a separate application and order.
- ✓ I-CAN! can help you fill out these forms. Go back to the main menu in I-CAN! and touch the “Fee Waiver” button.
- ✓ If you fill out an “Application for Court Fees and Costs”, you do not serve these forms on the plaintiff (your landlord) or his/her attorney.

## **File your forms.**

- ✓ Take your court forms to the Clerk's office for filing at:

Superior Court of California - County of San Diego  
330 W. BROADWAY  
SAN DIEGO, CA 92101-3827  
HALL OF JUSTICE

- ✓ Make sure to take the signed original Answer-Unlawful Detainer and the signed original Proof of Service with you and the copies of each form.
  - The copy of the Answer-Unlawful Detainer and Proof of Service must be served on the plaintiff (your landlord) or his/her attorney.

## **After you file your forms:**

### **Setting a date for trial**

- ✓ Your landlord will ask the court for a trial date by filing a form called Memorandum to Set Case for Trial.
- ✓ After the trial date is set you will receive a copy of the Memorandum to Set Case for Trial and a Notice of Trial by mail.
  - The Notice of Trial will tell you the date, time, and place of your trial.
- ✓ The trial date should be within 20 days of the landlord's request for trial.
- ✓ If you do not receive the Notice of Trial in the mail within 10 days of filing your Answer, call the court clerk to find out the trial date.
- ✓ If you receive any other court papers, you should get legal advice immediately.

# Preparing for Trial

## It is very important to go to your trial.

- ✓ If you do not go, you will lose automatically.
  
- ✓ Look on the letter you received in the mail to find the date, time, and room of your trial.

## Get there 30 minutes early.

- ✓ Find the courtroom.
  
- ✓ When the courtroom opens, go in and tell the clerk or officer you are present.
  - You may have time to talk with the other side about your case, to discuss, for example, evidence which will be presented, or if there is a possibility of settling your case.
  
  - Your case may be assigned to a Commissioner and not a Judge. You have the right to have your case heard by a Judge. If you wish to have your case heard by a Judge, advise the bailiff.

## Bring to your hearing:

- ✓ All your court forms.
  
- ✓ **Proof** of any defenses:
  - Any witnesses
  - Photos
  - Records
  - Bills, receipts
  
- ✓ You should make a checklist of everything you would like to bring up as a defense at your trial.

## What happens when the Judge calls your case:

- ✓ The plaintiff (your landlord) will say he/she is ready.
  
- ✓ You may also be asked to say if you are ready to proceed with your case. You should follow the judge's or the bailiff's instructions.
  
- ✓ The plaintiff (your landlord) or his/her lawyer will present their case.
  
- ✓ Do not interrupt the Judge or the plaintiff (your landlord).
  
- ✓ When it is your turn, present your defense and ask the plaintiff (your landlord) questions about what he/she said.
  
- ✓ The plaintiff may ask you questions about your defense.
  
- ✓ Tell the truth. Speak slowly and give complete answers.

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name and Address</i> ): JOHN JEFFERSON 1591 Lawson Valley Rd El Cajon, CA 92020 ATTORNEY FOR ( <i>Name</i> ): IN PRO PER	TELEPHONE NO.: 619-034-6990 FOR COURT USE ONLY
NAME OF COURT: SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. BROADWAY MAILING ADDRESS: CITY AND ZIP CODE: SAN DIEGO, CA 92101-3827 BRANCH NAME: HALL OF JUSTICE	
PLAINTIFF: ARCADIA PROPERTIES, INC.  DEFENDANT: JOHN JEFFERSON	
<p style="text-align: center;"><b>ANSWER—Unlawful Detainer</b></p>	CASE NUMBER: <p style="text-align: center;">UE 0023958</p>

1. Defendant (*names*): JOHN JEFFERSON

answers the complaint as follows:

2. **Check ONLY ONE of the next two boxes:**

- a.  Defendant generally denies each statement of the complaint. (*Do not check this box if the complaint demands more than \$1,000.*)
- b.  Defendant admits that all of the statements of the complaint are true EXCEPT  
 (1) Defendant claims the following statements of the complaint are false (*use paragraph numbers from the complaint or explain*):

Continued on Attachment 2b(1).

- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (*use paragraph numbers from the complaint or explain*):

Continued on Attachment 2b(2).

3. AFFIRMATIVE DEFENSES (**NOTE:** For each box checked, you must state brief facts to support it in the space provided at the top of page two (item 3j).)

- a.  (*nonpayment of rent only*) Plaintiff has breached the warranty to provide habitable premises.
- b.  (*nonpayment of rent only*) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c.  (*nonpayment of rent only*) On (date): \_\_\_\_\_, before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d.  Plaintiff waived, changed, or canceled the notice to quit.
- e.  Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f.  By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or laws of the United States or California.
- g.  Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (*city or county, title of ordinance, and date of passage*):

(Also, briefly state the facts showing violation of the ordinance in item 3j.)

- h.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i.  Other affirmative defenses are stated in item 3j.

(Continued on reverse)

PLAINTIFF (Name): <b>ARCADIA PROPERTIES, INC.</b>	CASE NUMBER: <b>UE 0023958</b>
DEFENDANT (Name): <b>JOHN JEFFERSON</b>	

3. AFFIRMATIVE DEFENSES (cont'd)

j. Facts supporting affirmative defenses checked above (identify each item separately by its letter from page one):

(1)  All the facts are stated in Attachment 3j.      (2)  Facts are continued in Attachment 3j.

4. OTHER STATEMENTS

- a.  Defendant vacated the premises on (date):
- b.  The fair rental value of the premises alleged in the complaint is excessive (explain):  
The premises are not habitable.
- c.  Other (specify):

5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
- b. costs incurred in this proceeding.
- c.  reasonable attorney fees.
- d.  that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
- e.  other (specify): Such other and further relief as the Court deems just and proper.

6.  Number of pages attached (specify): 1

**UNLAWFUL DETAINER ASSISTANT (Business and Professions Code sections 6400-6415)**

7. (Must be completed in all cases) An unlawful detainer assistant  did not  did for compensation give advice or assistance with this form. (If defendant has received any help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name:
- b. Telephone No.:
- c. Street address, city, and ZIP:
- d. County of registration:
- e. Registration No.:
- f. Expires on (date):

.....  
JOHN JEFFERSON  
.....  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

.....  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

**VERIFICATION**

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

.....  
JOHN JEFFERSON  
.....  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT)

SHORT TITLE:

ARCADIA PROPERTIES, INC. vs. JEFFERSON

CASE NUMBER:

UE 0023958

**Answer for Unlawful Detainer**

**982.1(95) Item 3j Attachment**

**Affirmative Defenses**

3a. Defendant does not owe the rent demanded because the plaintiff has failed to provide habitable premises and repair the following problems: damp/leaking ceiling, damp/leaking walls/floor, missing windows, broken windows, missing window screens, torn window screens, holes in walls, holes in floors, holes in carpets, falling plaster, peeling paint, lead paint.

3a. The landlord has not repaired any of the problems.

3e. The landlord is retaliating because of complaints to the landlord about conditions at the premises.

3i. The notice was defective because it asks for payment other than rent owed.

3i. The complaint fails to state a cause of action in unlawful detainer.

3i. The plaintiff has failed to give the proper notice to terminate the tenancy.

(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, *not* line numbers):

This page may be used with any Judicial Council form or any other paper filed with the court.

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>JOHN JEFFERSON</b> 619-034-6990 1591 Lawson Valley Rd El Cajon, CA 92020 TELEPHONE NO.: FAX NO.:		<b>FOR COURT USE ONLY</b>
ATTORNEY FOR (Name): <b>IN PRO PER</b>		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>		
<input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input checked="" type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1501 6TH AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA BRANCH, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92083-6634 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5549		
PLAINTIFF(S)/PETITIONER(S) <b>ARCADIA PROPERTIES, INC.</b>		JUDGE: _____
DEFENDANT(S)/RESPONDENT(S) <b>JOHN JEFFERSON</b>		DEPT: _____
<b>PROOF OF SERVICE BY MAIL</b> <b>(CCP 1013a(1) &amp; (3) &amp; Local Rules, Division II, Rule 5.2C)</b>		DATE: _____ TIME: _____
		CASE NUMBER <b>UE 0023958</b>

I, \_\_\_\_\_, declare that: I am over the age of 18 years and not a party to the case; I am employed in, or am a resident of,  the County of San Diego, California  \_\_\_\_\_, where the mailing occurs; and my business/residence address is: \_\_\_\_\_  
(No., Street) (City, State)

further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I caused to be served the following document(s): (SET FORTH THE EXACT TITLE OF THE DOCUMENT(S) SERVED AND FILED)

Answer - Unlawful Detainer 982.1(95)

by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows: (For civil cases, specify the name of the party so served, the nature and status of the party's involvement in the case, i.e. plaintiff, defendant, cross-complainant, etc.; and the name, address and phone number of the party's counsel of record, if any)

**ALICIA ALBERTSON, ESQ**  
**1475 SIXTH AVE., STE 300 SAN DIEGO, CA 92101**

I then sealed each envelope and, with postage thereon fully prepaid,

I deposited each in the United States Postal Service at \_\_\_\_\_  
 I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_ (Signature)

# Filing Instructions for an Application for Waiver of Court Fees and Costs

## Things you must do right away!

- You should have an original and 1 copy of both your Application for Waiver of Court Fees and Costs form and Order on Application for Waiver of Court Fees and Costs.
- Fill in any missing information using the Missing Information sheet that was printed if you left any questions blank.
- Sign and date only the original Application for Waiver of Court Fees and Costs.
- Give all of your forms to the court clerk who will keep the original, stamp the copy as filed, and return the copy to you. The clerk is at:

Superior Court of California - County of San Diego  
Hall Of Justice  
330 W. Broadway

San Diego, CA 92101-3827

## Things you should know

- If you state on your Application for Waiver of Court Fees and Costs form that you have no income, you may be required to file a declaration under penalty of perjury. This means you are swearing under oath that you are being truthful about your income situation.
- If you are given a fee waiver based on the information you entered on your Application for Waiver of Court Fees and Costs, and the information you entered was not true, you may face certain penalties and may also have to pay the full amount of the filing fee.

**INFORMATION SHEET ON WAIVER  
OF COURT FEES AND COSTS  
(California Rules of Court, rule 985)**

If you have been sued or if you wish to sue someone, and if you cannot afford to pay court fees and costs, you may not have to pay them if:

1. You are receiving **financial assistance** under one or more of the following programs:

- SSI and SSP (Supplemental Security Income and State Supplemental Payments Programs)
- CalWORKs (California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families, formerly AFDC, Aid to Families with Dependent Children Program)
- The Food Stamp Program
- County Relief, General Relief (G.R.), or General Assistance (G.A.)

If you are claiming eligibility for a waiver of court fees and costs because you receive financial assistance under one or more of these programs, and you did not provide your Medi-Cal number or your social security number and birthdate, you must produce documentation confirming benefits from a public assistance agency or one of the following documents, unless you are a defendant in an unlawful detainer action:

PROGRAM	VERIFICATION
SSI/SSP	Medi-Cal Card <i>or</i> Notice of Planned Action <i>or</i> SSI Computer-Generated Printout <i>or</i> Bank Statement Showing SSI Deposit <i>or</i> "Passport to Services"
CalWORKs/TANF (formerly known as AFDC)	Medi-Cal Card <i>or</i> Notice of Action <i>or</i> Income and Eligibility Verification Form <i>or</i> Monthly Reporting Form <i>or</i> Electronic Benefit Transfer Card <i>or</i> "Passport to Services"
Food Stamp Program	Notice of Action <i>or</i> Food Stamp ID Card <i>or</i> "Passport to Services"
General Relief/General Assistance	Notice of Action <i>or</i> Copy of Check Stub <i>or</i> County Voucher

— OR —

2. Your total gross **monthly household income** is equal to or less than the following amounts:

NUMBER IN FAMILY	FAMILY INCOME
1	\$ 935.42
2	1,262.50
3	1,589.58
4	1,916.67
5	2,243.75

NUMBER IN FAMILY	FAMILY INCOME
6	\$ 2,570.83
7	2,897.92
8	3,225.00
Each additional	327.08

— OR —

3. Your income is not enough to pay for the common **necessaries** of life for yourself and the people you support and also pay court fees and costs.

**To apply, fill out the Application for Waiver of Court Fees and Costs (Form 982(a)(17)) available from the clerk's office. If you claim no income, you may be required to file a declaration under penalty of perjury. Prison and jail inmates may be required to pay up to the full amount of the filing fee.**

If you have any questions and cannot afford an attorney, you may wish to consult the legal aid office, legal services office, or lawyer referral service in your county (listed in the Yellow Pages under "Attorneys").

If you are asking for review of the decision of an administrative body under Code of Civil Procedure section 1094.5 (administrative mandate), you may ask for a transcript of the administrative proceedings at the expense of the administrative body.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>JOHN JEFFERSON</b> 1591 Lawson Valley Rd El Cajon, CA 92020  TELEPHONE NO.: 619-034-6990 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>In Pro Per</b>	FOR COURT USE ONLY          CASE NUMBER: <b>UE 0023958</b>
NAME OF COURT: <b>Superior Court of California - County of San Diego</b> STREET ADDRESS: <b>330 W. BROADWAY</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>SAN DIEGO, CA 92101-3827</b> BRANCH NAME: <b>Hall Of Justice</b>	
PLAINTIFF/ PETITIONER: <b>ARCADIA PROPERTIES</b> DEFENDANT/ RESPONDENT: <b>JOHN JEFFERSON</b>	
<b>APPLICATION FOR WAIVER OF COURT FEES AND COSTS</b>	

I request a court order so that I do not have to pay court fees and costs.

1. a.  I am *not* able to pay any of the court fees and costs.  
 b.  I am able to pay *only* the following court fees and costs (specify):
  
2. My current street or mailing address is (if applicable, include city or town, apartment no., if any, and zip code):  
 1591 Lawson Valley Rd, El Cajon, CA 92020
3. a. My occupation, employer, and employer's address are (specify):  
  
 b. My spouse's occupation, employer, and employer's address are (specify):
4.  I am receiving financial assistance under one or more of the following programs:
  - a.  **SSI and SSP:** Supplemental Security Income and State Supplemental Payments Programs
  - b.  **CalWORKs:** California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families (formerly AFDC)
  - c.  **Food Stamps:** The Food Stamp Program
  - d.  **County Relief, General Relief (G.R.), or General Assistance (G.A.)**
5. If you checked box 4, you must check and complete one of the three boxes below, unless you are a defendant in an unlawful detainer action. Do not check more than one box.
  - a.  (Optional) My Medi-Cal number is (specify):
  - b.  (Optional) My social security number is (specify):  
 -  -  and my date of birth is (specify):  
**[Federal law does not require that you give your social security number. However, if you don't give your social security number, you must check box c and attach documents to verify the benefits checked in item 4.]**
  - c.  I am attaching documents to verify receipt of the benefits checked in item 4, if requested by the court.  
**[See Form 982(a)(17)(A) Information Sheet on Waiver of Court Fees and Costs, available from the clerk's office, for a list of acceptable documents.]**

[If you checked box 4 above, skip items 6 and 7, and sign at the bottom of this side.]

6.  My total gross monthly household income is less than the amount shown on the Information Sheet on Waiver of Court Fees and Costs available from the clerk's office.

[If you checked box 6 above, skip item 7, complete items 8, 9a, 9d, 9f, and 9g on the back of this form, and sign at the bottom of this side.]

7.  My income is not enough to pay for the common necessities of life for me and the people in my family whom I support and also pay court fees and costs. [If you check this box, you must complete the back of this form.]

**WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.**

I declare under penalty of perjury under the laws of the State of California that the information on both sides of this form and all attachments are true and correct.

Date:

JOHN JEFFERSON



(TYPE OR PRINT NAME)

(Financial information on reverse)

(SIGNATURE)

**FINANCIAL INFORMATION**

8.  My pay changes considerably from month to month. **[If you check this box, each of the amounts reported in item 9 should be your average for the past 12 months.]**

**9. MY MONTHLY INCOME**

a. My gross monthly pay is: ..... \$ \_\_\_\_\_

b. My payroll deductions are (specify purpose and amount):

- (1) \_\_\_\_\_ \$ \_\_\_\_\_
- (2) \_\_\_\_\_ \$ \_\_\_\_\_
- (3) \_\_\_\_\_ \$ \_\_\_\_\_
- (4) \_\_\_\_\_ \$ \_\_\_\_\_

My TOTAL payroll deduction amount is: \$ \_\_\_\_\_

c. My monthly take-home pay is (a. minus b.): ..... \$ \_\_\_\_\_

d. Other money I get each month is (specify source and amount; include spousal support, child support, parental support, support from outside the home, scholarships, retirement or pensions, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest or royalty, trust income, annuities, net business income, net rental income, reimbursement of job-related expenses, and net gambling or lottery winnings):

- (1) \_\_\_\_\_ \$ \_\_\_\_\_
- (2) \_\_\_\_\_ \$ \_\_\_\_\_
- (3) \_\_\_\_\_ \$ \_\_\_\_\_
- (4) \_\_\_\_\_ \$ \_\_\_\_\_

The TOTAL amount of other money is: \$ \_\_\_\_\_  
 (If more space is needed, attach page labeled Attachment 9d.)

**e. MY TOTAL MONTHLY INCOME IS**

(c. plus d.): ..... \$ \_\_\_\_\_

f. Number of persons living in my home: \_\_\_\_\_  
 Below list all the persons living in your home, including your spouse, who depend in whole or in part on you for support, or on whom you depend in whole or in part for support:

Name	Age	Relationship	Gross Monthly Income
(1) _____	_____	_____	\$ _____
(2) _____	_____	_____	\$ _____
(3) _____	_____	_____	\$ _____
(4) _____	_____	_____	\$ _____
(5) _____	_____	_____	\$ _____

The TOTAL amount of other money is: \$ \_\_\_\_\_  
 (If more space is needed, attach page labeled Attachment 9f.)

**g. MY TOTAL GROSS MONTHLY HOUSEHOLD INCOME IS**

(a. plus d. plus f.): ..... \$ \_\_\_\_\_

**10. I own or have an interest in the following property:**

- a. Cash ..... \$ \_\_\_\_\_
- b. Checking, savings, and credit union accounts (list banks):
  - (1) \_\_\_\_\_ \$ \_\_\_\_\_
  - (2) \_\_\_\_\_ \$ \_\_\_\_\_
  - (3) \_\_\_\_\_ \$ \_\_\_\_\_
  - (4) \_\_\_\_\_ \$ \_\_\_\_\_

10. c. Cars, other vehicles, and boats (list make, year, fair market value (FMV), and loan balance of each):

Property	FMV	Loan Balance
(1) _____	\$ _____	\$ _____
(2) _____	\$ _____	\$ _____
(3) _____	\$ _____	\$ _____

d. Real estate (list address, estimated fair market value (FMV), and loan balance of each property):

Property	FMV	Loan Balance
(1) _____	\$ _____	\$ _____
(2) _____	\$ _____	\$ _____
(3) _____	\$ _____	\$ _____

e. Other personal property — jewelry, furniture, furs, stocks, bonds, etc. (list separately):

\$ \_\_\_\_\_

**11. My monthly expenses not already listed in item 9b above are the following:**

- a. Rent or house payment & maintenance \$ \_\_\_\_\_
- b. Food and household supplies ..... \$ \_\_\_\_\_
- c. Utilities and telephone ..... \$ \_\_\_\_\_
- d. Clothing ..... \$ \_\_\_\_\_
- e. Laundry and cleaning ..... \$ \_\_\_\_\_
- f. Medical and dental payments ..... \$ \_\_\_\_\_
- g. Insurance (life, health, accident, etc.) \$ \_\_\_\_\_
- h. School, child care ..... \$ \_\_\_\_\_
- i. Child, spousal support (prior marriage) \$ \_\_\_\_\_
- j. Transportation and auto expenses (insurance, gas, repair) ..... \$ \_\_\_\_\_
- k. Installment payments (specify purpose and amount):
  - (1) \_\_\_\_\_ \$ \_\_\_\_\_
  - (2) \_\_\_\_\_ \$ \_\_\_\_\_
  - (3) \_\_\_\_\_ \$ \_\_\_\_\_

The TOTAL amount of monthly installment payments is: ..... \$ \_\_\_\_\_

l. Amounts deducted due to wage assignments and earnings withholding orders: \$ \_\_\_\_\_

- m. Other expenses (specify):
  - (1) \_\_\_\_\_ \$ \_\_\_\_\_
  - (2) \_\_\_\_\_ \$ \_\_\_\_\_
  - (3) \_\_\_\_\_ \$ \_\_\_\_\_
  - (4) \_\_\_\_\_ \$ \_\_\_\_\_
  - (5) \_\_\_\_\_ \$ \_\_\_\_\_

The TOTAL amount of other monthly expenses is: ..... \$ \_\_\_\_\_

**n. MY TOTAL MONTHLY EXPENSES ARE** (add a. through m.): ..... \$ \_\_\_\_\_

12. Other facts that support this application are (describe unusual medical needs, expenses for recent family emergencies, or other unusual circumstances or expenses to help the court understand your budget; if more space is needed, attach page labeled Attachment 12):

**WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>JOHN JEFFERSON</b> 1591 Lawson Valley Rd El Cajon, CA 92020 TELEPHONE NO.: 619-034-6990      FAX NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): In Pro Per	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 W. BROADWAY MAILING ADDRESS: CITY AND ZIP CODE: SAN DIEGO, CA 92101-3827 BRANCH NAME: Hall Of Justice	
PLAINTIFF/ PETITIONER: ARCADIA PROPERTIES	
DEFENDANT/ RESPONDENT: JOHN JEFFERSON	CASE NUMBER: UE 0023958
<b>ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS</b>	

1. The application was filed on (date):  A previous order was issued on (date):
2. The application was filed by (name): JOHN JEFFERSON
3.  IT IS ORDERED that the application is **granted**  in whole  in part (complete item 4 below).
  - a.  **No payments.** Payment of all the fees and costs listed in California Rules of Court, rule 985(i), is **waived**.
  - b.  **The applicant shall pay** all the fees and costs listed in California Rules of Court, rule 985(i), EXCEPT the following:
 

(1) <input type="checkbox"/> Filing papers.	(6) <input type="checkbox"/> Sheriff and marshal fees.
(2) <input type="checkbox"/> Certification and copying.	(7) <input type="checkbox"/> Reporter's fees* (valid for 60 days).
(3) <input type="checkbox"/> Issuing process and certification.	(8) <input type="checkbox"/> Telephone appearance (Gov. Code, § 68070.1(c))
(4) <input type="checkbox"/> Transmittal of papers.	(9) <input type="checkbox"/> Other (specify code section):
(5) <input type="checkbox"/> Court-appointed interpreter.	

\* Reporter's fees are per diem pursuant to Code Civ. Proc., §§ 269, 274c, and Gov. Code, §§ 69947, 69948, and 72195.
  - c. **Method of payment.** The applicant shall pay all the fees and costs when charged, EXCEPT as follows:  
 (1)  Pay (specify): \_\_\_\_\_ percent. (2)  Pay: \$ \_\_\_\_\_ per month or more until the balance is paid.
  - d. The clerk of the court, county financial officer, or appropriate county officer is authorized to require the applicant to appear before and be examined by the court no sooner than four months from the date of this order, and not more than once in any four-month period.  The applicant is ordered to appear in this court as follows for review of his or her financial status:  

Date:	Time:	Dept.:	Div.:	Room:
  - e.  The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.
  - f. **All unpaid fees and costs shall be deemed to be taxable costs if the applicant is entitled to costs and shall be a lien on any judgment recovered by the applicant and shall be paid directly to the clerk by the judgment debtor upon such recovery.**
4.  IT IS ORDERED that the application is **denied**  in whole  in part for the following reasons (see Cal. Rules of Court, rule 985 ):
  - a.  Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form 982(a)(17)(A)).
  - b.  Other (Complete line 4b on page 2).
  - c. The applicant shall pay any fees and costs due in this action within 10 days from the date of service of this order or any paper filed by the applicant with the clerk will be of no effect.
  - d. The clerk is directed to mail a copy of this order to all parties who have appeared in this action.
5.  IT IS ORDERED that a **hearing** be held.
  - a. The substantial evidentiary conflict to be resolved by the hearing is (specify):
  - b. The applicant should appear in this court at the following hearing to help resolve the conflict:  

Date:	Time:	Dept.:	Div.:	Room:
  - c. The address of the court is (specify):  
 Same as above
  - d. The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.

**NOTICE: If item 3d or item 5b is filled in and the applicant does not attend the hearing, the court may revoke or change the order or deny the application without considering information the applicant wants the court to consider.**

**WARNING: The applicant must immediately tell the court if he or she becomes able to pay court fees or costs during this action. The applicant may be ordered to appear in court and answer questions about his or her ability to pay fees or costs.**

Date: \_\_\_\_\_

\_\_\_\_\_, JUDICIAL OFFICER     
  Clerk, by \_\_\_\_\_, Deputy

PLAINTIFF/PETITIONER (Name):	CASE NUMBER:
DEFENDANT/RESPONDENT (Name):	

4b  Application is denied in whole or in part (specify reasons):

**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that a true copy of the foregoing was mailed first class, postage prepaid, in a sealed envelope addressed as shown below, and that the mailing of the foregoing and execution of this certificate occurred at (place): \_\_\_\_\_, California, on (date): \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy


(SEAL)

**CLERK'S CERTIFICATE**

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

- ✓ After both sides are presented, the judge will allow the plaintiff (your landlord) to make a closing statement, and then you can make a closing statement.
- ✓ If your landlord or his/her lawyer does not show up at court, ask the Judge to dismiss the case.

## **Need more help?**

### **Contact:**

- ✓ Legal Aid Society of San Diego, Inc.  
Pro Bono Program Unlawful Detainer Clinic  
Hall of Justice  
330 West Broadway, Rm 224  
San Diego, CA 92101  
Mondays and Fridays, 2:00-4:30 p.m.
- ✓ Lawyer Referral and Information Service of the San Diego County Bar Association  
1333 Seventh Ave.,  
San Diego, CA 92101  
(619) 231-8585
- ✓ Fair Housing Council of San Diego County  
625 Broadway  
San Diego, CA 92101  
(619) 699-5888
- ✓ California Fair Employment and Housing Department  
110 West C. Street, Ste. 1702  
San Diego, CA 92101  
(800) 884-1684  
TTD (213) 897-2840

# Innovation Description

**Program:** State Bar of Georgia Pro Bono Project

**Address:** 104 Marietta Street, NW, Suite 100  
Atlanta, Georgia 30303

**Phone:** (404) 527-8762/8763

**Fax:** (404) 527-8717

**Email:** [Mike@gabar.org](mailto:Mike@gabar.org)

**Program Director:** Michael L. Monahan

**Contact Person:** Michael L. Monahan

**Subject Area:** Pro Bono

**Project Title:** A Business Commitment (ABC) Project

- A. **Problem:** Thousands of potential volunteer lawyers who handle non-litigation and business law matters are seeking pro bono opportunities beyond the typical- but crucial—legal aid case types such as divorce and consumer fraud. Legal aid and legal services programs addressing the systemic causes of poverty need volunteer lawyers to assist in community economic development.
- B. **Innovation:** Expand the provision of quality business legal services to non-profit organizations serving low-income communities in the State of Georgia. The State Bar of Georgia, Georgia Legal Services Program, and the Pro Bono Project implemented the A Business Commitment (ABC) Project in 1998 to use volunteer business attorneys to provide pro bono business law services to community-based Georgia nonprofit organizations.

The ABC Project provides legal assistance and guidance in the following areas of law: business contracts, leases, real estate issues, tax law, intellectual property, corporate structure, and employment law. In creating this project, the State Bar and GLSP sought to take advantage of the large number of business attorneys in Atlanta and share their

expertise with non-profit organizations serving low-income people throughout the state.

Non-profit organizations seeking legal assistance can apply for services by downloading an application from the ABC Project's website. The ABC Project's priorities are to locate pro bono attorneys for non-profit organizations providing direct services to Georgia's low-income community and to organizations coming out of the low-income community. Generally to receive services, applicants usually either have a strong history and commitment to working in the non-profit world or have completed a micro-enterprise training program. Applicant's whose proposals need more work are referred to organizations such as the Georgia Center for Non-Profits or to GLSP in-house attorneys where they can locate additional resources to further develop their application. The ABC project also offers trainings to non-profit organizations in substantive areas such as corporate structure and non-profit operations.

The ABC Project concept began through a partnership with the American Bar Association's Section on Business Law and National Legal Aid and Defender Association (NLADA). This partnership sought to implement an urban and a rural model project. The urban project was implemented in Washington DC and the Georgia Bar and GLSP implemented the rural project. For more information, visit the ABC Project's website at: <http://www.abc-georgia.org/>.

- C. **Result:** "A Business Commitment" (ABC) was created in 1998 to provide Pro Bono business law services to non-profit organizations in the state of Georgia. ABC is currently supported by both Georgia Legal Services Program (GLSP) and the State Bar of Georgia, and was originally funded by the Ford Foundation. The Director of the Pro Bono Project of the State Bar of Georgia has managed ABC since its inception.

ABC has served 91 unduplicated organizations since 1998, including nonprofits working in affordable housing, neighborhood improvement, social services, the arts, health services, and youth development and immigrant issues. ABC places approximately 28 matters per year. Since its inception, ABC has leveraged over 850 hours or an estimated \$297,000 of attorney time.

- D. **Replication:** Georgia is the largest state east of the Mississippi. It is largely rural, and home to 38% of the south's persistently poor counties. 70% of Georgia's lawyers are found in the 5-county metro Atlanta area,

while 70% of the state's poor live outside that 5-county metro area. ABC has found that matches can be brokered successfully between large law firm business lawyers and rural CED organizations and client groups. Local legal aid/legal services offices can provide valuable assistance in identifying the potential pool of client organizations and supporting the CED work, either as co-counsel with the volunteer business lawyer or by providing local administrative case support.

**E. Materials Available:**

- a. Daniel Cox, "Atlanta's 'ABCs' Of Justice: Corporate Attorneys Donate Legal Help to Nonprofits in Need by Making 'A Business Commitment,'" Legal Services Corporation's Equal Justice Magazine 2, No. 2 (Summer 2003). Available online at:  
<http://www.ejm.lsc.gov/EJMIssue5/atlanta.htm>
- b. Georgia's ABC Project website is available online at:  
<http://www.abc-georgia.org/>.

## Innovation Description

**Program:** Georgia Legal Services Program  
Atlanta Legal Aid Society

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**Subject Area:** Service Delivery

**Project Title:** Mobile Law Units

- A. **Problem:** Across the country, four out of five individuals who qualify for free legal services are not receiving them. In an effort to expand access to legal information and legal services, Georgia has developed a statewide web site for the public, LegalAid-GA.org. Even though the web site has received 37,000 different visitors who have downloaded over 1 million pages of the web site during the first 10 months of 2003, the web site will not address the needs of everyone currently lacking access to legal services. In particular, the elderly and rural residents in remote counties have difficulty accessing legal help both from traditional legal services offices and from the Internet. The Mobile Law Units project attempts to use technology to bring lawyers to those clients.
- B. **Innovation:** The purpose of the Georgia Mobile Law Unit ("MLU") project is to make legal services and legal information available to hard-to-reach clients in isolated low-income communities and to empower these groups to address their own legal problems. Based on a modification of the Self-Help Office model developed by AARP in Washington, DC, the MLU partners (Atlanta Legal Aid Society, Georgia Legal Services Program, and Georgia AARP, among others) seek to deliver cost-effective, extensive legal information and interactive services in rural public libraries, seniors centers, disaster assistance centers and other

locations where low-income clients who have difficulty accessing legal services might congregate. In the Atlanta metropolitan area, the Mobile Law Units will focus their efforts to reach the elderly and disabled in locations such as seniors centers and high-rise apartment complexes. In greater Georgia, the Mobile Law Units will be deployed in the public libraries in remote rural areas, such as Clay, Seminole and Early counties, and in disaster assistance centers in counties subject to frequent flooding and other natural disasters.

The two necessary components of this service model are a well designed website, which is the central informational source, and on-site staff, who are trained to help users access that information. Following extensive advertising to attract walk-in clients to the Mobile Law Unit sites, GLSP or ALAS staff would assist clients in logging onto the community-based computers or lap-tops and direct the clients to Georgia's statewide website located at: <http://LegalAid-GA.org/>. The MLU staff would then help clients find the legal information and documents they needed. Staff will work with clients to access legal information, self-help forms and online applications, social service organizations and agencies, courts and legal service organizations and attorney referral resources in over 23 areas of law, including: Health Law, Family Law, Housing, Public Benefits, and Taxes. In the event that clients might need extended services, the MLU staff member will be able to conduct intake on-site and refer the individual to an attorney at the nearest Atlanta Legal Aid Society or Georgia Legal Services Program office for additional help.

- C. **Result:** The Mobile Law Units are still in the early phases of deployment, but the results so far have been generally positive. In addition to allowing attorneys to provide services in locations that have been difficult to reach, the attorneys who have been engaged in traditional circuit riding have increased their productivity: (1) They have been able to save time by directing clients to the web site when the clients legal issues may be resolved simply by using that resource. (2) They have been able to perform intake on site at the remote location, when necessary and begin dealing with the legal issues on site. (3) They have been able to continue with their casework from their remote location when between clients at the Mobile Law Unit sites.
  
- D. **Replication:** The process is entirely replicable in other states provided that certain equipment (laptops, portable printers, remote access server, high-speed Internet connections) are available and the staff are trained in the use of technology and become comfortable with it. Atlanta Legal Aid Society and Georgia Legal Services Program have selected their Mobile Law Unit locations based on (a) client friendliness of the site, and (b) the

access to high-speed Internet connections. Any state considering developing Mobile Law Units should first find out what kinds of infrastructure are available in the targeted locations in their state and what partners could help them to achieve their goals, such as the public library service, the schools, the state and local governments, the universities and colleges. The project may also become a good model for mobilizing pro bono attorneys.

**E. Materials Available:**

- a. Mobile Law Units Press Release available online at:  
[http://www.lri.lsc.gov/pdf/03/030052\\_MLUpressrel.pdf](http://www.lri.lsc.gov/pdf/03/030052_MLUpressrel.pdf)
- b. Georgia Legal Services Program Mobile Law Unit Handbook available online at:  
[http://lstech.org/projects/georgia\\_mobile\\_selfhelp\\_offices](http://lstech.org/projects/georgia_mobile_selfhelp_offices)
- c. Mobile Law Unit Project Management Plan available online at:  
[http://lstech.org/projects/georgia\\_mobile\\_selfhelp\\_offices](http://lstech.org/projects/georgia_mobile_selfhelp_offices)