

Access to Justice in the Show-Me State: Meeting the Civil Legal Needs of Low-Income Missourians

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Introduction

Equality before the law and equal access to justice are fundamental to a healthy democracy. A systematic lack of access to justice by those in poverty leads to inequities and imbalances that produce serious fairness and equality concerns. Civil legal aid programs attempt to temper these inequalities by providing services to those citizens at the lowest end of the economic bracket. However, civil legal aid has never been adequately funded. There is no right to an attorney in most civil cases in the United States, even when the civil legal matter impacts basic fundamental needs, such as housing, employment, and access to government benefits. Instead, civil legal aid is available on a limited basis to certain groups of people depending on availability of resources, a person's geographical location, and whether that person's legal problem is considered a priority by the legal aid servicer. Current economic conditions, growing income inequality, and other factors have led to a growing justice gap in the United States. The civil justice system is not meeting the legal needs of the poor. Access to civil justice is an important policy issue that is often either ignored by policy makers or subject to political attack, despite the significant impact it has on individual lives, families, and the community as a whole.

This article provides an overview of the diverse, fragmented, and decentralized provision of civil legal aid across the United States, with an emphasis on conditions within the state of Missouri. The first section addresses the various funding sources for civil legal aid. Because of consistent underfunding, other forms of legal aid are necessary to attempt to narrow the justice gap and are explored in the second section of this article. Next, the issue of pro bono service

among Missouri attorneys is addressed. The article concludes with policy recommendations that could help narrow the justice gap in Missouri.

Funding for Civil Legal Aid

Since 1974, the primary provider of federally funded civil legal services has been Legal Services Corporation (LSC) and its grantee organizations. Congressional appropriations to LSC have not kept pace with the number of income-eligible persons. LSC's initial appropriation in 1974 was \$400 million, with 12 percent of the U.S. population eligible for legal aid. In 2015, with over 20 percent of the population income-eligible, LSC funding was \$375 million.¹ Overall, less than 1 percent of federal legal expenditures go toward legal aid.² LSC distributes funding based on census data to its 134 independent grantee legal aid organizations, which are located in approximately 800 offices throughout the United States.³

In addition to congressional appropriations, each LSC grantee organization also generates revenue from other sources, such as private grants, state and local grants, and interest generated from lawyer trust accounts (IOLTA funds). Non-LSC funding varies dramatically from state to state, leading to vast inequities in distribution of civil legal services among the poor in America. LSC has estimated that over 80 percent of the poor in America with civil legal needs never receive legal assistance due to lack of funding and

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¹ "Legal Services Corporation Annual Report," accessed May 25, 2015, <http://www.lsc.gov/about/2013-annual-report>.

² Deborah L. Rhode, *Pro Bono Principle and in Practice: Public Service and the Professions* (California: Stanford University Press, 2005), 3.

³ "About LSC," accessed May 20, 2015, <http://www.lsc.gov/about/what-is-lsc>.

resources.⁴ The state of Missouri received less than \$6 million in LSC grants for fiscal year 2014. A detailed breakdown of grants to each of Missouri's four legal aid grantee organizations is in Table 1 (found on page 12).

As a result of consistent underfunding to LSC over the years, alternative revenue streams have been required. Legal Aid of Western Missouri, for example, had \$8,867,613 in expenses in 2014, an amount that far exceeds the \$1,899,273 grant from LSC. In order to make up for the almost \$7 million gap in funding, many other revenue sources are used. Some of these revenue sources include almost \$2.5 million from the city, county, and/or state; \$1,356,404 from foundations, churches, and other organizations; and \$2.5 million from fundraising efforts. Coupled with the LSC federal grant dollars, Legal Aid of Western Missouri had \$9,481,781 in total revenue in 2014. A detailed breakdown of funding sources for the Legal Aid of Western Missouri office is provided in Table 2 (found on page 12).

Legal Aid Delivery

Legal aid provision in the United States is highly decentralized, diverse, and fragmented. As such, it is difficult to assess and little empirical data exists. Different types of civil legal assistance can be found at the national, state, and local levels; however, each state has some sort of organizational structure in place to coordinate legal aid, either through state courts, bar associations, legislatures, or access to justice commissions.⁵ Also, each state separately licenses and regulates attorneys who practice within its jurisdiction, leading to a variety of rules and guidelines regarding attorney and non-attorney provision of legal aid. Very minimal coordination exists at any governmental level. The civil justice infrastructure has vast inequalities

among and within states. Sandefur and Smyth state that "geography is destiny: the services available to people from eligible populations who face civil justice problems are determined . . . by where they happen to live."⁶

Legal aid is delivered in a myriad of ways across the nation, including through staff-based legal aid organizations, pro bono programs, *judicare* programs, law school clinics, telephone hotlines, legal information centers in courthouses, court form websites, and more. Each state has at least one staffed legal aid office and one civil pro bono initiative.⁷

Missouri has four LSC-funded legal aid organizations: Legal Aid of Western Missouri, Legal Services of Eastern Missouri, Legal Services of Southern Missouri, and Mid-Missouri Legal Services Corporation. These grantee organizations each serve a portion of the state on a county-by-county basis. A map of which organization serves which counties can be found at the Legal Services of Missouri Website.⁸

Pro bono services in Missouri "are few and far between."⁹ It is estimated that less than 30 percent of those eligible for and requiring legal assistance in Missouri receive assistance.¹⁰ The Civil Justice Infrastructure Mapping Project collected data on the state of available legal assistance across the United States during 2010-2011. According to data from that report, Missouri is falling behind many states in the variety of delivery mechanisms for legal assistance. Most states, including Missouri, have basic court-related information available online. However, Missouri lacks self-help centers located in courthouses, which are available in more than 70 percent of states.¹¹ Also, Missouri does not have legal advice/information hotlines (with the exception of one that serves the elderly). Missouri does offer formal *judicare*, which

⁶ Sandefur and Smyth, 9.

⁷ *Ibid.*, 11.

⁸ "About Us," Legal Services of Missouri, accessed June 11, 2015, <http://www.lsmo.org/about-us>.

⁹ "Analysis of Survey of Missouri Circuit Clerks Regarding Pro Se/Pro Bono Services," prepared for Missouri Supreme Court Committee on Access to Family Courts (formerly Commission on Pro Se Litigation (September 30, 2008), accessed June 18, 2015, <http://www.courts.mo.gov/file.jsp?id=12210>.

¹⁰ "Existing Pro Bono Programs in Missouri," accessed June 10, 2015, <https://www.courts.mo.gov/page.jsp?id=43918>.

¹¹ Sandefur and Smyth, p. 11

⁴ Laura K. Abel and David Pedulla, Reform Federal Civil Justice Policy to Meet the High-Stakes Legal Needs of Low-Income People, Brennan Center for Justice at the NYU School of Law Blog, (Jan. 5, 2007), <http://www.brennancenter.org/blog/reform-federal-civil-justice-policy-meet-high-stakes-legal-needs-low-income-people>.

⁵ Jeanne Cham, "Legal Services for All: Is the Profession Ready?" *Loyola of Los Angeles Law Review* 42 (2009): 1021-64.

involves paying private attorneys with public money on a fee-for-service basis, but does not have any high-volume law school clinical programs, lawyer-of-the-day programs, or staffed courthouse centers.

Various other pro bono programs exist in Missouri to supplement the services provided by the four LSC-funded staff attorney-model offices. For example, each of the LSC grantee organizations has developed insightful volunteer programs in an attempt to fill the justice gap in their geographical area. Legal Aid of Western Missouri administers the Volunteer Attorney Project (VAP), which includes 900 enrolled volunteer attorneys and focuses on legal matters including victims of abuse, the homeless, and the elderly. Similarly, Legal Services of Eastern Missouri reported that their Volunteer Lawyers Program (VLP) generated over 4000 hours of volunteer legal work in more than 450 cases, performed by over 400 lawyers in 2013.¹²

Other legal aid programs exist apart from the four LSC grantee organizations. Gateway Legal Services, a self-funded non-profit legal aid office in St. Louis, handles cases statewide and specializes in veteran's benefits, SSI, abusive debt collection, and social security disability cases. Another program is the Samaritan Center Legal Care Program, which primarily serves counties surrounding Jefferson City. Samaritan Center attorneys (all volunteer) handle civil matters. The Samaritan Center provides resources to volunteer attorneys, including mentoring, meeting space, limited office support, malpractice coverage through the state of Missouri, no out-of-pocket expenses, language translation, and free training opportunities that also count toward continuing legal education requirements. There is also a pro bono attorney list serve available that is maintained by the Missouri Bar Association to connect with other volunteer attorneys in Missouri, as well as a virtual desk book that includes a legal forms library. Other programs include the Catholic Legal Assistance Ministry, the Missouri Trial Lawyers Association (in collaboration with the Red Cross) program to assist disaster victims, and other pro bono

¹² "Legal Services of Eastern Missouri 2013 Annual Report," 8, accessed May 15, 2015, http://www.lsem.org/files/5814/1781/7939/2013_LSEM_Annual_Report.pdf.

programs across the state which either focus on specific legal areas or specific groups of clients.¹³

The Legal Services of Missouri website¹⁴ contains basic legal aid-related information, including contact information for each of the four legal services grantees, a few articles about poverty, a link to Missouri court information, and a link to make a donation. According to the Missouri Courts website, no local bar association has a legal aid referral program or pro bono panel. In fact, a 2008 survey revealed that only five circuit clerks out of 115 maintained a list of pro bono attorneys in the area.¹⁵ None of these lists were reported as publicly available.

The Missouri Bar Association's website contains a "Pro Bono Opportunities" portion of its website, where it lists contact information for attorneys interested in donating time to the various legal aid organizations located throughout the state, many of which are listed above. The Missouri Bar Association asks for voluntary reporting of pro bono hours from its member attorneys. If at least 40 hours are reported by a certain date each year, lawyers' names are reported in the bar's online publications, on their website, and at certain bar association events.¹⁶ Missouri attorneys are guided by an ethical rule in considering their professional obligation to serve the poor. Rule 4-6.1, while not mandatory, suggests it is important to serve:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations; by service in activities for improving the law, the legal system, or the legal profession; and by financial support for

¹³ "Existing Pro Bono Programs in Missouri," accessed June 2, 2015, <https://www.courts.mo.gov/page.jsp?id=43918>.

¹⁴ "Legal Services of Missouri," accessed May 19, 2015, <http://www.lsmo.org/>.

¹⁵ Analysis of Survey of Missouri Circuit Clerks.

¹⁶ However, one of the publications listed as a benefit of voluntary reporting on the Missouri Bar Association's website as featuring the wall of fame names each year, the *Precedent*, does not contain a wall of fame list for 2010-2015.

organizations that provide legal services to persons of limited means.¹⁷

Attorneys licensed to practice law in Missouri are required to join the Missouri Bar Association. According to the Missouri Bar Association website, Missouri has nearly 30,000 licensed attorneys.¹⁸ Out of those 30,000 attorneys, only 205 voluntarily reported at least forty hours of pro bono work for 2013. In 2012, 282 attorneys met the requirements; in 2011, only 119 lawyers reported forty hours. The first year of the program listed on the Missouri website was 2010, in which 84 attorneys reported forty hours. 2014 data for voluntary reporting is not currently available. It is clear from the extremely low percentages of attorneys reporting pro bono hours that much room for improvement exists. See Table 3 (found on page 13).

Private Attorneys and Pro Bono Service

Consistent underfunding of legal services and a growing justice gap has led to renewed calls for private attorney involvement via pro bono service to indigent clients. Legal Services of Missouri estimates that “if every Missouri attorney volunteered for one pro bono case each year, most unmet needs would be fulfilled.”¹⁹

Determining attorney involvement levels in pro bono services has historically been difficult, as most states do not have reporting requirements. In 1919, Reginald Heber Smith published one of the first studies on pro bono activities among attorneys, finding that not even 10 percent of attorneys provided legal assistance to the poor. In some cities, he determined the rate was closer to 2 or 3 percent.²⁰ Current data on pro bono

involvement, where available, reveals vast disparities in pro bono involvement among states. When data has been gathered, it has often been part of a voluntary reporting duty instead of mandatory, resulting in low compliance rates among attorneys. According to the American Bar Association website, nine states mandate reporting of pro bono hours: Florida, Hawaii, Illinois, Indiana, Maryland, Mississippi, Nevada, New Mexico, and New York.²¹ New Mexico had the highest percentage of attorneys reporting pro bono activity, at 57 percent in 2013. States with voluntary reporting systems, like Missouri, tend to have much lower response rates. Available research shows that U.S. attorneys “average less than half an hour of work per week and under half a dollar per day in support of pro bono legal assistance.”²² A 2009 study of lawyers conducted by the ABA Standing Committee on Pro Bono and Public Service showed that 27 percent of lawyers volunteered fifty or more pro bono hours in the previous year.²³

The reality is that most attorneys do not participate in pro bono service. When surveyed, most attorneys believe that members of the bar should perform pro bono service, but the majority of attorneys oppose mandatory pro bono requirements.²⁴ Also, “much of the bar’s charitable work goes not to the disadvantaged groups and causes most in need of assistance, but rather to friends, relatives, and potential or deadbeat clients.”²⁵ There are certainly noteworthy exceptions; some attorneys take on much more than their share of pro bono cases, making a dramatic difference in the lives of their clients.

Explaining why the majority of attorneys fail to volunteer their time to provide legal services is a complicated issue deserving of increased empirical analysis. Concepts such as motivation to serve the

¹⁷ Missouri Supreme Court Rules, Rules of Professional Conduct, Rule 4-6.1, adopted September 28, 1993, eff. July 1, 1995, Rev. July 1, 2007, accessed June 2, 2015, <http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/0/384af6c9c3fdae1d86256ca600521254?OpenDocument>.

¹⁸ “Frequently Asked Questions About the Missouri Bar,” Missouri Bar Association, accessed June 11, 2015, http://www.mobar.org/About_Us/FAQ.htm.

¹⁹ “Pro Bono,” accessed June 20, 2015, <http://www.lsmo.org/content/pro-bono-if-every-missouri-attorney-volunteered-one-pro-bono-case-each-year-most-unmet-needs>.

²⁰ Reginald Heber Smith, *Justice and the Poor*, (New York: Charles Scribner’s Sons, 1919).

²¹ “Pro Bono Reporting Links,” American Bar Association Website, accessed May 25, 2015, <http://apps.americanbar.org/legalservices/probono/reporting/probono-reporting.html>.

²² Rhode, 20.

²³ Robert Granfield and Lynn Mather, “Pro Bono, the Public Good, and the Legal Profession: An Introduction,” in *Private Lawyers and the Public Interest*, edited by Robert Granfield and Lynn Mather (New York: Oxford University Press, 2009), 5.

²⁴ Rhode, 31.

²⁵ *Ibid*, 166.

public interest, along with volunteerism, are interesting and multifaceted areas of inquiry that have seen a recent surge in research activity. However, limited studies are available that pertain directly to attorney pro bono motivation. Deborah L. Rhode, a Stanford Law School professor, conducted a study published in 2005 that surveyed attorneys regarding pro bono activities. She found the most common reasons cited for failing to provide pro bono service included family obligations, workload, and billable hour requirements. Additionally, survey data revealed that employer attitudes and the absence of rewarding pro bono opportunities also played a role.²⁶ Rhode cites another possible reason for failure to provide pro bono service as a general lack of emphasis in legal culture that could be addressed through increased socialization to the importance of pro bono service during law school.

Pro bono service has consistently been a hotly contested topic. Despite a dramatic increase in support for pro bono service over the last twenty years or so, “most practitioners have yet to embrace the view, set forth in bar ethical codes, that ‘every lawyer has a professional responsibility to provide legal services to those unable to pay.’”²⁷ Ethical rules that include the concept of pro bono were not adopted by the American Bar Association until 1983, with the adoption of the ABA’s Model Rule 6.1. In developing the initial version of Model Rule 6.1, the idea of mandatory pro bono service was rejected.²⁸ Rule 6.1 was revised a decade later, and remains suggestive/voluntary today, using language such as “A lawyer *should aspire* to render at least (fifty) hours of pro bono publico legal services per year.”²⁹

Many arguments have been given in opposition to mandatory pro bono service. However, Rhode concludes that “most of the bar’s objections to pro bono requirements are unconvincing in principle or unsubstantiated in practice.”³⁰ First, as a private profession, there is the argument that attorneys should not have to work for free, as other private professions have no such obligation. However, Rhode points out

that medicine, which is the most analogous profession regarding public service expectations, has higher levels of voluntary participation in serving the underprivileged than law.³¹ Another common and pervasive, almost “Pavlovian” response, is that mandatory pro bono service must be unconstitutional.³² These claims have rarely been successful, and have been premised on various legal grounds, including arguments based on the Fifth Amendment, Thirteenth Amendment, First Amendment, and Fourteenth Amendment.³³

Aside from the potential to improve access to justice, many arguments exist in favor of mandatory pro bono service and/or reporting. First, mandatory requirements would change the conversation within the legal community. It would become a moral imperative instead of a mere suggestion. Also, mandatory pro bono service and reporting could lower the volume of “apathetic bystanders who are now free riders on the bar’s reputation for public service and whose nonparticipation discourages participation by others.”³⁴ Another argument is that the legal profession has a duty to provide pro bono service in exchange for the privilege of self-regulation and autonomy from the state.³⁵

Finally, American attorneys have strictly limited who may practice law, which has resulted in a lack of competition in the provision of legal services. This has enabled the profession “to price services beyond the reach of millions of consumers. Some pro bono contribution is not unreasonable in return for lawyers’ privileged status.”³⁶ Despite the potential costs associated with mandatory pro bono requirements, the limited available data demonstrates large increases in pro bono service with the implementation of mandatory reporting. For example, after the reporting system was put in place in Florida, there was substantial growth in the number of pro bono hours and financial contributions.³⁷

²⁶ Rhode, 152.

²⁷ *Ibid*, 25.

²⁸ Granfield and Mather.

²⁹ American Bar Association Model Rule 6.1 on Voluntary Pro Bono Public Service, accessed June 22, 2015, www.abanet.org/legalservices/probono/rule61.html.

³⁰ Rhode, 45.

³¹ Rhode, 77.

³² *Ibid*, 7.

³³ *Ibid*.

³⁴ *Ibid*, 71.

³⁵ Granfield and Mather, 7.

³⁶ Rhode, 28-29.

³⁷ *Ibid*, 168.

Future Recommendations and Conclusion

Missouri can and must improve access to justice in the state. Some suggestions for improvement include:

- Establish a centralized or court-based intake system and legal aid referral program
- Implement a mandatory reporting system with compliance lists made publicly available
- Condition government contracts on pro bono service. California, for example, required “such a condition in state contracts for legal services that exceed \$50,000.”³⁸
- Work with state-based law schools to develop high-volume legal aid clinics
- Develop a pro bono mentoring program
- Emphasize and bolster recognition programs for pro bono attorneys
- Make pro bono opportunities more attractive, effective, and accessible
- Strengthen support structures for volunteer attorneys
- Adopt innovative ideas from other local and state organizations

These suggestions are not meant to minimize the importance of maintaining staff-based legal aid offices, however. Legal aid attorneys and staff vet cases, run pro bono programs, train volunteer attorneys, assess local needs, etc. In other words, they play an essential organizing role and thus increased funding for LSC is important.

An assessment of civil legal aid availability in Missouri shows much room for improvement. It is worthwhile to pay attention to innovations from other states and localities that may work in Missouri. It is also necessary to continue attempts to increase pro bono service among attorneys licensed in the state. With increased attention from policy makers, concerned citizens, and members of the legal profession, Missouri can work toward meeting the civil legal needs of the poor and narrowing the justice gap.

³⁸ Rhode, 169.

Table 1. 2014 LSC Funding to Missouri Legal Aid Offices

<u>LSC Grantee Organization</u>	<u>2014 LSC Funding</u>
Legal Aid of Western Missouri	\$1,899,273
Legal Services of Eastern Missouri, Inc.	\$1,959,043
Legal Services of Southern Missouri	\$1,654,892
Mid-Missouri Legal Services Corporation	\$436,010
Total LSC Funding	\$5,949,218

Table 2. Legal Aid of Western Missouri Funding Sources

<u>Funding Sources 2014</u>	<u>Percent of Total Revenue*</u>	<u>Actual Dollar Amount</u>
LSC Grant	20%	\$1,899,273
Other Federal	8%	\$730,624
City, County & State	26%	\$2,480,658
United Way	3%	\$262,211
IOLTA	2%	\$229,896
Foundations, Churches, and Other Organizations	14%	\$1,356,404
Fundraising and Other (Misc.)	27%	\$2,522,715
Total Revenue	100%	\$9,481,781

*Percentages have been rounded to the nearest number.

Table 3. Number of Attorneys Listed on “Pro Bono Wall of Fame,” 2010-2013

<u>Year</u>	<u>Number of Attorneys</u>	<u>Percent of Attorneys Reporting Pro Bono</u>
2013	205	0.7%
2012	282	0.9%
2011	119	0.4%
2010	84	0.3%