

Testimony on: Suggested Amendments to D.C. Council Bill B21-0879: “Expanding Access to Justice Act of 2016”

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Supplementary Testimony
to the

**D.C. Council Committee
on the Judiciary**

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Consumers for a Responsive Legal System (“Responsive Law”) testified to the Committee on this bill at the hearing October 19. This supplementary testimony provides specific language for amendments discussed generally in that statement. We appreciate the opportunity to present further details.

Responsive Law is a national nonprofit organization (based in the District, with a director and several board members who are active members of the D.C. Bar) working to make the civil legal system more affordable, accessible and accountable to the people. We have testified to state bar associations and legislatures as well as the American Bar Association on a range of issues affecting users of the legal system. We participated in the ABA Commission on the Future of Legal Services and we have examined innovations in legal service delivery here and abroad that hold promise of expanding sources of legal assistance consistent with the longstanding goal of protection for the consumer.

1. The bill should include among the findings in Sec. 101 a new subsection citing the goal of full access to effective assistance: “The Conference of Chief Justices and the Conference of State Court Administrators adopted an Access Resolution in 2015 aiming for 100% access to ‘effective assistance for essential civil legal needs.’”¹ This would be an important response of the District to the urging in the resolution that members “provide leadership in achieving that goal and to work with their Access to Justice Commission or other such entities to develop a strategic plan with realistic and

¹ <http://bit.ly/1SQHvKf>.

measurable outcomes.” Adding this finding would underscore that the long-range goal of access to justice will require action (by providers, the courts, and the profession) including but not limited to providing counsel where that is essential.

2. Amend Sec. 101(h) to expand the learning goals of the legislation. It should read: “Demonstrating empirically the value of the provision of legal assistance to low income people, including full representation where necessary especially in cases of fundamental human needs, will move the District towards establishing the right to effective assistance for all.”

3. Conform other parts of Sec. 101 to the revised emphasis on multiple approaches by amending Sec. 101(c), (d) and (e). Sec. 101(c) should read: “Effective assistance in cases involving fundamental needs is essential....” Sec. 101(d) should read: “assistance of various kinds is necessary to provide a complete and fair resolution....” Sec. 101(e) should read “along with effective assistance in a wide array of cases....”

4. Amend Sec. 102(f) to expand those who may provide services in funded projects. New sentences (or new sub-section) should say: “In addition to licensed legal professionals, any employee or volunteer at a provider under this act who is acting within the scope of assigned duties to advance the project and organizational goals will not be considered in violation of D.C. Court of Appeals Rule 49. Nor will any nonprofit organization be considered in violation for the work in projects under the act of any of its employees and volunteers who are not licensed legal professionals.” Trying out various approaches to delivery of effective services will involve a mix of staff, including some who may not be licensed legal professionals. The bill should assure grantees and their staff they may do so, so long as consumer protection is assured by proper assignment and supervision.²

² If this exceeds Council authority, an agreement with the court may be possible to accomplish the same goals. The idea suggested here of authorizing law-related work by all staff at nonprofit legal service providers is discussed in Richard Zorza, “Five Broad New Ideas to Cut Through the Access to Justice-Commercialization-Deregulation Conundrum,” 29 *Geo. J. Legal Ethics* 683 (Summer 2016).

5. Amend Sec. 201(a) to assure the program is not viewed as an entitlement but as a competitive opportunity where funds are awarded based on stated evaluation criteria applied to proposals by a broad-based review committee. (The three stated criteria are those emphasized by the California legislature in their right to counsel demonstration projects.) The section should read: “The DC Bar Foundation (“Bar Foundation”) shall adopt policies and procedures for a competitive award process, issue requests for proposals, conduct impartial proposal evaluations with the assistance of community members (including representatives of the courts and the public), utilize criteria of review that include capacity for success, innovation and efficiency, and make grants...”

6. Amend the fundamental criterion for the projects in Sec. 201(b) to broaden the project design to link to the goal of learning about many variations on effective assistance. It should read: “The projects shall be designed to demonstrate the value of effective assistance in civil cases involving fundamental human needs, including the right to full representation where necessary.”

7. Amend the limit in Sec. 301(c) on providers who may be considered, by deleting “only” in the first sentence. The remaining text will still direct the Bar Foundation to consider four important criteria (relevant local expertise and capacity), but the change is needed to make clear the Foundation may solicit, consider and support other proposals (including from organizations that may not be headquartered here). With public funds, the search should be broad for exemplary projects that meet goals of innovation, efficiency and learning without artificial barriers to those “not invented here.”

8. Amend the consultation requirement in Sec. 301(d) for the Bar Foundation planning process to add representatives of consumers of legal services. This is needed to assure such voices are heard directly, no matter who may be appointed by the government sources named in (d)(1) through (6). New text should be added as 301(d)(7): “Three representatives of consumers of legal services proposed by the D.C. United Planning Organization, Consumers Union, Responsive Law, the Self-Represented Litigation Network, or other similar organizations.”

9. Amend the requirements for programmatic reporting in Sec. 302(a)(3) to assure sound plans and necessary conditions for

carrying them out. For example, annual reporting is too frequent to be done well. In lieu of detailed requirements, we suggest directing the Bar Foundation to develop a study plan, while granting authority for their use of experts and requiring grantees to allow access to all project details for study purposes. The revised text should read: “(3) An evaluation study as follows: (i) A study plan shall be developed in the first six months after passage of this act for evaluating the funded projects; (ii) The plan shall specify study reports and their delivery dates taking into consideration the funded projects; (iii) The plan shall include study goals and data gathering to learn what was done (including costs and implementation challenges), as well as the results (including legal outcomes for individuals and effects on the courts); (iv) The Foundation is authorized to retain and compensate expert consultants in developing the plan and carrying out the evaluation and to set aside funds needed; (v) Providers supported by funds under the act, as a condition of that support, shall provide full access to their activities for data collection needed for the evaluation (including access to any comparison groups needed).”

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As we urged in the initial Responsive Law testimony, this legislation offers an opportunity to help at least some people, and also to learn how to do better at meeting the remaining need.

The changes suggested here will assure the effort better meets the second goal by allowing multiple approaches and assuring solid study of what will be complex activities.

As the ABA Commission on the Future of Legal Services recommended, “Outcomes derived from any established or new models for the delivery of legal services must be measured to evaluate effectiveness.”³

The Responsive Law policy advisory board includes experts in designing and evaluating innovative legal services delivery systems worldwide. (List at <http://bit.ly/2dloaEI>.) Our staff, board and advisors would be pleased to assist as this important legislation is further developed and the project work begins.

³ *Report on the Future of Legal Services in the United States* (August 2016), p. 56. <http://bit.ly/2ehXotB>.