Finding New Ways to Give Access to Justice to Those Who Cannot Afford Lawyers

By Harry Reasoner

The people in Texas who need legal representation the most and cannot afford it are often the least likely to obtain it. They have several avenues, but none are ideal. They can suffer the consequences of doing nothing. They can attempt to represent themselves and face the multitude of barriers to resolving their legal matters in a system established for lawyers. They can try to find a lawyer to represent them for free or at a reduced cost. Or they can seek legal aid and find out soon enough that Texas ranks last in the nation for the ratio of legal aid lawyers to poor people.

A recent study by the University of Texas at San Antonio found that Texas legal aid organizations can help only 10 percent of low-income Texans. With Texas having one of the highest poverty rates in the nation—21.8 percent—the number of people without representation will likely grow. Add to that the fact that Interest on Lawyers Trust Accounts funding has declined dramatically since 2007, dealing a $110 million blow to legal aid. Although the statistics are grim, they are not beyond the power of Texas lawyers to address.

Generally speaking, there are three ways poor people can get legal help in our current legal service delivery system: legal aid, the private bar, and self-help. The Texas Access to Justice Commission is studying these methods to see how they might be improved.

Legal Aid

Legal aid is essential if we are to truly have the rule of law. Legal aid lawyers exist to give the poor the same level of access to our courts as a person of means. As the statistics demonstrate, we are failing to provide “justice for all.”

Although the regular call for financial support is tiresome to some, money is essential for legal aid to help people. Increased funding would allow legal aid to hire more attorneys and start making a dent in helping the 90 percent with unmet needs. Funds not only pay staff salaries, they also sustain our pro bono infrastructure that connects the poor to volunteer attorneys.

The Commission, the Texas Supreme Court, the State Bar, the Texas Access to Justice Foundation, and their volunteers dedicate a significant amount of time to growing funds by securing support from our state legislators and congressional members, expanding the number of Texas attorneys who make the $150 ATJ contribution on their dues statement (which is currently at only 8 percent), and hosting our Champions of Justice Gala Benefiting Veterans. We must continue to strive for adequate funding sources.

We also need to draw talented lawyers to this worthy endeavor by helping graduating law students with their often exorbitant student loan debt. Many simply can’t afford to pursue a legal aid career. Those who do often leave within a few years, making it difficult for legal aid to maintain seasoned staff.
There is some relief through the Texas Student Loan Repayment Assistance Program funded by the State Bar of Texas for the past several years. This program provides $400 per month toward loan repayment to more than 100 legal aid lawyers each year. Securing student loan forgiveness legislation would also go a long way for those who work in public service careers.

The Private Bar

While pro bono efforts in Texas are laudable, more can be done to increase the number of lawyers who want to engage in public service and to make it easier for those who choose this path.

We start by cultivating a culture of service in law students. Exposing them early on to the plight of the poor is critical to developing this ethic, which is why the Commission offers a Pro Bono Spring Break opportunity and Access to Justice Internships. Students with limited time can spend their spring break week doing hands-on pro bono at legal aid organizations across the state, or they can dedicate more time through an internship that pays a living wage stipend. If we’re successful, more students will want to give back by focusing on a legal aid career or incorporating a pro bono aspect into their practices.

We continue by making it easier for lawyers to do pro bono. The Commission regularly gets calls from attorneys who want to help but can’t because of limitations in current policies and rules. The existing Emeritus Attorney Pro Bono Participation Program is restricted to retired attorneys and is administratively burdensome for attorney volunteers and legal aid organizations. The Commission and the State Bar Pro Bono Work Group are working to address these shortcomings and to broaden the pool of volunteers by allowing inactive attorneys who want to keep up their skills and corporate counsel licensed in another state to do pro bono.

We also look at innovative ways to connect low-income people to lawyers on an affordable basis since there aren’t enough legal aid and pro bono attorneys to meet the need. Incubators, limited scope representation, and nontraditional law firm models have been successful in other states and could help in Texas too.

Incubators help newly licensed attorneys develop their own practices by providing in-depth training on practical legal skills and law office management. In return, these lawyers agree to offer free and low-cost representation to low-income people. The incubator training provides guidance to participating attorneys on how to have thriving practices serving this population. The Commission has been working with Texas law schools and the State Bar as the bar plans to implement the first incubator in Texas.

With limited scope representation, a lawyer provides only specific legal services to a client rather than handling the whole case. It allows clients to pay for the legal services they need and can afford while handling the other parts pro se. The working poor can sometimes afford to pay something, and as some savvy young lawyers have discovered, there are economic opportunities when an equitable arrangement can be made. The Commission has developed a CLE and a toolkit with sample limited scope retainer agreements and basic materials to get started. Both are available on our website at texasatj.org/limited-scope-representation.

Low bono and nonprofit law firms are also starting up around the state. Low bono law firms offer services at reduced rates or use inventive billing structures, such as flat rates, that help clients with limited ability to pay. With flat rates, clients know upfront how much their cases will cost, which is incredibly important to people with limited means. However, flat rates are not recommended for all situations, so attorneys are using sliding-scale fees to handle more complex cases. Other firms take into account income and family size, allowing attorneys to charge a higher hourly rate to people with more ability to pay while representing people with limited means at a lower rate. Nonprofit law firms often combine limited scope, flat fees, and sliding scales to serve a limited income population while growing their businesses.

Self-Represented Litigants

For the majority of low-income Texans, their only option is to attempt to represent themselves. The degree of help they receive when they arrive at the courthouse varies greatly, depending on the county they live in and the judge they obtain. There is much confusion among judges, clerks, and court personnel on what assistance, if any, can be offered to litigants. The Commission is looking at ways to help clarify what can and can’t be done and to ensure that pro se litigants receive similar treatment no matter where they live.

Additional improvements can be made inside the courtroom. Formal guidance for handling pro se cases, as some states have implemented, would be of great benefit to courts. Such basics as bilingual signage, brochures and pamphlets detailing how to handle a lawsuit, access to interpreter and translation services, and the necessary forms and instructions should be readily available. We can’t immediately reduce the number of pro se litigants but we can provide them with the information they need to resolve their case and lessen the burden on the courts.

Outside the courtroom, mechanisms can be created that help people avoid legal disputes and the legal system altogether. During the last legislative session, the transfer on death deed was passed, as well as reforms to the statute governing payable on death accounts and the small estates affidavit. The Commission is working on additional legislation that would allow people to transfer a vehicle upon death. For most low-income people, this would mean their assets—bank account, car, home—could pass entirely outside of probate.

These efforts have broad impact, but more are needed. We welcome your ideas for improving access and outcomes. We believe the justice system should be guided by our national ideal of justice for all and basic human decency. TBJ

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