Trends in State Courts
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A nonprofit organization improving justice through leadership and service to courts.
About half the cases filed in any given year in circuit (general jurisdiction) courts involve civil matters. To access the courts, citizens generally need adequate financial resources to pay for legal representation and court costs. The financial crisis of 2007 to 2008 and the ensuing economic downturn created new groups of individuals facing difficult circumstances and reinforced the vulnerabilities of some groups who historically lived in poverty. The challenge for the courts has been to provide access to justice when citizens have inadequate financial resources. To ensure that Missouri’s citizens would continue to have equal access to the courts, the research unit in the court administrator’s office analyzed the changing demographics of poverty in the state and examined how the downturn impacted court access. The information provides insights into groups of citizens who may need special assistance from the courts because of poverty or the nature of their needs.

The study drew data from the U.S. Census Bureau and ancillary reports for a poverty profile. To better understand the nature of legal problems faced by population subgroups, interviews were conducted with staff at domestic violence, homeless, and veterans’ shelters. Previous local studies were pulled into the analysis of court accommodations designed to ensure equal access for those with limited financial means.

A PROFILE OF POVERTY IN MISSOURI

The poverty profile addresses the characteristics of those living in poverty and what we know about their potential need for court services. The official poverty line is determined by a formula that accounts for household composition. The poverty line in 2010 was $11,344 for individuals under age 65, $10,458 for individuals over age 65, and $22,113 for a family of four (U.S. Census Bureau). Legal aid services generally are available for those making up to 125 percent of the poverty line, or $24,641 for a family of four.

In Missouri, and much of the nation, the biggest growth among those living in households with an income at 100 percent of the official poverty threshold occurred in suburban areas around urban centers, a 53 percent increase over the last decade. The new poor are formerly middle-class households...
dragged into poverty by unemployment, foreclosures, and uninsured medical costs (Berube and Kneebone, 2011). Their need for legal services often involves resolution of financial problems. Some of them may end up in homeless shelters. From 2009-12 homeless shelters saw more people with serious financial problems who were deluged with debt through payday loans, rent-to-own arrangements, and medical bills. Many did not know how to file for bankruptcy or to avoid getting into the same situation if they did receive bankruptcy protection. Many such individuals joined the ranks of the working poor. About half of impoverished adults work, almost 9 percent full-time and 35 percent part-time (U.S. Census, 2010). As their earned income increases, their eligibility for financial assistance often decreases, leaving them at the same level of income but with a much smaller safety net. They may have to choose between paying for legal representation or for basic necessities. Shelter staff report that many of these individuals need not just legal aid but also consumer education in how to manage their finances.

The proportion of Missouri children living below the 100 percent poverty threshold grew by 39 percent over the last decade. Children with disabilities are very vulnerable; one in three such children live below the poverty line (U.S. Census, 2010). The most common direct source of legal need for children involves social-welfare benefits. The vulnerability for many children is compounded if they live in a female-headed household; 40 percent of such households live below the 100 percent poverty threshold. They tend to seek legal resolution to problems associated with meeting basic needs, family matters (divorce, child custody, and child support), and safety in intimate-partner-violence situations. While legal aid services may assist some families with these issues, such services are limited. Women in domestic violence situations may try to borrow money from family members for an attorney or find an attorney who will reduce fees or provide services with the expectation of payment in the future. Shelter staff report increasing difficulties in finding attorneys who will represent a client for anything but upfront payment of standard fees. As a result of no access to legal services, some women remain stuck in a marriage or with an undesirable custody arrangement, further threatening the well-being of the women and children. Many of the women who come to domestic violence shelters for help have a bad credit rating, which constrains their ability to obtain legal services. Those escaping domestic violence may want to get a divorce as a way to resolve the problem but often are not familiar with restraining orders as an alternative means of protection.

While a safety net exists to serve their needs, veterans from the most recent Gulf War and from the Vietnam era are vulnerable to living in difficult circumstances, including homelessness. In Missouri 13,549 veterans are typically homeless. The trauma they experienced while serving has enduring impacts, leaving many with disabilities and an
incomplete safety net. Many veterans lose their driver’s license because they fail to meet child support obligations. Without a license, many do not have any legal identification to apply for benefits, nor do they have adequate means of transportation to get to a job. Thus, they fall into a downward spiral and may end up homeless. According to a survey by the Department of Veterans Affairs, they have legal needs that are not being adequately met, particularly regarding family matters and consumer finance issues (CHALENG Survey, 2010).

Identifying the characteristics of those living in poverty, and coupling that with information gained from interviews with staff who work with similarly situated people, indicates the nature of legal needs but not their magnitude. Next, the analysis estimated the magnitude of need by extrapolating information from a 2002 study.

ESTIMATING LEGAL NEEDS OF THE POOR IN MISSOURI

Legal needs are generally estimated through survey research. Such studies have consistently found that most low-income households have legal problems, most of which are not resolved, and that many such people are unaware that they need legal help (Conference of Chief Justices, 2012). This study used findings from a previous legal-needs survey to estimate current legal needs among the poor. In 2002 a University of Missouri political science professor, Greg Casey, in collaboration with a polling firm, Telephone Contacts, Inc., surveyed a representative sample of poverty-level households in Missouri regarding their legal needs over a three-year period (1999-2001). He used the responses to calculate the proportion of households with legal needs in case categories served by legal aid.

Professor Casey calculated that 77 percent of low-income households faced at least one legal problem during 1999-2001. The 2010 Census indicates 344,075 households in the state of Missouri had income in the past 12 months at the 100 percent poverty level. Applying Casey’s analysis, almost 250,000 low-income families in Missouri will face at least
one legal problem in the next three years. Many households will experience multiple legal problems; 625,000 legal problems are predicted. The majority of these legal problems would involve housing, employment, or family issues.

MEETING LEGAL NEEDS THROUGH LEGAL AID SERVICES

With a general sense of the nature and magnitude of legal needs for Missouri households at the 100 percent poverty threshold, the examination of access to justice next turned to how these needs are being met. In 2011 the four legal aid offices in Missouri accepted 50 percent of the applications they received, or 21,531 requests for assistance. From 2009-11, legal aid helped people resolve their legal problems by closing 54,555 cases. Comparing the cases closed to the estimated legal needs indicates that 91 percent (\(\frac{625,219 - 54,555}{625,219}\)) of the legal problems of Missouri’s poor are not resolved with direct assistance from legal aid offices.

Both national and state observers have documented an association between the economic downturn and changes in court activity, at least for certain case types (Conference of Chief Justices, 2012; Glaberson, 2009; New York Task Force, 2010). Examining trends in Missouri from a general perspective shows that case filings for all case types decreased from 2009-11. The picture changes somewhat when particular case types are examined. A recent study in Missouri indicates an association between the economic downturn and cases associated with financial difficulties. From 2006-08, when the downturn became a recession, the number of civil filings suggestive of economic hardship (contracts, housing, foreclosures, tax actions, etc.) increased by more than 40 percent, or 19,000 cases (Rehagen, Vradenburg, and Gaynor, 2009). From 2009-11, as the economy stabilized, the filings on these economic-hardship-related cases stabilized at a level of 10,000 cases above where they were before the downturn (Rehagen and Vradenburg, 2012). These case types suggest households may be transitioning from middle-class asset owners to poverty-status debt carriers.

Filing a civil case in court generally costs money, even without attorney participation. To reduce this financial barrier, parties can file a petition to proceed without paying court costs. Filings on these petitions were stable from fiscal 2009-11 for all case types but showed significant trends within case types. The largest number of cases with this accommodation was for family cases (Vradenburg, 2012a). Requests grew the most for cases associated with consumer finance (257 percent) and housing (44 percent).
Another way to access the courts when finances are limited is to appear pro se, or "on one's own behalf." In fiscal 2011 there were almost 75,000 separate pro se parties (i.e., self-represented litigants) to civil cases (including domestic relations and probate) at case disposition in Missouri circuit (general jurisdiction) courts.

To assist individuals considering self-representation in family law matters, the Committee on Access to Family Courts developed a Web site with helpful resources. The committee also posted a questionnaire online to learn more about individuals who consider filing a case pro se. In 2011 4,921 individuals responded to the survey. More than half reported salaries below the poverty line. The most common reason for not using an attorney, reported by 48 percent of respondents, was that it would be too expensive. The majority of respondents were parties in a divorce, with custody issues being the next most common type of matter.

**IMPACT OF PRO SE ON THE ADMINISTRATION OF JUSTICE**

In recent years, as more people have filed pro se, concern has been voiced about how this impacts the administration of justice (Zorza, 2012.) One way to examine this issue would be to look at the impacts on court administration. Another approach is to compare case outcomes for pro se filers to those with legal representation.

In 2012 Missouri conducted a “Pro Se Survey of Court Clerks.” Among the 45 respondents, 68 percent reported it takes significantly more time to provide assistance to pro se parties. The most common interactions between clerks and pro se parties involve filling out forms correctly and requesting the clerk’s opinion about the accuracy of forms. Clerks expressed mixed views as to whether these forms of assistance fall within their purview or are better handled by an attorney because of the potential legal implications of the information the clerks are asked to provide.
Some attorneys believe people who represent themselves are more likely to lose their cases than are people who are represented by attorneys (Collins, 2012) because they do not have the expertise to effectively navigate the legal system. Researchers analyzed this issue for Missouri pro se civil-case parties from two perspectives. First, the researchers compared the manner of disposition for pro se and non-pro se parties, and then they focused specifically on judgments against pro se parties, looking at both petitioners and respondents.

Examining cases at disposition, pro se party types were associated with a higher proportion of disposed family cases and lower proportion of disposed consumer finance cases compared to non-pro se parties. The most common outcomes for active pro se party types at disposition were dismissed by the court without prejudice, tried by the court, dismissed by the parties, default judgment, and consent judgment. In comparing pro se to non-pro se dispositions within case types, some differences are noteworthy. Pro se parties are more likely to use the full resources of the court as indicated by disproportionately more of their cases being tried by the court and fewer having dispositions of dismissed by the parties, consent judgment, and default judgment. They also are more likely to have their cases dismissed without resolution as indicated by a disproportionate number of dismissed-by-the-court-without-prejudice outcomes. (Vradenburg, 2012b).

In fiscal year 2012, 13,500 judgments were entered against pro se petitioners and respondents combined. Non-pro se petitioners had judgments entered against them for 9 percent of their cases, compared to 19 percent for pro se petitioners. Pro se petitioners had a higher proportion of judgments against for cases involving family, housing, and consumer/finance cases, but not for employment, juvenile, income maintenance, individual rights and miscellaneous cases. Among respondents, compared to those who were non-pro se, pro se respondents at

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disposition had a much higher proportion against only for family cases. For the other seven case types, the pro se respondents had smaller proportions of judgments entered against them. These results provide some evidence to support the contention that people who represent themselves are more likely to lose their cases, at least for certain case types. To fully test this hypothesis, an analyst would need more information about the nature of the cases used in the comparison to control for other factors that could impact case outcomes besides pro se status.

### CONCLUSIONS

Much of the national discussion about equal access to justice has centered on more funding for legal services (Conference of Chief Justices, 2012). This study extended the scope of analysis to provide an integrative look at the economic downturn and impoverished groups in the population and their typical legal needs and to examine how courts are accommodating those with limited financial means. Without proper skills and knowledge about how the courts can help them and how to avoid further such problems, individuals in difficult circumstances may find themselves entrenched in poverty and legal problems. Education should be part of any strategy to ensure equal access to the courts. Many individuals are not even aware that their problems may have a legal resolution. Even if they do seek justice in the courts, they may need consumer education and financial literacy training to avoid similar problems in the future.
The courts have several mechanisms to enhance access, including allowing parties to not pay court costs and to represent themselves. Over 300,000 civil cases are filed in a typical year, yet less than 20,000 petitions to file without fees are filed. Raising awareness about this option may enhance access to justice for impoverished parties. Because self-representation is allowed in Missouri, helpful resources should be extended beyond family matters to include assistance for other common case types with significant numbers of pro se filers, namely, consumer finance and housing, areas that have been greatly impacted by the economic downturn.

REFERENCES


Access to Justice

In 1987 legal aid was still reeling from huge cuts under President Reagan and the attempt to completely defund it. Efforts to create alternative funding mechanisms, such as Interest on Lawyers Trust Fund Accounts (IOLTA), were starting. There were no access-to-justice commissions, and courts did not think they had any special responsibilities to help self-represented litigants. At this point, the only role courts played were to support Legal Services Corporation funding and encourage pro bono work by the bar.