

Call for Justice, LLC—United Way 2-1-1 Training Paper Session 1: Basics of the Civil Legal System

Speaker on March 15, 2012:

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Speaker on March 16, 2012:

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Featured Speakers' Topics

This month, Cathy Haukedahl and Jean Lastine will discuss the various legal assistance programs in the Twin Cities and Minnesota generally, with specific discussion of eligibility criteria and other nuances that will be of assistance in making effective legal referrals.

A question and answer session will follow the presentations

Introduction—Criminal Cases vs. Civil Cases

There are two types of legal proceedings: criminal and civil.

A **criminal** case usually involves an **arrest or some other police action** which starts the legal process. Usually, a criminal case involves the risk of a jail sentence or fine. Because of the risk that a defendant could lose his/her freedom, most criminal defendants are provided with an attorney if they don't have the money to pay for one. The right to an attorney is considered a basic right—it's the kind of thing seen on television or the movies when a police officer reads a suspect his or her "Miranda rights" (e.g. "You have the right to consult an attorney; if you can't afford an attorney, one will be appointed for you...").

A **civil** case usually involves a dispute between two people or between a company and a person. Instead of an arrest, **a party to a dispute can sue** the other party as a way of proving they are right or as a way of getting money to resolve the dispute. Because there's no risk of jail or a fine, the parties to a civil case do not generally have a right to an attorney.

RED FLAG: If a caller reports he/she has a court date associated with an arrest or because of some interaction with the police, then it's likely a criminal, and not a civil, case. Suggested course: refer the caller to the Legal Rights Center (Hennepin County) (612)-337-0030, or the Neighborhood Justice Center (Ramsey, Dakota, and Washington Counties) (651) 222-4703, or other criminal system resources that you commonly use.

Access to Justice/The "Justice Gap"

The phrase, "Access to Justice," is very important in the context of the civil court system. It can mean several different things—getting the opportunity to speak to a lawyer; having a user-

friendly court system that takes into account language and other differences; and ensuring that everyone has a chance to have their dispute or legal issue heard by a judge or jury. Often, people speak of “barriers” to “access.” Effective legal referrals are one way of eliminating, or at least minimizing, some barriers.

A problem, of course, is that even with good referrals, not everyone can afford a lawyer. If you have a civil legal problem and can’t afford an attorney, you may lose the dispute because the court system is too complicated or because the other party has an attorney. This can have tremendous consequences—such as requiring you to pay out money or losing a place to live, or losing the right to see your children. **The inability to obtain legal help when one’s basic needs are at risk is called the “Justice Gap.”**

Speaking to a lawyer may not always fix the legal problem since some legal disputes cannot be won, just like some health issues can’t be cured. **Still, however, the goal is to give everyone a chance to talk to an attorney about their civil legal problem.**

Although “Access to Justice” doesn’t mean that everyone’s legal problems will be solved, most people feel satisfied if they believe the civil justice system treats them fairly. Being able to consult with an attorney is an important element of fairness.

United Way 2-1-1’s referral to a legal provider is an important step to that person getting “Access to Justice.” If that person can’t reach an attorney even after United Way 2-1-1’s referral, the justice system hasn’t been opened.

The goal is to make legal referrals more effective. Among other things, this requires understanding the functions and roles of various legal providers in the Twin Cities.

Access Barriers and Openings

The biggest barrier to civil justice system access is a **lack of money**. Most attorneys want to be paid by the hour—sometimes at rates as high as \$300 or \$400 per hour. Often, attorneys want money up front (called a “retainer”), and many people just don’t have that kind of money in savings.

Even the court system creates money barriers, since it costs to file a lawsuit (\$322 in Hennepin County). Again, some low-income people can’t afford to pay this and thus, they don’t get access to the court system (sometimes the filing fee can be waived for indigent persons).

Another barrier to access is **lack of knowledge**. People don’t know where to turn or what agencies or private legal resources are available to help with their civil disputes.

United Way 2-1-1 can't help with money, but it can help with knowledge. The more that I&R Specialists know about legal resources, the more they can help close the Justice Gap.

RED FLAG: Many of your callers will be overwhelmed because the civil justice system is so confusing. It is exceedingly difficult to understand what resources exist and for whom. A suggestion is to quickly figure out if the caller has internet access and whether they seem to reasonably understand how to navigate the net. This may be particularly useful if you have a younger caller. If so, you may want to first refer them to **LawHelpMN.org**. The site has live online "chat" where the user can interact with an agency employee as the user navigates the LawHelp site.

Several decades ago, Congress decided that low-income people (presently defined as people or families at 125% of the Poverty Guidelines) should have access to an attorney in some civil cases. It created the Legal Services Corporation, also known as "**Legal Aid**."

In Minnesota, there are several Legal Aid offices which serve different areas of the state. Three of the offices overlap and cover parts of the Twin Cities: Mid-Minnesota Legal Assistance, Central Minnesota Legal Services and Southern Minnesota Regional Legal Services.

In addition to Legal Aid, there are other organizations that assist low-income people. One organization is the **Volunteer Lawyers Network (VLN)** in Minneapolis. The VLN uses hundreds of volunteer attorneys to provide some form of legal service for low-income people.

Low-income people are also given legal assistance by many specialized social service agencies, such as **Tubman** and the **Children's Law Center**.

As referenced in the **Red Flag** above, Legal Aid organizations in Minnesota help fund **LawHelpMN.org**, an interactive website that assists users with understanding what resources exist for a myriad of legal problems. The site provides both explanatory summaries of how to deal with certain legal problems—such as tenants' rights—and forms that the user can download. The site literally walks the user through the process of completing some simple forms—such as a letter to a landlord. Additionally, the website offers live online chat with an agency employee to assist in navigating the system. (Web address: <http://www.lawhelpmn.org>)

Both the **Hennepin County and Ramsey County Bar Associations** operate legal referral call lines.

1. The Hennepin County Lawyer Referral Service uses "market rate attorneys" who promise to take into account the client's financial ability to pay when setting their fees. The caller pays \$30 for the service, but the first half hour with the attorney is free. The Referral Service makes the appointment with the lawyer directly and then gets back to the caller with date and time. This service doesn't screen for income levels.

2. Hennepin County also has a “Low Fee Family Law Project,” where there is no service fee for the caller. This service does screen for income, and it serves Hennepin County residents between 125-250% of the Poverty Guidelines. Note: the project is designed to help the “working poor,” and it requires that the client pay a \$500 retainer. After that, the attorney charges \$60/hr. The client must have a regular form of income.
3. Ramsey County operates a “Modest Means Panel.” This serves Ramsey County residents between 150-300% of the Federal Poverty Guidelines; the caller pays a \$20 referral fee. The client must pay up to \$600 for a retainer; after that the attorney charges \$55/hr. This panel covers Family Law, Consumer Issues, Immigration, and Real Estate Foreclosure.

We are advised that both the Hennepin and Ramsey County referral programs are **not** operating at capacity.

Finally, **law firms and private attorneys** sometimes represent low-income people free of charge or at reduced rates. This is partly due to the Supreme Court saying that lawyers have an obligation to help low-income people with their civil disputes. Some of the larger law firms in the Twin Cities have attorneys and paralegals whose sole jobs are to help low-income people with their legal needs.

Pro Bono and Low Bono

There are two ways that lawyers help low-income people who cannot afford to pay regular rate legal fees.

One way is **Pro Bono Service**. This is where the lawyer agrees to provide legal services without charging the person-in-need. The lawyer could complete one step in a dispute or lawsuit or the lawyer could handle the entire lawsuit or dispute. Regardless, the person in need pays nothing for the lawyer’s time.

Another way to help low-income people is **Low Bono Service**. This is where the lawyer agrees to take less than a full fee or less than the usual retainer. The attorney usually agrees to let the client pay the lawyer’s discounted fee over time.

All of the Legal Aid providers are pro bono. Some private law firms and some social service agencies do both pro bono and low bono. There is a need for more attorneys willing to do both. One of Call for Justice’s future roles may be to assist in expanding the pool of attorneys willing to do pro bono and low bono work.

Eligibility for Pro Bono and Low Bono

This is where things get tricky. **“Eligibility” is a way of determining whether someone qualifies for services.** Almost always, one eligibility factor is income. Sometimes, it’s geography (where the person in need lives), or age. Sometimes, all three factors (and others) apply.

The problem is that eligibility is fluid—sometimes a legal provider requires that someone be no more than 125% of the Poverty Guidelines. At other times, they will take someone at 200% or even as high as 300%. Sometimes it depends on the type of case involved.

It is Call for Justice’s job to acquire eligibility information and keep it accurate. Call for Justice will have this information on its website, and in various instances, convey this information to United Way 2-1-1.

We understand that it’s exceedingly difficult to screen callers on the basis of eligibility. We will continue to come back to eligibility issues as the Call for Justice Project goes forward.

RED FLAG: One eligibility factor that favors low-income people is whether they are considered “disabled.” If so, the Minnesota Disability Law Center does not have an income eligibility requirement. If the caller volunteers they are disabled or on Social Security Disability or served by some disability program, we suggest that your first level of referral be to the MDLC. (The MDLC is part of Mid-Minnesota Legal Assistance, 612-332-1441.)

Unbundled Legal Services and Court Self-Help Centers

Another way of helping low-income people with their legal needs is through the use of **“unbundled legal services.”** Traditionally, lawyers were ethically bound to handle every legal issue involving a particular client—otherwise, the lawyer would be deemed to have not fully represented the client. More recently, lawyers have been allowed to help clients with only select issues—such as writing a letter for the client, but ending the lawyer’s involvement once that was accomplished, even if the legal dispute continued. This is called **“unbundling.”** It’s a way of giving low-income people access to the civil legal system.

RED FLAG: “Unbundled legal services” is a new concept. It’s like going to the doctor for a sore throat without the doctor doing a full physical examination. The doctor may be in the examining room for only a minute, but in doing so, he/she provides some help for your health problem. As you talk to callers, you can set their expectations by advising that with some of the low-income legal programs, they may be able to sit and talk to an attorney for only 15 minutes. Yet, this may be enough time to help the caller figure out a way to solve their legal problem.

Another recent development is the creation of **Court Self-Help Centers** at various courthouses. Some of the centers are staffed with court employees dedicated to helping court users fill out

forms and providing information about how court procedures work. A major limitation of Court Self-Help Centers is that the court employees don't provide legal advice. However, in the Hennepin County Courthouse, on the same floor as the Self-Help Center, there are Legal Access Point (LAP) offices staffed by lawyers from the Volunteer Lawyers Network (VLN) and volunteer attorneys through the Hennepin County Bar Association. The LAP hours are Mondays, Tuesdays, and Thursdays 9 am - 3 pm; Wednesdays and Fridays from 9 am - 1pm. People in need of legal services should just show up. Calling LAP isn't necessary.

Both Hennepin and Ramsey Counties offer **Self-Help Centers for Housing Court and Conciliation Court** (Small Claims—\$7500 limits). Additionally, there are **Self-Help Centers for Family Law**—divorces, child custody, and child support issues. These Self-Help Centers are periodically staffed with volunteer attorneys with varying hours and varying degrees of expertise.

Court Self-Help Centers are spread out across Minnesota, and they also provide “live help” for people trying to utilize court forms via the internet. Refer callers to www.mncourts.gov/selfhelp. Once on the internet, the user can telephone one of three attorneys at a central location in Minneapolis for help with the forms (651-259-3888).

RED FLAG: The Court Self-Help Centers are a good resource if the caller earns too much for Legal Aid but not enough to get help from the Bar Association referral programs. Callers should be advised to make sure they leave time to wait—both for help in completing forms (by Self-Help Center staff) and wait time to see an attorney. Hennepin County advises the user come in at least 90 minutes before they close to ensure for enough time (Self-Help Center hours in Hennepin County are 8-3:30 M-F, with a 1:30 close time on Wednesdays); Ramsey County does not provide a “general court” Self-Help Center.

Free Advice Legal Clinics

A “legal clinic” is a public meeting where attorneys talk about a particular legal topic and usually provide direct advice to low-income people. The clinics can last a couple hours or much of a day. The subject matter of the clinic is confined to one or two topics—such as advice on housing, sexual violence, landlord-tenant matters, or assistance to the Somali community. The clinics are either recurring (regularly scheduled each week or month) or occasional.

RED FLAG: Legal clinics are listed on the VLN website (<http://volunteerlawyersnetwork.org>) and the LawHelpMN.org website. Note, however, there are many different clinics covering many different topics and the websites do not list the clinics by topics. The Call for Justice website lists the clinics by subject matter/topic. It would be helpful to advise callers of the clinics and direct them to the Call for Justice website, VLN, or LawHelpMN. Callers could go to LawHelpMN and use the live chat feature to determine if a clinic will help them. Many of the clinics are also very crowded and reservations may be required.

New VLN Program—Answers to Lawsuits

A program that VLN just launched is designed to help low-income people (up to 300%) file answers to lawsuits. The program requires that the person-in-need have access to the internet (where they will complete an on-line questionnaire) and the ability to fax or scan the summons and complaint with which they have been served.

RED FLAG: If the caller reports something to the effect that, “I have this official court paper that says I’m being sued,” it is important to ask two questions: first, “How long ago did you get the paper,” and second, “Do you understand you could end up losing if you don’t answer the lawsuit?” The summons, which would accompany the complaint, states as much. It is imperative that in these situations, the caller speak to a lawyer quickly—the caller will have only 20 days from the date he/she got the complaint to serve an answer to the lawsuit.

LawHelpMN.org

We’ve repeatedly referenced LawHelpMN.org because it may be the fallback option for many callers. **Remember, this program covers the entire state of Minnesota, not just the Twin Cities.**

Core Principles Going Forward Working with the Call for Justice Project

In order for our project to work, it’s important that the following always be present in the interaction between Call for Justice and Information & Referral Specialists:

- That everyone feels welcome to ask questions without fear of embarrassment or retribution;
- That everyone shares information, regardless of how unimportant they may believe it to be—sometimes bits of information lead to huge pieces in the information puzzle; and
- It’s crucial to think outside the box and challenge all assumptions about the “old way” of making legal referrals.

This Month’s Tip

1. It is also crucial that callers understand the importance of seeing an attorney before a legal problem becomes an emergency. For example, if the caller says “A bill collector just started calling me,” it will be important to talk about how doing nothing may mean more bill collectors (or a debt collection lawsuit) are around the corner. If the caller



gets legal help now, rather than later, he/she may be able to avoid some problems (and bill collectors), and a great deal of stress.

Thank you! We appreciate your input and involvement. Together, we can make the Call for Justice Project a success!

The Call for Justice, LLC staff

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