

CIVIL LEGAL AID IN ILLINOIS



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Abstract: Civil legal aid organizations provide free legal representation and other services on civil court matters to low-income individuals. While research indicates clients who receive civil legal aid often have more favorable outcomes, these organizations face many barriers to providing assistance that efficiently meets the diverse needs of their clients. This article provides an overview of civil legal aid, with a focus on Illinois where applicable, and discusses challenges and innovations in provision of civil legal services.

Introduction

During criminal proceedings, defendants are guaranteed legal counsel as a right under the U.S. Constitution. However, there is no such right for those involved in civil legal proceedings.¹ The United States is the only country among similar nations that does not guarantee the right to legal representation in civil matters.² A study by the Legal Services Corporation (LSC) reports that low-income households face an average of two to three civil legal issues per year and they are assisted by an attorney less than 20% of the time.³ Studies suggest that more than half of all claims brought by self-represented litigants are dismissed by the courts.⁴

Civil legal aid organizations provide free legal representation and other services on civil court matters to low-income individuals.⁵ Funding for civil legal assistance programs comes from a variety of sources, including federal, state, and local governments, private foundations, Interest on Lawyers Trust Accounts funds, and contributions from private bar associations.⁶ The LSC is the organization tasked with administering federal funds for civil legal services in the United States. Organizations funded by this source serve only households whose annual incomes fall below 125 percent of the federal poverty level.⁷ Other groups that are eligible for targeted civil legal assistance include the elderly, veterans, Native Americans, and individuals with disabilities.⁸

The American Bar Association (ABA) holds that individuals should be guaranteed a right to legal counsel for civil issues related to “basic human need,” including: shelter, sustenance, safety, health, and child custody.⁹ Civil legal issues are represented within a variety of fields of law (*Table 1*). However, many individuals facing these problems do not view them as legal problems that should be resolved through the courts.¹⁰

Table 1
Areas of Law and Example Civil Legal Aid Actions

Area of Law	Example Actions
Consumer Protection	Bankruptcy, protections from predatory lending, protection from harassment by creditors
Family	Child support, alimony, division of property or debt from a marriage, child custody, adoption, guardianship
Income Maintenance	Social Security, SNAP, TANF, unemployment insurance, veterans' benefits, state/local benefits
Housing	Relief from illegal charges by a landlord; avoiding eviction; obtaining more time prior to an eviction; obtaining, increasing, or preventing termination of a rental subsidy; modifications to a home loan to prevent foreclosure

Health	Medicaid, Medicare, or other public health insurance program eligibility
Employment	Recovering unpaid wages or overtime pay, resolving federal tax claims, safe working conditions, accommodations for individuals with disabilities
Education	Student discipline hearings, special education classifications/disability accommodations, school lunch program benefits, expediting school enrollment for homeless children
Other	Obtaining compensation for medical expenses and lost wages for crime victims; protective orders for victims of domestic violence; legal recognition for noncitizen victims of domestic violence or other abuse; FEMA benefits; asylum claims; expungement and sealing of criminal records

Sources: Kushner, J. (2012). *Legal aid in Illinois: Selected social and economic benefits*. Chicago: Social IMPACT Research Center.; Schoenholtz, A. I., & Jacobs, J. (2001). The state of asylum representation: Ideas for change. *Georgetown Immigration Law Journal*, 16, 739.; U.S. Department of Justice. (2014). *Legal aid interagency roundtable toolkit*. Washington, DC: Access to Justice Initiative, U.S. Department of Justice. Retrieved from <https://bit.ly/2In36et>.

Challenges in Civil Legal Services

Many face barriers to accessing legal aid services, including low-income individuals in rural areas and non-English speaking individuals.¹¹ Access to services can be improved through telephone hotlines, service centers located within court buildings, and co-located services (e.g. legal aid available at community health clinics or public housing).¹² Web-based service provision is another possibility; however, low-income individuals are disproportionately less likely to have access to technology or required technological skills.¹³

Civil legal services should be provided by a neutral party and available equally to both plaintiffs and defendants. Self-represented litigants face issues, such as evaluating evidence or handling witnesses, that are not easily addressed through simplified forms or process instructions.¹⁴ Judges must sometimes forego their typically passive role in court proceedings to accommodate self-represented litigants who are unfamiliar with the process, while remaining impartial.¹⁵

Language access services. Access to an interpreter is not a guaranteed right for litigants in civil court proceedings.¹⁶ This can be a severe impediment to meaningful participation of individuals with limited English proficiency. Some litigants rely on family members or friends to interpret during court proceedings; however, without the appropriate training or vernacular, these individuals are often unable to effectively convey legal terminology.¹⁷ While many organizations have made common legal materials available in various languages, litigants with more complex civil legal needs still face barriers. Some civil legal service providers in Washington, D.C. partner with an interpreter bank to eliminate language barriers for low-income individuals with civil legal needs.¹⁸ In Hawaii, grant programs provide training for attorneys about working with

individuals with limited English proficiency and for judges on implicit cultural bias associated with language barriers.¹⁹ The U.S. Department of Justice created a tool courts can employ in [developing a language access plan](#) to provide individuals with more equal access to justice, regardless of their level of English proficiency.

Research on Civil Legal Services

A meta-analysis of civil legal proceedings revealed individuals represented by an attorney were more likely to achieve a favorable outcome than those not represented by a lawyer.²⁰ In one randomized study comparing a group receiving legal assistance to a group without legal assistance, over half of those without legal assistance experienced an unfavorable ruling in their housing court proceedings; just 22% of those with legal assistance received an unfavorable judgement.²¹ Cases with legal assistance also were less likely to require post-judgment motions, creating more court system efficiency.²² Other experimental and quasi-experimental studies have produced conflicting findings about the impact of legal representation, with some finding strong positive effects associated with offers of representation and others finding no effects.²³

Civil legal services aid community members in accessing federal financial benefits (e.g. Supplemental Security Income, federal tax credits), which in turn, supports the local economy.²⁴ Civil legal aid also helps prevent many costly harms in communities, including:

- *Rearrest.* One study indicated children with prior delinquent involvement who received legal aid had a lower rearrest rate than those who did not receive legal services.²⁵
- *Domestic violence.* A study found that providing legal services to victims significantly reduces the likelihood of domestic violence through legal processes, such as orders of protection.²⁶
- *Eviction.* By preventing eviction or securing orders allowing individuals more time in their homes prior to an eviction, civil legal aids can help clients avoid homelessness or the need to enter a homeless shelter.²⁷
- *Loss of familial custody.* A pilot study demonstrated that clients with no legal assistance were more likely to have their parental rights terminated than those who received assistance. Additionally, children from families who received civil legal aid spent almost 20% less time in non-kinship foster care than those who did not receive legal aid.²⁸

The outcome of any court procedure inherently rests on the individual case's merits, which may also impact a person's decision to seek civil legal assistance (e.g. an individual with a very weak case may know it and choose not to seek services).²⁹ Prevention and early intervention in civil legal matters have the potential to improve efficiency in the court system by decreasing incomplete or unfounded claims and reducing associated costs.³⁰

Legal Aid in Illinois

In 2012, the Illinois Supreme Court formed the Access to Justice Commission to “promote, facilitate and enhance equal access to justice with an emphasis on access to the Illinois civil courts and administrative agencies for all people, particularly the poor and vulnerable” [*Illinois Supreme Court Rule 10-100*]. The commission aims to develop resources for litigants in plain

language, streamline civil court processes (including expanding remote access options), train judges and court personnel on working with self-represented litigants, improve language access services for those with limited English proficiency, and expand outreach to promote community trust in the court system.³¹

According to the Commission, in 2015, courts reported over half of civil proceedings in 93 Illinois counties involved at least one self-represented party.³² The Commission also reported fewer than 400 legal aid attorneys were available across the state to serve a population of nearly 4 million qualifying residents.³³ Geographically, seven of Illinois' 24 judicial districts have no legal assistance service providers located within the district.³⁴ [JusticeCorps](#) trains volunteers to serve as court facilitators/navigators in 10 Illinois counties to guide and assist self-represented litigants in civil proceedings.

Data collected in 2015 show in one year almost 188,000 court proceedings in Illinois required the use of an interpreter.³⁵ Judicial circuits across the state are creating individualized [language access plans](#) to document court procedures for working with litigants with limited English proficiency, including hiring staff interpreters and employing bilingual staff and volunteers. For certification in Illinois, court interpreters must complete an orientation and pass written and oral exams. The Administrative Office of the Illinois Courts (AOIC) maintains a court interpreter registry with over 370 certified interpreters in 33 different languages.³⁶ Counties that use court interpreters from the registry are eligible for reimbursement from AOIC.³⁷

In 2010, Illinois received \$13.8 million in funding for civil legal assistance from LSC.³⁸ One 2012 study found that every dollar spent on legal aid services in Illinois was associated with a return of \$1.80 in economic benefits for clients and others in the community.³⁹

Expanding Access to Civil Legal Services

Approximately 20% of Americans are eligible for free civil legal aid; however, over half of low-income individuals who seek assistance are denied because organizations lack the capacity to serve them.⁴⁰ Some practitioners argue the demand for legal aid is so great that expansion of existing services to fulfill the level of need would not be practicable.⁴¹ Further, many hold that full legal representation is not necessary in the vast majority of civil legal proceedings.⁴² Less than 20% of the services funded by LSC involve full attorney representation in court.⁴³ Other approaches include legal education for consumers, legal help desks and self-help computer workstations, unbundled (or partial) attorney services, and aid from nonlawyers.⁴⁴

- **Legal education for individuals and communities** functions to inform people of their legal rights and responsibilities, as well as the options and services available to them.⁴⁵ This information can be distributed through workshops, individual consultations, prepared materials, or other types of outreach.⁴⁶
- **Self-help centers** for self-represented litigants provide information and assistance with simplified legal forms, but typically do not offer legal advice.⁴⁷ The work of these centers should be supervised by attorneys and staffed by individuals with training in legal support.⁴⁸ [Illinois Legal Aid Online](#) lists legal self-help centers in Illinois by county.

- **Unbundled legal services** offer an attorney-client relationship for work on discrete tasks (e.g. advice, drafting court documents) as part of civil litigation.⁴⁹ This practice results in fees that are more affordable than those for full legal representation.⁵⁰ Unbundled services have become the primary vehicle for providing civil legal assistance.⁵¹ For more information, see the [ABA Unbundling Resource Center](#).
- **Legal assistance from nonlawyers** (e.g. paralegals) allows self-represented litigants to more efficiently and affordably complete routine civil legal processes.⁵² Nonlawyer professionals are able to carry out basic services, such as form preparation, without being in violation of unauthorized practice of law regulations, provided they are held to the same standard of care as an attorney.⁵³

Many of these approaches can be tailored to each legal issue's level of complexity.⁵⁴ However, initial review by a professional may be required to determine the complexity of individual cases.⁵⁵ Some critics argue civil legal procedures should be simplified, as opposed to expanding the provision of services.⁵⁶ The state of Virginia has barred representation by counsel in small claims courts in an attempt to make the process more equitable for individuals who cannot afford legal representation.⁵⁷

An evaluation of self-help legal assistance programs in California found them to be effective in helping litigants provide the court with complete information for consideration, serving non-English speaking clients, increasing participant satisfaction, and improving the efficiency of court processes.⁵⁸ In another study, individuals who received assistance from self-help legal centers were highly satisfied with the services; however, some research suggests clients who receive these services have higher expectations and experience greater dissatisfaction when receiving an unfavorable judgment.⁵⁹ Many citizens report basing their opinions of experience with the legal system on perceived fairness, irrespective of a positive or negative outcome in their case.⁶⁰

An evaluation of one civil legal aid program for individuals navigating eviction proceedings found that litigants reported understanding “all” or “most” of the information provided; however, court staff reported that they felt the litigants were very unprepared for the trial processes.⁶¹ Some critics argue expanding non-lawyer services and limited assistance does not adequately address the justice gap and still disadvantages those who cannot afford legal representation from an attorney.⁶²

Using technology to expand access to civil legal aid. While technology is already in use to facilitate some civil legal assistance, such as telephone hotlines and online forms, more advanced features, such as video conferencing, text messaging, and live chats, offer more in-depth services in a more efficient manner.⁶³ These features create efficiency by reducing the travel burden on litigants seeking civil legal aid as well as reduced travel time for providers serving multiple areas.⁶⁴ Some states are developing “triaging portals” to facilitate the intake process and refer individuals to the appropriate services.⁶⁵ Technologies should be tailored to the structure and needs of the communities they are intended to serve.⁶⁶

Additionally, some courts offer electronic filing, allowing self-represented litigants to send secure documents to the court, pay fees, and receive communications from the court.⁶⁷ Illinois courts require electronic filing of all civil court documents, with exceptions for those who:

- Do not have internet or a computer at home.
- Have trouble reading, writing, or speaking English.
- Have a disability that prevents e-filing.
- Are an inmate in prison or jail.
- Are filing documents in a sensitive case, such as an order of protection.⁶⁸

Public terminals are available for e-filing at many court clerks' offices, but court staff cannot file documents on behalf of litigants. A multi-site study found litigants and court staff were satisfied with the results of civil legal aid provided through expanded remote technology, with many participants preferring this method to face-to-face assistance.⁶⁹

Conclusion

Civil legal aid organizations provide free legal representation and other services on civil court matters to low-income individuals. The range of services offered addresses a vast array of needs, including consumer protections, assistance with housing issues, expungement and sealing of criminal records, and access to social services and benefits. Improving equal access to justice through civil legal assistance will benefit both the individual and the justice system as a whole by increasing efficiency and community trust in the civil court system.⁷⁰

More research is needed to inform efficient legal aid service expansion and improve access to the civil justice system.⁷¹ Objective information on case outcome probability and average lengths of time to disposition would be helpful for self-represented litigants to consider when deciding to pursue civil court matters.⁷² Future research and services should be conducted from a consumer-centered perspective, emphasizing access and positive outcomes for individuals while pursuing efficiency for the system and providers.

Suggested citation: Gatens, A. (2020). *Civil legal aid in Illinois*. Chicago, IL: Illinois Criminal Justice Information Authority.

This project was supported by legislative appropriation to the Illinois Criminal Justice Information Authority under the Illinois Cannabis Regulation and Tax Act, 410 ILCS 705. The opinions, findings, and conclusions or recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Governor, members of the General Assembly, or the Illinois Criminal Justice Information Authority.

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