



## Recession overwhelms underfunded legal services

BY KAT AARON

Monday, February 14th, 2011 [ShareThis](#) [ShareThis](#)

This story is being co-published with [Mother Jones](#) magazine.

Marilyn Hopper learned the hard way what happens to people who can't afford a lawyer.

Back in 2009, Hopper, a diminutive, pleasant, 57-year-old from Detroit, was sued by a company called Midland Funding over a \$1,700 credit card debt, which grew to \$2,400 with fees and interest. She missed the initial court hearing at Michigan's 36th District Court, and in her absence, the judge gave the company permission to take \$700 a month from her paycheck.

That got her attention pretty fast. When she showed up in court this past November to contest the judgment, she explained that the hearing notice had been delivered to her old address — a home she'd lost to foreclosure. Over the objections of Midland's pink-suited young attorney, Hopper convinced the judge to reduce the garnishment from her paycheck to \$200 a month, but the company's past withdrawals had left her nearly destitute. "I was subjected to undue hardship because they were taking such a large chunk," she told me. When I asked whether she'd considered hiring a lawyer, Hopper sighed. "Most of them want \$4,000 up front, and who has \$4,000 lying around?"

Thanks to a landmark 1963 Supreme Court ruling, criminal courts must assign a lawyer to any defendant who can't afford one. But there's no such safety net for the hundreds of thousands of cash-strapped Americans who, like Hopper, find themselves embroiled in civil litigation, from employment and custody battles to foreclosures and bankruptcies — cases that often have serious consequences. "You're not going to go to jail, but you may lose your home, you may lose your kids, you may lose your job," says Linda Perle, director of legal services at the Center for Law and Social Policy in Washington, D.C. "There's very important interests at stake."

Traditionally, people with little money could turn to Legal Services Corporation (LSC), the federally mandated nonprofit that supports free legal-aid programs in hundreds of communities. But over the past few years, a perfect storm of conservative pushback, stagnant budgets and recessionary demand for legal services has left those who can least afford it fending for themselves against the financial behemoths.

The corporation lawyers "are here every day, and they pretty much bank on people not showing up, or not having an attorney to represent them," says Alison Folmar, a Detroit lawyer who spends much of her time in the 36th District Court, defending everyday clients in anything from traffic disputes to domestic-violence cases. "The playing fields are not even."

The courts, too, are reeling from having more and more people show up as their own lawyers. Unfamiliar with the process, these solo flyers require considerable hand-holding from judges and bailiffs who are dealing with overstuffed dockets. Nearly 80 percent of judges in a 2010 American Bar Association survey ([pdf](#)) said that pro se litigants have a negative effect, primarily by bogging

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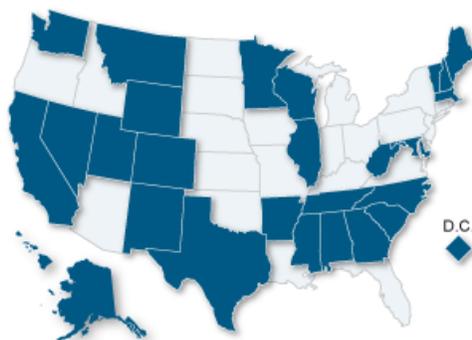
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## Expanding access to legal services States with "access to justice" commissions.

things down. "The amount of time that gets spent to assist a self-represented person through any kind of litigation really expands for court staff, as well as for judicial hearing time," says Lorraine Weber, director of access and fairness for the Michigan Supreme Court.

Numbers are hard to come by, but what little research that exists on the topic supports the notion that going it alone is a losing proposition. Tenants represented by lawyers, for instance, were three to 19 times more likely to beat their landlords in eviction cases. And a study of women seeking restraining orders found that 83 percent of those with lawyers secured an order while only 32 percent of those without lawyers prevailed.

I witnessed this disparity firsthand one morning in one of the 36th District's windowless, linoleum-floored courtrooms. Judge Roberta Archer presided over two foreclosure cases, three eviction cases and three debt-collection cases, and only one of the defendants had a lawyer in tow. He was the only defendant who didn't lose his case. "For some people, it makes a world of difference," says Archer's colleague, Judge Katherine Hansen. "Some people have a defense, but they don't really know how to put the words to a defense."

An unschooled defendant would certainly have a tough time explaining flawed mortgage paperwork to a judge — if the defendant even makes it that far. In Michigan and 26 other states, foreclosures seldom go to court without a proactive move by the borrower's lawyer. In Michigan, most foreclosures are conducted "by advertisement" — the bank runs a legal notice in a local newspaper for four weeks stating its intent and then initiates a sheriff's sale. A homeowner's day in court is by no means guaranteed.

Nor, of course, is a lawyer. To qualify for free legal aid, a family must earn no more than 125 percent of the poverty threshold — about \$27,500 for a family of four. That's not much, to be sure, but more and more people have been qualifying. In 2009, the most recent year for which numbers are available, nearly 44 million Americans were living in poverty, up from about 40 million in 2008. "There are only about 180 legal aid lawyers for the state of Michigan," says Linda Rexer, executive director of the Michigan State Bar Foundation, which funds legal aid grants. "Now, in Michigan, a third of our 10 million population would qualify for legal aid." That's about 18,500 potential clients per legal aid lawyer.

## INITIATIVES ONLY MAKE A DENT IN SWELLING NEED

Across the nation, pro bono and legal aid lawyers have been facing a crisis of numbers. In 2009, the 136 independent legal aid groups backed by Legal Services Corporation saw a dramatic rise in recession-related cases: Their collective foreclosure caseload more than doubled from the previous year, and cases involving unemployment compensation jumped by 63 percent, according to the LSC's annual report ([pdf](#)). This explosion of demand has forced grantees to turn away half of the people who come to them with eligible cases.

These numbers, of course, only take into account people who step up and ask for help. Many never make the phone call to legal aid in the first place, or give up when their calls go unanswered by harried local staff. "Program after program will tell you, they are just flooded with new need," says Rebekah Diller, deputy director of the justice program at the Brennan Center for Justice at New York University School of Law.

Last June, the Brennan Center [reported](#) some striking local stats. One office in Orange County, California, reported a 337 percent jump in requests for foreclosure help. In Las Vegas, where 1 in every 76 housing units had a foreclosure filing in December — more than 43,000 homes — there were fewer than 10 legal aid lawyers for the entire city. According to the Oregon state bar, requests for help in landlord-tenant cases had more than tripled. And Cleveland's Legal Aid Society reported a 56 percent increase in employment-related cases. The list goes on.

The crisis in civil representation hasn't gone unnoticed. In 2008, as foreclosures slammed the state, Maryland's Pro Bono Resource Center launched a program to train pro bono lawyers in foreclosure prevention and defense. Last March, the Justice Department launched an initiative called Access to Justice, aimed at improving indigent defense in civil and criminal cases.

Many states have created Access to Justice commissions, assessing the growing crisis of unrepresented defendants in the civil courts. Most states, in addition to those with formal commissions, have groups focused on the issue, including bar associations and legal services providers. The American Bar Association keeps a list of all such efforts.

Source: the American Bar Association Standing Committee on Legal Aid and Indigent Defendants, 2010

By Julie Snider, Investigative Reporting Workshop

Other states are looking at recruiting retired lawyers and allowing them to represent low-income clients. And Michigan is building an online resource for people who plan to represent themselves in court — similar to websites launched in Illinois, Wisconsin and elsewhere. "There are some problems that can be effectively resolved with self-help," explains Rexer of the Michigan State Bar Foundation, who is spearheading the effort. "There are other problems that require full representation and the help of a lawyer."

But none of these initiatives are likely to make much of a dent in meeting the legal needs of the poor. That would require more money, and state lawmakers are loath to pass laws guaranteeing people a lawyer in civil cases — a budget-busting proposition for deficit-plagued governments.

At the federal level, the GOP's resurgence has made matters worse. Prior to the midterm elections, congressional lawmakers were mulling the [Civil Access to Justice Act](#), which would loosen restrictions on groups receiving money from the LSC. The changes would once again let legal aid lawyers file class-action lawsuits and engage in policy advocacy — both of which are now forbidden — allowing them to bundle together cases against unscrupulous lenders, for instance, and alert elected officials to emerging problems.

But the act didn't make it out of committee before the November elections. "That thing is kind of dead in the water at this point," says Ken Boehm, chairman of the National Legal and Policy Center, which opposes the changes.

Earlier this month, the House unveiled its latest appropriations [bill](#), which would slash the LSC's budget by another 18 percent. (The corporation had asked for a 23 percent *increase* to keep pace with the overwhelming demand for its services.) The House conservative caucus, meanwhile, aims to do away with the LSC entirely as part of its [Spending Reduction Act of 2011](#) — "a \$2.5 trillion head start in the race to resolve the growing debt crisis and preserve the American Dream."

The upshot, says the Brennan Center's Diller, is that most low-income people are basically stuck with two choices when they are faced with foreclosures, evictions, debt collections, custody battles or employment-related problems. "You give up and you don't even show up in court," she says. "Or you try to go it alone."

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