

PROPOSAL TO INCREASE LEGAL ACCESS IN RURAL ARKANSAS

Arkansas Access to Justice Commission | University of Arkansas School of Law | University of Arkansas at Little Rock William H. Bowen School of Law

Residents of rural Arkansas are facing a looming crisis when it comes to access to legal representation. Without the help of a lawyer, families with critical legal problems—even ones affecting basic human needs—are left to flounder on their own. The national per capita average of attorneys is 4.11 per 1,000 residents. Among the states surrounding Arkansas, the average is 3.28 per 1,000. Arkansas's average is 2.04 per 1,000. Among the twenty-five most sparsely counties in Arkansas (the "Rural Counties"), the average is only 0.72 per 1,000. At least one Arkansas county has no lawyers at all.

On average, the attorneys in the Rural Counties are older than the general population, and they also tend to be older than the average Arkansas attorney. The rate of new attorneys locating in the Rural Counties is very low, with only fourteen attorneys locating in any of the Rural Counties between 2008 and 2013. Twenty-eight percent (28%) of the Rural Counties have no attorneys who were licensed in this millennium.

If swift action is not taken to address this disparity, the accident of where in Arkansas someone lives will likely determine their ability to access essential legal services. This proposal outlines five complementary programs that will work together to increase the presence of lawyers in rural Arkansas: (1) A loan repayment program for attorneys who locate in Rural Counties; (2) A judicial clerkship program to benefit circuit judges and courts in Rural Counties; (3) A fellowship program for Legal Aid attorneys in Rural Counties; (4) A distance incubator program that emphasizes skills needed to successfully establish practices in in Rural Counties; and (5) the addition of two Legal Aid staff attorney positions in Rural Counties.

These programs are proposed on a pilot basis. The Arkansas Access to Justice Commission, University of Arkansas School of Law, and University of Arkansas at Little Rock William H. Bowen School of Law will jointly report to the General Assembly at the conclusion of Year 5 on the effectiveness of these programs in recruiting new attorneys to provide services in the Rural Counties and on the need for continued legislative funding for one or more of the programs.

Loan Repayment

Programs exist in Arkansas to encourage doctors, dentists, teachers and veterinarians to serve disadvantaged communities. The proposed Loan Repayment program would create a similar program for attorneys. By helping to repay student loans, attorneys will be encouraged to locate in Rural Counties, and those who do will be better able to establish a practice in such areas.

An attorney in the program must establish an office in a Rural County and dedicate the significant majority of his or her practice to clients in a Rural County. For each year that the attorney completes in the Rural County, the attorney will receive up to \$12,000 to repay student loans. The attorney would be permitted to remain in the program for a maximum of five years, receiving a maximum student loan reimbursement of \$60,000. A pilot program of five attorneys would cost a grand total of \$300,000, which could be spread out over a period of up to nine years, if needed in order to ramp up the program and then to taper off if the program is discontinued or other sources of funding identified. If the program is sustained, it would cost \$60,000 per year. The program would be administered by the Arkansas Access to

Justice Foundation, which would select the most qualified applicants for participation in the program and ensure compliance with the program requirements.

Judicial Clerkship Program

Arkansas circuit courts are the state's courts of general jurisdiction, which means that they handle a wide variety of civil and criminal matters. The courts are organized into a system of 28 judicial circuits that serve all 75 counties of the state. Only in Pulaski County are all circuit judges provided with a law clerk funded through the county budget. Many of the judges who hear cases in the Rural Counties regularly travel to several different courthouses in a judicial circuit, and they operate under strict deadlines for hearing certain matters. They typically travel to the Rural Counties without the assistance of staff and, in many locations, have no access to even basic law library materials. The availability of a law clerk would greatly enhance the ability of judges in Rural Counties to manage their caseloads in each county of their respective circuits, benefiting the judge, the attorneys, and the public.

In addition, the declining number of attorneys locating practices in Rural Counties impacts the availability of future judges to serve in these areas. A number of judicial circuits will, upon a sitting judge's retirement, have few attorneys in the circuit who can run for election to take the place of the retiring judge. Statewide, the average age of sitting trial court judges is 58.7. In 2013, the average retirement age was 65.7, suggesting that many judges are within just a few years of retirement. Without a way to develop potential successor judges in these rural areas, our state risks depriving rural citizens—particularly those without the means to travel significant distances—meaningful access to the court system.

This program will offer a mechanism for attracting new attorneys to underserved areas of the state, while meeting a need for assistance to sitting judges and fostering the tutelage of potential successors. Law clerks will be responsible for conducting legal research, drafting memoranda, and preparing court opinions. Participating clerks will also be available to supervise law students through externship programs, leveraging law student participation that will provide additional judicial support at no cost and introduce law students to rural communities.

Legal Aid Fellowship Program

Arkansas's two nonprofit civil legal aid providers, the Center for Arkansas Legal Services and Legal Aid of Arkansas, provide high-quality legal representation in all 75 counties to low-income Arkansans facing critical civil legal problems, such as domestic violence, mortgage foreclosures, and child custody. With 16 offices statewide, these organizations are ideal sources of infrastructure and support for new attorneys wishing to establish practices in rural areas of the state. A Legal Aid Fellowship program would provide funding for CALS and LAA to each hire a recently licensed attorney who would be expected to make a two-year commitment of at least 50% of his or her time providing services in Rural Counties where the attorney population is sparse and aging. The fellows will work under the direct supervision of senior staff who work in those areas of the state, and who will provide mentoring and links to the local community. The fellow will have a guaranteed source of part-time income and support and have the flexibility to spend outside of the legal aid commitment but primarily within a Rural County establishing a practice and developing a base of paying clients.

Distance Legal Incubator

A legal incubator is a mechanism for providing structured and professional support to new law school graduates interested in creating solo or small-firm practices in underserved communities. The first incubator was created at CUNY law school in 1998, and the website of the American Bar Association reports approximately 25 legal incubators around the country. Incubator programs benefit law school graduates by creating jobs and allowing them to serve the communities in which they grew up, contrary to the frequent expectation that they would have to abandon those communities to make a living. Incubator graduates receive supervision and training that they would not have otherwise received had they established practices on their own. This support includes:

- Having an experienced, highly-regarded lawyer to serve as a sounding board for brainstorming
- Training in basic lawyering skills if needed
- Feedback on projects
- Training on client development
- Training on uses of technology to minimize operating costs
- Other law office management training
- Introductions to the legal community
- Inculcation of professional values

Individuals in underserved communities benefit from incubators because they not only have access to legal services they would not otherwise have had, but because the legal services they do receive are more likely to be competently performed.

The program would include a component designed to support and assist graduates who desire to practice in rural parts of the state. Graduates who participate will act as “legal circuit riders” in one or more underserved judicial districts by conducting periodic legal clinics in those areas. In addition, those who relocate to Rural Counties during their incubator tenure will have virtual access to such services and tools as online legal research, video-conferencing capability, and malpractice insurance coverage that would otherwise create significant overhead costs for them as newly established attorneys trying to build a practice. Once the program is well established, incubator participants will have access to incubator alumni across the state who will be available as mentors and who could provide space for incubator participants to meet with clients around the state.

We are therefore proposing the creation of a legal Distance Incubator, with offices in each of the two state law schools. Both law schools are willing to incur the costs of providing the necessary office space and supplies for the Distance Incubator program through a mix of private funding and redirecting existing resources. However, both law schools lack the economic resources the personnel to staff the proposed Distance Incubator program. We believe that a half-time employee at each law school can adequately staff each location. For example, at Bowen Law School, a person who currently works at Bowen as a half-time clinical professor would become a full-time employee. The law schools estimate this extra cost at \$35,000 per year for years 1-3. Thereafter, if things go well, the Distance Incubator program will be able to cover this extra salary expense through incubator revenue. Most incubators operate practices that are able to break even after a few years.

Expansion of Legal Aid in Rural Counties

Arkansas is one of only 17 states in the country that provide no general revenue funding to support the provision of civil legal aid. A 2014 study by the Arkansas Access to Justice Commission in partnership with the Clinton School of Public Service concluded that civil legal aid in Arkansas has a substantial positive economic benefit at the individual level by increasing household income, decreasing household debt, keeping families in their homes, and protecting victims of domestic violence. Our state's two legal aid programs annually produce a combined total of more than \$11.7 million in financial recoveries and avoidance of financial loss for legal aid clients and generate a total of more than \$32 million in economic activity in the state each year. They accomplish this at a cost that is \$2.4 million less than the equivalent cost of such services in the private legal market. State funding for the addition of staff attorneys dedicated to providing services in the Rural Counties will not only improve access to legal help for low-income rural Arkansans facing life-altering civil legal crises, it will create an economic stimulus effect within those communities and for the state as a whole. A total of \$500,000 is requested for 4-6 staff attorneys who will be dedicated to delivering services in the Rural Counties. This funding could increase the capacity of CALS and LAA to serve as many as 1300 more clients annually. CALS and LAA presently turn away about half of the 30,000 eligible Arkansans who contact them each year for help due to resource constraints.

Cost Summary

The incubator program would cost \$70,000 per year for three years for both locations combined. The judicial clerkship and legal aid fellowship programs would cost \$60,000 per year each if fully funded. Finally, the proposed allocation of funds to increase legal aid staffing in Rural Counties would cost \$500,000 per year over the five year pilot period. These projections also assume cash and in-kind support from the law schools, legal aid programs, and Arkansas Access to Justice Foundation.

The Loan Repayment program would likely have a ramp-up period, so the program would need flexibility to distribute funds over a period of time that may exceed the five-year pilot period. The Arkansas Access to Justice Foundation is also committed to identifying alternative sources of funding for the program once the pilot program is established and has a demonstrated track record of success. The following cost illustration assumes that four of the five programs will be fully funded for five years, except for the Distance Incubator, which is projected to become self-sustaining after Year 3.

	LRAP	Incubator	Clerkship	Fellowship	Rural Legal Aid	Totals by Year
Year 1	\$60,000	\$70,000	\$60,000	\$60,000	\$500,000	\$750,000
Year 2	\$60,000	\$70,000	\$60,000	\$60,000	\$500,000	\$750,000
Year 3	\$60,000	\$70,000	\$60,000	\$60,000	\$500,000	\$750,000
Year 4	\$60,000	\$0	\$60,000	\$60,000	\$500,000	\$680,000
Year 5	\$60,000	\$0	\$60,000	\$60,000	\$500,000	\$680,000
Totals by Program	\$300,000	\$210,000	\$300,000	\$300,000	\$2,500,000	\$3,610,000