Task Force on Legal Needs Arising out of the 2020 Pandemic

Summary Report: Survey Regarding Legal Needs Arising from the COVID-19 Pandemic

The Survey Regarding Legal Needs Arising from the COVID-19 Pandemic was circulated on May 8th to:

- **Task Force members** and **liaisons** (total of 70 recipients which includes members, liaisons, observers, interested parties and ABA Staff);
- **Section Officers Conference** (total of 289 recipients includes Chairs, Chairs-Elect, Vice-Chairs, Secretaries, Budget Officers, Delegates and Membership Chairs of the 34 Sections, Divisions and Forums);
- **Chairs of the Special and Standing Committees and Commissions** (total of 90 recipients)

In total, the survey was circulated to **449 recipients**. Additionally, member leaders further circulated the link through their networks; therefore, we suspect our reach surpassed the original total of recipients.

The survey closed at 5:00 pm CT on Thursday, May 14th with a total of **271 respondents**.
Survey Results:

Q1 - What legal needs have you seen arising from the COVID-19 pandemic? Please identify both substantive legal issues (e.g., insurance claim issues) and process issues (e.g., limitations on remote access to courts; insufficient resources to meet increased client needs).

- Substantive Legal Issues Identified –
  - Approximately 19% indicated unemployment claims and issues
  - Approximately 17% indicated housing and landlord/tenant issues, as well as evictions
  - 64% of the respondents identified other substantive legal issues. The other issues were widely dispersed and cannot be sorted into categories of significant size.
    - Assistance with navigating government forms and paperwork; accessing government benefits (including CARES Act; Economic Impact Payments; Unemployment Insurance Benefits); confusion over interaction between the CARES Act and state unemployment law requirements; small business loans
    - Employment related issues (leave, office conditions, workers’ compensation); understanding unemployment benefits (denials, overwhelmed claims processing system, claimants’ limited ability to resolve minor clerical problems, long waiting periods for unemployment insurance); employment advice on layoffs; employment rights
    - Insurance coverage (issues; employment; business disruptions)
    - Consumer issues including scams; price gouging; debt collection; bankruptcy/restructuring and counseling (need for more bankruptcy lawyers to serve low income communities)
    - Contract issues
    - Housing issues; landlord/tenant issues; landlord harassment; evictions (commercial and residential); illegal lockouts; foreclosures
    - Making sure in-home care services providers are available to clients
    - Domestic Violence; child sexual abuse; elder abuse; order of protections for elder and disabled adults
    - Increased racial discrimination
    - Family law matters; custody and parenting time; divorce
    - Immigration Issues (employment difficulties and government-imposed moratoriums on visa issuance); language access advocacy; detention centers are in remote rural areas, the need for interpreters
    - Lack of safe shelter access for people experiencing homelessness
    - Need for guardianship for those severely ill with COVID-19
    - Advanced directives/estate plans; increased interest in wills, trusts and estate matters
    - Nursing home protections
    - Voting Rights issues; access to polls; mail-in ballots
    - Insufficient protection rights of people incarcerated in jails and prison (both in state and federal institutions)
Education (accessibility and accommodations)
Force Majeure
Providing reasonable accommodations in new laws and regulations for people with disabilities (example, everyone needs to wear masks - creates difficulties for the hard of hearing)

• **Procedural Issues Identified** –
  o *Approximately 20% of the respondents indicated issues with limitations on access to the courts.*
    ▪ Limited access to the courts when closed and continue to struggle even with remote access. Overall, general confusion regarding court policies and procedures regarding operations
    ▪ Limitations on remote access to filing with governmental state and local agencies (more time on the phone trying to reach agency employees; ability to do remote documentation)
    ▪ Remote depositions and court proceedings create equal access issues
    ▪ Many rural courts have simply shut down; and even for the courts that do have remote access, they are encountering issues with limited availability of technology resources
    ▪ Court hearings and bench trials (in remote areas) are going to be telephonic; without the judge being able to see witness testifying, how can they determine credibility? In small claims court, there is little or no hard evidence, so the judge’s assessment of which party is more credible will determine the outcome of the case
    ▪ Litigation/Trials have been delayed, deals are being slowed or delayed
    ▪ Limitations on administrative tribunal’s ability to handle the greatly increased need for video hearings and trials
    ▪ Lack of courts’ advertising how unrepresented litigants can access the courts in the case of emergencies
    ▪ Low income clients and self-represented litigants often don’t have computers or sufficient bandwidth (how to address issues of economic inequality, so that everyone gets due process? what do we do about the litigants and witnesses who don’t own a smart phone?)
    ▪ Concern about mask requirements in courthouses; concerns over the lack of confidential conversations with clients in courthouses due to requirements to stay 6-feet apart
    ▪ Uncertainty keeping clients home instead of seeking services; lack of communication pipelines with the public; need for plain language interpretations of court orders
    ▪ Impact of courts closed and how to get information; difficulty in deciphering court access rules
- Technology Access issues, lack of Wi-Fi, high speed internet in areas, lack of technology; upgraded technology to meet demands
- Inability to file documents and do legal research as libraries were physically closed and inability to print documents
- Access to clients, witnesses, and courts, as well as, access to providers on the post-sentencing end
- Getting voluminous exhibits before the remote hearing
- Cancelation of all jury trials
- Courts meeting in person when clients are reluctant to be in crowded public places (as well as court staff)
- Issues with notarizing, signing and witnessing documents; lack of access to notaries.
- Insufficient resources to meet client needs.
- Inability to visit clients in prison/jail
- Questions about pending court cases.
- Increasing difficulty in processing civil cases because the criminal cases have taken priority
- Case backlog
- Advising governmental entities on steps to protect the public health, and employment and workplace safety matters relating to COVID-19
- Need for victim-based services
- Ensuring that our limited English proficient populations have the translated legal resources they need
- Paratransit issues - protecting public health/health of drivers vs. ensuring transportation available for those who rely on this service

- **Other Emerging Legal Issues to Note** –
  - Need for information about rapidly changing laws and relief programs
  - Unintended consequences resulting from ambiguities in executive orders, advising governmental entities on steps to protect the public health, and employment and workplace safety matters relating to COVID-19
  - Insufficient resources and a lack of understanding of basic civics
  - Navigating information and sources to advise on policies and procedures for safe working conditions for employees, re-opening for customers and/or conducting activities (decisions differ across different workplaces and businesses, schools, government services, nonprofits, community service organizations)
  - For nonprofits and public interest organizations, there is now some uncertainty about Good Samaritan laws and how they do or don’t shield liability in the current environment
  - Need for legal services
  - General confusion from healthcare providers and other businesses about liability issues, how to move forward in light of the pandemic in a way that is safe for employees and customers.
The authority to have virtual public meetings needs to be continued, particularly when members of your public body are in the COVID-19 high risk groups.

Lack of resources for LSC legal aid providers

Q2 - Have you seen an increase in demand for legal services as a result of the COVID-19 pandemic?

![Bar chart showing increase in demand for legal services]

<table>
<thead>
<tr>
<th>Answer</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>56.21%</td>
</tr>
<tr>
<td>No</td>
<td>43.79%</td>
</tr>
</tbody>
</table>

If yes, please provide your best estimate the volume of the increase and the issues causing the increase.

- **Best estimate in volume of the increase:**
  - Less than 1% of the respondents estimate a volume increase of 15%
  - 12% of the respondents estimate a volume increase between 20- 30%
  - Less than 1% of the respondents estimate a volume increase of 50%
  - Less than 1% of the respondents estimate a volume increase of 100%
  - 85% of the respondents did not provide an estimate on the volume increase

- **Issues Causing the Increase:**
There is increased demand for counsel on workplace issues, contracts and insurance. There is a drop off on new transactions, litigation.

Increases in incidences/reports of domestic violence/child abuse; housing issues, particularly eviction filings; unemployment insurance claims/employment law issues; family law issues, particularly child custody disputes and child welfare; Consumer law/garnishments; debt; Immigration law issues; education; prisoner advocacy release; public benefits.

Existing clients need help with finishing up their cases remotely, which takes a lot more time. Many people need help understanding the resources available and how to apply for the CARES Act funds and the economic stimulus payments and in applying for unemployment benefits.

More requests for pro bono legal advice. Most people who need legal services cannot afford them. Small business owners and others are facing extreme uncertainty about their futures.

Almost all of our providers have indicated that the number of requests they receive has decreased since the beginning of the pandemic. They do, however, anticipate a surge as time goes on, eviction moratoriums are lifted, and problems with access to public benefits such as unemployment continue to arise.

Significant volume increase in property coverage/business interruption claims due to pandemic and resulting losses.

We expect an increase when shelter in place is lifted. We believe many potential clients are unaware we are still open.

Insecurity with housing, access to healthcare, access to courts, protection from abuse, eviction, failure of system to deal with nursing homes.

Increase in filings from prisoners for release from prisons due to the pandemic.

I put yes in anticipation of what is to come. Requests for assistance now is slightly down but steady. However, the concern in all legal aid programs is that there will be a tidal wave of need when the courts reopen.

Fraud Investigation and need for government funds, like unemployment insurance.

Higher demand for services related to evictions, restraining orders, and foreclosures.

Actually, yes and no. Increase in demand for virtual case resolution services and resources, and in COVID economic impact cases; decrease in demand for traditional in person services and resources and traditional business/commercial cases.

With online forms, the increase is on food stamps calculators, domestic violence forms, and wills power of attorney.

Florida free legal answers have an increase in questions. My best estimate is about and extra 100 questions for per month in April and in May compared to the last several months. Since March there has been an increase in questions asked on The Florida Free Legal Answers site. I anticipate that in May 2020 it may be over 400 questions asked.

We've seen an increase, but not exponential. Our sense is people aren't focused on legal issues right now. But, we believe there is a pending flood.

Increase in questions without a court system to fix them. Traffic on our pro se site is up about 50%.

Most of the attorneys I am talking with are swamped with work and delayed by closed courts.
Mostly in tenants' rights and with undocumented workers
Incoming mail from incarcerated people has doubled or tripled.
In family law matters, I believe there is an uptick in need for modification and enforcement in parenting time and also child support.
We are a support center and frontline legal services and domestic violence agencies have needed support around accessing courts, court system advocacy so their clients can get court orders and free remote access. We represent clients directly in appeals and have had increased need to help them with filing appeals.
In our housing practice, we see an increase the week before and of the first of the month. Our consumer unit is taking more calls, due to questions about student loans, home loans, debt collection, towing and other debt issues. Our family law unit is providing increased services in domestic violence restraining orders.
We have seen a drop in domestic violence, but steady needs for domestic violence temporary restraining orders, and a lot of questions around public benefits and the stimulus money.
Increasing filings in the area of protective orders and family law. Greater need for settlement conferences; slowed resolution of criminal dockets.
Back log issues involving divorce and criminal matters.
I represent workers hurt on the job and as people are not working, the volume has gone down. What I have found is that the immigrant community is particularly hard hit. Many of them work in the restaurant or hospitality industry and have been laid off. Males often work in construction and they are afraid to report injuries as they need to keep their job. They are not always provided PPE and the workers cannot keep social distancing. One employer told an injured immigrant that he would turn him over to Immigration if he reported the injury, another told him he could not report the injury because he was illegal.
Novel issues relating to both delays in government actions and the necessity of utilizing electronic media for government proceedings.

Q3 - Do you anticipate additional legal needs arising from the COVID-19 pandemic in the future?
If yes, please identify the needs. Include both substantive legal issues and process issues and estimate the time period during which you anticipate the needs will arise.

- **Substantive legal issues and process issues identified:**
  - Insurance interpretation of laws in context of pandemic/remote situations; civil liberties and civil rights claims due to government action/inaction; breach of contract claims; workplace claims tax and benefits issues. Time horizon: 3-6 months lasting from 18 months to 3 years.
  - Access to Justice Commission staff anticipate increased needs surrounding domestic violence and evictions in the future. In addition, ATJ Commission staff identified the following crucial resources that are urgently needed now by all stakeholders in the civil justice system and will continue to be needed as high volume courtrooms become overwhelmed: (1) best practices/standards regarding remote court proceedings/operations; (2) best practices/standards regarding how to reach/communicate with litigants; (3) best practices/standards on how to deliver legal aid services remotely; (4) how to determine when to start "reopening" legal service organizations/courtrooms/advice for court staff. The ATJ Commission staff felt it would be very helpful if the ABA Task Force could study these issues and provide some guidance/standards.
  - Substantive legal issues: excuses for contractual nonperformance; development of legal mechanisms/contractual provisions to protect clients' interests in future pandemics; compliance with statutory and regulatory rules/requirements that do not account for pandemic circumstances; voting rights and processes; protecting individual rights, including First and Second Amendment rights and privacy rights; labor rights and new labor rules to protect worker health and safety associated with pandemics; disputes associated with new pandemic-related legislation and related government actions. Process issues: ensuring access to courts while protecting the health and safety of court personnel, parties, and the public; revising criminal and civil judicial processes to incorporate technologies that enable judicial functions and litigative processes to be performed on a remote/virtual basis. Relevant time period -- these issues are arising now and may take 5 or more years to fully resolve themselves.
  - Bankruptcy, government lobbying, advice on government programs.
How can the court system reopen safely, practicing social distance guidelines? Personal protective gear should be provided for free for litigants and witnesses who must make a court appearance and who don't already have their own. What do we do for the people who refuse to wear a mask but still want to participate without infecting others? I suggest they be able to enter a room where they can participate by screen. Courts have an even bigger backlog now with all the rescheduled hearings and trials. I anticipate this problem to continue for the next 3 years, at least.

Contract disputes, employment claims, suits claiming infection, insurance coverage.

Continuing assistance filing claims for government support, debt renegotiation, and bankruptcy. Increased vigilance regarding internet-based fraud and cybersecurity.

Great influx of disputes as disruptions from COVID-19 continue for an extended period.

Safeguarding civil rights for the foreseeable future.

I work for a county government. There are huge budget issues coming, with tax revenues down. There will be all kinds of issues in terms of how to manage shortfalls, maybe layoffs and salary cuts, furloughs, cancellation of contracts and projects, shifting budgeted amounts around--and covering or managing cash shortfalls of other local governments, for which the County treasurer is the banker.

Continued employment issues-furloughs and lay-offs.

Lots of contract, transactional, regulatory (making some rules permanent, such as for telehealth), employment, enforcement (who took improper advantage of programs or circumstances).

Collective bargaining will most likely become more complicated as employers and unions attempt to adjust to the pandemic and its continuing impacts. Additional focus on safety in the workplace and healthcare issues may well predominate, as well as demands for hazard pay for those who interact personally with members of the public. Money will be needed to address all of these issues.

There will be ongoing need for coverage counsel both on the carrier and policyholder-side for years to come as cases begin to work their way through the courts. We are already seeing property claims being filed, and claims relating to other coverages will likely flood in as well, but it is impossible to predict the timeframe for when that may happen.

Bankruptcy counseling; credit counseling; debt collection representation (universal right to counsel); evictions; social determinants of health; stress impacts; mental health needs.

Access to remote or online services-this is already occurring and will continue as we develop new ways to provide services via technology tools. Nursing home protections-this is already occurring and will continue due both to COVID-19 problems but also to the underlying inadequacies of current system.

Increased expertise in insolvency, judgment recognition and enforcement.

Massive crowding and delays in the courts. Evictions, foreclosures, collections actions, decedent's estates, disabled estates.
More bankruptcy-related counseling and advice; more employment law questions; continued lack of access to courts; difficulties in adapting to remote notarization and witnessing.

Practical: E-documentation Case management in the virtual world Substantive: Contract clauses Bankruptcy Health and other insurance coverage.

I think there may be attempts to sue governments and other entities on behalf of those who contract COVID19, depending on mitigation measures taken by the entities.

Wrongful termination

As a judicial law clerk who deals with many prisoner lawsuits, I believe that pro se prisoner litigants will increasingly need alternative methods to conduct legal research. As their lawsuits proceed to summary judgment and beyond, pro se prisoners will be at an even greater disadvantage than they usually are if they can’t access litigation handbooks and computers for legal research. If more attorneys were willing to represent these litigants, that would ease the burden.

Governments trying to respond to people to address impacts of "reopening" will be a large issue for public lawyers; - how and when to return to physical quorum meetings will pose procedural and perhaps substantive legal issues for local governments; - ongoing employment issues as a result of "reopening".

Given projections of a second surge of COVID 19 specific health issues in the fall/2021, we anticipate a repeat of the current challenges faced by our civil legal aid program and referenced in this survey.

There is a committee that is working on a timeline of the anticipated evolution of cases for this pandemic. We have one for usual disasters, like hurricanes, but we are updating it to be specific for the pandemic. I've not yet gotten it back from that group.

Assuring quality health and long-term care to public beneficiaries assuring payment of legitimate Medicare and Medicaid claims; adequate protection for health providers--especially low paid caregivers at home and in nursing homes.

Not adjudicating removal of civil rights through guardianship because evaluators do not have access to the alleged incapacitated person. Their legal rights are in limbo - the petition is filed but can't be resolved.

I predict a surge in elder abuse, and domestic violence cases. Adults who are vulnerable to abuse, are being isolated with abusers. This need is current, but won't fully see the light of day, until the doors start to open. Economic hard times often result in a surge in financial exploitation. There will be a surge in wrongful death cases, based on poor infection control in congregate living facilities. Over 50% of the deaths in my country are in 9 long term care facilities. The contact tracers are finding that the major source of introducing infection to a facility are part time low paid staff that work part time at multiple facilities, if they are exposed in one facility, they take it to work with them in the others.

Increased truancy referrals and allegations of educational neglect stemming from chronic absenteeism. Unmet special education needs. Increased school discipline referrals and
expulsions resulting from inappropriate treatment of children's natural responses to trauma. We expect these needs to arise when school starts again in the fall.
  o Substantive: demands for release from custody that is dangerous to life and health -- as long as infection remains possible and there is no vaccine or effective treatment.
  Procedural: limitation on visits and delays in trial -- hopefully only temporary, but delay in restoring these procedural rights will have serious adverse effects on constitutional rights
  o We anticipate a significant increase in client contact with our courts re-opening in the coming weeks, especially concerning eviction fears and questions about rental assistance.
  o There will certainly be more people unable to hire private attorneys, so that means more people getting help from court staff or legal aid.
  o Continued unemployment and discrimination
  o Additional lawyers to handle the likely influx of eviction and unemployment cases for the next year. Additional funding for court mediation programs and eviction diversion.
  Additional funding for public outreach and education on people's legal rights during the pandemic.
  o Managing workplace risks in light of continuing infection risk; force majeure clauses; insurance claims; business restructuring; data incident remediation.
  o Helping victims of contagious diseases/inadequate care find relief.
  o Representation for those threatened with loss of public benefits and other sources of fixed income
  o Increased staff primarily, but also cleaning supplies, clear barriers, PPE as appropriate. Need is ASAP.

If yes, please provide your best estimate the volume of the future legal needs you anticipate.
  o These needs will be substantial - difficult to estimate the volume. The bigger concern is that the legal problems will be there, but the vast majority of people will be unable to afford legal assistance or have sufficient information or resources to address their legal needs.
  o New legislation and new social structures always lead to an increase in legal counseling and litigation activities. At the same time, adopting new technologies often increases productivity and reduces costs. Clients will always be looking for cost savings. I expect the global legal spend might increase by around 10%, but that's a wild guess.
  o In the short term, millions of people need more information and guidance. The challenge is connecting them to people who can help.
  o In 2019, LSA handled 12,000 cases. Based upon the volume of activity to the Call Center, LSA is preparing for a 100% increase in demand as the unemployment figures combine with an already high poverty level so over 20% of the state's 5 million population are eligible for legal aid. Yet, Alabama remains one of only two states to never appropriate funds for legal aid.
  o My office has fewer prosecutors than courtrooms to cover. When you the need to prepare for major hearings and trials, we will need to double the number of prosecutors to keep up. We were running at 66% of what we needed before the shut down, and two attorneys left
the office during the shutdown. We will have 8 attorneys working in the DA's office when
the court house reopens. Our office is required to cover 9 courtrooms.

- For my office, we will need to work at 200% for at least two months to catch up and then at
  25% additional capacity for the rest of the year. The “catch up” means we get everything
  out the door so that the ball is in someone else’s court. The 25% will be required to deal
  with responses when the ball returns to our court.

- I would easily expect a doubling for a while--and then as the economy continues to fall--the
  2008 to 2010 data would help set a baseline for a) types of cases that increase and b) volume--with the understanding that language diversity and tech diversity have increased
  (some safe, some not safe).

- Florida Free Legal Answers I estimate minimum of about 325-350 questions per month.

- Local legal aid estimates the need for up to 60 new attorneys to handle the increased
caseload.

- I think both the number of issues will increase as will the number of people needing help. In
  legal aid, the pandemic is going to increase the number of people eligible for service due to
  the economic downturn.

- We anticipate that our caseload, which is usually around 325-350 children per school year,
  will increase by at least 50%.

- The volume in housing and debt matters is expected to exponentially increase, due to the
  extremely high numbers of newly unemployed. They are expected to more than double.

- Demand for services likely to remain very high until vaccine or cure.