The Unmet Need: Minnesota’s Family Law Survey

by Lise L. Schmidt*

Family breakup has placed unprecedented demands on our legal system. Each year thousands of Minnesota families are affected by divorce, paternity, custody, child support, and other family law problems. Low-income people with family law problems face a double burden. Not only are they involved in some of life’s most emotionally wrenching situations, but they are often unable to obtain legal assistance to help get them through. The inability to obtain legal representation and resolve family law matters in an orderly, fair, and just manner has serious implications not only for the individuals involved and their children, but for society at large as well.

Family breakup is, in fact, a factor in the impoverishment of many people. Lenore Weitzman found in her ten-year study that, “when income is compared to needs, divorced men experience an average 42 percent rise in their standard of living in the first year after the divorce while divorced women (and their children) experience a 73 percent decline.” **Fourteen percent of the divorced women in her study went on welfare for some period during the first year after their divorce; many others moved back into their parents’ homes. David Ellwood, a respected Harvard economist, noted recently that family breakup is now the primary reason for poverty.***

Legal assistance offices providing representation to low-income people in Minnesota have always experienced a high demand for help in family law cases. During the federal fiscal constraints of the early 1980s, however, the funding for legal services programs was substantially reduced, and many legal aid offices cut back on the number of family law cases handled. Although the amount of family law assistance provided by the programs has risen since then, there has been a widely shared consensus among persons working with low-income families that thousands of persons needing legal assistance with family law problems are not getting help.

The Survey

In 1986, the Minnesota State Bar Association’s Legal Assistance to the Disadvantaged (LAD) Committee decided to do a

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*Renee Morson, a CLIRA intern, was also a coauthor of the full report (see sidebar on CommunityWide Personnel Grants).
Put on a waiting list? Or did the caller withdraw the request for assistance? If the caller was turned down for representation, the reason for the rejection was indicated. If accepted, the type of assistance provided was indicated.

Each office also completed a questionnaire describing the office’s family law services. A second telephone survey was done in April 1988 to follow up on people covered by the initial survey who were turned down or had withdrawn their request for services.

The Programs

Eleven programs with twenty-eight offices participated in the Family Law Survey (see map). This includes all Minnesota programs which provide a full range of legal representation to low-income persons with family law problems. Family law does not make up the entire caseload of these programs, but it is a significant part of their work. The programs use a combination of staff attorneys and paralegals, who are employees of the programs, and attorneys in private practice, to deliver legal services. Private attorneys participate both as volunteers and, in some areas of the state, on a partially reimbursed basis (judicare).

All of the programs have income and eligibility guidelines which must be met before a person can be accepted for representation by a legal assistance office. The National Legal Services Corporation (LSC) defines “low-income” as persons whose gross income is below 125 percent of the poverty threshold established by the United States Department of Health and Human Services. Most of the programs use the national LSC income guidelines or a comparable income guideline.

Because the number of requests for family law assistance is greater than the programs can handle, each program or office also has guidelines establishing priorities with respect to the kinds of cases the office will usually accept. Case priorities vary among the programs, with some offices having more restrictive priorities than others. In general, staff and judicare programs give high priority to divorces where there are minor children, to other child custody cases, and to cases where spousal or child abuse is alleged.

Only a handful of the offices do not limit the kinds of divorce or custody cases they will handle. The majority of the staff and judicare offices handle divorces only if the case involves domestic abuse and/or the custody of minor children. The programs uniformly exclude divorces where the sole issue is the division of non-homestead property.

Low priority is generally given to cases involving post-decree visitation, change of custody, or enforcement of child support. Assistance in paternity cases and third-party custody cases is also limited. Most offices represent petitioners in order-for-protection cases only where the opposing party has an attorney. They are, instead, referred to battered women’s shelters for assistance in obtaining protection orders without a lawyer (pro se). The programs generally do not represent respondents in these cases.

Volunteer attorney programs generally have less restrictive case priorities than the staff and judicare programs. All of the volunteer programs give first priority to cases where there is a conflict of interest—where both parties are financially eligible, but one of them is already represented by the legal services office. A volunteer attorney is then sought to represent the other party. Volunteer attorney programs’ priorities generally include family law problems usually not handled by staff and judicare programs, including uncontested divorces, divorces without children, visitation disputes, some change of custody cases, adoptions, name changes, and some child support cases. Although volunteer attorney programs also generally include contested divorces, custody disputes, and other more difficult cases within their priorities, as a practical matter many of the volunteer programs find it difficult to refer such potentially time-consuming or messy cases to volunteers.

Many of the Minnesota offices have waiting lists for divorce and custody cases.
To be placed on a waiting list, the caller must be financially eligible and the case must be within the office's case priority guidelines. Persons placed on a volunteer attorney program waiting list may wait for three to twelve months for an attorney. A person placed on an office waiting list may wait from two months to two years, with most waiting between two and six months. Ten to 30 percent of the people placed on waiting lists withdraw or cannot be found by the time an attorney can take their case. This is a significant problem as many low-income clients are lost due to disconnected telephones, frequent moves, and instability related to their poverty and the problems connected with family breakup.

Who Requested Assistance?

During the one-month survey, information was obtained about the age, race, sex, county of residence, and financial circumstances of every person who contacted a Minnesota legal assistance program. Nearly three-quarters (71 percent) of the persons contacting the programs were women. This is close to the ratio of women to men in the poverty population and reflects the feminization of poverty. The callers were also young—nearly three-quarters were under thirty-five. Although the callers were predominantly white, a significant number were members of racial minorities (15 percent). They came from every county in the state, with 56 percent living in the metropolitan area.

The vast majority of the callers (80 percent) were financially eligible for services. The callers were poor by any standard, and would not, in fact, have had sufficient discretionary income to pay an attorney. Two-thirds of the persons who were eligible for legal assistance had gross incomes of $573 or less per month. Ninety-five percent had gross incomes of less than $969 per month.

What Kinds of Cases Did They Have?

The kinds of cases for which people requested assistance were remarkably consistent among the legal assistance programs statewide, regardless of the location of the program, the type of program (staff, judicare, or volunteer), or the case priorities of the program or office. The majority of the requests (54 percent) were for representation in divorces—both contested and uncontested—most of which (over 60 percent) involved the custody of children (Figure 1). One-quarter (26 percent) of the requests for representation in contested divorces involved domestic abuse.

About 18 percent of the callers asked for assistance in post-decree matters; most were requests for assistance with custody disputes, visitation problems, or child support modifications. Fourteen percent of the requests were for assistance in paternity and third-party cases; over one-half of these involved custody problems.

Most of the persons requesting legal assistance were petitioners—that is, they wished to initiate a legal action. Women were more likely than men to be petitioners. Men were more likely to request help in response to papers served on them by the other party.

The survey indicates that the greatest demand is for legal representation in divorces in which minor children are involved, and other child custody cases. There was also a significant number of requests for assistance in cases involving domestic abuse.

How Many Got Help? The Unmet Need

The survey confirmed that substantial numbers of low-income people with family law problems are turned away by the legal assistance programs. During the one-month survey, the programs received 2,107 requests for legal assistance with family law problems. Of the callers for whom financial information was obtained, 1,525 were financially eligible for assistance from the programs. The programs were able to provide legal representation or advice to less than one-half (47 percent) of these income-eligible callers.

From these figures, it can be estimated that over 1,500 requests from income-eligible callers will be received each month, or approximately 18,300 requests a year, of whom an estimated 53 percent or nearly 10,000 persons each year, will not be able to obtain needed family law assistance from the Minnesota legal assistance programs. Many of the legal assistance offices observed that the number of calls they received during the survey period was lower than usual. Thus, the numbers reported are probably a very conservative estimate of the actual need for low-income legal assistance in family law cases in Minnesota. These figures do not include requests for assistance received by agencies who provide advice or referral services, attorneys in private practice, social service agencies, or other sources of family law assistance. Nor do they include those who were discouraged from calling at all because of public awareness of the limited numbers of family law cases the programs can handle.

Statewide, the programs were able to provide full representation to only one-quarter (27 percent) of the persons who contacted them for assistance with family law problems during the survey period (Table 1). Another 9 percent of the callers received one-time telephone or in-person advice or brief service (such as a telephone call or letter) which was sufficient, in their case, to resolve the problem. Eleven percent were accepted but were placed on waiting lists. Six percent withdrew or did not follow through with a request for assistance.

The percentages of callers accepted or rejected varied significantly among the programs. This appears to be the result of differences in the level of demand for services (both in family law and other areas of law handled by the offices), the resources available to the offices to meet the demand, and the program's case priorities. The larger metropolitan area offices and programs with more restrictive family law case priorities generally turned down more people. The Minneapolis office had the highest rate of rejection (91 percent) despite having the largest full-time family law staff in the state. This appears to reflect both a very high level of demand and a program decision to focus efforts on the more difficult and time-consuming cases—those in which both custody and domestic abuse are involved.

![Figure 1. Requests for Legal Assistance by Type of Case](image-url)
A significant number of requests were turned down even though the person requesting assistance was financially eligible and the problem was within the program's case priorities. Seventeen percent (112 requests a month) were rejected for insufficient attorney time or resources; that is, although the caller was eligible, staff attorneys had full caseloads and were unable to handle additional cases, or a volunteer or judge/attorney could not be obtained. In Minneapolis, 41 percent of the rejected callers were turned down because of insufficient attorney time or resources (staff or volunteer) to take the case.

A significant number of requests for representation in divorces and cases involving abuse were turned down by the programs. Although such cases were more likely to be accepted than legal separations, post-decree cases, or even non-marital cases, close to 40 percent of these generally higher priority cases were rejected (Table 2). In addition, a very substantial number of the divorce cases accepted by the offices, including cases involving abuse or minor children, ended up on waiting lists (29 percent of the contested divorces accepted and 38 percent of the uncontested divorces accepted).

This survey clearly documents that, despite the significant amount of family law representation provided by the legal assistance and volunteer attorney programs in Minnesota—approximately 10,500 cases annually—thousands of low-income people are not able to obtain needed legal assistance, whether it is help obtaining protection from abuse, determining custody, or getting child support.

**Why Legal Representation Is Important**

Little research has been done on what happens to people who are unable to obtain assistance with family law problems. The literature is replete with studies on the economic consequences of divorce, and of inadequate or unenforced child support, but few studies address the consequences of being unable to obtain a divorce, custody, or child support order at all. As part of the Family Law Survey, a telephone follow-up survey was done in April 1988 in an attempt to learn more about what had happened to some of the people included in the initial survey who had been refused or withdrawn request for assistance.

Some—usually those with a relatively inexpensive case such as an uncontested divorce—retained an attorney in private practice when they couldn't get free or low cost legal assistance. The financial hardship of paying for a private attorney is often considerable. Those who hired attorneys (about one-quarter of those interviewed) paid for it in instalments, borrowed the

<table>
<thead>
<tr>
<th>Table 1. Action Taken on Requests for Legal Assistance by Income-Eligible Callers</th>
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| Rejected | Percent | Number
| 47 | 700 |
| Rejected | 37 | 555 |
| Brief service | 10 | 145 |
| Accepted | 47 | 716 |
| Full representation | 27 | 408 |
| Advice only | 9 | 136 |
| Waiting list | 11 | 172 |
| Caller withdrew | 6 | 98 |

1 In addition, there were eleven cases where financial information was given, the caller was income-eligible, but the action taken on their case was not recorded.
2 Received some advice or assistance, but less than the caller needed.

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money from family or friends, or relied on lump sum windfalls such as income tax refunds or small inheritances. For many low-income clients, paying legal fees is the first of a series of major financial problems. Many of these people "tried all over the place" before finding an attorney they could afford. Several others stated that their attorney started but would not complete their divorce until they could make additional payments.

Others turned down by the legal assistance programs ended up representing themselves without an attorney (pro se). Most people in the follow-up survey who proceeded pro se did so only because they felt they had no other choice. Many of them expressed dissatisfaction with the outcome and disillusionment with the judicial system. Several studies which have looked at pro se representation in family law cases have noted lower child support awards and an unequal division of marital property in cases where the parties are not represented.

Many of the callers turned down by the legal assistance programs never obtained legal help. A substantial number of them had custody problems. Inability to resolve custody disputes, or dissatisfaction with the results, can have a serious impact on both parents and their children, accelerating acrimony and stress, and far too often leading to manipulation of the children, abuse, or child-snatching. Other sources of legal representation are, for the most part, simply not available in these often time-consuming, difficult, and usually expensive cases.

Some needed help in getting out of an abusive situation. It is estimated that domestic abuse occurs in one out of every six households. In Minnesota, about 6,250 women and 5,600 children were served by battered women's shelters in 1986. About 65 percent of the families contacting the shelters—nearly 77 percent in the metropolitan area—were turned away for lack of sufficient resources to serve them. Battered women who want a divorce but who are unable to obtain legal assistance may reconcile as a result of financial or emotional pressures. Several studies have found that violence is likely to escalate when battered women are forced by lack of other alternatives to remain in an abusive situation.

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Table 2. Action Taken on Requests for Assistance by Income-Eligible Callers

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<thead>
<tr>
<th></th>
<th>Rejected</th>
<th>Brief Service</th>
<th>Accepted</th>
<th>Full Representation</th>
<th>Advice Only</th>
<th>Waiting List</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uncontested divorce</td>
<td>38</td>
<td>7</td>
<td>54</td>
<td>31</td>
<td>2</td>
<td>21</td>
<td>454</td>
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<tr>
<td>Abuse involved</td>
<td>30</td>
<td>12</td>
<td>65</td>
<td>24</td>
<td>5</td>
<td>37</td>
<td>62</td>
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<tr>
<td>Children present</td>
<td>34</td>
<td>6</td>
<td>57</td>
<td>33</td>
<td>2</td>
<td>22</td>
<td>302</td>
</tr>
<tr>
<td>Contested divorce</td>
<td>42</td>
<td>7</td>
<td>53</td>
<td>33</td>
<td>4</td>
<td>15</td>
<td>446</td>
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<tr>
<td>Order for protection</td>
<td>41</td>
<td>12</td>
<td>51</td>
<td>27</td>
<td>15</td>
<td>9</td>
<td>117</td>
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<tr>
<td>Non-marital</td>
<td>51</td>
<td>12</td>
<td>45</td>
<td>21</td>
<td>23</td>
<td>1</td>
<td>229</td>
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<tr>
<td>Post-decree</td>
<td>59</td>
<td>14</td>
<td>38</td>
<td>19</td>
<td>16</td>
<td>3</td>
<td>239</td>
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<tr>
<td>Legal separation/annulment</td>
<td>65</td>
<td>11</td>
<td>30</td>
<td>14</td>
<td>16</td>
<td>0</td>
<td>37</td>
</tr>
</tbody>
</table>

* Nine of the offices participated in the survey. The information obtained was limited and not statistically valid, but is helpful in understanding why family law representation is important.
1 This table does not include persons who withdrew their request for assistance.
2 Includes cases in which the assistance given was less than what the caller needed.
3 Includes full representation, advice only, and waiting list cases.
Inability to obtain legal representation for family law problems can aggravate and accelerate an already tense and difficult situation. It often has serious financial, emotional, and even physical consequences for those who cannot legally resolve their problems.

Conclusions and Recommendations

The Family Law Survey confirms that many low-income people are unable to get needed legal assistance with family law problems. Nearly one-half of the income-eligible people who contacted the legal assistance programs during the survey were turned away, including cases involving abuse, contested custody, and the support of children.

Offices that are unable to respond to anything other than emergencies and high priority cases cannot take cases which have not yet escalated into acrimonious divorces or custody battles, or resulted in abuse. Hundreds more who need assistance with other problems such as modification of child support orders, visitation rights, property division, or obtaining maintenance (alimony) cannot be helped because of the immediate demands of more critical family law needs.

In response to the unmet need for family law representation documented by the Family Law Survey the LAD Committee recommended that:

1) a task force be formed to undertake a comprehensive review of Minnesota family law, both substantive and procedural, with particular emphasis on issues of access to representation;

2) a substantial increase in funding, both public and private, be sought for representation of low-income people in family law matters;

3) efforts be made to increase court-awarded attorney's fees and the availability of partial fee arrangements when appropriate;

4) legal assistance programs be encouraged to use the data from the Family Law Survey in planning, setting priorities, and seeking funding; and

5) the results of the Family Law Survey be shared with the Minnesota Supreme Court's Gender Fairness Task Force.

In response to the recommendations of the LAD Committee and a separate recommendation of the bar association Family Law Section, the Minnesota State Bar Association established a special Family Law Task Force in June 1989. The task force's mission is to "seek ways through which the family law issues of the citizens of Minnesota can be fairly, equitably, and cost-effectively addressed." The task force plans to complete its work and submit a report by late 1990.

The Supreme Court Gender Fairness Task Force issued its report on September 6, 1989. The task force made extensive findings in the area of family law and specifically recommended that "state resources should be made available for the funding of legal representation for poor people in family law matters." A seven-member implementation committee will be considering, among other things, legislation to implement the task force's recommendations regarding domestic abuse, family law, and access to the courts.

Lise Schmidt coordinated the Minnesota Family Law Survey and wrote the final report of that study with Renee Manson. She holds a B.A. in sociology and a J.D. from the University of Minnesota. Schmidt is a former legal services attorney and currently a staff attorney for the Minnesota Workers' Compensation Court of Appeals.

This article summarizes the full report of the Minnesota Family Law Survey. The survey was the first of its kind in the United States. To receive a copy of the full report, Family Law: A Survey of the Unmet Need for Low Income Legal Assistance, send a check or money order for $7.25 to: Minnesota State Bar Association, Suite 403, 430 Marquette, Minneapolis, MN 55401, attention: Tricia.