

## Vermont Access to Justice Coalition Legislative Request for Funding

**The Vermont Access to Justice Coalition asks the Vermont Legislature to fund an annual grant of \$525,000 to the Vermont Bar Foundation for access to justice programs; \$500,000 of this amount will be used for direct grants to qualifying organizations, and \$25,000 will fund VBF administration of its programs.**

### Background

The Vermont A2J Coalition consists of the Vermont Supreme Court (VSC), Vermont Legal Aid (VLA), Legal Services Vermont (LSV), Vermont Law and Graduate School (VLGS)/South Royalton Legal Clinic (SRLC), the Vermont Bar Association (VBA) and the Vermont Bar Foundation (VBF). The Coalition was created in January of 2004. Its members provide a variety of legal services to low-income Vermonters.

The 6-partner Coalition has long been aware of significant gaps in legal services to Vermonters. Most of these gaps relate to lack of funding. All A2J partners are affected when one partner's coverage is reduced by budget cuts and staffing decreases—it means more work for other A2J organizations and growing gaps in services to clients. This is occurring at the same time demand for legal services has doubled. The Coalition members have resolved to unite for the funding increases necessary to meet this demand and close the service gaps.

This request made by the Coalition is in addition to annual appropriations for Vermont Legal Aid and Legal Services Vermont, and in addition to the annual funding of the Vermont Judiciary.

### Funding through the Vermont Bar Foundation, a Coalition Partner

Coalition members have agreed that annual legislative funding of \$525,000 for the Vermont Bar Foundation is necessary to address legal access service gaps in Vermont.

1. The VBF is an experienced and trusted entity well equipped to receive and fairly distribute grant funds. The VBF, a 501c3 organization, has distributed IOLTA funds for 40 years through its competitive and non-competitive grants programs. It has raised and granted more than \$27 million to more than 60 deserving organizations ranging from legal aid providers to law school clinics and domestic violence prevention programs.
2. The VBF has an active and experienced Board of Directors and grant committee. The VBF was tapped by the federal DOJ to receive and distribute BOA settlement funds to assist with foreclosure defense and community redevelopment programs. The VBF engages annually in fundraising for the Poverty Law Fellowship Program, and solicits contributions from lawyers through a link with their on-line licensing program.
3. As a member of the A2J Coalition, the VBF is well informed about legal needs of varying Vermont communities. It can and does respond to changes in those needs. For example, after the July 2023 floods, the VBF quickly funded a project to provide flood victims with advice on legal issues ranging from FEMA and SBA programs to landlord/tenant issues to insurance claims.

4. To distribute \$500,000 of the \$525,000 legislative appropriation, the VBF will invite legal access providers (including but not limited to Coalition members) to submit annual grant applications. Those applying can seek to fund existing programs (e.g., the VBA's adult inv. guardianship low bono program or LSV's family law clinics) or new initiatives (e.g., VLGS' proposed LGBTQ project.)
5. The VBF will prioritize grant-giving based upon current legal needs, legislative mandates, and numbers of Vermonters served, with goals of avoiding duplication and filling gaps in legal services.
6. The VBF will use the remaining \$25,000 of the annual legislative appropriation to fund its own on-going administrative needs. IOLTA monies and funding raising efforts does not provide long-term, reliable support for this critical organization.

For further information contact Bob Paolini, Executive Director, Vermont Bar Association at [bpaolini@vtbar.org](mailto:bpaolini@vtbar.org) 802-775-5189.

## **Vermont Bar Foundation**

### History and Impact

The Vermont Bar Foundation (VBF) is the exclusive foundation dedicated to the legal services community.

Our mission is to enhance justice access for low-income Vermonters, primarily funded by Interest on Lawyers' Trust Accounts (IOLTA).

IOLTA pools interest from lawyers' trust accounts to provide civil legal aid without taxing the public. It's a vital funding source for organizations like WomenSafe, Association of Africans Living in Vermont, Have Justice Will Travel, Circle, Vermont Legal Aid and others.

Unlike other states, Vermont doesn't have a rule making IOLTA-participating banks pay interest rates on par with non-IOLTA accounts, leading some banks to pay well below the current market rate. This absence of a rule in Vermont makes IOLTA funding less reliable.

In 2023, the Vermont Bar Foundation gave just under \$1 million in grants to 12 organizations. Although this is a significant amount, the VBF's Board of Directors regrets not fully funding all requests, which exceeded \$1.3 million.

Besides awarding grants to deserving nonprofits, the VBF also raises money to support the work of the Poverty Law Fellow.

The Poverty Law Fellowship is a competitive two-year program designed for early-career attorneys dedicated to increasing legal access for low-income individuals in Vermont.

Past Vermont Poverty Law Fellows have worked on a range of issues, including access to justice for low-wage workers and for Vermonters experiencing housing insecurity. Maya Tsukazaki is the 2022-2024 Vermont Poverty Law Fellow, focused on access to justice for Vermont's immigrant communities.

Our impact and that of the Poverty Law Fellows not only helps those in need, but it also helps boost the Vermont economy. There is an \$11 return on investment for every dollar donated to the VBF to fund low-income legal services in Vermont.

Our grants make a significant difference in the lives of low-income Vermonters by assisting them with critical legal issues affecting their families, homes, incomes, jobs, and access to essential services.

The demand for access to justice has grown exponentially over the years, particularly during the COVID-19 pandemic, but we have remained excellent stewards of our resources.

The VBF Board of Directors, committee members, and Executive Director exercise meticulous oversight of the resources entrusted to the VBF. Hundreds of volunteer hours a year are devoted toward raising, accounting for and marshaling these resources in aid of those who need the rights and protections of our laws but cannot afford the legal services by which to make those rights and protections a reality.

The Board and staff take great pride in our past achievements and eagerly anticipate this year's successes and the positive influence we'll exert across Vermont.

Thank you!

### **Impact of 2023 Legislative Funding Increase for Legal Services Vermont:**

Legal Services Vermont receiving \$100,000 as a subgrant from Vermont Legal Aid of the increased AHS funding to Vermont Legal Aid as a subgrant, to provide additional support for intake and legal Helpline operations. With this funding, Legal Services Vermont has hired a new intake specialist. Prior to this new position, callers with non-emergency legal issues were waiting at least two weeks, and frequently up to three weeks, from the time they left an initial message to the time they received a callback. As of this report (November 2023) the wait time has been reduced to one week or less. Before the additional funding, we typically had well over 100 callers waiting for a response; that number is currently down to 35. The additional funding has provided a significant and material improvement in our ability to respond to the legal needs of Vermonters.

(Yasmin can add statement about impact of the other additional 2023 funding for Vermont Legal Aid, primarily the ability to avoid cutting further staff ).

### **Data Around Current Unmet Needs**

Legal Services Vermont operates the statewide legal assistance Helpline for Vermonters seeking legal assistance. While we can help many people with immediate legal needs, we still turn away the great majority of callers due to limited staffing and programs to assist them. The purpose of additional funding for the Vermont Bar Foundation is to allow VBF to grant funds to legal services providers around the state to begin to address these needs.

Here are some statistics in areas of unmet legal need where we have been unable to provide substantive legal assistance. All statistics reflect the number of calls received by the Legal Services Vermont Helpline (by phone or on-line requests) between January 1 and November 15, 2023. These numbers reflect contacts where we had contact with a caller but did not open a case. In each instance, the caller was, at most, only given brief legal information, and in most cases was only sent an informational text or referred to the Vermont Bar Association Lawyer Referral Service or other agency. These numbers only reflect callers in legal areas that VLA and LSV might cover if we had sufficient resources—they do not include

many thousands of other caller with legal needs outside the normal scope of our practice.

### **Family Law**

- Divorce: 363 callers
- Custody, Visitation, Parentage and Child Support: 450 callers
- Domestic Violence: 125 callers
- Other Family: 227 Callers
- Family Law Total: 1165 Callers

### **Housing Law**

- Private Landlord/Tenant: 927 callers
- Federally Subsidized Housing: 221 callers
- Other Housing: 336 callers
- Housing Law Total: 1474 callers

### **Consumer Law**

- Debt collection/Repossession: 87 callers
- Consumer Fraud: 93 callers
- Utilities: 18 callers
- Consumer Law Total: 198 callers

### **Probate Law**

- Wills and Estates: 238 Callers
- Advance Directives and Power of Attorney: 60 callers
- Probate Law Total: 298 callers



## Vermont Developmental Disabilities Council

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### **Outline for Comments on the Legal Needs of Vermonters with Disabilities**

#### **Introduction:**

I am speaking on behalf of the Vermont Developmental Disabilities Council. The Council was created by the federal developmental disabilities act. All 50 states and territories have a developmental disabilities council. Councils exist to advocate for people with disabilities to be included in all aspects of American life- to be included in their communities everywhere where people live, work, learn, and play.

The majority of Council members are required to be people with disabilities or their family members. In Vermont, the Council is housed in the Agency of Human Services. While I am a state employee, I do not speak for the Agency of Human Services. The Council and AHS operate under a memorandum of understanding that provides for independence and non-interference in our Advocacy.

#### **The Vermont Developmental Disabilities Council Supports the Appropriation of \$525,000 to the Vermont Bar Foundation to Support Access to Justice Grants**

Disabilities impact people across the life span, from birth to death, cradle to grave, people can experience one or more disabilities. Disabilities can be temporary or permanent- caused by car accidents or genetic conditions.

No one knows if or when they or a loved one will experience life with a disability. The Mission of the Vermont Department for Disabilities, Aging, and Independent Living is to make Vermont the best state in which to grow old or live with a disability. Sadly, Vermont is not known as a great state to live in when one has a disability.

#### **Disability-based Discrimination is a Problem in Vermont**

The Vermont Human Rights Commission (HRC) receives complaints of discrimination on the basis of more than 8 major protected categories including sex, race, age, religion, sexual orientation, national origin, and disability. Disability discrimination is the most frequently cited type of discrimination in the complaints received by the HRC. For at least the 6<sup>th</sup> year in a row, the HRC received twice as many disability-related complaints as any other protected category.

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## **Where's the rub?**

Because disabilities are experienced across the lifespan, disability-based discrimination or other legal issues arise across the lifespan.

I am going to use the lived experience of a couple of my Council members to illustrate the kinds of legal issues that come up in daily life in Vermont.

Medicaid provides infants and children under age 21 with the comprehensive Early Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit. Created in 1967 and required in every state, EPSDT finances various appropriate and necessary pediatric services.

Since Medicaid covers one-third of children age 1–6, and more than 40% of school-age children and adolescents, EPSDT offers a way to ensure that children birth to age 21 receive appropriate physical, dental, developmental, and mental health services—from prevention to treatment.

In Vermont, parents of children with complex health needs frequently need advocates to help them access the supports and services their children need.

Many of my Council members are parents of children who are being denied EPSDT and other services they are legally entitled to in Vermont. The health care workforce shortage – especially the shortage of evaluator and high tech nurses, is especially challenging for families of children with disabilities in Vermont.

**School-age children** with disabilities are excluded from classrooms at higher rates than students without disabilities. Vermont's Agency of Education is under supervision because our students with special educational needs are grossly underperforming on grade level reading and math tests.

**Dire need for Advocates for Special Education:** Children can't wait 6-9 months to be evaluated by speech-language pathologists, applied behavior analysts, or any other type of evaluator. Parents of students with learning disabilities depend on Vermont legal aid and other advocates to get their children the services and evaluations they need to succeed in school.

**Transition-age youth** – students with disabilities to age 21- entitled to explore careers, education – system struggled to fulfill requirements pre-covid since Covid it has been nearly impossible. Other states have extended transition services to account for the covid-era losses.



Other issues:

**Consumer Debt:** One of my Council members with an intellectual disability has been taken advantage of by landlords and car dealers.

**Social Security and employment:** This same Council member needed the intervention of Bernie Sanders Office to straighten out an issue he was having with social security that even his staff at Howard services could not resolve. This young man is always at risk of losing his benefits if he earns too much money. When his employer wants to give him a raise he needs support managing his funds so he is not penalized.

**Guardianship:** Historically, adults with disabilities have had guardians who manage their financial and other affairs. Alternatives to guardianship are on the rise and people under existing guardianships often need legal advocates to help them regain their personal autonomy and legal agency.

### **Housing Discrimination**

#### **Inaccessible Housing**

#### **Inaccessible Emergency Services**

**Susan Aranoff, J.D. (VLS Class of 1988)**

**Senior Planner and Policy Analyst, Vermont Developmental Disabilities Council**

## ATJ – Consumer Law Needs

- Introduce myself and my history and practice areas at VLA
- Critical need for representation and legal assistance for low-income, elderly, disabled and other disadvantaged Vermont consumers
  - Judiciary FY22 stats – of 4681 “major civil cases” filed, 1241 or 26% were debt collection cases – including credit card and auto repossession
  - Additionally there were 3485 new small claims cases filed in FY22; historically, approximately 70% of cases filed in small claims are debt collection cases - 2440
- In the majority of these cases, we’re talking about a huge power imbalance – rich corporations that are always represented by counsel suing folks who can’t afford to pay their debts let alone hire attorneys which frequently results in judgments by default or stipulations without having to prove the underlying debt – amount, interest rate, etc.
- Why is this an access to justice issue? – because when low-income Vermonters have to pay debt collectors:
  - it means less money in their pocket to pay for other necessities, which impacts housing stability and food security - many elders and disabled clients are not aware that their disability and SSA income is exempt from collection by law and end up paying consumer debts out of their meager fixed incomes
  - When client’s cars get repossessed, because of our lack of public transportation infrastructure, it means clients can’t get to work, to medical appointments, to the grocery store
  - And when client’s credit is trashed, it impacts their ability to get approved for rental housing and is a basis for denial for subsidized housing, it makes it difficult if not impossible to buy a car, making folks more susceptible to unscrupulous used auto dealers and often results in exorbitant financing costs – feeding a vicious cycle of unfavorable credit terms, which leads to default, which leads to worse credit scores
- Currently, VLA has no funding or capacity to represent clients in debt collection actions or other consumer issues other than those related to mortgage debt
  - LSV receives hundreds of calls per year from consumers seeking help with debt collection issues but of the thousands of debt collection cases filed each year, LSV was only able to provide legal assistance to 53 clients with debt collection issues so far this year
  - And there are almost no private attorneys in the state that defend debt collection cases as a regular part of their practice, so without free legal services vulnerable VT consumers are left to fend for themselves
- If time - Share story of repossession case where legal assistance resulted in life-changing settlement for client
  - Client was an 82-year-old grandmother who was sued in replevin because her auto financier wanted to repossess and sell the car when she couldn’t afford to make her \$350/monthly car payment out of her meager SSA retirement benefit of less than \$900
  - After we investigated the facts, we determined that the only reason she had qualified for a car payment that was 40% of her income was because the car dealer had forged her signature on the loan application, claiming that she made three times her actual income. The dealer also signed her up for a vehicle service contract and gap insurance that she neither wanted nor was aware of, which added over a hundred dollars to her monthly payment

- We helped her countersue the dealer and finance company for fraud and eventually negotiated a settlement that allowed her to pay off the remaining mortgage on her home and repaired her credit so that she was able to purchase a vehicle that she could afford
  - Without the assistance of counsel, my client would have been in an even worse financial situation as a result of the debt collection action, but with our help she was able to resolve her debt, improve her credit and reduce her monthly obligations
- Reiterate need for funding to close the legal services gap for low-income consumers

Good morning. Thank you for giving me time to speak with you all today.

My name is Laura Bierley and I am the director of the Victims' Rights project at Vermont Legal Aid. I'm here to talk to you about the need for family law assistance, especially for low or moderate income Vermonters. Like my colleague Sam Abel-Palmer, I cannot directly lobby, but I can speak to what I have seen directly and use examples to illustrate how we use our resources to help.

I have been a family law practitioner for all 17 years of my career. It is a bit telling, however, that the project that provides the most family law assistance at Vermont Legal Aid is the Victims' Rights Project. It is a reflection of the very limited resources available that the only family law advice and representation we are able to provide is in the context of helping a victim of crime. Because of that, we tend only to provide advice when the victim is connected to us during the Relief from Abuse or criminal court process.

So, we try to make our limited resources stretch as far as they possibly can. One way I do that is to staff legal advice clinics. I spend about 2 to 3 hours a week on average providing legal advice through legal clinics. I am often surprised by the impact those hours can have. One impact they have is that I can get a sense of recurring issues, which helps me to target our work to help more systemically. In at least one case, the legal clinic led to a case I argued at the Supreme Court. Legal clinics also help litigants have a more effective voice in Vermont courts.

For positive examples, I want to tell you about two legal clinic clients. Anna and Bobbi. Anna had come to clinic after a divorce from a very abusive husband. She has three kids. She had been fully represented in the divorce, but three years out and 30 motions later she was out of resources for representation and her ex was trying to exert control over her by making her come back to court again and again to fight over custody of their children.

It wasn't easy to explain to Anna that no, I'm not going to be able to represent her. But after we got over that hurdle, we spent a lot of time talking about hearsay, witness prep, exhibits, and what best interests of the children really means, in court. We went over forms to use to file responses to her ex husband's motions and other forms to file motions of her own.

Anna came to 4 one hour legal clinics, over the course of about a year. During that time, she went from panicking and feeling helpless to becoming an effective and capable self-represented litigant. I didn't hear from Anna for many years after the last clinic she attended with me. Then a couple years ago, Anna called me at Vermont Legal Aid. She managed to work her way through our phone system to reach me directly with a "quick question"; a phrase I usually dread to hear.

But with Anna, it really was just few quick questions. She needed to know how to use the child support calculator and the differences between what the magistrate might allow as evidence but the family court judge would not. She has a pretty sophisticated understanding of the family law system, which I like to think started with her time in legal clinic.

We talked for 20 minutes or so. Turns out Anna had successfully represented herself in another 10 motions all on her own until these child support questions came up. She and the kids were doing pretty well. She still had full custody. The kids were in therapy. And her ex had been lectured by both the judge and the magistrate about filing frivolous motions. If she calls again, I'll be sure to refer her to the abusive litigation statute. And she shows exactly how powerful an education legal clinics can provide.

Going through the divorce process had not prepared Anna for going through the post-divorce process. She hadn't learned the legal process because that had been handled by a capable and effective attorney. But what happens to folks like Anna when there is no attorney working for them any more? Legal clinics can help fill that gap.

But they can do so much more. I had first seen a litigant I will call Bobbi at the RFA docket day. Bobbi was present by Webex, so they didn't get to meet with the Network advocate in person. They wrote down the outreach number but didn't immediately reach out. They were, however, successful in the RFA hearing and got the protection they asked for.

What they didn't know, however, was that getting safety from their abuser would lead them to be cut off from a relationship with their children. About a year later, Bobbi reached out to the Network program and was referred to legal clinic.

Bobbi didn't know there was anything they could do to get in contact with the children they had raised for 5 years before they got the RFA. They didn't know the phrase "de facto parentage." Or that there's a form for that. Or that there are resources available online and that they can, in fact, successfully ask to be reconnected with their children.

Bobbi came to clinic twice. Once to go through the motion paperwork and once to discuss preparing for hearing. 2 hours of legal work, and probably countless hours of time spent by Bobbi worrying and preparing, led to the reunification of Bobbi with their children.

That's what legal clinic does. It connects folks with the tools they need to represent themselves in a meaningful way. There are a lot of great pro se resources available online through [vtlawhelp](#) and the Vermont judiciary website. But it is one thing to read the best interests of the child statute, it is another to walk through those factors and apply them to a litigant's real life. I cannot tell you the number of conversations I have had about hearsay and evidence, but those conversations pay dividends when litigants report the judge listened to them and based their decisions on the information they provided.

We don't have the resources right now to represent everyone who asks. As my colleague, the director of Legal Services Vermont Sam Abel-Palmer has said in more concrete numbers, we have to turn away hundreds who ask for family law help. But the family division is one of the most impactful parts of our civil justice system. What area of law is going to hit closer to home than family law?

If we want to increase public buy in and respect for the justice system, then we need the public to feel that they are heard in family court. We can't represent everyone, yet (I am hopeful that someday we can find the resource to do so). But in the meantime we can help those who are most impacted by this system have a voice in that system. When people feel heard the system feels more just. An investment in legal advice clinics is an investment in justice.

Thank you.

## POST ADOPTION CONTACT AGREEMENTS

### State Funding needed

### Vermont Bar Association

The Vermont Bar Association supports the Access to Justice Coalition request for state funding through the Vermont Bar Foundation for legal services projects. The VBA would seek continued funding for its low bono project to provide PACA assistance to foster/adoptive parents.

#### The Need

In 2015, the Vermont Legislature created a means by which relinquishing parents and adopting parents could enter into post adoption contact agreements.<sup>1</sup> These PACAs are voluntary agreements intended to allow relinquishing parents some contact with their children after the parents' rights are voluntarily terminated and the adoption process is complete. The PACAs are enforceable through a process in Vermont Probate Division<sup>2</sup>, and can extend as an obligation on adopting parents throughout the minority of their children—for up to 18 years.

Because PACAs must be entered into when the child is in DCF custody prior to any termination of parental rights, and because the relinquishing parents must agree to a voluntary termination of parental rights, PACAs are often negotiated as a way of settling contested TPR cases.

Termination of parental rights cases are a time-consuming and significant component of the Family Division docket. In FY 21, 248 new TPR cases were filed. While the number of new filings has eased, down from 307 new TPR in FY'17, these cases are resource-intensive, often demanding several days of hearing time and many hours of preparation from judges, court staff and attorneys.<sup>3</sup>

In TPR cases, the Vermont Department of Children and Families, bio-parents, and children all have party status, and all have attorneys representing them. Adoptive parents have neither party status nor legal representation. But enormous pressure is brought on foster parents to enter into a post adoption agreement which will impact their new family for many years to come.

This is a highly emotional time for biological/relinquishing parents and for foster parents. The bio-parents love their children but struggle with feelings that they have failed them. These parents face hours of courtroom testimony about how their children will be better off without them. Many want some way of staying in touch, but understand that if the contested hearing goes against them, they will lose all rights to see or hear from their children again. A PACA offers a possible solution. But these parents will have to give up their right to a hearing and voluntarily give up their parental rights to stay in touch with their children.

Foster parents have come to love these children, too, in the months, sometimes years, that they have cared for them. Foster parents are apprehensive about a contested TPR hearing—what if the

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<sup>1</sup> 33 V.S.A. Sec. 5124.

<sup>2</sup> 15A V.S.A. Sec. 9-101.

<sup>3</sup> Vermont Judiciary Annual Statistical report for FY21, pages 8-12

<https://www.vermontjudiciary.org/sites/default/files/documents/FY2021%20Annual%20Statistical%20Report%20-%20FINAL.pdf>

judge rules that parental rights are not terminated, and sends children back to their bio parents? A PACA would eliminate that risk, but create a new one. Are the foster parents comfortable with allowing their children to remain in contact with bio parents who have let them down? What terms of contact are fair, and what terms will also protect the children? A PACA might offer a solution, but the foster parents need a lawyer to help them, and they can't afford one.

#### Low Bono Project Meets the Need

Recognizing this legal need, the Vermont Bar Association extended its County Low Bono Project to include low bono PACA representation to low-income foster/adopting parents.

This VBA "low bono" project uses grant funds to pay private attorneys a stipend of \$75 per hour for up to 3 hours for PACA representation. This is a cost-effective way of providing legal representation for a targeted, needy population.

In FY 2022-23, the VBA's Project received 21 requests from foster parents for PACA representation, and placed all 21 with private attorneys. These requests for representation are sometimes made with very short notice—just days before the TPR hearing is to begin. The foster parents are relieved to have assistance.

In one case complete last year, a grateful foster/adoptive mom wrote this note to the VBA:

"[My lawyer] jumped on this case the day before the hearing and made magic happen. It was clear she had experience with PACAs. She heard my concerns/ideas and created a PACA with both bio parents that outlined my asks. The PACAs were both accepted!"

Please support funding for the Vermont Bar Foundation so that legal magic can happen in courts throughout Vermont. Thank you.

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