



Maryland Attorney General's COVID-19 Access to Justice Task Force

Andre M. Davis, Vice Chair

Former Judge, U.S. Court of Appeals, 4th Cir.

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Maryland Access to Justice Commission

September 1, 2020

Via electronic mail

The Honorable Lawrence J. Hogan, Jr.
Governor
State House
100 State Circle
Annapolis, Maryland 21401

Re: CARES Act Funding Request for Access to Justice

Dear Governor Hogan:

On behalf of the Maryland Attorney General's COVID-19 Access to Justice Task Force,¹ I write to request that you allocate \$145.6 million of the State's \$2.4 billion in CARES Act funding² to address the widespread challenges in access to justice that have been created or exacerbated by COVID-19.³ Having received input from over 300 diverse experts from 130 unique organizations, we believe that investing in the solutions identified below is necessary to give our residents and the State a fighting chance to emerge from this pandemic without suffering even greater losses and harms than Marylanders have already experienced, particularly in our communities of color.

¹ For more information, visit: <https://www.marylandattorneygeneral.gov/Pages/A2JC/default.aspx>

² The federal CARES Act established the \$150 billion Coronavirus Relief Fund (CRF). The State of Maryland and some local entitlement jurisdictions received nearly \$2.4 billion from the CRF established through the CARES Act. Title VI, Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act, requires that states shall use funds provided under a payment under this section to cover only those costs that: (1) are necessary expenditures incurred due to the public health emergency of the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of March 27, 2020 for the state; and (3) were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

³ Task Force members who are members of the Judiciary and the Administration were recused from participating in this request.

You are already well aware that because of the coronavirus pandemic, too many hard-working Maryland residents face extraordinary challenges in virtually all aspects of their lives: health, food, employment, housing, finances, estate planning, and family issues. The health and economic crises have halted the economy and led to an access to justice crisis of unprecedented scale and magnitude. Our response must be proportional to the gravity and breadth of the need.

The mission of this Task Force is to ensure that Marylanders are housed, fed, safe, secure and connected to justice as they struggle to survive and overcome the pandemic. To achieve this goal, we must allocate the immediate funds necessary to keep Marylanders afloat in the short term. In the meantime, we must build capacity and put systems and supports in place to help Marylanders achieve access to civil justice as the aftershocks of the COVID-19 earthquake roll on.

The federal and state judicial moratoria on evictions for failure to pay rent and consumer debt cases have expired as of yesterday, August 31, 2020⁴, and we now expect to see a huge wave of civil legal filings. If these cases are allowed to move forward, we anticipate mass evictions, repossessions, wage garnishments, and more - outcomes that may endanger the lives of those affected directly, lead to a resurgence of COVID-19 infections, and thwart economic recovery for all Marylanders. In order to head off that disaster, we renew our request in our letter of July 28, 2020 that you restore the effect of the federal and state judicial moratoria until January 31, 2020 by expanding upon your April 3, 2020 order on evictions and foreclosures.⁵

If you do not restore the moratoria, this flood of new civil cases will hit an already strained civil justice system that is unprepared to handle it. Even before the pandemic, hundreds of thousands of Marylanders were navigating this system on their own, with no civil legal assistance of any kind. Now, given that almost 1 million of our residents have lost their jobs, and 330,000 renters are predicted to face eviction by year's end,⁶ more Marylanders than ever need civil legal help, not only to keep their homes, cars, and utilities, but also to obtain life-saving benefits like

⁴ District Court of Maryland, "Communication Regarding Landlord/Tenant Actions and Cares Act Information During Phase III of Maryland Judiciary's Reopening Plan", July 17, 2020.
https://mdcourts.gov/sites/default/files/import/district/phaseIII_communication_landlordtenant_7.17.20.pdf

⁵ For more information, visit: <https://www.marylandmatters.org/2020/07/28/ag-joins-call-for-hogan-to-extend-moratorium-on-evictions/>

⁶ The Baltimore Sun, "Maryland families fear 'tsunami' of evictions when courts reopen and federal aid dries up at the end of July", July 2, 2020.
<https://www.baltimoresun.com/coronavirus/bs-md-eviction-tsunami-20200702-dbuifbn7bbtrc5abkujcc3k7m-story.html>

unemployment, food stamps and Medicaid. Many also need to put health and life planning documents in place and to take actions to protect themselves from their abusers.

At this time, therefore, it is imperative that we invest CARES Act funding to address these urgent civil legal needs through direct assistance to Marylanders, while also adding capacity and scaling infrastructure to meet the imminent increase in demand. Although it is unclear how much of the \$2.4 billion has already been allocated and for what purposes, we have identified the following areas where expenditure of CARES Act dollars will have an immediate and meaningful impact. We have intentionally focused this current request on CARES Act funding because it is time-limited and must be spent by December 30, 2020.⁷ We are acutely aware and want to underscore, however, that fully addressing the pandemic-induced access to justice crisis will require substantial additional investments.

Rental Assistance - \$135M

We appreciate that you have already used federal CARES Act funds to provide the first installment of \$30M in rental assistance. The need, however, far surpasses that amount and must be significantly increased. Facing a loss of income beyond their control, tenants have remained throughout this crisis responsible for paying their rent, and they will be at risk of eviction when the moratoria expire. Landlords, for their part, and especially smaller “mom and pop” shops, also need rent revenues to stay afloat. Providing enough temporary rental assistance to keep Marylanders housed will avert disruptive displacement for renters, along with the severe consequences that flow from loss of a home: increasing educational inequities; jeopardizing chances for re-employment; ruining credit scores; and aggravating the toll on physical and mental health. Adequate rental assistance will also help landlords meet their mortgage and other obligations. As the pandemic continues, providing temporary rental assistance will be vital to ensuring housing stability and public safety.

Civil Legal Aid Funding - \$5 million

Unlike in criminal cases, there is no right to an attorney in most types of civil cases. When people with civil legal problems cannot afford to hire an attorney, they are forced to handle their child custody, foreclosure, eviction, bankruptcy, protective order, unemployment appeal, or probate cases on their own. Even before the pandemic, many Marylanders were losing cases they should have won simply because they did not have the legal help they needed. Multiple studies have

⁷ Coronavirus Aid, Relief, and Economic Security Act 2020, <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf> (Accessed: 11 August 2020).

shown that legal representation is the key factor to a successful case outcome. Now, as demand for civil legal aid is mounting, Maryland Legal Services Corporation (MLSC), the largest funder of civil legal services in the State, is facing a funding decline of approximately \$5.2 million for FY 2021. MLSC has also suffered additional losses in private funding.⁸ This decline in resources coincides precisely with the immediate and critical need for civil legal aid organizations to add capacity and engage more pro-bono attorneys so that low-income Marylanders who cannot afford an attorney can obtain legal representation when they need it.

Case Management, Counseling & Social Service Supports - \$2.8M

As Marylanders fall ill, lose jobs, face eviction, experience food insecurity, and encounter myriad other calamities caused or exacerbated by the pandemic, we must bolster important social supports to ensure that our most vulnerable Marylanders receive the case management, counseling, and social support services they need to manage or resolve their civil legal problems. For example, many Marylanders need credit and housing counseling, and elderly adults who are most risk of COVID-19 and abuse need robust case management services. Others must have an opportunity to resolve disputes through mediation before the disputes become matters for the court, where additional social services supports become necessary, including video-conferencing and personal protective equipment to allow for meaningful interaction and engagement with social workers, case managers, and attorneys.

Public Awareness - \$800,000

We have already seen massive confusion among Marylanders with respect to their rights and where to go for help. The desperate circumstances in which so many Marylanders find themselves are only exacerbated when they have no idea where to turn or what resources exist to provide them assistance or relief. We must, therefore, bolster efforts towards creating a centralized information hub and resource center that collates, organizes and makes existing information easy to navigate. We must also develop and broadly disseminate new educational materials - including one-pagers, toolkits and videos - that explain complex matters in ways that are easy to understand and available in multiple languages.

To this end, we have developed a multi-pronged and multi-modal distribution strategy that incorporates technological and non-technological means (for those who do not have access to technology or wi-fi), that include a website, social media, billboards, contact tracers, the faith

⁸ Maryland Legal Services Corporation, "Funding for Civil Legal Aid in Maryland Faces Drastic Decline."
<https://www.mlsc.org/funding-for-civil-legal-aid-in-maryland-faces-drastic-decline/>

community, food distribution centers, MTA, public libraries, PSAs, radio stations and existing community partners. Implementing this strategy will help ensure that Marylanders understand the civil legal issues they face, know their rights with respect to those issues, and know where to go for help.

Marylanders' access to justice needs are at crisis levels. The investments identified above do not cover the full range of needs. For example, we estimate that there are significant additional dollars needed for expanded credit and housing counseling services. Increased investments in legal technology would also strengthen connectivity among organizations and enable them to refer people more effectively to information and resources, counselors, and attorneys. Yet CARES Act funding is time-limited, and we believe that the specific needs we have identified above require urgent action and investment.⁹ In the interest of time, therefore, we urge you to allocate \$145.6 million of CARES Act funding immediately to help Marylanders address these civil legal needs. Our response to these extraordinary challenges will have a direct impact on the course of the pandemic and our collective economic recovery.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Frosh". The signature is fluid and cursive, with a large, sweeping initial "B".

Brian E. Frosh
Attorney General of Maryland

⁹ Additional research and analysis in support of these funding requests can also be made available upon request.