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# CALIFORNIA'S SARGENT SHRIVER CIVIL COUNSEL ACT TESTS IMPACT OF MORE ASSISTANCE FOR LOW-INCOME LITIGANTS

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The civil-right-to-counsel movement has recently become interested in pilot programs to test the effectiveness and cost of increasing the availability of counsel to low-income civil litigants. Interest in pilot programs also coincides with the civil-right-to-counsel movement's increased strategic focus on measures that are short of an across-the-board right to counsel and that instead focus on particularly important areas of law, particularly vulnerable litigants, or types of cases particularly susceptible to power imbalances between the parties.<sup>1</sup>

A privately funded housing counsel pilot in two Boston courts recently concluded (a follow-up pilot is about to begin), and elsewhere several pilots are ongoing or in late stages of development. The most ambitious pilot to date is the multiyear, multicounty pilot project under way in California pursuant to the Sargent Shriver Civil Right to Counsel Act of 2009.<sup>2</sup>

## I. The Sargent Shriver Civil Counsel Pilots

California's Shriver Act allocates an estimated \$9 million to \$10 million per year for the six-year life of the pilots.<sup>3</sup> Its four central provisions set out legislative findings; a scheme for development, selection, and operation of the pilots; a mandate for evaluation; and a funding mechanism. The Act's goals are to (1) provide representation for low-income persons in specified areas of the law, (2) establish best practices in court procedures and practices to ensure meaningful access to justice, (3) "gather information on the outcomes associated with providing those services," and (4) "address the

<sup>1</sup>See, e.g., Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 FORDHAM UNIVERSITY LAW JOURNAL 37 (2010), and *id.*, *Reflections on a Civil Right to Counsel and Drawing Lines: When Does Access to Justice Mean Full Representation by Counsel, and When Might Less Assistance Suffice?*, 9 SEATTLE JOURNAL OF SOCIAL JUSTICE 97 (2010). A 2006 American Bar Association (ABA) resolution took a similar targeted approach, urging provision of counsel in cases involving "basic human needs ... such as those involving shelter, sustenance, safety, health or child custody" and was widely endorsed by other state and local bar associations (see American Bar Association, Resolution 112A, Report to the House of Delegates: Recommendation (Aug. 7, 2006), <http://bit.ly/13yGmj9>).

<sup>2</sup>Sargent Shriver Civil Right to Counsel Act of 2009, 2009 Cal. Stat. ch. 457. See Kevin G. Baker & Julia R. Wilson, *Stepping Across the Threshold: Assembly Bill 590 Boosts Legislative Strategies for Expanding Access to Civil Counsel*, 43 CLEARINGHOUSE REVIEW 550 (March–April 2010).

<sup>3</sup>See CAL. GOV'T CODE § 68085.1(c)(1)(E) (West 2013) (allocating \$10 of each of certain postjudgment fees between July 1, 2011, and June 30, 2017, to the pilot program).

substantial inequities in timely and effective access to justice that often give rise to an undue risk of erroneous decision ...."<sup>4</sup>

### A. Legislative Findings

The Shriver Act opens with fourteen remarkable paragraphs—nearly two thousand words—of legislative findings.<sup>5</sup> The themes of the findings include the recognition of the size and extent of the “justice gap” and the recognition that the inability of many litigants to afford representation causes injustice in some cases, threatens courts’ ability to dispense justice in others, undermines public confidence in the courts, imposes avoidable costs on the courts and society, and is inconsistent with the requirements of a democratic society. The findings embrace the concept of state responsibility for addressing the imbalance in access to justice but explicitly disavow any notion that doing so requires providing counsel in all cases.<sup>6</sup>

### B. Pilot Requirements

Despite media reports to the contrary, the Shriver Act does not create any rights or guarantee counsel to anyone. Instead it identifies six areas of law (housing, domestic violence and restraining orders, elder abuse, guardianship of the person, probate conservatorship, and child custody) and establishes a structure under which legal services agencies, courts, other service providers, and pro bono attorneys can partner to experiment with increased representation, innovations in court procedures, improved self-help, and other practices to improve service to indigent litigants with cases in those fields, and to measure the impact.<sup>7</sup>

Nonetheless, providing more attorneys for low-income litigants is clearly the

statute’s centerpiece. Each pilot is to be a partnership among a court, a “lead legal services agency” that is a qualified California IOLTA (interest on lawyers’ trust accounts) program, and other legal services providers, with the use of pro bono services encouraged. Innovation in court procedures is also required.<sup>8</sup> The lead legal services agency is to serve as the “hub for all referrals, and the point at which decisions are made about which referrals will be served and by whom.”<sup>9</sup>

The statute directs the lead legal services agency to use specific criteria in determining when to provide representation, and to target scarce resources at cases where representation is likely to make the greatest difference or avoid the most injustice. In assessing whether to accept a particular case, the lead legal services agency must determine the litigant’s need for representation, considering

- case complexity;
- whether the other party is represented;
- the adversarial nature of the proceeding;
- the availability and effectiveness of other types of services, such as self-help, in light of the potential client and the nature of the case;
- language issues;
- disability access issues;
- literacy issues;
- merits of the case;
- nature and severity of potential consequences for the client without representation;

<sup>4</sup>CAL. BUS. & PROF. CODE § 68651(b)(1) (West 2013).

<sup>5</sup>See A.B. 590, 2009–2010 Assembly, ch. 457 (Cal. 2009), <http://bit.ly/10Z7aGz>.

<sup>6</sup>Compare *id.* § 1(j) (“Because in many civil cases lawyers are as essential as judges and courts to the proper functioning of the justice system, the state has just as great a responsibility to ensure adequate counsel is available to both parties in those cases as it does to supply judges, courthouses, and other forums for the hearing of those cases”) with *id.* § 1(k) (“[T]here are some forums in which it may be possible for most parties to have fair and equal access if they have the benefit of representation by qualified nonlawyer advocates, and other forums where the parties can represent themselves if they receive self-help assistance.”).

<sup>7</sup>CAL. BUS. & PROF. CODE § 68651(b)(1).

<sup>8</sup>*Id.* § 68651(b)(4).

<sup>9</sup>*Id.* § 68651(b)(7).

- whether legal services may eliminate or reduce the need for and cost of public social services for the potential client and others in the household.<sup>10</sup>

The statute also sets the financial eligibility limit at 200 percent of the federal poverty level.<sup>11</sup>

### C. Evaluation Requirement

The Shriver Act requires California's Judicial Council, the courts' policymaking arm, to study "the effectiveness and continued need for the pilot program" and, by January 31, 2016, to report its findings and recommendations to the legislature, including "data on the impact of counsel on equal access to justice and the effect on court administration and efficiency ...."<sup>12</sup> Portland-based NPC Research Inc. was awarded the evaluation contract after a competitive bid process.

The scope of information that pilots must collect is impressively broad, covering dozens of measures such as client demographics, case outcomes, court appearances and continuances, Shriver services provided, client goals and satisfaction, and judicial officers involved. If actually captured on all or most Shriver cases, this information will yield a wealth of data for analysis.

## II. The Selected Pilots

The Judicial Council approved, in April 2011, Shriver funding for seven lead legal services agencies that proposed ten pilots in seven counties—six housing, three custody, and one probate guardianship pilot—with a projected collective budget of \$9.5 million and individual grants ranging from \$350,000 to \$2.8 million. (Each grant is per year for three years.) The pilots cover a wide swath of the state, from Yolo County (population 200,000) north of Sacramento, down to San Diego, and encompassing San Francisco, Sacramento, Santa Barbara, Kern, and Los

Angeles Counties. Programs began providing services in early 2012.

More than fifty attorneys, known in most counties as "Shriver Counsel," as well as paralegals, interpreters, and coordinators within the lead legal services agencies and their partners, have been funded so far, along with court personnel in most of the pilot courts: a dedicated clerk to handle eviction cases in Los Angeles, housing investigators or inspectors in Yolo and Sacramento, and a probate guardianship facilitator in Santa Barbara. Some of the Shriver-funded court personnel have been controversial because of the drastic cuts and attendant layoffs of personnel that the California courts are facing.

Below I briefly describe each pilot; the dollar amounts specified are the sum of funds to lead and partner agencies and the court partner.<sup>13</sup>

### A. Housing Pilots

Housing pilots are under way in six locations.

#### 1. Los Angeles

Los Angeles is home to the largest housing pilot, with a grant of \$2.8 million. The lead legal services agency, Neighborhood Legal Services of Los Angeles County, coordinates a team of lawyers and other advocates from the Legal Aid Foundation of Los Angeles, Public Counsel, and the Inner City Law Center. Twenty-one Shriver counsel have been funded: three to four who screen clients for eligibility, thirteen who regularly represent tenants in court, and four supervisors. The program operates in downtown Los Angeles, where more than 17,000 eviction actions—20 percent of the total in Los Angeles County—are filed each year.

A central innovation is the project's Eviction Assistance Center, staffed daily

<sup>10</sup>*Id.* § 68651(b)(7)(A)-(J).

<sup>11</sup>*Id.* § 68651(b)(1).

<sup>12</sup>*Id.* §68651(c).

<sup>13</sup>These descriptions draw from the Sargent Shriver Civil Right to Counsel Act applications and monthly reports from each program and from my interviews with advocates in each program.

in the downtown courthouse by at least four Shriver counsel. Neighborhood Legal Services anticipated that the project's resources would allow full representation to two thousand litigants annually, about 40 percent of those eligible based on income and a represented opponent, and limited scope services to another three thousand. The program reported meeting its goal of two thousand full-scope cases in approximately the first year of operation.

Every party to an eviction action at the courthouse can be evaluated for Shriver eligibility by going to the Eviction Assistance Center. Those not eligible (because they are over the income limit or face an unrepresented opponent) are referred elsewhere. Those potentially eligible for Shriver services meet (generally the same day) with an Eviction Assistance Center attorney who determines whether to offer full- or limited-scope assistance (help with filing and serving an answer and filing a fee waiver request, brief advice and counsel, and referral to online video and in-person self-help workshops). Those offered full-scope representation receive an immediate appointment (next day if possible) with one of the three Shriver provider agencies, assigned on a random basis, to represent them through settlement or trial.

The partner agencies devoted a great deal of thought and discussion to the instrument used to determine who is offered full-scope representation. Eviction Assistance Center attorneys rate such factors as the presence of legal or technical defenses (e.g., defective notice); factual defenses (e.g., cure, waiver, estoppel, retaliation, breach of lease term, or habitability); and vulnerability of the client (e.g., whether elderly, disabled, likely to become homeless, or has income under half of the area median; or, if a tenant, whether eviction would jeopardize long-term tenancy in a rent-stabilized unit or a Section 8 voucher). The form also allows for indicating factors such as whether the landlord seems to be targeting the tenant or appears abusive, or the eviction appears pretextual or raises a new legal issue that would benefit from litigation. However, one advocate notes that priori-

tization has been a "moving target" that has changed over time, partly due to different priorities or philosophies among the partner programs.

The project has also created a "Shriver Corps" of pro bono attorneys from prominent firms; the pro bono attorneys are recruited, trained, supported, and mentored by the participating legal services programs' attorneys who have taken on full-scope representation cases. A project goal is that eventually these pro bono attorneys will staff an attorney-of-the-day program for litigants who were initially offered only limited representation.

A project-funded court clerk handles all Shriver eviction cases, allows for rapid location and assessment of files, gives a copy of the complaint to the tenant if necessary, and weeds out ineligible clients (such as those who have already defaulted).

Like all the Shriver housing projects, the Los Angeles project also assists landlords who meet the income and represented-opponent criteria. According to the Shriver coordinator, a handful of landlords have been served in the first year, through placement with pro bono attorneys.

A website ([www.shriverhousingla.org](http://www.shriverhousingla.org)) geared toward volunteers and pro bono attorneys invites visitors to "be involved in the largest and most dramatic experiment in legal services since the 1970s" via a "groundbreaking effort to provide legal representation to low-income families and individuals facing eviction, [and] help us fight homelessness on a large scale ...."

## 2. San Diego

San Diego, the state's third-largest county with nearly three million residents, is home to the second-largest Shriver housing project. With a housing grant of just under \$1.9 million per year, the Legal Aid Society of San Diego County has eleven Shriver housing attorneys and a housing investigator. The application set a goal of full- or limited-scope representation for all income-eligible tenants who faced a represented party and

contacted the project; the application estimated a maximum of 4,500 cases per year (of 17,000 in the county), including those requiring advice only or dispositive motions and settlements. As of December 31, 2012, eleven months after the project began, approximately 770 full-representation cases had been opened.

The court innovation proposed was modest: a Shriver project telephone contact number was added to the packet that the court sends to all parties in unlawful detainer cases.<sup>14</sup> Notices are also posted on the court's website, and the court began an early settlement conference program in which parties are encouraged but not required to participate. Advocates have expressed frustration at the court's unwillingness to require settlement conference participation or to increase the prominence of the Shriver information in the packets that parties receive. As of April 2013, however, at the beginning of the project's second year, advocates reported success in persuading the court to order the parties to a settlement conference in one case (though only after an *ex parte* request, a resource-intensive method which is obviously impractical on a large scale), after which the case did settle.<sup>15</sup>

Clients connect with the Shriver project primarily by calling the central Legal Aid Society intake line listed on the court's form. With regard to evaluation, the Legal Aid Society anticipates a small randomized assignment component and then tracking results through court records and follow-up interviews.

### 3. Sacramento

Legal Services of Northern California, a large program covering twenty-three counties, won two Shriver contracts to run housing pilot programs, one in Sacramento and the other in neighboring Yolo County.

In Sacramento, the state capital with half a million residents, funding for a supervising attorney, four staff attorneys, and an administrative support clerk comes to \$ 1.1 million. Referrals come through a combination of regular Legal Services of Northern California intake and inclusion of information about its services in the packet sent to parties in eviction actions. The proposal anticipated representing tenants in 720 trials and 288 dispositive motions per year, and providing self-help advocacy in 300 cases. As of April 2013, just over a year into the program, over 700 clients had received full- or limited-scope services. The program informally estimates that 90–95 percent of the cases settle, about the same as its pre-Shriver caseload, with settlements much more favorable to represented tenants, and that it wins about half of the small number of cases that go to trial.

An interesting innovation is the Sacramento housing pilot's partnership with the Mediation Clinic of the McGeorge School of Law in Sacramento. This voluntary mediation program predominantly handles disputes that have not yet reached litigation; the program identifies participants through robust community outreach and diversion of tenants with thirty-day notices. The lack of postfiling mediation was not anticipated, and Legal Services of Northern California theorizes that the problem is that such meetings challenge the landlord bar's business model of minimizing court appearances and meetings.

Another innovation has been expanded electronic filing options. Previously e-filing was unavailable to parties who proceed under a fee waiver, even when represented by legal aid. As a practical matter e-filing was unavailable to parties not in the know since a private company administered it at a cost and the option

<sup>14</sup>CAL. CIV. PROC. § 1161.2(c) (West 2013) requires court clerks, between twenty-eight and forty-eight hours after an eviction action is filed, to mail to each defendant a notice that includes the name and telephone number of a legal services provider in the county.

<sup>15</sup>Legal Aid Society of San Diego County's advocates also noted that the court's settlement judge recently noted that at least one settlement conference per week had been scheduled in recent weeks, perhaps a sign that change was coming, however slowly (E-mail from Greg Knoll, Executive Director/Chief Counsel, Legal Aid Society of San Diego, to me (May 2, 2013)).

was not publicly advertised or mentioned on the court's website. This system not only imposed lengthy waits in the clerk's office on those attempting to file answers or other documents but also gave e-filers the potentially significant advantage of filing documents even when the clerk's office was closed. Now both parties have equal access to the filing system.

Legal Services of Northern California does not plan to assign clients at random to a control or treatment group as part of an evaluation, although court records for represented and unrepresented tenants will be compared. This pilot is like others that aim to serve, at some level if not fully, all eligible clients who contact the agency, and thus the Shriver supervising attorney in Sacramento expressed discomfort with turning away, solely for purposes of evaluation, eligible, needy clients whom the program had the capacity to assist.

#### 4. Yolo County

Legal Services of Northern California's Yolo County pilot is similar to its Sacramento project, albeit less ambitious in that it is a smaller office, has significantly fewer eviction actions, and lacks a mediation partner. Yolo is a mixed urban and rural county of two hundred thousand. According to court records, before Shriver, tenants were unrepresented in 88 percent and landlords in 12 percent of eviction cases. The organization sampled twenty-five cases from 2010 (3 percent of eviction cases for a three-week period) and discovered that the landlord prevailed in every case that proceeded without the organization's involvement.

The Shriver grant of \$336,000 has funded two attorneys and interpreter services, a part-time mediator, a part-time self-help attorney who aids both landlords and tenants, and, through a contract with the County Health Department's Division of Environmental Sciences, a registered environmental health specialist who serves as a housing inspector in cases where habitability is at issue. The managing attorney reports that this latter measure is quite successful; Shriver attorneys can request inspections and receive reports within forty-eight hours,

and the registered health specialist is a highly credible witness at trial.

Shriver mediation services are available even before filing through an outreach program, but most mediations occur on the day of trial and in cases where the tenant is unrepresented, apparently because landlords' attorneys regularly decline to mediate early or when the tenant is represented.

The application estimated that 337 tenants per year would qualify for Shriver services; of those tenants some 200 would receive full representation and 100 limited assistance (with pleadings, court forms, discovery, and advice). Informal results suggest that while the overall number served is consistent with the estimate, the pilot has provided less direct (full) representation and more limited-scope assistance than anticipated—a trend the managing attorney attributes largely to more settlements achieved.

Randomized evaluation is unlikely since the pool of clients is so small. In addition to the standardized data elements all Shriver housing projects are gathering, the program is considering ways to gather data on the Shriver pilot's effect, including on the habitability of local housing, on the community.

#### 5. Kern County

Greater Bakersfield Legal Assistance serves Kern County, a largely rural and heavily agricultural Central Valley county of 840,000 with one of the state's fastest-growing populations and extremely high poverty and unemployment rates. In partnership with the Volunteer Attorney Program of Kern County, the organization received, for its Shriver housing project, \$560,000, with which it hired three full-time Shriver attorneys, a bilingual paralegal, and a social worker. The project also funds interpreters and a court-employed unlawful detainer advisor. Referrals come from the assessment attorney at the Shriver-funded Landlord-Tenant Assistance Center in the courthouse; the assessment attorney screens for eligibility and conflicts.

The project gives priority in full-scope representation to cases where the opposing party is represented by counsel, the client is especially vulnerable, the case is unusually complex, or valuable precedent might result; others receive help with answers, drafting motions, general information about the process, and mediation through the existing program. As with several other Shriver housing projects, Greater Bakersfield Legal Assistance's proposal also contained a mediation component intended to get the parties into settlement discussions much earlier than the day of trial, but this component has proved difficult to implement because of an unforeseen shortage of qualified mediators and landlords' and some tenants' resistance to mediation.

The Kern County pilot includes a social service coordinator who links clients to services intended to help keep tenants in their homes—for example, job placement and employment services, health and mental health services, substance abuse treatment or counseling, money management, and conflict resolution. Every income-eligible client who reaches the Landlord-Tenant Assistance Center is referred either to “advanced self-help” with the unlawful detainer advisor or to a Shriver attorney for representation, with the presence of an attorney on the other side primarily determining which form of assistance is offered. At the end of the first year, approximately 900 clients had received advanced self-help and 183 had received direct representation.

## 6. Santa Barbara County

The Legal Aid Foundation of Santa Barbara County received \$465,000, the smallest Shriver housing grant. Santa Barbara County's population of 423,000 includes some of the wealthiest census tracts in California as well as very poor and rural areas. The Shriver grant funds three attorneys who share probate guardianship and housing duties; translators in the Santa Maria office, where many clients are monolingual Spanish speakers; and an intake paralegal. The principal court innovation element is manda-

tory settlement conferences conducted at least forty-eight hours before trial by a Shriver-funded settlement master in Lompoc and Santa Maria.

All Shriver intake is handled by the project's paralegal. Eligible clients then consult a Shriver attorney by telephone to allow the attorney to evaluate the case's complexity, merits, and the nature and severity of the consequences if representation is not provided.

## B. Custody Pilots

The statute permits the use of Shriver funds in cases where a parent seeks “sole legal or physical custody,” a relatively narrow slice of family law matters, especially in a state where joint custody is statutorily favored.<sup>16</sup> Such cases tend to involve unusual factors such as domestic violence, mental or physical disability of one or both of the parents, or very high conflict between parents. Three custody projects have been funded.

### 1. San Francisco

The Justice and Diversity Center (formerly Volunteer Legal Services Program) of the Bar Association of San Francisco received \$350,000, the smallest Shriver grant to custody projects; the expectation was to represent some 100 clients per year and give legal information to another 350 self-represented litigants. In its application the project set a goal of representing every low-income San Francisco resident seeking or responding to a request for sole physical or legal custody where the other party is represented by counsel. The project funds a part-time project coordinator and one attorney who handles the cases in which a Shriver attorney represents clients. Another Shriver attorney at the courthouse helps with “preage”—a Justice and Diversity Center coinage (spun off “triage”), meaning identifying clients and giving legal information to litigants not eligible for representation. The court supplies office space and computers. Referrals come from the court's Family Law Self-Help Center (where all *pro per* litigants must go before filing custody motions

<sup>16</sup>CAL. FAM. CODE § 3040(a) (West 2013).

under local rules), project staffers who speak with potentially eligible litigants who appear for the readiness calendar (where mediation and hearing dates are set), the private bar, and other legal services organizations. The Shriver attorney at the court identifies *pro per* self-help center clients who are income-eligible and face a represented opponent; within a day the attorney contacts clients to set an appointment and determine whether to offer full- or limited-scope assistance. Appropriate cases are referred to a *pro bono* family law project. Anecdotally, the project reports that more cases are being resolved by stipulation and order than hearings or judgments—a desirable result from the standpoint of judicial and attorney resources.

The San Francisco custody pilot evaluation is using a control group of sorts. For the first three months after the program began, but before Shriver representation was in place, Shriver staff identified some twenty-five cases where representation would have been offered had the project been fully operating. Staff interviewed the unrepresented parties after custody hearings. The project's supervising attorney noted that, even with a dozen years of family law experience, he was surprised at the difficulty unrepresented litigants face in navigating the system. Of the twenty-five cases flagged, only one had settled, and that with the aid of the court's facilitator.<sup>17</sup>

## 2. San Diego

The San Diego custody pilot is run by the San Diego Volunteer Lawyer Program, which received approximately \$450,000, although the Legal Aid Society of San Diego is the lead legal services agency. Staffed by three Volunteer Lawyer Program attorneys, the project's core innovation is to strive for early resolution of custody cases on a "fast track." Shriver counsel can stipulate to a bench officer's early neutral evaluation within thirty days of a request for sole custody, to an expedited Family Court Services counseling session within the subsequent two weeks, and to an expedited hearing to determine the custody issues within

the subsequent two weeks. Thus the entire custody determination could be resolved within approximately sixty days of filing, compared to the usual four to seven months. Additional court staffing, funded by Shriver, makes this fast track possible.

The application anticipated handling 120 to 180 cases per year, or 10 to 15 new cases per month per attorney, with *pro bono* representation for additional clients. However, program staff reports that, while mediations with a settlement judge have been extremely effective, the number of eligible clients has been dramatically smaller than expected. Although the need for assistance is no less acute than projected, imbalance of representation in custody cases appears to be less common than anticipated. The pilot's Shriver plan was to assist those whose cases did not settle through the court's preexisting "workshop" (whereby both parents meet with a family court mediator), but program protocols ruled out high-conflict cases because those cases generally contain issues such as domestic violence or child protective services involvement that are beyond the capacity of the mediators to handle. Project staff also mentioned that the statutory requirement that the lead legal services agency perform all screening is cumbersome since it means that cases are screened by the Legal Aid Society's heavily used preexisting system rather than by Volunteer Lawyer Program specialists. Some clients have rejected Shriver offers upon learning that they would be represented only on custody issues and not the entire family law case.

Because the first year's experience did not match expectations, the Volunteer Lawyer Program and the superior court, seeking to modify the pilot to serve more clients, established a clinic inside the courthouse three mornings each week, where staff and *pro bono* attorneys assist clients even before knowing whether the other side is represented. Like all of the custody pilot staffers interviewed, Volunteer Lawyer Program staffers mentioned the "fluidity" of representation in

<sup>17</sup>Telephone Interview with Javier Bastidas, Attorney, Justice and Diversity Center (May 9, 2013).

family law and how often representation status changes, for example, as previously unrepresented parties secure counsel for certain but not all aspects of the case, and the consequent difficulty in determining whether a case meets the Shriver criterion of representation on the other side.

Whether randomized assignment will be used in the San Diego assessment has not yet been determined, and Volunteer Lawyer Program attorneys, like those whose projects target small populations elsewhere, expressed concern about the ethics of turning away eligible clients in order to create a control group.

### 3. Los Angeles

The Los Angeles Center for Law and Justice received a Shriver grant of \$850,000 to provide representation, specialized mediation, and support services, in cases involving domestic violence, to a total of 450 self-represented litigants annually. After approximately one year, the pilot had received about 230 referrals, reflecting perhaps the same difficulty the other custody projects have identified with separating custody issues from complex family law disputes, as well as the exceedingly lengthy and complex nature of high-conflict cases where domestic violence, child abuse or neglect, child protective services involvement, mental health issues, or substance abuse may also be present. Asymmetrical representation in domestic violence cases is common, in part because the alleged perpetrator often faces criminal charges and so prioritizes the need for an attorney even for the family law matter. The goal of representation or assistance in each case is to get the case to judgment, something that the project attorney whom I interviewed stressed could differ among the Shriver family law projects—some prioritize stabilizing the case with interim or temporary orders, for example. Because of this focus, the time that cases remain open is lengthy.

The Los Angeles Center for Law and Justice partnered with a private law firm with a sliding-scale business model geared for low-income litigants. The project also offers parenting classes, de-

veloped by the Center for Divorce Education, that focus on high-conflict custody disputes. A proposed case management component to the pilot was discontinued due to low client take-up, a result one project attorney attributes to low-income parents' inability, when in crisis, to prioritize these services over other urgent needs.

Three Shriver attorneys work on the project. Referrals were intended to come from judicial officers, but concerns about judicial neutrality led to a slightly altered system under which referrals come from family court mediators and evaluators, the court's self-help center staff attorneys, and the county bar's court-based domestic violence assistance program. Court cutbacks have eliminated the planned specialized calendar for this subset of custody cases.

Like other custody projects, Los Angeles has struggled with the contracted evaluator to conceptualize and agree upon a workable evaluation system. A randomized control group is not planned.

### C. Probate Guardianship Pilot

The sole Shriver guardianship pilot is in Santa Barbara County; the pilot is coordinated by the Legal Aid Foundation of Santa Barbara and funded at \$483,000. The pilot primarily helps unrepresented litigants, often monolingual Spanish speakers from rural parts of the county, secure guardianships over children in their care. (The program anticipated handling conservatorships over adults as well, but referrals for these have been far fewer than expected.) The typical case is a grandparent who is caring for grandchildren when parents are incarcerated, addicted to drugs, or absent and who needs the guardianship to secure medical care for the children, enroll them in school, or for similar reasons. Unlike other pilots, which aim to level the playing field between litigants with attorneys and those without and to some degree to change the culture of courts, the probate pilot's coordinator has described it as more of a "pure access project," tackling not an imbalance in representation but the sheer difficulty many unsophisti-

cated or non-English-speaking litigants have in obtaining basic services from the court, even when they face no opposition. The Legal Aid Foundation's review of court files before the pilot began revealed ample need for such assistance: self-represented litigants visited the court's legal resource centers seeking guardianships 146 times in 2009, with twenty-two litigants visiting between 2 and 9 times each. Each self-represented litigant required one to thirteen continuances. In conservatorships of the person and estate, as many as twenty continuances have been required. Among the reasons for *pro pers*' inability to secure guardianships were difficulty in understanding service requirements and which forms to file, and inability to check online tentative rulings and respond correctly.

Shriver funds were used to hire three attorneys who divide their time between housing and probate matters, and a probate facilitator, employed by the court, who helps *pro per* litigants negotiate the process. The concept is that the Legal Aid Foundation represents persons whose guardianship petitions are complex or contested, or those who are non-English speakers; others can access the process through the court-based facilitator.

#### **D. Early Lessons and Observations**

Although it is far too early for formal Shriver data or conclusions, informal observations abound. Some relate to the nature of conducting a pilot. Without exception, each advocate interviewed—at least one in each Shriver lead legal services agency—mentioned the difficulty of beginning the pilot without full clarity about evaluation methodology or precisely what data would be collected. Several mentioned the frustration of seeing substantial time and funding resources going to prove what they felt was obvious—that providing counsel to indigent clients makes a difference. Quite a few observed that greater coordination with the evaluation designers and evaluators would have made the process smoother and lamented the substantial time required to input the several dozen pieces of information in the evaluation protocol. Concerned that the protocol does not

capture all relevant information, some programs are collecting additional data. For example, the Legal Aid Foundation of Santa Barbara, the sole guardianship project, is keeping a narrative record of results of securing of guardianships, such as noting that the guardianship secured over a severely ill child allowed grandparents to seek out-of-area medical care and to get the child a passport that would enable travel through the Make a Wish Foundation. Several advocates expressed regret at the lack of even anecdotal data about how the courts functioned before Shriver. Several programs reported their local courts' displeasure at a perceived lack of consultation or coordination with them regarding evaluation.

Whether to assign clients randomly to receive services or not, in order to compare outcomes, has been controversial. While some researchers are convinced that random assignment is the "gold standard" of evaluation, many advocates doubt the ethics of denying services in the name of research, especially in projects (as in some of the Shriver pilots) that have the capacity to serve all or virtually all eligible clients. Even where a program cannot come close to filling the need, many advocates balk at turning away clients who have already been screened for need and eligibility, or for whom the advocate can readily discern a strong legal argument. Others, however, acknowledge that the only difference between such a process and normal intake limits is that the clients who have made their way into the Shriver system are therefore "present" in a way that those who cannot get through the phone system are not. Aside from the randomization debate, Los Angeles advocates noted the difficulty of agreeing upon a prioritization protocol among partner agencies with different philosophies and approaches, and noted that addressing this in advance would have been helpful.

Several family law advocates reported their own and clients' frustration with the perception that the Shriver statute's limitation of family law representation to cases where sole custody is at issue means providing assistance only on the custody issues and not other issues in the family law case, such as child support,

property division, or divorce itself. The statute does clearly limit Shriver family law services to cases where sole custody is at issue, but it does not explicitly preclude Shriver funds from being used to resolve the client's entire matter once this criterion is met. Although apparently not compelled by the Administrative Office of the Courts' interpretation of the statute, the limitation does seem to have influenced the design of several Shriver programs; some pilots have limited services to custody matters, and this can force a client to shuttle back and forth between a legal provider and the self-help center. One advocate reported frustration with the lack of legal information or brief advice available to alleged batterers at restraining order hearings because the results of those proceedings can bear so heavily on the eventual custody decision. But the advocate also noted the difficulty in obtaining funding for those services and potential political challenges in representing alleged perpetrators in an area where most programs, if they tread at all, serve survivors of domestic violence.

Likewise, that Shriver funds may be used to represent only clients who face represented opponents is sometimes a problem in the family law context. (By contrast, one advocate noted that this criterion is helpful in avoiding conflicts in the housing context.) While providing representation only where it would balance representation on the other side is certainly consistent with some of the norms of fairness that underlie the Shriver pilots, and certainly seems a wise use of resources in most instances, no statutory language explicitly bars assisting clients who do not face a represented opponent, and one section appears to contemplate it.<sup>18</sup> This representation might make sense where, for example, initially represented opponents dismiss their attorney along the way.

One of the family law pilots expressed surprise at the high number of noncustodial parents who sought Shriver services. The custody pilots also raised serious concerns with the evaluator about

data collection; the pilots were worried that information about mental health, substance abuse, or domestic violence could find its way into databases available in discovery to opponents. After several custody pilots consulted with outside ethics counsel, some changes in the data collection protocol resolved the matter.

All of the housing pilots in which settlement conferences prior to the day of trial are voluntary, not mandatory, reported frustration at the landlord bar's reluctance to participate and noted that the "business model" of much of that bar depended on reducing the amount of time spent on each case and consequently the number of court visits. Conversely, most private family law practitioners apparently bill hourly and so lack any built-in impediment—and perhaps even have an incentive—to participate in such voluntary activities. Greater Bakersfield Legal Assistance notes that reluctance to mediate is not limited to landlords but tends to manifest on the part of the party that had no contact with the Shriver project.

The pilots located at courthouses report that the courthouse-location model seems quite successful, while at least one housing pilot reports that the location of the legal services office several miles from the courthouse is a significant disadvantage; some clients simply disappear between their initial (often telephonic) contact and their scheduled office visit. Other replicable court innovations that seem to be paying off even at this early stage are the dedicated court clerk for unlawful detainer actions in Los Angeles, the environmental health specialist in Yolo County, the partnership with a law school mediation clinic in Sacramento, the unlawful detainer advisor in Kern County, the expansion of electronic filing options in Sacramento, and the probate facilitator in Santa Barbara. While not a court innovation per se, the expanded availability of landlord-tenant clinics to help *pro per* litigants has helped reduce lines and delays at the clerk's office filing window in Yolo County, benefitting all litigants. Reports to the Adminis-

<sup>18</sup>See CAL. BUS. & PROF. CODE § 68651(b)(2) ("In light of the significant percentage of parties who are unrepresented in family law matters, proposals to provide counsel in child custody cases should be considered among the highest priorities for funding, particularly when one side is represented and the other is not." (emphasis added)).

trative Office of the Courts from some courts where housing pilots are under way assert the courts' perceptions that the Shriver housing pilots are helping reduce technical problems with pleadings, reduce delays, and relieve pressure on court resources.

Directors and advocates with some of the pilots report encouraging culture change. Several cited the readiness (even eagerness) of Shriver counsel to go to trial as a valuable incentive for settlement. Los Angeles Shriver attorneys report a palpably different "feel" in the master calendar courtroom where eviction matters are handled. It has long been a sort of insiders' club for the repeat-player landlord lawyers, but Shriver lawyers are now also in court daily, familiar to the judges and clerks and literally sitting inside the bar. All of the housing pilots (and some judges) report a trend of settlements more favorable to represented tenants than to *pro pers*.

At least one program reports that the Shriver pilot is furthering its law reform goals. Greater Bakersfield Legal Aid included among its pilot goals "identifying impediments to equal access to justice and speedy, affordable resolution of housing-related problems." Advocates report identifying at least one such problem, involving public housing evictions they believe are systematically premature; with Shriver resources they expect to resolve it through negotiation or litigation.

Others report more mixed experiences. In San Diego, for example, the program's executive director is disappointed that the court declined to make early settlement conferences mandatory (a frustration several programs shared) or to make the "You May Be Eligible for Free Assistance" information more prominent in the information that litigants receive. He confirms that the landlord bar has been unwilling to take advantage of early settlement opportunities. By contrast, the San Diego pilot, like the other hous-

ing pilots, reports that the experience of both Shriver attorneys and judges is that settlements in Shriver-represented cases are much more favorable to tenants than previously, in such areas as time to move, forgoing adverse credit reporting, and forbearance of rent before an agreed-upon move-out date.

Several housing pilots reported a very small number of cases going to trial—no jury trials at all in San Diego's first year, for example, and only five trials in Kern County. Los Angeles reports a much lower rate of jury trials in Shriver cases than in *pro per* cases. In terms of conserving scarce court resources, these results, like the reduction in court appearances for guardianship or conservatorship seekers in Santa Barbara County, certainly seem encouraging.

A final note: the difficulty of implementing change at the level the Shriver Act seeks, when courts and advocacy agencies alike are undergoing budget cutbacks, has been a significant, though likely unavoidable, barrier to smooth implementation in some of the pilot counties.

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Pilot programs are clearly here to stay. As they test new types of service delivery and assess the costs and benefits of changes and existing systems, the programs will challenge business as usual in the courts and among advocates. While data produced will not end the discussion about how to close the justice gap, the Shriver Civil Counsel Act pilots offer a wealth of provocative innovations and observations that will inform that debate for years to come, in California and elsewhere.

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