

# Findings and Recommendations From the Sargent Shriver Civil Counsel Pilot Projects

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# **PART ONE - KEY FINDINGS; RECOMMENDATIONS;** **CONTINUING UNMET NEED AND FURTHER RESEARCH** **RECOMMENDED**

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## **INTRODUCTION – FINDINGS AND RECOMMENDATIONS** **FROM THE SHRIVER CIVIL COUNSEL PILOT PROJECTS**

These findings and recommendations highlight the results of a multi-year evaluation of access to justice pilot projects funded by the Sargent Shriver Civil Right to Counsel Act (AB590)<sup>1</sup>. The Shriver pilot projects are collaborative efforts between legal services programs and their local superior courts. They provide legal assistance and judicial system innovations to help low-income individuals and families facing critical legal problems involving basic human needs. The Act also calls for an evaluation to help determine whether the state needs to provide counsel in order to ensure equal access to justice. The fundamental goal is to ensure that cases are properly decided on their merits, and the result is not affected by the fact that one side has legal representation while the other does not.

In the first five years of implementation, through December 2016, the ten pilot projects served nearly 27,000 individuals facing the loss of their homes, child custody disputes, or the urgent need for a family guardianship or conservatorship. The housing services, alone, affected over 73,000 household members. As part of the pilot project, innovative court services were developed so that all litigants could be meaningfully involved in their cases, including self-represented parties and those who received limited scope legal assistance or full legal representation.

Most Shriver clients were female and non-White. Many experienced a disability or had limited proficiency with English. More than half had minors living in their households. Over half of Shriver custody cases had intertwined issues of domestic violence. For the Shriver housing cases, the overwhelming majority of clients were experiencing severe rental cost burden; across all six housing pilot projects, nearly three-quarters of Shriver clients spent more than 50% of their monthly household income on rent. The average monthly income of Shriver clients was well below the 2014 Federal Poverty Level, and many demonstrated substantial needs in critical livelihood areas such as income, employment, and food security.

This has been one of the largest access to justice evaluations ever undertaken, and the detailed information compiled over the 6-year period of the initial pilot projects will be of great interest to all those concerned with ways to offer affordable, effective, and efficient legal services. [See

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<sup>1</sup> Assem. Bill 590; Stats. 2009, ch. 457.

the Executive Summaries of the three subject areas that form Part II of this report, as well as the full NPC Research Report on the Shriver Pilot Projects, July, 2017.]

The Sargent Shriver Civil Counsel Act Implementation Committee, appointed by the Chief Justice, developed the recommendations below, based on the findings from the evaluation conducted by NPC Research. The Committee hopes that these findings and recommendations guide the Judicial Branch and advise the Legislature and the Administration as they move toward ensuring fair and equal justice to all litigants in our civil courts.

### **KEY EVALUATION FINDINGS:**

While there are extensive findings contained in the NPC Research report of the multi-year Shriver evaluation, these key findings focus attention on those areas that were the most significant, and those that have the most promise for improving our judicial system.

**A. Specific Subject Area Findings:** These findings are specific to the three subject areas of the pilot projects, whereas Section B includes findings concerning attorney involvement, and Section C includes court-related findings.

- **Housing/Unlawful Detainers** – Eviction is one of the most critical civil justice issues for low-income individuals, as the loss of housing poses a wide range of short and long terms risks and consequences for families. Families can become homeless, children’s education can be undermined, and even the health of family members can be at risk. Among cases that received full representation by Shriver counsel, the study found that:
  - Representation by Shriver counsel helped tenants avoid evictions. Formal evictions (i.e., court issues a judgment against a tenant) occurred in roughly 6% of cases across the six pilot projects. Though most Shriver clients moved out of their homes at the end of their cases, the majority did so as part of a negotiated settlement and thus able to avoid the disruptive effects of an eviction.
  - Most cases settled. Across all six projects, 70% of Shriver unlawful detainer cases settled and only 5% ended in trials (18% were dismissed and 7% were unknown), resulting in savings for the parties and the court.
  - The random assignment study showed that 67% of cases where both sides had an attorney resolved by settlement, versus 34% of cases where only the landlord had a lawyer. The random assignment study also showed that significantly fewer tenants (8%) with Shriver representation ended their case by default, as compared to those without Shriver services (26%).
  - A mandatory settlement conference program at one site proved promising. It encouraged early settlements and yielded agreements with a high rate of compliance.
  - Across all six projects, 78% of tenants ended up leaving their homes (16% stayed and 6% were unknown). However, the improved settlement agreements meant that most of them were in a better position than they would have been without legal representation.

- Shriver counsel helped get tenants more time to move out; cases were often “masked” from public view<sup>2</sup>, and therefore kept off the public record, and often not reported to credit agencies; and counsel negotiated reduced or waived fees. These workable negotiated settlements balanced the needs of low-income families forced to relocate with the needs of landlords to regain possession of their property.
- Of those tenants reached for an interview one year after case closure, significantly more Shriver clients (71%) reported living in a new rental unit, as compared to those who did not receive Shriver service (43%). This suggests that the higher rate of settlement agreements among Shriver clients, and the terms of those agreements, appears to support longer term housing stability.
- **Child custody** – Child custody cases are complex, emotionally charged, contentious, and have critical implications for families and children. The study found that:
  - Shriver services helped parents who were otherwise self-represented facing opposing parties represented by attorneys in cases with sole custody at issue. Roughly half of these cases had intertwined issues of domestic violence. The representation focused only on the child custody components of the cases.
  - Shriver attorneys educated parents about the legal process and helped to shape reasonable expectations, thereby creating efficiencies for the court and easing tensions between the parties.
  - Results from one project with comparison data showed that 54% of cases with Shriver full representation were settled and 40% were decided at a hearing, versus 30% and 63% (respectively) of cases without Shriver services.
  - Shriver Settlement Conferences conducted by a judge reached full or partial agreement on the custody issue in 60% of cases. Litigants felt supported even when they were disappointed with the outcome.
  - Attorneys increased collaboration between the parties, and courts benefited from more comprehensive information on which to base decisions.
  - At one project, two years following Shriver child custody court orders, 1 in 10 Shriver cases had filed a request to modify orders, versus 1 in 3 cases that did not receive Shriver services. Durable court orders ease court congestion, save resources, and increase family stability.
  - Because of the nature of child custody cases, and the wide range of concerns that are taken into account in the resolution of custody issues, it is difficult to report on the relative percentage of successful Shriver cases. However, the impact of attorney representation can be deduced from the higher rate of settlement, the lower rate of trials, and the durability of court orders.

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<sup>2</sup> Recent legislation strengthened the masking of eviction files, partly as a result of representation through the Shriver project. Cite:

- **Guardianships and Conservatorships** – Improving family stability through the establishment of guardianships was the goal of the probate pilot project, particularly where there were significant risk factors for the children involved. The study found that:
  - Court proceedings in Shriver cases were found to be more efficient. Specifically, cases with full representation from Shriver counsel were resolved faster and were more likely to involve only one court hearing and no continuances, as compared to cases without Shriver counsel.
  - Guardianship petitions were successfully filed or other arrangements pursued, such as a power of attorney for the child or caregiver’s affidavit; litigants more fully participated in the judicial system, and courts received more comprehensive information.
  - Shriver staff educated parties about the terms of guardianships and conservatorships which often eased tensions and supported cooperation.
  - The work of the probate facilitator benefitted individuals seeking guardianships or conservatorships by assisting with the preparation of complicated and voluminous paperwork, and also saved considerable time for the court clerks and the bench officers charged with reviewing these documents.
  - The project helped prevent the need for additional governmental services by assisting family and friends establish formal arrangements to care for persons who cannot care for themselves. For example, 26% of cases receiving Shriver representation were referred from the child welfare system, versus 16% of a comparison group of cases.
  - Efficiencies translated into cost savings for the court – the combined benefits of Shriver representation and assistance from the Probate Facilitator yielded an average savings of 25%, or \$1,035 per case (see Table P38 in the full NPC Report for calculations).

**B. Findings Concerning the Role of Attorneys and the Impact of Legal Assistance:**

The following Findings were true across all three case types, unless otherwise indicated. The evaluation clearly supported the important role of attorneys in representing their clients, in reaching settlements, and in helping ensure more efficient use of judicial resources.

- **Attorneys help settle cases, positively impacting all parties involved and freeing up limited judicial resources.** Attorneys are able to successfully negotiate settlements and reduce emotional tensions between the parties. By thoroughly explaining the process to their clients, Shriver counsel help individuals have more reasonable expectations regarding what can be accomplished and what is beyond the scope of the case. They also help people resolve their own issues, armed with a clearer understanding of their options. In housing cases, negotiating reasonable repayment plans and workable move-out timelines helps mitigate the harmful impacts on families, while facilitating the landlords’ recovery of the property. The random assignment study of three projects found that, among cases with Shriver representation, 67% were settled, 3% resolved via trial, and 8% ended by default. In contrast, among comparison cases, 34% were settled,

14% resolved via trial, and 26% ended by default. Roughly a quarter of both groups (22% of Shriver cases and 26% of comparison cases) were dismissed.

- **Balanced representation facilitates settlement of cases which should settle and trial of those that should be tried. This both improves the litigants' perception of fairness and enhances court efficiency.** The cases covered in the random assignment component of the study indicated that the settlement rate with balanced representation is significantly higher, and the trial rate lower, than what occurs when one side is self-represented. By balancing the playing field and providing individuals with expert help and support from knowledgeable attorneys, individuals are more likely to report satisfaction with case outcomes, even when outcomes were not what they originally wanted. Reducing the percentage of self-represented parties enhances the efficiency of court proceedings because attorneys help parties prepare for and ably navigate the process. As a result, judicial officers have more time to focus on the many other issues facing judges, easing the demands on limited judicial and court staff resources.
- **Shriver cases involved more efficient court proceedings, including fewer continuances, fewer trials, and more settlements across all three case types.** The provision of Shriver services made notable contributions to court efficiency and improved the quality of information available to the court. Cases with a Shriver attorney were resolved more efficiently than were cases without Shriver services, and courts received more comprehensive and relevant information on which to base decisions.
- **Attorney involvement improves the durability of court orders.** Attorneys help improve the quality of settlement agreements. With more durable court orders, fewer issues are re-litigated and there is increased stability and predictability for all parties.
- **Shriver representation prevents the loss of legal rights, and increases the involvement of parties in their cases.** Legal assistance prevents the loss of important legal rights by avoiding unnecessary defaults and by helping to ensure that parties participate actively in their cases. Attorneys raise key defenses on behalf of their clients that the client might not otherwise be aware of. In guardianship cases, in particular, the increased participation in the legal system by relevant parties enhances collaboration among parties who otherwise may have been in opposition.
- **Triage systems are critical to the smooth functioning of the continuum of service.** In order to use limited attorney resources most effectively, referral mechanisms were established to try to ensure that litigants received the appropriate level of assistance, consistent with individual need. The range of services comprising the "continuum of service" included self-help assistance for those who would remain self-represented,

limited scope legal assistance for those who would receive legal assistance for a part of their case, and full legal representation.

- **Further study is needed to examine any differences in outcomes between cases provided with full representation and those provided with limited scope legal assistance.** Future research should also assess the conditions under which individuals can benefit from different levels of legal service—for example, when full representation is necessary and when limited scope assistance would be sufficient. The current study could not undertake this analysis because outcome data for limited scope cases were not available.

**C. Findings Concerning Court Innovations:**

- **Court-based opportunities for settlement discussion, including mediation and settlement masters, are an effective way to resolve cases before trial, benefiting all parties.** These options can be effective for both attorney-represented and self-represented parties, although care must be taken to ensure an even playing field where self-represented parties are involved. For custody cases in one project, among Shriver cases, 34% resolved their case during a Shriver Settlement Conference, contrasted with 4% who did so during typical mediation sessions where no attorneys are present. In fact, 60% of Shriver cases reached at least partial agreement during the Shriver Settlement Conferences. The heightened success of Shriver Settlement Conferences is likely attributable to the presence of counsel—parents were more willing to enter into agreements under the guidance of their attorney—and to the ability of the judge presiding over the settlement conference to facilitate immediate resolution. In the housing program that used the settlement master, when both parties appeared at the mandatory settlement conference, an agreement was reached 79% of the time, and among those cases that settled during the conference, 81% percent complied with the terms of the agreement within 2 years of case filing.
- **The improved use of technology, including expansion of e-filing, helps facilitate the efficient handling of cases.** Particularly in landlord-tenant cases, where e-filing had previously only been available for landlords, expansion of e-filing to tenants has helped facilitate the efficient handling of these cases. Increased use of document assembly software programs that make it easier to prepare court documents is more efficient and enables self-represented litigants to better represent themselves. The increased use of remote hearings using video cameras makes it more likely that parties in rural areas can get an attorney to represent them. Remote access to interpreters can also help them obtain the language assistance they need.
- **In housing cases, the masking of the court files from public view is a key component to encourage settlements.** Workable settlement agreements are beneficial to all parties

and agreeing to mask the court file makes it possible for families to find safe and secure replacement housing.

- **The use of a housing inspector in one pilot project was a promising development that helped the court by providing neutral information about habitability issues.** Further study is needed to determine whether this is a best practice that should be replicated, and whether the involvement of housing inspectors has any preventative impact on how landlords address habitability concerns.
- **Expanded court-based self-help centers are a critical piece of the continuum of service.** They provide self-help assistance for those who will be self-represented and also can help in the triage process of getting litigants to the level of help they need, whether it is limited scope legal assistance or full legal representation. A key example is the Probate Facilitator, who provided a very effective service, enabling parties to navigate the complex guardianship process in a timely, cost-effective way, benefitting families and the court.

#### **RECOMMENDATIONS:**

- **Recommendation 1: Shriver Civil Counsel pilot projects should continue to be funded to build on the positive results reflected in the evaluation.** The ongoing research and evaluation of the projects regarding the effectiveness of different interventions should remain an integral component of the pilot projects.
- **Recommendation 2: Courts should build on the lessons from the Shriver pilot projects and experiment with more structured opportunities for settlement discussions, such as mediation and early meetings with judges.** The court-based Housing Settlement Master was a good model for further exploration, as the settlement conferences had a high level of agreement between the parties and a high level of compliance with terms of the settlement agreement. The custody pilot project offering Shriver Settlement Conferences conducted by a judge was another promising model with good results, particularly when combined with representation available for both parties.
- **Recommendation 3: Litigant education should be expanded.** An adequate explanation of legal procedures leads to more reasonable expectations concerning what can and cannot be accomplished through the judicial process. These measures thus help people resolve their issues more efficiently.
- **Recommendation 4: The critical triage function needs to be routinely undertaken and further study is needed to clarify the best procedures for ensuring effective and efficient triage methods involving all key stakeholders.** An effective assessment mechanism can help ensure appropriate referral for those cases warranting a higher level of service due to various risk factors or vulnerabilities. Those litigants who remain



self-represented should be provided a level of assistance necessary to their case, and those who would benefit from limited scope representation or full legal representation are referred to a program that can provide the legal services they need.

- **Recommendation 5: The Judicial Council should consider the simplification of forms and procedures, particularly for guardianship, conservatorship and housing cases.** Costs could be reduced by simplifying procedures so that litigants can better understand the process and complete more of the work themselves. Past simplification efforts have helped untold numbers of litigants, and those efforts should be expanded.
- **Recommendation 6: E-filing should be expanded, wherever possible, and increased use of technology should be explored.** In unlawful detainers, for example, e-filing should be available to assist tenants to complete answers in a timely manner, thus improving the efficiency of the litigation, impacting all concerned. Expanded use of document assembly software can help attorneys serve more litigants with fewer resources, and the increased use of remote hearings will facilitate representation for litigants in remote areas. Increased court participation in the data collection process will help ensure that collection methods are not duplicative and more streamlined.
- **Recommendation 7: Regular planning meetings should occur between legal services and courts participating in these pilot projects.** These planning sessions are key to reviewing issues as they arise and conducting long-range planning for the effective and efficient operation of the pilot projects. In addition, the involvement of bench officers and court clerks in the day-to-day processing of pilot project case files are invaluable to creating a more efficient process.
- **Recommendation 8: Promising practices should be developed based on the evaluation of the pilot projects.** The promising practices developed as a result of the evaluation of the Shriver pilot projects should be broadly disseminated throughout the judicial branch and the legal services community. Specific examples include the thoughtful involvement of social workers within legal services programs, contracting with neutral building inspectors to provide valuable input for housing matters, and court-based settlement efforts.

#### **Continuing Unmet Need:**

#### **The Challenges and Barriers, and Additional Research Recommended**

The Shriver pilot projects were conducted in the context of larger societal trends which posed a significant challenge and made the legal issues harder to pursue on behalf of the Shriver clients.

During the next stage of the pilot projects, some of these issues and trends will need to be taken into account in order to increase the effectiveness of the services provided.

- **Potential Reductions in Legal Aid Funding.** The federal Legal Services Corporation (LSC) faces potential cuts or even elimination, and other legal services funding sources are also facing reductions or elimination. This uncertainty will put significant pressure on the legal aid community and the pro bono volunteers who support their work, threatening to increase the justice gap, rather than move closer to the goal of equal access. Priorities for legal assistance will have to be reconsidered in light of reduced funding, and many individuals facing critical legal issues will find that they can no longer obtain the assistance they need.
- **Lack of Affordable Housing.** For housing representation, the fact that affordable housing is almost nonexistent in many areas of the state, and the housing that is available is very expensive, makes it extremely difficult to negotiate successful settlement agreements. These challenges will only increase as the cost of housing rises and the availability of affordable housing decreases. Key goals should be the preservation of low-income housing stock, particularly federally-assisted Section 8 units and Housing Choice Vouchers, which are important for this at-risk and vulnerable population.
- **Legal Issues Not Recognized or Addressed.** Research shows people often do not see their problems as legal issues, so they fail to seek legal help when they should. Others do not want to address the problems they are facing. Unfortunately, this often leads to their legal issues becoming significantly worse, such as when defaults are entered against them or alternative solutions are no longer feasible.
- **Need for attorneys willing to handle custody cases.** Attorneys can play a critical role in child custody cases, helping the parties reach settlement earlier and avoiding long-term family instability. However, there is a dearth of attorneys willing to take on these kinds of cases, because of the conflict involved and because the cases can last for years, until the children become adults.
- **Growing Aging Population.** The increasing number of frail seniors in the population will lead to a corresponding need for conservatorships. However, the paperwork is challenging and the number of attorneys who know how to handle these kinds of cases is inadequate to meet the need. The cases sometime involve a high level of conflict, as different family members seek different solutions.
- **Limited CPS Funding Often Leads to Increases in Guardianship Petitions.** When there are reductions in funding for Child Protective Services (CPS) leading to reduced assistance, there will be a corresponding increase in guardianship petitions being pursued. As with conservatorships, these cases involve significant amounts of paperwork, few attorneys are expert in the field, and there can be high levels of conflict involved.
- **Further research recommended:** As part of the functioning of the Shriver pilot projects, it became clear that additional research would be extremely valuable:

- **Effective Triage Mechanisms and a comprehensive Continuum of Service.** A thorough analysis of triage mechanisms was beyond the scope of these pilot projects. However, important information was learned about how to ensure that individual court customers are referred to the level of service most appropriate for that individual and what components are necessary to a comprehensive continuum of service. Some individuals and some legal issues can be handled effectively with a certain level of self-help assistance, while others require limited scope legal assistance or full representation. Further study is needed to clarify the best procedures for ensuring effective and efficient triage methods involving all key stakeholders.
- **Impact of Limited Scope Legal Assistance (otherwise known as “unbundling”).** This project focused on the impact of providing full legal representation, but it would be helpful to also study the actual impact of different levels of limited scope legal assistance. Evaluation from such a pilot could help expand our understanding of how to best incorporate limited scope programs, and how to establish truly workable and effective triage mechanisms.
- **Effective Education and Outreach.** Research is recommended concerning why some people access services and others do not, despite significant levels of outreach. Because early intervention might save resources and avoid unnecessary protracted litigation, methods could be studied that would encourage individuals to seek prompt legal assistance where appropriate.
- **Other Potential Subjects for Pilot Projects.** Research should be conducted concerning other litigation types that often involve uneven representation and that might benefit from a pilot project to evaluate the role of civil legal assistance. Research should also be conducted with regard to projects that were successful in one jurisdiction, to determine whether they are truly replicable best practices.

# **PART TWO - EXECUTIVE SUMMARIES FROM** **EVALUATION REPORT**

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## **EVALUATION OF THE SHRIVER HOUSING PILOT PROJECTS** **EXECUTIVE SUMMARY**

Given the dearth of affordable housing in California and the rate at which rents have outpaced wages in most areas of the state, eviction is one of the most pressing civil justice issues for low-income individuals, as the loss of housing poses a wide range of short- and long-term risks and consequences for families. These risks can be particularly severe for vulnerable tenants, such as the elderly and people with disabilities. Among low-income populations, it is very common for unlawful detainer cases to involve landlords with legal representation and tenants without the resources to retain counsel. By balancing the playing field, the Shriver Program sought to provide equal access to justice and to ensure that cases were decided on their merits and not as a result of one side having legal representation. The Shriver Program funded housing pilot projects in six counties: Kern, Los Angeles, Sacramento, San Diego, Santa Barbara, and Yolo.

Data for the evaluation of the Shriver housing pilot projects were collected over the course of 5 years, from multiple sources including program services data by Shriver project staff, individual court case files, data from court case management systems, and interviews with defendants and Shriver project staff from both legal aid and the courts. Importantly, for a limited period of time, three pilot projects randomly assigned litigants to receive Shriver services or not, and data for these two groups were compared.

### **WHO WAS SERVED BY THE SHRIVER HOUSING PILOT PROJECTS?**

From October 2011 through October 2015, the first 4 years of implementation, the six housing pilot projects provided legal aid services to more than 19,000 low-income tenants facing eviction (and a small number of low-income landlords). Most Shriver clients were female and non-White. Many experienced a disability or had limited proficiency with English. More than half had minors living in their households. Within these cases, approximately 55,000 household members were impacted by the Shriver legal services.

The average monthly income among Shriver clients was well below the 2014 Federal Poverty Level (FPL), and the overwhelming majority of them were experiencing severe rental cost burden. Across all six pilot projects, 92% of Shriver clients spent more than 30% of their monthly household income on rent, and 73% spent 50% or more. Most commonly, Shriver clients were being evicted for alleged non-payment of rent, and the average amount demanded on the eviction notice was \$1,812, highlighting the financial vulnerability of many families.

## **WHAT SERVICES WERE PROVIDED BY THE SHRIVER HOUSING PILOT PROJECTS?**

More than half of Shriver housing clients received full representation by a Shriver legal aid attorney and just under half received unbundled services, such as brief counsel and advice or help filing an answer. Of those tenants who received full representation from a Shriver attorney, 96% were facing a landlord who was represented by counsel (1% were not and 3% were missing information about opposing party representation).

Court-based Shriver services for unlawful detainer cases included self-help centers, mediation services, housing inspectors, and electronic filing systems. One court established a Housing Settlement Master and instituted mandatory settlement conferences for all unlawful detainer cases that were scheduled for trial.

## **NOTABLE IMPACTS OF THE SHRIVER HOUSING PILOT PROJECTS**

Study findings demonstrated that, relative to cases with self-represented defendants, cases with Shriver full representation for defendants had the following impacts:

### ***Increased participation in the justice system***

Tenants' access to justice depends on their ability to successfully file a written response to the unlawful detainer complaint within a short timeframe. Inability to do so usually results in a default, landlords regaining possession of the property, and defendants never presenting their side of the case. Historically, in unlawful detainer cases, defaults are very common. Across all six pilot projects, an answer (or other response) was successfully filed in approximately 94% of cases that received representation by a Shriver attorney. The random assignment study of three projects showed that significantly more full representation cases filed an answer/response (91%) than did comparison cases (73%).

The increased likelihood of filing an answer to the unlawful detainer complaint led to fewer defaults among cases with full representation. The random assignment study found that Shriver full representation clients were significantly less likely to end their cases by default (8%) than were self-represented defendants (26%). The lower rate of default judgments is an important indication of access to justice for these families.

### ***More settlements and fewer trials***

Balancing the playing field did not appear to make unlawful detainer proceedings more combative or drawn-out. Instead, it increased the likelihood of settlement. Across all six pilot projects, 70% of defendants with Shriver representation settled their cases, versus roughly 5% who resolved their cases via trial (18% were dismissed and 7% were unknown). Random assignment study results showed that the settlement rate with balanced representation is significantly higher (67%) and the trial rate lower (3%), than what occurs when the tenant is self-represented (34% and 14%, respectively).

### ***Impact of Mandatory Settlement Conferences***

As part of its Shriver housing pilot project, the Santa Barbara County Superior Court established a court-based Housing Settlement Master and required parties in unlawful detainer cases to meet with the Settlement Master before the trial date. Preliminary data suggest this intervention was effective. When both parties appeared at the conference, an agreement was reached 79% of the time. This greatly reduced the number of cases that proceeded to trial, thereby reducing the burden on the court. Further, among those cases that settled during the conference, 81% had complied with the terms of the agreement within 2 years of the complaint filing, suggesting that the Settlement Master helped negotiate terms that were both agreeable and tenable for both sides.

### ***Improved efficiency for the courts***

Although providing full representation to defendants does not appear to shorten the time to resolve cases, it does reduce the level of involvement necessary by the court to bring cases to resolution. Shriver services enabled a large majority of unlawful detainer cases to resolve by settlement, which requires comparably fewer court resources, and limited the number of cases that went to trial, which is a more resource-intensive activity for court staff. These efficiencies can help alleviate court congestion by reducing the load on court clerks and judicial officers, and they also translate into cost savings over time.

### ***Case outcomes favored longer term housing stability***

#### *Possession of the Property*

Across all six pilot projects, among cases that received full representation, tenants in 78% of cases ultimately moved out of their homes (16% stayed in their homes and 6% were unknown). Likewise, the random assignment study found that possession was obtained by the landlord in roughly 75% of cases. Although comparatively fewer cases ended with the tenant retaining possession of the property, possession was retained more often among cases with Shriver represented tenants (5%) than among cases with self-represented tenants (1%). (Note that possession was unknown for cases that ended in dismissal, roughly 20% of the sample.)

Of those Shriver clients who moved out of the home, the majority did so as part of a negotiated settlement. Across the six pilot projects, formal evictions (i.e., court issues a judgment against a tenant) occurred in roughly 6% of cases. Moving as part of a settlement helps to calm emotional tensions on both sides and to foster a transition that is better planned, less disruptive, and less damaging for tenants by offering some additional stability. For example, tenants with full representation had, on average, 79 days to move, versus 69 days among self-represented defendants. This additional time gave Shriver clients more time to find alternate housing and plan their transition.

#### *Financial and Credit-Related Outcomes*

Across all six pilot projects, among those cases in which tenants had to move out of their homes as part of a settlement, the terms of the agreement included: a reduction in or waiver of the back-owed rent to be paid by the tenant (65% of cases), the unlawful detainer action masked from the public record (74%), the case not reported to credit agencies (53%), and a neutral rental reference from the landlord (39%). Any of these elements alone—but more so when combined—provides tenants with increased opportunity to find alternate stable housing for themselves and their families.

Random assignment study results showed that many of these beneficial financial and credit-related outcomes were attained more often by defendants with Shriver representation than by self-represented defendants. In particular, compared to self-represented tenants, fewer Shriver-represented tenants were ordered to pay holdover damages (26% vs. 11%, respectively), attorney fees (28% vs. 18%), and other costs (33% vs. 15%). Further, 45% of Shriver clients received at least one positive credit-related outcome (e.g., masked case, not reported to credit agencies), compared to 17% of defendants without an attorney.

This support for longer term housing stability was evident among defendants interviewed 1 year after their case had closed. All interviewees except for one had moved out of their homes at the end of their housing case. One year later, 71% of Shriver clients had obtained a new rental unit, compared to 43% of self-represented defendants. It is plausible that benefits such as protected credit, masked records, and

reduced/waived debt made it easier for Shriver clients to obtain stable replacement housing and to maintain stability for their households.

***Litigants felt supported***

When asked about their housing cases, many Shriver clients expressed appreciation for the legal services they received. Even with this assistance, and certainly among those who did not receive Shriver services, defendants stated that the unlawful detainer case negatively impacted their lives and that being forced to move negatively affected others in the household, most notably dependent children. However, the presence of an attorney helped tenants make the stressful experience of an unlawful detainer case manageable, helped them feel supported in the process and not lost in the system, and in some cases, it helped them mount the motivation for a new start.

# EVALUATION OF THE SHRIVER CHILD CUSTODY PILOT PROJECTS EXECUTIVE SUMMARY

The Sargent Shriver Civil Right to Counsel Act allocated up to 20% of program funding for child custody cases. The statute set several eligibility requirements, including that clients have low-income status (i.e., at or below 200% of the Federal Poverty Level), be facing an opposing party with an attorney (i.e., imbalanced representation), and be involved in a case with a parent trying to obtain a court order for sole custody of the child (Gov. Code Section 68651(b)(2)(B)).

Generally, child custody cases are complex and emotionally charged, have critical implications for families and children, and can remain open until the child turns 18 years old. A court order for sole custody can often leave the other parent with limited or no access to the child. Therefore, these cases can also be highly contentious. The Act mainly aimed to level the playing field in these types of cases. Shriver projects served parents trying to obtain custody, as well as those trying to preserve custody.

The unique attributes of families, parent personalities, relationship dynamics, and circumstances of children can add intricacy and tension to proceedings. When cases are contentious, as most cases served by the Shriver custody pilot projects were, the adversarial nature of the judicial process can be compounded. Moreover, there are innumerable factors that can influence court decisions and determinations regarding the best interests of the child, many of which are not reliably documented in court case files.

The Shriver Program funded custody pilot projects in three counties: Los Angeles, San Diego, and San Francisco. Services were provided for one request for orders (RFO) during the life of a custody case. Data for the evaluation of the Shriver custody pilot projects were collected over the course of 5 years, from multiple sources including program service data recorded by Shriver attorneys, individual court case files, and interviews with custody litigants and project staff from legal aid agencies and the courts.

## **WHO WAS SERVED BY THE SHRIVER CUSTODY PILOT PROJECTS?**

Shriver services were provided to both mothers and fathers, though most clients were female. The average monthly income of Shriver clients was well below the 2014 Federal Poverty Level, and many demonstrated substantial needs in critical livelihood areas such as income, employment, and food security. Over half of Shriver cases had intertwined issues of domestic violence. Most clients were Hispanic/Latino or African American.

## **WHAT SERVICES WERE PROVIDED BY THE SHRIVER CUSTODY PILOT PROJECTS?**

From October 2011 through October 2015, the first 4 years of implementation, the three custody projects provided services to 1,100 low-income parents. Over half of these clients received full representation by a Shriver attorney throughout their custody pleadings, and just under half received unbundled legal services, such as brief counsel and advice, education, and mediation preparation. Over time, the pilot projects in Los Angeles and San Francisco incorporated social workers into their projects to address their clients' serious and persistent social service needs. Moving families out of crisis and into self-sufficiency became a project goal, as this transition also eased emotional duress, enabled the creation of more stable environments for children, and supported sustainability of custody



arrangements. In addition to the legal aid services, the San Diego custody pilot project also offered Shriver settlement conferences conducted by a judge.

## **NOTABLE IMPACTS OF THE SHRIVER CUSTODY PILOT PROJECTS**

Studies have acknowledged the myriad benefits of providing legal assistance to litigants in complicated family law matters (e.g., Engler, 2010<sup>3</sup>). The Shriver custody pilot projects demonstrated several of these:

### ***Shriver services helped level the playing field.***

The statute required Shriver projects to serve cases with the potential for acute consequences for families. Specifically, services targeted self-represented parents who were facing opposing parties represented by attorneys in cases with sole custody at issue. Legal aid services attorneys explained that their primary goal was to level the playing field, ensuring both parents had adequate access to justice. Across all three projects, data showed that 89% of Shriver representation cases had attorneys on both sides (10% of clients faced an unrepresented party at the time of Shriver service intake, and 1% were unknown).

### ***Attorneys educated parents, which created efficiencies and eased tensions.***

Attorneys helped to educate parents about the legal process and to shape reasonable expectations for their case outcomes. Consequently, court proceedings became more efficient, as judges spent less time managing litigants and benefited from more comprehensive information on which to base decisions. Shriver attorneys felt that they could ease tensions and reduce emotional turmoil that would otherwise cloud and complicate proceedings.

### ***Litigants felt supported.***

Parents reported feeling informed about their cases, supported throughout the process, and not lost in the system. Having an attorney's expertise and support mattered to parents beyond the case outcomes. Specifically, litigants' perceptions of fairness of the judicial system varied with their satisfaction with their case outcomes: If they were satisfied with their case outcomes, they found the process was fair; if they were not satisfied with their outcomes, they found it not fair. In contrast, litigants' perceptions of the Shriver attorney were overwhelmingly positive, regardless of their satisfaction with their case outcomes.

### ***Attorneys supported collaboration between parties.***

Shriver project staff thought litigants were more willing to enter agreements when their attorneys helped them understand when terms were reasonable. By supporting successful negotiations and reducing emotional tensions between parties, Shriver attorneys were able to increase the likelihood of pre-trial settlements, which positively impacts the court and the families. This finding is supported by the quantitative data culled from the court case files at the San Diego project, where 54% of Shriver full representation cases resolved via settlement versus 30% of comparison cases.

This resulted in increased efficiencies for the court, as Shriver cases tended to involve fewer hearings and continuances than comparison cases. In San Diego, 16% of cases with Shriver representation resolved without a hearing, versus 2% of comparison cases. Further, while nearly two-thirds (63%) of

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<sup>3</sup> Engler, R. (2010). Connecting self-representation to civil Gideon: What existing data reveal about when counsel is most needed. *Fordham Urban Law Journal*, 37, 37

comparison cases required hearings to resolve the pleading, less than half (40%) of Shriver representation cases did.

***Combined effect of attorney representation and Shriver settlement conferences was positive.***

The San Diego custody pilot project offered Shriver settlement conferences conducted by a judge, with attorneys present. Sixty percent of Shriver settlement conferences reached full or partial agreement during the session. Further, 34% of Shriver representation cases were resolved during the settlement conference, contrasted with 4% of Shriver cases that reached resolution during typical mediation sessions. The heightened success of Shriver settlement conferences is likely attributable to the presence of counsel—parents were more willing to enter into agreements under the guidance of their attorneys—and to the ability of the judge to provide immediate resolution.

***Custody orders were more durable.***

In San Diego, the combination of representation by a Shriver attorney and participation in a Shriver settlement conference yielded more durable custody orders. Within the 2 years after the pleading was resolved, only one in ten Shriver cases had filed an RFO to modify the existing custody orders, versus one in three comparison cases.

Custody orders that endure can help stabilize families and reduce the burden on courts. Importantly, this can translate into cost savings, as the investment costs of Shriver court-based services are more than recovered by the reduction in subsequent filings requesting a change to custody orders.

Increasing settlements and improving the durability of custody orders are important project achievements. While it is difficult to disentangle the independent contributions of legal representation and settlement conferences, preliminary data suggest that both are useful.

# **EVALUATION OF THE SHRIVER PROBATE PILOT PROJECT**

## **EXECUTIVE SUMMARY**

The Shriver Program funded one probate pilot project in Santa Barbara County that focused on guardianship and conservatorship cases. Most guardianships were sought because wards' parents were unable or unavailable to care for them due to a range of complex and deleterious issues. Establishing legal guardianships and conservatorships helps to ensure that vulnerable children and adults are living in stable environments and have the care they need. These cases are technically complicated and involve volumes of paperwork that can be very challenging for self-represented litigants, and insurmountable for those with limited English proficiency or literacy abilities. Unlike the housing and custody pilot projects that sought to level the playing field, the Shriver probate pilot project fundamentally intended to provide individuals with meaningful access to the judicial system and assistance with these complex and emotionally charged cases that have critical implications for families, even when there is no opposing party.

The Shriver probate pilot project involved legal aid services provided by attorneys at the Legal Aid Foundation of Santa Barbara County (LAFSBC) and court-based services provided by a newly established, Shriver-funded probate facilitator.

Data for the evaluation of the Shriver probate pilot project were collected over the course of 5 years, from multiple sources, using various methodologies such as program services data, individual court case files, and interviews with project staff from legal aid and the court.

### **WHO WAS SERVED BY THE SHRIVER PROBATE PILOT PROJECT?**

Families served by the Shriver project evidenced substantial dysfunction and considerable risk factors to the children involved. In short, guardianships were sought not because parents were deceased, but because parents were unable/unavailable to care for children due to issues such as substance abuse, incarceration, abandonment, maltreatment, and homelessness. The median monthly income was below the 2014 Federal Poverty Level (FPL), and a sizable minority were reliant on food subsidies. Moreover, roughly a quarter of families were referred by the child welfare system (CWS), suggesting that CWS recognized guardianships as a way to avoid foster care in these situations that would otherwise have been untenable for children. The most common case involved individuals seeking assistance with a petition for guardianship (e.g., couples, such as grandparents, seeking to care for grandchildren).

### **WHAT SERVICES WERE PROVIDED BY THE SHRIVER PROBATE PILOT PROJECT?**

LAFSBC aimed to provide full representation to all eligible litigants, including assistance with paperwork, required notifications, and representation in court. From January 2013 to June 2015, 242 litigants sought help from Shriver legal aid attorneys, and of these, 158 met eligibility criteria. Of those eligible, 40% received full representation and 60% received unbundled services (brief counsel and advice). The remaining 84 cases that did not meet eligibility criteria received unbundled services (i.e., brief counsel and advice) during their initial consultation with an attorney, but were ultimately deemed ineligible for project services due to reasons such as living out of jurisdiction or having an income above 200% of the FPL.

The probate facilitator assisted all parties who presented at the court (no income requirement) and, from January 2013 to June 2015, she assisted 286 self-represented litigants. The probate facilitator provided litigants extensive help with paperwork, including the initial petition for guardianship/conservatorship and the entire range of additional forms and documents related to the case. This

assistance made it possible for litigants, who otherwise lacked the resources to retain an attorney, to meaningfully access the legal system.

## **NOTABLE IMPACTS OF THE SHRIVER PROBATE PILOT PROJECT**

Findings demonstrated several beneficial impacts of the Shriver probate pilot project:

### ***Petitions were successfully filed.***

The Shriver probate project sought to stabilize families by removing barriers to filing petitions for guardianship and conservatorship and creating the opportunity for meaningful access to the judicial system. The complexity and volume of the paperwork necessary for petitions, as well as the skills and time required to locate family members for notification, present a significant barrier to successfully filing a petition. As a result, historically, many people who begin the process never successfully file. Among litigants receiving full representation by a Shriver attorney, only 6% did not file a petition or pursue other arrangements, such as power of attorney for the child or a caregiver's affidavit.

#### *Impact of probate facilitator*

Court staff estimated that, before the Shriver project, it would take three attempts for litigants to successfully file a petition and many would give up before succeeding. However, litigants who received help from the probate facilitator were generally able to file successfully on their first attempt, which eased the burden on both the litigants and court clerks charged with reviewing the documents. The probate facilitator also streamlined the document revision and information collection once the petition was filed. She served as a resource for litigants as they attempted to complete any of a wide range of related legal forms and prepare their case, and for court staff (e.g., investigators) who needed additional information about a family. When interviewed, court staff were vocal about the numerous efficiencies and expertise this position added to the court.

### ***There was increased participation in the legal system by relevant parties.***

Individuals who received representation by a Shriver attorney were afforded meaningful access to the legal system and employed a range of strategies to support their cases. For instance, litigants with Shriver counsel called witnesses (31%) and submitted declarations (22%) significantly more often than did litigants without Shriver services (5% and 3%, respectively). These actions supported the petitioners' cases and offered the court more complete and comprehensive information on which to base decisions.

Shriver services, both representation and probate facilitator services, also supported effective notification procedures, including those for relatives and tribes. Ensuring effective and complete notification provided other relevant parties with an opportunity to participate in the case. Increasing participation tended to enhance collaboration among parties who may have been in opposition otherwise. Shriver staff educated parties about the terms of guardianships/conservatorships—e.g., parental rights are not terminated when guardianship is established—which often eased tensions and supported cooperation.

Despite the use of the additional legal strategies and support for effective notification, litigants with Shriver representation (70%) and those with probate facilitator assistance (71%) were just as likely to have their petition granted as non-Shriver litigants (63%) were.

### ***Court proceedings were more efficient.***

The provision of Shriver services made notable contributions to court efficiency. Cases with a Shriver attorney were resolved more quickly than were cases with self-represented litigants. Specifically, 53% of Shriver representation cases were resolved within 60 days, compared to just over one third of other

cases. Further, these full representation cases involved fewer hearings and continuances compared to cases with self-represented litigants.

***Efficiencies in proceedings translated to savings for the court.***

Court staff reported that the probate facilitator's assistance resulted in more petitions filed successfully the first time, rather than after multiple attempts, as had been typical before the Shriver project. Her assistance streamlined paperwork and increased the quality of information for the court, which created substantial efficiencies for clerks and for the court's probate attorney, as well as provided more thorough information for decisions by judicial officers.

Overall, the Shriver probate pilot project created efficiencies for the court through the Shriver probate facilitator (e.g., reduced clerk time to process petitions) and through the Shriver legal aid attorneys (e.g., fewer hearings and continuances). Together, these efficiencies resulted in an average savings of \$1,035 per case (a 25% reduction).