

# The Senior Lawyer



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# New York's Aging Population—A Growing Impact on the Need, Market, and Framework for Legal Assistance

By Vera Prosper

New York's 3.7 million older adults (aged 60 and older) are among three populations that are the focus of the state's Legal Services Initiative. The Initiative's aim is to address gaps in the availability, affordability, and accessibility of legal assistance in civil matters.

The state's mounting number of older adults has largely gained attention in the provision of health and long-term care. However, for both the legal community and policymakers, the impact of aging demographics strongly underscores the expanding need for trained, expert legal assistance for this growing population.

Several important change-drivers are transforming the characteristics of New York's communities and setting the stage to re-shape law school curricula and training, court room environments, the practice framework for legal-service professionals, and the role of legal assistance in residents' lives:

- The aging of the "baby boomers" and several "baby boomlets,"<sup>1,2</sup> as well as increasing longevity among all population groups (including those with frailties, chronic illness, and disabilities), will continue a significant growth in the older adult population throughout this century.
- The characteristics defining the older population have changed, including their increased participation in the work force and in educational pursuits; their significantly greater cultural and ethnic diversity; their increasing classification by a variety of non-traditional household types, including growing responsibility for their grandchildren and aging adult children with disabilities; and their greater acceptance and use of technology in conducting their daily lives.
- Public policies have shifted the delivery of health and long-term care from institutional facilities to in-home and community-based services, resulting in the greater majority of individuals living most or all

 <p><b>LSI</b> New York State Legal Services Initiative</p>
<p><a href="http://www.aging.ny.gov/livable/ny/Legal.Services/index.cfm">http://www.aging.ny.gov/livable/ny/Legal.Services/index.cfm</a></p>
<p><i>Initiative's Focus</i></p> <ul style="list-style-type: none"> <li>• Civil legal matters</li> <li>• Older adults (aged 60 &amp; older)</li> <li>• People of all ages with all types of disabilities</li> <li>• Caregivers of these two groups</li> </ul>
<p><i>Initiative's Goal</i></p> <p>Advance "equal access to justice" for the three population groups.</p>
<p><i>Initiative's Partnership</i></p> <ul style="list-style-type: none"> <li>• NY State Office for the Aging</li> <li>• NY State Office of Court Administration</li> <li>• NY State Bar Association</li> <li>• NY State Office for People With Developmental Disabilities</li> <li>• Facilitation assistance by Robert (Bob) Abrams, Esq.</li> <li>• Consultation assistance by a 100-member Think Group</li> </ul>

of their lives in conventional housing, regardless of age or ability, and often alone.

- The over two million informal caregivers (family and friends), who currently provide the majority of all types of assistance and care for the state's older residents, will increase in tandem with the aging population. As older individuals live into very old age in conventional homes, the responsibilities of caregivers grow in number, type, and complexity.

The impact of these four trends can be viewed as two sides of the same coin: (1) for New York's older adults and their caregivers, the trends foretell an expanding need for both basic and more sophisticated legal assistance to resolve increasing challenges of daily life; and (2) for the legal community, the trends represent a growing market for legal assistance—both in the numbers and variety of clients and in the diversity and complexity of issues presented.

NY State has the 4th largest number of individuals aged 60 and older in the U.S.<sup>3</sup>

<b>Demographics of Aging Population Projections: NY State*Number of Older Adults</b>			
Age Group	2010	2025	2040
Aged 60–74	2,426,862	3,143,802	2,704,445
Aged 75–84	866,467	1,078,124	1,320,294
Aged 85 & Older	390,874	389,062	543,452
Aged 60 & Older	3.7M	4.61M	4.57M

\*Program on Applied Demographics (September 8, 2011), New York State Projections Data by County. Ithaca, NY: Cornell University.  
<http://pad.human.cornell.edu/counties/projections.cfm>

Reflecting these impacts, the impetus for the Legal Services Initiative's activities stems from ongoing comments that limitations and gaps exist in the ability of many residents to readily find and effectively use affordable legal assistance. The Initiative's study project<sup>4</sup> (six statewide surveys) and the work of the Initiative's consultative 100-member Think Group describe the status of legal assistance in the state, highlighting aspects that have a strong effect on access to legal assistance by the Initia-

tive's three population groups. This article focuses on findings related to various facets of accessibility for older adults.

**Access to and use of legal assistance:** The Initiative's "Statewide Survey of Residents Aged 18 and Older" showed that, within a three- to five-year period, 51%<sup>5</sup> of New York's general adult population experienced one or more issues that "required more than ordinary action and was serious enough that they needed or wished they had professional assistance." Among the older adult population, 44%<sup>6</sup> felt that need (45% of those aged 18-24 and 57% of those aged 25-59). Among the 44% of older respondents, between 47%-67%<sup>7</sup> across the survey's five issue categories<sup>8</sup> used legal assistance to help resolve serious issues (between 32%-61% of respondents aged 18-59 used legal assistance).

Causes of limited or complete lack of accessibility are many, including: lack of transportation; mobility problems, due to disabilities, frailties, home-bound; lack of available legal services within a reasonable travel distance, or lack of nearby attorneys who have expertise in the consumer's problem area; language or other communication issues inhibiting effective communication; the consumer's educational, mental health, or cognitive limitations; the inability of many members of the legal and judiciary communities to interact effectively with the consumer because they lack an understanding of the traits, characteristics, norms, and circumstances of elderly, frail, or impaired consumers; and other reasons.

However, as became apparent through the Initiative's study, as well as the Think Group's discussions, several additional factors strongly influence the extent to which consumers access legal services. For respondents of all ages in the "Survey of Residents Aged 18 and Older" (24% are aged 60 and older), their primary reasons for not using legal assistance were:<sup>9</sup>

- They are not knowledgeable or aware of their legal rights.
- They do not think the presenting problem is a legal issue—they are not aware that a legal framework underlies many problems and issues they encounter and, thus, do not even consider seeking legal guidance for unresolved situations.
- They do not know where or how to find legal help.
- They cannot, or fear that they cannot, afford legal help.
- For a variety of reasons, they believe they can handle problems themselves...or they *choose* to handle them themselves or represent themselves in court; for example, they do not trust the legal community; they have had a negative experience with a legal service provider in the past; they do not realize they have insufficient knowledge of the legal as-

pects of an issue; they do not realize that they have insufficient understanding of courtroom procedures, the legal process, how to present testimony, how to defend their position, etc.; they believe the judge has discretion to provide whatever help they need in the courtroom; or they are convinced they can do a better job than the legal service provider.

The Initiative's "Survey of Attorneys Staffing the New York State Mental Hygiene Legal Service" (MHLS)—23% of whose clients are aged 60 and older—showed similar reasons why New Yorkers do not use the MHLS program,<sup>10</sup> and comparable reasons why MHLS-eligible individuals and their families do not use alternative community-based legal assistance.<sup>11</sup> Respondents in the Initiative's "Survey of Judges and Justices in New York State's Unified Court System" reported similar reasons why civil litigants appear in court or hearing proceedings without the benefit of legal counsel (*pro se*).<sup>12</sup> The judges and justices also reported a substantial number of adverse and negative impacts on both the quality of judicial proceedings involving *pro se* litigants and the outcomes of those cases.<sup>13</sup>

To address the many accessibility issues, the Legal Services Initiative's partners, together with members of the Think Group, law schools, the legal and judiciary communities, and many interested community aging, disability, and caregiver organizations, will draw upon the *Blueprint for Action*<sup>14</sup> developed by the Think Group to implement a variety of strategies, actions, and training activities.

**Client-oriented versus topic-oriented legal practice:** Anecdotal comments from various sources, including members of the legal community, suggest that the topic-oriented practice area of "elder law" (concentrating on wills, advance directives, health care proxies, powers of attorney, guardianship, and estate planning) does not reflect the reality of issues faced by older adults and does not adequately reveal the extent to which, among the overall legal field, improvement is needed in communication and interaction between older adult clients and the general legal profession. The Initiative's various studies<sup>15</sup> show that the challenges and serious issues facing older adults are many and extremely diverse, including:

- Retirement and estate planning.
- Debt issues, including credit cards, bill collectors, bankruptcy.
- Consumer contracts, small claims, and consumer protection.
- Family issues, including divorce, marriage, permanency planning, foster care, custody, adoption, visitation rights, spousal and child support, paternity, orders of protection, name change, family offenses and disputes, child's finances and debts, and others.

- Public benefits.
- Housing (rental and homeownership), including landlord/tenant issues, eviction, foreclosure, discrimination, harassment, fees/charges, housing conditions, utilities, mortgages, liens, purchase/sales, zoning, repairmen, deed adjustments, property transfers, trouble with neighbors, safety, co-op conversions, and others.
- Long-term care, including issues related to all types of in-home services and care, adult homes, assisted living, nursing homes, caregiving issues.
- Guardianships, diminished mental capacity.
- Insurance and taxes, including health, life, long-term care, income, business, property, and other types of insurance, taxes, and fees.
- Abuse and neglect, including financial, mental, emotional, and physical.
- Fraud and scams, including public benefits, contractors, identity theft, home repair, telephone/mail/computer scams, and others.
- Employment issues, including pensions, wages, benefits, discrimination, harassment.
- Business ownership issues, including sale of business, breach of fiduciary duty, business succession, business theft.
- Immigration issues.
- Traffic tickets, arrests, criminal activity, personal injury.

In addition, study findings<sup>16</sup> show that members of the legal and judicial communities are not sufficiently knowledgeable about the traits and characteristics of older people, the aging process, and caregiving. Eighty-six per cent of respondents in the survey of practicing attorneys reported receiving “no training” in law school about the aging process or older adults, and 91% received “no training” regarding Alzheimer’s Disease or other dementia; 54% reported that, during their entire legal career, they engaged in “no” professional learning activities related to older adults, and 67% engaged in none related to Alzheimer’s Disease or dementia. In the survey of judges and justices, the opinion of respondents is that 75% of judges and 81% of non-judicial attorneys are less than “very knowledgeable” about older adults, and that 87% of judges and 89% of non-judicial attorneys are less than “very knowledgeable” about the caregivers of people who are frail, impaired, incapacitated, or elderly.

In response to these findings—and in light of the state’s demographic and policy trends—the Legal Services Initiative will:

- Launch discussions with the state’s law schools and members of the legal and judiciary communities to develop strategies for transforming how consumers, law students, and legal professionals think about the provision of legal assistance to older adults and their caregivers—evolving from “function-based” (focusing on several specific items or topics) to “client-based” (focusing on effectively understanding and serving an older adult client group, regardless of the problem presented or the professional’s area of practice).
- Promote training activities for members of the legal and judicial communities on the traits, characteristics, norms, values, situations, and circumstances of older adults and caregivers.

#### **Aging network’s Legal Assistance Program (LAP):**

Across the Initiative’s six study surveys, “affordability” rose as an issue affecting the availability and accessibility of legal assistance. A number of organizations, programs, and individuals across the state provide *pro bono*, free, discounted, and other types of affordable legal assistance; nevertheless, a demand for low-cost and no-cost legal help continues, as many of these programs and individuals cannot, for various reasons, meet all requests for assistance. The Legal Services Initiative surveyed the administrators of the Legal Assistance Program, a statewide aging services program providing legal assistance for older adults, targeting those with greatest economic and/or social need.

In the U.S., services and programs for people aged 60 and older are provided through a three-tiered structure, which includes the Administration on Aging in the Department of Health and Human Services at the federal level, a state unit on aging in each state, and a local network of approximately 620 area agencies on aging (AAA) across the country that coordinate the delivery of services to older adults. Such services include meals, transportation, in-home support and care, caregiver programs, counseling, advocacy, and others. The Older Americans Act (OAA) is the federal enabling legislation that established the three-tiered structure and authorizes the expenditure of federal funds for aging programs.

Among the services provided by AAAs to individuals aged 60 and older, three are mandated by the Older Americans Act. One mandated service is the provision of legal assistance in civil matters, as well as the designation of a Legal Assistance Developer in each state. In New York, 59 county-based AAAs each administer a Legal Assistance Program, and each contracts with various types of community-based legal assistance Providers to deliver the Program’s services. Contracted Providers include sole proprietor attorneys, law firms, Legal Aid Society, and community-based service organizations.

The Legal Assistance Program is predominantly supported with federal funds under Title III-B of the OAA,<sup>17</sup> and 26 AAAs in New York supplement the program with county government funds.<sup>18</sup> The state's total LAP program is modest, with a total program budget for the 12-month survey period of \$4.47M.<sup>19</sup> Across the state, the program varies greatly in size, with a median program budget of \$13,556 among the 59 AAAs. Legal service Providers contract with the AAAs at negotiated rates, and cost per unit of service varies widely, with some of the highest rates in rural areas of the state.<sup>20</sup>

Reflecting the state's growing numbers of older adults and caregivers, 42%<sup>21</sup> of AAAs reported that LAP's Title III-B funds were exhausted prior to the end of the program year and 35%<sup>22</sup> reported that LAP's county government funds were exhausted.

AAAs and their contracted Providers collaborate effectively to provide the program, sharing program tasks<sup>23</sup> and developing strategies for stretching program resources. While some Providers stop delivering services when program resources are exhausted, others use a variety of means to supplement and extend the program throughout the program year, including modifying the type and amount of legal help provided to each client (for example, not providing costly client representation in court); pacing the number of requests per month throughout the program year; moving non-emergency requests to the following contract year; re-allocating funds from the AAA's or the Provider's other programs to supplement LAP; using AAA staff for tasks that do not require an attorney; and searching for additional supplemental funds. In addition, when program funds are exhausted, some Providers will continue services on a *pro bono* basis, and some solicit *pro bono* services from their legal colleagues in the community.

**Initiative's next steps:** In 2015, the Initiative's Partnership will join with members of the Initiative's Think Group and interested individuals and organizations to begin implementing strategies, activities, and steps outlined in the Think Group's *Blueprint for Action: Strategies for Achieving the Legal Services Initiative's Goals*. The public can follow the progress of these activities on the Legal Services Initiative web site.

## Endnotes

1. Sharon Jayson, with contributions by Anthony DeBarros, *Is This the Next Baby Boom*, including *Live U.S. Births By Year* providing annual live births in the U.S. from 1909-2006 from the National Center for Health Statistics, USA Today, (Updated July 17, 2008), available at [http://usatoday30.usatoday.com/news/nation/2008-07-16-baby-boomlet\\_N.htm](http://usatoday30.usatoday.com/news/nation/2008-07-16-baby-boomlet_N.htm).
2. Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, *National Vital Statistics Reports*, Volumes 58-63 (2007-2013). During the Baby Boom years (1946-1964), live births in the U.S. topped 4M annually for the first time, peaking at 4.3M in 1957. From 1989-1993, U.S. live births were

again over 4M annually, and again surpassed 4M annually from 2000-2009, peaking at 4.3M in 2007. Live births in the U.S. began declining below 4M in 2010.

3. American FactFinder, U.S. Census Bureau, *Population 60 Years and Over in the U.S. 2009-2013* Table S0102, American Community Survey 5-Year Estimates, (Retrieved Feb. 15, 2015).
4. Vera Prosper, *Report of Findings: Six Statewide Surveys*, (2014) available at <http://www.aging.ny.gov/livableny/LegalServices/>. The six groups surveyed include: New York residents aged 18 and older, attorneys practicing in New York State, Area Agency on Aging directors—regarding the aging network's Legal Assistance Program, legal services providers—regarding the aging network's Legal Assistance Program, attorneys staffing the New York State Mental Hygiene Legal Service, and judges and justices in New York State's Unified Court System.
5. *Id.* at 35 Chart 17.
6. *Id.* at 37 Chart 19a. The Initiative's "Survey of Residents Aged 18 and Older" is a telephone survey conducted by the Siena College Research Institute. The 44% is likely a conservative finding as a telephone survey does not include older persons who cannot adequately participate in a telephone interview; for example, those with cognitive impairments, are too ill, with no access to a private telephone (financial reasons, in hospitals or other facilities, are homeless or in homeless shelters, in prison, etc.), with hearing loss, have language or other communication issues, use only cell phones with out-of-state area codes, or other reasons.
7. *Id.* at 51 Chart 34.
8. The five issue categories for the "Survey of Residents Aged 18 and Older" are: Housing, Family Interactions/Relations, Money, Life Planning, and Dealing with Others.
9. *Supra* at 64, *Report of Findings: Six Statewide Surveys* Chart 52.
10. *Id.* at 200 Table 10.
11. *Id.* at 202 Table 11.
12. *Id.* at 244 Table 9.
13. *Id.* at 248 Table 11.
14. Vera Prosper, *Blueprint for Action: Strategies for Achieving the Legal Services Initiative's Goals*, (2015) available at <http://www.aging.ny.gov/livableny/LegalServices/>.
15. *Supra* *Report of Findings: Six Statewide Surveys*, at 91 Table 8, at 124 Table 14, at 170 Table 22, at 246 Table 10.
16. *Id.* at 96 Tables 15 and 16, at 258 Table 16.
17. *Id.* at 114 Chart 1.
18. *Id.* at 116 Chart 2.
19. *Id.* at 118 Table 6.
20. *Id.* at 119 Table 7.
21. *Id.* at 131 Chart 13.
22. *Id.* at 131 Chart 14.
23. *Id.* at 155 Table 8.

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