

Expert Report of Michele Levy



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Report of Michele Levy July 16, 2012

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Background

I am the Managing Attorney at the Homeless Advocacy Project (HAP), a Philadelphia-based nonprofit 501(c)(3) organization that provides free civil legal services to individuals and families residing in Philadelphia and who are experiencing or imminently at risk of homelessness. I have been with HAP since December 1999, when I was hired as a staff attorney. Since joining HAP's staff, I have continued to provide direct legal representation to homeless individuals and families and to supervise volunteer attorneys, paralegals and law students as they provide *pro bono* representation to HAP clients. I became Managing Attorney in July 2003, when my responsibilities expanded to include supervising the HAP legal staff with regard to their representation of clients and their supervision of *pro bono* legal professionals. As Managing Attorney, I also coordinate HAP's broader advocacy on systemic issues that impact the homeless population in Philadelphia.

Before coming to HAP, I practiced from 1991 to 1999 with a small firm in Delaware County focusing primarily on civil rights litigation and criminal defense. I also spent 4 years as a staff attorney with Neighborhood Legal Services Program, a free legal services program in Washington, DC, where I represented indigent individuals in a wide range of civil legal matters. I graduated from Temple University School of Law in 1986.

The Homeless Advocacy Project

HAP utilizes an outreach intake model; we engage our client population where they eat, sleep and spend their time. HAP currently holds over 125 regularly scheduled clinics per year at over twenty-five homeless shelters, soup kitchens, overnight cafes and transitional housing facilities located throughout the city. At these clinics, HAP staff attorneys, together with volunteer legal professionals working under their supervision, meet and interview prospective clients, assess their legal and social service needs and offer them advice, information, referrals and on-going legal representation or advocacy. HAP serves approximately 2,500 homeless individuals and families each year.

HAP provides comprehensive legal assistance in a broad range of legal areas including: establishing eligibility for benefits programs such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), medical assistance and food stamps (SNAP); establishing eligibility for Veterans Compensation and Pension

"...helping to break the cycle of poverty and homelessness."

benefits and services; custody, child support and other family law matters; accessing shelter, behavioral health services, and other supportive services; replacing lost or stolen identity documents; landlord/tenant and other housing issues; and consumer matters. Since HAP's founding in 1990, HAP's staff, volunteer attorneys, paralegals and law students have provided free legal assistance worth over \$39 million to over 28,800 homeless families and individuals.

Experience with Birth Certificates

Since joining HAP's staff, I have personally requested in well in excess of 55 birth records on behalf of my own clients. I also directly supervised *pro bono* counsel who requested well over 175 birth certificates for clients they met at HAP's legal clinics.¹

As HAP's Managing Attorney, moreover, I am responsible for reviewing every case closed in our office which includes all birth certificate matters handled by HAP staff as well as all of our *pro bono* volunteers. The volume of HAP's birth certificate matters is significant.

1/1/09 - 12/31/09	534 birth certificate matters (333 adults of which 11 were veterans)
1/1/10 - 12/31/10	761 birth certificate matters (523 adults of which 5 were veterans)
1/1/11 - 12/31/11	762 birth certificate matters (586 adults of which 9 were veterans)

During the first half of 2012, HAP has already represented individuals in 400 birth certificate matters, 314 of these involved requesting birth certificates for adults, only 6 of who were veterans. This pace exceeds that of 2011 when HAP assisted 187 adults seeking their birth certificates in the same time period.

Clients seeking birth certificates attend HAP's regularly scheduled legal clinic where, if possible, they are paired with a volunteer who will assist them.² Over the years, however, as increased security measures made government issued identification documents more essential to access services and benefits, and as HAP's reputation for securing and paying for birth records spread, the numbers of individuals attending HAP's legal clinics grew significantly, becoming at times unmanageable. This increased demand adversely impacted HAP's ability to focus on more substantive legal matters at the legal clinics.

In an effort to divert individuals seeking birth records from HAP's regularly scheduled legal

¹HAP experienced a database systems failure in mid-2008 whereby all client case data for the period of 6/03 through 5/08 were deleted. While all open matters for that time period were re-entered, cases closed already during that period of time were not re-entered into the database. Consequently, the data available for that time period are significantly *under-reported* as they do not include all cases closed from 6/03 - 5/08.

²For a number of reasons, not all clients seeking birth records can be placed with a volunteer. Between 1/1/09 and 6/30/12, HAP's own staff directly represented, and HAP paid for, birth records for 145 individuals.

clinics, HAP began holding dedicated “Birth Certificate Clinics.” At these 2 hour events, individuals in need of birth certificates could meet with volunteer attorneys representing a discreet number of corporate legal departments and law firms who would apply and pay for birth certificates. The two most recent birth certificate clinics were held on November 18, 2011 where HAP opened 205 birth certificate matters (171 adults) and June 6, 2012 where 105 birth certificate matters were opened (81 adults). HAP quickly scheduled and held the June 6th clinic in response to the recently passed Pennsylvania Voter ID Law. Another birth certificate clinic is scheduled for September 12, 2012 for the same reason.

Along with representing clients seeking their Pennsylvania birth records, HAP provides representation for individuals who were born in states throughout the country. As a result of our most recent birth certificate clinic held on June 6th, birth records are being sought from New Jersey, New York, South Carolina, Florida, Ohio, Indiana, Virginia, Michigan, California, Puerto Rico, Delaware and Maryland. At the November 18th clinic, 64 of the 205 birth certificate cases opened were for out-of-state birth records.

While Legal Representation is Often Essential to Secure Birth Records for Homeless Individuals, Attorneys Continue to Experience Difficulties and Delay

A combination of two key factors, discussed more fully below, provided the impetus for HAP to begin requesting birth certificates on behalf of our clients: (1) Our homeless clients did not have government issued photo identification to request the records themselves; and (2) Our clients could not afford to pay for their birth certificates due to their indigence.

(1) Government issued photo identification is required to request a birth record. I am not aware of any state that will honor a birth certificate application that is not accompanied by the requisite photo ID. Because many of our clients do not have a photo ID, they cannot apply for the birth record on their own.

In Pennsylvania, there is an exception that would enable requests by individuals who do not have a government issued photo ID, though homeless individuals cannot satisfy it. In order to qualify for this exception, the requestor must provide two “acceptable documents:”

“Acceptable documents are a utility bill, car registration, pay stub, bank statement, copy of income tax return/W-2 form, or lease/rental agreement. If your mailing address is a P.O. Box, one of the documents submitted must reflect that you have used the P.O. Box for at least two months.”

In my experience, the majority of the clients HAP serves cannot provide any of the above documents, and only extremely rarely would a client be able to produce two of them.

An individual without the requisite ID may have another person serve as the birth certificate requestor/applicant. However, the category of people who qualify to apply for someone else’s birth record is limited. In Pennsylvania and many other states, qualified applicants include:

- Person named on the birth certificate, who is 18 years of age or older (if under 18, immediate family member must apply)
- **Legal representative** [*emphasis added*]
- Husband / wife

- Parent / step-parent
- Brother / sister / half-brother / half-sister
- Son / daughter / stepson / stepdaughter
- Grandparent / great grandparent (specify maternal or paternal)
- Grandchild / great grandchild
- Power of Attorney (for person named on birth certificate or immediate family member listed above)

In HAP's experience of working with homeless individuals, the men and women we represent are routinely isolated from family members who would qualify as acceptable applicants in PA. Therefore, the only way for them to secure a birth certificate is to have a legal representative act on their behalf. Fortunately, HAP staff and volunteer attorneys qualify to serve as the requestor/applicant. Our attorneys provide a copy of the following:

- Attorney's own PA Driver's License
- Attorney License
- HAP Release of Information authorizing Vital Records to release the birth certificate to the attorney

Although an attorney is an authorized requestor in Pennsylvania, there are nevertheless occasions when the government employee processing the application is mistaken as to the attorney's authority to request the birth record for his or her client. We have had experiences where the request is returned, indicating that the attorney is not a permissible requestor. Now that HAP has submitted thousands of requests in Pennsylvania, this is less frequent here and is more likely to occur in other states were no free attorneys routinely assist clients with birth records matters.

(2) The second reason HAP felt compelled to assist homeless individuals with their efforts to secure birth certificates is because our clients simply cannot afford the fee. I am aware of no state that provides for a fee waiver based upon an applicant's inability to pay for their birth record. In Pennsylvania, birth records cost \$10.00. There is a limited exception that waives the fee for veterans and their dependents. In other states, birth records are generally even more expensive. For example, HAP has recently obtained birth certificates from each of the following localities:

- Washington, DC \$23
- New Jersey \$25
- New York State \$30
- New York City \$15
- Georgia \$25
- South Carolina \$12
- North Carolina \$24
- Maryland \$24
- Delaware \$25
- California \$18

The most common source of income for a HAP client has traditionally been state General Assistance benefits of \$205 per month. With this income, the fee for a Pennsylvania birth

certificate amounted to 5% of a client's total monthly income. As of August 1, 2012, the state has terminated the General Assistance program for many of HAP's clients because they were receiving these benefits due to a permanent or temporary disability. Adults formerly on General Assistance will now have no income from which they could be expected to pay the fee for a birth certificate.

Because of our clients' indigence, our partner law firms and corporate legal departments have paid the cost for all of the birth certificates they requested for HAP clients whether from inside or outside of Pennsylvania. In those cases where HAP staff provides representation, HAP itself pays the fees. In addition to the cost of the birth record, the additional priority mailing fees, as discussed more fully below, generally result in an additional \$10.30 to the cost of each birth record.

An additional \$10.00 fee may be incurred when the Pennsylvania Vital Records office cannot locate a birth certificate. In those instances, the agency will issue a "No Record" state certificate. If the client attended school in Philadelphia, the attorney may then send that state certificate to the Philadelphia Student Record Center along with an application requesting Proof of Birth which costs \$10.00. Although not a frequent occurrence, it is rare for a case in this posture not to be pending at HAP.

Even with attorney representation, the birth certificate process may be lengthy and fraught with complications. In Pennsylvania, a birth certificate request submitted by regular mail can frequently take up to 16 weeks (per estimations of Pennsylvania's Vital Records office). HAP, therefore, encourages our volunteers to send their requests by priority mail and to enclose a second priority mail envelope for the birth certificates' return. Although this adds \$10.30 to the cost of the birth certificate, some of our volunteers utilizing priority mail were able to obtain the birth record in less than one week's time.

The priority mail process, however, is now taking longer. The same volunteers – from Exelon's Legal Department – who secured records in less than one week in the past now report that responses to birth record requests sent via priority mail are taking 3 weeks. New Jersey processes these priority mail requests even more slowly; there is an 8 to 10 week processing time even for a birth certificate requested by the use of Federal Express envelopes (one to send the request and a second enclosed for the agency to use when returning the birth certificate to the volunteer). When working with a transient individual, the longer the processing time, the less likely the attorney will be able to locate his or her client to deliver the birth certificate once it is received.

In addition to the processing times which routinely change without notice, Pennsylvania's Division of Vital Records arbitrarily changes its processing requirements without notice. For example, the agency has recently started returning some of our volunteers' birth certificate applications because they are not signed by the person for whom the birth certificate is being sought (the client). This was not required in the past. More importantly, the birth record application does not have a place for the subject's signature; there is only one signature line on the form and that is for the applicant (who in this case is the attorney). The agency's recent

demand for this additional signature is inconsistent with its prior practice and its forms, and has further delayed the processing time to obtain a birth certificate.

Pennsylvania is not the only state that arbitrarily changes its requirements. New Jersey, for example, recently began requiring that HAP's volunteers submit notarized statements signed by the clients along with the birth certificate application. The agency's website omits reference to this requirement. States also, without advance notice, frequently limit the number of times they will issue an individual's birth certificate. This is especially problematic for homeless individuals who frequently lose their personal belongings, including birth certificates and other important documents, as a result of their transience. Multiple birth record requests are often required for these individuals.

Although almost, if not all, states provide for legal representatives to request birth records for their clients, some states nevertheless demand that a government issued photo ID of the person named on the birth certificate accompany the application. This is so even though the attorney submits his/her own identification documents and may be requesting the birth certificate in the first instance because the client cannot secure a government issued photo ID without it.

For example, as recently as June 11, 2012, South Carolina's Division of Vital Records rejected an application I submitted on April 30th because I did not include my client's state photo ID. It took over 6 weeks for the agency to notify me that it would not process my request. My client has no such identification and cannot secure it without his birth certificate since he has been incarcerated for the past 28 years. I am still waiting to hear from the agency as to whether it will be satisfied with the copy of my client's prison photo ID card I subsequently sent since he does not possess, and cannot secure, any of the official documents identified by the agency until such time as the birth certificate is obtained.

In other jurisdictions, such as New York City, I would likely never receive an agency response at all. New York City's Vital Records office likewise requires the provision of the client's government issued photo ID along with that of the requestor. If the client does not possess the requisite ID, then the agency is to be contacted, via e-mail, for further instructions. Unfortunately, it is rare for the agency to respond to these e-mail inquiries. Multiple e-mails are typically required and it is not uncommon for our clients to move on before we receive an agency response.

Puerto Rico is another especially problematic jurisdiction in terms of responding to birth record requests and follow-up inquiries. On September 29, 2010, after Puerto Rico declared all previously issued birth certificates null and void, HAP held a birth certificate clinic for the sole purpose of helping individuals from Puerto Rico secure valid birth certificates. HAP and its partners, primarily Exelon's Legal Department, requested 133 birth certificate matters as a result of that clinic. Despite repeated phone calls (estimated to be in excess of 100) and Exelon's attempt to utilize contacts within the Puerto Rican government, 27 of those birth certificate applications remain outstanding to this date.

In addition to agency delay and, at times, arbitrary agency requirements, there are instances

where HAP's clients cannot recall the details of their birth or may never have known the specific information requested by the agency. Clients raised in foster care systems, for example, may not know their birth parents' names. Nor may they know their siblings names and dates of birth, which some states request. It is frequently time consuming and challenging to secure this information, if it can be secured at all. HAP's own attorneys and volunteers have difficulty under these circumstances; clients without representation would have virtually no chance of succeeding.

A client raised in the foster care system in South Carolina, for example, could provide his date of birth and the hospital, but he did not know his birth mother's name, having never met her. He tried for years to secure his birth certificate but failed. I was able to successfully assist him only because a contact at the Social Security Administration provided me with the client's mother's name based upon his Social Security number. While not frequent, we have certainly represented clients raised by individuals who were not their parents and they, too, could not provide their birth parents' names. Many of these individuals have never been successful in securing their birth records, even with attorney representation.

In addition to lack of necessary background information required to apply for a birth record, some clients have discrepancies between the information they do possess and data recorded with the vital records office. For instance, HAP has represented clients who go by their mother's maiden name although they were recorded under their father's last name. They frequently become aware of this discrepancy only when unsuccessful in seeking their birth certificate. For these clients in Pennsylvania, the administrative process to amend the birth record is demanding; the client must produce a document from a limited list that establishes the individual's use of his/her last name for at least 15 years. In other localities, agency amendment of the birth record may not even be an option.

When a birth certificate cannot be located and the administrative agency is not willing to issue a delayed birth record or to amend an existing birth record, a court action is the only available option.³ While Philadelphia's low-income residents are fortunate that legal services here – HAP, Philadelphia Legal Assistance, Community Legal Services, Volunteers for the Indigent Program – will devote some resources to resolving these issues, none of these programs can represent clients in birth certificate matters involving court action outside of Philadelphia. And many jurisdictions outside Philadelphia have no legal services or pro bono program which will handle these court matters.

I am currently assisting a woman who has been trying to obtain a record of her birth in Washington state for many years. She was born at home and her parents never filed a record of her birth with the state. (While we regularly come upon older individuals who were born at home, my client is only 24 years old.) Community Legal Services (CLS) began representing her in October 2009. When CLS was unable to make progress, it referred the client to me in July

³Most state vital records agencies are authorized to issue delayed or amended birth records under limited circumstances and if very specific documentation is provided in support of the request. Many of HAP's clients, however, would not have access to those limited documents.

2010.

In an effort to meet the state's requirements for the issuance of a delayed birth certificate, I secured and repeatedly submitted additional documentation of the client's birth in Seattle, WA, including immunization and health department records dating back to when the client was 14 months of age. Although convinced that I had provided more than enough documentation, the agency nevertheless, after disregarding my calls for 3 months, refused to issue a delayed birth certificate. Court action would be required.

I contacted every legal services program that served the Seattle area and none provided representation with birth record matters. Likewise, the bar association's *pro bono* panel indicated that birth record cases did not fall within its priorities. While exploring the websites of HAP's law firm partners, I discovered that DLA Piper, LLC, maintains an office in Seattle. Fortunately, for my client, an attorney at that office agreed to handle this matter on a *pro bono* basis. He is in the process of filing his court petition. More than 2 ½ years have passed since this young woman first secured legal representation to obtain her birth certificate and she still does not have it.

In sum, HAP has extensive experience with assisting clients obtain birth records, which have historically been a prerequisite to obtaining any other form of ID, including photo ID. In my capacity as a Staff Attorney and now Managing Attorney of HAP, I have experienced first-hand the variety of obstacles facing our clients as they attempt to obtain a birth certificate. As described above, the most common barriers include lack of ID or alternative documents; lack of relationships with family members who would be authorized to obtain an ID on the client's behalf; lack of income to obtain the document; changing state procedures and demands; atypical birth or living situations resulting in lack of birth information to corroborate the client's identity; and discrepancies between the client's name at birth and the name used. These cases take up a significant amount of HAP's resources, including volunteer time and staff attorney time. As Managing Attorney, I am responsible for supervising each of these individual cases as well as working on others directly.



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