

AGENDA ITEM

Board of Governors

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Proposed Recommendation to
Seek Legal Services
Contributions on State Bar's
Annual Fee Statement to
Implement AB 2301 –
Recommendation following public
comment

**Open / Action
Item III B.**

DATE: June 29, 2007

TO: Members, Board of Governors,
Board Committee on Stakeholder Relations

FROM: Hon. Douglas Miller, Chair, State Bar Task Force on Lawyer Support for
Legal Services (AB 2301) and Mary Lavery Flynn, Director, Legal Services
Outreach

**SUBJECT: Proposed Recommendation to Seek Legal Services Contributions on
State Bar's Annual Fee Statement to Implement AB 2301 –
Recommendation following public comment**

EXECUTIVE SUMMARY

The State Bar Task Force on Lawyer Support for Legal Services (AB 2301) is charged with making recommendations to the Board of Governors about implementation of AB 2301 (Assembly Judiciary Committee, Chapter 165, Statutes of 2006). That bill was intended to expand lawyer contributions to support free legal service for the poor through the State Bar fee statement.

This is a recommendation from the Task Force following public comment on implementing AB 2301. The comment was overwhelmingly favorable and only minor changes were made to the recommendation.

The proposed method is to add a request for voluntary contributions to the State Bar's annual Member Fee Statement, beginning with the Fee Statement for 2008. The request would be to contribute \$100.00 to a new Justice Gap Fund at the State Bar's Legal Services Trust Fund Program.

The Task Force proposes that the requested contribution be given prominent placement on the fee statement, listed directly beneath the subtotal showing the amount that members must pay in order to practice law. The voluntary contribution would be reflected in a second subtotal for members, clearly indicating what the subtotal would be for members wishing to add the \$100 contribution to the amount they must pay in order to practice law. There would also be an obvious way for State Bar members to contribute more or less than \$100, or not make any contribution at all.

The only change in the recommendation, following public comment, is to emphasize the importance of the analysis to be done two years after implementation.

For further information about this project, please contact Mary Lavery Flynn at (415) 538-2251 or at mary.flynn@calbar.ca.gov.

BACKGROUND

On October 8, 2006, the Board of Governors approved membership of the new Task Force on Lawyer Support for Legal Services to implement AB 2301. That bill was signed into law by the Governor on August 28, 2006, authorizing the State Bar to facilitate collection of voluntary contributions to legal services programs, and calling on the Bar to appoint a task force, in consultation with the Chief Justice and the Judiciary Committees of the Assembly and Senate, to study the issues and recommend implementation methods. The language of AB 2301 is Attachment A and the members of the Task Force are listed in Attachment B.

The State Bar Task Force on Lawyer Support for Legal Services is now seeking approval from the Board Committee on Stakeholder Relations and the Board of Governors for its recommendation for implementing AB2301, following public comment. The proposed method is to add a request for voluntary contributions to the State Bar's annual Member Fee Statement, beginning with the Fee Statement for 2008. The request would be to contribute \$100.00 to a newly-created Justice Gap Fund at the Bar's Legal Services Trust Fund Program. The ultimate goal is to increase lawyer support for civil legal services programs, and thereby to increase access to justice in California. The impetus for AB 2301, in part, was the fact that California lawyers' contributions to legal services programs are proportionately less than lawyers of other states. California has by far the largest low-income population of any state. Since 1980, California's population has increased 40 percent while the number of Californians in poverty has increased by 60 percent.

The Task Force proposes that the requested contribution be given prominent placement on the fee statement, listed directly beneath the subtotal showing the amount that members must pay in order to practice law. The voluntary contribution would be reflected in a second subtotal for members, clearly indicating what the subtotal would be for members wishing to add the \$100 contribution to the amount they must pay in order to practice law. State Bar members would also be given an obvious option of

contributing more or less than \$100, or not making any contribution at all. The statement should also include some information about the recipients of the fund as well as information about the tax-deductible nature of the contribution. Pursuant to AB 2301, the contribution request, if approved, will be included with the 2008 Member Fee Statement.

REPORT ON THE PUBLIC COMMENT PROCESS

Background on Public Comment Process: On March 9th, the State Bar Board of Governors approved a request from the Task Force on Lawyer Support for Legal Services to distribute their proposal for public comment. The Task Force proposed to implement AB 2301 by seeking a voluntary contribution on the State Bar's annual fee statement. The proposed contribution level would be \$100 for a new Justice Gap Fund that would be distributed to legal services organizations that are recipients of the Bar's legal Services Trust Fund Program, using the existing statutory distribution formula.

Summary of Comments Received: During the public comment period, which ended on May 31, 2007, we received a total of nineteen comments, including nine letters and ten e-mail messages. The responses were submitted by judges, commissioners, and individual attorneys from both the private sector and public interest sector, including representation from large firms, small firms, solo practitioners, legal services programs, and local bar associations. The chart of these comments is Attachment C.

All but one of the responses were supportive of the proposed recommendation for implementing AB 2301. Their comments reflected that it was a "great idea," the amount requested was reasonable, the voluntary nature of the donation was clear, and it had the potential to make a significant impact on California's struggling legal services programs.

Of those supportive responses, 27 percent urged serious re-evaluation of the distribution formula after two years. Several responses emphasized that such a re-evaluation would allow the Bar to take into account the amount of money raised for the new Fund, analyze all other available funding sources and determine how well justice gaps were being addressed in the state. With this additional information, the Bar could consider whether there should be any modification of the allocation of the Justice Gap Fund among legal services providers.

Twenty-two percent of the responders made suggestions and proposed changes such as emphasizing that the contribution was tax-deductible, allowing a contribution amount other than the suggested \$100, publishing the names of contributors to the Justice Gap Fund in the legal newspapers.

One negative response was submitted, from an attorney who felt that this was an important issue, but that it was a statewide problem and not just the responsibility of members of the State Bar.

PROPOSED MODIFICATION FOLLOWING PUBLIC COMMENT:

The only change in the recommendation, following public comment, is to emphasize the importance of the analysis to be done two years after implementation. At that time, the State Bar should particularly evaluate the question of the distribution of the funds as between existing recipients of the Legal Services Trust Fund Program, looking at the availability of other funding and analyzing the best use of these funds in helping increase access to justice in California and expanding legal services for all low-income Californians across the state. The planning for such an analysis would need to begin immediately so that the analysis can be done in an effective manner at the second year of implementation.

The Task Force will work with all segments of the legal profession to help raise the profile of this new opportunity, and hope that this effort is a successful endeavor, showing the strong support of the legal profession in California for the cause of fairness and equality before the law.

PERSONNEL/BUDGET IMPLICATIONS

The costs for this proposal are covered under current approved budgets.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None

RULE AMENDMENTS

Not applicable

STRATEGIC IMPACT

This proposal helps implement Goal 3, Equal Access to Justice, Strategy 3.2, Resources for Low/No Cost Legal Services Providers.

PROPOSED RESOLUTION FOR THE BOARD COMMITTEE ON STAKEHOLDER RELATIONS:

Should the Board Committee on Stakeholder Relations agree to approve the request from the Task Force on Lawyer Support for Legal Services, it would be appropriate to adopt the following resolution:

RESOLVED, that the Board Committee on Stakeholder Relations recommends to the Board of Governors that it approve the recommendation of the Task Force on Lawyer Support for Legal Services that the State Bar add a request for a \$100 voluntary contribution to a new Justice Gap Fund at the State Bar's Legal Services Trust Fund Program on the State Bar's annual Member Fee Statement, beginning with the Fee Statement for 2008, in order to implement AB 2301;

FURTHER RESOLVED, that the requested contribution should be given prominent placement on the fee statement; the voluntary contribution should be reflected in a second subtotal for members, clearly indicating what the subtotal would be for members wishing to add the \$100 contribution to the amount they

must pay in order to practice law; and that there should also be an obvious way for State Bar members to contribute more or less than \$100, or not make any contribution at all; the statement should also include information about the recipients of the fund as well as the tax-deductible nature of the contribution;

FURTHER RESOLVED, that the State Bar should conduct an analysis of the new Justice Gap Fund two years after implementation, as required by AB 2301; this analysis should particularly evaluate the question of the distribution of the funds, looking at the availability of other funding and analyzing the best use of these funds in helping increase access to justice in California and expanding legal services for all low-income Californians across the state; the planning for such an analysis would need to begin immediately so that the analysis can be done in an effective manner at the second year of implementation.

PROPOSED RESOLUTION FOR THE BOARD OF GOVERNORS:

Should the Board of Governors concur with the Board Committee on Stakeholder Relations, it would be appropriate to adopt the following resolution:

RESOLVED, that the Board of Governors, upon recommendation from the Board Committee on Stakeholder Relations approves the recommendation of the Task Force on Lawyer Support for Legal Services that the State Bar add a request for a \$100 voluntary contribution to a new Justice Gap Fund at the State Bar's Legal Services Trust Fund Program on the State Bar's annual Member Fee Statement, beginning with the Fee Statement for 2008, in order to implement AB 2301;

FURTHER RESOLVED, that the requested contribution should be given prominent placement on the fee statement; the voluntary contribution should be reflected in a second subtotal for members, clearly indicating what the subtotal would be for members wishing to add the \$100 contribution to the amount they must pay in order to practice law; and that there should also be an obvious way for State Bar members to contribute more or less than \$100, or not make any contribution at all; the statement should also include information about the recipients of the fund as well as the tax-deductible nature of the contribution;

FURTHER RESOLVED, that the State Bar should conduct an analysis of the new Justice Gap Fund two years after implementation, as required by AB 2301; this analysis should particularly evaluate the question of the distribution of the funds, looking at the availability of other funding and analyzing the best use of these funds in helping increase access to justice in California and expanding legal services for all low-income Californians across the state; the planning for such an analysis would need to begin immediately so that the analysis can be done in an effective manner at the second year of implementation.