

# AGENDA ITEM

MARCH 113

**DATE:** February 28, 2013

**TO:** Members, Board Committee on Operations  
Members, Board of Trustees

**FROM:** Patrick M. Kelly, President  
Joseph Dunn, Executive Director/CEO

**SUBJECT:** Proposed Legislation on Legal Services Funding

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## EXECUTIVE SUMMARY

This agenda item seeks approval to sponsor legislation that would provide funding for legal assistance to vulnerable Californians through a surcharge on attorney's dues, collected through the State Bar's membership fee statement. This proposal was developed after careful study of the need for additional legal aid resources, and after careful review of all possible revenue sources.

As Board members are well aware, there is a dire need for legal services funding at a time of diminishing resources and increasing need. Because the Legal Services Trust Fund Program faces a possible 40% reduction in IOLTA grants for 2014-2015, immediate action is required to avoid those reductions. Funding received from attorneys through their annual fee statement would supplement the Justice Gap Fund, which has resulted in only 4% attorney participation, as well as the new annual State Bar contribution to legal services programs recently approved by the Board at its October, 2012 meeting.

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

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## BACKGROUND

**The need for legal services has increased as revenue for legal aid programs has diminished.** As Board members are well aware, there is a tremendous need for legal assistance for California's low-income families facing major life situations -- to avoid homelessness or prevent domestic violence; to keep children in school; to make sure that otherwise vulnerable Californians are better able to keep a roof over their heads, food on the table, and their families together.

These critical legal needs increase during a recession, when more families face loss of wages and benefits, and must deal with bankruptcies and foreclosure, as well as increased domestic violence. At the same time, the legal aid programs that help them are facing a crisis of their own. Revenue from IOLTA dropped over 75% in the last six years, and other sources of legal aid funding such as government grants and contracts, foundation funding and private giving, have all been negatively affected by the economic downturn.

Legal aid programs have been forced to close offices and lay-off staff due to these major losses of funding. In the Bay Area alone, there was a 22% reduction of staff in legal services programs between 2009 and 2011, and there have been significant funding reductions since that time which, in turn, led to more layoffs. On a national basis, during last year alone, there was an 8% loss of legal aid advocates across the country.

These staff reductions have a direct impact on the level of legal services that can be provided to the eligible low-income population. Even as far back as 2005, when legal aid funding was at a much higher level than it is now, a study by the Legal Services Corporation indicated that over 50% of all those who seek help from a legal aid office must be turned away due to lack of resources.

“Assuming that state and private funding increases were to keep pace, it will take at least a five-fold funding increase to meet the documented need for legal assistance, and a doubling of LSC’s current funding of the basic field grant just to serve those currently requesting help.”

[Documenting the Justice Gap in America—The Current Unmet Civil Legal Needs of Low-Income Americans (2005)]

A recent Stanford University study of seven bay area counties found a great disparity in resources among the counties. There are over 3,000 families in poverty per legal aid advocate in San Francisco, but over 14,000 indigent families in Contra Costa per legal aid advocate. Because of the recession, legal aid advocates report that five to ten times more clients began showing up at clinics. One hotline reported that their wait time increased from 7 minutes to 45 minutes. And low-income persons seeking help with visa applications can wait a year and a half for assistance at free legal aid programs.

Because the cutbacks in legal aid services have tremendous human costs for low income people, the State Bar’s Legal Services Trust Fund Program and the Campaign for Justice have stepped up efforts to encourage financial institutions to voluntarily increase their IOLTA rates and otherwise to sustain and encourage other sources of funding. Unfortunately, these efforts have not been enough to bridge an ever widening “Justice Gap.”

**Legal Aid Funding through the State Bar.** For nearly thirty years, the State Bar has provided funding for legal services programs providing free legal assistance to

low-income Californians through the Legal Services Trust Fund program. The funding distributed by the Trust Fund program includes:

- **The IOLTA Program (Interest on Lawyers Trust Accounts)**, established by legislation in 1980; this funding is granted to legal aid programs that are eligible under the IOLTA statute, and distributed according to a statutory formula. Note that, over the last three years, the IOLTA funding was supplemented with two additional funding sources:
  - The Temporary Emergency Legal Services Voluntary Assistance Option (“TELS”) Fund, a check-off on the dues statement of \$10 for 2011 and \$20 for 2012 and 2013; and
  - A diversion of \$2 million per year for 2012 and 2013 from the Bar’s fund balance, pursuant to SB 163.
- **The Equal Access Fund**, a state appropriation established in 1999, supplemented by a filing fee surcharge that began in 2006; the State Bar distributes this funding under contract with the California Judicial Council, and
- **The Justice Gap Fund**, established by the State Bar Board in 2008, pursuant to legislation, requests a \$100 contribution from lawyers to support free legal service for the poor through the State Bar fee statement. The Justice Gap Fund authorizing legislation called for study every five years, after its initial implementation, and this recommendation is part of the five-year study required by that legislation.

For the coming fiscal year, 2013-2014, the IOLTA program faces its sixth year of substantially reduced revenue, due to the economy and historically low interest rates. In a separate agenda item, the Legal Services Trust Fund Commission is recommending that the Board approve distribution for 2013-2014 that reflects a 10% reduction from the current year’s distribution. This distribution includes all public funding available to legal services programs other than the Equal Access Fund, which is distributed later in the year. (See agenda item MARCH 54-161) In addition, the Commission estimates that it may be necessary to reduce IOLTA grants by 40% for 2014-2015 unless other funding sources are developed.

**Cushioning the Impact of IOLTA Funding Losses.** Over the past six years, the Trust Fund Program has been able to maintain relatively level funding for legal services, despite the huge swings in revenue. Revenue from IOLTA dropped over 75% since 2007-2008 while grants were reduced by 31%.

Reserves developed in the higher-revenue years enabled the Trust Fund Commission to avoid significant reductions for the first few years of the recession. When those reserves began to run out in 2010, the State Bar directly subsidized the grants with the use of a one-time fund balance of non-dues revenue, pursuant to legislative authority. This subsidy consisted of two parts, described above – the Temporary Emergency Legal Services Voluntary Assistance Option (“TELS”), and the diversion of \$2 million

per year from the Bar's fund balance for 2012 and 2013. Both of these funding components sunset this year and cannot be extended because they were underwritten by a one-time fund balance. As noted above, the Trust Fund Commission projects a reduction of 40% next year unless additional revenues can be developed.

## **ISSUE**

Should the State Bar Board of Trustees sponsor legislation to increase funding for legal services through an annual surcharge that will be added to and collected on the membership fee statement?

## **CONCLUSION**

The proposed surcharge on lawyers' membership fees, as recommended below, is an appropriate part of the solution to the legal services funding crisis.

## **DISCUSSION**

As described above, there is a tremendous ongoing need for funding legal services to the poor. Repeated studies show that we are meeting only a small percentage of the need. The highest estimate in recent years is that we are meeting approximately one-third of the legal need of low-income Californians, but that need is only being met in part and most clients are not able to get full representation for their critical legal issues.

[Citation: Action Plan for Justice, California Commission on Access to Justice, 2007]

While lawyers should not be made to shoulder the entire burden of providing access to justice and ensuring some level of legal assistance for California's vulnerable population, it is important that the legal community provide leadership. Their contributions are an important part in this public/private partnership. The importance of lawyer support for legal services is reflected in B&P Code Section 6073:

"In some circumstances, it may not be feasible for a lawyer to directly provide pro bono services. In those circumstances, a lawyer may instead fulfill his or her individual pro bono ethical commitment, in part, by providing financial support to organizations providing free legal services to persons of limited means....In view of their expertise in areas that critically affect the lives and well-being of members of the public, lawyers are uniquely situated to provide invaluable assistance in order to benefit those who might otherwise be unable to assert or protect their interests, and to support those legal organizations that advance these goals."

Lawyers in several other states contribute to legal services, due to an assessment ordered by the legislature or their Supreme Court. These states include Illinois, Minnesota, Missouri, Pennsylvania, Texas, and Wisconsin, with assessments ranging from \$20 to \$95 per attorney. Several other states include an assessment for legal services as part of attorneys' dues, on an opt out basis; these include Arizona, Hawaii, Massachusetts, South Carolina, South Dakota, Washington State, and Texas, with requests ranging from \$30 to \$150. Fifteen other states, like California, have an "opt in" request on their dues statement.

California's voluntary dues contribution since 2007 – the Justice Gap Fund request for \$100 – has been relatively unsuccessful, despite terrific efforts from our volunteers -- only approximately 4% of lawyers contribute.

Support for this proposal would be in line with the Board's recent resolution supporting funding for legal services as a result of the bar's improved long-term financial condition following the purchase of the building in Los Angeles.

**FISCAL / PERSONNEL IMPACT:**

The costs for implementing this proposal will be covered by the revenue generated.

**RULE AMENDMENTS:**

None

**BOARD BOOK IMPACT:**

None

**RECOMMENDATION**

This agenda item recommends approval of sponsorship for legislation that would provide funding for legal assistance to vulnerable Californians through the annual State Bar fee statement.

**PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Board Committee on Operations agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Operations recommends that the Board approve sponsorship of the proposed legislation to fund legal aid through a surcharge to be added to the annual membership fee statement; and it is

**FURTHER RESOLVED**, that the Board Committee on Operations recommends that the Board authorize staff to develop a proposal for implementing this resolution, including the structure and the amount of the surcharge, subject to the approval of the Board.

**PROPOSED BOARD OF TRUSTEES RESOLUTION:**

Should the Board concur with the recommendation of the Board Committee on Operations, the following resolution would be in order:

**RESOLVED**, that upon the recommendation of the Board Committee on Operations, the Board hereby approves sponsorship of the proposed legislation to fund legal aid through a surcharge to be added to the annual membership fee statement; and it is

**FURTHER RESOLVED**, that the Board authorizes staff to develop a proposal for implementing this resolution, including the structure and the amount of the surcharge, subject to the approval of the Board.