

AGENDA ITEM

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DATE: November 13, 2013

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

FROM: Luis Rodriguez, President, State Bar of California

SUBJECT: Task Force on Civil Justice Strategies: Authorize Creation of
Special Committee to Study Creative Solutions to Achieve
True Civil Justice in California

EXECUTIVE SUMMARY

This agenda item seeks the board's authorization to create a special task force ("Task Force on Civil Justice Strategies") to analyze the reasons for the existing "justice gap", to evaluate the role of the legal profession in addressing the crisis, to seek the input of groups who have been working to expand access to justice to understand what efforts have worked and which have not been successful, to study creative solutions being considered in other states and other countries, and to develop an action plan with recommendations for steps that should be taken to fill the justice gap and achieve true "access to justice" in California. It is further recommended that the proposed committee be chaired by Luis Rodriguez, President, State Bar of California.

BACKGROUND

"No principle is more essential to a well-functioning democratic society than equal access to justice. True access to justice ensures the long-term preservation of our core constitutional and common law values and fosters respect for the rule of law by all segments of society. Yet universal access remains an alluring and elusive goal rather than contemporary reality. While the law increasingly permeates every aspect of our lives, not all members of society yet enjoy full access to the institutions in which the law is administered, interpreted, applied and enforced." [Executive Summary, *Action Plan for Justice*, California Commission on Access to Justice, 2007]

California's poverty rate is one of the highest in the country, at 17%, and another 27% of Californians — 10 million people — live at or below twice the poverty level. Every year, legal aid organizations turn away thousands of low-income people above the poverty line, as well as thousands below the poverty line because of subject matter restrictions

or the lack of resources. These individuals need lawyers but have nowhere to go for help.

The State Bar has long been involved with efforts to expand access to the legal system for millions of low and moderate-income Californians who need legal assistance. For example, for over thirty-five years, the Bar has actively pursued improved access to justice through the work of its Office of Legal Services and its Center on Access to Justice:

- To help attorneys fulfill their professional obligation to provide pro bono assistance, the Office of Legal Services has worked with local bar associations, legal service organizations and other groups to develop pro bono programs and train lawyers to provide free and low-cost legal services to people who cannot afford to pay for counsel.
- The State Bar waives active membership fees for members of the Emeritus Attorney pro bono program to encourage retired attorneys to use their expertise to provide legal services to low income Californians.
- The bar also certifies Lawyer Referral Services throughout the state, establishing standards for organizations offering members of the public a choice of attorneys to represent them.
- Support is also provided to the State Bar Standing Committee on the Delivery of Legal Services (SCDLS) to identify, develop and support improvements in the delivery of legal services to the poor and middle-income individuals.

The State Bar has also worked hard to expand funding for legal services:

- The Bar's Legal Services Trust Fund program, established by legislation in 1980, provides funding for civil legal services for indigent Californians. The program is funded, in part, by interest-bearing demand trust accounts held by attorneys for their clients. The Legal Services Trust Fund Program also distributes the Equal Access Fund, a \$10 million annual state fund for improving the fair administration of justice for low income Californians, and private contributions.
- Recently, the State Bar Board has approved key initiatives designed to increase funding for legal services, including the \$30 opt-out on the fee statements beginning in 2014, the tax intercept program, contributions from fund balances of over \$10 million in the past few years, and annual contributions from the State Bar approved last fall.

In 1996, the Board established the California Commission on Access to Justice, and invited appointments by the Governor, the Attorney General, the Chief Justice, the legislature, and other civic institutions. The Access Commission has pursued a multi-

faceted approach since that time, working to expand access to our judicial system in a number of ways:

- The Commission helped establish the Equal Justice Fund in 1999, which has raised over \$170 million for legal services programs;
- Language access has been a focus of the Commission, focusing attention on the need for interpreters in civil cases, and the Judicial Council is now pursuing development of a new statewide language access plan;
- The Commission helped expand the availability of limited scope legal assistance, which is an invaluable tool for expanding access for moderate income Californians; and
- The Commission has helped expand court-based Self-Help Centers throughout the state. These centers serve over 500,000 people a year, providing information on how to proceed with family law, consumer, guardianship, and other critical legal issues.

While the Access Commission has made great strides in each of these areas, and has focused attention on the disturbing lack of access, much more remains to be done. According to the Commission's 2007 *Action Plan for Justice*, only thirty-percent of the legal needs of low-income Californians is being met, and even those needs are only being met in part, because of the lack of resources.

The concept for this new Civil Justice Strategies Task Force is to analyze all of these efforts that have been so important, study the justice gap that continues despite these efforts, and develop an action plan with recommendations for next steps. The timing for this effort is appropriate, given the current Access 3D initiative of the Chief Justice, and the proposed implementation of a 50-hour pro bono requirement by the Bar's Admissions Implementation Task Force.

DISCUSSION

Authorization of any Ad Hoc Committee must be based upon a written charge setting forth the tasks to be carried out, and must not include any task that is expressly delegated by the Board Book to any standing committee or to the Board as a whole. Board Book at Tab 9, Article 1, Section 3 (b) (2). The proposed charge of this special committee is as follows:

CHARGE OF THE TASK FORCE ON CIVIL JUSTICE STRATEGIES

To analyze the reasons for the existing "justice gap", to evaluate the role of the legal profession in addressing the crisis, to seek the input of groups that have been working to expand access to justice to understand what efforts have worked and which have not been successful, to study creative solutions being considered in other states and other

countries, and to develop an action plan with recommendations for steps that should be taken to fill the justice gap and achieve true “access to justice” in California. This study and action plan should include an evaluation of law reform methods and systemic strategies that might help address the justice gap.

Development of the action plan should include a series of public meetings and circulation of the draft action plan for public comment to obtain input from key stakeholders, including those who have long struggled to address the justice gap, as well as others who may be able to suggest creative solutions. Outreach should include the California Commission on Access to Justice, the Judicial Council of California and its Access and Fairness Advisory Committee as well as the Self-Represented Litigant Task Force, the State Bar’s Standing Committee on Delivery of Legal Services, the Legal Services Trust Fund Commission, the Legal Aid Association of California, the Senate and Assembly Judiciary Committees, and others.

In order to ensure that the Task Force has the benefit of innovative ideas for addressing the justice gap, the Task Force should study initiatives being considered in other states and other countries, moving beyond a study of the traditional methods for solving the justice gap. Although significant gains have been made in the past three decades, the continuing unmet need emphasizes the enormity of the challenge and the necessity of considering creative solutions.

The Board has not previously delegated this task to another standing committee or to the Board, and the Task Force on Civil Justice Strategies Force will report back to the Board of Trustees.

FISCAL / PERSONNEL IMPACT:

At the direction of the Board, the Task Force on Civil Justice Strategies would be staffed from the Executive Offices. Staff time and meeting costs will result in some fiscal impact, the amount of which is unknown at this time.

RULE AMENDMENTS:

Unknown at this time.

BOARD BOOK IMPACT:

No Board Book impact is foreseen.

RECOMMENDATION

It is recommended that the Board of Trustees approve the creation of a special Task Force on Civil Justice Strategies and that the new Task Force be chaired by Luis Rodriguez, President, State Bar of California.

It is further recommended that President Rodriguez may appoint the Civil Justice Strategies Task Force members, composed of no more than 20 members.

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 that it approve the creation of a “Task Force on Civil Justice Strategies”; and it is

FURTHER RESOLVED, that the Board Committee on Operations recommends to the Board that it approve Luis Rodriguez, President, State Bar of California, as the chair of the Task Force on Civil Justice Strategies; and it is

FURTHER RESOLVED, that the Board Committee on Operations recommends to the Board that President Rodriguez should appoint the members of the Task Force on Civil Justice Strategies, composed of no more than 20 members.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Board Committee on Operations’s recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Board Committee on Operations, the Board hereby approves the creation of a “Task Force on Civil Justice Strategies”; and it is

FURTHER RESOLVED, that the Task Force on Civil Justice Strategies shall be chaired by Luis Rodriguez, President, State Bar of California; and it is

FURTHER RESOLVED, that President Rodriguez may appoint the members of the Task Force on Civil Justice Strategies, composed of no more than 20 members.