

AGENDA ITEM

IV-B MARCH 12, 2015

DATE: March 9, 2015
TO: Members, Stakeholders and Access to Justice Committee
FROM: David Pasternak, Chair, Stakeholders and Access to Justice Committee
Kelli Evans, Senior Director, Administration of Justice, Office of Legal Services
SUBJECT: Legal Services Funding

Background

California suffers from a staggering “justice gap” between the legal services available for low and moderate income residents and the legal services they need to address life’s most basic necessities, such as food, shelter, family safety and stability, health care, education, and subsistence income. Unfortunately, the need for affordable legal services for low and middle income Californians has always far outstripped its availability.

The State Bar and the Legislature have been strong partners in working to ensure that the basic legal needs of poor Californians are addressed, starting with the creation of the Interest on Lawyers Trust Accounts (IOLTA) program in 1981. For many years, the main source of funding for legal aid was IOLTA revenues. But, beginning in 2007 with the economic downturn, IOLTA declined sharply (from over \$20 million/year to just under \$5 million/ year in California). IOLTA is now only a fraction of the funding support for legal aid in California because interest rates remain at historic lows.

In 1999, the Legislature and State Bar worked together to create the Equal Access Fund which provides \$10 million in General Fund support for legal services, augmented by a small percentage of first-paper filing fees (\$5 of the \$435 unlimited civil filing fee). The Equal Access Fund has been a critical source of support for legal services but, the base appropriation of \$10 million has not been increased since 1999. Adjusted for inflation, \$10 million in 1999 is the equivalent of approximately \$7 million today.¹

By way of comparison, the State of New York (which has approximately one half of the population of California) currently allocates \$70 million for civil legal aid. New York has

¹ The filing fee augmentation which began in 2005 and generally hovers around a total of \$5 million/year varies because of swings in the number of civil filings. The economic downturn has seen a decrease in the number of new cases filed, resulting in reduced filing fee revenue available for legal services.

substantially increased its investment in legal services over the past several years in recognition of the deep need and, according to Chief Judge Jonathan Lippman, because, “[i]t’s good for the bottom line of our state for its financial well-being and health.”² According to studies done in New York, every dollar of funding for civil legal services returns more than six dollars to the State.³ These returns take various forms including savings in costs that otherwise would be incurred assisting survivors of domestic violence; savings in averted shelter costs; and receipt of federal benefits.⁴

In addition to IOLTA and the Equal Access Act, the Legislature has authorized the State Bar to use its annual member dues bill to collect voluntary contributions from lawyers to support legal aid. For 2014, the State Bar collected over \$4.8 million in contributions for legal services assistance (from a voluntary \$30 opt-out) and an additional \$941,000 (from a suggested donation of \$100 and a few cy pres designations) for the Justice Gap Fund. So far for 2015, the State Bar has collected over \$5.6 million for legal services assistance (from what is now an increased voluntary \$40 opt-out) and \$798,457 for the Justice Gap Fund.

Last year (2014) was the first year that the State Bar participated in the State’s Interagency Intercept Collection Program. This program allows the State to intercept refunds when individuals have delinquent debts owed to government agencies. Types of intercepted payments include tax returns, lottery winnings, and unclaimed property disbursements. The State Bar is using the program to collect delinquent fines and costs from attorneys who have been disciplined. The Board of Trustees agreed to use revenue collected through this program to support legal services. The State Bar received \$178,289 in intercept funds last year.

Notwithstanding the creativity and hard work of many individuals in working to expand the sources of financial support for legal services, the needs continue to far outstrip current revenue sources. In addition to identifying non-revenue ways of expanding legal services to low and moderate income Californians, there is a continuing and pressing need for additional, and importantly stable, sustainable funding for legal services.

Potential Funding Ideas

At its recent Annual Planning Meeting, a small group of trustees met to discuss potential legal services funding ideas. Before pursuing any of the ideas, it would be necessary to confer with relevant stakeholders in the bench, bar, and community. Below are brief descriptions of the alternatives discussed:

² Addressing the State Bar of California Civil Justice Strategies Task Force, May 28, 2014.

³ Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York at 23-29 (2011).

⁴ Id.

Statutory Amendment of Cy Pres Rules.

Cy pres awards are designated by courts when there are residual funds in class action lawsuits and other proceedings that cannot be distributed to the class members or beneficiaries for a variety of reasons. Courts solve this problem by making cy pres awards to appropriate nonprofit charitable organizations.

Across the country, 17 states have amended their cy pres rules to authorize or require that some portion of class action residuals be used to fund access to civil legal aid. Some states designate a particular amount (e.g., Montana requires that where the claims process has been exhausted and residuals remain, not less than 50% of the residuals will be disbursed to legal aid organizations). Just last week, Oregon's governor signed a bill that will direct 50% of unclaimed or unpaid damages in class action proceedings to the Oregon State Bar to fund legal services programs (Oregon did not have a cy pres rule previously—unclaimed funds were returned to the defendant).

In California, Code of Civil Procedure §384 authorizes the distribution of unpaid residuals from class actions to legal aid organizations to further the purposes of the underlying causes of the action. The statute could be changed to *require* a distribution of unclaimed residuals to legal aid organizations.

Unclaimed Property.

According to the State Controller's Office, California currently possesses more than \$7.1 billion in unclaimed property belonging to nearly 30 million individuals and organizations. After a period of reasonable efforts to locate the rightful owner, the state is free to use or sell the property.

Oregon has amended its unclaimed property laws to require that unclaimed funds held in lawyer trust accounts be used to fund legal services for the poor. Currently, in California, such funds are treated like other types of unclaimed or abandoned property and simply escheat to the state. Maryland uses a different approach—it designates a specific amount from the state's escheat fund to go to the Maryland Legal Services Corporation each year (the amount recently was increased). Either of these approaches could be pursued in California.

State and Federal Employee Charitable Campaigns.

State and federal employees may contribute to charitable organizations through payroll deductions. Thousands of employees contribute millions of dollars each year (nearly \$7 million from California state employees last year) to participating organizations. Many individual legal aid organizations participate in the campaigns. If we were able to obtain independent non-profit status for the Campaign for Justice, we could apply for it to be included among the charities participating in the state and/or federal campaigns. We would not want to do so, however, if it would mean that we would be competing with legal aid organizations that participate in these campaigns, and in effect merely cannibalize their funding instead of increasing legal services funding.

Legal Aid Interagency Roundtable.

At the federal level, the Department of Justice has created a Legal Aid Interagency Roundtable (LAIR) to coordinate and “unlock” federal funding sources for legal aid by identifying federal funding streams that could achieve improved outcomes by working with civil legal aid partners, and eliminating unintended barriers that may prevent legal aid providers from receiving federal grants.

We may be able to replicate LAIR on the state level through coordinated efforts with our executive branch to help unlock state funding for civil legal aid by, for example, explicitly including language designating civil legal aid as acceptable grantees for state funding streams.

Fees from Redevelopment Commercial Real Estate Transfers.

A coalition is exploring legislation that would require a portion of recording fees on commercial real estate transfers to be used to support community redevelopment. It may be possible to designate a portion of any such fee (or to add a small additional amount to each fee) for legal services. Trustees recognized that it likely would be outside of the State Bar’s scope to weigh in on real estate transfer legislation and that such legislation might be a longshot since it would require a 2/3 vote by the Legislature to pass. However, because there is the potential for substantial revenue creation should such legislation ever pass, trustees recommended exploring the interest of the Access Commission and the Legal Aid Association of California (LAAC) to be involved in early conversations with the coalition that is working on these issues.

Legal Notice Publication.

Each year across the country, including in California, state and local governments and others spend millions of dollars to publish public and legal notices in printed newspapers. Those published notices are the result of 19th Century legislation. With the advent of digital media and the internet, this system is an anachronistic, costly and inefficient way for providing the public with notice. Efforts have been made to update the law, including a 2012 bill to allow government agencies to comply with notice requirements by publishing notices on a searchable website operated by the State Bar with revenues used to support legal services. However, the press association’s lobbying efforts have defeated any attempt to move away from the current paper system because of the significant revenue it generates.

The Legal Aid Society of Orange County (LASOC) has created a newspaper called, “The Notice,” which has been adjudicated to accept legal notices in Orange County and Los Angeles County and in a few cities in each county. LASOC’s goal is for The Notice to generate enough ad revenue that it becomes a funding resource for the legal services community. This strategy is in a nascent stage but, The Notice currently is accepting legal notices and is working to expand the number of notices it receives.

The State Bar could consider revisiting the legislation from 2012 or other strategies to examine how effective and costly the current legal notice system is and whether there might be better alternatives that could also help to support legal services.