

AGENDA ITEM

161 May 8 2015

DATE: April 14, 2015

TO: Members, Stakeholders and Access to Justice Committee
Members, Board of Trustees

FROM: David Pasternak, Trustee
Kelli Evans, Senior Director, Office of Legal Services

SUBJECT: Resolution in Support of Increased Funding for Legal Services

EXECUTIVE SUMMARY

Legislative leaders, the California Commission on Access to Justice, the Legal Aid Association of California (LAAC) and others are urging the Governor to increase funding for nonprofit legal services organizations that provide legal assistance to low income and other vulnerable Californians.

In light of the immense “justice gap” in California and the State Bar’s strong commitment to helping to ensure that the basic legal needs of poor Californians are addressed, this agenda item proposes that the State Bar Board of Trustees pass a resolution supporting increased funding for legal services.

BACKGROUND

Senator Bob Wieckowski and Assemblymember Mark Stone and other legislators are urging Governor Brown to improve equal access and the fair administration of justice by increasing allocations to the Equal Access Fund by \$15 million in this year’s revised budget. *See attached March 24, 2015, Letter from Wieckowski and Stone to Governor Brown.*

The California Commission on Access to Justice also is asking the Governor and legislative leaders to increase support for legal services, noting that California’s funding for legal services has not kept pace with inflation or increased needs and is significantly below the investment in legal services made by other states. *See attached April 2, 2015, Letter from Access Commission to Governor Brown and Budget Committee Chairs.*

The Legal Aid Association of California (LAAC) has joined the Access Commission, legislators, and others in supporting of the proposal to increase the Equal Access Fund by \$15 million in the revised budget. *See attached April 10, 2015, Letter from LAAC to Governor Brown and Budget Committee Chairs.*

DISCUSSION

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 in the 16 years 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 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

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.

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.

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.

FISCAL / PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK IMPACT

None

RECOMMENDATION

This agenda item recommends that the Stakeholders and Access to Justice Committee and the State Bar Board of Trustees adopt a resolution supporting increased funding for legal services.

PROPOSED BOARD COMMITTEE RECOMMENDATION

Should the Stakeholders and Access to Justice Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Stakeholders and Access to Justice Committee recommends that the Board of Trustees adopt the following Resolution In Support of Increased Funding for Legal Services:

WHEREAS, equal justice and the fair administration of justice are cornerstones of our democracy, core functions of our government, and fundamental components of the State Bar's mission of public protection;

WHEREAS, California suffers from an enormous justice gap between the legal services available for low and moderate income residents and the legal services needed to address life's most basic necessities such as food, shelter, family safety and stability, health care, education, and subsistence income;

WHEREAS, there are more than 7 million Californians living below 125% of the poverty level and only one legal aid lawyer for every 6,867 low-income Californian who qualifies for legal aid (and even fewer in the rural parts of California);

WHEREAS, legal services funding historically has been insufficient to meet this substantial need and decreased further during the recent economic crisis while the legal problems faced by low income and other vulnerable Californians increased during this same period;

WHEREAS, between 2008 and 2014, revenue from one of the core sources of funding for legal aid, Interest on Lawyers' Trust Accounts (IOLTA), dropped over 80% due to declining interest rates—from over \$22 million to below \$5 million;

WHEREAS, in 1999, the Legislature, State Bar, and California Commission on Access to Justice 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 revenue from filing fees;

WHEREAS, the Equal Access Fund has been a critical source of support for legal services, however, the base appropriation of \$10 million has not been increased in the 16 years since 1999;

WHEREAS, New York, a State with approximately one half of the population of California, provides \$70 million annually for legal services funding;

WHEREAS, due to inadequate funding, legal services must turn away eligible clients who are left to navigate complex legal situations on their own—and risk losing their families, homes and livelihoods in the process;

WHEREAS, legal services provides access to legal help for people to protect their livelihoods, their health, and their families;

WHEREAS, legal services helps reduce—not increase—costs to taxpayers. Taxpayers save money from legal aid's success in reducing homelessness for children, veterans, seniors, people with disabilities and others, and the incidence of domestic violence;

WHEREAS, legal services helps to streamline the court system by fostering efficiency, reducing the number of unnecessary lawsuits, and cutting down on court costs;

WHEREAS, legal services helps ensure fairness for all in California's justice system, not just for those who can afford it; and

WHEREAS, the State Bar of California has long been committed to supporting legal services programs, including by providing crucial funding since 1981; linking legal aid to expanded partnerships that leverage services; recruiting new volunteers; and providing training;

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees of the State Bar of California supports increased stable funding for legal services through an

increased Equal Access Fund and otherwise to provide critically needed legal help to low-income and vulnerable residents of California.

ATTACHMENTS LIST

Att A. Letter from Senator Bob Wieckowski and Assemblymember Mark Stone to Governor Brown, March 24, 2015

Att B. Letter from California Commission on Access to Justice to Governor Brown and Budget Committee Chairs, April 2, 2015

Att C. Letter from Legal Aid Association of California to Governor Brown and Budget Committee Chairs, April 10, 2015