

AGENDA ITEM

163 MARCH 2017

DATE: February 28, 2017

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

FROM: Michael Colantuono, Trustee
Kelli Evans, Senior Director, Office of Legal Services

SUBJECT: Resolution in Support of Increased Funding for Legal Services

EXECUTIVE SUMMARY

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

In 2016, the State Bar joined the Latino Caucus and other legislative leaders, the California Commission on Access to Justice, the Legal Aid Association of California (LAAC), the California Chamber of Commerce, and hundreds of other individuals and organizations in urging the state to increase funding for nonprofit legal services organizations that provide legal assistance to low-income and other vulnerable Californians.

As a result of this advocacy, the legislature passed and the Governor approved a one-time \$5 million increase in the Equal Access Fund (EAF). This increase represented a 50% increase to the fund’s base appropriation of \$10 million and the first such increase since the inception of the fund in 1999. This was a terrific step in the right direction. California, however, continues to lag behind many other states when it comes to funding legal aid notwithstanding inflation, significant growth in California’s poverty population, or the dramatic and anticipated spike in need.

Based on California’s poverty population and new anticipated federal funding threats, it is more essential than ever that strong state financial support for legal aid continue to increase.

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, 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 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, before last year, the base appropriation of \$10 million had not been increased in since 1999.¹

By way of comparison, the State of New York (which has approximately one half of the population of California) currently allocates \$100 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 Fund, 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 2016, the State Bar collected nearly \$7 million in contributions for legal services organizations.

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

¹ The filing fee augmentation which began in 2005 and generally hovers around a total of \$4-5 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.

importantly stable, sustainable funding for legal services. This is especially true given anticipated or possible threats to multiple, critical federal funding sources for legal aid proposed by the new administration.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK IMPACT

None

BOARD GOALS & OBJECTIVES

Goal 5a: ***Support increased funding*** for Legal Services.

BOARD COMMITTEE RECOMMENDATIONS

The Stakeholders, Access to Justice, and Appointments Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, 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 8 million Californians living below 125% of the poverty level and only one legal aid lawyer for every 7500 low-income Californians who qualify 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 services, 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, with the exception of last year's one-time increase of \$5 million, the base appropriation of \$10 million has not been increased since 1999;

WHEREAS, New York, a State with approximately one half of the population of California, provides \$100 million annually for legal services funding;

WHEREAS, critical sources of federal funding for legal services including the Legal Services Corporation and other federal funding programs have been targeted by the new administration for reduction or elimination;

WHEREAS, due to inadequate funding, legal services programs 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 other vulnerable residents of California.