

## **STATE EQUAL JUSTICE ACT**

**[NOTE: This is a draft of a generic state statute implementing a comprehensive “right to equal justice” but not an automatic right to counsel. As drafted, it is comprehensive in several senses. *First*, it provides a full range of legal services in the civil arena – including legal advice, assistance with preparation of documents, and appropriate levels of representation before non-judicial as well as judicial forums. *Second*, it is comprehensive in the sense it covers any and all categories of noncriminal cases and legal problems that require some level of advice, assistance or representation. *Third*, it is comprehensive in using a full range of types and levels of law-related services to implement the right to equal justice as to different types of cases, forums, and clients – including self-help assistance, lay advocates, and limited legal representation as well as full legal representation. *Finally*, it is comprehensive in the sense it extends the right to equal justice not only to the poor but into the lower middle class.**

**It, of course, is possible to contemplate narrowing the statute and the right it implements as to any of the above dimensions. It also is possible to conceive alternatives to the policy choices reflected in other parts of the statute, such as the design of the system proposed for delivering the legal services provided and the mechanisms and procedures established for administering the right. In addition to the DRAFTING COMMITTEE’S COMMENTARIES at the end of each major section of the statute, there also are notes in boldface describing in general terms some of the alternative formulations that were considered and which some readers might find worthy of writing up as full-blown draft provisions. Inasmuch as this draft statute is very much a work in progress, such drafts are most welcome – along with any more general comments and suggestions. Please e-mail any drafts or other input to Clare Pastore at [cpastore@aclu-sc.org](mailto:cpastore@aclu-sc.org).**

### **100. LEGISLATIVE FINDINGS**

The Legislature finds and declares:

**101.** Access to justice is a fundamental right in a democratic society. It is essential to the enforcement of all other rights and responsibilities in any society governed by the rule of law. It also is essential to the public’s confidence in the legal system and its ability to reach just decisions. Recognizing its responsibilities in a democratic society, the State government assumes the duty to guarantee this right to all its citizens.

**102.** The adversary system of justice used in this State and elsewhere in the United States inevitably allocates to the parties the primary responsibility for

discovering the relevant evidence, finding the relevant legal principles and presenting them to a neutral judge or jury. Discharging these responsibilities generally requires the knowledge and skills of a legally-trained professional.

**103.** Because in many civil cases lawyers are as essential as judges and courts to the proper functioning of the justice system, the State government has just as great a responsibility to ensure adequate counsel is available to both parties in those cases as it does to supply judges, courthouses, and other forums for the hearing of those cases.

**104.** It is recognized that many of those living in this State cannot afford to pay for the services of lawyers when needed for them to enjoy fair and equal access to justice. In order for them to enjoy this essential right of participants in a democracy, and to protect their right to liberty and property, the State government accepts its responsibility to provide them with lawyers at public expense. Other residents cannot afford the full cost of needed lawyer services and the State government accepts its responsibility to provide a partial public subsidy so these people can exercise their right to fair and equal access to justice.

**105.** While in many cases decided in the State's adversary system of civil justice the parties cannot gain fair and equal access to justice unless they are advised and represented by lawyers, there are some forums in which it may be possible for most parties to have fair and equal access if they have the benefit of representation by qualified non-lawyer advocates and other forums where parties can represent themselves if they receive self-help assistance. In those cases where non-lawyer advocates or self-help assistance will be sufficient for that purpose, the State government has a responsibility to ensure such representation or assistance also is available to all, irrespective of their economic means.

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**106.** The State government has an interest in supplying publicly-funded legal representation and non-lawyer advocates or self-help advice and assistance, when the latter is sufficient, in a cost-effective manner by insuring the level and type of service provided is the lowest-cost type of service consistent with providing fair and equal access to justice. Several factors can affect the determination of when representation by an attorney is needed for fair and equal access to justice and when other forms of assistance will suffice. These factors include the complexity of the substantive law, the complexity of the forum's procedures and process, the individual's education, sophistication and English language ability, and the presence of counsel on the opposing side of the dispute. The State government recognizes the importance of establishing mechanisms and criteria that will ensure appropriate levels and types of publicly-funded advice and assistance are provided, including representation by lawyers when appropriate, to guarantee fair, equal and cost-effective access to justice to those unable to afford counsel.

**107.** If those advised, assisted or represented by publicly-funded lawyers are to have fair and equal access to justice those lawyers must be as independent,

ethical, and loyal to their clients as those serving clients who can afford to pay for counsel.

**108.** The services provided for in this Act shall be funded by the appropriations provided in this Act and are not intended to and shall not supplant existing legal services resources from any other source. The services provided for in this Act do not entitle any person to receive services from a particular legal services provider, nor do they override the local or national priorities of existing legal services programs. The services provided for in this Act are likewise not intended to undermine any existing pilot programs or other efforts to simplify court procedures or provide assistance to pro se litigants. Furthermore, nothing in this Act shall be construed to prohibit the provision of full legal representation or other appropriate services funded by another source in those cases or circumstances in which there is not an entitlement to the services funded under this Act.

**DRAFTING COMMITTEE’S COMMENTARY:**

*The findings and declarations in section 100 et. seq. express the legislature’s intent in enacting this remedial statute and are expected to guide the courts and the State Equal Justice Agency in their interpretation of the remaining provisions of the statute.*

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**200. DEFINITIONS. For purposes of this statute only, the following definitions apply:**

**201.** “Public legal services” includes full legal representation, limited legal representation, non-lawyer representation, legal advice, legal assistance, personal self-help assistance, computer-assisted and online self-help assistance as defined in sections 207.1-207.3 below.

**202.** “Full legal representation” is the performance by a licensed legal professional of all activities (such as investigation of facts, research of law, preparation of pleadings, negotiations, appearance at pre-trial, trial, and posttrial proceedings, preparation of appellate briefs and appearance at appellate oral arguments) that may be involved in representing a party in a court or other tribunal in which by law or uniform practice parties may not be represented by anyone other than licensed members of the legal profession.

**203.** “Limited legal representation” is the performance by a licensed legal professional of one or more but not all of the tasks involved in advocating a party’s position before a tribunal in which by law or tradition any representation other than self-representation must be provided by members of the bar. This limited legal representation must comply with established rules permitting the legal professional to so limit the legal representation provided, and shall be confined to cases and circumstances in which such limited representation is sufficient to afford the applicant fair and equal access to justice consistent with criteria set forth in section 302 below. Depending on circumstances, this form of assistance may or may not be coupled with selfhelp assistance as defined in section 207.

**204.** “Legal advice” is individualized advice provided by a licensed legal professional about the law and its implications for a person and that person’s conduct, transactions, and the like, but not involving the preparation of any documents or any contacts with other persons.

**205.** “Legal assistance” is assistance provided by a licensed legal professional in the preparation of legal documents such as contracts, wills, etc. in undisputed matters or in pre-litigation activities in disputed matters, such as preparing correspondence or otherwise contacting an adverse party.

**206.** “Non-lawyer representation” is representation by qualified non-lawyer advocates in tribunals in which representation by such advocates is permitted and in which, in the particular circumstances of the case, the State Equal Justice Authority or its delegated agent or designee considers such representation sufficient to afford the applicant fair and equal access to justice.

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**207.** “Self-help assistance” is assistance short of representation before a court or other forum which is provided to parties who are representing themselves in such forums. It may consist of one or more of the following forms of assistance:

**207.1** “Personal self-help assistance” is “one-on-one” guidance provided by lawyers or lawyer-trained and supervised non-lawyer staff to persons in the preparation of required court documents, familiarization with procedures and practices in the court or other tribunal, and other assistance short of appearing before the court or other tribunal as an advocate for that person.

**207.2** “Computer-assisted or online self-help assistance” is provided electronically to parties enabling unrepresented persons to fill out required court forms, and providing guidance in properly and effectively representing oneself in the court or other tribunal through specially designed computer programs available at kiosks, on computers, or on the Internet. This assistance may be general or individualized.

**207.3** “Community self-help assistance” is general education not specific to an individual, provided through classes or on the Internet or otherwise about how to prepare court forms or other legal documents, or about how to properly and fair and equally represent oneself in court or other tribunal, or other relevant legal topics. It may or may not be coupled with personal, computer-assisted, or online self-help assistance.

**208.** “Licensed legal professional” is a member of the State Bar, a certified law student participating in a supervised clinical program, or a member of the bar of another jurisdiction who is legally permitted to appear and represent the particular client in the particular proceeding in the court or other forum which is hearing that matter.

**209.** “Qualified non-lawyer advocate” is a person trained and certified to represent parties before certain forums, often administrative bodies, and which

the State Equal Justice Authority or its designee finds qualified to provide fair and equal justice to such parties in proceedings before those forums.

**210.** “Qualified non-profit legal services organization” is a non-profit corporation or law school clinic which has the primary purpose of benefiting those unable to afford counsel and that employs licensed legal professionals, qualified non-lawyer advocates, and/or uses pro-bono licensed legal professionals and pro bono qualified non-lawyer advocates for the purpose of

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delivering appropriate public legal services to persons who cannot afford to pay for their own counsel and which the State Equal Justice Authority determines qualifies as an organization suitable to discharge the functions this statute allocates to such organizations. Any such organization which the federal Legal Services Corporation has deemed qualified to receive funding support from the Corporation is automatically considered a qualified non-profit legal services organization for purposes of this statute.

**211.** “State Equal Justice Authority” is the statewide body responsible for administering State’s public legal services program. It is authorized to implement the statute by enacting regulations pursuant to the state Administrative Procedures Act, Gov. Code \_\_\_\_ et seq. The regulations shall provide, inter alia, for delegation of eligibility decisions (among others) to designated public or non-profit bodies as described in section 700 et seq.

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### **300. RIGHT TO PUBLIC LEGAL SERVICES.**

Subject to the exceptions and conditions specified in sections 301 - 306 below, appropriate public legal services shall be available to any financially eligible person [or group]. Depending on circumstances described in these sections, appropriate public legal services may consist of full legal representation, limited legal representation, non-lawyer representation, legal advice, legal assistance, self-help assistance, or other advice or assistance as needed for the person [or group] to enjoy fair and equal access to justice for the particular dispute or problem that person [or group] confronts. The standards for “financial eligibility” are defined in section 400 et seq.

#### **301. Full Public Legal Representation**

In the courts or any other forum in this state where by law or established practice parties can only appear pro se or be represented by licensed members of the legal profession, public legal services shall consist of full legal representation as defined in section 202 above, provided under the following conditions and with the following exceptions:

**301.1** Full public legal representation services shall be available to a plaintiff only if a reasonable person in the plaintiff’s position, with the financial means to employ counsel, would be likely to pursue the matter in light of the costs and potential

benefits. In making that determination it shall be presumed that a reasonable person would be likely to pursue matters involving any of the following: the sole housing for the plaintiff or plaintiff's family; the maintenance of plaintiff's present employment or occupation; the plaintiff's current right or future right to income maintenance, health benefits and other substantial benefits from the federal, state, or local government; custody and/or parental rights to children; and protection from domestic violence. This list shall not be considered exhaustive and the State Equal Justice Authority or its designees shall apply the general criteria to applications for legal representation which do not fall within any of the above presumptive categories.

**301.2** Except in exceptional circumstances, full public legal representation services shall be available to financially eligible defendants when they are defendants in a court or other forum defined in section 202 above unless they lack a reasonable possibility of achieving a favorable outcome

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**301.3** Eligibility for full public legal representation services in an initial proceeding is limited to that proceeding. Eligibility for full public legal representation in the appellate courts is a new and different determination after the proceedings in a trial court or other forum conclude. If the financially eligible applicant is an appellant or petitioner rather than a respondent or real-party-in interest, except in extraordinary circumstances, full legal representation services shall be available only if there is a reasonable probability of success on appeal. If the financially eligible applicant is a respondent or real-party-in interest, however, except in extraordinary circumstances full legal representation services shall be available unless the trial court decision is clearly erroneous and thus there is no reasonable possibility the appellate court will affirm the decision of the superior court or other forum which the opposing party is challenging in the appellate court.

**301.4** Full public legal representation services shall not be available to an applicant in the following circumstances:

**301.4.1** In proceedings in any court or other forum where parties are not allowed to be represented by licensed legal professionals. However, this does not preclude a financially eligible person from receiving self-help assistance in such proceedings nor does it preclude the provision of full legal

representation services if the opposing party in such a forum appeals a decision of that forum which was favorable to the applicant to a forum where licensed legal professionals are permitted to provide representation and that opposing party is represented by a licensed legal professional in that appeal.

**301.4.2** If legal representation is available to the applicant in the particular case through the services of a lawyer who provides such representation on a contingent fee basis, or as the result of the provisions of an insurance policy, or for some other reason is willing to provide such representation at no cost to the applicant or at a cost that is substantially the same as any co-payment the

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applicant would be expected to pay if provided counsel at public expense under this statute.

**301.4.3** Except in extraordinary circumstances, in the following lawsuits: plaintiffs in libel, slander, or defamation actions; actions seeking a name change; uncontested marriage dissolution cases not involving children or disputes over property, support, or other significant issues [assuming state involved has no-fault divorce system], disputes between business enterprises and, other categories of disputes that the State Equal Justice Authority determines by regulation to be so insignificant that they do not warrant public legal services or that are uncontested and so simple that public legal services are unnecessary to have fair and equal access to justice.

**301.4.4** If under standards established by the State Equal Justice Authority, and under the circumstances of the particular matter, the Authority deems a certain type and level of limited legal representation is sufficient to provide fair and equal access to justice and such limited public legal representation is provided. It shall be presumed limited legal representation is insufficient in actions before courts or other forums in which representation can only be provided by licensed legal professionals if the opposing party has full legal representation by

such a professional.

**301.4.5** In designated courts or other forums the State Equal Justice Authority evaluates and certifies after public hearings that:

(a) these courts or forums: (1) operate in an inquisitorial rather than adversarial manner, with a judicial officer actively developing the facts and the law, and (2) follow relaxed rules of evidence and (3) follow procedural rules and adjudicate legal issues so simple that non-lawyers can represent  
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themselves before the court or other forum and still enjoy fair and equal access to justice, and

(b) in the particular matter to be decided by such designated courts or other forums (1) the opposing party is not represented by a licensed legal professional, and (2) the particular applicant possesses the intelligence, knowledge, language skills (or assistance), and other attributes ordinarily required to represent oneself and still enjoy effective fair and equal access to justice.

Nothing shall preclude the State Equal Justice Authority from funding self-help assistance in such cases before the designated courts or other forums even though SEJA certifies full legal representation is not required and such assistance shall be offered to the applicant unless SEJA further certifies the applicant can receive fair and equal access to justice in the particular case without any such assistance.

### **302. Limited Legal Representation**

Limited legal representation as defined in section 203 above shall be available to financially eligible individuals [or groups] where the limited service provided is required because self-help assistance alone would prove inadequate and where such limited legal representation is sufficient in itself or in combination with self-help assistance to provide the applicant with effective access to justice in the specific case in the specific forum. In matters before those courts or other forums in which representation can only be provided by licensed legal professionals, however, limited legal representation can only be substituted for full representation when permitted by sections 301.2 through 301.4 above, nor shall it be available in the matters excluded under section 301.4.3.

### **303. Legal Advice**

Legal advice as defined in section 204 above, shall be available to

financially eligible individuals [and groups] on an individualized basis, and may be provided in person, by telephone or other communication device, or by computer or other interactive device. [Such advice shall be provided only through non-profit legal services organizations as defined in section 210 or through lawyers certified and supervised by such organizations.] Legal advice shall not be available for issues related to an applicant's business

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enterprise, or for other issues related to the classes of problems excluded under section 301.4.3.

#### **304. Legal Assistance**

Legal Assistance as defined in section 205 shall be available to financially eligible individuals [and groups] when required for the proper preparation of significant legal documents in undisputed matters or for the review and possible revision of such documents generated through computer programs or other self-help assistance. It also shall be available in the pre-litigation phase of disputed matters in which there is a reasonable possibility such services may avoid a proceeding in court or other forum whether that proceeding would be filed by or against the applicant.

#### **305. Non-lawyer Representation**

Non-lawyer representation as defined in section 206 shall be available from qualified non-lawyer advocates to financially eligible individuals [and groups] in proceedings in forums which permit non-lawyer representation of parties and in which (1) the criteria for full legal representation set forth in 301.1, 301.2 or 301.3 are satisfied, and (2) non-lawyer representation is more economical than full legal representation, and (3) the opposing party is not represented by a licensed legal professional, and (4) the non-lawyer advocate works under the supervision of attorneys in a non-profit legal services organization or has been certified by a non-profit legal services organization or by an official body SEJA designates to possess adequate training, knowledge, and skill to provide appropriate representation in that forum, and (5) the forum and the circumstances do not fit the exception defined in section 301.4.1 or 301.4.5 [in which self-help assistance is sufficient to afford parties fair and equal access to justice.]. This section is not intended to and does not supersede existing state law governing nonattorneys or paralegals.

#### **306. Self-help Assistance**

Self-help assistance as defined in section 207 shall be available to all persons without regard to financial eligibility in those forums and categories of disputes or problems SEJA [or the state court system] designates and through the means SEJA [or the state court system] provides.

#### **DRAFTING COMMITTEE'S COMMENTARY:**

*This section defines the scope of the right to different forms of representation, advice and assistance funded under this Act which are to be*

available to financially eligible applicants. Depending on the circumstances, an applicant may be entitled to full legal representation or limited legal

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representation by a lawyer in disputed matters, or to legal advice or nonlitigation assistance from a lawyer, or to representation by a qualified non-lawyer advocate, or to self-help assistance. While there are several categories of cases or circumstances in which representation or other services will not be available from licensed legal professionals or qualified non-lawyer advocates under this Act, as declared by the Legislature in section 108 this will not prohibit the provision of such services by other lawyers who are not funded under this Act in those cases and circumstances. For example, pro bono attorneys or those legal aid lawyers whose funding does not come from the state government funds specifically appropriated under this Act would be able to provide full legal representation to litigants in those cases.

Full legal representation in litigation before courts and other adversary forums is the most expensive of the services provided as a matter of right under this Act. Consequently, much of section 300 is devoted to defining the parameters of the right to this level of service.

**First, full legal representation is not available under any circumstances:**

**(1) In forums (such as small claims courts in California) in which lawyers are prohibited** [sub-section 301.4.1].

**(2) In certain categories of cases such as those that are deemed trivial or undisputed or otherwise to not justify representation** [sub-section 301.4.3].

These categories must either be defined as such in the Act or subsequently so defined by SEJA based on empirical data and after appropriate proceedings.

**(3) In cases in which lawyers are willing to represent the applicant without government funding because of other sources of financial support** [sub-section 301.4.2] This includes services available because of the prospect of a contingent fee, the duty to defend under a liability insurance policy or the provisions of a prepaid legal insurance policy, or for some other reason – which could include the prospect of a statutory or contractual court-awarded fee, a class action recovery, or on a pro bono basis. To deny government-paid counsel on this basis, however, the availability of counsel must be real, not merely theoretical. Thus, merely because the case is one in which a contingent fee might be available or where conceivably it might be aggregated with other similar cases in a class action lawsuit does not necessarily mean there is no right to receive full legal representation under the Act. Rather, in order to deny service, a contingent fee lawyer would have to indicate a willingness to provide representation to the applicant in the particular case or there would have to be a lawyer who has expressed a willingness to bring this case or include this case in a class action lawsuit where a fee would be available to that lawyer if successful.

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**(4) In cases in which other, less expensive forms of representation or assistance are sufficient to provide fair and equal access to justice.** These less expensive forms of representation and assistance are either limited legal

representation (sometimes called unbundled legal services) by lawyers, representation by qualified non-lawyer advocates, or self-help assistance. Where these less expensive forms of representation or assistance are deemed sufficient, however, there is a right to receive that representation or assistance just as there is a right to receive full legal representation when that is what is sufficient. As to limited legal representation SEJA or its designees must make the determination this level of assistance (usually in combination with self-help assistance) is sufficient and full-legal representation is not needed on a case-by-case basis [subsection 302]. An important caveat is that limited legal representation cannot be deemed sufficient if the opposing party enjoys full legal representation, except in unusual circumstances.

As to representation by non-lawyer advocates, this is confined to forums in which non-lawyer advocates lawfully and traditionally provide the representation and to cases heard in those forums in which the other side is not represented by a lawyer [subsection 305].

As to self-help assistance several criteria must be satisfied. First, the court or other forum must be tailored in a way that is calculated to make selfrepresentation sufficient—such as a judge or hearing officer who actively finds the applicable legal principles and develops the facts, uses simplified procedures, and the like. Second, the case itself must be relatively simple so a non-lawyer can be reasonably expected to comprehend and present it, at least with appropriate self-help assistance. Third, the applicant must possess personal characteristics (such as intelligence, mental stability, and English language facility) sufficient to represent himself or herself [subsection 306]. Supplying an interpreter, however, ordinarily will compensate for lack of English language facility if a foreignspeaking applicant possesses the other required characteristics.

**Second, full legal representation is available in the remaining cases only when the following criteria are satisfied:**

***If the applicant's legal problem requires initiation of a lawsuit as a plaintiff the applicant will receive full legal representation if a person who had personal resources sufficient to pursue that litigation would do so [subsection 301.1]*** In making this assessment, the hypothetical client would consider the value of what is at stake, the likelihood of success in the lawsuit, and the estimated cost of achieving success. The rationale for requiring applicants to satisfy this test before providing them with government funding is that a new lawsuit no matter how it is financed imposes costs on the judicial system and on the opposing party. This test seeks to mimic the economic considerations that constrain prospective plaintiffs who can afford to employ their own lawyers when they are contemplating the

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possibility of filing a lawsuit. There is an important qualification, however, affecting one element of the equation – the value of what is at stake. Recognizing the monetary value of many matters of great consequence to lower income people is lower than the cost of the legal representation required to properly litigate those issues, the Act creates a presumption that any rational person would employ a lawyer to pursue those cases if there was any reasonable possibility of a favorable outcome. This adjustment is necessary both because the cost of legal

representation is so high and because, by definition, the absolute economic value of many essentials on which lower income people survive is relatively low. The wages they earn or the welfare benefits they receive, the apartment rents they pay, the personal property they own, etc. often are less than the cost of the legal representation required to preserve those vital interests should they be threatened. Yet it is fundamentally unfair to deprive them of the opportunity to secure those basic human needs merely because of the high cost of legal representation. Subsection 301.1 lists some of those high priority concerns, but also allows SEJA to add others.

**If the applicant is a defendant, he or she is entitled to full legal representation unless there is no reasonable possibility that representation will result in a favorable outcome [subsection 301.2].** The test for defendants is different from that for plaintiffs in that the amount at stake is not part of the equation. This is because the opposing party has decided the stakes are substantial enough to warrant employment of a lawyer and is the party responsible for imposing costs on the judicial system as well as seeking to use that system to deprive the low income party of something he or she would otherwise retain. It is fundamentally unfair to deny lower income people legal representation and thus condemn them to lose the property or other interests they formerly possessed to a better funded party merely because the costs of justice might outweigh the financial value of the dispute. Therefore, the applicant is to be provided full legal representation unless the applicant lacks a reasonable possibility of achieving a favorable outcome. Obviously, a favorable outcome can be something less than a defense verdict so long as it is substantially better than the likely result if the applicant were not represented.

**Different criteria also apply when deciding whether there is a right to full legal representation at the appellate stage [subsection 301.3]** Applicants asking to appeal the trial court's decision against them, the right attaches only if there is a reasonable probability of obtaining a reversal or partial reversal of the trial court decision. On the other hand, applicants who prevailed at the trial level are entitled to full legal representation unless the trial court's decision was clearly erroneous and thus there is no reasonable possibility the applicant's position will be sustained on appeal. This distinction is based on the reality there is a comparatively low rate of reversal on appeal and also that the party appealing from the trial court decision, whether initially a plaintiff or a defendant, imposes additional costs on the judicial system and the party resisting the appeal and thus a higher threshold is warranted before providing full legal representation as a

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matter of right. Conversely, applicants who gained a favorable decision in the trial court should not be forced to surrender that victory simply because they lack the financial resources to respond to the other party's appeal of that favorable decision—unless the trial court's decision was clearly erroneous. Representation may be provided despite a failure to satisfy the above criteria in “extraordinary circumstances.” Such circumstances may include a case in which a significant unsettled legal issue is at stake that will affect a substantial number of future cases involving other parties. In any event, consistent with the legislative intent

*expressed in section 108, nothing prevents lawyers funded from a different source or acting on a pro bono basis from providing appellate representation to an applicant who is denied representation as a matter of right under the above standards.*

***Limited legal representation [section 302, 301.4.4] and non-lawyer representation [section 305] are provided in lieu of full legal representation only in circumstances where they are sufficient to afford litigants fair and equal justice in the court or other forum in which these forms of public legal service are to be provided. Except in unusual circumstances, neither is deemed sufficient if the opposing party in the particular case has full legal representation.***

*Furthermore, non-lawyer representation is deemed sufficient only in forums where officially permitted and where by tradition most parties are represented by non-lawyer advocates rather than by lawyers.*

***Legal Advice (section 303) and Legal Assistance (section 304) are provided by lawyers in undisputed matters or in potential disputes before adversarial proceedings have commenced. Legal advice is to be provided in the most costeffective manner including by telephone, or over the Internet or by computer program or printed materials, and should only be supplied on a personalized basis when required. To insure adherence with these standards legal advice as a matter of right shall only be available through non-profit legal aid organizations or lawyers certified and supervised by such organizations. Furthermore, legal advice and legal assistance are not available in certain categories of matters – generally those excluded from full legal representation in courts and other forums.***

**[NOTE: There are several alternative ways of reconfiguring the right defined in sections 300 et. seq.–most of which would narrow its scope. One possibility would be to limit the right to court proceedings–eliminating sections 303 (legal advice), 304 (legal assistance), and 305 (non-lawyer representation) entirely, and also removing references to other forums in sections 301 and 302. Another possibility would be to limit the right to those situations where full or limited representation by a lawyer was appropriate and not provide a right to self-help assistance–leaving the decision whether to provide that level of service to the discretion of the courts or other potential suppliers of same. Another would be to limit the right to certain categories of cases–essentially turning the “presumptive” categories of legal problems listed in section 301.1**

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**(or a shorter or longer or different list) into the “exclusive” categories to which the right attached. [This approach would raise some other problems not addressed in this draft “comprehensive” statute, such as insuring the categories enjoying the status of a right did not absorb all the legal resources devoted to representation of the poor.] Still another possibility would be to extend the right to all categories of problems, but only for defendants not plaintiffs. [This again raises problems not addressed in this draft “comprehensive” statute, such as the many plaintiffs with urgent needs (e.g., domestic abuse victims, etc.) who would be denied a right to equal justice**

**under such a definition of the right.]**

**400. FINANCIAL ELIGIBILITY**

**401.** The State Equal Justice Authority (SEJA) shall establish financial eligibility standards which must be satisfied in order to receive full public legal representation or other forms of public legal services. The SEJA also shall establish a schedule of co-payments for applicants with income-asset levels sufficient to make partial payments for the services they are to receive. No copayments

shall be required for those applicants whose incomes are at or below the federal poverty level. With rare exceptions limited to unusual circumstances, applicants with incomes above 300 percent of the official federal poverty level shall be ineligible for full or partially subsidized public legal services [OR possible alternative add the following clause-*with the exception of self-help assistance*].

**402.** The SEJA shall construct and publish a matrix of financial eligibility and copayment

levels that takes into account the following factors regarding the financial circumstances of an applicant for services: (1) current income; (2) current assets, taking into account reasonable exemptions for necessities of life, assets essential to potential earning and homeownership; (3) family size and relationships with dependents, and (4) other economic factors relevant to the applicant's ability to pay attorney fees and other litigation expenses. In setting eligibility and copayment

levels, SEJA shall not take into account the income or resources of persons who are not financially responsible for the individual seeking legal assistance.

**403.** The SEJA may establish and publish categorical financial eligibility rules for persons whose sole income is derived from public assistance. The SEJA may also establish special matrices of financial eligibility and co-payment levels for different types of public legal services. The SEJA may also establish different matrices for different regions of the state, taking into account significant differences in cost-of-living, the cost of public legal services, and other economic circumstances.

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**404.** The SEJA shall establish a special matrix of financial eligibility standards and co-payment levels for self-help assistance services. Such services may be provided to any applicants [at any income level OR whose incomes are no more than 500 percent of the poverty level] but at or above 250 percent of the poverty level they shall be charged 50 percent of the estimated costs of such services.

**405.** The SEJA shall adjust financial eligibility and co-payment levels annually to insure they fully account for changes in the cost of living and other inflationary factors. The SEJA also may allow those making the eligibility determinations in individual cases to exercise some limited measure of flexibility in applying these standards in order to account for unusual circumstances, but SEJA shall review

such cases retroactively to insure there are no abuses.

**406.** The SEJA shall establish financial eligibility standards for groups composed principally of financially eligible individuals, and for non-membership groups whose purpose is to benefit financially eligible individuals, which groups are of insufficient size to afford to pay counsel and otherwise lack the resources to do so.

**DRAFTING COMMITTEE’S COMMENTARY:**

*The legislature recognizes the impracticality of adopting rigid financial eligibility standards as part of the statute. Instead this statute only defines the general criteria to be applied and delegates to the SEJA the task of establishing standards consistent with those criteria, and revising the standards on a periodic basis. These standards are to be expressed in matrices which shall guide those making individual eligibility decisions (as explained in section 403). The statutory criteria embody several principles:*

*(1) Those individuals in the lowest eligibility strata, roughly corresponding to the federal poverty level, shall not be required to make any co-payments for any public legal services. Those above that line shall make co-payments in an amount commensurate with their income and assets.*

*(2) Different eligibility standards (including co-payment levels) shall be set for different geographic areas to the extent there are substantial differences in the cost of living, cost of legal services and other relevant factors. Different eligibility standards (including co-payment levels) shall be set for different forms of public legal services to the extent there are substantial differences in the cost of those services.*

*(3) A group in contrast to an individual or family may be eligible for public legal services only if composed principally of financially eligible persons or if it is a non-membership organization committed principally to benefiting financially eligible persons, and only then if the group lacks the resources to employ legal counsel.*

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**[NOTE: This particular draft statute envisions the provision of government subsidized services not just to what society considers poor people but to others whose personal resources are insufficient to afford the full cost of legal services when confronting more serious legal problems. Accordingly, it requires the SEJA to establish and administer schedules imposing copayments on a sliding scale basis determined by what it is reasonable to expect persons at different income levels to contribute to the cost of the legal assistance provided. Other basic policy alternatives exist. One would be to limit the right solely to those at and below the current federal eligibility level for legal services – that is, 125 percent of the federal poverty guideline and with no co-payments. Such an approach would simplify the administration of the right considerably. However, there are political as well as humanitarian and equal justice reasons for extending the coverage of the right to the income strata somewhat above the poverty line. Studies show and many people constantly say that the “near poor” and even the middle classes can’t afford lawyers for many or at least some of their legal problems. Indeed many**

**European and commonwealth countries extend the right well up into the middle classes – with half and sometimes more of the population eligible for some level of government-subsidized legal services.**

**In this draft, groups as well as individuals can be financially eligible to be entitled to representation. In order to be financially eligible, the definition in section 407 requires the group to be “*principally* composed” of financially eligible individuals. Other possible alternative formulations include a requirement the group be “entirely” or “predominantly” composed of such financially eligible individuals. Or if the primary need is confined to groups of poor people—not of individuals in the income strata above the poverty level who are entitled to receive partial subsidies--the language could be changed to require the group to be composed ”principally of individuals in the lowest eligibility category or categories.” [Obviously, the question whether the statute should confer a right to equal justice on groups or should cover groups at all is also an open question.]**

#### **500. THE PROVISION OF PROFESSIONAL SERVICES**

Professional services include the services of licensed legal professionals [as defined in section 20.8 performing the functions defined in sections 201-205] and the services of non-lawyer advocates in forums in which the services of the latter are permitted and deemed sufficient pursuant to section 20.6. Professional services can be provided through salaried staff attorneys or salaried non-lawyer advocates employed by qualified non-profit legal services organizations as defined in section 210 or by private attorneys [*or private qualified non-lawyer advocates*].

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It is the purpose and intent of the following sections to provide these services in a manner that is both efficient and guarantees recipients fair and equal access to justice. To this end, professional services shall be provided through salaried staff attorneys and salaried non-lawyer advocates employed by qualified non-profit legal services organization in those categories of cases in which the services of such attorneys and advocates ordinarily best serve the goals of efficient and effective access to justice. Professional services shall be provided through private lawyers [*and private non-lawyer advocates*] in those categories of cases in which it is deemed the services of such attorneys [*and non-lawyer advocates*] ordinarily best serve the goals of efficient and effective access to justice. Section 501 designates some of the categories of cases initially allocated to salaried staff attorneys and salaried non-lawyer advocates employed by non-profit legal services organizations, and section 502 designates some of the categories of cases initially allocated to private attorneys [*and private non-lawyer advocates*]. The State Equal Justice Authority is authorized to add additional categories of cases to either list on the basis of experience or empirical research and after public hearings and also to establish procedures for both salaried staff attorneys and private attorneys to provide services in the remaining categories of cases.

#### **501. Provision of professional services through salaried lawyers and**

**salaried non-lawyer advocates employed by non-profit legal services organizations.**

(1) Subject to the exceptions described below, professional services shall be supplied exclusively by salaried staff attorneys or, as appropriate, salaried nonlawyer advocates employed by non profit legal aid organizations in the following categories of cases in which the applicant is entitled to services pursuant to section 301:

- (a) Cases involving client's eligibility, benefit levels, and other issues regarding government income maintenance, welfare, unemployment compensation, means-tested disability benefits, or health benefit programs.
- (b) Cases involving a client tenant's eviction from or the condition of private or public residential housing that the client occupies.
- (c) Cases involving protection from domestic abuse in courts or geographic areas where the volume of such cases makes it substantially more economic to provide effective representation through salaried attorneys than by private lawyers.

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- (d) Cases involving the representation of parents or children in dependency [sometimes called neglect] cases in courts or geographic areas where the volume of such cases makes it substantially more economic to provide effective representation through salaried attorneys than by private lawyers.
- (e) Subject to regulations established by SEJA to exclude cases for which a private market exists, cases involving goods or services a client purchased.
- (f) Subject to regulations established by SEJA to exclude cases for which a private market exists, cases involving the continuation of a client's employment.
- (g) Any other categories of cases in which the State Equal Justice Authority determines, that salaried attorneys or salaried non-lawyer advocates can provide more efficient yet still effective access to justice to the clients to be served. Such determinations shall be made on an experimental basis and for a limited period and after public hearings at which all interested groups shall have an opportunity to appear and express their views and shall be in effect for no longer than 3 years unless SEJA extends such authority by regulation following the expiration of the experimental period.

(2) Exceptions within designated categories.

In the following specific circumstances, services in categories ordinarily to be provided by salaried staff attorneys or salaried non-lawyer advocates may be provided instead by a private attorney [or private non-lawyer advocate]:

- (a) When the applicant requests services in a case in which the non-profit legal aid organization already is representing a party with an adverse interest and it is not feasible, economic, or convenient to the applicant to refer that applicant to a different legal aid organization.

(b) When the applicant requests services in a case in which because of its unusual nature the case requires specific expertise not possessed or economically acquired by salaried staff employed by the legal aid organization and it is not feasible, economic, or convenient to the applicant to refer that applicant to a different legal aid organization possessing the required expertise.

(c) When no non-profit legal aid organization is located in or serves or is reasonably accessible to the geographic area in which the applicant resides and one or more private attorneys is available to that client and willing to provide the desired service.

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(d) When the legal aid organization has insufficient staff to provide effective access to justice to the applicant while still providing such access to clients it already has undertaken to represent.

**502. Provision of professional legal services through private attorneys and [and private qualified non-lawyer advocates].**

(1) Subject to the exceptions described below, professional services shall be supplied primarily by private attorneys [*or, as appropriate, private qualified nonlawyer*

*advocates*] in the following categories of cases in which the applicant is entitled to services pursuant to sections 301-305:

(a) Cases involving ordinary tort, contract, or property claims that do not fall within any of the specialized categories defined in section 501 above.

(b) Cases involving dissolution, child custody, child and spousal support and other ordinary family law issues that do not fall within any of the specialized categories defined in section 501 above.

(c) Cases involving protection from domestic abuse or dependency proceedings which do not satisfy the criteria set forth in section 501 above.

(d) Any other categories of cases in which the State Equal Justice Authority determines private attorneys [*or private non-lawyer advocates*] can provide more efficient yet still effective, fair and equal access to justice to the clients to be served. Such determinations shall be made on the basis of experience or empirical research and after public hearings at which all interested groups shall have an opportunity to appear and express their views.

**DRAFTING COMMITTEE'S COMMENTARY:**

*With respect to public legal services to be provided by licensed legal professionals and non-lawyer advocates, these sections assign certain defined categories of cases to salaried lawyers employed by non-profit legal aid organizations (except in certain defined circumstances) and assign other defined categories of cases to private attorneys. The SEJA is authorized to add other categories of cases to the lists assigned to either salaried or private attorneys. Either type of lawyer may provide services in yet other categories of cases. The guiding standard for any allocations the SEJA authorizes is that the preferred source of legal representation be not only the most economical but also an*

*effective provider of the service involved. Effectiveness, in turn, means the provider is proven to supply represented parties fair and equal access to justice.*

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**[NOTE: The sections above implement one of several possible delivery systems – a “subject matter mixed system.” This system delivers legal services through a combination of salaried staff lawyers (the primary delivery model presently used by American legal aid organizations) and compensated private lawyers (often called *judicare*). A “subject matter mixed system” allocates some categories of cases and legal problems to be handled by salaried lawyers and other categories to be handled by compensated private counsel.**

**Another possible form of “mixed system” that might be considered as a worthy substitute is the “client option mixed system.” This system combines a network of salaried staff offices alongside a *judicare* system. Each applicant is given a choice whether a salaried attorney or a compensated private attorney will handle the particular problem he or she is experiencing. (In some nations using this model, and if there is a substantial difference in cost between salaried and private counsel with respect to a given category of legal problem, the legal aid administrators are allowed to deny the option of choosing private counsel, when budgetary constraints dictate.) Examples of national legal aid programs using a client option mixed system include Quebec Province and Finland (the latter as to litigation in the courts only, but not legal advice and non-litigation assistance which are the exclusive province of salaried staff lawyers.)**

**Another possible form of “mixed system” might be called an “overflow mixed system” but is primarily a salaried staff lawyer program with the compensated private lawyer component limited to handling those cases the salaried lawyers cannot handle in a timely and effective way. Ireland is an example of such a mixed system. (In some if not many jurisdictions in the U.S., criminal defense systems provide most of their representation through salaried public defenders but use compensated appointed counsel for the overflow of cases those salaried lawyers can’t handle as well as for conflict and like situations.)**

**There also remain the options of a pure compensated private attorney system or a pure salaried staff attorney system either employed directly by the government (similar to public defender offices utilized to provide indigent defense in criminal cases) or by a non-profit organization as is common in the civil field. However, it is difficult to imagine how a right to equal justice can be implemented effectively with a completely fixed resource unable to accommodate an overflow of applicants for those services. As to a pure compensated private attorney system, most nations of which we are aware which started with such a system have found it worthwhile if not necessary to introduce a salaried staff attorney component. Moreover, all such nations of**

**which we are aware have found it difficult if not impossible to control the costs of a pure judicare system.**

**The “subject matter mixed system” was chosen primarily because it appears to offer the most economical approach to providing effective access to justice – allocating those categories of legal problems to salaried lawyers which they can handle both most efficiently and effectively and to compensated private counsel those categories which they can handle most efficiently and effectively. Whether the draft statute has accurately identified the categories each type of attorney can best supply is the superior can best falling in each]**

#### **600. ELIGIBILITY DETERMINATION PROCESS**

**601.** Irrespective of which provider is to supply the services, the State Equal Justice Authority may allow applications for public legal services to be granted only by specific entities it certifies from among the following: (1) non-profit legal services organizations, (2) self-help centers operated by State courts, (3) members of the State judiciary, or (4) special eligibility determination offices the Authority may establish. Before granting an application, the above organizations and individuals shall consider and apply criteria the State Equal Justice Authority promulgates which implement the provisions of sections 300 et. seq. and 502 et. seq. of this Act. Pursuant to section 502 private lawyers and private non-lawyer advocates may provide services in many circumstances, but they may not make the eligibility determinations in those or any other cases. In no case shall a judge who participates in an eligibility determination handle any aspect of the case as a judicial officer.

**602.** The State Equal Justice Authority shall establish procedures for the organizations delegated to make eligibility determinations which insure those decisions are made both accurately and in a timely fashion and take account of the financial eligibility standards promulgated pursuant to sections 401 et. seq. and the other criteria promulgated pursuant to sections 301 et. seq. These organizations shall maintain the relevant records reflecting the financial and other data used in finding applicants eligible or ineligible and these records shall be available for audit by the SEJA under procedures which maintain the confidentiality of information protected by the lawyer-client privilege.

**603.** Applicants who are denied service shall be informed they may lodge an appeal within fifteen days of the denial which shall be heard in a timely fashion by a three-member appellate committee composed of independent administrative law judges. By majority vote, this independent committee shall be authorized to reverse the denial and order the SEJA to provide the requested public legal service or to provide another form of public legal service to the applicant.

**604.** SEJA shall by regulation establish procedures for emergency, provisional eligibility determinations by private providers.

**DRAFTING COMMITTEE’S COMMENTARY:**

*This section funnels the determination whether persons are eligible for public legal services to a selected set of decision makers which either already have experience with this process (such as qualified non-profit legal aid organizations) or which SEJA certifies have become qualified to do so. SEJA may not designate private attorneys or law firms as qualified to certify persons are eligible for public legal services except on a provisional basis in emergency situations and consistent with criteria SEJA defines in regulations. Once a person is deemed to be eligible, the organization that made the determination shall refer that person to the appropriate type of public legal service (as defined in sections 300, et.seq.) and the appropriate provider.*

*This section allows an applicant denied service an opportunity for a prompt administrative review of that denial. This review is performed by an independent panel consisting of three administrative law judges. If the panel finds SEJA or its designee erred in denying the requested service it is empowered to order SEJA to provide that service or, if appropriate, a different form of service. Thus, for instance, if the applicant only requests full legal representation and the appeal panel determines the decision to deny this level of service was appropriate but that limited legal representation was both sufficient and justified, it may order SEJA to provide that lesser degree of service to the applicant.*

**[NOTE: Although this first draft uses a “subject matter mixed system,” it does not allow private attorneys to determine if applicants meet the financial, merits, and significance tests defined in sections 300 et. seq. and 400 et. seq. above. There are at least two reasons. First, these determinations involve expertise and procedures unfamiliar to private lawyers and law firms. Second, there is a potential conflict since a positive eligibility determination will inure to the direct financial benefit of the lawyer or law firm making that decision. (Notably, nearly all foreign legal aid programs that use private attorneys to provide government-paid representation nevertheless assign the eligibility determination decisions to public offices.)**

**Other possible formulations might assign all these eligibility determinations to special offices created by the SEJA or using Internet technology it might be feasible to channel the needed information from a variety of input locations (even possibly private attorneys and law firms) to a centralized eligibility determination office maintained by the SEJA.]**

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## **700. STATE EQUAL JUSTICE AUTHORITY**

Responsibility for policy-making and overall administration of the program defined in this chapter, and which has the purpose of guaranteeing people in the State their rights to fair and equal access to justice, reposes in an independent public body, the State Equal Justice Authority.

### **701 . Composition, terms, and compensation of State Equal Justice Authority Board of Directors.**

The State Equal Justice Authority shall be governed by a board of directors with nine members selected as follows:

(1) Two members who shall be members of the State Bar selected by the

Chief Justice, and at least one of whom shall have experience representing low-income people;

(2) Two members who shall be members of the State Bar selected by the State Bar, and one of whom shall be a full-time salaried attorney employed by a qualified non-profit legal services organization;

(3) Three members selected by the Governor, at least one of whom shall be a member of the State Bar, and at least one of whom shall be a person eligible to receive full legal representation under the statute;

(4) One member selected by the [lower house] of the State legislature;

(5) One member selected by the [upper house] of the State legislature;

(6) [In states with an elected Attorney General], one member selected by the Attorney General.

Board members shall serve staggered three year terms which can be renewed for a maximum of one additional term. After the initial board is selected, all members shall participate in a draw to determine which three members shall have initial one-year terms, which three shall have initial two-year terms, and which members shall have initial three year terms. The members of the Board shall elect one of their number to serve as the Chair of the State Equal Justice Authority, and another of their members as Vice-Chair. Board members shall be compensated at the rate of \$200 a day for their preparation for and attendance at board meetings and board committee

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meetings, and shall be reimbursed for all legitimate expenses attendant to discharging their responsibilities as board members.

#### **702. Staff of the State Equal Justice Authority.**

The Board of Directors of the State Equal Justice Authority shall select a person to serve as the President of the Authority who shall be an ex officio, non-voting member of the Board. The President of the Board shall be the SEJA's chief executive officer and this shall be a full-time staff position compensated at the same salary as an Associate Justice of the State Court of Appeal, but the benefits shall be defined by the Board of Directors. Under the direction of the Board of Directors, the President shall exercise all the powers and discharge all the responsibilities this Chapter confers on the State Equal Justice Authority. Based on recommendations from the President, the Board shall create and define other staff positions, but the President shall select the persons who occupy these positions. The Board of Directors shall establish the compensation and benefit levels for these other positions, but in doing so shall establish categories consistent with comparable positions in the executive and judicial branches of the State government and in no event may compensate any other staff member at a level exceeding the salary of a State trial judge.

#### **703. Functions of the State Equal Justice Authority.**

The State Equal Justice Authority shall have overall responsibility for

the administration of the public legal services funded by the State Equal Justice Act. The Authority is empowered to enact regulations Pursuant to the Administrative Procedures Act. The Authority also is empowered to delegate eligibility determinations in individual cases and other applications of its regulations and basic policies to designated organizations.

The State Equal Justice Authority shall:

(1) Ensure all eligible persons residing in the State receive appropriate public legal services when needed. In determining what level of services are appropriate, the SEJA shall ensure those services are sufficient to afford the client fair and equal access to justice while also taking account of the relative cost of those services.

(2) Ensure there is a comprehensive network of qualified nonprofit legal services organizations reasonably accessible to applicants in all geographic areas of State in which substantial populations of financially eligible persons reside. To the extent legal services

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organizations funded by the federal Legal Services Corporation or those deemed qualified to receive funding from the State IOLTA program provide services in or near the geographic area to be covered the SEJA shall give priority to funding expansion of those organizations rather than creating or encouraging the creation of new legal aid organizations.

(3) Identify and certify specific organizations to which it delegates the authority to make eligibility determinations pursuant to section 600. Legal services organizations funded by the federal Legal Services Corporation, those funded under the State IOLTA, and any self-help centers the State court system certifies as qualified are automatically considered certified to perform this function.

(4) Supplement the funding provided to non-profit legal services organizations by the Legal Services Corporation, IOLTA, the Equal Access Fund, and other government sources, to the extent required to ensure these organizations can fulfill their responsibility to provide cost-effective legal representation in all the cases allocated to them pursuant to section 501.

(5) Identify and contract with private lawyers and private law firms willing and able to provide any or all of the types of public legal services defined in sections 202-207 on terms that ensure both that the services will be sufficient to provide clients fair and equal access to justice and that they will be provided at reasonable cost. In performing this function, SEJA is authorized to negotiate contracts based on hourly-fee rates, per-service rates, or per-case rates, but not on a capitation basis.

(6) Through its own staff, contract with media firms, and other

means, SEJA shall inform the general public, especially population groups and geographic areas with large numbers of financially eligible persons, about their legal rights and responsibilities and the availability of public legal services should they experience a problem that might be addressed through one of the public legal services defined in section 201.

(7) Directly and through contracts with organizations and individuals possessing appropriate expertise in evaluation, social science, and empirical research, SEJA shall conduct studies which, among other subjects, assess the need and demand for public legal services, the sufficiency of different levels of public legal services to

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provide fair and equal access to justice in various circumstances, the effectiveness of those services in positively impacting people's lives and legal situations, the quality and cost-effectiveness of different providers of public legal services, and address other relevant issues.

(8) Ensure clients served by public legal services funded through the State Equal Justice Act receive the same independent, confidential, competent, and otherwise ethical representation as those persons who can afford to pay for legal representation and as is guaranteed to all clients by the code of ethics applicable to licensed legal professionals.

(9) Ensure those served who are not clients receive competent, timely, and accurate information and assistance.

(10) Prepare and submit an annual report to the Governor, the Legislature, and the Judicial Council. Among other subjects, this report shall include (1) a summary of SEJA's activities for the year and the results of any special studies or evaluations SEJA conducted or commissioned during the year, (2) the current status of the combined federal-state-local government effort to provide State residents full and fair access to justice in non-criminal matters, (3) quantitative and qualitative data about costs, the quantity and quality and other relevant performance measures regarding public legal services of different types provided during the year, (4) recommendations for changes in the SEJA legislation and other State statutes, court rules, or other policies which would improve the quality or reduce the cost of public legal services required to guarantee all residents of State their right to fair and equal access to justice in non-criminal matters.

**DRAFTING COMMITTEE'S COMMENTARY:**

*These sections establish an independent body charged with responsibility for administering the public legal services system and also for discharging the broader responsibility to constantly study and make recommendations*

*for changes to the legal system which would enhance access to justice for all residents of this State. To accomplish its administrative responsibilities SEJA is authorized to establish policies and set standards, to designate those entitled to perform various functions, to delegate certain of its functions (including eligibility determinations), and to employ consultants. Before promulgating regulations it must adhere to the processes, including public hearings, required by the State Administrative Procedures Act.*

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**[NOTE: This draft creates an independent body to administer the SEJA. The board of this independent body is selected by different governmental bodies, the judiciary, and the legal profession.**

**Alternative possible arrangements include administration by the state bar association or by the court system or as a separate part of the executive branch. Notably, most nations with advanced legal aid programs – including the United States -- have chosen to establish some form of independent or semi-independent board to administer their legal aid systems. Smaller states, however, may find it too cumbersome or expensive to set up a free-standing independent body to administer their legal aid system. ]**