

LEGAL SERVICES TO THE PUBLIC COMMITTEE

RESOLUTION IN SUPPORT OF INCREASED FUNDING FOR CIVIL LEGAL AID IN PENNSYLVANIA

I. Resolution.

State Funding

Be it resolved that the Pennsylvania Bar Association hereby calls upon the General Assembly of the Commonwealth of Pennsylvania to restore the appropriation for civil legal services to indigent people to past levels of support, adjusted for the current value of appropriations of the past, and for increases in the number of people living in poverty. Specifically, this resolution calls for a restoration of funding to the Pennsylvania Legal Aid Network, Inc. The Pennsylvania Legal Aid Network is the mix of civil legal aid programs funded through state, federal IOLTA, Bar Association, and local funds, which together provides civil legal representation to low income Pennsylvanians. Cumulatively, these programs provide coverage in every county of the state and they provide specialized services in certain areas, such as health, housing, and the needs of farmworkers."

Federal Funding

Be it further resolved that the Pennsylvania Bar Association hereby calls upon the Congress of the United States to restore the appropriation for civil legal services to indigent people to past levels of support, adjusted for inflation and increases in the number of people living in poverty. Specifically, this resolution calls for a restoration of funding to the Legal Services Corporation.

II. Discussion: The Need for Increased Funding for Civil Legal Aid Is Well Documented.

A. The PBA is Committed to Improving Access to Justice for the Poor

The PBA has a long history of promoting the access to justice for the neediest among us dating back through the past three decades (see Section III below) and, this year, the PBA is renewing its strong commitment to improving the access to justice of the poor. Then PBA President-Elect Andrew Susko, building on the civil legal aid work for children focus of his predecessor Ken Horoho, convened a distinguished working group to promote civil legal aid through enhanced pro bono service in early 2007. The work of that group resulted in the PBA Board and House of Delegates passing a strong resolution in support of pro bono service at the 2007 Annual Meeting when Susko became President (see <http://www.pabar.org/pdf/aspirationalresolution.pdf>). Susko brought together an ad hoc group at both the PBA and ABA Annual Meetings this past year to explore next steps in promoting the access to justice for the poor and this resolution is one of the outgrowths of that effort, as well as the ongoing effort of the PBA's Legal Services to the Public Committee whose mission is to improve civil legal aid in Pennsylvania.

B. The Civil Legal Needs of the Poor are Extensive.

There is a good story to tell. It starts with the fact that over 100,000 low income clients were represented in the past year by the civil legal aid programs of the Pennsylvania Legal Aid Network (PLAN).¹ Every county in the state is served by legal aid and there are also six specialized statewide programs, targeting special needs such as healthcare and housing. When one considers the size of a typical family, the representation of these 100,000 clients benefits over 300,000 people, many of them children. If a family is at risk of loss of a home, it is not just the client but the entire family that is affected. And nearly one-million Pennsylvanians are touched by legal aid each year through community education, self help and pro se assistance, targeted referrals, and other forms of help.

In addition, to the services provided directly by PLAN attorneys and paralegals, thousands of low income clients are represented each year by private counsel on a pro bono basis, an effort which is strengthened by the PBA goal for every Pennsylvania attorney to participate in the provision of pro bono representation.

Nevertheless, the sad news is that many Pennsylvanians are turned away, despite the fact that they are in immediate need of civil legal assistance. This is true even though, to qualify for legal aid, most families must fall under 125% of the federal poverty level or the client must be a victim of domestic violence. Many of those who are turned away have significant legal needs, in matters such as child support, access to an appropriate education, and consumer problems. In the past when funding levels were higher, these individuals would have been represented; today, with severely constricted resources, these same legal problems do not get addressed.

The civil legal needs of the poor are varied and extensive. Clients are victims of domestic violence; they are involved in custody disputes regarding the best interests of children; and they face mortgage foreclosures, evictions, inadequate living conditions, and other challenges involving the necessity of life. Others are in need of basic governmental benefits to live from day to day. This may include medical benefits, unemployment compensation, or Social Security or SSI Disability benefits, to name the most common. Often, clients are disabled, so that they are not able to provide for themselves. Still other clients experience consumer concerns, such as falling prey to predatory and sub-prime lending practices, being subject to improper repossession of automobiles (sometimes through unscrupulous car dealerships), or other consumer contract disputes.

C. The Extent of Unmet Need Has Been Well Documented.

i. National Documentation:

Studies consistently show that despite best efforts, civil legal aid represents about 1 in every 5 low income individuals who are unable to access legal remedies without assistance. Three key findings emerged from a national study by the federal Legal Services Corporation (LSC). “All three methodologies demonstrated that there was a significant shortage of civil legal assistance available to low-income Americans.”

- The LSC “unable to serve” study established that for every client who receives service, one eligible applicant was turned away by a legal aid program. Because programs counted only those who physically came to or called the program office, this study understated the need.

¹ The PLAN civil legal aid programs do not represent criminal defendants.

- Various state studies consistently demonstrate that less than 20 percent of the legal needs of low-income people were being met.
- There is one legal aid attorney for every 6,861 low-income-persons. The ratio of attorneys delivering civil legal assistance is one for every 525 eligible persons.

ii. Documentation of the Need in Pennsylvania:

Of the 17,600 eligible persons **who presented themselves at legal aid offices in Pennsylvania** during LSC's two month sampling:

- About 50% had to be turned away.
- About 25% could only be provided very limited services, such as referrals.
- About 10% received individualized brief services, such as legal advice.
- About 20% were provided extended representation.

This problem exists throughout the Commonwealth. **90% of those who are turned away reside outside of Philadelphia or Pittsburgh.**

As to the legal problems presented by those who were turned away, about 40% had family law problems, 12% had housing problems, another 12% had consumer problems, 7% had employment problems, and the remainder fell across a wide range of other concerns.

It's not surprising that services are limited. Funding supported a total of 358 lawyers working in PLAN legal aid programs twenty years ago. It now supports only 264 lawyers, statewide.

Legal aid programs help assure services are supplemented by and coordinated with local resources. Every county has a pro bono plan. Individuals are sometimes able to be referred to local attorneys who provide pro bono assistance. Thousands of clients have been represented annually, by pro bono counsel. In addition, the Pennsylvania Bar Association just expanded its commitment to pro bono services. Despite all these efforts, the unmet need for representation by civil legal aid attorneys continues to grow.

D. The Case for Increased State Funding.

Legal aid programs provide services to individuals with help from LSC, the Pennsylvania IOLTA Board, and the Commonwealth of Pennsylvania, as well as from a host of other sources, including foundations, United Ways, local governments, private attorneys, Bar Associations, law schools and law school clinics, and the pro bono services offered by lawyers.

i. Historical Funding to Legal Aid Points to the Need for an Increase.

State funding to legal aid has been flat. For over thirty years, as funding stayed flat, it drifted far below inflation-adjusted funding. The two components of funding in the state budget, a state allocation and an allocation of federal Social Services Block Grant funds, total today almost exactly the amount of funding that was allocated in 1975.

Limitations on resources have caused severe and damaging constraints not only in client services but also in areas such as technology to support the work, outreach efforts, attorney salaries (which still start on average at about \$35,000), addressing loan repayment challenges faced by new and recently-hired lawyers, pensions (which don't even exist in some places), and providing adequate office space for client services.

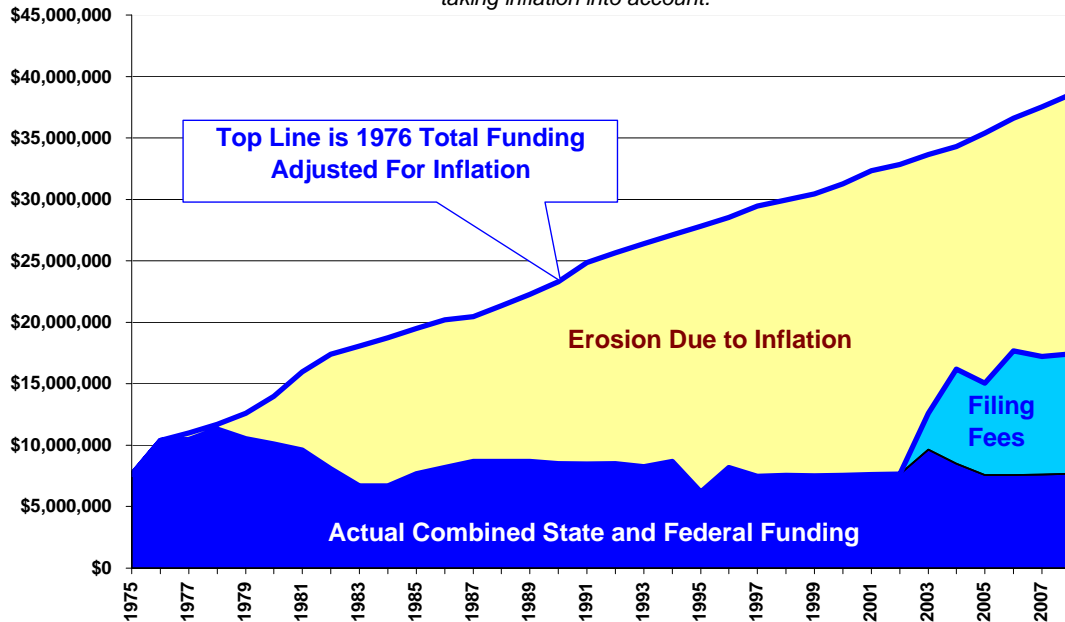
The creation of IOLTA revenues by the Court and Access to Justice Act revenues by the General Assembly demonstrates significant commitment to provision of legal aid. These initiatives are greatly appreciated. The IOLTA revenues of approximately \$12 million annually and the filing fee revenues of about \$9.6 million annually, though

impressive, still leave the state behind Pennsylvania's historical funding levels and still leave Pennsylvania behind other states, as discussed below.

The population of Pennsylvania residents living in poverty also continues to grow.² In 1979, the poverty population totaled about 1.6 million, or 14% of overall

Funding for Civil Legal Services in Real Dollars Has Fallen Behind

Even with recent increases, 2008 total is half what it was in 1976, taking inflation into account.



population of 11.6 million. Today, the poverty population is about 1.9 million, or 16% of overall population of 12 million.³

ii. Comparison of Funding in Pennsylvania to Other States also Points to the Need for an Increase.

Another way to analyze the level of funding to legal aid is to look to other states. For example, Texas has been steadily increasing its state funding for legal services programs in recent years. Over the past six years, Texas had added a total of \$5 million annually to legal services funding. Ohio just adopted a significantly increased filing fee surcharge (to \$26) to help fund legal services. New York just increased its annual appropriation to legal aid by \$8 million. The smaller state of Washington just increased its appropriation by over \$2.5 million.

A common way of comparing funding from state to state is to look at the amount of funding allocated in proportion to the census poverty population. For example, New Jersey appropriates \$23.42 per poor person counted in the census count. Pennsylvania

² While news surrounding the recently-released census data showed a national decline in poverty, this has not been the case in Pennsylvania, which witnessed a poverty population increase from 2005 to 2006.

³ Statistics of poverty are from U.S. Census Bureau, American Fact Finder. Because legal aid programs generally represent those at 125% of the poverty population level or below, data is at 125%. 1979 data is extrapolated.

appropriates \$13.44, even including the federal Social Services block grant portion of the state budget.

A comparison more within reach is to look to Maryland and Massachusetts, both of which appropriate about \$16.50 per poor person. And all three of these states, proportionate to the size of their population living in poverty, have generally provided the same amount, or even greater amounts of IOLTA and other governmental support, compared to Pennsylvania.

Comparing the current Pennsylvania funding level to that of Maryland and Massachusetts demonstrates that Pennsylvania is about \$3.06 behind, per poor person, for a total of just under \$4 million per year.

E. The Case for Increased Federal Funding.

Much of the state funding discussion applies equally to an analysis of federal funding. People needing services are being turned away because of inadequacy of combined resources from all sources. In 1980 dollars, the annual appropriation for the Legal Services Corporation has increased from a nationwide appropriation of \$300 million in 1980 to, 27 years later, an appropriation of \$348.5 million. Adjusting the 1980 dollars for their purchase power today, funding should be more than double, at \$733.2 million.

F. An Access to Justice Strategy.

Everyone plays their part. Attorneys offer pro bono services. The federal government has budgeted an increase to legal aid. The IOLTA Board and the Court continue to look to ways to increase funding. And local governments, foundations, bar associations, and others are increasing their contributions.

To get to a fairer system of justice, where people stand on equal footing under the law; to assure that families can survive; that victims of domestic violence can have protection; that families can have roofs overhead, a greater financial commitment by the state and federal governments, for the funding of legal aid is needed.

III. The PBA has Historically Supported Restored Funding for Legal Aid.

A. The Pennsylvania Bar Association has previously spoken in favor of increased funding for legal aid.

- At the May 1990 House meeting, “the House unanimously adopted the report of the Task Force on Legal Services to the Needy.” This report includes a formal resolution, found at p. v, that presents two relevant parts:
 - No. 2: “The Pennsylvania Bar Association Hereby calls upon the Congress of the United States to immediately restore the Appropriation to the Legal Services Corporation to a level not less than the amount appropriated in Fiscal Year 1981, adjusted for inflation and for increases in the number of persons living in poverty.” While we have now barely exceeded the 1981 appropriation in flat dollar terms, we are still well below the 1981 appropriation, when adjusted for inflation and increased poverty population (which itself has grown about 20%).

- No. 3: The Pennsylvania Bar Association hereby calls upon the General Assembly of the Commonwealth of Pennsylvania to immediately restore the appropriation to the Pennsylvania Legal Services Center [PLAN, Inc. predecessor] to a level not less than the amount appropriated in Fiscal Year 1981, adjusted for inflation and for increases in the number of people living in poverty. The graph above demonstrates that we are far from this accomplishment, even without adjustments for the 20% rise in poverty population.

B. The resolutions address only the funding of legal aid, not the restrictions the federal government has imposed upon LSC funding. This is because the PBA is already on record opposing the restrictions, dating to the October 1990 meeting of the House, and no further action is needed to express PBA policy.

Respectfully submitted,

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Legal Services to the Public Committee

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