Access to Justice Necessitates Adequate Funding

By Samuel W. Milkes

There is a good story to tell about legal aid in Pennsylvania.

Nearly 100,000 low-income clients were represented last year by the civil legal aid programs of the Pennsylvania Legal Aid Network (PLAN). Every county is served by legal aid, and six specialized programs target special needs such as health care and housing. Actually, legal aid representation directly benefits more than 300,000 of our citizens annually. Often it is not just the client but the entire family that is affected. In all, nearly 1 million Pennsylvanians are touched by legal aid each year through representation, community education, pro se assistance, targeted referrals and in other ways. Tens of thousands are also represented pro bono by other members of the bar.

Consider for a moment this one example of many: Mrs. Smith, a widow, was referred by the Area Agency on Aging to Laurel Legal Services (LLS) for representation in a mortgage foreclosure action. The mortgage holder claimed that the mortgage could be foreclosed because the mortgagee, her late husband, was deceased. LLS claimed that Mrs. Smith was protected from foreclosure because, as spouse, she stood in her late husband’s position under the mortgage and federal law protects the mortgagor until death of the mortgagor, sale of the residence or mortgagor’s absence from the residence for a year. LLS was able to settle the case by having Mrs. Smith assume the mortgage. A pro bono attorney assisted by helping with the federal court aspects of the case.

Unfortunately, many people are turned away. Generally, qualifying families must fall under 125 percent of the federal poverty level. Clients are 1) victims of domestic violence; 2) involved in disputes over children; 3) facing mortgage foreclosures, evictions and inadequate living conditions; and 4) denied health care. Still other clients experience consumer concerns such as falling prey to predatory and sub-prime lending practices or being subject to improper repossession of their vehicles. Often clients are disabled and unable to provide for themselves.

A national study by the federal Legal Services Corp. (LSC) “demonstrated that there was a significant shortage of civil legal assistance available to low-income Americans.” The LSC study estimated that:

- For every client who received service, one eligible applicant was turned away by a legal aid program. (Because programs only counted people who came to or called the program office, this study understated the full extent of need.)
- Less than 20 percent of the legal needs of low-income people were being met.
- There is one legal aid attorney for 6,861 low-income persons. (The ratio of attorneys delivering civil legal assistance to the general population is one for every 525.)

Of the 17,600 eligible persons who presented themselves to legal aid offices in Pennsylvania during LSC’s recent two-month sampling, about 50 percent had to be turned away; about 30 percent were provided brief services, referrals or advice; and about 20 percent were provided extended representation. The shortage of services exists throughout the commonwealth. Ninety percent of those who were turned away resided outside Philadelphia or Pittsburgh.

Funding to civil legal aid programs across the state amounts to about $70 million, counting funding from the LSC, the state Supreme Court through its Interest on Lawyers Trust Account (IOLTA) Board, the Commonwealth of Pennsylvania and a host of other sources, including foundations, United Ways, local governments, private attorneys, bar associations and law schools.

Over the years, state appropriations to legal aid have been flat. For over 30 years, this funding has drifted far below inflation-adjusted levels, while the eligible population actually increased by 20 percent. Twenty years ago, funding supported a total of 358 PLAN lawyers. Today’s funding supports only 264 lawyers statewide.

Limits on resources have caused damaging restraints not only in the amount of client services that can be provided but also in areas such as technology to support the work, attorney salaries (which start on average at about $35,000, even for lawyers with large law school debts) and adequacy of office space for client services.

The creation of IOLTA revenues by the court and Access to Justice Act revenues by the General Assembly demonstrate significant commitment to legal aid. These initiatives are greatly appreciated. However, although impressive, this still leaves legal aid below Pennsylvania’s historic funding levels. In addition, despite all the great efforts of the IOLTA Board, the coming year is one in which IOLTA revenues will be decreasing dramatically due to declining interest rates.

Another way to think about the level of funding for legal aid is to compare it to funding provided by other states by looking at the amount appropriated in proportion to census poverty population. New Jersey appropriates $23.42 per poor person. Maryland appropriates about
Pennsylvania appropriates $13.44. At that level, it would take an increase of about $4 million in state funding for Pennsylvania to catch up with a state like Maryland. Texas, Ohio, Virginia, Washington and New York each have recently added millions of dollars in appropriations and filing fees to support legal aid.

We thank Gov. Ed Rendell for his strong support for legal aid funding and for personally accepting pro bono referrals in the past. Following a discussion with PBA President Andy Susko and legal aid representatives, the governor has recommended $1 million of increased legal aid funding in the 2008-09 budget. This increment is a much needed advance in the total funding that is essential for access to justice for all citizens. And it helps to effectuate the recent PBA resolution supporting increased state and federal funding.

The PBA, under the inspiring leadership of Andy Susko, has already set a course. Already thousands of individuals are referred to attorneys who represent them for free. The PBA has committed itself to expanding pro bono services, expressing a goal for every lawyer to provide pro bono services annually, and the PBA has dedicated a full-time staff position held by Pro Bono Coordinator David Tievaskis. Despite these efforts, the unmet need for representation by civil legal aid attorneys remains substantial.

We call upon all members of the bar to work for increased state funding for legal services and for passage of loan repayment assistance legislation. The PBA on the Hill program in Harrisburg May 5-6 will be a great opportunity to do so.

Sam Milkes is executive director of the Pennsylvania Legal Aid Network, a statewide organization that provides leadership, funding and support to improve the availability and quality of civil legal aid for low-income people and victims of domestic violence in Pennsylvania; www.palegalservices.org.

For information on the PBA legislative program, call 1-800-932-0371, Ext. 2232, or e-mail Nevin Mindlin, the PBA’s legislative director, at nevin.mindlin@pabar.org.

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