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MEMORANDUM

To: Finance Committee, Board of Directors, Legal Services Corporation

From: Robert E. Stein, Chair, ABA Standing Committee on Legal Aid and Indigent Defendants

Date: June 6, 2012

Re: ABA Recommendation for FY 2014 LSC Budget Request

This memorandum sets forth the recommendation of the Standing Committee on Legal Aid and Indigent Defendants (SCLAID), on behalf of the American Bar Association, regarding the Legal Services Corporation's budget request for FY 2014. We appreciate the opportunity to submit this recommendation, and look forward to working with LSC to obtain adequate funding for the important work of the Corporation and its grantees.

As discussed below, the need for services provided through LSC funding continues to expand. However, because the full amount needed to respond to this need cannot realistically be obtained, in view of competing federal priorities and limited federal resources, we urge that the LSC Board base its FY2014 funding request on the benchmark provided by its request for FY2013. That request was well-researched, and grounded in similar circumstances. We therefore recommend that LSC seek an FY2014 appropriation of no less than \$470 million.

The Need for LSC Services Continues to Grow

The latest census data shows that nearly one in two of the nation's citizens are now officially classified as having a low income or living in poverty. One in five families earns less than \$15,000 a year. People facing unemployment, struggling to maintain stable housing, and trying to maintain health and sustenance often turn to the legal system for help.

A report issued by Indiana University earlier this year, *At Risk: America's Poor During and After the Great Recession* (January 2012),¹ states that the number of people living in poverty is increasing and is expected to increase further, despite the slow economic recovery: "Poverty in America is remarkably widespread... The number of people living in poverty is increasing and is expected to increase further, despite the recovery... The Great Recession has

¹ http://www.indiana.edu/~spea/pubs/white_paper_at_risk.pdf

left behind the largest number of long-term unemployed people since records were first kept in 1948.” The report suggests that a unique feature of the great recession is not just the high rate of unemployment, but the long duration of unemployment that millions of Americans have experienced. And for many who have suffered a long period of unemployment, the types of jobs that they had will no longer exist when the economy rebounds. Many of those who once held well-paid jobs will be forced to settle for lower paying work, trapping some in a permanent cycle of poverty. As a consequence people will be poor or near poor for a substantial period of time.

The Indiana University study says that the numbers of people falling into poverty is also likely to grow because of severe cuts to state and federal welfare budgets. Many states are required to have a balanced budget each year. This creates a cruel irony: states are in the process of cutting back their safety net programs at the same time that poverty is increasing.

Past research has demonstrated that about 50% of low-income households face legal needs at any point in time. And research has also shown that about half of those households will have more than one legal problem. Thus, the significant increase in the poverty population means that a larger number of people are experiencing legal problems, and half of those people will confront two or more serious legal issues. These baseline expectations are exacerbated by other recent trends:

- An unusually large number of people have served our nation in the prolonged military conflicts over the past 10 years, and have returned to often confront serious legal issues. Over 1.6 million U.S. troops have served in Iraq and Afghanistan since 2001. As these servicemembers continue to transition at high numbers from active-duty to veteran status, they encounter a bleak job market and an array of civil legal issues arising incidental to their service in the areas of employment, consumer, and family law, among others. It is especially challenging to recover Veterans Administration benefits for service-connected injuries; such cases are complicated and frustrating, and may drag on for years before results are achieved.
- Natural disasters have occurred with surprising frequency, throwing thousands into poverty and creating legal problems of unprecedented scope. There were 99 declared disasters during calendar 2011. This was by far the highest number of such unfortunate incidents in a single year. It continues a recent trend: in 2010 there were 81 declared disasters, and in 2008 there were 75. Most prior years there were usually 40-60 declared disasters in a year. Each disaster places new, unplanned burdens on already-overextended legal aid programs.

There is an alarming increase in pro se representation, and diminishing capacity of courts to provide justice

A perfect storm is underway within the justice system: the continuing reduction in funding of legal aid organizations has dramatically reduced the number of legal aid lawyers available to help those who must turn to the courts for relief. At the same time an increasingly large number

of poor people are experiencing multiple legal needs. As a result, the percentage of pro se litigants has skyrocketed in state and federal courts. This unfortunate trend has been compounded by significant decreases in the budgets for our state and federal courts, causing in many places temporary closures and suspension of certain types of trials or services. With reduced funding, courts cannot deliver the same quality of service previously expected. This impacts all litigants, and our society generally.

As Mississippi Supreme Court Justice Jess Dickinson stated at a recent meeting of state Access to Justice Commissions:

“One last word to my fellow judges. You know as well as I do that the lack of adequate funding for legal services has led to more and more poor persons coming into court to represent themselves... Poor people who represent themselves often lose, simply because they don’t know what to do, and they can’t afford a lawyer.”

Moreover, unrepresented litigants inevitably affect the operation of the courts, which impacts the ability of everyone who uses the courts to resolve problems– businesses, veterans, victims of domestic violence, landlords and tenants. LSC is an investment that produces an important corollary result – it helps to insure that courts keep working as efficiently as possible for both poor litigants and for all others.

Legal Aid for the Poor is an Investment in Society that Yields Significant Returns

Legal aid for the poor is a prime example of constituent services provided in every congressional district in the United States. Such services lead to greater efficiencies in other government services. It is more expensive for government to provide services *post hoc* than it is to prevent legal problems in the first place; allowing people to sink deeper into poverty imposes greater costs on government and society. For example, a November 2011 report to the Chief Judge of New York State² projected \$100 million in annual cost savings to state and local governments as a result of providing civil legal assistance, largely by preventing homelessness and providing assistance to survivors of domestic violence.

Sources of Funding for Legal Aid Continue to Decline

Federal funding available through LSC provides the foundation for the nation’s civil legal aid delivery system, and LSC funding catalyzes the development of other, additional, funding sources. Unfortunately, other funding sources are experiencing difficulty in providing support for legal aid during these difficult economic times. Most states now provide public funding for legal aid programs. But, as a result of the recession, state appropriations and legislatively approved court fees and fines supporting legal aid declined in 2011 for the first time since the ABA began tracking these funding sources in the late 1990’s. While new or increased funds were obtained by seven jurisdictions, funding was reduced or eliminated in 18 states.

² <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>

With the leadership of the organized bar, Interest on Lawyer Trust Account (IOLTA) programs have been established in every state, the District of Columbia and the Virgin Islands to provide funding for legal aid. However, falling interest rates and the reduction in legal business and therefore in the principal balances in lawyer trust accounts caused overall IOLTA income to fall from \$371 million in 2007 to below \$95 million in 2010. This is a 74% reduction over three years, and the first time in 15 years that IOLTA income has been below \$95 million nationally.

These reductions in other sources make it more important than ever that LSC provide the backbone of funding for legal aid programs.

Limitations on Supplementary Services Provided by Pro Bono

LSC funding also provides important infrastructure for donated pro bono services by private lawyers throughout the nation. LSC funding provides the institutional structure for intake and placement of pro bono cases, and the staffed legal aid offices provide pro bono attorneys with access expert legal advice as they assume responsibility for work in unfamiliar areas of law.

The ABA continues to buttress and expand pro bono efforts by private lawyers to bridge the chasm that stretches between the needs of citizens for access to justice and the ability of the system to respond to those needs.³ Our profession is proud of the unique public-private partnership in service to the poor that the pro bono system represents.⁴ At the same time, the ABA, like other organizations including the LSC and NLADA, is seeking new and innovative ways to stimulate even greater pro bono service. Such efforts have included an ABA-hosted National Summit on Pro Bono in October 2011 which brought together over 100 influential thinkers from the legal services, private bar, judicial, government, corporate and academic communities to develop an action plan for expanding pro bono.

While pro bono provides a valuable supplement, it cannot replace the network of LSC-funded staff legal aid offices. Even with current significant contributions of pro bono service, the system does not come close to responding to the full panoply of legal problems of the poor. Continuation of a vibrant pro bono system depends upon LSC receiving adequate funding.

Attracting and Retaining Legal Services Lawyers

LSC also provides an important foundation and support for other critical aspects of the delivery system. This includes support for attracting and especially retaining high-quality lawyers to/in legal services careers. The ABA has joined with LSC and many state bar foundations and educational institutions in focusing attention on the impact of educational debt on the ability of

³ There are approximately 2,000 local, generalist pro bono programs across the nation, most sponsored or operated by local bar associations. They place hundreds of cases every day with volunteer lawyers. There are also many specialty pro bono programs to address specific, emerging, needs such as foreclosures, the rights of military personnel, and the intersection of medical and legal needs.

⁴ Each state has an ethical rule calling for private lawyers to provide pro bono services. See: http://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html

young lawyers to enter and remain in public service. Federal funding for loan repayment assistance is no longer available through other government programs for civil legal services lawyers. We therefore urge that LSC continue to request at least \$1 million in funds for its program providing loan repayment assistance for selected lawyers in LSC-funded programs.

Building a Strong Technological Infrastructure

Similarly, we endorse the continuation of the “Technology Initiative Grants” (TIG) program, enabling the civil legal assistance community to move forward with improving and expanding the technological infrastructure for serving clients, reaching into rural communities, etc. We urge the Board to include within its FY2014 budget request an amount that will permit continued development of a strong technological infrastructure within the legal services community.

Conclusion

As the LSC Board prepares its 2014 budget request to the Congress, we urge the Corporation to advocate for a reasonable increase in federal support for legal services for the poor. We believe that a request of \$470 million is reasonable for FY2014 in light of the above, and that an appropriation at this level would equip LSC to begin to address the enormous justice gap. The American Bar Association will continue to work closely with LSC to vigorously support increased funding for LSC.