

Chair

Lisa C. Wood
Foley Hoag LLP
Seaport World Trade Ctr West
155 Seaport Boulevard
Boston, MA 02210-2600
LWood@foleyhoag.com

Members

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Boston, MA

Maureen Essex
Baltimore, MD

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Louisville, KY

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Ada Shen-Jaffe
Seattle, WA

Drucilla Stender Ramey
San Francisco, CA

Board of Governors Liaison

Josephine McNeil
West Newton, MA

Committee Counsel

Terry Brooks
312-988-5747
terry.brooks@americanbar.org

Associate Counsel

Bev Groudine
312-988-5771
bev.groudine@americanbar.org

Assistant Counsel

Tori Jo Wible
312-988-5753
tori.wible@americanbar.org

MEMORANDUM

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

From: Lisa Wood, Chair, ABA Standing Committee on Legal Aid and Indigent Defendants

Date: June 2, 2014

Re: ABA Recommendation for FY 2016 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 2016. 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 the members of your Committee and the LSC Board of Directors are well aware, resources are wholly inadequate at all levels across the nation to provide "Equal justice under law." Study after credible study has verified these facts. LSC has never been provided with sufficient budget resources to respond to more than a tiny fraction of the legal needs of eligible poor persons. Other resources, including an increasing level of pro bono contributions by private lawyers, state funding for legal aid, Interest on Lawyer Trust Account programs and other devices are insufficient as more than modest supplements. Nothing short of an enormous increase in the federal appropriation for LSC will produce resources to address the shortfall.

At the same time, the LSC Board, and organizations such as the ABA which advocate on behalf of the Corporation, must face budget realities. In a world where the rhetoric about the importance of justice was matched by action, a budget appropriation for LSC approaching five times the current allocation would be enacted. But we recognize that competing federal priorities and limited federal resources counsel a more moderate request. We therefore propose that the LSC Board strive to simply keep abreast of inflation. Last year, after carefully balancing the overwhelming need for civil legal services against the federal government's budgetary realities, LSC sought an appropriation for FY2015 of \$486 million. The US Bureau of Labor Statistics reported on May 15, 2014 that the inflation rate for the prior 12 months was 2.0%. Applying that basis for adjustment of LSC's prior request, we urge that LSC seek an appropriation of no less than \$495.7 million.

Many Indicators Support This Request

Funding for LSC has fallen very far behind inflation

In 2014, we recognize the fortieth anniversary of the creation of the Legal Services Corporation. Yet the program's current level of funding, \$365 million, is just \$65 million more than LSC's appropriation in 1980. If adjusted for inflation, the \$300 million funding provided for LSC in 1980 would be over \$850 million today.

There have been dramatic increases in poverty during the past decade

The Census Bureau has reported significant increases in poverty during the past decade. Today, nearly 30% of the U.S. population is financially eligible for LSC services. Research has demonstrated that approximately 50% of low-income households face legal needs at any point in time. Research has also shown that about half of those households will have more than one legal problem. This increasing poverty is certain to result in an increased demand for legal help as more people fall into poverty and suffer problems with employment, housing and income maintenance. Those legal problems, and the need for services, will persist for some time, and this burgeoning demand will continue to impact the LSC-funded network of provider-programs.

Pro se representation continues to increase, amid cutbacks in court services for self-represented persons

The constraints on resources to support civil legal aid services have led to large numbers of pro se litigants appearing in state and federal courts. National data indicate that in family law matters, between 60 and 90 percent of the cases involve at least one self-represented party. In New York, nearly two million litigants self-represent each year. California has over 150,000 divorce cases per year. At least one party is unrepresented in 70 percent of them. A New Hampshire report indicates that in 70 percent of the domestic relations matters there, at least one party is self-represented. In Oregon, about seven out of ten litigants in family law matters self-represent. According to a Utah study conducted in 2005, both sides in debt collection cases were represented in only three percent of the cases. In addition, 81 percent of respondents in divorce cases in Utah self-represent, and in evictions, 97 percent of respondents self-represented.

This trend toward involuntary self-representation has been compounded by significant decreases in the budgets for state and federal courts, causing in many places temporary closures and suspension of trials or support services for self-represented litigants. These diminished services impact everyone who uses the courts to resolve problems – businesses, veterans, victims of domestic violence, landlords and tenants.

LSC-funded legal aid programs lead or participate in efforts in many communities to provide assistance to self-represented litigants. Further, by providing representation in some matters, LSC ameliorates the burdens that are otherwise placed on courts in attempting to serve unrepresented persons. But, with current resources, LSC-funded legal aid programs are unable to provide needed representation to many who need such help, thus leaving many applicants for service to fend for themselves in court.

Other sources of funding for legal aid provide unreliable supplements to federal funding

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 funding sources. Board and staff leaders of legal aid programs, recognizing the inadequacy of LSC funds to meet the critical legal needs of poor people, work diligently to increase other resources to supplement their LSC funds. While state and local resources will never be able to replace the loss of LSC dollars, state legislators, attorneys, and other private and public funders across the nation recognize the importance of legal aid and have stepped up to at least partially fill the gap. Despite these efforts, forty percent of the states had less funding for legal aid in 2012 (the most recent year for which data is available) than they did in 2011.

With the leadership of the organized bar, IOLTA programs have been established in every state, the District of Columbia and the Virgin Islands, and in many years has been second only to LSC in the amount of revenue generated for legal aid programs. However, falling interest rates and the reduction in legal business and therefore in the principal balances in lawyer trust accounts have caused overall IOLTA grants to legal aid nationwide to plunge by 62% since 2008, when those grants were at their height. The decline in aggregate IOLTA grants to legal aid from 2011 to 2012 was a staggering 19%.

State legislatures in many states have increased funding to help fill the gap created by reductions in LSC funding. Legislatures in 47 states and Puerto Rico either provide funding directly through appropriations or court filing fees or authorize local jurisdictions to do so. However, growth in this area has been difficult in recent years because of the financial crisis faced by almost every state legislature. In spite of the economic difficulties, state legislative funding nationwide increased by 7% in 2012. While that sounds like a significant increase, it merely returns this critical funding source to its 2011 level.

Local legal aid programs also continue to work hard to increase revenue from private sources, and these sources have increased during this difficult economic period. For example, private donations from the legal community increased by 6% from 2011 to 2012 and foundation support increased by 3%. It must be noted, however, that these increases, starting from much lower base amounts and comprising a much smaller portion of revenue in the overall system, cannot begin to compensate for the loss of federal funding.

It is important to note that any aggregate increases mask a serious problem of disparities from state to state. Relying more and more on state and local funding means that programs in states with greater resources – e.g. where state governments have recovered more quickly from the recent economic crisis, where there are more attorneys and/or private foundations per capita – are better able to cope with the inadequate funding from LSC. The states in the Deep South are particularly negatively impacted.

LSC is the only funding source that provides funding to every state and jurisdiction, based on a formula that allows for an equal measure of justice for every state. The poor and disadvantaged in every state are helped equally, and every community benefits from the more just society that is the result of providing equal access to justice.

Supplementary Contributions Made Through Pro Bono by Private Lawyers

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 to expert legal advice as they assume responsibility for work in unfamiliar areas of law. Continuation of a vibrant pro bono system depends upon LSC receiving adequate funding.

The ABA continues to work closely with LSC to buttress and expand pro bono efforts by private lawyers, and in particular to foster more pro bono service to poor individuals with routine legal matters. We are heartened by, and support, the creation in FY2014 of a new fund to stimulate innovation and creativity in the use of pro bono as an adjunct to staffed civil legal aid services. All who work within the delivery system, however, recognize that pro bono provides only a supplement that cannot replace the network of LSC-funded staff legal aid offices, and that a robust pro bono system is dependent on the infrastructure provided by LSC-funded programs. For that reason, we urge that additional resources provided for the purpose of stimulating pro bono innovation and services should not come at the expense of reductions to the amounts allocated for basic field services.

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 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 FY2016 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 2016 budget request to the Congress, we urge the Corporation to advocate for an inflationary increase in federal support for legal services for the poor. We believe that a request of \$495.7 million is reasonable for FY2016 in light of the above, and that an appropriation at this level would bring LSC a step closer to fulfilling its role in promoting equal access to justice. The American Bar Association will continue to work closely with LSC to vigorously support increased funding for LSC.