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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 10, 2013

Re: ABA Recommendation for FY 2015 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 2015. 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.

Prior to the recession from which the U.S. economy is only now slowly emerging, LSC-funded programs were unable to respond to more than a fraction of the legal needs of eligible persons. As a result of the recession, the number of poor people has increased dramatically. The most recent available data shows that, even now, the poverty population continues to increase. With this increase in poverty, the need for services provided through LSC funding continues to expand. LSC has never been provided with sufficient budget resources to respond to the legal needs of all eligible poor persons, and its ability to do so is slipping even further behind.

Nevertheless, the LSC Board, and organizations such as the ABA which advocate on behalf of the Corporation, must face federal budget realities. In a perfect world, we would prefer to urge that you seek a budget appropriation approaching five times the FY2014 allocation to LSC; this would come close to meeting the needs. But we recognize that competing federal priorities and limited federal resources counsel a more moderate approach. Therefore, we propose that the LSC Board consider that the most recent Census Bureau report indicates a year-over-year increase in poverty of 1.4%, and we urge the Board to seek a similar increase over its FY 2014 budget request. We recommend that the LSC Board seek FY2015 funding of not less than \$492.8 million.

The Need for LSC Services Continues to Grow

The latest Census Bureau report providing an indication of poverty trends was the Supplemental Poverty Measure issued in November, 2012. That report indicates

that the percentage of people in the U.S. living in poverty increased by 1.4% between 2010 and 2011.

Past research has demonstrated that approximately 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 increase in the poverty population means that a larger number of poor people are experiencing legal problems, and half of those people will confront two or more serious legal issues for which LSC-funded programs could provide needed assistance.

The trend toward 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 impact the LSC-funded network of provider-programs.

Other Indicators Also Support an Increased Request

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

The continuing reduction in funding of legal aid organizations has dramatically curtailed 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 numbers of pro se litigants appearing in state and federal courts continues to rise. According to a research report issued in May 2013:

There have been dramatic increases in the numbers of people representing (self represented litigants or SRL's) themselves in family and civil court over the past decade, across North America. In some family courts this number now reaches to 80% and is consistently 60-65% at the time of filing. The National Self Represented Litigants Project: Identifying and Meeting the Needs of Self Represented Litigants Final Report available at: <http://www.representing-yourself.com/doc/report.pdf>

A report accompanying a February 2013 ABA policy encouraging lawyers to unbundle their services and thus provide at least some modicum of service to more clients reviewed the landscape as it has evolved over the years:

National data indicates 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 debts 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.

In 2009, the ABA Coalition for Justice surveyed judges to measure the impact of the economic downturn on the courts. Six out of ten judges who participated in the survey reported that the number of self-represented litigant had increased. Just over a third indicated it had stayed the same, but only 3 percent of the judges reported that more litigants were coming to court with representation. In addition, the study found the self-represented litigants were unprepared, with many having an unsatisfactory outcome. High percentages of judges reported that self represented litigants failed to include important

evidence, committed procedural errors and were ineffective in raising objections, examining witnesses and crafting arguments. Nearly two-thirds of the judges reported that the outcomes of self-represented parties were worse than if they had been represented. See page 2 of report available at:

www.americanbar.org/content/dam/aba/directories/policy/2013_hod_midyear_meeting_108.docx

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 services. This impacts 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 collateral benefit: it helps to insure that courts keep working as efficiently as possible for both poor litigants and for all others.

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, both LSC and other public funding sources saw significant declines in the last year. Aggregate state funding devoted to legal aid fell by 7%, and other public funding fell by 2%. This is on top of similar funding decreases that occurred in the previous year. Overall, taking all sources providing funding for all legal aid programs into account, funding in the system was 3.5% less in 2012 than the previous year.

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 have caused overall IOLTA grants to legal aid nationwide to fall by 54% since 2008, when those grants were at their height. The decline in aggregate IOLTA grants to legal aid from 2010 to 2011 was 14%.

At the same time, local legal aid programs are working hard to increase revenue from private sources. Those sources have responded to entreaties during this difficult economic period. For example, private donations from the legal community increased by 7% during the past year and foundation support increased by 8%. 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 compensate for the loss of federal funding.

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

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.

In 2013, the ABA completed the latest in a series of periodic empirical examinations of pro bono contributions reported by lawyers across the nation. Approximately 50% of lawyers reported contributions of pro bono service addressing the everyday legal needs of the poor (though many others – 80% of the bar in all – reported providing all types of pro bono services including in important policy and issue-oriented advocacy). 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. 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 in any event, is dependent on the infrastructure provided by LSC-funded programs.

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 FY2015 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 2015 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 \$492.8 million is reasonable for FY2015 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.