



THE IOWA STATE BAR ASSOCIATION

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February 12, 2014

Hand Delivered

The Honorable Mark S. Cady
Chief Justice of the Iowa Supreme Court
Iowa Judicial Branch Building
Des Moines, IA 50319

Re: Access to Justice Recommendations

Dear Chief Justice Cady:

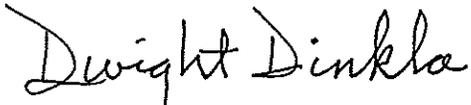
In late 2013/early 2013, Iowa State Bar Association leadership tasked our association's Access to Justice Committee to consider and recommend solutions to lessen the increasing problem of Iowans lacking access to justice.

The Access to Justice Committee, chaired by Bruce Walker (Iowa City), met on nine occasions. The Committee's final report, attached hereto, was approved without dissent by our Board of Governors during our December 2013 board meeting.

We invite you and other justices to visit with ISBA leadership should you have any questions or comments about the report.

Respectfully,


Guy R. Cook
ISBA President


Dwight Dinkla
Executive Director

Final - June 3, 2013

As revised and unanimously approved by the Committee on August 19, 2013

REVISED FURTHER DECEMBER 4, 2013

REPORT OF ACCESS TO JUSTICE COMMITTEE

This committee, formed by President Moser after the December 2012 Board of Governor's meeting, has met 9 times. We were tasked with proposing solutions to a significant budget crisis confronting Iowa's legal aid programs which have sustained substantial decreases in IOLTA and federal funding. Over the past six months, we have learned that the budget problem is an important issue, but there may be other issues with respect to dealing fairly and comprehensively with access to justice for Iowans.

The committee, whose names are listed at the end of this report, have accessed information from national as well as state and local sources to come to the conclusions contained herein. During the discussions surrounding this inquiry, we became aware that as with any change, there can be initial resistance. In addition, we became aware that there are many demands for worthwhile projects or fund raising within our profession and in our voluntary bar association.

We suggest that there are both immediate and long-term solutions possible. As is set forth in more detail below, there are two actions that the committee recommends be taken immediately: the imposition of a *pro hac vice* admission fee of \$250 per case, and increased support from the legislature. The recommendations are set forth in more detail at the end of this report.

A. BACKGROUND OF THE CURRENT PROBLEM

Access to our court system is important for everyone, but especially for low-income people. Every day, the courts and state and federal agencies decide crucial issues affecting the safety, security and stability of low-income families. For example, court decisions involving domestic abuse protection orders, evictions and home foreclosures have a major impact on whether low-income families will be safe or in danger of violence, or be housed or homeless. Agency decisions about food and medical assistance, disability and unemployment benefits, and support for dependent children may be the difference between being fed or going hungry.

The delivery mechanism for legal assistance for low-income Iowans is largely through the services of Iowa Legal Aid. Iowa Legal Aid has ten offices (including its subgrantee, HELP Legal Assistance) and provides assistance to eligible clients in all 99 Iowa counties. Attorneys employed by Iowa Legal Aid and HELP Legal Assistance provide advice and representation to clients. They also screen and refer clients to Iowa's three volunteer lawyers projects, after providing the client with initial advice. Staff of Iowa Legal Aid, HELP Legal Assistance and volunteer attorneys closed 19,357 cases in 2012.

Another important part of the delivery system is the services of volunteer attorneys. There are three volunteer lawyers projects in Iowa. The Iowa Legal Aid Volunteer Lawyers Project places cases with volunteer attorneys in 96 Iowa counties. The Pro Bono Project of Scott/Clinton Counties is operated from the HELP Legal Assistance office in Davenport and works with attorneys in Scott and Clinton Counties. The Iowa Legal Aid Volunteer Lawyers Project and the Scott County Pro Bono project are in-house projects of Iowa Legal Aid offices. The Polk County

Bar Association Volunteer Lawyers Project is a project of the Polk County Bar Association and operates without funding from the national Legal Services Corporation. Therefore, the Polk County Bar Association VLP is available to accept clients who do not qualify for the services of Iowa Legal Aid due to federal restrictions on services provided by Legal Services Corporation grantees (such as litigation for prisoners, and services to certain noncitizens). Approximately 3,000 attorneys are signed up to participate in the three volunteer lawyers projects. In 2012, 912 of these attorneys accepted a case referred by a volunteer lawyers project.

While Iowa Legal Aid is the predominant provider of civil legal assistance for low-income people in Iowa, there are other smaller programs including Story County Legal Aid and Muscatine Legal Services, providing assistance only in those two counties, as well as a few other specialty service programs. The limited number of current providers of general civil legal services to low-income Iowans is advantageous as it results in a system where it is less likely that there is an endless series of referrals in order to find an organization that can help them. The Committee believes that it is important that any funds generated are utilized in such a way as to be available in a relatively equal manner to low-income Iowans in all 99 counties and that the administrative costs be minimized.

B. REDUCED SERVICES CAUSED BY REDUCED FUNDING LEVELS

The most significant reductions in funding and resulting reductions in staff and client service are illustrated by the facts below:

- The most recent census data indicates that 499,474 Iowans meet Iowa Legal Aid's income eligibility guidelines. This is up from 359,741 in the 2000 Census, which is a 38.8% increase.
- Each year for the last five years, Iowa Legal Aid's funding from the Supreme Court's IOLTA Commission has been reduced as a result of reduced interest rates and falling revenues for the Commission. Funding from the IOLTA Commission to Iowa Legal Aid and its subgrantee, HELP Legal Assistance, is \$192,111, a 77% reduction from the \$935,195 received four years ago.
- The IOLTA Commission also provides funding to other legal aid organizations and specialty projects. All have been significantly reduced. The range was from 37% to as much as a 100% reduction. Examples include: the Polk County VLP and the ISBA Public Service Project (50% reductions), Story County Legal Aid (80% reduction) and Muscatine Legal Services (68% reduction). In 2012, Polk County VLP closed 1,169 files and attorneys gave approximately 4,800 hours of their time.
- Iowa Legal Aid's federal funding from the Legal Services Corporation was reduced \$391,255 in 2012, almost 15%. This was on top of a reduction of over \$100,000 made in 2011. The result was \$500,000 less in funding from LSC in 2012 than was received by Iowa Legal Aid in 2010. As a result of sequestration, federal funding has been reduced by an additional \$30,000 in 2013, so the annual loss for 2013 is approximately \$530,000.

- Iowa Legal Aid closed 19,357 cases in 2012, serving an estimated 46,625 Iowans, 20,175 of whom were children. The number of cases closed in 2012 is more than 27% less than the number of cases closed by Iowa Legal Aid in 2010.
- According to Iowa Legal Aid's most recent unmet needs study, a projected 13,500 families were turned away or underserved in 2012, due to lack of staff resources.
- As of January 2, 2013, Iowa Legal Aid has 20 fewer attorneys, 2 fewer legal assistants and 8 fewer support staff than it had at the beginning of 2010. As a result, Iowa Legal Aid has had to restrict intake in several areas of law.

In order to return services provided by Iowa Legal Aid to the level provided in 2010, including returning staffing levels to the 2010 level, it would cost a projected \$1,800,000 or more, taking into account increased personnel costs and other expenses. It is important to note, however, that even at the higher staffing level in 2010, Iowa Legal Aid was still turning away or under serving thousands of Iowans every year.

C. POTENTIAL SOLUTIONS

1. IMMEDIATE SOLUTIONS

In dealing with the budget shortfall, the Committee has concluded that there are three methods available to provide immediate, and potentially, long term revenue sources to guarantee a stable level of funding for civil legal services to the poor delivered by the legal service providers and volunteer lawyers projects.

A. Begin charging a *pro hac vice* admission fee.

Pro hac vice fees are paid by out-of-state lawyers who are not licensed in a particular state, but request permission to make an appearance in the state's courts. Most states have such fees, but Iowa does not. In recent years, several states that did not already have a *pro hac vice* fee have instituted one and are using the revenue to fund civil legal services for low-income people. A few states have increased their fee and used some or all of the additional amount for civil legal services. Examples include Mississippi, where a \$200 fee is imposed, and New Mexico and Oregon, where a \$250 fee is imposed. States vary on whether it is a once-a-year fee or per-case fee.

B. Begin charging an additional licensure or re-licensure fee for attorneys on an annual basis, with appropriate exemptions, as determined by the Supreme Court.

The committee has reconsidered the licensure fee recommendation because concerns have been raised about the potential impact any licensure fee may have on membership in the ISBA. As a result, the committee is not asking the Board of Governors to take action on the licensure fee solution at this time. Nevertheless the committee believes it is important for the Board of Governors to understand the facts that could justify such an assessment in the future.

Several states have imposed an additional fee for lawyers, charged by their supreme court, as a part of the annual cost of maintaining a law license.

- Minnesota established a \$50 civil litigant representation fee in 1997 and raised it to \$75 in 2010.
- Illinois requires \$289 of its registration costs to be divided among several groups and increased it recently by \$53 because the funding was inadequate.
- Wisconsin has required \$50 per member to fund Access to Justice programs.
- Texas required \$65 per attorney for legal services fees.
- Pennsylvania began taxing attorneys \$25 in 2009 by order of the chief justice of its supreme court.
- Missouri has required \$25 to \$30 per attorney for four legal services corporation programs in its state, raising \$2.5 million along with a \$200 *pro hac vice* fee and a \$20 bar dues increase.

Our committee has received reports from those states with voluntary bars, ie. Minnesota, Illinois and Pennsylvania. The information gathered indicates that although there may have been some initial resistance to these fees, it abated after a relative short period of time. No long-term consequences, e.g. lapsed bar membership or decline in pro bono service have been demonstrated. In addition, we have learned three unified bar associations have initiated license fees to support legal services for low-income people in their state.

Funds raised by pro hac vice and licensure assessments in Iowa could be administered by the Iowa Lawyer Trust Account Commission, or another commission established by the Iowa Supreme Court, in a manner similar to the way IOLTA funds are currently invested and administered. The rules for the distribution of IOLTA funds by the Commission would not be utilized for distribution of these funds as all funds raised by the fee should go directly to the provision of legal assistance to low-income Iowans. In addition, the Committee believes that it is important that any funds generated are utilized in such a way as to be available in a relatively equal manner to low-income Iowans in all 99 counties and that the administrative costs be minimized.

The Committee believes that some exemptions should apply for the licensure/re-licensure fees, but did not come up with specific recommendations. We discussed whether the exemptions should mirror those for the Client Security Fund. We generally agreed that exemptions made sense for newly licensed lawyers in their first five years of practice, judges, and emeritus attorneys. The committee did not see a strong reason to exempt government, part-time, or corporate attorneys.

The committee discussed whether exemptions should be structured as a way to reward those lawyers who have contributed at least 50 hours in pro bono time through assistance provided to low-income clients in recognized volunteer lawyer project programs; these lawyers could be exempt from the fee in the year following the year in which they met the aspirational goal and were so recognized by the Supreme Court. However, the committee also discussed potential difficulties with that exemption. The ethics rules do not limit pro bono hours to those performed through a recognized VLP program. Each attorney is supposed to keep track, and certify the hours to the court. A lawyer who performed 50 hours or more outside a recognized VLP program might challenge the lack of an exemption for the next year. In addition to creating administrative burdens, such an exemption might run counter to the lawyer's ethical duty to provide both pro bono service and financial support, as needed, for the delivery of legal services to the poor. The committee is not recommending this option.

C. Continued support by the ISBA for the state appropriation to the Legal Services for Persons in Poverty Grants program.

Since 1996, the Iowa legislature has appropriated and the Governor has approved an appropriation for the Legal Services for Persons in Poverty Grants program. This appropriation provides funding to Iowa Legal Aid's offices around the state, including the HELP office in Davenport and supports services to low-income residents of all 99 counties. State funding first started in 1996 when federal funding was significantly reduced to the Legal Services Corporation, the main federal funder of legal services programs around the country. The state funding is authorized as a part of the Iowa Attorney General's budget and there is specific statutory language setting forth the structure and eligibility criteria.

Funding for this program has been a part of the Iowa State Bar Association's legislative agenda each year. While the funding level has varied over the years, the current amount is \$1,814,831. An increase to \$2,180,562 is expected for the state's 2014 fiscal year. It is anticipated that funding from this source will need to increase to meet the demands outlined herein.

The Committee recommends an annual resolution urging the legislature and the Governor to provide state funding at the level required to address unmet needs for civil legal services, that the Bar include this resolution in its affirmative legislative agenda, and that the Bar continue working in support of this state appropriation.

2. LONGER TERM POTENTIAL SOLUTIONS

This committee has identified other Access to Justice issues for long term consideration by the Iowa State Bar Association and the Iowa Supreme Court:

- Maintain and increase funding for the programs that are part of the current delivery system. In recommending this course of action, we are cognizant of our mandate to propose solutions to the current budget crisis impacting the existing statewide legal services delivery system.

- Explore ways to deal with interpretation and translation issues for persons with limited English proficiency.
- Explore ways to provide civil legal assistance to immigrants who are not able to receive service from an LSC-funded organization. Federal regulations prohibit the representation of individuals who are not lawfully present in the United States (and certain other categories as well) by programs that receive funding from the Legal Services Corporation. There are limited exceptions when assistance is being provided to ameliorate domestic abuse. This leaves a category of individuals unable to obtain legal assistance in situations where there are no issues related to domestic abuse.
- Explore ways to deal with the need for Guardians ad Litem when prisoners are defendants in divorce actions brought by survivors of domestic violence.
- Consider ways to broaden the scope of Access to Justice for low-income individuals through the development of additional forms to assist pro se litigants, which also help judges deal more effectively with pro se litigants. The Iowa Supreme Court has appointed committees to address these issues in the highest use pro se areas—family, probate and small claims. Many forms in these areas have already been approved or are being finalized.
- Investigate whether free legal assistance should be provided to veterans who are over the income and asset guidelines for existing civil legal assistance providers (not including assistance with veteran’s disability benefits or Social Security disability benefits, where attorney’s fees are available).
- Provide information to attorneys about the *cy pres* mechanism which allows unclaimed funds from certain class action lawsuits to go to a civil legal assistance provider.
- Explore ways to increase pro bono activity, including specialized outreach to attorneys in specific areas. For example, attorneys who assist small business clients could be notified of the option of providing pro bono assistance for low-income persons who are starting or maintaining small businesses; or attorneys who practice in the area of elder law could be notified of the option to assist seniors.
- Suggest to the Supreme Court that it work with the Iowa State Bar Association and the Domestic Bar to attempt to streamline the provision of services in domestic cases.
- Explore ways to emphasize the obligation of attorneys to do pro bono work and provide financial support, as set forth in Court Rule 32:6:1.
- Encourage unbundling of legal services and limited scope representation by setting up an ISBA committee to focus and direct the effort.
- Work to match senior attorneys with law students or newly licensed lawyers to provide both mentoring and valuable services.
- Explore ways to utilize Internet/Skype/Face time availability to provide access in remote locations.
- Encourage the Iowa Supreme Court to continue to address Access to Justice issues for low-income Iowans
- Access to Justice Commissions have been set up in 28 other states, and 12 more are considering whether to start these commissions. The functions of these commissions have included:
 - Education, research, awareness
 - Funding for civil legal assistance
 - Pro bono

- Court access and pro se
- Limited scope representation (unbundling)
- State agency administrative fairness
- Student loan repayment assistance
- Civil right to counsel
- Civil legal aid delivery

They have been especially useful in states where there was more than one LSC-funded program, and where a state-wide coordination and fundraising architecture was not in place. In 2006, the Iowa Supreme Court decided that a state-wide access to justice commission was not feasible. Iowa has moved ahead on many of the usual functions of access to justice commissions, such as: pro se forms, the establishment of state-wide fundraising and the development of a state-wide foundation to assist in fundraising, economic benefit analysis, cy pres, unbundling, emeritus practice rule, student practice rules, the role of the judiciary in promoting pro bono and several other pro bono initiatives and student loan repayment. As evidenced by this non-exhaustive list, much has been done in Iowa to move forward on access to justice issues. Further implementation and development of some of these issues should be the focus at this point. Some members felt an additional Supreme Court Access to Justice Commission would be necessary to emphasize developing a vision for the future and long-term solutions. Other members of the committee, although mindful of the vision and focus such a commission might promise, expressed concern about the resource commitment necessary to successfully mount such an endeavor. The committee has not reached consensus on the creation of an Access to Justice Commission but rather recommends that work on these issues continue through the ISBA Access to Justice Committee.

CONCLUSIONS/RECOMMENDATIONS

The committee moves the Board of Governors:

- To recommend to the Supreme Court that a *pro hac vice* fee of \$250 per case be implemented.
- To continue to support a state appropriation for civil legal assistance, and support an increase in the amount of the appropriation, to the Legal Services for Persons in Poverty Grants Program that funds the provision of legal assistance to low-income Iowans by Iowa Legal Aid and HELP Legal Assistance.

COMMITTEE MEMBERS

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 Dennis Groenenboom

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