

AGENDA ITEM

APRIL 8 SPECIAL 701

DATE: April 4, 2011

TO: Members, Board of Governors

FROM: Hon. Ronald B. Robie, Chair, California Commission on Access to Justice; Mary Lavery Flynn, Director, Office of Legal Services

SUBJECT: Consideration of ABA's Request for Approval by the State Bar of a Joint Letter by State Bars to Members of Congress in Support of Continued Funding for Legal Services Corporation

EXECUTIVE SUMMARY

SUMMARY

This agenda item requests that the Board of Governors authorize the State Bar President to join with representatives from all 49 other state bars and the American Bar Association to seek continued stable funding for the federal Legal Services Corporation (LSC). The joint letter addresses two components – first, a request to avoid any midyear reductions in the current year's LSC grant allocations, and, second, a request to increase funding by \$30 million for LSC for the next fiscal year. All other state bars have agreed to sign this joint letter.

Eleven legal services programs in California receive LSC funding, all of which are also recipients of the State Bar's Legal Services Trust Fund Program. The proposed reduction in current year grants would mean a loss of over \$9 million for these California legal service programs.

This proposed letter was considered by the Board Committee on Operations on March 28th, 2011, and the Committee declined to join in the letter, on a 4-3 vote. During that meeting, concerns were raised about LSC oversight issues, and they are addressed below. Subsequently, a majority of members of the Board of Governors requested that the full Board have a meeting to consider the request. In addition, the proposed letter has been modified to respond to some of the concerns raised by the Board Operations Committee. The current version of the attached letter is Attachment A.

BACKGROUND

Grants from the federal Legal Services Corporation (LSC) represent approximately 22% of the total funding available for California legal services programs. LSC is a federal

nonprofit agency that accepts Congressional appropriations and disseminates the funds to local legal services programs across the country according to a statutory formula based on the number of indigent people in each state. LSC's recipient programs provide free civil legal services to the poor, and their California recipients are also funded by the Bar's Legal Services Trust Fund Program.

The U.S. House of Representatives on Feb. 19, 2011, passed a \$70 million cut in Legal Services Corporation funding from the current level of \$420 million, reducing grants to 136 local legal aid nonprofit programs by an average of 18 percent. The proposed \$70 million cut would have an immediate impact since it is proposed to be a reduction from the current Fiscal Year. A similar reduction has not been approved by the Senate, but no final action has yet been taken in the Senate on proposed current year reductions. According to the Legal Services Corporation,

“...under the House proposal, about 160,000 fewer low-income people would receive civil legal assistance and 80,000 fewer cases would be handled by the LSC-funded programs. The proposed funding cut would force layoffs of about 370 staff attorneys and shut down some offices in rural areas.”

The joint letter addresses two components – first, a request to avoid any midyear reductions in the current year's LSC grant allocations; second, the joint letter seeks a 7% increase next year, or a \$30 million increase. While this falls short of the \$516.5 million request submitted by the LSC Board, it is in line with the funding requested by the administration. Funding for the Legal Services Corporation has never been adequate to fill the need, and it has never even kept up with inflation. In 1980, LSC funding was \$300 million, or \$781 million in 2009 dollars. In 1994, LSC Funding reached \$400 million, but that was lower than 1980, when adjusted for inflation. Not until the current fiscal year did the Legal Services Corporation reach a funding level of \$400 million again, having a \$420 appropriation level. However, when adjusted for inflation, that is far less than the 1980 funding level.

A Legal Services Corporation study from 2005 documented the inadequacy of funding levels for legal services programs:

The Justice Gap Report documents that nationwide, for every person helped by LSC-funded programs, another is turned away. Fifty percent of those actually seeking help are turned away for one primary reason: lack of resources. If anything, this finding is an understatement. Many who are eligible for help never seek it—they do not know they have a legal problem, do not know help is available, or do not know where to go for help. [See “Documenting the Justice Gap, Legal Services Corporation, 2005, 2007; <http://www.lsc.gov/justicegap.pdf> .]

LSC Oversight Issues:

Some have questioned whether the Legal Services Corporation is fulfilling its obligation to conduct proper oversight of grantees, and the reports of the Government Accounting Office on those concerns are explained below. The issues and concerns raised about

LSC operations occurred prior to the Senate confirmation of a new Board of Directors last year and selection of a new LSC President in January of 2011, James Sandman, former managing partner of Arnold and Porter. The Board and the new LSC President have made a commitment to addressing these issues, and improving oversight and internal management.

- The Government Accountability Office (GAO) released a Report in August of 2007 raising concerns about deficiencies in internal controls. <http://www.gao.gov/products/GAO-07-993#recommendations>. A subsequent report was issued on December, 2007: <http://www.gao.gov/products/GAO-08-37#recommendations>. The reports indicated that LSC management controls had not kept pace with government reforms, partly because of its status as a separate nonprofit. The report recommended new audit and compensation committees, a risk management program, improved training, development of charters for the Board of Directors, and periodic self-assessment and evaluation of board and staff.
- During Congressional testimony by the former LSC Chairman, Frank Strickland, on February 24, 2010, he stated:

Two reports by the Government Accountability Office (GAO) prompted the Board and the Corporation to focus on the Board's oversight of the Corporation's financial and compliance responsibilities and to focus the Corporation's attention on improved internal cooperation and good management practices. We are making great progress. All 17 of the recommendations made in those two reports were accepted by LSC management and the Board. Nine have been judged by GAO to be fully implemented; eight have been judged to be partially implemented, and on three of those eight, management has recently submitted documentation of full implementation....The Corporation will adhere to best practices and continue to tighten up financial and management controls as appropriate. http://www.lsc.gov/government/testimony_detail_T116_R17.php

- On January 11, 2011, John Constance, Director, Government Relations and Public Affairs, Legal Services Corporation, reported:

“We have been informed by the Government Accountability Office (GAO) that all recommendations from their 2007 reports on LSC have now been accepted and closed. In a House Judiciary Committee LSC oversight hearing on October 27, 2009, Susan Ragland, Director, Financial Management and Assurance Team, testified that LSC had made a good start at implementing the recommendations and that the average close-out time for GAO recommendations is four years. At that hearing we pledged to Chairman Steve Cohen that we would complete all recommendations by the end of calendar 2010. We have fulfilled that pledge and have done so well under the average time of completion.

- January 27, 2011, Jeffrey Schanz, the LSC Inspector General, notified the LSC Board of Directors that an independent accounting firm had audited the Corporation as of September 30, 2010, and found:

The Independent Auditor's report on Internal Control over Financial Reporting and on Compliance and Other Matters identified no material weaknesses in internal control and no reportable noncompliance with laws and regulations." http://oig.lsc.gov/sar/10b/lsc_oig_sarc_09_30_10.pdf

State Bar Oversight of LSC's California Recipient Programs

LSC is the primary federal vehicle for appropriating funding for legal services to the poor, and is the largest source of funding for legal aid in California. All LSC grantees in California are also grantees of the State Bar's Legal Services Trust Fund Program, and the Trust Fund Commission and staff provide added oversight for these programs. Regular monitoring visits, annual analysis of programmatic and financial reports, and other oversight functions are fulfilled by your Trust Fund Commission to ensure quality performance and appropriate management controls.

Impact of Potential Cuts and Status of Proposed Letter:

The loss of LSC funding could result in a 25% reduction in funding for legal aid in California, and thus the Access to Justice Commission has strongly urged this Board of Governors to endorse the national letter supporting continued and expanded LSC funding.

Legal services programs in California continue to face difficulties filling the critical legal needs of their clients because of a lack of resources, particularly having faced a 50% reduction in IOLTA funding over the past three years. The legal needs being addressed by legal services programs include helping battered spouses with restraining orders; protecting elderly victims of fraud and abuse; assisting veterans attempting to qualify for veterans' health benefits; and helping families avoid homelessness.

The American Bar Association and all 49 other state bars have already agreed to join in this letter, in the form attached as Attachment A. The California Commission on Access to Justice has endorsed this position, and requests that the Board of Governors also go on record supporting this funding.

The State Bar has a long history of support for the Legal Services Corporation, and has indicated its support for continued and expanded LSC funding at many times over the years. As an examples, attached as Attachment C includes previous letters from the State Bar supporting LSC Funding.

This position by the Board of Governors would further Goal 3 of the State Bar's Strategic Plan – "All people have access to high quality legal services regardless of financial or other circumstances." Specifically, Strategy 3.2 calls for advocating for

increased funding and other resources for no and low cost legal service providers. No mandatory dues were expended in the review and support of this letter.

RECOMMENDATION:

The Access to Justice Commission and staff recommend that the Board of Governors authorize the State Bar President to join in this letter of support for stable funding for the Legal Services Corporation.

FISCAL AND PERSONNEL IMPACT:

There will be no fiscal or personnel impact as a result of this resolution.

BOARD BOOK IMPACT AND RULE AMENDMENTS:

None.

RECOMMENDED RESOLUTION

If members of the Board of Governors agree, the following resolution would be appropriate:

RESOLVED that the Board of Governors authorizes its President to join with the American Bar Association and other state bars to support funding for the Legal Services Corporation, in the form attached.

FURTHER RESOLVED, that no mandatory dues shall be used for the review and support of this letter.

Attachments:

- Attachment A – Proposed Joint Letter
- Attachment B – “California Legal Services: Legal Services Corporation Needs Full Funding to Protect California Residents.”
- Attachment C – Previous State Bar of California letters of support for the Legal Services Corporation