

LBF Funding of Civil Justice: You've Come a Long Way, Baby!

New Initiatives Beyond IOLTA to Combat Growing Civil Legal Needs

By E. Jane Sherman

“No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.”

— Article 39, Magna Carta (1215)

Our society is judged by how we treat the weakest and the most vulnerable. Ensuring access to justice through civil legal aid is fundamental to our society based on the rule of law and is our opportunity and call within our profession to strengthen our society.

The rule of law, established by the historic Magna Carta in England and later the United States, guaranteed that life, liberty or property cannot be arbitrarily taken away, and that everyone is entitled to a fair and impartial hearing with judgment by the subject's peers or the law of the land. We must ask ourselves, is access to justice truly fair and equal if only one party has legal representation due to financial means?

Historically, state bar foundations, including the Louisiana Bar Foundation (LBF), made grants to legal aid programs for civil legal aid to indigents using funding exclusively from Interest on Lawyer's Trust Accounts (IOLTA). For example, in fiscal year 2004-05, 80 percent of the LBF's \$2.1 million budget was from IOLTA funds. However, between 2007 and 2011, IOLTA income declined by a dramatic 74 percent nationally due to drastic reductions in interest rates. The LBF wisely opened its eyes and efforts to seek innovative approaches

to identify new funding sources and new systemic remedies and programs to assist the ever-growing need for civil legal aid services. This fiscal year, the LBF budget has grown to \$8.3 million with only 30 percent from IOLTA, and the LBF's program support has expanded by funding additional direct legal services and leveraging technology to provide additional awareness, advocacy and new models for the delivery of legal services. The LBF is the largest state funder of civil legal aid.

We've come a long way, but with great reason and drive to continue. Louisiana's poverty rates are among the nation's highest. Nearly one in five (19 percent) live in poverty, and another 21 percent qualify as ALICE (Asset Limited, Constrained, Employed) meaning they struggle to make ends meet and are one small emergency from being destitute. Our state has one of the highest rates of economic inequality in the country along with high racial disparities. Louisiana's child poverty rate is the third highest rate in the nation with almost half (46 percent) of African-American children in Louisiana living in poverty. It is estimated that one quarter of our poverty population will experience a civil legal problem each year. However, 80 percent will go without the legal help they need. It is our duty to serve the public and it is our duty to deliver justice, not just to

some, but to all. Civil legal aid provides free legal assistance to those who cannot afford a lawyer and makes the difference between staying in a home and living on the street; between a safe family and a life of fear and violence; between getting paid earned wages and having nothing to eat. The LBF is seeking innovative answers to enhancing access to and the delivery of legal services, as well as systemic changes to reduce the growing need for such services in our state.

Highlights of the LBF's recent funding sources and program initiatives follow.

New Funding

In addition to the IOLTA funding of civil legal service providers, the LBF has secured new funding sources:

► **Child in Need of Care Program (CINC).** Beginning 2009, the LBF has served as administrator for the Louisiana Supreme Court's CINC Program, providing governance and oversight of funds for free legal representation to children in foster care. More than \$2 million annually is subgranted to the three legal services corporations. Last year, the program provided representation to 3,384 children, made more than 15,162 court appearances on their behalf, and participated in 1,459 family team conferences.

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► **Cy Pres.** In 2012, the Louisiana Supreme Court adopted Rule XLIII (43) naming the LBF a permissible recipient of Cy Pres funds and the only organization specifically identified in the rule. Over the past two years, the LBF has received nearly \$90,000 in Cy Pres funds from Orleans Parish Civil District Court judges.

► **Mortgage Servicing Settlement.** In 2013, the LBF began serving as administrator of partial funding from the Office of the Louisiana Attorney General for the federal mortgage servicing settlement. With services by the legal services corporations, Louisiana Appleseed and the Louisiana Civil Justice Center, this program provided free legal representation to affected consumers. In fiscal year 2014-15, the program handled 280 bankruptcies, 469 landlord-tenant matters, 70 wrongful foreclosures, provided foreclosure prevention, mediation and relief to 966 clients, provided loan modification, principal reduction and refinancing to 603 clients, and participated in 670 housing counseling education sessions.

► **Pro Hac Vice Fees.** In 2015, the LBF and the Louisiana Attorney Disciplinary Board entered into an agreement regarding the increase of pro hac vice fees from \$250 to \$450. The increased funds are directed to the LBF and then awarded to the three legal services corporations.

► **Unidentified Funds.** A 2016 amendment to the Louisiana Rules of Professional Conduct, Rule 1.15 (Safekeeping Property), enables lawyers to properly dispose of unidentified funds remaining in their IOLTA accounts for at least one year after diligent efforts to document them as belonging to a client. These unidentified funds are remitted to the LBF for funding of civil legal services.

► **Bank of America.** In 2015 and 2016, the LBF received funds from the U.S. Department of Justice Bank of America settlement to continue helping families stay in their homes and out of foreclosure and bankruptcy.

New Initiatives

In addition to securing new funding

sources, the LBF has launched support of new program areas:

► **Advocacy.** In 2008, the LBF began financial and in-kind support of Louisiana Appleseed, part of a national network of public interest justice centers that use pro bono attorneys to develop policy solutions to legal injustices. In 2016, the LBF expanded support to Louisiana Appleseed to increase advocacy on behalf of civil legal aid in a proactive, not reactive, manner and to bring systemic, rather than piecemeal, relief to the poor.

► **Technology.** Hotline: In 2016, the LBF provided \$125,000 to the Louisiana Civil Justice Center for a statewide hotline to provide intake, brief service and referral to the legal service corporations and pro bono organizations.

Self-Represented Litigants. In 2016, the LBF created a new funding category to create self-help centers and kiosks in each parish using court-approved forms and young lawyers to give guidance and referral information, and pro bono lawyers in the district court-houses to assist with direct client advice.

► **Awareness.** Economic Impact Study. In 2016, the LBF funded a professional, expansive and accurate assessment of the social and economic value of civil legal aid to help spread the message that civil legal aid is essential to improving the economic, social and health conditions of our state and those living in poverty.

Philanthropic Community. The LBF is educating and engaging the broader philanthropic community about the value of supporting civil legal aid and integrating civil legal aid services throughout their work. Through strategic partnerships with Louisiana community foundations, these organizations are learning about the value of supporting civil legal aid. Together we are working to identify co-funding opportunities to enhance foundation support for access to justice and civil legal aid.

► **Training.** As part of the LBF's commitment to strengthen grantee board leadership and the Louisiana's civil legal aid network, the LBF began in 2013 to host board training for grantees. The training is designed to strengthen leadership by

reviewing board member responsibilities, program and administrative priorities for the organizations, and evaluation of mission outcome goals.

► **Flood Recovery.** In 2016, the LBF established a Louisiana Flood Recovery Fund following the March and August federally-declared flood disaster occurrences. Funds were provided to the three legal services corporations and to the pro bono organizations in the affected areas to assist post-disaster civil legal needs, such as title clearing, homeowner's insurance and federal fund eligibility issues.

The LBF is committed to serving all Louisiana households in poverty. Investing in civil legal aid impacts people to solve critical problems and prevent events that are personally harmful and expensive for society. Civil legal needs have a ripple effect, not only affecting the families served, but the community at large. Schools, businesses, government agencies and the state as a whole benefit from resolving civil legal problems.

Our society improves when people understand the law and have equal access to justice. It is our job to continue to provide civil legal assistance to Louisiana's most vulnerable citizens because access to affordable legal services is critical in a society that depends on the rule of law. As our needs, resources and technology change, so must our approach to addressing the unmet civil legal needs of those in our state. The profession must ensure that the justice system serves everyone and that the rule of law is preserved. We've come a long way. Innovation is underway. Innovation continues to be essential.

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