



# WSBA

BOARD OF GOVERNORS

**Patrick A. Palace**

**Governor – 6th District**

## **CIVIL LEGAL AID PROPOSAL**

The process of crafting a proposal to support our civil legal aid system ("CLA") to date has illuminated areas of agreement among some interested stakeholders. For example, many believe that 1) we as lawyers do have a responsibility to protect the civil legal aid system, 2) that we must take action to provide some level of funding to the system, and 3) that we do not have the ability, nor believe it our role, to self fund the system to "make it whole" again. The following proposal assumes these basic areas of commonality.

While this proposal is not intended as a complete final product, it is intended as an instrument to structure discussion and facilitate resolution. The dialog for resolution may necessarily begin by focusing on the tools we can reasonably access that will place a temporary safety net under the civil legal aid system to protect it from certain failure, while balancing the political realities and financial harms that a reallocation of funds necessarily creates.

### **SOURCES OF FUNDING**

The main **sources of funding** that may be utilized for CLA include:

- 1) Mandatory assessment of **Bar Dues**, through
  - a. a new additional assessment or
  - b. a reallocation of the existing dues structure, or
  - c. a reallocation of the future dues structure currently before the Supreme Court;

2) Reallocation of **WSBA Reserves** including:

- a. CLE Reserves
- b. Facility Reserves
- c. Combination of reserve sources

3) **Voluntary Contributions** from:

- a. Active WSBA members
- b. Other WSBA members and judicial officers
- c. Contributions from charitable organizations, business and corporate entities, private individuals, and other like sources.

**FUNDAMENTAL PRINCIPLES**

Fundamental principles underlying this proposal include:

- The WSBA retains the power to fund from **one or more funding sources**, and that funding does not need to be allocated from all sources
- An **annual funding target budget** shall be established
- The annual funding target budget must be established through a **need-based formula**

**EXISTING OPPORTUNITIES**

The Civil Legal Aid Crisis provides us with a unique opportunity, should we choose to capitalize on it, to: 1) improve the image of lawyers in the community while, 2) protecting and improving the civil legal aid system, 3) supporting and encouraging members to voluntarily support the civil legal aid system, 4) improving coordination and cooperation between the WSBA and Law Fund and/or other fund raising arms supporting CLA; and 5) creating a permanent infrastructure to supplement the provision of civil legal services on a long term basis.

**PROPOSAL:**

**1) VOLUNTARY CONTRIBUTIONS MUST BE ACTIVELY SOLICITED FROM WSBA MEMBERS AND OTHERS.**

- a. Every WSBA member shall be given the opportunity to donate money to CLA on an annual basis.  
The benefits from raising donated funds include:

- i. Fundraising may begin immediately to raise funds for expenditure in 2009.
  - ii. Funds may be raised and spent without Supreme Court approval. There will not be the risk of a significant delay or rejection by the Supreme Court for a funding proposal for 2009.
  - iii. For those many members who have e-mailed and believe that Bar dues should not be raised and that the members of the WSBA are charitable, they are given an opportunity to support their own charitable beliefs, or in the alternative, provide the BOG with solid statistics to support future consideration of increasing dues to support civil legal aid in the coming years.
- b. The **WSBA must facilitate fundraising** by creating a bar wide culture of giving. While Law Fund raises money yearly, they have never had the open support of the WSBA, nor has the WSBA actively participated in fundraising. Greater cooperation between the WSBA and Law Fund or like fund raising CLA arm, is key to creating a bar wide culture of giving. Bar resources may be used as follows:
  - i. Bar News: Bar News may recognize donors and donor firms in bold print. The more money individually donated, the greater the "recognition" space (i.e. quarter to full page ads) may be given to recognize the donations of individuals and firms. Charitable members may also be recognized in lists, articles, awards and other forms of recognition in the Bar News, local and minority bar publications, meetings and bar functions.
  - ii. CLE: CLEs may be provided to members who donate. For example, if a lawyer commits to \$100 a year for 3 years, then they may receive 3 hours of WSBA CLE to be used at anytime between reporting periods. This helps bring members into WSBA CLEs, gives members better member services, increases value for their donation, and encourages "giving". For cost efficiency, WSBA CLE could offer ethics CLEs by phone twice a year to satisfy the CLE "Credit" to donors.
  - iii. WSBA CLA Education Program: A concerted staged strategy to highlight and spotlight civil legal aid must be implemented to educate members, demonstrate the continued need, and encourage and grow the culture of donation. Civil legal aid information should be continually introduced, reintroduced, explained and updated through Bar News, local and minority bar publications, local and minority bar meetings, and WSBA bar functions. Those that donate must continue to be recognized in

order demonstrate the culture of giving, the charity of lawyers, and to further fuel peer synergy. Bar members should be given an opportunity to own the crisis and to assist in its solution on their terms.

- iv. WSBA Leadership: Governors and Bar leaders shall be encouraged to lead by example and to openly donate and encourage donation from others.
- v. WSBA Fundraising Infrastructure: The WSBA may establish a permanent infrastructure to support charitable donations by members from 2010-2012 and beyond. The WSBA must continue to implement and establish methods to complement and encourage charitable giving of members to support civil legal aid. This may include the tools listed above, and others, as a long term strategy and goals are created and implemented to raise money annually and to raise money to further create or fund an existing endowment. Examples may include;
  - 1. Create Campaign for Equal Justice committees in each county or district to facilitate peer-to-peer charitable fundraising;
  - 2. Amend RPC 6.1 to include charitable giving to CLA as one method to satisfy a portion of the "service" requirement;
  - 3. Make WSBA member phone numbers, e-mails and/or business addresses available for use by the Campaign for Equal Justice to contact members;
  - 4. Publish WSBA recommend minimum standards for giving. Such minimum standards may be established as equal to two billable hours of time.
  - 5. Encourage committees, sections and minority/local bars to actively participate in charitable giving as part of their mission, and to allocate a portion of committee/section resources to collecting or facilitating the collection of CLA donations;
  - 6. Better utilize the WSBA website to encourage charitable donations, provide information about the CLA system, directly link to CLA organizations, and add point and click donation buttons and banners;
  - 7. Make donations at CLEs a mandatory talking point for CLE chairs, and encourage all participants to donate at the CLE sites;

8. Discount or donate Bar News space for ATJ affiliates for the purpose of raising CLA awareness and to facilitate charitable donations from members;
9. Make available to all members pamphlets and other like materials at points of contact (i.e. CLEs, swearing-ins, bar applications, dues notices, WSBA functions, WSBA offices etc).

**2) ALLOCATE SPECIFIED WSBA RESERVES TO SUPPORT CLA:**

- a. Reallocate \$250,000 from CLE reserves to support CLA to meet the target budget for 2009.
- b. Reallocate up to \$500,000 in 2010 from WSBA reserves, if needed to meet the 2010 annual target budget. Reserves may include CLE or other reserve sources as deemed reasonable in 2010.

**3) NO USE OF MANDATORY BAR DUES:**

- a. This proposal does not recommend the use of mandatory bar dues collected from WSBA members for the purpose of funding CLA. However, the use of mandatory funds may be given future consideration, pending the success of charitable giving and the continued evolution of the IOTLA deficit. It is worth noting that for every \$15 of mandatory dues, creates \$405,000 assume 27,000 active members. Thus, even a minimal use of bar dues can have a large effect upon CLA.

Additionally, this proposal does not rule out the use of non-CLE WSBA reserve funds where necessary to meet budget goals. However, it is worth noting that such funds may have been collected from mandatory bar dues, and thus their use for CLA funding may pose concern for those do not support use of mandatory fees.

**4) ESTABLISH A WSBA CIVIL LEGAL AID TARGET BUDGET AND ALLOCATION FOR EACH YEAR 2009-2012.**

One potential budget version may identify estimated shortfalls, fund allocations and target budgets as follows:

<u>Source</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Bar Dues	\$0	\$0	\$0	\$0
Reserves	\$250,000	\$800,000	\$0	\$0
Donation	\$250,000	\$500,000	\$750,000	\$750,000
Total Raised	\$500,000	\$1,300,000	\$750,000	\$750,000
Budget Goal	\$1,000,000	\$2,000,000	\$1,000,000	\$750,000
Projected IOTLA Deficit	\$4,600,000	\$7,000,000	\$4,000,000	\$unknown

- a. The budget should be annually evaluated weighing the need for WSBA "reserve" dollars, available voluntary contributions, and the IOLTA deficit. The changes in IOTLA revenue must be addressed annually so that CLA funds are used only to the degree needed, and with an eye toward using a decreasing percentage of WSBA reserves annually. With the creation and implementation of the Comparability Rule, IOLTA revenues should increase, thus allowing the flexibility to allocate a smaller percentage of reserves to support legal aid. With the anticipated rebound of the economy, interest rates will also rise which will add further IOTLA revenues. Thus, the greatest funding challenges will be for 2009 and 2010. Reasonable (albeit optimistic) forecasts support a decreased need over time compared to today.

**5) CREATE PERMANENT STATEWIDE INFRASTRUCTURE FOR LOW BONO SERVICES**

The dedication of WSBA staff and resources to the creation of a permanent low bono delivery system is long overdue and a necessary complement to the

CLA system. The WSBA should expand GAAP statewide and fulfill our mission to promote greater access to justice, especially in these times of crisis. The recent WSBA Home Foreclosure Legal Aid Project shows that legal services can quickly and effectively be created and implemented to reduce the current need for legal services. Like the HFLAP, the expansion of GAAP may be feasible without significant allocation of funds. WSBA staff time may be reallocated consistent with the realign of priorities toward promoting pro/low bono services, access to justice, and charitable giving. In the long run, creating a WSBA supported infrastructure for legal services is a viable solution for proactively servicing and reducing the unmet need for legal services.

6) **SUNSET PROVISION**

End CLA non-voluntary funding in 2012.

**CONCLUSION**

In summary, this proposal consists of four basic components:

- 1) Voluntary contributions must be actively solicited from WSBA members and others.
- 2) Reallocate up to \$250,000 from WSBA CLE reserves to support CLA in 2009, and up to \$500,000 in 2010 from WSBA reserves.
- 3) Create a permanent statewide infrastructure for low bono services.
- 4) Sunset non-voluntary CLA funding in 2012.

Respectfully submitted,

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Patrick Palace  
Governor, 6<sup>th</sup> District  
Washington State Bar Association