Innovative Fundraising Ideas for Legal Services-2004 Edition

Prepared by
Meredith McBurney

Standing Committee on Legal Aid and Indigent Defendants
Project to Expand Resources for Legal Services (PERLS)

American Bar Association
Innovative Fundraising Ideas for Legal Services-2004 Edition

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Dear Colleagues:

There is no doubt that many bar associations across the country have recognized the critical role that they can play in fundraising for legal services. While acknowledging that continued funding of the Legal Services Corporation is vital, more and more bars are engaging in activities to create and maintain a more diverse, stable and adequate funding base for legal services.

The Project to Expand Resources for Legal Services (PERLS), a project of the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID), was conceived in 1994. Since that time, PERLS has assisted bar associations and their leaders, private lawyers, bar foundations, IOLTA programs, legal services programs and pro bono programs as they have worked to increase resources for legal services. PERLS has published three editions of its fundraising manual for bar leaders, each of which contained an overview of established fundraising projects involving private lawyers and state and local bar associations, as well as innovative, but untested projects. Since the last manual was published nearly six years ago, many of the established fundraising ideas have been expanded, several of the previously untested initiatives have become more established and new and creative projects have been developed. As a result, the time has arrived to publish a new edition of this valuable resource.

Publication of the manual would not have been possible without the generous funding of the Open Society Institute. Many individuals made valuable contributions to the development of this publication and we are indebted to them for their insight and assistance. Sincere appreciation is extended to the PERLS Manual Review Subcommittee of SCLAID – Sarah Singleton, chair, and my fellow members Phyllis Holmen and Diane Kutzko - who spent many hours reviewing and commenting on drafts of the manual.

SCLAID is also very grateful for the skills of Project Director Meredith McBurney, who researched and wrote this manual, for the editing and project oversight provided by Bev Groudine, Associate Counsel to SCLAID, and for the assistance of Terry Brooks, Counsel to SCLAID, who authored the initial PERLS funding proposals. A special thanks is extended to Janice Jones, Program Manager and Mickey Glascott, Administrative Assistant, for their dedicated support in coordinating the many details involved in the publication of this manual.

As with the past manuals, this newest edition sets forth a variety of suggestions that are not meant to overwhelm, but rather to recognize that each bar is unique and has its own goals and priorities. The extensive list of initiatives provides a range of options that may be applied to meet the needs of the bar, legal services providers and the economic and political realities of the community.

This manual differs from the last edition by not including information regarding initiatives that expand revenue for IOLTA programs. Given the complexity of these strategies and the wealth of resources that exist through state IOLTA programs and the American Bar Association Commission on IOLTA to address IOLTA revenue enhancement, SCLAID decided to eliminate that discussion from the manual. The Committee, however, recognizes the critical importance of this funding source and encourages bar leaders to work with their state IOLTA programs to enhance IOLTA revenue.
Bar leaders can choose from a wide range of projects to focus on during their tenure. Few, however, will have as significant an impact on making real the promise of “equal justice under law” as increasing funding for legal services. Given the continued vulnerability of Legal Services Corporation funding and the decline in IOLTA revenues due to low interest rates, it is more important than ever that bar leaders commit to fundraising for legal services. By doing so, they can create a legacy that will help to ensure that the goal of justice for all is realized.

Bill Whitehurst
Chair
Standing Committee on Legal Aid and Indigent Defendants

March 2004
American Bar Association
Project to Expand Resources for Legal Services (PERLS)
Manual Review Subcommittee of the Standing Committee on Legal Aid and Indigent Defendants

Sarah Singleton, Chair
Santa Fe, NM

Phyllis Holmen
Atlanta, GA

Diane Kutzko
Cedar Rapids, IA

William O. Whitehurst
Austin, TX
Chair, ABA Standing Committee on Legal Aid and Indigent Defendants
The ABA Project to Expand Resources for Legal Services (PERLS)

During the past decade the Project to Expand Resources for Legal Services (PERLS), a project of the Standing Committee on Legal Aid and Indigent Defendants (SCLAID), has: (1) collected and disseminated information about new legal services fundraising initiatives to bar leaders and IOLTA, legal services and pro bono programs; (2) promoted bar leaders’ involvement in fundraising activities; and (3) directly assisted individual bar leaders and others with specific fundraising campaigns.

These efforts have been extremely well-received by bar leaders and the legal services provider community, and PERLS’ assistance has contributed to the beginnings of a more stable funding base for legal services.

Activities include:

♦ Developing a tracking system to collect information on fundraising activities under way across the country, which is shared with a variety of organizations and providers

♦ Producing four handbooks for bar leaders on fundraising for legal services

♦ Obtaining passage by the ABA House of Delegates of a resolution encouraging bar involvement in resource development for legal services

♦ Producing workshops to assist fundraising by bar leaders and to provide examples of successful fundraising efforts for others to follow

♦ Providing technical assistance to individual bar leaders, legal services programs and pro bono programs that are considering specific fundraising initiatives

For more information, contact:

Bev Groudine
American Bar Association
321 N. Clark St., 19th Floor
Chicago, IL 60610
312/988-5771
FAX 312/988-5483
Ratings of Fundraising Initiatives

The chart below and the individual charts at the top of each initiative provide an at-a-glance overview of each fundraising initiative described in this manual. Each initiative is categorized by type, that is, whether it is “tried-and-true,” “experimental” or “cutting edge.” It is then rated according to six criteria — locale, revenue, time, cost, staff and upkeep. The charts may help you identify quickly the initiatives most appropriate for your bar to pursue. For example, if you are seeking fundraising initiatives with high revenue-generating potential and are less concerned about staff and time requirements, it would be wise to look carefully at those initiatives for which the “Revenue” criterion is rated High (H).

It should be noted that these ratings are estimated averages only. Bars may well have greater or less success, with more or less expense, than our ratings show, based on any number of factors.

Key for Initiative Type

**Tried and True =** Implemented in various areas around the country, usually successfully.

**Experimental =** Implemented in various areas around the country, but with somewhat varying degrees of success, or circumstances may prevent duplication.

**Cutting Edge =** Implementation is very limited or in discussion stage only.

Rating Key

L = Low \( \quad \) M = Medium \( \quad \) H = High

Definitions

**Locale:** Can be implemented at the state, regional or local level.

**Revenue:** Net amount of money produced that is available for legal services.

**Time:** Amount of time it would take to implement the initiative, from beginning of planning until actual dollars are received.

**Cost:** Anticipated cost of implementing the initiative, excluding the cost of staff.

**Staff:** Need for a staff person to implement and maintain the initiative.

**Upkeep:** Need for work after the initial period of implementation to insure that funding continues to be received over time (i.e. not self-sustaining).

1 The initiative, “Other Possible Public Sources,” is the only one that does not have a completed chart, and this is due to the disparate nature of the various ideas put forth in that “catch-all” chapter, making one rating difficult to provide.
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<th>Type</th>
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Introduction

Initiatives Undertaken and Implemented by the Bar

Of all the initiatives in this manual, the ones in this section may be the most important, because they both provide critically needed funding and demonstrate the commitment of the organized bar and individual attorneys to support legal services for the poor and access to our justice system.

A fundamental rule in fundraising is to ask those who are most closely related to the organization to give first, working under the assumption that those who know the cause best understand its importance and are most likely to contribute to its continued success. There is no doubt that the organized bar and individual attorneys fit into this category for legal services programs. Lawyers understand the vital importance of access to our justice system and know that it is unattainable for most poor people without the help of legal services providers. They also have a professional responsibility to ensure the availability of legal services to the poor.

The organized bar and individual attorneys must be contributing if legal services programs are to diversify their funding base successfully. Foundations, state legislators and most other potential funders want to know what the private bar is doing to support legal services financially before they are willing to make a commitment.

Key to increasing financial support is the development of a board or committee that understands resource development and the essential role that volunteers play in fundraising. The ability of many legal services programs to increase resources is limited because the programs' board members are not interested in being involved in the fundraising process. Some legal services programs have successfully gone through the process of reorganizing their boards to include members who are interested and able to raise funds. Other programs have developed fundraising committees, recruiting lawyers who are interested in and appreciate the importance of raising funds and who would rather not spend their volunteer time working on governance issues. Bar leaders can encourage and assist legal aid programs in redesigning their structure so that they have the volunteer power necessary to significantly increase resources.

As the initiatives in this section illustrate, the private bar is providing increasingly generous support for legal services. Since this manual was last published, some bar associations and individual attorneys have taken innovative steps to increase resources for legal services, while others have continued to generate additional income from the legal community through more tried and true methods. This increasingly strong financial commitment from the private bar is providing the basis for expanded support from other private sector donors as well as public sources, providing the potential for the diverse, stable and adequate funding that is needed for the survival of legal services.
Lawyer Fund Drive

Definition

An annual solicitation of lawyers and/or law firms by lawyers on behalf of legal services.

Explanation

Lawyer fund drives, or private bar campaigns, are efforts by lawyers to obtain personal and law firm contributions from members of the bar. Most have been initiated by a legal services program or a coalition of programs, although in recent years some bar associations and bar foundations have led efforts to develop new campaigns and to encourage competing campaigns to join forces. A lawyer fund drive should be an integral part of the resource development plan of virtually every legal services program.

The most important ingredients for success are a good working relationship between the private bar and the legal services programs, a committed campaign committee willing to ask lawyers and law firms for money, and strong staff supporting the effort.

There are many types of lawyer fund drives. They range from sophisticated campaigns that make individual contacts with every major law firm and personally solicit individual attorneys who are capable of making major gifts, to those that involve no more than sending an annual letter to every attorney. The more sophisticated, well-run campaigns raise significant revenues on an annual basis, providing a stable funding source for legal services programs. For example, in 2002, Greater Boston Legal Services, one of the oldest campaigns in the country, raised $2,166,000. Atlanta Legal Aid Society, another well-established campaign, generated $1,135,000. Legal Aid Society of Middle Tennessee and the Cumberlands, headquartered in Nashville, has a somewhat newer campaign that generated $524,000.

To be really successful, a lawyer fund drive must be run by a committee of attorneys who are chosen because of their commitment to legal services and their influence in the legal community. The composition of the committee reflects the diverse groups practicing law in any given community or state. Care is taken to find a chair or co-chairs with the ability to recruit other highly respected lawyers for the committee.

Firms and individuals identified as capable of and potentially willing to make significant contributions are targeted. Each committee member is assigned targeted law firms or individuals to solicit. Staff provides orientation, campaign materials, overall organization and
coordination, and follow-up. Most of the targeted solicitations are done on a peer-to-peer, personal basis. Letters are used for follow-up, and to contact the many lawyers that cannot be reached through the more personal process.

A successful lawyer fund drive often leads to other significant resource development and diversification for legal services programs. An effective fundraising campaign, no matter what the cause, is developed by first asking those closest to the organization to contribute. Because of the close ties of lawyers to legal services, most other private sources, such as foundations, corporations and non-attorneys, will not choose to contribute to legal services programs unless lawyers have made a financial commitment to them. Additionally, a successful lawyer fund drive usually needs to be developed before the legal services providers can consider more complex private resource development efforts such as planned giving, capital campaigns, and endowments. (It should be noted that several legal aid programs have initiated successful capital campaigns first. See initiative Capital Campaigns, page 83.)

**Pros**

- A well-run lawyer fund drive can provide significant general operating revenue for legal services programs.
- Once established, a lawyer fund drive is a very stable funding source.
- Many lawyers become highly invested in legal services through their participation in lawyer fund drives. Once a lawyer has begun to make contributions, he or she will pay more attention to the organization and have more interest in its success. By necessity, lawyer fund drives educate lawyers about legal services, and those lawyers are then more willing to help with other efforts, like contacting their legislators to request support for state funding or supporting an attorney registration fee increase.

**Cons**

- A lawyer fund drive is labor-intensive and requires staffing. Many details are involved in establishing and running a lawyer fund drive. It continues to be successful year after year only if the requisite staffing and support are maintained.

**Examples**

Lawyer fund drives can be run on behalf of individual programs or groups of programs; they can be done in big cities, more rural areas, or on a statewide or regional level.

- The Campaign for Equal Justice, organized by the Oregon legal services programs in 1990, is a statewide fundraising organization. Start-up funding was provided by one of the legal services providers, and an experienced fundraiser and community organizer was hired as the executive director. The new executive director sat down with legal services staff and volunteers and brainstormed to identify the people they
needed to involve to insure an effective campaign. They commissioned a simple and inexpensive feasibility study that told them that lawyers cared about access to justice and would give, but that they had almost no understanding of the need for legal services. The executive director cultivated a large Oregon foundation, which agreed to make a challenge grant of $750,000, to be paid when the first $750,000 of lawyer and law firm contributions had been made, a challenge that was met successfully. She obtained a grant from another foundation to fund a communications strategy aimed at raising awareness of the need for legal assistance.

The Campaign for Equal Justice also has taken on responsibility for other funding for legal services in Oregon. From its beginnings as a lawyer fund drive, it has developed a highly invested group of volunteer leaders who have continued to increase the level of giving from lawyers and law firms, helped secure numerous foundation grants, developed a successful cy pres program, are now working with other Oregon entities to develop planned giving and an endowment, and are actively involved in a campaign to increase state legislative funding. Access to justice moved from being a virtual non-issue among Oregon lawyers to the top of the agenda for lawyers and the Oregon State Bar. In 2002, the Campaign’s lawyer fund drive raised $732,000. The Campaign also was instrumental in generating over $600,000 in foundation grants and $247,000 in cy pres funds.

“and Justice for all” is a joint campaign of the three major legal services providers in Utah - Utah Legal Services (ULS), the statewide LSC funded provider; Legal Aid Society of Salt Lake (LAS), which handles domestic relations cases in Salt Lake City; and the Disability Law Center (DLC), the protection and advocacy program. In 1999, these three programs decided that their potential for raising significant funds from the private bar would be greatly enhanced if they joined together in a campaign. They contracted with The Fundraising Project of MIE to do a feasibility study, which showed that the lawyers in Utah were supportive of access to justice and would support a well-run campaign. After considerable discussion produced an agreement as to how the campaign would be financed and staffed and how proceeds would be divided, a campaign committee of powerful Utah lawyers was formed. A major breakthrough occurred when they secured a challenge grant of $100,000 from the Church of Jesus Christ of Latter-Day Saints Foundation, to be paid when the campaign raised $300,000 from other sources, which (in Utah) legitimated the campaign for lawyers. The campaign collected $310,000 from the legal community in the first year, meeting that challenge. The campaign secured additional $100,000 challenge grants from local foundations in 2000 and 2001, as well as a smaller $25,000 challenge grant in 2000, helping to generate $350,000 in lawyer giving in 2000, and $344,000 in 2001. The campaign raised $408,000 from the legal community in 2002, the first year without a significant challenge grant.

The joint lawyer fund drive was a building block for other major fundraising activities. The programs collaborated in 2002 on a successful capital campaign for the purchase of a building. In 2003, they were able to secure the first appropriation from the state legislature for legal services (to provide assistance to victims of domestic violence).

Legal Aid of West Virginia (LAWV) is a statewide program created by the merger of four LSC funded programs in 2002. The executive director of LAWV recognized that this time of change presented a good opportunity to initiate a major lawyer fund
drive. She approached the Legal Services Corporation (LSC) about providing seed money to contract with The Fundraising Project of MIE to work with LAWV on a feasibility study and then help implement the campaign. LSC provided $12,000. The West Virginia State Bar donated $12,000 to fund a legal needs study, performed by a professor from West Virginia University. The state bar also made a $13,000 unrestricted contribution to the campaign. (See the initiative Bar Funds for Legal Services, page 29, for more information.)

Staff and volunteers of LAWV began planning for the campaign in May 2002. Through the feasibility study, they were able to identify two well-known lawyers – a very respected plaintiffs attorney and the CEO of the largest law firm in West Virginia – who became the campaign co-chairs. A video about legal services and the need for contributions was prepared. The campaign officially kicked-off in December 2002, and by June 2003 they had raised $469,000 in gifts and pledges toward a three-year goal of $1.2 million. Of the campaign proceeds, 75 percent will go to current and emerging needs and 25 percent will go into an endowment that is being established.

The executive director believes the keys to the success of this campaign have been the campaign co-chairs and the video. Many lawyers have been willing to make contributions simply because these men were chairing the campaign, and they also were able to attract other high-powered people to the campaign committee. The video involved a large number of people, showing broad support for the campaign, and has been used extensively in the fundraising process, particularly by solicitors who have less knowledge about legal aid.

What the Bar Can Do

Historically, lawyer fund drives have been initiated by legal services programs. In recent years, some campaigns, particularly those involving more than one legal services program, have been initiated or strongly encouraged by bar associations, bar foundations, or an access to justice entity. However they are initiated, their success is based on members of the private bar leading the efforts, recruiting other lawyers to participate in the campaign and making contacts. The bar can do the following:

♦ Encourage legal services programs to run a lawyer fund drive and work with them to develop strategy for a campaign.

♦ Assist legal services providers in identifying potential campaign leaders and encourage those attorneys to participate in the campaign.

♦ Endorse the campaign through a bar association resolution and publish the resolution in bar publications.

♦ Consider making the lawyer fund drive such an integral part of the work of the bar that bar officers are expected to make a contribution and actively support the campaign.

♦ Promote the campaign through letters and speeches by the president of the bar or
other bar leaders and by printing articles about legal aid and the campaign in the bar journal, other bar publications and on the bar website.

♦ Host an E-contribution form on the bar website.
♦ Provide space and other necessary amenities for orientation sessions and committee meetings.
♦ Allow the campaign to use the bar membership list, free of charge.
♦ Consider providing financial support to get the campaign started.

### Budget

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<td>Lobbying Costs</td>
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<td>Filing Petitions</td>
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♦ It is virtually impossible to run an effective lawyer fund drive without dedicated staff time, although in smaller programs it may not be someone hired specifically for that purpose. Although this person usually will not be a bar staff person, the availability of a staff person and the costs associated with that person need to be considered when deciding to pursue this initiative.

♦ It is important to develop a realistic budget for the first few years of a lawyer fund drive. Depending on how strong the existing relationship is between the private bar and the legal services program(s), it may take some time to get the campaign up and running. Insufficient upfront funding can lead to failure of what otherwise might be a successful campaign.

♦ Another potential expense for lawyer fund drives is fundraising software. Depending on the nature of the campaign and the number of donors, the initial outlay, upgrades and on-going training and support can be quite costly.

♦ Many lawyer fund drive efforts have retained a consultant for assistance in the first year. (See Considerations, below.)

### Considerations

♦ Before initiating a new campaign, it is important to talk with key bar leaders to determine the feasibility of a private bar campaign. These conversations can provide information about the perceived strengths and weaknesses of legal services providers, identify potential campaign leaders, and give clues as to how much can be
raised. If the conversations show that the legal community would not support a campaign, they should provide guidance about what needs to happen before a campaign could succeed.

♦ Those developing a lawyer fund drive might consider utilizing a consultant to help determine if a campaign is feasible, and if so, to help develop the initial plans. Utilizing a consultant who has worked with other private bar campaigns is especially helpful in situations where there is no experienced fundraiser involved, or where the fundraiser has limited experience with legal services.

♦ Careful consideration should be given to the financial goal for the campaign. Talking with people running successful lawyer fund drives in similar states or communities may help in setting a goal. New campaigns may want to consider setting a three-year goal and asking donors to make a three-year pledge. This gets the donor into an annual giving mode and allows time for campaign volunteers to solicit effectively all potential donors.

♦ In addition to setting an overall goal, most campaigns set a target gift per attorney, frequently an amount equivalent to between one and three billable hours. If a target gift per attorney is set, it is important to remember that many lawyers can give far more than that amount, and those attorneys - the prospective major donors - should be solicited differently than those for whom the target gift is viewed as appropriate.

♦ Some campaigns have obtained commitments from foundations or other sources to match new gifts from lawyers or law firms and have found that this helps stimulate giving. For information about matching grants, see the initiatives Matching Grants, page 35, and Foundation and Corporate Grants, page 95.

♦ Although the first few years of a campaign are generally the most expensive and the most time-consuming, it will always require some staff and a group of volunteers willing to devote time and energy to solicit others.

♦ If a bar dues add-on or opt-out program already exists, it would be worthwhile to evaluate the impact a lawyer fund drive would have on this effort as the two solicit contributions from the same individuals. Usually, a lawyer fund drive will generate more revenue. For more information see the initiative Bar Dues Add-Ons and Opt-Outs, page 19.

♦ In recent years, a number of bars have supported changes to their ethical rules related to pro bono service to include an aspirational goal of a certain number of volunteer hours. Some have included a mechanism for “buying out” of pro bono by making a financial contribution to a legal services provider. These buy-outs need to be evaluated carefully if there is an existing lawyer fund drive, as they have the potential to reduce the number of lawyers who both contribute and do pro bono. Lawyers who understand and support legal aid are likely to take pro bono cases and contribute financially, so efforts to educate lawyers about legal aid and encourage them to do both may be better options. In places where there is no lawyer fund drive in place, the initiation of a buy-out provision may be a good time to begin a lawyer fund drive to capitalize on lawyers’ attention being drawn to the concept of giving.
Contacts

Linda Clingan, Executive Director, Campaign for Equal Justice, Portland, OR, LClingan@aracnet.com, (503) 295-8442

Kai Wilson, Managing Director, Community Legal Center, Salt Lake City, UT, kaiwilson@lasslc.org, (801) 578-1204

Adrienne Worthy, Executive Director, Legal Aid of West Virginia, Charleston, WV, worthac@aol.com, (304) 343-4481

Dennis Dorgan, Director of Consulting Services, The Fundraising Project, Circle Pines, MN, ddorgan@m-i-e.org, (763) 780-6369

For more information on lawyer fund drives, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Attorney Registration Fee Increase or Dues Assessment

Definition

An increase in the fees or dues that attorneys are required to pay to practice law, to be used to fund legal services for the poor.

Explanation

This initiative increases the fees or dues that every lawyer in the state must pay to practice law. It affirms the bar’s commitment to help meet the special obligation that lawyers have to ensure access to the justice system.

Attorney registration/licensing fees are paid in states without a mandatory or unified bar, and the revenue supports administration of justice functions such as attorney discipline, client security funds, continuing legal education compliance and bar admissions. In most states, this fee is determined and controlled by the supreme court, but in a few states it is determined by the legislature.

In states with unified bars, dues must be paid to practice law. The unified bar usually administers functions such as attorney discipline and continuing legal education compliance. In many states, the unified bar also handles the functions that the voluntary bar performs in a non-unified state, although some unified bars restrict their activities to the administration of the practice of law. The process for approval of dues increases differs - in some states the decision is made by the bar itself, some by the supreme court and others by the legislature.

The history of this initiative illustrates both how difficult it is to obtain and the different procedures for implementing it. Of the five states that have succeeded in adopting this initiative, three have been done by supreme courts, one by the state bar, and one by the legislature:

♦ The first attorney registration fee increase was authorized in 1997 by the Minnesota Supreme Court.

♦ In 1998, the Ohio Supreme Court began utilizing a portion of the attorney registration
fee to fund legal services, although there was not a specific increase for this purpose.

♦ No other states implemented this initiative until late 2002, when the Illinois Supreme Court authorized an attorney registration fee increase.

♦ Also in 2002, the unified Missouri State Bar authorized a bar dues increase.

♦ In 2003, legislation was approved in Texas to increase the bar dues by $65, thereby converting what had been a voluntary bar dues check-off for funding civil legal services to a required dues payment. Under the new legislation, the funds generated will be split evenly between civil legal aid and innovative criminal indigent defense projects. The legislation is scheduled to sunset in four years.

These three recent successful implementations occurred in the wake of the economic downturn, which resulted in reductions in IOLTA and other funding. Additionally, all three of the states suffered reductions in their LSC grants due to the 2000 census redistribution.

Many unified and voluntary bars have included a voluntary dues opt-out or add-on for legal services. These voluntary mechanisms have the advantage of being easier to implement but the disadvantage of generating far less revenue. For more information, see the initiative Bar Dues Add-Ons and Opt-outs, page 19.

Pros

♦ This initiative ensures that all licensed attorneys help meet the special obligation that lawyers have to provide access to the justice system, spreading a portion of the responsibility equitably among all attorneys.

♦ It institutionalizes bar support for legal services.

♦ It provides a predictable, stable source of revenue for legal services providers.

♦ This is a very cost-effective means of raising money for legal services. Once the criteria are set for who may receive the funds and it is implemented, there is little expense required to collect, disburse and administer the funds.

♦ An increased and institutionalized commitment from the bar, combined with ongoing pro bono activities, will demonstrate to other funding sources the bar’s support for legal services.

Cons

♦ It is difficult to obtain the necessary support to implement this initiative because it is mandatory. In states with few lawyers, the amount of revenue that could be obtained may not be worth the time and effort that is required to implement the initiative. Voluntary bar associations may oppose this initiative because they believe an
increase in the registration fee may cause some lawyers not to choose to pay voluntary bar membership dues. This also may apply to specialty bars.

Examples

♦ The Minnesota Supreme Court instituted the first attorney registration fee increase for legal services in 1997. The increase is $50 for attorneys admitted more than three years and $25 for attorneys admitted three years or less, with a 50 percent discount for attorneys with adjusted gross income under $25,000. Annual income is approximately $850,000.

The recommendation for a fee increase was made by the Joint Legal Services Access and Funding Committee, a supreme court appointed blue ribbon committee which was charged with developing a plan to meet the long-term funding needs of civil legal services for the poor. The joint committee recognized both the special obligation of lawyers to promote access to justice and the need for a partnership approach to funding legal services, which in Minnesota includes federal funding, funds from the state legislature, strong bank support in terms of lower fees and higher interest rates for comprehensive IOLTA, and successful fundraising from the private bar, foundations, United Way and local governments by the legal services programs.

There was considerable discussion within the Minnesota State Bar Association (MSBA) over whether to support the increase. A special MSBA committee, appointed to review the recommendation, recommended against bar support, although there was a minority report in support. Ultimately, the MSBA General Assembly strongly endorsed the increase and the MSBA appeared before the supreme court in support of the petition. The increase also was endorsed by 13 regional and specialty bars, retired supreme court justices and the deans of Minnesota’s three law schools. Highly respected attorneys were recruited to author and argue the petition and brief before the court on a pro bono basis and to communicate broad support of the petition to the court.

A supreme court-appointed committee, already in place to distribute funds appropriated by the legislature for legal services, is responsible for distributing the funds. The same distribution formula is used for registration fee funds as for appropriated funds. Eighty-five percent of the funding is divided, based on poverty population, among the six regional legal services programs that serve the entire state; the remaining 15 percent is distributed through a grant process to other legal services providers.

♦ In 1998, the Ohio Supreme Court increased the attorney registration fee by $50 per attorney, generating $1,750,000 annually. The court then allocated some of those funds - $375,000 in 1998 and 1999, $500,000 in 2000 and 2001, and $1,000,000 in 2002 - to the Ohio Legal Assistance Foundation (OLAF), the organization that receives and disburses IOLTA and state filing fee funds in Ohio. The 2002 increase from $500,000 to $1,000,000 was made in light of the serious reductions in funding from LSC and IOLTA occurring at that time. It is the equivalent of approximately $25 per attorney. The Court recently approved an additional $12.50 increase in the fee,
which OLAF hopes will be allocated to help in its effort to stabilize the annual grant at the $1 million level.

The process of obtaining the original allocation began with an informal inquiry from an OLAF board member to the court. The court then requested a proposal from OLAF. The court made the decision to provide the funding over the opposition of the Ohio State Bar Association (OSBA). The OSBA believed that using attorney registration fee funds to provide civil legal services was inconsistent with the need to find a societal solution. (The OSBA strongly supports state general revenue funding for legal services, believing that providing civil legal services for the poor is a societal problem and thus the solution should not rest on lawyers alone.) The bar also was concerned that an increase in the registration fee to pay for legal services might cause some lawyers to drop their membership in the voluntary state bar.

The Board of Governors of The Missouri Bar made the decision in the fall of 2002 to increase bar dues by $20 for every member eligible to practice law in Missouri, with the increased funds going to the state’s legal services programs. The dues increase was part of a multi-pronged campaign to impact the problem of insufficient funding and create stable statewide funding mechanisms to meet the need for legal assistance. The problem in Missouri was exacerbated by a reduction in LSC revenue due to the 2000 census redistribution, a more than 50 percent decrease in IOLTA revenues because of the reduction in interest rates, and an anticipated elimination of the state legislative appropriation.

Considerable research went into designing the successful resource development campaign that included the dues increase. A legal needs study, funded by the Missouri Bar Foundation and conducted by a professor at the University of Missouri-Columbia, found that a large number of low-income households in Missouri were in need of legal services and only a small percentage were being helped. The University of Missouri also did a pro bono study, which indicated that in 2002 Missouri lawyers did over 500,000 hours of work at no fee or reduced free for persons of limited means. A special committee, appointed by The Missouri Bar Board of Governors in 2001, studied various funding options for legal services in Missouri and issued a report highlighting the need for additional resources and supporting a filing fee surcharge on certain court filings. A state senate resolution, passed during the 2002 legislative session, asked the bar to show what lawyers were doing to help meet the need. The dues increase provided meaningful funding and, along with the pro bono study mentioned above, demonstrated concrete support from the legal community. The president of the bar described the dues increase, which will generate approximately $400,000 annually, as providing funds for legal aid and reaffirming the commitment of the Missouri legal community to ensuring that the goal of equal access to justice is met. Despite the increase, dues for membership in The Missouri Bar are still among the lowest in the country.

**What the Bar Can Do**

In most instances, the state bar’s strong and active leadership will be an important factor in the success of this initiative. Bar leaders can:
Set the stage for approval of the initiative by outlining the need for legal services and defining the bar’s role in helping to generate resources for legal services.

Work with legal services providers to develop the most effective strategies for obtaining approval of a fee or dues increase, whether through the bar, the supreme court, or the legislature.

Recruit volunteer attorneys to make presentations to local and specialty bars to explain the issue and obtain their endorsement.

Place articles in bar publications explaining the initiative and its importance.

Recruit prominent attorneys to prepare the petition and argue the case before the supreme court or lobby for support of an increase in the legislature in those states where court or legislative action is needed.

Commit staff support to help coordinate the effort.

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**Budget**

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It may be necessary to have a staff person coordinate the effort to build support among members of the bar, the legislature and/or the judiciary.

In most states, this initiative will require petitioning the court or working with the legislature. The costs associated with this can be defrayed by asking attorneys to donate their services to prepare the petition or lobby for legislation.

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**Considerations**

In states with unified bars, some may raise issues related to *Keller v. State Bar of California*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d. 1 (1990). In *Keller*, the Supreme Court held that “the compelled association and integrated bar are justified by the State’s interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members.” It can be persuasively argued that funds used to support legal services improve the quality of legal services available in the state. There are measures that unified bar associations can take to avoid problems and alleviate concerns about the use of their dues by any of their members.
Courts in states with voluntary bar associations will examine carefully the legitimate uses to which registration fees can be applied. The petition to the court is an opportunity to present an effective argument regarding how a registration fee increase for legal services falls within the court’s power to regulate the practice of law and furthers the administration of justice.

Legislative efforts to obtain increased fees or dues are likely to be similar to campaigns to obtain a fee increase from the legislature. The initiatives on Court Fees and Fines, page 117, and State Appropriation, page 125, may provide useful information.

The acceptability of this proposal may be influenced by how high bar dues and fees are in your state compared to other, especially neighboring, states.

Once a fee or dues increase has been approved, the need for the increase and the benefits of it must be communicated to all attorneys before they receive their bills.

Because this initiative raises funds from lawyers, some may be concerned about it competing with private bar campaigns. Although it is unlikely to have a serious negative impact on an established private bar campaign, it might not be wise to start a private bar campaign at the same time that a fee or dues increase is instituted. On the other hand, a successful private bar campaign, which already has established a culture of giving and support for legal services, may make it easier to implement this initiative. Voluntary donors will support the argument that all lawyers should bear some of the responsibility.

This project seeks funds from lawyers, and some may feel that too much is being expected of the bar. Care must be taken to ensure that fundraising activities are conducted among a number of sources. Attorneys should be seen as only one source of funds.

Contacts

Jeremy Lane, Executive Director, Mid-Minnesota Legal Assistance, Minneapolis, MN, jl@midmnlegal.org, (612) 746-3701

Robert M. Clyde, Jr., Executive Director, Ohio Legal Assistance Foundation, Columbus, OH, clyde@olaf.org, (614) 752-8919

Keith A. Birkes, Executive Director, The Missouri Bar, Jefferson City, MO, ExecDir@mobar.org, 573/638-2235; Jay Wood, Director, Missouri Legal Services Support Center, Jefferson City, MO, jwood@mlssc.org, (573) 638-3430

Ruth Ann Schmitt, Executive Director, Lawyers Trust Fund of Illinois, Chicago, IL, raschmitt9@aol.com, (312) 499-4754

Randy Chapman, Executive Director, Texas Legal Services Center, Austin, TX, rchapman@tlsc.org, (512) 477-6000
For more information on attorney registration fee increases or dues assessments, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Bar Dues Add-Ons and Opt-Outs

Definition

A line item on the annual bar association dues statement that provides an opportunity for the member to make a contribution to legal services providers.

Explanation

Through their annual dues statement, bar associations solicit financial support, on behalf of legal services programs, from all their members. There appear to be two different mechanisms being used by bar associations:

**Opt-out:** A line on the bar dues statement that indicates that a specified amount of the member's dues will go to legal services providers unless otherwise indicated by the member.

**Add-on:** A line on the bar dues statement that allows the member to add on his or her contribution to legal services. (An amount may be suggested.)

An add-on often does not generate much income and is best when viewed as a supplement to other fundraising efforts. It has greater potential for success in smaller bar associations, especially local ones where more members participate in the decision to enact the provision. Opt-outs almost always will generate more revenue than add-ons. Revenue can be increased by including a letter from a legal community leader, explaining the value of legal aid and urging attorneys to make the contribution. This letter can be used with either an opt-out or add-on.

Some states have taken this concept a step further, increasing the fee that attorneys are required to pay to practice law to fund legal aid. This option generates significantly greater funds than add-on or opt-out choices. See the initiative *Attorney Registration Fee Increase or Dues Assessment*, page 11, for more information. It also is possible for a bar association to decide to use some of its bar dues to support legal services without treating it as a separate dues item. Bar associations considering this option should see the initiative *Bar Funds for Legal Services*, page 29. Bar associations looking to significantly increase funding for legal services through voluntary giving should see the initiative *Lawyer Fund Drive*, page 3.
Pros

♦ A dues add-on or opt-out provides a supplemental source of income with little work for legal services or the bar association.

♦ It is an opportunity for bar associations to encourage members to fulfill their obligation to provide "equal justice under law."

Cons

♦ When an add-on or opt-out is done without much information being furnished about the legal services providers, their clients and the need for assistance, participation is usually low and the size of the gift small. There are more effective methods for generating voluntary financial contributions from lawyers (see the initiative Lawyer Fund Drive, page 3).

♦ With opt-out, the “contribution” amount is predetermined. This may result in lawyers who are capable of giving larger gifts making smaller contributions due to the absence of a personal request.

♦ Bar associations may have more than one item as a dues add-on or opt-out, competing for the bar member’s discretionary funds. The more items, the less likelihood that any of them will generate much revenue.

♦ When bar members are being asked to pay their bar dues may not be the best time to ask them for another payment to a law related cause.

Examples

The following chart lists the state bars that have dues add-ons or opt-outs for legal aid and the approximate amount received in 2002:
<table>
<thead>
<tr>
<th>State</th>
<th>Amount Requested/ Raised Per Year</th>
<th>Comments</th>
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<tbody>
<tr>
<td>AK</td>
<td>None/$3,000</td>
<td>Add-on; for Alaska Legal Services. Paragraph on back of form provides description of ALS.</td>
</tr>
</tbody>
</table>
| CO    | 1. $25/$23,000  
2. None/$5,000 | 1. Opt-out; for pro bono, metro Denver area only.  
2. Add-on; for Legal Aid Foundation, which funds CO Legal Services. The back of the dues form provides a very brief description about the various entities (5 total) on the form. |
| FL    | $25/$48,000                       | Add-on; to the FL Bar Foundation, for Children’s Legal Services. In 2003, increasing request to $45; average contribution in past three years has been $26. A letter from the bar president promoting the cause is included. |
| GA    | $75/$132,000                      | Add-on; part of the overall private bar campaign of GA Legal Services; viewed as follow-up to mail solicitation sent about a month before the dues statement. In 2003, increasing request to $125. |
| HI    | $50/$85,000                       | Opt-out; for pro bono program. |
| LA    | None/$13,000                       | Add-on; to the LA Bar Foundation, which distributes to its grantees; requires writing separate check. |
| MS    | None/$8,870                        | Add-on; for statewide pro bono program. Insert about program is included in statement; bar officials & members of court encourage donations in speeches, & bar president may send letter to larger law firms. |
| NH    | $50/$8,500                         | Add-on; part of joint campaign for 3 legal aid providers in state. |
| NM    | None*/$7,875                       | Add-on; for statewide legal aid campaign; *On-line form gives 4 choices (range $50-$200); printed form has no requested amount. |
| SC    | $30/$178,000                      | Opt-out; for legal services providers; no solicitation activity. |
| TX    | $65/$1,200,000                    | Opt-out; to Texas Equal Access to Justice Foundation, which distributes to its grantees; converting to mandatory bar dues assessment as of 2003 (see initiative, Attorney Registration Fee Increase or Dues Assessment, page 11). |
| UT    | None/$5,000                        | Add-on; funds split among 3 legal aid providers. |
| WY    | $50/$13,000                       | Add-on; contributions to WY State Bar Foundation, which distributes to legal aid providers. |

These more in depth examples should provide useful guidance:

♦ **Opt-out:** The South Carolina Bar, a unified bar with approximately 8,200 members, instituted an opt-out in 1996. An additional fee of $30 is added to each member’s bar dues to fund civil legal services for the indigent. The member may deduct the additional fee. Basic bar dues (excluding the additional fee) for the most senior category of attorney at the time the opt-out was instituted were $170; they have since risen to $190.
The idea for the additional fee originated in the bar’s Service to the Indigent Committee, which recommended that the fee be mandatory. Supporters of the proposal contacted individual members of the Board of Governors and House of Delegates to explain the proposal and the need for additional funding for legal services. The Board of Governors agreed to approve the recommendation if it was changed to opt-out. The opt-out proposal then was approved by the House of Delegates. Finally, the bar asked the South Carolina Supreme Court for approval, but the Court responded that this was a bar matter and that it did not need to act. Approximately 68 percent of the bar paid the additional fee in 2002, generating over $178,000. LSC-funded legal services offices received 80 percent of the proceeds and the South Carolina Appleseed Foundation received 20 percent.

♦ Add-on: The Wyoming State Bar is a mandatory bar association with 1,900 members. In 2002, the Wyoming State Bar Foundation (WSBF), which administers the IOLTA program, was facing a severe reduction in funding because of the drop in interest rates. The state bar president, a strong supporter of legal aid, asked the governing body of the bar to approve the addition of an add-on to the bar dues statement, with contributions being paid to WSBF to support civil legal aid to the poor. The Board of Officers and Commissioners approved the proposal, which encourages a $50 donation. Because the proposal was approved only a month before the dues statement went to press, there was no time for promotion. However, a brightly colored flyer was included with the dues statement, urging lawyers to make a contribution, and approximately 300 members contributed $14,000. The WSBF is formulating plans to promote the check-off more extensively in 2003 to increase participation and revenue.

There also is an add-on for dues to the WSBF, which had been on the bar dues form in previous years. There was concern that the new add-on would cause attorneys to choose only one of the two to support. Instead, both were supported, with the number of attorneys electing to pay dues to the WSBF increasing from the previous year. (Each add-on is described in a sentence or two on the back of the form.)

What the Bar Can Do

Only a bar association can implement and maintain a dues add-on or opt-out program. The bar might do the following to implement this initiative and ensure its long-term success:

♦ Talk with legal services providers and offer to add an add-on or opt-out to supplement their funding. Coordinate to avoid conflict with any lawyer fund drives for legal services.

♦ Prepare the case for the need for increased attorney support for legal services. Educate bar members through mailings, the printing of articles in bar publications and presentations at bar meetings.

♦ Develop an on-going effort to remind bar members of the need to support legal services so they will continue to support the add-on or opt-out each year.
# Budget

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An advantage of this initiative is the lack of time and expense of implementation. The materials that may be necessary to educate bar members about the needs of legal services and its clients need not be expensive or extensive.

## Considerations

- Bar associations must take into consideration economic factors in their area. The contribution amount must be at a level that lawyers find reasonable, but it should not be so low that the effort fails to generate the maximum amount of funds for legal services providers.

- A dues add-on or opt-out program and a lawyer fund drive can conflict with each other as they ask the same group of people to support the same or similar organizations. Therefore, coordination between the bar association and legal services program(s) is a must very early in the discussion of a dues add-on or opt-out project. In many states and communities, dues add-ons or opt-outs and lawyer fund drives compliment each other rather than compete. See also the initiative *Lawyer Fund Drive*, page 3.

- In some bar associations, issues have been raised about how many and which organizations, if any, should have access to the bar’s dues statement as a means of raising money. Bar associations may alleviate problems by working with the various organizations to determine which can really benefit from placement on the bar dues form and to assist others in identifying alternative ways to get their fundraising message out to members of the bar.

## Contacts

George B. Cauthen, Nelson Mullins Riley & Scarborough, L.L.P., Columbia, SC, gbc@nmrs.com, (803) 733-9404

Honorable Timothy C. Day, Circuit Court Judge, Teton County Court, former President, Wyoming State Bar Association, Jackson, WY, tcd@courts.state.wy.us, (307) 733-7713;
Leigh Ann Manlove, Executive Director, Wyoming State Bar Foundation, lamanlove@wyomingbar.org, (307) 632-9061, ext. 15
For more information on bar dues add-ons and opt-outs, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Project

Pro Hac Vice Fee

Definition

An initiative through which the state supreme court or legislature authorizes a fee to be used to fund legal services that is paid by out-of-state lawyers who are not licensed in the state but request permission to make an appearance in the state’s courts.

Explanation

Pro hac vice is Latin for "this time only." The phrase refers to the application of an out-of-state lawyer to appear in court for a particular case, even though the lawyer is not licensed to practice in that state. States may set their own standards for the admission of out-of-state lawyers pro hac vice.¹ Twenty-two states and the District of Columbia² have instituted fees that lawyers must pay to appear pro hac vice; of those, four (Missouri, Mississippi, Oregon and Texas) use the revenue to fund legal services.

In most states, changes in the rules governing pro hac vice admission will be under the jurisdiction of the state supreme court; in a few states, any change will require legislative action. For information about the pro hac vice rules in each state, please see www.crossingthebar.com.

Pros

♦ In some states that do not yet have pro hac vice fees, this could be a relatively easy way to increase revenue for legal services.

♦ It usually is not controversial, because the cost is not being borne by lawyers in the state that is establishing the fee.

¹ Commentary, Pro Hac Vice Rules, crossingthebar.com

² Basic Pro Hac Vice Information by Jurisdiction, crossingthebar.com, updated based on PERLS information obtained from contacts in Missouri and Texas
Cons

♦ About half of the states already have pro hac vice fees, and the proceeds are most likely designated for some other use.

♦ Some states might consider adopting a pro hac vice rule, but then choose to use the revenue for another purpose.

♦ Some states have reciprocity admission and/or admission on motion rules that might reduce the number of lawyers subject to the pro hac vice fee.

Examples

♦ In 2001, Oregon instituted the first pro hac vice fee specifically for legal services. The state legislature authorized the state supreme court to implement the fee, which is $250 per attorney per case per year. The executive director of the Oregon State Bar learned at a national conference that other states had pro hac vice fees, and she thought it would be a good way to increase revenue for legal services. The Coalition for Equal Justice, a broad-based statewide coalition of legal services supporters, was working on a major state legislative campaign to increase funding for legal services, and this was a good first step. It was a relatively easy proposal to sell to the legislature, and, therefore, provided a good opportunity to talk with and educate virtually every legislator about legal aid. The fees are collected by the Oregon State Bar and are distributed by poverty population to the legal services providers that also receive funds from a filing fee surcharge. The fee is generating approximately $65,000 annually. (Oregon has a reciprocity admission arrangement with Washington and Idaho, which reduces the potential revenue.)

♦ In early 2003, the Supreme Court of Mississippi amended the Mississippi Rules of Appellate Procedure to require that lawyers appearing pro hac vice pay a fee of $220 per appearance, $200 of which would be used to fund civil legal services to the indigent. A bar staff member had heard about this idea from another state and passed the suggestion along to the executive director of the bar. There was then an informal conversation with the Chief Justice, who thought it was a very good idea. The Mississippi Bar submitted a petition to the court requesting a pro hac vice fee, and the rules committee of the supreme court determined the amount of the fee, which was approved by the full court. The fee has generated over $46,000 in the first three and a half months.

♦ In May 2003, the Texas Legislature approved a bill authorizing a pro hac vice fee of $250 per case. Members of the Texas Equal Access to Justice Commission and the Texas Supreme Court proposed the idea to members of the legislature, and the bar made it a part of its legislative package for the session. It was a relatively uncontroversial piece of legislation, although a few legislators were concerned because it imposed a new fee at a time when every effort was being made to avoid any new fees or taxes. It is estimated that the fee will generate approximately $200,000. The funds will be distributed by the Texas Equal Access to Justice Foundation, which also distributes the IOLTA and state filing fee surcharge revenues.
What the Bar Can Do

This initiative would almost certainly be implemented more successfully if the organized bar were actively supportive and making the request. Specific steps include:

♦ Research the state’s statutes and court rules related to *pro hac vice* to determine the process for obtaining a fee.

♦ Initiate discussions with the court and prepare the petition or other materials as needed, if court approval is required.

♦ Prepare legislation, find sponsors, and lobby as needed, if it is necessary to go to the legislature.

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♦ It is likely that the time or expense associated with implementation of this initiative will be low, unless it is necessary to go to the legislature for authorization

Considerations

♦ Legislative efforts to obtain *pro hac vice* fees are likely to be similar to, although easier than, campaigns to obtain court fees from the legislature. The initiatives on *Court Fees and Fines* (page 117) and *State Appropriation* (page 125) may provide useful information.

Contacts

Karen Garst, Executive Director, Oregon State Bar, Lake Oswego, OR, kgarst@osbar.org, (503) 620-0222, ext. 312

Ben Piazza, Chair, Delivery of Legal Services Committee, Jackson, MS, bjpiazza@schoolaw.com, (601) 956-2345

Emily Jones, Director, Texas Lawyers Care, The State Bar of Texas, ejones@texasbar.com, (800) 204-2222, ext. 2155
For more information on *pro hac vice* fees, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Bar Funds for Legal Services

Definition

A financial commitment by a bar association, one or more of its sections, or a bar foundation (separate from IOLTA funds) to support the work of legal services or a specific legal services project.

Explanation

Bar leaders across the country are working diligently to maintain federal funding and to develop or expand state and local funding for legal services. A contribution from the bar demonstrates that the bar as an institution has indeed made legal services a priority by committing its own funds to maintain access to justice.

Bar funds for legal services can take many different forms. The bar may decide to play a major role by funding and staffing necessary functions of legal services, like resource development or training. Or, the bar may make a contribution for general operating expenses or a special project directly to a legal services program or fundraising campaign.

The amount and type of commitment may depend on the size and resources of the bar as well as the current needs of the legal services providers. Bar associations, because of the nature of their own work, frequently are in a good position to provide training and lobbying, functions that some legal services programs may not be maintaining because of the funding cutbacks and restrictions imposed by Congress upon the Legal Services Corporation (LSC). Some bars may be able to waive bar dues or fees for continuing legal education courses for legal services attorneys. Resource development is another service that bar associations may provide. In recent years, several state bars have chosen to support their legal aid programs by funding legal needs studies. Some bars can help their legal services programs more by simply making a financial contribution directly to the programs.

A bar contribution - when combined with pro bono activities and contributions from lawyers through a lawyer fund drive, dues add-on or opt-out, or other efforts - demonstrates full bar support for legal services. Like any non-profit organization, a legal services program needs the support of those who are closest to it and should have the best understanding of its value. If the legal community does not support legal services, no one else will. However, when legal aid can show foundations, legislatures, and other funders the depth of the legal community's commitment, these other sources are a lot more inclined to add their support.
The legal community’s financial support is then successfully leveraged to bring more resources to this critical legal and social need.

Pros

♦ More than almost any other initiative, this project institutionalizes the organized bar's support for legal services.

♦ A bar contribution is a very concrete way to demonstrate the bar’s commitment to legal services. This makes it easier to go to other sources, such as the legislature, for funding for legal services.

♦ By making a substantial investment in legal services, the bar develops a closer working relationship with legal services programs that may generate additional ideas for improving access to justice.

Cons

♦ This initiative could be controversial among bar leaders for any number of reasons. Some may object to spending what in some cases may be a significant amount of bar revenue directly for legal services. Others may be concerned that it will require an increase in bar dues. In a voluntary bar, there may be concern that those who oppose it will resign from the bar.

Examples

♦ The Columbus (Ohio) Bar Foundation has committed approximately $81,000 per year for the next five years to the Legal Aid Society of Columbus, one-third of the funding needed for a project to provide legal assistance to domestic violence victims. (A local private foundation whose purpose is reduction in family violence is providing the balance of the funds.) The project will cover the cost of three attorneys, a paralegal, an intern and associated overhead. This is the largest grant, for the longest period of time, ever made by the Bar Foundation. The approval of both the bar foundation and bar association boards was required for the grant to be made.

The relationship between the Columbus Bar and Legal Aid has been developing and improving over several years. The director of the Bar Foundation was appointed to the Legal Aid Board about three years ago, became a strong supporter, and was president-elect at the time the grant was proposed. This project is leading to an even stronger relationship between the bar and Legal Aid. There has been excellent positive publicity for the project, including front page stories in the bar publication and the local newspaper. The Bar Association nominated Legal Aid for the CHOICES’ Peacemaker Award, a prestigious award given annually by the local domestic violence shelter to recognize individuals who work diligently to make the community a safer place, and the award was presented to Legal Aid at a well attended luncheon. The Bar Foundation has decided to include Legal Aid as one of the...
choices for designated giving to its endowment campaign. The boards of the Bar Foundation and Legal Aid jointly will decide how the funds will be spent.

Legal Aid of West Virginia (LAWV), the statewide program recently created by the merger of the four LSC funded programs, initiated its first major lawyer fund drive in late 2002 (see Lawyer Fund Drive, page 3, for more information). The lawyer fund drive was very important because LAWV had suffered a reduction in LSC funding due to the 2000 census redistribution and IOLTA revenue was down because of lower interest rates. A member of the West Virginia State Bar (WVSB) Board of Governors and its executive director knew of the funding problems because they were on the board of LAWV, and they brought the issue to the bar’s board of governors. The board of governors established an ad hoc committee to discuss how the WVSB could best support the fundraising campaign. This committee made several recommendations, which were approved by the board of governors. They made a leadership gift to the campaign of $14,500, demonstrating the strong commitment of the bar to the campaign. They joined with the West Virginia Bar Foundation to pay the $12,000 needed to fund a legal needs study. They publicized these gifts and the campaign itself so that lawyers would understand that the bar association was behind the campaign. They committed to a campaign to increase the state legislative funding for legal aid for domestic violence victims, which also was successful (see initiative, Court Fees and Fines, page 117). Finally, LAWV suffered a serious but short-term funding crisis in November 2002, so the WVSB provided an interest free loan of $175,000, which the program repaid in January.

Since 1982, the State Bar of Texas has provided support for pro bono activities by funding its Texas Lawyers Care project. Beginning in 1996, because of a reduction in LSC funding, the State Bar of Texas Board of Directors voted to expand the bar’s commitment to legal services in three ways. First, the board agreed to fund support services for the staffed legal services programs as well as pro bono programs, including training, production of resource materials and statewide coordination. The board also decided to provide malpractice insurance for all legal services programs and pro bono programs. Finally, the board agreed to provide additional funds to Texas Lawyers Care to replace the funds the legal services programs could no longer contribute because of the LSC funding cut. In 2001, the Bar also began funding the Texas Access to Justice Commission, which was created that year by the Supreme Court of Texas and is staffed by Texas Lawyers Care. The Commission provides statewide leadership to increase the quantity and quality of legal services in Texas. For FY03-04, the total budget for Texas Lawyers Care is $687,000, which includes the state support functions, pro bono support, and malpractice insurance for all legal aid and pro bono programs, and the Commission’s budget is $73,000.

What the Bar Can Do

Only a bar association can implement this initiative. The bar might do the following to develop a consensus among its members about making a financial commitment to legal services:

- Research the needs of legal services providers.
♦ Meet with legal services providers to determine how the bar could most effectively help their programs.

♦ Educate attorneys about the needs of legal services providers to set the stage for a request for a bar appropriation.

♦ Include access to justice issues in the bar’s planning activities.

### Budget

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♦ The cost, primarily in time, of implementing this initiative will depend on the amount and purpose of the donation. The more significant the size of the donation compared to the bar’s budget, the more preliminary planning and discussion will need to take place. In some cases there may be no real costs to implement this initiative; there is, obviously, the cost to the bar of the donation itself.

### Considerations

♦ Bar leaders and members must be committed to providing free legal assistance to poor people in civil matters. They must believe that pro bono efforts alone will not meet existing needs and that a formal structure must exist to provide the best and most efficient means for serving those who need and qualify for free legal assistance.

♦ Bar members are more likely to support requests for funding from legal services programs if they know and respect the attorneys working in those programs. Bar supporters of legal services should encourage legal aid staff to become involved in bar activities and serve on committees, thus building the personal relationships that eventually could lead to financial support.

♦ Legal services programs often request funding from bar associations when the programs have special needs. However, some of the most helpful funding from the bar comes in the form of regular annual allocations, thereby providing a legal services program with a stable revenue source.

♦ In addition to bar associations and bar foundations, sections and committees may have discretionary funds and be interested in contributing to legal services.
Contacts

Marion Smithberger, Assistant Director, Columbus Bar Foundation, Columbus, OH, marion@cbalaw.org, 614/340-2070; Jane Foulk, Director of Development, Legal Aid Society of Columbus, Columbus, OH, jfoulk@columbuslegalaid.org, (614) 224-8374, ext. 163

Tom Tinder, Executive Director, West Virginia State Bar, Charleston, WV, tindert@wvbar.org, (304) 558-7993

Emily Jones, Director, Texas Lawyers Care, The State Bar of Texas, ejones@texasbar.com, (800) 204-2222, ext. 2155

For more information on bar funds for legal services, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Project

Matching Grants

Definition

Foundations, IOLTA programs and other potential funders award grants to legal services providers that are contingent upon the providers generating resources from other sources.

Explanation

Foundations, IOLTA programs and other potential funders can help legal services providers develop new funding sources by providing grants that are contingent on the legal services provider generating other resources. The matching or challenge grant concept may be particularly helpful for a legal services program that is just beginning to diversify its funding base. It also is a good concept for an organization that has reached a plateau in its fundraising campaign and can use the grant as a match for every new or increased gift.

Some foundations may be more likely to give, or make more substantial gifts, if the payment of their gift is dependent on the grantee generating significant contributions from other sources. Those other donors may be more likely to give if they know their contribution is going to be matched, because they feel it increases the value of their gift. Proposing a match may also entice a reluctant funder to take a risk on a proposal.

The matching grant concept can be used to meet a variety of goals, including engaging board members in fundraising and diversifying the legal services program’s funding base. The grant application should be designed to show how the applicant organization will meet those goals. There needs to be an evaluation process to determine if the goals were met.

In most respects, applying to a foundation for a matching grant will be similar to applying for any other foundation grant. Those interested in pursuing a matching grant should read the initiative Foundation and Corporate Grants, page 95, as well.

Pros

♦ Matching grants not only supply funds to legal services programs, but they also leverage additional resources.
♦ A matching grant program may be used to encourage legal services board members and staff to begin asking for contributions or increase their fundraising efforts.

♦ Particularly with innovative ideas, foundation board and staff may be more likely to provide funding if it is a proposed match because they know other funders are supporting the idea and are willing to join them in taking the risk.

Cons

♦ IOLTA programs or bar foundations may not have sufficient discretionary funds to create a matching grants program.

♦ If the match requirements are too great, programs may be unable to raise the funds to make the match.

Examples

♦ “and Justice for all” is the joint statewide fundraising campaign for Utah Legal Services, Legal Aid Society of Salt Lake, and the Disability Law Center. This campaign successfully utilized matching grants to motivate the legal community to contribute during the first three years of its lawyer fund drive. The first year, the Church of Jesus Christ of Latter Day Saints Foundation provided a matching granting of $100,000, payable when the campaign raised $300,000. (See the initiative Funding from Religious Institutions, page 105, for additional information). This gift legitimized the campaign among lawyers and helped the campaign raise $310,000 from the legal community in the first year. In 2000, the second year of the campaign, the campaign leaders set a goal of obtaining donations from 2000 of Utah’s approximately 5,000 lawyers. They received a challenge grant of $100,000 from a Utah foundation, to be paid when they met that goal. A second challenge grant in 2000, from another Utah foundation for $25,000, helped them increase giving from solo practitioners and firms with five or fewer lawyers. A final $100,000 matching gift was received in 2001. (See the initiative Lawyer Fund Drive, page 3, for more information about the lawyer fund drive.)

♦ Maryland Legal Services Corporation (MLSC), the Maryland IOLTA program, initiated a challenge grant program in 1993. MLSC designed it to encourage the boards of directors of its many grantees to initiate fundraising activities. Grantees bid for an additional amount, up to five percent of their grant, which they received if it was matched with new contributions. MLSC believes the program was quite successful; grantees increased their fundraising skills and generated more revenue. MLSC currently is making one challenge grant of $250,000 annually to its largest grantee, the Legal Aid Bureau. LAB used its challenge grant to kick-start a lawyer fund drive and now is using it to increase legal community donations. It has become more difficult for MLSC to make challenge grants because IOLTA funding is not growing at a rate that allows for increased grant making.

♦ Clark County Legal Services (CCLS), the legal services provider in Las Vegas, Nevada, developed a very innovative matching grant to pay off the mortgage on a $2
million building it had recently purchased. CCLS had just merged with the Clark County Pro Bono Project, and was reinvigorating the pro bono effort. A board member arranged for the executive director of CCLS to meet with the executive director of a large, established Nevada foundation, which in the past has been very supportive of programs serving children and seniors. The foundation wanted to help low income people get the legal assistance they needed and also wanted to encourage lawyers to volunteer. After considerable discussion, the foundation agreed to match volunteer attorney time, at the rate of $200 per hour, up to an annual maximum of $500,000. With a three-year grant from this foundation, CCLS was able to retire the entire mortgage debt. The matching grant was a great incentive to increase lawyer participation in the pro bono program, increasing the number of cases referred from approximately three to 35 per month. The pro bono hours donated were 3,600 the first year, 4,900 the second and are expected to exceed 5,300 this year, the third year, greatly exceeding those required to meet the match.

What the Bar Can Do

♦ Encourage bar related charitable entities, such as the bar foundation or IOLTA program, to initiate a matching grant program.

♦ Provide supplemental funds to the bar foundation or IOLTA program to support such an undertaking.

♦ Help legal aid programs initiate contacts with other foundations through lawyers who may be on the board or staff of foundations or know people who are in those positions.

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♦ Funds to establish the matching grants will be the largest expense of this initiative. The bar foundation or IOLTA program will have similar staffing and printing costs to those for administration of any other grant program.

Considerations

♦ An IOLTA program or bar foundation interested in establishing a matching grant program must have the funds available to do so. It is a good initiative to consider
when IOLTA revenue is increasing. The other possibility is to make revenue available by reallocating funds, cutting back on the number of grants awarded or seeking funds from other sources.

♦ An IOLTA program or bar foundation may be able to assist inexperienced legal services board and staff in developing proposals that other funding sources will consider and in identifying potential funding sources.

♦ A program should evaluate its project carefully to be sure it is appropriate for a matching grant. It must be a project that does not require immediate funding, as it will take time to solicit other sources for the match. It also needs to be a project that various funders will want to support. If at all possible, it is wise to have tentative commitments from other sources before seeking the matching grant.

Contacts

Kai Wilson, Managing Director, Community Legal Center, Salt Lake City, UT, kaiwilson@lasslc.org, (801) 578-1204

Susan Erlichman, Executive Director, Maryland Legal Services Corporation, Baltimore, MD, rhudy@mlsc.org, (410) 576-9494

Terry Bratton, Legal Administrator, Clark County Legal Services, Las Vegas, NV, tbratton@clarkcountylegal.com, (702) 386-1070 x118

For more information on matching grants contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defense, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Fellowship Programs

Definition

A project in which an entity makes a monetary contribution to support a staff position, usually a lawyer or law student, in a legal services office for a given period of time.

Explanation

Fellowship programs are exciting opportunities for the lawyers who participate in them, the entities that support them and the legal services organizations that benefit from them. Through these programs, a legal services provider usually receives funds to cover all or part of the salary and benefits of an attorney. The fellowship is for a designated period of time, frequently one year, often with the possibility of renewal for a second year. A fellowship also could support a more short-term internship. Some fellowship programs, especially individual ones between a law firm and a legal services program in the same city, may be fairly informal - the law firm simply provides the funding and the legal services program designates an attorney on staff as the fellow. However, most fellowship programs require the legal services program and/or the potential fellow to submit a grant request describing the work to be performed or the project to be accomplished.

Many fellowships in legal services today are administered through Equal Justice Works (EJW), formerly the National Association for Public Interest Law (NAPIL). EJW has a new website providing information on fellowships and applications (see contact information below.) There are four categories of EJW fellows:

- **Regular Fellowships** are awarded to third year law students or graduates of an Equal Justice Works member school. The applicant must submit a project proposal and identify the organization with which he or she would be working. These two-year fellowships cover salary and loan repayment assistance, as well as national training, support and technical assistance for the fellows. The host organization for which the fellow works is responsible for other training, supervision, benefits and overhead. More than one fellow may be hosted by an organization. Regular fellowships are funded through EJW funds, EJW sponsors, and matching funds from the Open Society Institute. In 2002, eight students were awarded a regular fellowship.
- **Matching Fellowships** are awarded to non-profit organizations, which are required to secure matching funds of $52,000 over two years. This is approximately half the cost of the fellowship. The match must be raised expressly for the fellowship, but can come from any number and type of sources. These two-year fellowships cover salary and loan repayment assistance. In 2002, 52 fellows were placed through this program.

- **National Service Legal Corps (NSLC)** is funded through AmeriCorps, a program of the Corporation for National Service. This federal program places volunteers, who are paid a stipend, in community services organizations. There currently are 55 participants in 11 teams, based in legal services programs across the country. NSLC teams consist of attorneys, paralegals, social workers and community educators addressing housing and domestic violence cases. Participants are paid a stipend of up to $19,000, plus health care, child care, and an education award for student loan repayment of $4,725. These projects run in three-year cycles; the spring of 2003 was the beginning of a new cycle, so the next opportunity to apply will be for a cycle beginning in 2006. However, AmeriCorps is in the process of reconfiguring this program, so there may be changes by that time.

- The **Americorps’ Summer Corps** has been operating since 1997. Law students earn a $1,000 education voucher for spending the summer in a public interest internship. The Summer Corps has 200 student participants. Students are required to complete a minimum of 300 hours with the organization. As with the regular EJW fellowship, law students secure a position with a public interest law organization and then apply for the Summer Corps.

Another significant national fellowship program is funded and administered by the law firm of Skadden, Arps, Slate, Meagher & Flom. Twenty-five **Skadden Fellowships** have been awarded annually for each of the last 14 years. The third year law student applies for the fellowship, providing a letter of obligation from the hosting public interest organization. The selection process is based on the qualifications of both the applicant and the sponsoring organization. The fellowship is for one year, with the expectation of renewal for a second year. The Skadden Fellowship Foundation pays salary, benefits, and debt service on law school loans. A Skadden fellow’s salary is $37,500 annually.

**Pros**

- Legal services programs receive funding for an existing attorney position or to create a new attorney position for a specified period of time.

- Newly admitted lawyers are able to obtain work with public interest organizations, which, because of relatively static funding, have few openings for entry-level attorneys.

- Lawyers from the private sector gain a greater knowledge of legal services. In some fellowship programs, the sponsoring entity receives reports about the work being done by the fellow, and in some programs can be actively involved in the work.
Cons

♦ Fellowship programs may require a fairly long-term commitment by the law firm, bar association or other entity that decides to participate.

♦ Since most attorneys in fellowship programs are relatively inexperienced, legal services programs need to provide additional training and supervision to individuals who may not be with their programs for long periods.

♦ Some fellowships require the legal services program to match some part of the contribution; most fellowships require the legal services program to cover overhead expenses. Some programs do not have sufficient resources to cover the expenses and/or are unable to raise the match.

Examples

♦ Montana Legal Services Association (MLSA) has a fellow through the EJW Matching Fellowship program. The Attorneys Liability Protection Society (ALPS), a professional liability insurance company with its national headquarters in Missoula, got the ball rolling on the match for the fellowship when it decided to establish a fund in memory of a longtime MLSA board member who had been a close friend of the CEO of ALPS. ALPS and MLSA agreed that the memorial fund would be used to support a future EJW Fellowship. ALPS (through the memorial fund and a corporate contribution), the Montana Coalition Against Domestic and Sexual Violence, and the Montana Justice Foundation joined together to raise the matching funds to support the fellow.

Tara Veazey, a Yale Law School graduate, is MLSA’s EJW fellow. She coordinates the Rural Family Law Project at MLSA, providing resources, training and support to clients experiencing domestic violence in the large and very rural area of eastern Montana. Tara is developing a manual for pro bono attorneys representing domestic violence survivors, which she hopes will serve as a training and recruitment tool. She also is seeking funding for a comprehensive assisted pro se project for the state.

♦ In 1998, a consortium of the 12 largest law firms in Portland, Maine funded two fellowship positions, focused exclusively on family law cases of the type traditionally handled by pro bono attorneys. These Coffin Fellows were named in honor of a senior appellate federal court judge, Frank M. Coffin, who at the time was chairing Maine’s state planning body for legal services. The fellows are housed at Pine Tree Legal Assistance, the statewide LSC-funded provider, which provides supervision, training, and other support. The $54,000 for each fellow per year covers a fixed stipend of $32,500 for each year of these two-year Fellowships, along with benefits and some related overhead costs. According to the executive director of Pine Tree, the project has given six entry-level attorneys the opportunity to work in public service for a two-year period and has allowed hundreds of low-income families to get representation in difficult family law cases. The project is administered by the Maine Bar Foundation, which collects the pro rata contributions from each firm annually.
What the Bar Can Do

♦ Sponsor a fellowship program.

♦ Encourage law firms to develop their own fellowship program, or to contribute to the EJW fellowship program.

♦ Assist legal services programs in identifying and approaching law firms and corporations that could provide matching funds where needed to obtain the fellowship.

♦ Promote fellowship programs by profiling the work of fellows and acknowledging law firms that support fellows in bar publications.

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♦ The bar’s costs associated with a fellowship program will depend on the role it is playing. If the bar is sponsoring the program, it most likely will be necessary to assign a staff person to administer the program. If it is encouraging participation, its costs are minimal. The majority of the work should be done by volunteers, talking to other lawyers and law firms.

♦ Fellowship programs may require printed materials to promote the effort and recognize the attorneys, firms or bar associations that are participating in the program.

Considerations

♦ For most fellowship programs, there is a considerable amount of work on the part of both the donating/administering entity and the recipient organization. On the other hand, there can be significant benefits that go well beyond increasing resources for legal services programs, because these projects offer the opportunity for many people to become involved in the work of legal services. The pros and cons should be weighed carefully before deciding to undertake this initiative.
Contacts

Imoni Washington, Senior Program Manager, Fellowships, Equal Justice Works, Washington, DC, iwashington@equaljusticeworks.org, (202) 466-3686, ext. 110. (Website is www.equaljusticeworks.org)

Susan Butler Plum, Director, Skadden Fellowship Foundation, New York, NY, splum@skadden.com, (212) 735-2956

Klaus Sitte, Executive Director, Montana Legal Services Association, Missoula, MT, ksitte@copper.net, (406) 543-8343

Nan Heald, Executive Director, Pine Tree Legal Assistance, Portland, ME, Nheald@ptla.org, (207) 774-4753

For more information on fellowship programs, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Project

Cy Pres

Definition

An initiative to utilize the doctrine of cy pres to direct class action residuals and other funds resulting from lawsuits to legal services providers.

Explanation

The cy pres doctrine (from the Norman French term “cy pres comme possible,” meaning “as near as possible”) first was used as a method of fairly distributing a trust fund when the original purpose could not be achieved. Under cy pres, the funds are distributed to the “next best” use. Courts utilize this doctrine to award residual funds from class action lawsuits to legal services and other non-profit organizations. The cy pres concept also has been employed to dispose of other funds produced by court actions. For example, the attorneys’ general offices in at least two states have donated restitution funds from consumer cases to legal services providers, and at least one program has received restitution funds paid in federal court criminal cases. There have been a number of other contributions to legal services from court cases, two of which are explained in the example section below, that may not be precisely cy pres, but are similar enough in terms of the process for obtaining them that they are included here.

In terms of class action lawsuits, if there is to be a payment of damages to class members, a fund is created. A time period is established during which people may identify themselves as class members and make claims. Often, only a small percentage of those eligible will do so. As a result, there are often residual monies in the fund after the claim period has expired. The defendants usually have no right to these excess funds. Under the doctrine of cy pres, judges may order that the unclaimed funds be put to their next best use, which may be for the aggregate, indirect, prospective benefit of the class. In the typical case, the award is made pursuant to the stipulation (or at least recommendation) of counsel for both plaintiffs and defendants.

Legal services providers frequently can make a good case for being appropriate beneficiaries of funds under the cy pres doctrine. The unnamed members in many class action lawsuits are people similar to legal services clients - those who cannot afford legal counsel, and might very well not know what their rights are or have their rights protected. In other situations, the case may be on an issue, like consumer fraud, that is directly related to the work of legal services.
Legal services programs that are well-positioned in their communities sometimes learn about available *cy pres* funds and are able to act quickly to submit a request for a contribution. However, in most instances, legal services advocates will not know when *cy pres* funds become available, so it usually is not possible to submit a request for specific funds at that time. A more effective strategy is to design a general campaign to educate judges about their authority under *cy pres* to direct residual class action and other funds resulting from lawsuits to legal services and to encourage lawyers who do trial work to recommend that legal services be considered as a recipient of any such funds. This education process needs to be repeated periodically.

**Pros**

- Once the program is established, it is a relatively low cost mechanism for obtaining what can be substantial additional resources for legal services.

- It provides a means to achieve the goals of the lawsuit when the original purposes cannot be fully met.

**Cons**

- It is not an immediate or predictable source of funding.

- Judges may be unwilling to award funds to legal services programs whose attorneys appear before them in litigation because of the appearance of favoritism. This concern can be eliminated by directing the funds to an entity such as IOLTA or a bar foundation that can then give the funds to legal services.

**Examples**

- Land of Lincoln Legal Assistance Foundation (LOL) is a program serving 65 rural, low-income counties in central and southern Illinois. Using the broad definition of *cy pres*, LOL has received over $1.8 million in such funds since 1996. They have received class action residuals, restitution funds from federal criminal cases, and a donation from a settlement fund. The experience of LOL is somewhat atypical, because two of the counties in the service area have historically had very active plaintiffs' bars, providing a venue for numerous state and nationwide class action lawsuits. However, LOL is an excellent example of a program in a relatively low-income rural area making the most of its strengths. LOL's success comes from utilizing proven *cy pres* fundraising strategies. They have developed personal relationships with well-known and respected members of the local bar who handle cases that involve potential *cy pres* awards. They have built strong lawyer fund drives in several of their counties, which have helped increase the awareness in the community of the need for LOL's services. Finally, they took the time to educate the local lawyers and judges about the *cy pres* doctrine and the opportunity to help LOL.

LOL began working with the private bar on fundraising in 1995, developing its first lawyer fund drive. About a year later, an active campaign committee member and
generous donor who was local counsel in a national class action case called LOL and notified them that they would be receiving over $600,000 from the settlement fund in the case. The award was publicized in the local newspaper, and generated discussion among lawyers about LOL and its value to the community. This led to the receipt of a class action residual cy pres award, which has amounted to over $500,000.

In 1998, the members of the lawyer fund drive committee agreed that LOL should implement a formal cy pres strategy. They put together an educational manual, and then met with local judges and lawyers. One of the judges with whom they met was the chief judge of the local federal district court, who sent a memo to all of the judges in the district reminding them about the cy pres doctrine and that LOL was interested in being designated as a recipient of such funds. One of the co-chairs of LOL’s campaign had recently been appointed to this federal district court. Shortly thereafter, he presided over the settlement of a nationwide class action case involving credit card overcharges. He approved the settlement agreement that included a contribution of up to $100,000 of the undistributed portion to LOL to promote consumer rights and education. Since then, they have received another $400,000 in class action residual cy pres funds.

Finally, LOL recently received $195,000 from restitution funds paid in two federal criminal cases. The cases resulted in plea bargains, which included the payment of restitution, and the judge directed that the restitution funds be distributed in grants to local non-profit organizations. The cases grew out of operation of a house of prostitution and interstate transportation of women, and LOL used its contribution to provide legal services to battered women.

Legal services providers in at least two states have received restitution funds under the doctrine of cy pres from consumer fraud cases brought by the attorney generals of their states. This occurred first in Washington in the mid-90s. Legal services advocates had made a presentation on cy pres to a meeting of lawyers from the attorney’s general office. Soon after, LAW Fund, the statewide private resource development organization for legal services, received the first of several awards from restitution payments made by automotive financing companies in settlements brought under the Washington State Consumer Protection Act.

After hearing about the Washington experience, advocates in Oregon visited with their neighbors to learn about their success. Oregon legal aid programs have a long-standing statewide lawyer fund drive, and the private bar is extremely supportive of their work, so they were well positioned to make the case to their attorney general for similar support. Although the attorney general had no relevant cases at the time, legal services staff and volunteers developed and maintained a close relationship with his office. Several years later, when the attorney’s general office received Oregon’s share of restitution funds from a nationwide consumer case, it provided a total of $350,000 to the Oregon legal services providers throughout the state.

What the Bar Can Do

- Adopt a resolution supporting this initiative.
◆ Educate judges about their authority to direct funds under the *cy pres* doctrine to legal services providers.

◆ Communicate with litigation attorneys to educate them about needs of legal services and the use of this mechanism.

◆ Keep legal services providers informed about major cases in which the *cy pres* doctrine might be applicable.

**Budget**

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◆ An on-going effort to obtain *cy pres* funds is probably best coordinated by a staff person, based at the entity that is receiving the funds, to organize periodic efforts to encourage judges and lawyers to consider legal services as the beneficiary.

**Considerations**

◆ It is impossible to budget for this revenue, and some of the awards have been substantial. For these reasons, it is a good idea to use these funds for one-time expenditures or as revenue for an endowment (see initiative, *Building an Endowment*, page 77), rather than for basic operating expenses.

◆ Advocates interested in promoting the *cy pres* concept with their judiciary and attorneys’ general offices should start by talking with judges and attorneys who are known to be supportive of legal services. The advice and counsel from these supporters can be very helpful in determining how best to proceed.

◆ The programs that have been most successful in obtaining *cy pres* funds have strong, positive reputations in their communities, and they have staff that are highly regarded by other attorneys. Most of them have successful lawyer fund drives, which have helped to increase their visibility in their communities.

◆ When the *cy pres* concept was first identified as a possible source of funds for legal services, it was thought that a likely mechanism would be to seek a court rule or legislation to require that some or all of the funds go to legal services. No state has adopted such a rule or law, but California has a statute that includes “non-profit organizations providing civil legal services to the indigent” among those to whom *cy pres* funds may be paid. A statute of this type may be helpful in marketing the
concept to judges and lawyers, as it eliminates questions about whether cy pres funds may be used to fund legal services.

Decisions as to the use of residuals in class action cases do not always rely on the cy pres doctrine - some cases have relied on the court’s general equity power, while in other cases, the court has simply ordered the distribution without stating its authority. There also are many possible uses under cy pres besides payment to legal services providers. A more complete discussion of the distribution of unclaimed class action funds appeared in “What Can A Court Do with Leftover Class Action Funds? Almost Anything!”, The Judges' Journal, Summer 1996, Vol. 35, No. 3, published by the American Bar Association. Another resource for information on class action residuals and the cy pres doctrine is Newberg on Class Actions, Third Edition.

The Fundraising Project of Management Information Exchange has published a manual on cy pres that includes more information and copies of decisions awarding cy pres to legal services programs. It is available for purchase through MIE (see Contacts, below).

Contacts

Linda Zazove, Deputy Director, Land of Lincoln Legal Assistance Foundation, East St. Louis, IL, lzazove@lollaf.org, (618) 271-2476, ext. 266

Linda Clingan, Executive Director, Campaign for Equal Justice, Portland, OR, LClingan@aracnet.com, (503) 295-8442

Dennis Dorgan, Director of Consulting Services, The Fundraising Project, Circle Pines, MN, ddorgan@m-i-e.org, (763) 780-6369

For more information on cy pres, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Lawyer Referral Program Contributions

Definition

A policy adopted by a lawyer referral program to commit some or all of any excess revenue to programs providing legal services to the poor.

Explanation

There are approximately 310 lawyer referral programs in the United States, more than 90 percent of which are operated by state and local bar associations. These programs, also known as lawyer referral and information services, match a person looking for a lawyer with a lawyer from a subject matter panel. The lawyer usually pays to participate in the service. The funds generated by the program generally are used to promote the referral program, recruit new attorneys and cover operating costs of the program. Many programs do not generate sufficient funds to break even, and they are subsidized by the bar associations, which view them as a public service for people trying to find a lawyer.

There are exceptions, however, especially among those programs that have adopted percentage fee funding. These programs receive from the lawyer a percentage of the fee the lawyer charges the client. (The percentage is usually over a certain amount or is based on a sliding scale.) The number of programs instituting percentage fee funding has been increasing, and these programs have seen their revenues increase, to the point where some have excess revenue.

The American Bar Association policy on lawyer referral and information services urges programs with excess revenue to put whatever they need back into the programs, and then use the balance to fund public services programs of the bar. At least one state bar, California, has incorporated a similar concept into its rules. Rule 17.2 states that “The income generated by a non-profit Lawyer Referral Service shall be used only to pay reasonable operating expenses of the Services and/or to fund programmatic public service activities of the Service or its sponsoring entity, including the delivery of pro bono legal services.”

Lawyer referral programs that responded to a recent survey indicated that of those that used a portion of excess revenue to fund public service programs, most either passed the excess through to their bar foundations for distribution along with other grant funds or gave the funds to bar sponsored pro bono programs.
Pros

♦ This initiative offers an opportunity for the bar to show its support for access to justice.

♦ Once established, the initiative requires very little work to maintain.

Cons

♦ Because the revenues of the lawyer referral program will fluctuate, this is unlikely to be a stable funding source.

♦ The bar association may believe that the funds generated from the lawyer referral program should be retained by the program or used by the bar for its other public service activities.

Examples

♦ The Lawyer Referral Service of Central Texas (Austin, TX) uses the percentage fee basis to generate its revenue, and in some years runs a surplus. In 1996 and 1998, the service was able to make donations in the $20,000 range to each of four legal services programs. They did not have sufficient excess revenue again until 2004, when they received a large referral fee from a malpractice suit. As a result, in February 2004, they made donations totaling $60,000 to eight legal services organizations.

♦ The Lawyer Referral Service of the Bar Association of San Francisco is a large (14 staff members) lawyer referral service and they use the percentage fee system to generate their revenue. They support their pro bono program in two ways. First, they make an in-kind contribution by doing all the telephone screening for the pro bono program. They estimate that 25 percent of the 70,000 calls they receive annually are screened and referred to the pro bono program. This work is worth approximately $150,000 annually. Second, over the past several years, LRS has been able to make substantial cash contributions, totaling over $400,000, to the pro bono program.

What the Bar Can Do

If the lawyer referral program is run by the bar association, the bar itself can initiate these activities. If the referral program is separate, the bar’s role is likely to be to encourage these activities.

♦ Adopt a percentage fee system that would generate greater revenue, if such a system is not already in place.

♦ Make the decision to use some portion of any excess revenue to support legal services for the poor.
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- There are minimal expenses involved in implementing and maintaining this initiative, except for the obvious direct cost of the contribution to the legal services provider.

Considerations

- For this initiative to be implemented, the lawyer referral program must be generating excess revenue. The ABA provides advice and consultation to bars that want to make their lawyer referral program self-supporting or profitable. See Contacts, below.

- Once this initiative is implemented, the referral program may want to publicize the fact that donations from the program support legal services for the poor. Highlighting such contributions is yet another opportunity to improve the public perception of lawyers and their commitment to justice.

Contacts

Glenn Fischer, Assistant Staff Counsel, Standing Committee on Lawyer Referral and Information Service, American Bar Association, Chicago, IL, fischerg@staff.abanet.org, (312) 988-5755

Jeannie Rollo, Director, The Lawyer Referral Services of Central Texas, Austin, TX, jeannie@travisbar.com, (512) 472-1311

Linda Katz, Assistant Director, Lawyer Referral Service of the Bar Association of San Francisco, San Francisco, CA, ikatz@sfbar.org, (415) 782-8943

For more information on lawyer referral program contributions, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Attorneys' Fees Awarded in Pro Bono Cases

Definition

Encourages attorneys handling cases pro bono to donate any attorneys’ fees awarded in those cases to organizations that provide legal services to the poor.

Explanation

Attorneys who accept cases on a pro bono basis do so with the understanding that they will not be paid for the work they perform. In some types of cases, however, there is an opportunity to apply for and receive attorneys’ fees. This initiative encourages attorneys to donate those fees to legal services programs.

Model Rule of Professional Conduct 6.1, which sets forth an aspirational standard for pro bono service, lends support to this initiative. It permits attorneys to retain statutory attorneys’ fees in cases originally accepted as pro bono, but encourages the volunteer “to contribute an appropriate portion of the fees to organizations or projects that benefit persons of limited means.” For further discussion on this issue, please see Standard 3.5-6 of the American Bar Association’s Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means.

Frequently, the pro bono case that leads to the receipt of attorneys’ fees will have been referred from a legal services or pro bono program, and that organization may be the logical recipient of the donation. Sometimes the lawyer may choose to donate the fees as an unrestricted contribution. In other situations, especially if the fee award is sizeable, the lawyer may choose to design a special project, or even establish an endowment.

Programs that receive funds from the Legal Services Corporation (LSC) are subject to restrictions imposed by Congress related to the programs’ acceptance of attorneys’ fees. (See Considerations, below, for more information.)

Pros

♦ Attorneys who donate fees in pro bono cases help increase access to legal services
twice - first, by representing a client who could not afford legal representation and second, by providing much-needed funding.

- Donating attorneys’ fees helps improve the image of lawyers because it demonstrates that the lawyer is truly committed to voluntary service to help the poor.

Cons

- The idea may meet with resistance. Some lawyers may feel that attorneys participating in pro bono activities are already doing enough and should not be asked to give up the fee they are awarded for providing the representation.

Examples

- In 2003, six Denver law firms collectively donated $237,000 in attorneys’ fees from a major class action pro bono case to the Legal Aid Foundation of Colorado and the Colorado Center on Law and Policy (CCLP). The case successfully challenged the loss of welfare benefits to over 2,000 families in two counties when they were improperly sanctioned or terminated from Colorado’s welfare program. The problems that led to the filing of the case were identified by the Welfare Reform Task Force, which had been created by CCLP to educate members of the private bar about the issues associated with the implementation of the recent welfare reform legislation and to interest them in taking relevant pro bono cases. After winning the lawsuit, the firms sought and were awarded attorneys’ fees, and then decided to donate a large portion of the fees. The pro bono lawyers on the case recognized the need for additional funding faced by the programs and wanted to continue the good that had come from their work on this case. They worked closely with their firms’ management committees to obtain the necessary commitments to make the contributions. The firms were honored at a breakfast at the Colorado Bar Association.

- Children in Need of Care, a program of The Pro Bono Project of New Orleans (TPBP), provides training and support for attorneys handling cases in which the court has ruled the abuse and neglect is substantiated and the child remains in the state system. The state appropriates funds to reimburse attorneys for their time and related costs for these cases, and TPBP asks the attorneys to donate their fees to the program. The attorneys track their time and submit the forms for reimbursement to TPBP, which then follows up with the state to obtain payment. Most of the attorneys participating in this program have assigned their fees to TPBP, generating between $15,000 and $20,000 annually for the program.

- Atlanta Legal Aid Society operates a Grandparents Project that helps children, provides an interesting and rewarding pro bono experience for members of the bar, and raises some revenue for Atlanta Legal Aid. Georgia, like many other states, has an adoption assistance program, which provides on-going funding to support certain categories of at-risk children who have been adopted by grandparents or other relatives. Attorneys are needed to represent the grandparents or other relatives in the adoption process, and the state pays the lawyer up to $1,500 for each case.
Kilpatrick Stockton, an Atlanta law firm, has volunteered to take a number of these cases, with the intention of doing them on a pro bono basis. They accept the payments from the state and donate them to Atlanta Legal Aid, which is receiving between $15,000 and $20,000 annually from the Project. See Consideration, below.

What the Bar Can Do

♦ Encourage all lawyers to participate in pro bono activities and to contribute attorneys’ fees awarded in pro bono cases to legal services. If the bar sponsors the pro bono program, it could institute a policy encouraging these contributions.

♦ Initiate conversations about donating attorneys’ fees with attorneys known to be handling pro bono cases where major fee awards are anticipated.

♦ Provide recognition for attorneys that donate their fees from pro bono cases to reward those making the contribution and encourage other lawyers to follow their example.

♦ Include information about obtaining attorneys’ fees in CLE training on subjects related to cases that pro bono lawyers are likely to handle. This would both inform the lawyers and gain publicity for the idea.

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♦ The costs of this project usually will be minimal. There may be some responsibilities that may need assistance from staff, including recruiting and/or training attorneys to take cases that may result in fees, coordinating any projects that are developed with large fee awards, periodically reminding attorneys to consider donating fees and identifying cases where fees might be available.

Considerations

♦ Some pro bono programs have specific written policies related to obtaining, retaining and donating attorneys’ fees. Some state that lawyers may retain the fees, while others suggest that the fees be donated or split between the lawyer and the program. However, most programs with policies encouraging turning over fees to the program do not seem to receive fees with any frequency, suggesting that if this initiative is to succeed it may require more than a written policy.
The opportunity to obtain donations of attorneys' fees usually arises when there is a strong personal relationship between the private firm or lawyer handling the case and the staff or a board member of the potential recipient legal services programs.

Recipients of funds from LSC and their employees are prohibited from seeking or receiving attorneys’ fees in cases they handle. Private attorneys who receive compensation from LSC recipients or their subrecipients to handle cases for eligible clients are also prohibited from seeking attorneys' fees in those cases. However, private attorneys who accept referrals on a pro bono basis are not subject to the restriction and are free to donate the attorneys’ fees back to the LSC recipient. Nevertheless, the LSC recipient and the pro bono attorney could not have an advance arrangement under which the private attorney agrees, before the fees are awarded, to donate any attorneys’ fees to the recipient. Additional information on this subject may be obtained from the Center on Law and Social Policy (CLASP), see Contacts, below.

The attorneys' fees donated by Kilpatrick Stockton to LSC-funded Atlanta Legal Aid Society mentioned in Examples, above, are not prohibited attorneys’ fees under LSC regulations, since they do not come from the other side or from the client. They are like fees from a contract with the state for services, which the regulations specifically allow LSC programs to receive. Atlanta Legal Aid could therefore collect those fees itself and is allowed to accept them as donations.

Contacts

Natalie Hanlon-Leh, Partner, Faegre & Benson, Denver, CO, NHanlon-Leh@faegre.com, (303) 607-3639; Maureen Farrell, Executive Director, Colorado Center on Law and Policy, mfarrell@cclponline.org, (303) 573-5669

Rachel Piercey, Executive Director, The Pro Bono Project, New Orleans, LA, rpiercey@probono-no.org, (504) 581-4043

Steve Gottlieb, Executive Director, Atlanta Legal Aid Society, Atlanta, GA, sgottlieb_alas@yahoo.com, (404) 614-3990

Linda Perle, Senior Attorney, Lperle@clasp.org, (202) 906-8002, or Alan W. Houseman, Executive Director, ahouse@clasp.org, (202) 906-8001, Center for Law and Social Policy, Washington, DC

For more information on attorney fees awarded in pro bono cases contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Other Giving Opportunities for Lawyers

Definition

A variety of other opportunities for lawyers, law firms, and/or the legal community generally to make financial contributions to legal services.

Explanation

This manual includes chapters on virtually all major fundraising initiatives used to generate revenue for legal services. However, there are opportunities for lawyers or law firms to donate to legal aid that do not fit neatly into one of the other initiatives. What they have in common is that legal services staff and volunteers cannot develop an on-going strategy for identifying and obtaining these gifts. The ideas most likely will originate with and be carried out by individual lawyers, law firms, or bar associations. Some possibilities include:

*Gifts in memory or in honor of friends, family, or colleagues:* Most legal aid programs provide opportunities for donors to make contributions in memory or in honor of individuals. However, the passing, retirement or other life milestone of particularly well-known and respected members of the bar are times when many people may be interested in making a gift. A more organized effort to collect these gifts may yield a greater sum of money, which can be directed to one or more specific programs.

*When a law firm or lawyer receives an unusually large fee:* Lawyer fund drives have traditionally focused on asking lawyers and law firms for a dollar amount per lawyer that demonstrates a strong commitment to legal services, but is not a major gift. However, from time to time, some lawyers receive very large fees, and on these occasions, the lawyer could make a really significant gift to legal aid. (See the initiative, *Attorneys’ Fees Awarded in Pro Bono Cases*, page 55, for information that may be relevant to this idea.)

*Law firm anniversaries:* Law firms having milestone anniversaries – 25, 50, 100 years – often look for special ways to celebrate. Making a significant gift to legal services is a very meaningful way to demonstrate the firm’s commitment to the ideal of justice for all and may be more rewarding than hosting a big party or other more typical event.

*Holidays:* Some lawyers and law firms have made the decision to share the holiday spirit by making gifts to their favorite charities. Legal services is an excellent choice for this kind of gift.
**Excess campaign funds:** In at least two states, judges and candidates for political office are required or permitted to donate any excess campaign funds to non-profit organizations. Some of these funds have been given to legal aid programs.

**Endowments or Trusts:** The revenue from any of these initiatives, if sufficient, could be used to establish an endowment or trust, with the income being used for a specific purpose. For example, the income could fund an internship or fellowship, or an activity of particular importance to those making the gift or in whose honor or memory the gift was made. It could be named after the law firm or individual that made the donation or the person in whose honor or memory the endowment was created. Providing the opportunity for the funding to be used over a long period of time may increase the number of people who contribute. It also may be possible to increase the fund over time, as people see the benefit of the fund’s use.

**Pros**
- These initiatives are wonderful ways for lawyers to demonstrate their commitment to access to justice, since the gifts are usually unsolicited.
- These special, unsolicited gifts are great morale boosters, both for the donors and the organizations that receive them.

**Cons**
- Given the sporadic nature of these gifts, they cannot replace annual contributions to legal aid programs.
- If the donor creates an endowment or trust with too little principal, or places too many restrictions on the funds, the recipient program may have difficulty using the funds effectively.

**Examples**
- When a prominent New Mexico lawyer with a long history of involvement with legal services passed away, his colleagues and family wanted to remember him in a dynamic way that would express, on a continuing basis, his concern for equal justice. Members of his family and members of his former law firm, Montgomery and Andrews, in Santa Fe, donated approximately $75,000 to create an endowment. The endowment was given to the New Mexico Center on Law and Poverty, to be used to fund a fellowship for a first or second year law student. Although the goal is that the fellowship be annual and be funded through income from the endowment, the donors gave the Center considerable discretion so as not to make it difficult to use the funds.
- Holme Roberts & Owen, a large law firm headquartered in Denver, Colorado, makes contributions to charitable organizations in lieu of gifts to clients at the holidays. On the back of the holiday cards sent to clients is a note that provides information about
the organizations to which the gifts were made. In 2002, two partners and legal aid supporters asked the firm’s executive committee to consider legal services programs as its holiday charities. The gifts were made to legal aid organizations in the three states in which Holme Roberts & Owen has offices – the Legal Aid Foundation of Colorado, San Francisco Lawyers Committee for Civil Rights, and Utah’s “and Justice for all”. The Legal Aid Foundation of Colorado, the state’s fundraising organization for legal aid, received $10,000, which was in addition to the firm’s regular lawyer fund drive contribution.

Legal services programs in Florida and Nevada have received donations from excess campaign funds. In Nevada, the excess campaign funds have come from judges’ campaigns. The Code of Judicial Conduct was recently changed, and the judges may now retain the funds until the next election, so it is expected that this already small source of funds will be reduced. In Georgia, there is a state statute that governs the disposition of excess campaign contributions for candidates for office. One of the options it provides is for those funds to be contributed to charitable organizations, and two legal aid programs have received such gifts. In Florida, at least eight legal services providers have received excess campaign funds. For example, the Legal Aid Society of Palm Beach County received approximately $5,000 in excess campaign funds in the past three years, from three judicial campaigns and one state house race. The donors were supporters of the Legal Aid Society who had participated in its fundraising events. (See the initiative Special Events, page 89.)

What the Bar Can Do

✦ Suggest ideas like these when lawyers or law firms are looking for ways to celebrate holidays or events or honor individuals.

✦ Provide publicity in bar publications when lawyers or law firms make these kinds of gifts.

Budget

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✦ The primary and frequently only expense for this initiative is the gift itself. If an endowment or trust is created, and the revenue is to be used to create a fellowship or other on-going activity, some staff time will be required to maintain the project. Depending on the design of the project, this work will be done by the donating entity, the recipient organization, or both.
Considerations

♦ Generally, legal aid providers cannot directly request these contributions. The best way to plant the idea for this type of gift is to acknowledge the donating firm or individual publicly, through a bar publication, the program’s annual report, or possibly in the local newspaper.

Contacts

Sarah Singleton, Partner, Montgomery and Andrews, Santa Fe, NM, ssingleton@montand.com, (505) 986-2648

Mary Stuart, Partner, Holme Roberts & Owen, Denver, CO, mary.stuart@hro.com, (303) 861-7000

Robert Bertisch, Executive Director, Legal Aid Society of Palm Beach County, Inc., West Palm Beach, FL, rbertisch@legalaidpbc.org, (561) 655-8944

For more information on other giving opportunities for lawyers, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Services and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Introduction

Initiatives that Expand Private Fundraising and Move Beyond the Legal Community

The private bar and legal services programs throughout the country have worked together successfully to develop strong financial support for legal services from the legal community. The development of this strong support should enable legal services advocates to move successfully into more sophisticated, high-revenue fundraising activities and into the non-legal private sector to increase funding to support legal services for the poor. The private bar and legal services programs in some places have expanded into these new areas successfully, as the examples in this section demonstrate.

This section includes a variety of seemingly unrelated initiatives. What they have in common is they all encourage legal services advocates to stretch their fundraising goals – to ask attorneys as well as non-attorneys to make major contributions, to generate resources that will provide greater security for the future, to seek support from outside the legal community.

Some of the initiatives, such as foundation and corporate grants and special events, can and should be considered for inclusion in the resource development plans for those programs relatively new to private fundraising. Others, such as planned giving and the building of an endowment, normally should not be initiated until a strong base of private support has been established.

Most of the initiatives in this section are “Tried and True” fundraising activities for many other charitable causes. They are more “Experimental” for most legal services programs. Many bar leaders have had experience on boards of established organizations, like hospitals and universities that have used these initiatives successfully for years. These attorneys can provide guidance to legal services providers as they explore these initiatives in an effort to diversify their funding and plan for the future.

When working to raise money outside of the legal community, legal services advocates need to present their message differently. Most members of the general public do not understand the concept of access to justice as instinctively as lawyers do. Legal services advocates need to communicate their message in terms of the people who are helped - the elderly, children, victims of domestic violence - and the problems that are solved - fewer people are homeless, battered women and their children are safe, low income families can obtain health care.

The bar and individual lawyers are critical to the effort to attract gifts from a wider range of sources. Every lawyer has close friends and colleagues who are not lawyers and can educate them about the importance of the work of legal services programs. The bar’s contacts with business and other community leaders are essential as legal services advocates seek to involve the broader community in supporting their work. The experience of the bar in working with the media can be very helpful in raising the general awareness in the community of the important work done by legal services programs.
Major Individual Gifts

Definition

An on-going effort to motivate individual donors to make major annual contributions to legal services.

Explanation

Major, established institutions - universities, hospitals, museums - have long engaged in fundraising efforts that motivate annual donors to upgrade - to move from making relatively small gifts to more generous ones. These institutions then work with their generous annual donors to encourage them to consider making very major, probably one-time commitments and/or planned gifts, usually for endowment or capital campaigns. In the past few years, some legal services programs have recognized the importance of major individual gifts to resource stability and diversity, and have begun developing similar campaigns. This is a long-term process that requires careful planning and a strong commitment to developing personal relationships with donors.

The usual first step in developing major annual donors is to develop a base of contributors from which these major donors will be identified. Most legal services programs have developed their donor base through a lawyer fund drive. (See the initiative Lawyer Fund Drive, page 3.) Over the course of a few years, as attorneys are solicited for their own and their firms’ gifts, potential major donors will emerge. Many will be obvious - some board members, lawyer fund drive volunteers, and others with strong, known ties to the organization. Others will be identified by staff, board members or volunteers, or through the solicitation process, because they give a larger than expected gift, or because over a period of time they give consistently and at increasingly higher amounts.

Legal services advocates in a few programs have demonstrated that it is possible to develop major donors without going through this traditional building process – that is, people with the financial capability of making a substantial gift, if properly approached by personal friends, will make their first gift to the organization a major one. For this to occur, the staff and volunteers of the program must be very well respected and have developed a strong network of personal relationships within the community.

Some legal services programs with well-developed private bar campaigns have used endowment campaigns as vehicles to gain their first major gifts from individuals. Some of
these efforts began as planned giving campaigns in which campaign solicitors discovered that many lawyers chose to make outright gifts rather than planned ones. (See the initiatives, *Major Individual Gifts*, page 65, and *Building an Endowment*, page 77.) Several legal services programs have used capital campaigns to not only gain their first major gifts, but to begin their fundraising efforts with the private bar. (See the initiative, *Capital Campaigns*, page 83.)

Solicitations of current and prospective major donors should be handled carefully. Since these special donors are relatively few in number, staff and volunteers should take the time to get to know how each of them prefers to be approached. Some people would never consider becoming a major contributor without an in-person visit from a peer; others have been known to make major annual donations in response to regular direct mail appeals. Most of the time, a personal solicitation will achieve the best results.

Another step for legal services programs to take involves recruiting individual donors who are not attorneys. This can be done in a number of ways. Some programs have begun by mailing to lists of people who would understand and care about legal services, for example, supporters of civil rights causes and domestic violence prevention. Other programs have asked board members to provide names of non-attorneys who might give, particularly if asked by the board member. These are likely to be people with whom the board member has either a personal or professional relationship. Developing a non-attorney donor base is a relatively slow process that usually will not generate much revenue in the short run. In the long run, it may provide significant financial returns, as well as develop a stronger base of support and a greater understanding of legal services among the general population.

**Pros**

Major annual donors can be a source of significant unrestricted income.

♦ Major donors are committed to the survival of the organization, often become actively involved with the organization, and may be helpful with other resource development activities.

♦ Many major donors are highly appreciative of the work of the organization and frequently are a source of support and inspiration.

♦ The development of major annual donors can set the stage for a planned giving, capital or endowment campaign.

**Cons**

♦ Developing major individual donors is a time consuming activity for volunteers and staff.

**Examples**

♦ The board and executive director of the Sargent Shriver National Center on Poverty
Law made the decision to develop a major gifts campaign shortly after the implementation of restrictions and the loss of funding from LSC in the mid-1990s. The board members understood that fundraising was one of their major responsibilities, and that the board would need to be expanded to include more individuals with the ability to fundraise and to make financial contributions of their own. It would also be necessary to hire professional staff, and a board member helped make that possible by contributing to the creation of a development program.

Their major gifts strategy has developed around relatively small and intimate “house receptions”. The reception host is usually a current contributor, wealthy, with an interest in justice issues, and with a home others want to visit. A reception committee, usually including some donors who the Center hopes to get more involved, is formed. Each member of the committee invites five to seven guests. These are substantive events; the program includes a legislator or other well-known person who talks about issues related to the work of the Center and a lawyer from the Shriver Center who discusses his or her specific work. After the presentation, the host makes a pitch for contributions and challenges the guests by making his or her own gift. Packets including reply envelopes are distributed to the guests, and guests are encouraged to make gifts at that time. The Center puts on approximately six of these events annually.

The development director describes the follow-up with reception attendees, as well as the approach to other potential major donors, as “very situational”. A strategy is designed for each potential major donor, taking into consideration the individual’s current interest level, ability to give, and who is most likely to influence them.

The Center generates approximately $350,000 annually in gifts from their individual donor program. Keys to this success are the fundraising ability and commitment of all the necessary players - executive director, development director, board members and other key volunteers – to identify potential prospects and follow-up with first-time contributors to develop a long term relationship.

With the support of the NLADA/CLASP Project for the Future of Equal Justice, a group of Mississippi lawyers and community activists came together in June 2002 to create the Mississippi Center for Justice. The Center, which had its official opening on June 12, 2003, provides legal advocacy to advance racial and economic justice statewide. A capacity for statewide systemic advocacy had been lacking in Mississippi since Congress prohibited LSC funding of state support programs in the mid-90s.

During the 12 months preceding the opening, the Center’s nine board members and its president/CEO worked to raise the funds necessary for an initial staff of four, including two full-time lawyers. They set a target of $300,000 for the start-up year. Although they anticipated that their fundraising sources would include foundations and special events, their initial focus was on raising major annual operating support from individuals capable of giving $10,000 or more. A major task at early board meetings was to identify lawyers and other prospective donors, decide on the amount to request of each prospect, and assign who should make each contact. All board members accepted assignments for contacting prospects and used every opportunity to talk about the Center to their colleagues and friends, in both formal
solicitations and informal conversations. Board members knew who was being solicited by others and followed up informally.

It was an informal conversation about the Center that led an anonymous donor to contribute $300,000 to fund the first year of operations. A board member had chatted enthusiastically about the Center with an acquaintance he knew was interested in social justice issues, and the donor turned out to have the resources to make this very large gift. The Center raised private contributions of about $400,000 prior to its official opening in June 2003, primarily from large donors – the one for $300,000, six at $10,000, and the remainder in smaller amounts. By the end of 2003, the Center raised an additional $100,000, including three additional $10,000 donations. The Center’s first infusion of foundation support came from the Stern Family Fund’s Public Interest Pioneer grant.

This example is very unusual – a legal aid provider was created that had sufficient donations from individuals and foundations from its inception. It was possible to accomplish this because the board members and president were well known and respected by potential donors. Their message -- that Mississippi urgently needed to resurrect its capacity for legal advocacy to advance racial and economic justice – was compelling. The president believes that other key factors included finding a multi-talented business manager to oversee development of the office and contracting with a sophisticated local fundraising consultant who had all the right contacts to complement those of the board and president. When the Center’s two attorneys – the advocacy director and the Equal Justice Works Fellow – came on board in August, they initiated aggressive, highly visible advocacy for educational and juvenile justice reform on behalf of Mississippi’s new Schoolhouse to Jailhouse Coalition and its social justice campaigns. This work attracted the support of the Southern Poverty Law Center, which recently placed its SPLC Fellow at MCJ and will provide funding for an additional attorney position in 2004.

What the Bar Can Do

The effort to obtain major annual gifts is likely to develop from a lawyer fund drive. The initiative Lawyer Fund Drive, page 3, lists several ways the bar can facilitate the development of the fund drive. In addition, the bar can:

- Provide opportunities for legal services programs to honor their major donors, by providing space in bar journals for lists of donors and profiles of particularly significant gifts, and by providing legal services programs with a forum at bar functions to honor their most generous donors.
- Help legal services programs identify lawyers who have the potential to make major donations.
- Support legal services openly and often, to develop a climate in which donating to legal services is viewed as an integral part of the activities of attorneys.
It is virtually impossible to run an effective major gifts campaign without staff. Normally, the individual with major gift responsibilities would be a part of the resource development department that performs the other fundraising activities for legal services, although it is possible that this campaign would require adding a staff person with particular skills in major gifts work. Another option is to utilize a consultant to provide the expertise needed to design and implement a major gifts campaign. Although personnel costs will not usually be a bar expense, they need to be considered when deciding to pursue this initiative.

Any program considering a major gifts campaign should prepare materials, including a brochure, pledge cards, and annual report. Periodic updates, in the form of letters, e-mails, or newsletters, are appropriate for larger contributors. These materials need not, and probably should not, be expensive, but they need to look professional and tell the story effectively.

The minimum amount that will be considered as a major annual gift will depend on the size of the organization, its fundraising experience, how much current donors are giving, and the income and giving patterns in the area in which it is located. For legal services programs with lawyer fund drives, the amount should be higher than the target gift for that campaign. It should be set low enough so that the program has a realistic chance of obtaining some gifts, but high enough so that it will be viewed as a significant amount.

Fundraising experts frequently cite the 80-20, or 90-10, rule, meaning that 80 (or 90) percent of donations will come from 20 (or 10) percent of an organization’s contributors. It also suggests that 80 percent of the organization’s fundraising time should be spent on the 20 percent of donors who are likely to make the major gifts. An organization cannot develop major donors unless it focuses time and energy on them.

Raising major gifts from individuals is a well established fundraising mechanism, but one that many organizations have a hard time implementing. For a legal services program that is having difficulty, it may be helpful to bring in a consultant to work with the organization’s staff and volunteers to develop a strategy, help identify potential major donors, review written materials and train volunteer solicitors.
As major gift campaigns are begun, there usually is discussion about benefits that will be provided to those who contribute. This is harder to do with legal services than with an entity like a university, for example, that can offer donors the opportunity to attend lectures, classes, or a reception with the football coach; or an art museum, that might give a print signed by the artist. Most legal services fundraisers believe that any gifts ought to be of minimal financial value, because most generous legal services donors want their contributions to be spent providing service to the poor. Site visits to legal aid offices may be a good way to help donors understand the value of their gifts. Some programs may be able to do seminars for large donors on important justice issues. However, it is not necessary to offer anything tangible, and most legal services donors will simply want to know that their gifts are put to good use.

Although, as mentioned above, it is not necessary to provide gifts, it is very important to give special attention to major annual donors. This can include recognition in the organization’s annual report and in bar publications, handwritten notes or phone calls acknowledging the gifts, and the provision of information in between gifts about the work of the organization. For example, legal services programs might consider sending major donors copies of positive newspaper articles about legal services cases, accompanied with a handwritten note.

Many legal services programs have developed a handful of larger individual annual donors through their lawyer fund drives, but few have had major successes attracting regular really major contributors. The most significant successes have been among advocacy programs, at least suggesting that programs aimed at solving long-term, systemic problems may have strong appeal to a few individuals with the capacity to make substantial gifts.

Contacts

James Bennett, Director of Marketing and Resource Development, Sargent Shriver National Center on Poverty Law, Chicago, IL, jimbennett@povertylaw.org, (312) 263-3830, ext. 235

Martha Bergmark, President and CEO, Mississippi Center for Justice, Jackson, MS, mbergmark@mscenterforjustice.org, (601) 209-1892

For more information on developing major individual donors, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Services and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Planned Giving

Definition

Gifts made through bequests, charitable trusts, gift annuities, life insurance and similar mechanisms to a legal services provider or to a bar foundation or other entity on behalf of legal services.

Explanation

Planned giving refers to various mechanisms, ranging from simple bequests to more complicated charitable trusts or gift annuities, that allow donors to make what are usually significant contributions from their assets while gaining tax benefits and, in some cases, income. They are usually fairly large gifts, and most of the time the money will not be available to the organization until a future time, usually after the donor has died. Planned gifts often are used to support endowments. See the initiative Building an Endowment, page 77.

Planned giving is usually viewed as a difficult form of resource development, because there are so many different ways to make the gift, some of which are quite complex. The reality is that approximately 60 percent of planned gifts are made in the simplest planned gift form, a bequest; that is, the donor leaves something to the organization in the donor’s will. In 2001, charitable bequests reached an estimated $16.63 billion in the United States and represented 7.7% of total charitable giving. Another simple planned giving mechanism is to designate a legal services program as the beneficiary of a life insurance policy.

Planned giving, however, is usually undertaken by organizations with experience in resource development because most planned gift donors make their gifts to organizations with which they have had significant involvement, as a contributor, volunteer, and/or board member. The organization usually has cultivated the donor over a long period of time. The donor is making a major and very thoughtful commitment to the long-term future of the organization, which usually means that a high level of trust has been established.

Legal services programs should develop a successful lawyer fund drive and other fundraising efforts (see the initiatives Lawyer Fund Drive, page 3, and Major Individual Gifts, page 65) before embarking on a major planned giving campaign. These other efforts are a good way to identify individuals who may some day make a planned gift to the organization. These initiatives also provide the organization with the opportunity to develop the skills and
experience in fundraising among its staff and volunteers that are necessary to run a successful planned giving effort. Finally, planned giving does not provide immediate income, and programs generally need to develop funding sources to meet today’s needs first. However, because bequests are a fairly simple form of planned giving, many forward-looking organizations develop a simple brochure on planned giving and suggest that donors include the organization in their wills early on in the development of their private fundraising activities.

The private bar can be very helpful to legal services programs seeking to develop planned giving programs and endowments. Probate lawyers in particular have expertise in setting up the various planned giving mechanisms and could provide valuable pro bono assistance.

**Pros**

- Making a planned gift provides the donor with several benefits - the donor is able to help ensure that the work of an organization that he or she cares deeply about continues into the future, while in most cases lowering the donor’s taxes and in some cases providing the donor with income.

- Planned gifts enable the organization to build an endowment, which can provide a stable source of income for the future.

**Cons**

- It takes time to establish, implement and reap the benefits of a planned giving program.

- Building a major planned giving program is a very labor-intensive effort for both volunteers and staff.

**Examples**

- In 1996, the New Hampshire Bar Foundation developed an aggressive planned giving and major gifts campaign, asking individuals to become members of its Justice Society. By 2003, 120 people had made commitments, including 67 who indicated that the Foundation was among the beneficiaries in their wills. While the Foundation offers the more complicated planned gift options, no donor has yet used one, although the Foundation has been notified that it will be the beneficiary of one life insurance policy and one piece of art. Approximately 53 other individuals made major gifts, which ranged in size from $1,000 to $100,000. The Foundation estimates the worth of the Society to be approximately $915,000; $490,000 in cash gifts and $425,000 in bequests.

Planning for the campaign began in 1993, when the Foundation received a grant from the New Hampshire Charitable Foundation to hire an outside consultant to evaluate the potential of a planned giving program to fund the Foundation’s endowment. The consultant, after interviewing key members of the New Hampshire
legal community, made several recommendations, including that the Foundation proceed with a planned giving campaign. (The major gifts portion of the campaign developed because some of those approached about a planned gift chose to make a regular contribution instead.) The effort got underway in earnest in 1996, when the Foundation hired a consultant to coordinate and organize this initiative. The process of obtaining planned gifts is time consuming for staff and volunteers. The consultant, who was known and respected by many in the New Hampshire legal community, helped identify potential donors, found board members and other volunteers to make visits to potential donors, and scheduled and attended the meetings. The focus was on fellows of the bar foundation, although others have also made commitments. Leads on potential new donors frequently came from those who have already made gifts. Foundation staff kept track of donors, handled paperwork, assured that proper acknowledgments were made and that there was periodic publicity about major donors.

The revenue received has gone into an endowment, which is managed by the New Hampshire Charitable Foundation. This arrangement allows for the Bar Foundation’s funds to be pooled with the Charitable Foundation’s larger group of funds, resulting in a higher rate of return for the New Hampshire Bar Foundation’s funds with lower administrative costs and lower investment risk.

Legal services advocates in Oregon spent many years developing a very successful lawyer fund drive (see the initiative, Lawyer Fund Drive, page 3, for more information) before deciding to establish an endowment, the funds for which would be raised through current and planned major gifts. Three organizations - the Campaign for Equal Justice (the statewide resource development entity for Oregon’s legal services providers), the Oregon Law Foundation (Oregon’s IOLTA program), and the Oregon State Bar Association - joined together to create the Oregon Access to Justice Endowment Fund. In late 2000, they hired a consulting firm to conduct a feasibility study, which tested the goal of raising $2 million in current and deferred gifts, and found that it would be possible. To date, eight donors have made planned gifts for specific amounts, totaling $351,000, and another two donors have indicated that they have included the Campaign in their wills but have not indicated an amount. This is slightly over half the pledged revenue to the Campaign, which has generated $638,000 to date between planned and direct giving.

The consulting firm interviewed 35 key leaders for the feasibility study, a very high percentage of which were judged to be potential givers to the endowment. Indeed, during this study phase, they received three $100,000 commitments, two of which were planned gifts. However, it was understood that obtaining significant gifts from most donors would require considerable time and effort. Many donors would want to know how their money would be used and invested - the structure, management, and distribution policies of the endowment. Therefore, it was determined that a primary activity would be donor cultivation events, small gatherings of already committed individuals who are asked to consider making a gift. A series of intimate dinners, informal and social but also informational, have been held for those identified as the most likely to give to the campaign. Campaign leaders have found this to be a good setting in which to provide in-depth information in a very personal way. It has been particularly useful in engaging non-lawyer spouses, who may know less about legal services but will be very involved in the decision-making about a gift of this size.
What the Bar Can Do

♦ Educate private attorneys about legal services, the financial crisis it faces and the need for long term, stable revenue.

♦ Encourage attorneys to consider a contribution to legal services when they do their personal estate planning.

♦ Recruit an attorney to provide technical assistance on a pro bono basis to legal services providers seeking to establish a planned giving program.

♦ Profile individuals who have made significant planned gifts to legal services in bar publications.

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♦ An organization undertaking a major planned giving campaign needs to have a staff person with resource development experience to work with volunteers, who usually will make the actual solicitations. Although this person usually will not be a bar staff person, the availability of a staff person and the costs associated with that person need to be considered when deciding to pursue this initiative.

♦ Printed materials, which explain legal services, the goals of the planned giving campaign, and the need for major gifts, are necessary. As with the staff person, this will probably not be a bar expense, but needs to be taken into consideration.

Considerations

♦ Since most planned gifts are used to provide revenue for an endowment, those considering this initiative should also read the initiative Building an Endowment, page 77.

♦ Particularly with the more complicated planned gift forms, the potential donor and recipient should consult with their own legal counsel before the arrangement is finalized. All potential donors of planned gifts should be encouraged to contact a financial planner or attorney for guidance in preparing their gift. The potential recipient organization should have its own lawyer review prospective planned gifts prior to their acceptance to be sure the organization understands any commitments it is making to the donor. Neither staff nor volunteers of the potential recipient
organization should provide advice or assistance on the specifics of an individual’s planned gift.

Contacts

David Snyder, Executive Director, New Hampshire Bar Foundation, Concord, NH, dsnyder@nhbar.org, (603) 224-6942, ext. 255

Linda Clingan, Executive Director, Campaign for Equal Justice, Portland, OR, LClingan@aracnet.com, (503) 295-8442

For more information on planned giving contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Building an Endowment

Definition

A campaign to obtain large gifts, either as outright contributions or through planned giving, to develop an endowment. An endowment is a mechanism whereby large sums of money are set aside in a fund, which is invested. Normally the principal, or corpus, of the fund is never spent; only the interest income is available to help fund the organization.

Explanation

An endowment provides a mechanism for continued funding for legal services providers. They usually are designed so that the corpus can never be used. However, some organizations, including a number of legal services programs, decide to at least begin with a board designated “endowment”, which allows the organization to use some or all of the funds, based on criteria established by the board. This indicates that the organization is committed to an endowment, but wants to retain the choice of using some of the principal in an unusual circumstance, for example, in case of a financial crisis. (See Considerations, below, for more details about this distinction.)

It often is difficult for legal services programs to begin building an endowment, because they are too busy raising money for current needs. An organization’s board of directors needs to be thinking very long term to begin committing money to an endowment. Also, it is important that the organization be experienced in private fundraising before embarking on an endowment fund campaign.

Legal services programs often spend many months (or years) thinking and talking about developing an endowment before they actually do it. Often, the impetus for starting a campaign is the receipt of a substantial, one-time gift, for example, a bequest or a cy pres award. The program may then decide that all similar large gifts will be added to the endowment. Or, once they have the first big gift, they may initiate a campaign to grow the endowment.

As legal services programs increase their resource development expertise, however, it is expected that more will begin their endowments by making the decision that the time is right to start this effort. They will then develop and implement a campaign to raise the large outright contributions and planned gifts that are needed for an endowment to be large enough to provide a meaningful annual income.
Some individuals, when making a very substantial gift, want to give something lasting, and thus they would prefer that their major gift go into an endowment fund. These major gifts, often in the form of a planned gift, usually come after an individual has developed a strong personal relationship with the organization. See the initiatives Major Individual Gifts, page 65, and Planned Giving, page 71, for more information about developing annual donors into major givers.

In addition to raising funds for the endowment, the organization needs to decide how to invest the funds. The staffs of legal services programs generally do not have the expertise or time to manage the funds. These services can be obtained from banks or investment firms, or lawyer board members or their partners may provide the expertise. Also, many community foundations provide investment services for non-profit organizations in their communities.

Pros

♦ Creating a substantial endowment ensures that, as other funding sources rise and fall, there will be a revenue source in the future to address the legal needs of low-income people.

♦ The existence of an endowment may assist the legal services program in attracting additional funding by demonstrating that the program is committed to providing service well into the future.

Cons

♦ The endowment ties up large sums of money, using only the interest. Some may believe that the funds should be spent to help the many poor people who need help now and are not being served.

♦ Some potential donors may misunderstand the endowment concept and believe that the organization doesn’t need additional contributions.

♦ Running a major endowment campaign is a time consuming effort for volunteers and staff.

Examples

♦ Greater Boston Legal Services (GBLS), one of the oldest legal services programs in the country, has an “endowment” that was begun many years ago and had grown to about $2 million by 2001. These funds are divided into two parts. One is pure endowment that is permanently restricted; the corpus cannot be used. The other part is a long-term investment fund established by the Board in the 1970s from operating surpluses. While the long-term investment fund has to be treated on financial statements as unrestricted since the Board has discretion over its use, the Board basically treats it as endowment.
In 2001, GBLS decided it was time to grow the pure endowment in order to help insulate itself against the vagaries of government and other funding in perpetuity. To do this, it established the Access to Justice Endowment Fund with a long-term goal of raising $6 million, an amount that would permanently endow four attorney positions. Before they did this, GBLS hired an outside consulting firm to evaluate its overall fundraising capacity. GBLS has a long history of raising funds, with a very successful private bar campaign that generates approximately $2 million annually in operating support, virtually all from law firms. The consultants reported that for GBLS to continue its fundraising growth and reach its endowment goal, it needed to develop a base of major individual donors.

They set a goal of $2 million for the first phase of the campaign. Their fundraising strategy was to follow the basic rules for successful major gifts campaigns. They retained a consulting firm (the same firm that had done the evaluation mentioned above) to provide advice. They sought and received a challenge grant from a local foundation that would provide $500,000 after they had raised $1,500,000 from other sources. A major gifts committee, composed of board members and other close allies, was established. The committee developed a list of prospects - people who would be asked to contribute between $10,000 and $25,000 to the endowment. Board members were solicited first, then other close lawyer friends, and finally non-attorneys who were close friends of members of the committee. Solicitations were well planned, so that each prospect was approached personally in the way most likely to be successful. They raised their $2 million goal in approximately one year. Individual gifts ranged in size from $10,000 to $190,000.

GBLS’ associate director for development believes a major key to the success of the campaign was having the right people on the major gifts committee. The committee members were able to develop an excellent, broad-based prospect pool because of their personal relationships. Another key was adding an experienced major gifts person to their existing strong development staff. It is critical to have a staff person devoted to working with the volunteers on the many tasks of this time-intensive effort, including researching and identifying prospects, developing a strategy to nurture and then solicit prospective donors, and handling on-going post-donation contributor stewardship work.

Under the terms of the GBLS investment policy, each year five percent of the three-year average of its investments is withdrawn to provide funding for program operations. An outside investment firm manages the portfolio with oversight by GBLS’ finance committee, which meets annually with the portfolio manager to review the portfolio’s holdings and performance. The finance committee has at least one member who is a trusts and estates attorney who regularly manages clients’ portfolios. That person and GBLS’ associate director for development also meet on a quarterly basis with the portfolio manager.

The Atlanta Legal Aid Society began its endowment about 15 years ago, and at that time raised $360,000. The total had grown through investments to approximately $500,000 by 1996, when the program received $1,000,000 in cy pres funds. With this $1,500,000 in hand, the program initiated an aggressive endowment campaign. The goal was to raise $4,000,000. The program’s first approach was to foundations, which was not very successful; they then turned their attention to law firms and individual attorneys. Atlanta Legal Aid, which has a very successful private bar
campaign, asked law firms to contribute to the endowment an amount equal to their annual gift, to be paid over three years. About a dozen firms committed to do this, for a total of $400,000. Individuals have committed approximately $1,000,000 in outright contributions and planned gifts, including two large gifts, one for $200,000 and another for $100,000. The 170 individuals who donated to the endowment (“Partners”) were recognized in April 2000 at a black-tie dinner hosted by then Governor Barnes at the governor’s mansion. Since then, Partners also have been recognized at a dinner hosted by the Coca-Cola Company in January 2002 and at Atlanta Legal Aid’s Salute to Justice Celebration at the Atlanta Zoo in September 2003.

There is presently no specific campaign to increase the endowment, although Atlanta Legal Aid’s literature continues to offer this opportunity, and there have been some small additional gifts. The program also received another cy pres award, for $250,000, which was invested in the endowment.

This is a board designated endowment, allowing the board to authorize use of the funds in an emergency. It is managed by a local bank. Atlanta Legal Aid may spend annually an amount equal to four percent of the total principal. This payout was structured to provide the program with some income while retaining sufficient earnings in the endowment to protect the principal from erosion by inflation. To this point, all of the earnings from the endowment have been reinvested. At its high point, the endowment was worth close to $4 million, but decreases in stock values have lowered its value to about $3 million.

What the Bar Can Do

◆ Promote the endowment among private attorneys and encourage them to contribute.

◆ Educate private attorneys about legal services, its on-going funding problems and the need for long term, stable revenue.

◆ Provide technical assistance to legal services providers seeking to establish an endowment. Many bars have foundations which have endowments, and so they have expertise in this area.

◆ Recruit a pro bono attorney to do the necessary legal work to establish the endowment.
Any organization undertaking an endowment campaign needs to have a staff person with resource development experience to work with volunteers, who usually will make the actual solicitations. The organization also may want to hire a consultant with special expertise in developing endowment campaigns. Although the expenses for a staff person or a consultant usually will not be paid by the bar, these costs should be considered when deciding to pursue this initiative.

Printed materials, which explain legal services, the goals of the endowment campaign, and the need for major gifts, are necessary. As with personnel costs, this usually will not be a bar expense, but needs to be taken into consideration.

Considerations

An organization raising funds under the endowment concept needs to be clear with its potential donors about whether they are requesting gifts for a pure endowment or a board designated endowment/investment fund. If the donor’s understanding is that the gift is to be a true endowment, that gift must be treated as permanently restricted and no portion of the value of the initial gift can be used for operations, only interest, dividends and gains can be used.

Raising funds for an endowment is complex work that requires the expertise of a seasoned fundraising staff person and dedicated volunteers. It is usually best to develop a successful lawyer fund drive before starting a campaign to build an endowment.

Because of the special expertise necessary to run an endowment campaign, many organizations retain an outside consultant in addition to their resource development staff to assist in developing the campaign strategies and written materials.

An endowment is occasionally an opportunity to obtain funds that would not otherwise be available, because some sources will give only to something lasting, like an endowment or a capital campaign.

Legal services programs have developed different policies for the use of the interest income from their endowments. Some use a percentage of the income for program operations. Others only use the income in the year it is generated if they have a need; otherwise they reinvest it in the endowment. Still others build a “rainy day” fund from interest income, using those proceeds from time to time to help fund one.

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time purchases, such as a building, computer upgrade or public education campaign, or to help during a fiscal crisis.

Contacts

Jack Ward, Director of Finance and Administration, Greater Boston Legal Services, jward@gbls.org, (617) 603-1604

Steve Gottlieb, Executive Director, The Atlanta Legal Aid Society, Atlanta, GA, sgottlieb_alas@yahoo.com, (404) 614-3990

For more information on building an endowment contact Meredith McBurney, Project Director, mm8091@aol.com, PERLS (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Capital Campaigns

Definition

A capital campaign is an effort to raise a significant amount of money for a one-time, specific project, usually to buy or renovate a building. The techniques also are used to build an endowment.

Explanation

A capital campaign is an effort to raise a large sum of money for a one-time purpose over and above the annual budget. Usually, and as described in this section, capital campaigns are used to purchase and/or refurbish a building. Donors will frequently be asked to make a substantial pledge which they will pay over several years. If the program has an annual fundraising campaign, donors would be asked to make the capital campaign gifts in addition to their regular contributions.

Several legal services programs have used capital campaigns in an unusual way - they have started their fundraising efforts with the private bar by asking them to give to a capital campaign. The idea is that lawyers would prefer to donate to something tangible, like a building. To date, this idea appears to be working, as these campaigns have been quite successful. Some of these programs are now working to convert their capital campaign efforts into annual giving programs.

The most frequent givers to capital campaigns are individuals (lawyers and non-lawyers), foundations, and, for legal services, law firms. A capital campaign may be a good opportunity for obtaining a matching gift, possibly from a foundation, that will pay when a certain amount has been raised from other sources. See the initiative, Matching Grants, page 35, for more information. The initiative, Building an Endowment, page 77, also may provide helpful ideas.

There are many issues beyond fundraising to consider before deciding to initiate a capital campaign. If the campaign is for a building, then all the issues related to finding, purchasing, and renovating a building must be considered. Because this is such a major undertaking, a feasibility study may be critical, to determine whether the organization is well enough positioned to generate large gifts. This is particularly important for the legal services program that is not already running a successful private bar campaign. The campaign goal...
must take into consideration not just the costs of the building (buying, renovating, furnishing, etc), but also the expenses of running the campaign.

Pros

♦ A successful capital campaign for a building allows the program to save money on rent and control its space costs on a long-term basis.

♦ In legal services, a capital campaign may be a good way to initiate giving from the legal community.

Cons

♦ A capital campaign is a time consuming effort for volunteers and staff.

♦ Purchasing a building is not always a good economic investment, and may not be the best use of a major effort to generate a very large amount of money.

Examples

♦ Board members of the Legal Aid Society of Columbus decided to begin the program’s private fundraising efforts with a capital campaign for the purchase of a building. They believed that it would be easier to obtain support for a capital campaign than a campaign for operating funds because it was for something tangible. However, they had major tasks to accomplish before they could begin the actual money raising activities of the campaign. The first task, which took about two years, was to rebuild the board to include members who were interested in and able to raise money. The second was to hire The Fundraising Project of Management Information Exchange (MIE) to do a feasibility study. This study showed that there was high visibility and respect for the Legal Aid Society within the legal community but almost no visibility within the corporate and foundation community. The program asked the Columbus Foundation for advice, and it was suggested that the Legal Aid Society aim to raise one-third of the campaign funds from the legal community first, thus showing the support of lawyers, and then seek the balance from other sources.

A key to the success of fundraising campaigns is the selection of the right chair. One of the tasks of the feasibility study done by MIE was to identify an appropriate person to chair the campaign. One man’s name was repeated over and over as the best choice, and he was someone that the program had recently recruited as a new board member. He agreed to chair the campaign, recruited a number of other powerful members of the legal community to serve on what is called the campaign cabinet, and guided them through the development of an effective campaign strategy. As a result, $600,000 of the campaign goal of $1,000,000 was raised from the legal community. Most of the $400,000 balance came from foundations, county government and a few corporations. Most of the gifts are being paid over five years. Ultimately, this successful campaign generated a total of $1,200,000.
The Legal Aid Justice Center provides legal services to low income people throughout Central Virginia and to immigrant workers statewide. In 2000, the Legal Aid Justice Center embarked on a capital campaign to purchase a building. On May 1, 2003, they announced the successful completion of the campaign, having raised a total of $2,000,000.

The most important factor in the campaign was the development of strong personal relationships. The Legal Aid Justice Center was known in the community as a well-run, necessary organization with a well-respected executive director. This reputation helped in the development of a Campaign Advisory Council, composed of powerful members of the community who enjoyed working and socializing together. Because of the quality of the organization and a well-written grant proposal, they were able to obtain a $275,000 challenge grant from the national Kresge Foundation and two $100,000 matching grants from a local foundation. This helped to legitimize the campaign for individual donors. John and Renee Grisham and the Dave Matthews Band made lead gifts. Although this program was unusually lucky in having two high profile potential contributors living and working in its service area, the solicitation of these major donors was traditional - Campaign Advisory Council members who were their friends provided the entrée, and staff and volunteers demonstrated the value of the program.

The Justice Center went from having almost no donors at the beginning of the campaign to over 800 at its completion. The 350-member local bar association provided exceptional support, contributing over $300,000 in individual and firm gifts towards the total amount raised. The next goal is to convert this new support into funding for program operations. This effort received a jump-start when John and Renee Grisham donated an additional $50,000 in honor of the success of the capital campaign.

What the Bar Can Do

♦ Promote the capital campaign among private attorneys and encourage them to contribute.

♦ Provide advice and expertise. Many bar associations and/or foundations have done capital campaigns for their own buildings and so have expertise in this area.

♦ Educate private attorneys about legal services, the financial crisis it faces and the need for the stability that building ownership can provide.

♦ Identify lawyers who may have contacts with foundations that make capital campaign or matching gifts.
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♦ Any organization undertaking a capital campaign needs to have a staff person with resource development experience to work with the volunteers who will be making the actual solicitations. Depending on the level of resource development expertise of current staff, the organization may want to hire a consultant with experience running capital or other major campaigns. Although the expenses of a staff person or a consultant usually will not be paid by the bar, these costs should be considered when deciding to pursue this initiative.

♦ Printed materials, which explain legal services, the goals of the capital campaign, and the details of the building purchase and renovation or endowment, are necessary. As with personnel costs, this usually will not be a bar expense, but needs to be taken into consideration.

Considerations

♦ A capital campaign involves complex work that requires the expertise of a seasoned fundraising staff person and dedicated volunteers.

♦ Many organizations retain an outside consultant with experience running major campaigns to work with their resource development staff in developing campaign strategies, identifying campaign leaders, training volunteers and preparing written materials.

♦ A capital campaign may be an opportunity to obtain funds that would not otherwise be available, because some sources will give only to something lasting, like a capital or endowment campaign.

Contacts

Jane Schoedinger Foulk, Development Director, Legal Aid Society of Columbus, Columbus, OH, jfoulk@columbuslegalaid.org, (614)224-8374, ext. 163

Alex Gulotta, Executive Director, Legal Aid Justice Center, Charlottesville, VA, alex@justice4all.org, (434) 977-0553, ext. 102
For more information on capital campaigns, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Special Events

Definition

An event, such as a dinner, dance, sports event, or auction, held to raise funds for legal services.

Explanation

Special events historically have been a very popular way to raise funds for non-profit organizations. Some legal services programs have been able to raise substantial income from events, although they are expensive to produce and require a major commitment of time from volunteers and staff.

There are many tasks involved in developing a special event. An activity must be identified that the target audience - whether lawyers, the general public, or both - will want to attend. Volunteers need to be recruited to work on the event. There are numerous jobs to be done no matter what the event, such as finding a location, deciding about food and entertainment, renting equipment, designing decorations, preparing publicity, finding sponsors to cover expenses and selling tickets. Many volunteers will be needed at the event to make it run efficiently.

A realistic budget must be prepared. Fifty percent or more of the revenue may be used to cover expenses. Most successful event planners aim to cover all costs through pre-event sponsorships/underwriting, rather than relying on ticket sales.

A key is finding an event that really works for the organization, one that matches the strengths and interests of the organization’s volunteers and is a good fit for the community that is served by the program. An event may need to be held several times before it becomes popular enough to be worthwhile as a fundraiser.

Special events can bolster other fundraising endeavors by creating a public awareness about legal services and its work. They also provide an opportunity for supporters to meet each other as well as a forum for public recognition of volunteers. Special events can complement a lawyer fund drive, and a well-run lawyer fund drive should bring in much more revenue. (For more information, see the initiative Lawyer Fund Drive, page 3.)
Pros

♦ A special event provides an opportunity to educate people about legal services and the needs of legal services clients.

♦ A special event may encourage individuals or businesses to contribute to legal services that might not otherwise do so. There are companies who prefer to do their charitable giving through events because it gives them publicity. Some individuals like to give to events because they enjoy the socializing.

♦ Special events offer an opportunity for those who have a limited interest in or knowledge of legal services to join with others to learn more about legal services’ mission and financial needs, see first-hand who is involved in supporting legal services and develop a camaraderie with people who are committed to legal services.

Cons

♦ Developing and implementing a successful special event is very time consuming and expensive.

♦ A significant amount of the money raised usually is spent to produce the event rather than to fund legal services.

♦ Most special events require a large number of volunteers.

Examples

♦ Pro Bono Recognition Evening, Palm Beach, Florida. Some of the most successful events in legal services have been developed by the Legal Aid Society of Palm Beach County, Inc. This year will mark the 15th anniversary of the Palm Beach Pro Bono Night. In 2002 the evening event netted $177,000 and was attended by 900. It includes a silent auction, raffle, dinner buffet, awards ceremony and entertainment. Planning begins eight months before the event. There is a planning committee with seven subcommittees, involving 50 volunteers, which, in addition to attorneys, includes some attorneys’ spouses and their friends. An additional 50 volunteers are needed the evening of the event. The major portion of the revenue is raised up front from sponsors, not from ticket sales. Pre-event activities include Gift Gathering Galas. A few members of the legal community invite guests to their home for an evening of food and fun. Guests are asked to bring gifts that will be used for the Pro Bono Evening’s silent auction. Over 400 gifts are acquired for the silent auction. The event is advertised in bar publications and quarterly newsletters of the LAS of Palm Beach. This year’s event will feature a five-minute video about legal aid. The video, to be produced this year, is sponsored by a local foundation.

♦ Home Court, a fundraiser for the Washington Legal Clinic for the Homeless (WLCH), is a basketball game pitting Georgetown University faculty against members of the United States Congress. The event began in 1987, when law students at
Georgetown came up with the idea as a way to generate funds to sponsor a public interest law fellow. The event evolved into a benefit for WLCH and has become a focal point of its fundraising activities. Each December, WLCH sends out a letter inviting its donor base to make a contribution toward Home Court. Individual solicitations have check-offs ranging from $50 to $1,000, while law firms and other legal businesses have check-offs ranging from $500 to $7500. Donors are listed in the Home Court program under the category of their gift. Approximately 90 percent of Home Court’s revenue comes from this mailing. In 2002 Home Court netted WLCH over $160,000.

The law students are key to the success of this event, with numerous students donating a large amount of time and energy. Students have set up several committees overseen by a steering committee. Sub-committees include congressional, publicity, financial, silent auction and evening of event volunteers. The event costs are minimal, as students have secured donations for every aspect of the event. Georgetown provides its facilities for the game and silent auction, members of Congress pitch in with their basketball talents and local businesses donate items for the silent auction.

The Justice for All Ball, benefiting Legal Services of Eastern Missouri (LSEM), is a black-tie event that starts with cocktails and a silent auction, followed by dinner and a dance. The idea for the ball originated with the 1990 president of the St. Louis County Bar Association, who had heard about a similar event at an ABA meeting. The Bar Association of Metropolitan St. Louis joined with the St. Louis County Bar to sponsor the event, and contacted LSEM about using the event to benefit the program. The bar presidents then worked together, providing the leadership to make the ball a success. The first ball, held in February of 1991, was attended by 400 people and raised $20,000. A silent auction was started with the second ball. Auction items have included a trip for two to New York to see *The Producers* (sold for $2,350) and a suite for a Saint Louis Cardinals game (raised $1,250). A souvenir book, provided to attendees, has advertisements that provide an additional source of revenue, raising $17,000 in 2003. The 2003 ball, the 13th annual, netted approximately $87,000.

Hundreds of volunteer hours go into planning and arranging the evening. Thirty volunteers serve on the committees and an additional 25 volunteers help the evening of the event. LSEM promotes this event through mailings to its donors and potential donors, in bar publications and at bar meetings.

**What the Bar Can Do**

The bar and individual lawyers often are key to the success of special events for legal services. The bar can:

- Encourage individual attorneys to become involved in the effort - chairing and serving on committees, soliciting underwriters, selling tickets, getting supplies donated, etc. Because an event is so labor intensive, it is absolutely essential that attorneys volunteer their time.

- Share its membership list, free of charge, for the invitation list.
♦ Promote the event in its publications and at bar meetings.

♦ Consider actually running a fund raising event for legal services or pro bono programs.

♦ Sponsor the event, even if it is run by a legal services program. Businesses may be more willing to provide underwriting if the bar is involved formally.

### Budget

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♦ In most cases, it will be necessary to have a staff person working on this effort, because it requires a great deal of coordination and follow up. Although this person will not necessarily be a bar staff member, the availability of a staff person and the costs associated with that person need to be considered when deciding to pursue this initiative.

♦ Special events have costs beyond those of other fundraising activities. A complete budget should be prepared before a decision is made to hold any event, including entertainment, etc. Getting items and services donated should be explored, but those putting on the event should be realistic about the possibility of obtaining donations before the event is too far along.

### Considerations

♦ Setting a realistic goal and budget for the event is important. Even when the event is not seen as solely a fundraising initiative, it is still important to remember that it should generate income. The cost of staff time should be taken into consideration in evaluating whether the event makes money.

♦ The first special event is generally the most time-consuming. Although the event becomes easier each time, it will always require a group of individuals willing to devote time and energy to organize and solicit others.

### Contacts

Harreen Bertisch, Director of Development, Legal Aid Society of Palm Beach County, Inc., West Palm Beach, FL, hbertisch@legalaidpbc.org, (561) 655-8944
For more information on special events, contact Meredith McBurney, Project Director, PERLS (303) 329-8091, mm8091@aol.com. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Project

Foundation and Corporate Grants

Definition

An effort to obtain grants from foundations and corporations to fund legal services programs.

Explanation

Foundations and corporations account for approximately 15 percent of private sector giving in the United States. Legal services programs in all but eight states received some foundation or corporate funding in 2002, although for most programs it is not a major revenue source. It is quite unevenly distributed – approximately 60 percent of all foundation funds to legal services go to programs in California or New York.

There appear to have been some changes in the nature of foundation giving to legal services in recent years. Compared to six years ago, when this manual was last updated, there are now more grants going to legal services programs that provide systemic advocacy. Indeed, foundations are a relatively significant funding source for many of the smaller advocacy programs.

There are several different types of foundation and corporate giving programs. Foundations range from large ones with staff that require the preparation of a major proposal to small family foundations that may require little more than a phone call from a friend and a brief letter. Some corporations, especially larger ones, have formal giving programs, either through a foundation or a corporate giving department; others have little structure to their giving.

Many foundations and corporations, especially larger ones, have funding priorities that define what types of projects and subject areas they will fund. Most choose to fund in a particular geographic area. Some are national in scope, and so are unlikely to fund local or state based legal services programs, except for very innovative, replicable projects. Most will not provide general operating revenue; they prefer special projects, start-up efforts for innovative ideas, capital campaigns or, possibly, endowments. A foundation may be willing to underwrite the start-up of a private fundraising campaign. They also like to fund collaborative projects that involve two or more organizations.

There are basic rules to follow in approaching the different types of foundations and corporate giving structures. The information needed to solicit foundations and corporations
effectively is available from a variety of sources. Most states have a council on foundations or other organization that publishes a guide to foundation and corporate giving programs. There are organizations in most communities that provide training on raising money from foundations. Most public libraries will have resources and there is information on the Internet. If a legal services provider does not have staff with experience raising funds from foundations or corporations, the program should research this area before undertaking any fundraising activities.

Legal services programs need to present their message in a way that foundation and corporate board members will understand and appreciate. Members of the private bar can be very helpful with this effort, because they often are acquainted with the community leaders who serve on foundation and corporate boards, and frequently are members of those boards themselves. The private bar also can assist legal services staff in forming relationships with these board members. Having an internal advocate on the board can make a real difference.

In many instances, the success of a legal services program with foundations and corporations is directly related to the number of foundations and corporations located in the program’s service area and what their interests are. Advocates considering foundation and corporate fundraising need to keep this in mind in deciding whether to pursue this initiative.

Pros

♦ If approached appropriately and creatively, foundations and corporations can be a source of funds for innovative projects that legal services programs want to initiate but cannot because they do not have sufficient resources in their on-going operating budget.

♦ Making a request to a foundation or corporation is an opportunity to educate community leaders who otherwise might have little knowledge of or contact with legal services.

♦ Gaining funding from foundations and corporations demonstrates that there is support for legal services outside the legal community, which may facilitate resource development efforts with other sources, including the state legislature.

♦ Foundations may be a good source of funds for matching grants, which also can help to develop funding from other sources.

♦ Foundations often provide funding to jump-start other fundraising projects, such as private bar campaigns and capital campaigns.

Cons

♦ Foundations and corporations usually do not provide general operating support, the most needed funding for legal services programs.
Foundations and corporations generally will support a particular project for a limited time only, rather than on an on-going basis.

Some foundations and corporations have fairly specific guidelines and extensive grant applications, and the amount of funding available may not be worth the time and effort needed to prepare the proposal. Other foundations have so many applicants for the available funding that the chance of success is very low.

Examples

In recent years, statewide advocacy programs have had relatively high success in raising funds from foundations. Maine Equal Justice Partners (MEJP) is a good example. MEJP, which works in the legislature, before administrative agencies and the courts to advocate for low-income people in Maine, was founded in 1996 in response to the increase in restrictions on Legal Services Corporation funds. In 2003, it received $264,000 from 14 foundations, over 40 percent of their total revenue.

Because MEJP receives funding from IOLTA and the Maine legislature (through court fees and fines), they have a relatively stable base of unrestricted support, and, therefore can effectively use a variety of foundation grants for specific purposes. In 2003, their foundation grants ranged in size from $3,500 to $77,000, and from small family foundations to large national entities. Most of the funders are Maine-based, although they also receive grants from regional and national foundations. Their grant proposals generally are project and issue oriented, based on their priorities – health care policy, welfare and other income support issues, employment, and child protection.

Although all MEJP staff are supportive of fundraising and understand the need to focus energy in this area, the associate director has assumed primary responsibility for grant-writing and other fundraising activities. In addition to her other administrative responsibilities for the organization, she keeps track of potential foundation grant opportunities, develops and maintains relationships with foundation staff, and prepares grant applications.

Prairie State Legal Services, a primarily rural program serving a 36 county area in central and northern Illinois, has been successful at obtaining contributions from the corporations in its service area. For example, they have a long-term relationship with State Farm Insurance Company. State Farm has a corporate foundation, but its focus is on education, so Prairie State has not tried to obtain funding through it. Instead, Prairie State developed a strong relationship with the company’s 40 lawyer legal department. The relationship began about 20 years ago, when an attorney from State Farm was invited to join Prairie State’s local advisory committee. (Because of its geographic size, Prairie State has advisory committees in many of its communities. These committees, composed of attorneys, clients and representatives from human services organizations, provide input to the Prairie State board on matters of importance to the local communities.) State Farm lawyers do pro bono work, the company makes an annual contribution of $10,000, and employees help with Prairie State’s annual fundraising event.
In their approach to other corporations in their service area, Prairie State staff identified who among their board members and other volunteers knew the general counsels for the companies, and then worked through those general counsels to obtain support for contributions. Once the contacts were established, staff identified work that they do that was of particular interest to the corporations. For example, Abbott Laboratories and Baxter International both do work in the medical area, and Prairie State suggested they fund a position for a lawyer who does health care work. By picking projects that appeal to the corporations and developing good relationships, Prairie State now receives $20,000 annual gifts from both of these companies.

Legal services programs have received foundation grants to help them meet fundraising goals for a number of other initiatives in this manual. For more information about other foundation grants that legal services programs have received see the following initiatives: Capital Campaigns, page 83, Building an Endowment, page 77, Lawyer Fund Drive, page 3, Matching Grants, page 35, and Special Events, page 89.

What the Bar Can Do

- Help legal services programs identify lawyers with good contacts with foundations or corporations who could provide effective advocacy on behalf of the legal services program.
- Encourage lawyers to make contacts on behalf of legal services programs.
- Talk with corporate counsels about becoming involved in the effort to raise funds for legal services.
- Encourage the bar foundation or IOLTA program, where appropriate, to become involved with any local organization of grant-makers (called regional associations of grant-makers, or RAGs, in many parts of the country). This will give the bar foundation or IOLTA program staff the opportunity to educate other grant-makers about the importance of the work done by legal services programs.

### Budget

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- Staff are almost always necessary to prepare the grant application and work with staff at the foundations or corporations. Although this person probably will not be a
bar staff person, the availability of staff and the costs associated with that person need to be considered when deciding to pursue this initiative. Also, a proposal is more likely to be successful if the organization has some well prepared printed materials to attach - annual report, brochures, newsletters.

Considerations

♦ Because foundations are in existence to make grants, people tend to think of them as a logical first place to go when looking to raise funds. However, many foundations will want to see that there is support from the legal community before they will be interested in funding legal services. Therefore, it is useful to have developed financial support from the bar, or have a plan to develop such support, before approaching foundations. See the initiatives Lawyer Fund Drive, page 3; Attorney Registration Fee Increase or Dues Assessment, page 11; Bar Dues Add-Ons and Opt-Outs, page 19; and Bar Funds for Legal Services, page 29.

♦ Some corporations include funds for charitable causes in their marketing budgets in addition to, or instead of, doing regular charitable giving. Some legal services programs may qualify for these funds if they can demonstrate that they can provide the corporation with exposure to potential customers or clients. This might be effective when trying to raise funds to put on a special event, where the corporation would get publicity.

♦ Most corporations of any size have a general counsel, and many have legal departments that employ several lawyers. Sometimes the best way for legal services to raise funds from a corporation is through the legal department rather than the usual giving arm of the corporation. Even if the program submits its application to the giving department, it is a good idea to make contact with the company’s top lawyer, because the giving department is very likely to ask the lawyer about a legal services program’s application.

♦ Community foundations, which derive their funds from many sources and support charitable activities focused on a specific geographic area, may provide good funding opportunities for legal services programs. These foundations may fund a broader range of projects and their board members may be more accessible than those serving on the boards of some private foundations. There are now over 600 community foundations in the country, many of which are located in rural communities, providing a potential funding opportunity for some of the more resource poor areas.

♦ Most foundations and corporations will not have identified legal services as a specific area of interest. However, many will have areas of interest - for example, helping children, preventing homelessness or stopping domestic violence - that would make legal services a good grant applicant. In writing grant proposals, legal services programs will need to describe effectively how their work helps the people or solves the problems that are of interest to the foundation or corporation.

♦ Foundations like proposals in which several organizations collaborate to develop innovative solutions to problems. It may be possible for a statewide entity, like an IOLTA program, bar foundation or access to justice commission, to submit a
proposal on behalf of a group of legal services providers that will be more likely to succeed than proposals from any of the individual programs.

♦ As was mentioned in the Explanation, above, more foundations are making grants to advocacy programs. This is probably not surprising, since many foundations like to make grants to organizations that seek to get to the root of problems, rather than funding the individual direct service work that is the primary activity of many legal services programs. Also, because the advocacy programs are usually smaller, a foundation grant is likely to be a larger part of the organization’s total funding; thus, the foundations can feel like they are playing a bigger role in the organization.

Contacts

Deborah Curtis, Associate Director, Maine Equal Justice Partners, Augusta, ME, Dcurtis@MEJP.org, (207) 626-7058, ext. 206

Joseph A. Dailing, Executive Director, Prairie State Legal Services, Rockford, IL, jdailing@pslegal.org, (815) 965-2134

For more information on foundation and corporate grants, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Project

Increasing United Way Funding

Definition

Lawyers volunteer their time to help increase United Way funding for legal services providers.

Explanation

United Way is an important funding source for many legal services programs. In 2003, programs in all but five states received some funding from United Way, with allocations ranging from a few dollars to over $700,000.

Historically, United Ways designated organizations (United Way “agencies”) to receive funding. It usually was very difficult to become a United Way agency, but once an organization was selected, its continued funding was fairly certain. This distribution system has been changing over the past 10 years, in at least two major ways:

Instead of funding only designated organizations, some United Ways are targeting areas of community concern, or problems, that they wish to use their donations to alleviate. The local United Way conducts a needs assessment by convening representatives of human service providers, clients and community leaders to participate in meetings to evaluate the needs of the community. United Way identifies its target areas from the results of these meetings. All human services organizations in the community, not just designated United Way agencies, may be eligible to apply for all or part of the available funds.

Some United Ways are permitting donors to designate the organization(s) to which their contributions will be distributed. This may include organizations that are not designated United Way agencies. If the amount of money being raised by United Way is not increasing, and more donors specifically designate their gifts, this means that United Way has less money to distribute to its member agencies.

In communities where legal services programs currently receive funding, volunteers are needed to work with United Way as it modifies its funding priorities and mechanisms to protect and possibly increase funding for legal services. In other communities, where United Way has not supported legal services, the changes in United Way may offer an opportunity for legal services to gain funding.
In addition to this targeted work for legal services, attorneys can participate fully in the United Way process. As United Way volunteers, attorneys can influence the direction of United Way, participate in the proposal review process and decide on funding allocations.

Pros

♦ This initiative does not require an outlay of funds. It is completely volunteer-driven and therefore requires only a commitment of time, although that commitment may be substantial. Since many lawyers already are involved in United Way, this may not involve any additional time, but a redirection of that time.

♦ It allows the bar association and lawyers to become more involved in the community. Attorneys become more familiar with other nonprofit groups in the area and develop relationships with others who are concerned about similar issues. This networking can help improve the image of attorneys, as others see lawyers involved in an effort to improve the community and help others.

Cons

♦ Serving as a United Way volunteer can be very time-consuming. There are committees to serve on, meetings to attend, applications to review and United Way-sponsored events to attend.

♦ Getting local United Way organizations to adopt policy changes may be a slow process.

Examples

♦ In 2003, Prairie State Legal Services, which serves a 30 county area in central and northern Illinois outside of Cook County (Chicago), received a total of $737,000 from approximately 36 United Ways, making it one of the largest legal services recipients of United Way funds in the country. The total amount received increases almost every year, although the 2003 amount is below 2002, due to lower donor giving attributed to the current economic downturn. The grants range in size from $200 to over $120,000. The volunteers and staff of Prairie State work hard to insure the continuation and growth of this major funding source. Although grant applications are prepared by staff in the administrative office, volunteers in the local communities work directly with their United Way committees. Local volunteers attend meetings, where they greet people by name and talk about the clients served and the needs of the program.

Some of these United Way organizations have changed their focus, although perhaps not as much as others in the country. They have moved to outcome-based evaluations, asking grantees to demonstrate how they are making a difference, and some are permitting donor designation of gifts. Another now allocates a portion of its grant funds to priority populations, such as seniors, Hispanics, and single mothers. Because of its strong position in the community, the quality of its programs and its
own priorities, Prairie State has been able to use these changes to its advantage and increase its United Way revenue over time.

What the Bar Can Do

♦ Learn about the policies and procedures of the local United Ways.

♦ Encourage attorneys familiar with legal services to become volunteers for United Way.

♦ Become an active organizational donor to United Way.

♦ Encourage lawyers and law firms to donate to United Way.

♦ Publicize the United Way campaigns in bar publications.

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♦ There are no financial expenses associated with the initiative; however, the time commitment by volunteers could be substantial.

Considerations

♦ Legal services programs are not always well understood by United Way agencies. Legal services may need to be seen not as a separate service, but as a necessary part of the solution to many of the community problems that United Ways are identifying as priority areas - e.g. homelessness, domestic violence, health care, transportation.

♦ Some United Way organizations have been hesitant to add legal services providers as United Way agencies, fearing that they may alienate a large corporate donor that has had a legal encounter with legal services. They may be concerned about the idea that legal services programs litigate rather than work in less confrontational ways to prevent problems. Volunteers can help explain that much of the work of legal services is preventative, and that, in some situations, litigation is the only way to protect very important rights.
There has been considerable discussion about how to handle the issue of United Ways permitting donors to designate the organization(s) to which their contributions will be given. In some communities, this is a useful way for legal services programs to obtain funding from United Way. However, many legal services programs that receive United Way funding through the traditional distribution process do not support this donor designation effort. United Ways may expect or, in some cases, require their grantees to discourage potential donors from designating their gifts. In addition, many legal services programs believe that the movement to designated gifts will hurt legal services, because it will never be able to compete with more popular and better known causes.

Some United Ways that are permitting donors to designate gifts to specific organizations are taking an administrative fee out of the donation, reducing the amount received by the organization that the donor selected. In those cases, a direct gift to legal services might be more beneficial.

Contacts

Joseph A. Dailing, Executive Director, Prairie State Legal Services, Rockford, IL, jdailing@pslegal.org, (815) 965-2134

For more information on increasing United Way funding, contact Meredith McBurney, Project Director, PERLS (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Services and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Project

Funding from Religious Institutions

Definition

An effort to generate resources from religious institutions to help meet the civil legal needs of the poor.

Explanation

Religious institutions are a possible source of resources for legal services programs. Many religious organizations and legal services providers have shared values - achieving social justice and helping the poor and disadvantaged. Legal services programs frequently collaborate with human service providers that are affiliated with religious institutions. However, few legal services programs have tapped religious institutions as a funding source.

Approximately half of all the charitable contributions in the United States are made to religious institutions, and those gifts are used primarily to pay for the religion’s own programs. However, religious institutions also make gifts through various mechanisms to other non-profit organizations. These contributions may be made by local churches or by regional or national organizations.

Religious funding sources at the national level usually are run similarly to foundations in that they have written guidelines and application procedures. At the local level, there are several avenues for seeking contributions, including a gift from a minister or other church leader’s discretionary fund; a special collection, taken after the regular collection for the service, specifically for the organization; or through a separate arm of the congregation, such as a women’s guild or a mission program. It also may be possible to obtain staff positions through a religious institution (see Examples, below). Finally, some members of congregations may become interested enough through the involvement of their religious institution to become regular individual donors.

The best way for a legal services program to obtain a gift from a religious institution is to work through a legal services volunteer or staff person who also is involved with the religious institution. Those legal services programs that have been successful at generating support from religious institutions have worked hard to develop and maintain the personal relationships that lead to support. There are often opportunities to make presentations,
which can be very compelling if legal services advocates target issues that are of particular interest to church members.

Pros

♦ In addition to some level of funding, religious institutions may be able to provide volunteer support. This could be especially helpful in small communities where resources are few.

♦ Developing relationships with religious institutions in a program’s service area may increase the program’s visibility and credibility in the community and thus help the program better meet community needs.

♦ Developing these relationships also may increase the base of support for public funding.

♦ Religious institutions are often active in issues that are of importance to legal aid’s clients, such as welfare reform and immigration, and therefore can be valuable allies in advocacy work.

Cons

♦ The process of developing the necessary relationships and submitting applications may be very time consuming without significant results.

Examples

♦ Since 1984, Nebraska Legal Services (NLS) has had a contract with the Interchurch Ministries of Nebraska (IMN) to operate a farm hotline. IMN, a statewide ecumenical agency that provides planning and program support to cooperating denominations in Nebraska, began a farm crisis council board in the 1980’s to serve Nebraska farmers. This hotline is the longest running farm hotline in the nation. NLS staffs and supervises the hotline. The hotline responds to rural clients by providing legal, financial and technical advice related to farm issues and refers callers to other helpful organizations. NLS reapplies annually for this contract, which is currently for $57,000.

♦ Over the years, the Chicago Legal Clinic has been successful at obtaining funds and in-kind services from various Catholic churches and religious orders located in or near the four Chicago communities where the clinic has offices. Its ties to the Catholic Church stem from one of its co-founders, a Catholic priest. The Clinic has generated resources through a variety of mechanisms. For example, once each year, the congregation of a Catholic church takes up a special collection for the Clinic, averaging approximately $2,000 a year. Various orders and organizations of the Catholic Church provide the Clinic with volunteers, including lawyers and law students. The Clinic pays a stipend of $9,600 to one order and in turn receives a full
time employee for a year. The biggest gift from the church was the donation of the building that houses the Clinic’s main office.

In 1997, Utah Legal Services, Legal Aid Society of Salt Lake City and the Disability Law Center decided to explore joining private fundraising efforts to run one coordinated statewide campaign. The Utah State Bar provided funding for the Fundraising Project of Management Information Exchange to conduct a feasibility study. The study convinced the board and staff of the three organizations to join forces. It also helped identify contacts with various foundations, one of which was the Church of Jesus Christ of Latter-day Saints Foundation. In approaching this foundation, it was critical to have the support of well-respected members of the Latter-day Saints Church who were familiar with the missions and programs of the three legal services partner agencies. During the first year of the “and Justice for all” campaign, as the effort is now known, the Church of Jesus Christ of Latter-day Saints Foundation made a challenge grant of $100,000, payable when the campaign was able to raise $300,000 from the legal community. The campaign exceeded this challenge by $10,000. For additional information on the lawyer fund drive and matching grants of the “and Justice for all” campaign, see the initiatives Lawyer Fund Drive, page 3, and Matching Grants, page 35.

What the Bar Can Do

Identify lawyers in the community who have strong ties with religious organizations and encourage them to work with legal services programs to approach those organizations for funds or volunteers.

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Expenses associated with this initiative will vary based on the nature of the work involved in obtaining the support. For example, if a full proposal needs to be written, the amount of time needed will be far greater than if a brief presentation is being made to a church committee.

Considerations

Some religious funding sources are interested in funding organizations that operate at a more grassroots level than many legal services programs and that do work in a specific area that is of interest to the funder. Therefore, these sources may be more
appropriate for smaller providers and those with special interests, such as immigration law.

♦ The larger, national funding arms of religious institutions may have significant application requirements. Legal services providers should obtain sufficient information to be sure they will qualify for consideration before submitting an application.

Contacts

Shannon Howard, Development and Public Relations Director, Nebraska Legal Services, Omaha, NE showard@nebls.com, (402) 348-1069 x237

Ed Grossman, Executive Director, Chicago Legal Clinic, Inc., Chicago, IL, egrossman@clclaw.org, (773) 731-1762

Kai Wilson, Managing Director, Community Legal Center, Salt Lake City, UT, kaiwilson@lasslc.org, (801) 578-1204

For more information on funding from religious institutions, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Services and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Fee for Service Projects

Definition

The development of projects or activities through which legal services programs generate income by charging a fee for the services they provide.

Explanation

As part of the effort to diversify income and develop a more stable, long-term future, some legal services programs have moved beyond traditional fundraising to developing projects that pay the programs for the services they provide. Legal services programs have developed a wide range of projects that fit into this category of resource development, and there are a variety of ways that the programs receive payment.

The fees charged can be based on an hourly or per case rate, or on providing certain services for an agreed upon period of time. Another option is to determine a fee for a specific project. A few programs have increased their income guidelines and are charging a fee, frequently on a sliding scale, for all clients over 125 percent of poverty. Others are charging community based organizations for services such as incorporation, contract drafting and employment law matters.

The fee for service project examples provided in this section are arrangements between legal services programs and individuals, not-for-profit organizations or businesses. For information about fee for service arrangements with governmental entities, see the initiative Other State Funds, page 137.

Pros

♦ These projects allow the legal services programs to meet the legal needs of people who might otherwise not receive assistance.

♦ Some of these projects may generate excess revenue or cover fixed overhead costs, providing the legal services programs with income to serve other poor people.

♦ These projects may provide enough revenue to keep offices open in some rural areas that otherwise would not have enough revenue to warrant a local presence.
Some of these projects have allowed legal services programs to develop positive relationships with entities that may have been adversaries, or at least not allies, in the past.

Cons

- Generally, these projects require a change in the way the program thinks about its work, and this may be difficult for some members of the board and staff.
- Some of these projects may be opposed by private attorneys, who may view the legal services program as trying to take business away from them, especially if the program accepts a fee lower than what a private attorney would charge.
- Perceived competition with the private bar may produce pressure on bar leadership to reconsider bar association support for legal services.
- Some of these projects have the potential of moving the program too far from its mission of providing civil legal services to the poor.

Examples

- Legal services programs in many states have fee for service contracts with hospitals to assist low-income patients obtain Medicaid coverage. This saves money for the hospital, since Medicaid will cover the patients’ medical expenses, and it benefits the patients because they will have Medicaid coverage going forward. One such program is Pisgah Legal Services, which has a contract with a not-for-profit hospital in Asheville, North Carolina. This relationship began in 1999, with the receipt of a modest grant from the hospital’s Community Benefit Committee to help people with disabilities obtain Medicaid. In subsequent years, a foundation affiliated with the hospital has disbursed funds to Pisgah according to the number of people for whom Pisgah obtained benefits, at rates established in advance. More recently, Pisgah’s relationship with the hospital has evolved into a more traditional business partnership. In 2003, Pisgah is receiving $40,000 as a grantee of the hospital foundation and $40,000 from the hospital’s general budget. Funds Pisgah receives from the general budget must be used to help patients who are identified and referred by hospital staff, whereas the funds from the Foundation may be used to assist non-patients as well (although the majority of the work funded by the hospital has always been for current patients.) For the $80,000 that Pisgah is receiving in 2003, it is expected to help 100 patients with disabilities obtain benefits. Pisgah has determined that at this rate ($800 per client) the program easily covers its costs.

- Legal Aid of Northwest Texas (LANWT) has contracts to provide lawyers to two Dallas area organizations, Housing Crisis Center, an advocacy organization for tenants and the homeless, and The Family Place, a family violence shelter. These relationships developed in a similar fashion. The Chief Operating Officer of LANWT, who had good relationships with the executive directors of both organizations, learned they were considering hiring lawyers, and suggested that they contract with LANWT to provide the attorney. The attorney is “on staff” with the contracting organization, serving that organization’s clients, while LANWT provides the attorney
with training, legal research facilities, legal supervision, backup, and additional support. The contracting organizations and LANWT both participate in the selection and hiring process, ensuring that both organizations’ interests and needs are met. One of the most important benefits of this arrangement for the contracting organizations is that they are not just hiring one staff attorney, but the support and experience of an entire legal aid program.

♦ Community Legal Services (CLS) in Philadelphia, Pennsylvania was contacted by a non-profit organization and asked to develop and provide training for grassroots language interpreters who were going to be working in a legal setting. CLS decided that it would be a good opportunity to expand its role in the community and educate a new group of people about legal aid; however, since it was not central to the organization’s mission, CLS staff determined that they would do it if they were sure to cover all costs. They calculated their expense based on a rate of $100 per hour, which was more than the CLS cost for an hour of attorney time but less than the rate CLS charged in attorneys’ fees petitions, and then estimated the time that would be involved. They requested and received $15,000 for doing two training sessions, each of which lasted two days, and developing extensive training materials. Although they may have broken even the first year, by the second year, when they were paid the same base plus six percent and already had the materials developed, they were able to realize a profit. In addition, CLS attorneys made new contacts with grassroots organizations of immigrants across the state that have been useful in identifying legal issues affecting non-English speakers, and in coalition building.

♦ Alaska Legal Services (ALS) has established contracts with several Native American organizations. The impetus for several of these contracts was the LSC funding cut in the mid-1990s, putting ALS in the position of needing to close some of its offices, which would have left very rural communities without legal services. Native American organizations representing those communities agreed to pay for sufficient services to allow offices to remain open. ALS was able to obtain these contracts because the members of the Native American organizations had first hand, long-term experience with ALS staff and knew them to be reliable. Some of the contracts are based on an hourly rate of $120 per hour, and others are simply a total amount, which would be more like a grant. Because the services provided under these contracts are core to the mission of ALS, there is not a hard and fast relationship between the amount of money from received and the work performed.

♦ The Legal Aid Society of Hawaii (LASH) has been a leader in developing fee for service projects to expand services and diversify revenue. Two examples are provided here:

The Affordable Lawyers Program serves what LASH calls the “Gap Group,” people who do not qualify for free services but generally cannot pay the fee of a private attorney. LASH defines the Gap Group as those between 125 and 250 percent of poverty, and increased its income guidelines to serve this group. LASH learned that start-up funding was necessary, because the price that this group of clients can afford did not provide sufficient income for the program to do effective marketing to develop a client base. The Hawaii Community Foundation was willing to provide LASH with one-time seed money to set up a system that would help the working poor with their legal problems, believing that this would help insure that the working poor won’t fall into poverty and therefore require state assistance. The experience at
LASH is that a program serving the gap group can breaks even in most years, and an on-going marketing effort will increase its success.

LASH has a fee for service contract with the Teamsters Union to provide legal services to its members. LASH became aware of the Union’s interest in contracting for legal services from a board member whose brother was active in the Union. LASH bid for the contract and was successful in obtaining it. LASH bills at $1,000 for pro se cases and $1,500 for direct representation cases. The contract generates $130,000 a year and the expenses are $100,000. One full time staff attorney and a half time paralegal handle these cases. Given the diverse areas of law that legal service providers handle, the union knows its members legal needs will be met.

What the Bar Can Do

♦ Work with legal services programs to identify possible income generating projects.
♦ Educate bar members as to why it may be appropriate for legal services to be taking on what may appear to be non-traditional work.
♦ Support income generating projects by providing seed money, either through the bar itself or the bar foundation.
♦ Assist the legal services program in identifying other sources, such as foundations, to provide seed money.
♦ Encourage lawyers with business experience to offer pro bono assistance to legal services providers that are developing fee for service projects.

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♦ Although there may be significant costs associated with the initiative, most of them will be born by the legal services program directly. As mentioned above, the bar may assist by making a grant as seed money to get a fee for service initiative started.

Considerations

♦ Unlike most other initiatives in this manual, this one requires a change in the philosophy of the program in terms of how services are provided and compensated.
It is very important for the various issues associated with this initiative to be discussed, understood and supported by board and staff.

♦ When designing most fee for service projects, programs should calculate the full cost of the project, including administrative overhead and supervision. When negotiating a contract with organizations or businesses, the rate should cover all the costs, so that funds for basic legal services are not used for these other activities. The costs should be reevaluated on an annual basis to ensure that the fee remains sufficient. With a project that involves charging individual clients, it may take some time before the project revenue covers the cost. When this is a possibility, programs should seek other funding sources, such as foundations, to subsidize the start-up period.

♦ With some of these projects, attorneys may be concerned about the legal services program competing with the private bar for business. Problems may be alleviated if bar leadership and the legal services program work together as such projects are being developed.

♦ Legal services programs should consider whether any potential fee for service agreements could create a conflict of interest in representing clients against the entity with whom they are contracting.

♦ Programs may wish to consult with tax counsel to ensure that activities they are considering do not affect their non-profit tax status or require them to pay taxes on the income they receive.

Contacts

Andrew Pirie, Grants Manager, Pisgah Legal Services, Asheville, NC, andrew@pisgahlegal.org, (828) 253-0406

Sam Prince, Director of Development, Legal Assistance of Northwest Texas, Arlington, TX, princes@lanwt.org, (817) 649-4754

Catherine Carr, Executive Director, Community Legal Services, Philadelphia, PA, ccarr@clsphila.org, (215) 981-3712

Andrew Harrington, Executive Director, Alaska Legal Services, Fairbanks, AK, aharrington@ALSC-law.org, (907) 452-5181

Victor Geminiani, Executive Director, Legal Aid Society of Hawaii, Honolulu, HI, vigemin@lashaw, (808) 527-8010

For more information on fee for service projects, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Services and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
**Introduction**

**Initiatives that Generate Financial Support from Public Sources**

State, local and non-LSC federal funding for legal services have become increasingly important funding sources in recent years. While funding from the Legal Services Corporation has been relatively stagnant, these other public funding sources have increased dramatically. Bar associations, IOLTA programs and legal services providers in many parts of the country have worked creatively to obtain this funding to provide needed civil legal services to the poor.

Of particular note is the increase in funding from state legislatures, obtained through various mechanisms, including appropriations, filing fee surcharges, and new fees and fines. In some states, state funding is now the first or second largest source of money for legal services providers. Active leadership and support from bar associations and individual lawyers are necessary to achieve success in this area. Getting a legal services funding bill through the legislative process requires substantial involvement by many members of the bar to communicate the message about the importance of legal services to legislators and the governor. It usually is a difficult and time-consuming activity; however, little else will provide legal services programs with as much revenue at a consistent level as state funding.

The initiatives in this section are highly interrelated. What appears to be state or local funding may actually be non-LSC federal money passed through to the states. States have different policies and procedures for obtaining these pass-through funds, so what is disbursed at the state level in one state may be treated as local public funds in another. Also, laws and procedures for obtaining various funds differ significantly from state to state. Funding that requires a legislative appropriation in one state may be obtained through a grant process in another. For programs relatively unfamiliar with public funding, reading all applicable initiatives in this section is an advised first step.

**Lobbying**

Some of the initiatives in this section, and particularly the high revenue ones that seek funding from the state legislature, involve lobbying. If your bar association or foundation has never before stepped into this arena, it is wise to determine which state laws apply and how they may affect your activities. Bar foundations and IOLTA programs also may be governed by laws concerning lobbying by non-profit organizations. These laws should be investigated as well before initiating a lobbying effort.

**Operating Within the Confines of Keller**

For unified bars, the Supreme Court ruling in *Keller v. State Bar of California*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990), will be of interest. In *Keller*, the U.S. Supreme Court held that “the compelled association and integrated bar are justified by the State’s interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members.”
It can be persuasively argued that funds used for lobbying purposes on behalf of legal services improve the quality of legal services available in the state. Lobbying the state legislature for the purpose of obtaining access to justice for poor people in civil matters is a function that most lawyers agree is an appropriate use of bar members’ dues. Activities such as producing printed materials for educational purposes are generally permissible under the Keller decision.*

*If your bar association is concerned that its lobbying efforts may overstep the bounds of Keller, several options are available. Some bar associations are taking preventive measures to avoid problems and alleviate concerns by any of their members. Some have established relief mechanisms that enable members to object if they believe that political or ideological activity is being funded by mandatory dues and to ensure that their dues are not being used for that purpose. Still others find private funds to finance lobbying efforts. Some use volunteer lobbying by bar leaders. A few have curtailed legislative action to avoid potential conflict. We cannot say whether any of the methods employed are sufficient under Keller. Each bar association should consult with legal counsel before conducting lobbying activities.
Court Fees and Fines

Definition

An increase in certain court fees, a new fee on a court filing or an increase in a fine imposed by the court, the revenue from which is directed to legal services programs.

Explanation

Legal services providers in 26 states now receive funds through legislation that increases certain court fees or fines to provide civil legal services to the poor. In 22 of these states, the fees or fines are statewide. Two states authorize local filing fee surcharges, and two others have state laws authorizing surcharges in specific counties only.

In 2003, court fees and fines generated approximately $54 million for legal services programs. The amount of the fees and fines range from $2 to $25. Exemptions are sometimes made, for example, for state and local governments. Usually individuals who are qualified to file in forma pauperis also are exempt from the additional fees.

This initiative originally was called Filing Fee Surcharges, and most people still refer to it as that, because most of the funds have come from surcharges on existing filing fees. However, in some states it was either impossible to tack an additional charge onto a current filing fee or the surcharge raised relatively modest amounts, so legal services supporters have pursued other options. These options include creating a new filing fee on post-divorce motions (Kansas), imposing a surcharge on civil fines (Maine), a surcharge on parking and speeding tickets and a tax on bail bonds (Tennessee), and increasing the fee for a marriage license (West Virginia).

The funds usually are collected by the clerks of courts and sent to an entity at the state level, such as the treasury, where they are deposited into a fund for legal services, or are sent on to the supreme court for disbursement. The legislation frequently details how the funds will be distributed.

Fees and fines have the potential to generate significant revenue for legal services and should be considered, along with state appropriations, by bars that are looking to increase significantly funding for legal services to the poor. The primary difference between this initiative and an appropriation is the source of the funds - whether the money comes from a fee on the users of the court system, or out of the state general fund or other specified fund.
In some states, filing fee bills have been converted to appropriation bills during the legislative process, so an understanding of both funding mechanisms is valuable. See the initiative *State Appropriation*, page 125.

**Pros**

♦ Court fees and fines and/or a state appropriation, more than any other initiatives, provide substantial revenue for legal services for the poor.

♦ Court fees or fines may provide an opportunity for legal services to obtain state funding at a time when the state does not have sufficient funds in its regular budget to pay for services it is not already funding.

♦ Court fees or fines are not subject to an annual or biennial legislative approval process.

♦ Anticipated increases in population make it possible that the revenue generated from this initiative will grow.

**Cons**

♦ In most states, obtaining this funding will require a significant commitment of time and resources.

♦ Court administrators and/or judges may oppose additional fees for purposes other than court administration.

♦ There may be opposition from people who are concerned about this mechanism for funding. The argument is that funding legal services with court fees places the responsibility on the relatively small number of individuals who need to use the courts while the revenue generated by the fees benefits only the poor. It may be argued that society as a whole should share the cost of access to justice.

♦ There may be aggressive opposition from groups that pay a large percentage of certain kinds of court fees and have powerful lobbyists at the legislature, such as landlords and collection agencies.

♦ The legislature may place restrictions on the work that can be done with state funds. The restrictions may be similar to those imposed by Congress on Legal Services Corporation funding.

**Examples**

Because of the importance of state appropriations to civil legal services, the PERLS Project has done research, gathered materials, and obtained considerable information on this initiative. More information on these examples and the work in other states is available.
Pennsylvania, one of the first states to enact a legislative appropriation for legal services, began allocating $1,700,000 in state funds in FY74-75. Efforts over the years to increase this appropriation significantly were only moderately successful; the allocation for 2002 was $2,600,000. In 2002, the legislature established the Access to Justice Act, a filing fee surcharge that will generate for legal services an estimated $3,800,000 in the first year, $5,700,000 in years two and three, and $7,600,000 in years four and five.

Advocates had made three attempts to pass this legislation over a ten year period. This successful effort was the most sustained, beginning in 1998. Key to the success was broad-based support from the legal community, led by a Pennsylvania Bar Association task force that was developed during the state planning process and that was composed of representatives from the legislature, the governor's office, state and local bar associations, law firms, and legal services programs.

When introduced, the legislation was solely a surcharge for legal services and only on civil filings. It passed the House with little dissent, but when it got to the Senate, it was amended to include criminal filings and funding for the court system, primarily for computer upgrading. It is possible that both the court and legal services benefited from this; the two entities had different supporters who together may have ensured passage of the measure. By the fourth year, legal services will be receiving the amount it would have received in the original legal services only legislation. However, the legal services funding is scheduled to sunset after the fifth year, so advocates will need to go back to the legislature to seek its continuation.

Legal services advocates in New Mexico were successful in obtaining their first state funding in 2001 through passage of a filing fee surcharge. As in Pennsylvania, advocates went through the legislative process three times before achieving success. In their first attempt, supporters sought an answer fee, because the state supreme court opposed the use of filing fee funds for purposes other than court administration. On the second occasion, supporters sought a filing fee surcharge despite supreme court opposition. On both occasions, the legislature passed the bills, only to have them vetoed by the governor, who opposed any increased spending. Legal services supporters close to the governor had visited him during both of these efforts, but had been unable to convince him of the need for state support.

In the 2001 effort, bar leaders again visited with the governor, suggesting a general appropriation. This time, he indicated that he might consider signing funding legislation if it came in the form of a filing fee surcharge. This presented a difficult situation for the lawyers leading the effort, given the court’s opposition. However, the legislation passed easily despite supreme court opposition, and the governor signed it. Even though it had opposed the bill due to the source of the funds, the supreme court opposition ceased once the legislation was enacted because the court recognized the need for increased funding for legal services. The supreme court has been instrumental in collecting the fees and supporting the commission created to distribute the monies. The filing fee surcharge generates approximately $1.3 million annually for legal services.

Legal services advocates in Nebraska first obtained a filing fee surcharge in 1997, generating about $750,000 annually. By late 2000, the state’s three LSC funded
programs had been reconfigured into one statewide program, and it was clear that there were insufficient resources to meet the need for legal assistance. At about the same time, LSC issued a program letter, requesting that each state justice community perform a self-evaluation. The Nebraska Statewide Planning Group was reactivated and agreed to conduct this evaluation. New members were recruited, creating a large, broad-based coalition. Among those recruited were two legislators, a conservative and a liberal who were members of the judiciary committee. The support of this committee would be key to the success of any filing fee surcharge legislation.

As this planning group worked, they learned about the unmet need and the problems of insufficient funding. This education generated the energy to mount a campaign to the legislature to increase the filing fee surcharge. An informal working group, composed of the chair of the State Planning Group, the executive director, president and lobbyist of the Nebraska State Bar Association, the chief counsel for the Nebraska Commission for Public Advocacy and the chair of the board of Nebraska Legal Services, took primary responsibility for the legislative campaign. They worked strategically with the members of the judiciary committee to gain their support. Once the judiciary committee supported the increase, overall approval by the legislature was a fairly routine matter. In 2002, the surcharge was raised from $2 to $5, increasing the amount generated to approximately $1,550,000.

What the Bar Can Do

The support and leadership of the bar usually are essential to the success of any effort to obtain state funding. Lawyers are in a unique position to influence legislation that produces benefits for legal services, and professionally and personally, lawyers can help make a persuasive case to legislators. With court fees, it is particularly important to have support from all segments of the bar, because court fees are so tied to the process of lawyering. Specifically, the bar can do the following:

♦ Make this legislation a priority, and provide the assistance of its staff, particularly its lobbyist if it has one.

♦ Retain or recruit as a volunteer a respected lawyer/former state legislator to lobby the legislature and the governor if the bar does not have a lobbyist.

♦ Work with the courts to obtain their strong, active support.

♦ Work with the legal services providers, as appropriate, to design the bill.

♦ Assist in identifying and approaching a key legislator or legislators to sponsor the bill.

♦ Pass resolutions in support of the legislation.

♦ Run articles supporting the legislation in bar publications.

♦ Compile a list of attorney and bar association supporters and distribute it to legislators and the governor.
Provide legislators with information pertaining to the legal services office serving each legislator's district.

Educate legislators and the governor about other states' funding for legal services.

Arrange for bar leaders and other supportive attorneys to meet with key legislators and the governor and to testify before committees.

Prepare hand-outs about the legislation to share with bar members and members of the legislature and the governor.

Keep interested bar members apprised of the status of the legislation and urge them to call or write their legislators and the governor at key times.

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In most cases, it will be necessary to have a staff person working on this effort, because it requires a great deal of coordination and follow up. Although this person will not necessarily be a bar staff member, the availability of staff and the costs associated with that person need to be considered when deciding to pursue this initiative.

It often will be necessary to have a lobbyist. The costs of a lobbyist can be minimized if there are private attorneys willing to lobby or take on aspects of the lobbying effort free of charge.

In most instances, it will be necessary to produce printed materials that can be shared with legislators and members of the bar. These materials can provide information on other states’ legislation and what current court fees and fines support and outline the need for funds for legal services.

Considerations

An analysis should be conducted before approaching the legislature for funds to determine whether an appropriation, a filing fee surcharge, a new filing fee, an add-on to a fine or some other means is the best mechanism for funding legal services. Each project should be considered in terms of what would benefit legal services the most over the long term and what is politically realistic.
When proposing legislation, it is important to take into consideration how any exemptions would affect the level of funding. For example, if governmental entities are not required to pay a filing fee, then those filings need to be subtracted from the total cases filed to come up with the amount of money that would be raised by the fee.

In addition to passing the legislature, the bill must be signed by the governor. Contacts with the governor should be initiated early in the process. It may be necessary to develop a strategy for obtaining the governor's support just as is done in obtaining the support of legislators.

Finding the right legislator to sponsor the bill is often the key to success. Important criteria to consider when identifying the most appropriate primary sponsor include the respect that the legislator has among fellow lawmakers, the legislator's understanding of and support for legal services, and the likelihood that the legislator will commit significant time and energy to obtain support for the bill.

In states where legislators are reluctant to fund general legal services, legislation that proposes that the funds be used for a specific purpose, e.g. domestic violence prevention or to serve the elderly, may be more likely to pass. Campaign leaders and key legal services staff should discuss this possibility before the campaign begins.

In some states, legal services advocates have found it necessary or advantageous to join with other potential recipients in order to obtain court fees or fines. For example, the courts also may have funding needs, and by joining together it may be possible to gain votes that one entity or the other could not win on its own.

In some of the states in which a portion of court fees or fines is designated for legal services providers, attempts have been made to divert the funds to other uses. To "protect" the revenue from such diversions, it may be necessary when drafting the legislation to require that the funds be deposited into the state bar fund, IOLTA program or administrative office of the courts, if the funds cannot be deposited directly into a non-government account.

In several states with court fee or fine legislation, restrictions have been placed on the use of the funds, similar to those imposed on Legal Services Corporation funding by Congress. Some of these restrictions include prohibitions on legislative lobbying, filing class actions or challenging welfare reform. Bar associations and legal services programs need to work closely together to try to keep the full range of services available, or, if not, to determine if any restrictions are acceptable.

Unified bars need to be aware of issues raised in Keller v. State Bar of California. Please see the introduction to this section for more information.

Contacts

Sam Milkes, Executive Director, Pennsylvania Legal Services, Harrisburg, PA, smilkes@palegalservices.org, (717) 236-9486, ext. 208
Sarah Singleton, Co-Chair, Legal Services and Program Committee of the New Mexico State Bar, Montgomery and Andrews, Santa Fe, NM, ssingleton@montand.com, (505) 986-2648

Doug German, Executive Director, Nebraska Legal Services, Omaha, NE, dgerman@nebls.com, (308) 529-0556

For more information on court fees and fines, including copies of legislation, contact Meredith McBuney, Project Director, mm8091@aol.com, PERLS (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Project

State Appropriation

Definition

Funding appropriated, usually from the state general fund, by the state legislature to support civil legal services.

Explanation

Legal services programs in 29 states now receive funds through general appropriations. Total revenue for legal services from state appropriations was approximately $65 million in 2003.

In some states, the appropriations for civil legal services are simply line-items in the state budget; in others, they are separate pieces of legislation. The funds usually are paid to the court administrator or another state agency to be disbursed. The line-item or legislation usually will identify the organizations that will receive funding or will provide qualifications that programs must meet to be funded.

A state appropriation has the potential to generate significant revenue for legal services and should be considered, along with court fees and fines, by bars that are looking to increase significantly funding for legal services to the poor. The primary difference between a court fee and fine initiative and an appropriation is the source of the funds - in the former the money comes from a fee on the users of the court system and in the latter it comes out of the state general fund or other specified fund. In some states, court fee bills have been converted to appropriation bills during the legislative process, so an understanding of both funding mechanisms is valuable. See the initiative Court Fees and Fines, page 117.

A significant commitment of time and financial resources is usually required to implement this initiative successfully. However, along with Court Fees and Fines, it is one of the few initiatives that can provide major, long-term, often relatively unrestricted funding for civil legal services, so it is almost always worth making the investment.

Pros

♦ A state appropriation and/or court fees and fines, more than any other initiatives, provide substantial revenue for legal services for the poor.
The appropriations process provides an opportunity to educate elected officials about the work of legal services and the needs of its clients.

Cons

♦ In most states, obtaining this funding will require a significant commitment of time and resources.

♦ The funding may need to be approved every time the budget is considered. This leaves legal services vulnerable to being eliminated from the budget or having its funding reduced.

♦ The legislature may place restrictions on the work that can be done with state funds. The restrictions may be similar to those imposed by Congress on Legal Services Corporation funding.

Examples

Because of the importance of state appropriations to civil legal services, the PERLS Project has done research, gathered materials, and obtained considerable information on this initiative. More information on these examples and the work in other states is available.

♦ Minnesota legal services providers received their first state funding in 1983, the sixth state in the country to do so. Through the years, Minnesota advocates have worked hard and with great skill to retain and increase their state funding, and they have been very successful. Their most recent success at increasing funding occurred in 2001, when the legislature allocated an annual amount of $7,734 million, an increase of $1.25 million over the previous year. The effort was spearheaded by the Minnesota State Bar Association (MSBA). The MSBA president had made funding for legal services a top priority for his presidential year, and he advocated more funding in speeches and articles and encouraged bar members to call, write and e-mail their legislators. The judiciary also was very supportive; the chief justice wrote a powerful letter to legislators and other judges told legislators that legal services helped the courts work more efficiently. Providers did a good job of explaining the range of benefits to the community. The business community also played a role in the effort, with some corporate attorneys making key legislative contacts. Finally, there was a strong grassroots component, with lawyers from all over the state making phone calls and sending e-mails and letters to their legislators.

This strong support was tested in 2003, when the legislature attempted to reduce legal services funding by 20 percent. Minnesota, like most other states, was facing a financial crisis, and some legislators wanted to reduce the relatively high legal services appropriation to a level closer to that of other states. Legal services advocates successfully activated their strong network of supporters. They also produced information showing the benefits of civil legal assistance to the disadvantaged. Ultimately, legal services funding, a line-item in the supreme court’s budget, was reduced by 3.05 percent, the same amount as the balance of the court’s budget.
Legal services supporters in some states have been able to obtain a state appropriation by targeting it for a specific type of service that legislators found particularly compelling. In Arizona, services for victims of domestic violence was just such an issue. In 2000, a federal grant for civil legal assistance for victims of domestic violence was ending, and at the same time, several high profile domestic violence cases were making headlines. Legal services advocates, coordinated by the Arizona Bar Foundation (now the Arizona Foundation for Legal Services & Education), made the case for legislative funding for domestic violence shelters and the legal advocacy that was needed for women to be safe and ultimately improve their lives. They did this by presenting the facts about the number of domestic violence victims in the state and the inadequacy of funding for legal assistance. The bar foundation presented a coordinated plan for disbursement of the funding to legal services providers throughout Arizona. The legislature provided $1,000,000 in temporary assistance to needy families block grant (TANF) funds beginning in FY2000; another $200,000 from general revenue was added in FY2001. The appropriation continues to be $1,200,000 annually.

Louisiana was successful in obtaining its first statewide appropriation for legal services in 2003. Advocates had sought state funding on numerous occasions but had been unsuccessful. However, with a change in strategy and much hard work, they were able to achieve success. For the first time, the Louisiana State Bar Association (LSBA) and the Louisiana Bar Foundation were highly engaged in the effort. A respected legislator who was a strong supporter of legal services was identified to get the funds into the appropriations bill. The Resource Development Subcommittee of the Access to Justice Committee of the LSBA monitored the appropriation bill and identified which legislators needed to be contacted and when. Members of the bar then were called upon to call, write or e-mail their legislators at the appropriate times. Staff developed informational materials about legal services, talking points and sample letters, and kept the whole effort coordinated. A member of the Resource Development Subcommittee who also was an LSBA officer was able to get the chair of the Louisiana Republican Party to testify before the Senate Finance Committee, which had a big impact on the committee members. Louisiana suffered from a similar budget crisis as most other states in 2003, and many line items in the budget were cut. However, legal services supporters did an excellent job of educating legislators about the need for legal assistance and about the cuts that were occurring due to the significant funding losses from both LSC and IOLTA.

What the Bar Can Do

The support and leadership of the bar are very important to the success of an effort to obtain state funding. This is particularly true in states with legislatures that are resistant to funding legal services. Lawyers are in a unique position to influence legislation that produces benefits for legal services, and professionally and personally, lawyers can help make a persuasive case to legislators for a direct appropriation for legal services. Specifically, the bar can do the following:

- Make this legislation a priority, and provide the assistance of its staff, particularly its lobbyist if it has one.
♦ Retain or recruit as a volunteer a respected lawyer/former state legislator to lobby the legislature and the governor if the bar does not have a lobbyist.

♦ Work with the supreme court, if needed, to obtain judicial support for the legislation.

♦ Work with the legal services providers, as appropriate, to design the bill.

♦ Assist in identifying and approaching a key legislator or legislators to sponsor the bill.

♦ Pass resolutions in support of the appropriation.

♦ Include articles supporting the legislation in bar publications.

♦ Compile a list of attorney and bar association supporters and distribute it to legislators and the governor.

♦ Educate legislators about the legal services provided to their constituents. For example, a bar leader could accompany a legislator to their local legal aid office, giving both an opportunity to meet the staff and talk directly with clients.

♦ Provide information to legislators and the governor about other states' funding for legal services.

♦ Arrange for bar leaders and other supportive attorneys to meet with key legislators and the governor and to testify before committees.

♦ Prepare hand-outs about the legislation to share with bar members, members of the legislature and the governor.

♦ Keep interested bar members apprised of the status of the legislation and urge them to call or write their legislators and the governor at key times.

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♦ In most cases, it will be necessary to have a staff member working on this effort, because it requires a great deal of coordination and follow up. Although this person will not always be a bar staff person, the availability of staff and the costs associated with that person need to be considered when deciding to pursue this initiative.

♦ It often will be necessary to have a lobbyist. The costs of a lobbyist can be
minimized, however, if there are private attorneys willing to lobby or take on aspects of the lobbying effort free of charge.

♦ In most instances, it will be necessary to produce printed materials that can be shared with legislators and members of the bar. These materials can provide information on other states' funding and outline the need for funds for legal services.

Considerations

♦ An analysis should be conducted before approaching the legislature for funds to determine whether an appropriation, a filing fee surcharge, a new filing fee, an add-on to a fine, or some other means is the best mechanism for funding legal services. Each project should be considered in terms of what would benefit legal services the most over the long term and what is politically realistic.

♦ It may be important to consider whether to seek the appropriation through the budget of a state entity - e.g. judicial administration, social services, or the governor's office. If the entity is willing to fight for the legislation, it could be helpful in obtaining approval. Similarly, thought should be given to which entity would be best to administer the funds. Considerations include where the funds could be best protected from any efforts to divert them to other uses and which entity would handle disbursements most efficiently and effectively.

♦ In addition to passing the legislature, the bill must be signed by the governor. Contacts with the governor should be initiated early in the process. It may be necessary to develop a strategy for obtaining the governor's support just as is done in obtaining the support of legislators.

♦ Finding the right legislator to sponsor the bill is often the key to success. Important criteria to consider when identifying the most appropriate primary sponsor include the respect that the legislator has among fellow lawmakers, the legislator's understanding of and support for legal services, and the likelihood that the legislator will commit significant time and energy to obtain support for the bill.

♦ It is essential to evaluate the political climate prior to making the request so that legislators are not alienated. The approach to the legislature may be different when there is a budget crisis or if legislators do not have a favorable view of legal services.

♦ The development of a grassroots network, involving lawyers, other community leaders, clients, and ordinary citizens from around the state, may be necessary to get legislation approved. Such strong, broad-based support has proven to be very helpful in efforts to retain and increase funding in subsequent years.

♦ In states where legislators are reluctant to fund general legal services, legislation that proposes that the funds be used for a specific purpose, e.g. domestic violence prevention or to serve the elderly, may be more likely to pass. Campaign leaders and key legal aid staff should discuss this possibility before the campaign begins.

♦ In some states, legal services advocates have found it advantageous to join with other potential funding recipients in order to obtain an appropriation. This has been
especially true for legal services providers seeking funding targeted for a specific purpose. For example, providers seeking funds for domestic violence prevention might partner effectively with shelters to get legislation passed.

♦ In several states with state appropriations, restrictions have been placed on the use of the funds, similar to those imposed on Legal Services Corporation funding by Congress. Some of these restrictions include prohibitions on legislative lobbying, filing class actions or challenging welfare reform. Bar associations and legal services programs need to work closely together to try to keep the full range of services available, or, if not, to determine if any restrictions are acceptable.

♦ Jurisdictions (states, counties, cities) differ in terms of how the same or similar public funds are administered and distributed. Legal services advocates need to research carefully their own jurisdictions to determine what funds are available and how to go about obtaining them. For example, states differ in the process for disbursement of federal pass-through funds from Victims of Crime Act (VOCA) monies, and some states also have their own crime victims’ funds. Some of these funds may be available to legal services programs through a grant process at the state or local level, or a legislative appropriation may be required to access them.

♦ Unified bars need to be aware of issues raised in Keller v. State Bar of California. Please see the introduction to this section for more information.

Contacts

Kent Gernander, Past President, Minnesota State Bar Association, Streater & Murphy, Winona, MN, kentg@streaterlaw.com, (507) 454-2925; Jeremy Lane, Executive Director, Mid-Minnesota Legal Assistance, Minneapolis, MN, jl@midmnlegal.org, (612) 746-3701

Jessica Ponzio, Grants and Contracts Manager, Arizona Foundation for Legal Services & Education, jessica.ponzio@azflse.org, (602) 340-7357

Michael W. McKay, President-Elect, Louisiana State Bar Association, McKay, Williamson, Lutgring & Cochran, Baton Rouge, LA, mike@mwclaw.com, (225) 389-1060; Monte Mollere, Access to Justice Director, Louisiana State Bar Association, New Orleans, LA, mmollere@lsba.org, (504) 619-0146

For more information on state appropriations for legal services contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Aid and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Non-LSC Federal Funds

Definition

Efforts to obtain funding for legal services that is available through various federal agencies, such as Housing and Urban Development, Department of Justice and Health and Human Services.

Explanation

Many legal services providers receive some federal funding from entities other than the Legal Services Corporation (LSC). These funds may be distributed at the national, state or local level. Those distributed at the national level are referred to as discretionary, while those that are passed through to the state or local level are called block grants, entitlements, pass-through funding, or formula grants. (Legal services programs may not be aware that some of the funds they apply for at the state or local level originated as federal dollars.)

The non-LSC federal funds that legal services programs are most likely to receive come from a number of different grant programs within several agencies. Currently, the largest amount of funding comes from the Department of Justice (DOJ) through the Violence Against Women Act (VAWA). DOJ also provides funding through the Victims of Crime Act (VOCA). The Department of Housing and Urban Development (HUD) distributes grants for work primarily related to housing and homelessness. HUD also is the funding agency for the locally distributed Community Development Block Grants (CDBG). Two agencies provide funding to serve persons living with HIV and AIDS - Health and Human Services (HHS) administers the Ryan White Care Act, and HUD administers Housing Opportunities for Persons with AIDS (HOPWA). HHS also provides funding for food stamp screening and welfare to work projects. The IRS funds legal services programs to help low income people deal with tax return issues. A few programs have tapped into funding from the Department of Agriculture, the Environmental Protection Agency, and the Social Security Administration.

Unlike funding from LSC, most of this federal funding is not to provide legal services specifically, but to alleviate problems such as domestic violence, housing discrimination, and homelessness. Legal services providers who have learned to explain effectively how their work meets the particular interests of an agency have been successful in obtaining these funds. Federal funders usually require programs to work in partnership with other community organizations to utilize a variety of tools, including legal assistance, to resolve problems facing low income people.
Federal grants distributed at the national level are announced through Notices of Funding Availability (NOFAs), which are printed in the Federal Register. Organizations apply directly to the agency. For state and local level grants, the administering state and local agencies are responsible for providing necessary information. The state or locally distributed federal funding is usually easier to obtain than the national level discretionary grants for two reasons. First, there is more money in this category and second, as with most other funding, personal relationships make a difference, and those working in state and local government are more likely to know the local providers and the quality of their work.

Programs interested in pursuing this initiative are urged to talk with legal services providers who have been successful at raising federal funds before beginning the application process. Potential applicants need to understand the nature of the federal grant process. This is a complex funding area; the grant applications frequently are complicated and time consuming to complete, and they usually require the applicant to have done substantial planning and coordination with other community agencies. For some discretionary grants, applicant programs must have certain prior experience and have become certified by the funding agency.

For a program that is considering seeking federal funding, the first step is to research the funding source to learn what it is funding. Then, staff should analyze the work of their legal aid program to find areas of overlap with the funding source’s priorities, or identify ways to create overlap. The funding agency’s website is a good starting point for basic research about available funding. Legal services advocates who have identified sources which they believe are appropriate for funding for their organization are encouraged to contact PERLS to get names of people in other legal services programs that have been successful in obtaining similar funding. Also, Management Information Exchange (MIE) maintains a file of successful grant applications.

For those seeking federal funds that have been passed through to the state or local level, reading the sections in this manual entitled Other State Funds (page 137) and Local Public Funds (page 143) may be helpful.

Pros

- These sources can provide significant additional resources for legal services providers to help poor people with particular legal problems.

- These grants encourage legal services providers to work with other organizations in the community.

- This is an excellent funding initiative for rural programs, which tend to be in high poverty areas with few resources. For some grants, rural programs may even have an advantage. For example, some federal grants place an emphasis on meeting the needs of hard-to-reach populations, which may include most residents of rural areas, or groups like Native Americans, that usually live in rural areas.

Cons

- Some of the grant applications are long, complicated and time consuming to
complete. The applicant may very well be turned down on the first attempt.

♦ Some of these grants, especially those distributed at the national level, are highly competitive, in addition to having complicated applications.

♦ These funds have various kinds of restrictions and requirements attached to them - e.g. requirement of a match, restrictions about what entities can apply, restrictions on their use - that may prevent some legal services providers from obtaining the funds or using them effectively once received.

♦ If a grant is not renewed, particularly if it is fairly large, it can cause serious problems for a program that has expanded to fulfill the grant objectives.

Examples

Legal services programs in virtually every state have received at least some non-LSC federal funding. However, a few programs have been extremely successful, and several of those programs are in Tennessee. The examples below, while just a small sample of the federal grants going to Tennessee programs, help to demonstrate how these programs have worked individually and collectively to obtain and increase this funding:

♦ West Tennessee Legal Services (WTLS), a program headquartered in Jackson, serves 17 very rural counties. Because of the paucity of potential funding sources within the service area, WTLS has focused on federal funding as a strategy for expanding client services. Its projects involve creating partnerships with other community organizations to increase resources to address fundamental concerns of their rural low income communities. These projects are interlinked and leveraged so they can support each other.

WTLS received its first non-LSC federal funding about 16 years ago. It was a CDBG grant, federal pass-through funding, through a program administered by Jackson’s community development agency. The executive director of WTLS became acquainted with the head of the agency and learned about the agency’s interests. He then designed a small grant request that was approved. The head of that agency recommended that WTLS apply for a second grant, this one for housing counseling work, through another grant program administered by HUD. With these relatively small grants, WTLS began the process of building a reputation for successful implementation, developing personal relationships with HUD staff, and gaining the experience and qualifications required by HUD so that the program could apply for and receive larger grants for more complex projects.

Once WTLS had established its credibility and gained the necessary HUD required experience, the program was able to obtain fair housing grants for itself and other programs in the state. All of the other Tennessee LSC programs, except Memphis, which has its own grant and coordinates its activities with the others, are subgrantees and provide fair housing advocacy in their own service areas pursuant to the WTLS grant. With this approach, Tennessee programs have had these very competitive discretionary grants renewed annually for 10 years.
WTLS has used its experience and track record with federal discretionary grants to assist other states in obtaining housing counseling and other funds. The Mid-South Project, currently funded at $450,000, includes programs in Mississippi, Alabama, Kentucky, and Georgia in addition to Tennessee. As affiliates of the Project, 15 legal services programs provide comprehensive housing counseling services at 61 offices throughout the region. With WTLS as the applicant, the other programs can participate and receive funding without having built their own track record with HUD. As part of the Mid-South work plan, WTLS is sharing its funding development methodology so that its partners can become eligible for additional housing funding.

A project recently started by Legal Aid of East Tennessee (LAET) provides an example of securing federal funds passed through to the state level. LAET staff were concerned about the number of minority children who were incarcerated. The issue was brought to LAET by representatives of a client organization in the African American community of Blount County. LAET, which has a long history of working with community partners in its service area, organized meetings to discuss this issue and found anecdotal evidence of unequal treatment of minority children in state custody. At the same time, LAET social work interns uncovered the widespread impact of adult incarceration on the African American communities. A survey found that 90 percent of worshipers in an inner city church had either been previously involved with the criminal justice system or had an immediate family member involved.

LAET staff then set out to find funding so they could focus attention on this problem. They contacted the Tennessee Commission on Children and Youth (TCCY), a state governmental entity that is funded with federal pass-through monies from the Department of Justice. Tennessee is one of several states under scrutiny by the DOJ for having a disproportionate number of minority juveniles in confinement, so TCCY was interested in helping and provided $10,000. The program used these funds to contract with a law graduate who learned more about the problem and developed a plan for a project that would be an organized, systemic approach to keeping children out of the system or finding better solutions for children once they are in the system. This seed funding led to an implementation grant from TCCY of $58,000 for 2003-04 to begin work on this issue.

What the Bar Can Do

♦ Recommend to legal services programs that they explore applying for non-LSC federal funding.

♦ Encourage bar members to make calls or write letters, as appropriate, supporting the proposals of legal services programs.

♦ Assist legal services programs with few outside resources in securing matching funds or in-kind services if necessary, through the bar association itself, a bar foundation or IOLTA, or through pro bono services from individual attorneys.
Budget

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♦ There is considerable staff time involved in working with community organizations to plan for these projects and to prepare the grant applications. While this work will probably not be done by a bar staff person, the availability of staff and the costs associated with that need to be considered when deciding to pursue this initiative.

♦ The grant application needs to be a polished document, and attachments, like newsletters and annual reports, help produce a more attractive product.

Considerations

♦ Obtaining non-LSC federal funding, although not easy, is less difficult than it was a few years ago. As increasing numbers of legal services programs have applied for these grants, the proposal evaluators have become familiar with the concept of legal services and thus more apt to fund. Some legal services programs have been very successful in obtaining significant federal grants, as they have become skilled at the application process and have developed a track record with funding sources.

♦ There is a potential for conflict for many legal services programs, because the programs may be representing clients in cases against governmental entities providing the funding. It is important to find areas of agreement and mutual need.

♦ Programs considering applying for federal grants should evaluate carefully whether the funds available are for purposes closely enough related to the work of the program to be worth pursuing. Programs should not lose sight of their mission in an effort to obtain more funding.

♦ To do well in the federal funding arena, legal services staff need to be actively involved with the other organizations in their community that are seeking and receiving federal grants. This involvement should start long before the legal services program seeks to be part of a federal grant process.

♦ It is very important for legal services programs that are seeking these grants to involve the staff that will be implementing the grants in the planning and preparation of them. These are the people who will determine the success of the project, which will impact the program’s ability to get future federal funding.

♦ Although some of these grants, particularly at the state and local level, are renewed fairly routinely, others may terminate after a few years. For example, VAWA
recently declined to renew major grants to a number of legal services programs. Programs need to take this into consideration when they design their proposed projects and/or plan ahead so they will have funds available from other sources when the federal funding ends.

♦ Jurisdictions (states, counties, cities) differ in terms of how the same or similar public funds are administered and distributed. Legal services advocates need to research carefully their own jurisdictions to determine what funds are available and how to go about obtaining them. For example, states differ in the process for disbursement of federal pass-through funds from Victims of Crime Act (VOCA) monies, and some states also have their own crime victims’ funds. Some of these funds may be available to legal services programs through a grant process at the state or local level, or a legislative appropriation may be required to access them.

♦ Legal services advocates need to be aware that local politics may have an impact on decision-making when federal funds are disbursed at the state or local level. If local or state elected officials are opposed to the grant application, it will be more difficult to obtain the funds.

♦ Applicants for non-LSC federal funds occasionally request members of the private bar to contact members of Congress to ask for their support on discretionary grants. This can help or hurt the application, depending on the particular situation and the way the request is handled. As a result, programs should carefully weigh the pros and cons before making such a request.

♦ There is no comprehensive list of grant possibilities. The best way to find out what funding is available is to be involved with organizations and agencies in the community that have contacts with related federal agencies.

Contacts

Steve Xanthopoulos, Executive Director, West Tennessee Legal Services, Jackson, TN, Xanthopoulos@wtls.org, (731) 512-4111

David Yoder, Executive Director, Legal Aid of East Tennessee, Knoxville, TN, dyoder@laet.org, (865) 637-0484

Patricia Pap, Executive Director, Management Information Exchange, Boston, MA, ppap@m-i-e.org, (617) 556-0288

For more information on non-LSC federal funding, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Services and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Project

Other State Funds

Definition

Efforts to obtain grants or contracts for legal services from state agencies.

Explanation

Some legal services programs have been successful in obtaining state grants or contracts, distributed through state agencies, that are separate from any funding set aside through court fees and fines or direct appropriations for legal services. These funds may not be given to provide legal services specifically, but to solve a problem, such as domestic violence, homelessness or access to health care coverage.

Most of these funds are obtained by working closely with staff of state agencies. Frequently, a key factor in obtaining the grants or contracts is personal relationships that have been developed between staff at the state agencies and staff in the legal services programs. Working together on issues of mutual concern may provide opportunities for legal services staff to suggest solutions to problems that may lead to funding. Programs that have a track record of accomplishment on issues of importance to state officials and legislators have a better chance of success.

Some contracts fit into the fee for service category; programs are required to do a certain number of cases or provide a certain number of hours of service for a specified amount of money. For some contracts, the funds are disbursed on a reimbursement basis, so no funds are available to the program until after services have been completed. However, sometimes there is little, if any, practical difference between a grant and a contract. A contract may be awarded to a program, and the program may report back on the services provided, but the funding is not tied to a specific number of cases or hours of service.

Funds for grants or contracts from state agencies do not always originate as state dollars, but actually may be federal pass through funds. Programs that are seeking funds from state agencies might find helpful the information in the initiative, Non-LSC Federal Funds, page 131.
Pros

♦ These funds can provide additional resources for legal services providers to help poor people with particular legal problems.

♦ Applying for state grants or contracts may provide an opportunity for programs to educate state officials about the need for civil legal services. Obtaining and effectively using state grants or contracts may illustrate the value of legal services to legislators, and they may then be more willing to fund legal services through a legislative appropriation.

♦ Some of these projects may enable legal services programs to develop positive relationships with state officials or legislators that may have been adversaries, or at least not allies, in the past.

Cons

♦ These funds may not be available in all states.

♦ Some projects that the state may offer have the potential for moving the program too far from its mission of providing civil legal services to the poor.

♦ Particularly with fee for service contracts, if potential clients are not found and the services therefore cannot be provided, there is a possibility that the state agency will end up with an unfavorable view of legal services.

Examples

♦ Vermont Legal Aid (VLA) has contracts with two state agencies, for a total of $400,000, to operate a health care ombudsman program. This program helps consumers resolve problems with access to health care, billing, and eligibility problems, and represents the public-at-large before the legislature on systemic health care issues. Half of the money comes from state legislative funds appropriated to the State Banking, Insurance and Health Care Authority, and is used for work involving private insurance matters. The Authority issued its first Request for Proposal for this project in 1998; VLA was the successful applicant. The other half of the money is from the Vermont Office of Health Access and is supported by federal “administrative” funding from Medicaid. VLA obtained this second contract after successfully working on the first contract for a few years.

A key to VLA’s success in obtaining the contract was its track record for “getting things done”, earned from work on other state legislative projects. VLA advocates were regularly at the legislature providing technical support on other issues of importance to low-income people. These advocates also were involved in the discussions about helping consumers who were having problems with health insurance companies that led to the decision to create this health care ombudsman program.
The ombudsman program serves anyone having problems with their health insurance, so some of the clients have incomes above 125 percent of poverty. This led to debate internally about the appropriateness of VLA applying for this work. As it turns out, these funds have enabled VLA to help over 2,400 additional clients annually. Over 40 percent are on Medicaid and many of the balance are income eligible or almost income eligible. The contracts have also provided VLA with the opportunity to have a significant impact on the development of health care priorities in Vermont.

Many legal services providers have state contracts to provide SSI advocacy services to recipients of state public assistance. The Legal Assistance Foundation of Metropolitan Chicago (LAF) has such a contract with the State of Illinois. The contract amount for 2003 was for $986,000. The state, through the Illinois Department of Human Services (DHS), began funding this project 14 years ago, after LAF submitted a proposal arguing that they could save the state money by moving disabled people from the state-funded general assistance rolls to the federal SSI program. The state makes up to 400 referrals per month; LAF screens them, determines which are appropriate for representation, and then assists the clients in obtaining SSI benefits.

In addition to moving clients from state public assistance to SSI, the project now also is assisting disabled adults receiving TANF benefits to move to SSI. This does not save the state money, but allows them to meet their targets for moving people off of TANF and provides money to TANF recipients who otherwise would quickly reach their 60 month lifetime limit for receipt of benefits. Either way, the financial benefit to the client is significant since the SSI grant level is much higher than either the TANF or state assistance level.

Although LAF provides DHS with detailed reports of the services provided, the contract amount is not linked to a specific number of cases. A few years back, DHS discussed the possibility of a fee for service contract, but LAF determined that there was so much work beyond direct representation that a simple fee for service contract was not practical. LAF operates its SSI Advocacy Project as a stand-alone program, so they are sure that all costs are covered by the contract amount.

What the Bar Can Do

- Serve as liaison between legal services staff and legislators or other state officials who have an interest in implementing projects appropriate for legal services programs.

- Bar lobbyists may learn of projects that have been funded that might be of interest to legal services programs and can pass on this information to the legal services staff.
The expenses for this initiative will depend very much on the application requirements of the funding source. If a detailed proposal needs to be submitted to a state agency, staff time will be necessary. In most cases, any expenses for staff and printed materials will most likely be the responsibility of the legal services program, not the bar.

Considerations

♦ Some of the grants or contracts available through state agencies may not be directly related to the program’s mission. In these instances, there may need to be discussions about whether it is appropriate for the program to apply for the funding.

♦ If the contract is on a fee for service basis, the program needs to be sure that the proposed fee, at a minimum, covers all costs, including administrative overhead and supervision. The costs should be reevaluated annually to ensure that the fee remains sufficient, so that funds for other work are not used to pay for these activities.

♦ Legal services programs should consider whether any potential fee for service agreements could create a conflict of interest in representing clients against the entity with whom they are contracting.

♦ Jurisdictions (states, counties, cities) differ in terms of how the same or similar public funds are administered and distributed. Legal services advocates need to research carefully their own jurisdictions to determine what funds are available and how to go about obtaining them. For example, states differ in the process for disbursement of federal pass-through funds from Victims of Crime Act (VOCA) monies, and some states also have their own crime victims’ funds. Some of these funds may be available to legal services programs through a grant process at the state or local level, or a legislative appropriation may be required to access them.

Contacts

Eric Avildsen, Executive Director, Vermont Legal Aid, Burlington, VT, eavildsen@vtlegalaid.org, (802) 863-5620
Gloria Pruzan, Supervisory Attorney, SSI Advocacy Project, Legal Assistance Foundation of Metropolitan Chicago (LAF), Chicago, IL, gpruzan@lafchicago.org, (312) 423-5903; Sheldon Roodman, Executive Director, LAF, Chicago, IL, sroodman@lafchicago.org, (312) 347-8330

For more information on other state funds, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Services and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Local Public Funds

Definition

Efforts to obtain grants or contracts for legal services from city or county governments.

Explanation

Some legal services programs have been successful in obtaining grants or contracts from cities, counties and other local jurisdictions. This funding may be tied to a certain problem, such as housing, homelessness or domestic violence, or may be for general operating expenses.

Generally, keys to obtaining local funds include developing strong personal relationships with local governmental officials, presenting an effective case for the need, and demonstrating that funding legal services is to the economic benefit of the local community. However, aside from these basic concepts, the experiences of legal services programs in applying for, obtaining, and maintaining local public funds are more varied than with most other initiatives in this manual. Some programs report that the application process is relatively simple, once in the system it is easy to get funding renewed, and there are few reporting requirements. Other programs have indicated that the local politics are such that getting into the system is quite difficult, and staying in is tricky.

Because of these differences, programs considering seeking local funding will need to research each potential local source. A first step is to determine whether the governmental entity funds non-profit organizations, and, if so, from what revenue sources. Then, learn about any formal application process, as well as which individuals have formal and informal influence over decisions. In some communities, needs assessments have been performed, and they may impact which entities receive funds. Consulting with organizations in the community that have received funding may provide insights into the process.

Not all funds obtained through city or county governments originate as local dollars; they actually may be federal pass through funds. A good example of federal pass through funds would be Community Development Block Grants (CDBG). Programs that are seeking local public funds should also read the initiative, Non-LSC Federal Funds, page 131.
Pros

♦ Where available, funding from local governments can be a relatively substantial and stable source of revenue.

♦ Applying for local funding may provide an opportunity to develop relationships with important local officials and to educate them about the needs of low income residents.

Cons

♦ Local funding may be so impacted by local politics that it is very difficult to obtain.

♦ There may be potential conflicts of interest, since legal aid providers often represent clients in disputes with local governments.

Examples

♦ Community Legal Services (CLS) in Philadelphia, Pennsylvania, has a contract with the City of Philadelphia. This funding, which began in approximately 1994 with a contract for $150,000, provided $720,000 in revenue in 2003. CLS uses the funds to provide both individual representation and broad-based advocacy.

CLS staff have obtained and increased these funds by developing personal relationships with officials in the city administration. The mayors have been supportive of legal services, which has been a major advantage. CLS staff talk with the city about how the work of legal services improves the city’s economy, for example, by helping people avoid eviction or foreclosure and thus stay in their homes. Although CLS normally focuses its pitch on the benefits to the city, CLS was able to demonstrate a need for increased unrestricted city support in 1995 when LSC funding was reduced and restrictions were implemented.

CLS staff have found that different administrations and/or individual staff people in the Department of Human Services have different expectations of what CLS will accomplish. Therefore, maintaining good personal relationships with the key city players has been of critical importance.

♦ Several legal services programs in Virginia have been successful in obtaining local funding. The Virginia Legal Aid Society (VLAS), headquartered in Lynchburg and serving a largely rural 20 county area is south-central Virginia, currently receives about $32,000 annually from 10 of the 26 local governmental entities in its service area. VLAS began seeking local public funds in 1997, when the program sent a letter to each of the local governmental sources, explaining both the importance of legal services to clients and the cost benefits of those services to the city/county. VLAS set a goal of $100,000, and then asked each of the local entities for its share, based on that entity’s percent of the total poverty population.
Key to obtaining funds has been finding one county supervisor, city council member or county/city manager who is sympathetic to legal services and willing to champion the cause before fellow decision makers, usually county supervisors or city council members. VLAS has a development director who cultivates these relationships. Beginning in January of each year, she starts contacting county supervisors, to ensure that VLAS is considered as the budgets for the next fiscal year (all begin July 1) are being developed. In the six years that VLAS has been receiving local funds, only one county has reduced funding, and that was a result of the current budget crisis.

♦ For the past 12 years, New York City has provided approximately $3,000,000 annually in city funds to NYC legal services programs to provide legal representation to poor people who face eviction. This $3 million investment allows the City to obtain $3 million in state and $6 million in federal funds for a total eviction prevention project of $12 million. Under the contract with the city, services are provided to families who receive public assistance or who are eligible for emergency assistance, and who either have had an eviction proceeding commenced against them or are at risk of homelessness because of substandard housing conditions.

The executive director of Legal Services for New York City first proposed this project in a memo to the head of the Department of Social Services. He argued that preventing eviction reduces the number of people who become homeless, which would save the city money, and that there were state and federal dollars available to supplement the City’s contribution.

The funding is disbursed on a per case rate of $1,080. Legal services providers respond periodically to an RFP, estimating how many cases they will do. A current problem is that the per case rate does not fully cover the costs of the project, and the providers have not yet been able to negotiate a rate increase. In the past year, the total amount of funds was reduced, because the providers did not spend the entire amount allocated the year before. However, due to the cost saving nature of the project, it generally has been supported by the different City administrations over the years.

What the Bar Can Do

♦ Help legal services programs identify possible local public funding sources.

♦ Encourage individual members of the bar to advocate for legal services funding, as appropriate, before local groups charged with making funding decisions.
### Budget

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♦ The expense for this initiative will vary, depending on the nature of the local jurisdiction. In some cases, a detailed proposal will need to be submitted, which will require staff time. If the primary task is simply a brief presentation to a city or county board, that might best be done by a volunteer lawyer. In some jurisdictions, it may be necessary for staff or volunteers to make contact with individual staff or elected officials. In most cases, any expenses for staff and printed materials will most likely be the responsibility of the legal services program, not the bar.

### Considerations

♦ Some local funding sources have small amounts of money to distribute but time-consuming requirements for applying and reporting. These issues should be taken into consideration when deciding whether to pursue local funding.

♦ It appears that the process for obtaining local funds often is less complicated in smaller communities. Since raising funds generally is more difficult in rural areas, this may be a good source for less urban providers to consider.

♦ Lawyers frequently have good contacts with members of boards, councils and commissions, and can make a case for legal services that those members will understand and appreciate.

♦ As local government officials change, they may have different expectations of what a legal services program should accomplish. Therefore, it is important to be aware of any changes and build new relationships to ensure continued support.

♦ Local funding, especially in smaller communities, can be impacted significantly by fluctuations in the economy.

♦ Jurisdictions (states, counties, cities) differ in terms of how the same or similar public funds are administered and distributed. Legal services advocates need to research carefully their own jurisdictions to determine what funds are available and how to go about obtaining them. For example, states differ in the process for disbursement of federal pass-through funds from Victims of Crime Act (VOCA) monies, and some states also have their own crime victims’ funds. Some of these funds may be available to legal services programs through a grant process at the state or local level, or a legislative appropriation may be required to access them.
Contacts

Catherine Carr, Executive Director, Community Legal Services, Philadelphia, PA, ccarr@clsphila.org, (215) 981-3712

David Neumeyer, Executive Director, Virginia Legal Aid Society, Lynchburg, VA, davidn@vlas.org, (434) 528-4722, ext. 24

Andrew Scherer, Executive Director, Legal Services for New York City, New York, NY, ascherer@lsny.org, (212) 431-7200, ext. 121

For more information on local public funds, contact Meredith McBurney, Project Director, mm8091@aol.com, PERLS (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Services and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
Other Possible Public Sources

Definition

Sources of public funding for legal services that have been researched, proposed and/or initiated on a limited basis.

Explanation

In the important quest for additional funding, particularly from the public sector, legal services advocates around the country have considered a variety of different sources. This section provides information about several sources that have been considered but have either not been implemented successfully, or have been implemented in only one state.

State Abandoned Property Funds: Each state has a mechanism for capturing property for which no beneficiary can be determined or located following the owner’s death or bank accounts and insurance proceeds that individuals do not close or collect when they die or move and leave no forwarding address. Efforts have been made in some states to have a set amount from this fund allocated to legal services programs.

Abandoned Client Trust Funds: Lawyers that receive, maintain or disburse client funds are required to hold those funds in trust accounts, to preserve the identity of the client’s funds, and to promptly return to the client all funds to which the client is entitled. On occasion, however, a lawyer ends up with funds, usually small amounts, that belong to clients whom the lawyer cannot locate. Lawyers are required to make a reasonable attempt to find such clients but sometimes are unsuccessful. It is possible that if all the abandoned clients funds in any given state were combined, and separated from the general state abandoned property funds, there might be enough revenue to pursue an effort to use them to help fund legal services.

Punitive Damage Awards: A principal purpose of punitive damages is to discourage egregious action or behavior. Punitive damages are not primarily intended to provide victims, who have already been awarded actual damages, with larger awards. A portion of punitive damage awards could, therefore, be directed to legal services without compromising their deterrent and disciplinary purposes. (A portion of punitive damages could conceivably be paid to legal services through the cy pres mechanism. This would be the result of decisions in individual lawsuits, rather than enactment of legislation covering punitive damages generally. See the initiative Cy Pres, page 45, for more information.)
Pros

♦ These initiatives have been valuable revenue sources to the very few states that have been successful in obtaining them.

♦ Since many initiatives that have become successful around the country started as creative ideas in one or two locations, continuing to explore new funding ideas is important to the overall legal services community.

Cons

♦ The fact that these initiatives have not moved forward in other locales suggests that they will be extremely difficult or impossible to implement. Other options in this manual should be considered first before focusing much attention on these.

Examples

♦ **State Abandoned Property Funds:** The only state to date where an appropriation from the state abandoned property fund has been made to legal services is **Maryland**. The Maryland Legal Services Corporation (MLSC), a state mandated program that distributes IOLTA and other funds to legal services and pro bono programs, has received $500,000 annually since 1985. Close personal relationships between members of the private bar and key state legislators were required to develop and secure adoption of the legislation for this funding. Most states that have explored this option have decided that it was not feasible, either because of the nature of the state’s abandoned property fund statutes or because all of the available funds were earmarked for other purposes.

♦ **Abandoned Client Trust Funds:** This initiative has not been implemented in any state. It is believed that the most thorough research on this issue was done by the state of **Washington** in 1998 by the Pro Bono and Legal Aid Committee of the Washington State Bar Association. The committee issued a report, *Civil Equal Justice Funding Options*, which provides a fairly detailed analysis of this potential initiative.

♦ **Punitive Damage Awards:** There are seven states that have split recovery statutes - legislation directing a portion of punitive damage awards to sources other than the plaintiff. Statutes adopted in two other states were declared unconstitutional. During the 1990s, at least four states made unsuccessful attempts to adopt such legislation. Legislation in **Iowa** and **Missouri** designate legal services as a recipient.

In Iowa, legislation requires that in some lawsuits a portion of punitive damages be paid into a civil reparations trust fund. Money in the fund may be used only for indigent civil litigation programs or insurance assistance programs. Since 1993, Iowa Legal Aid has received approximately $2.2 million from the trust fund to provide legal assistance to low-income Iowans.

In Missouri, 50 percent of punitive damages awarded in cases that go to final
judgment are placed in a tort victims’ compensation fund. Twenty-six percent of the money in the fund is then payable, upon appropriation, to LSC recipients. The split recovery, however, does not kick in unless the case goes to final judgment. There has been only one payment into the fund, but the legislature then reduced the general state appropriation to legal services during the two years that it paid out the tort victims’ fund money. As a result, the programs to date have received no increase in funding through this legislation.

What the Bar Can Do

♦ Help legal services programs identify and evaluate other potential public funding sources.

♦ Encourage individual members of the bar to advocate for legal services funding, as appropriate, when disbursements of public funding occur.

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♦ The expense will vary, depending on which idea is being considered. The first step in pursuing any of these ideas will be doing research - about the experiences of other states as well as about the specific laws of the state considering the idea. The expense at this first stage is mainly in staff and volunteer time.

Considerations

♦ These ideas arise frequently during brainstorming sessions, when bar and legal aid leaders are trying to put every idea on the table. They should be considered, because they just might work in some locations. However, there are reasons that these initiatives have not become more widespread in the past 10 years, while other initiatives have been far more successful. None is going to be achieved without hard work, so it is important to focus most of the time, energy and resources on those initiatives that have proven to be successful elsewhere.

Contacts

Susan Erlichman, Executive Director, Maryland Legal Services Corporation, Baltimore, MD, serlichman@mlsc.org, (410) 576-9494, ext. 1005
Jim Bamberger, Statewide Coordinator, Columbia Legal Services, Spokane, WA, jim.bamberger@columbialegal.org, (509) 324-2789, ext. 210

Dennis Groenenboom, Executive Director, Iowa Legal Aid, Des Moines, IA, DGroenenboom@IowaLaw.org, (515) 243-2151

Jay Wood, Director, Missouri Legal Services Support Center, Jefferson City, MO, jwood@mlssc.org, (573) 638-3430

For more information on other possible public sources, contact Meredith McBurney, Project Director, PERLS, mm8091@aol.com, (303) 329-8091. The ABA Project to Expand Resources for Legal Services (PERLS) is an initiative of the Standing Committee on Legal Services and Indigent Defendants, supported by a grant from the Open Society Institute. PERLS seeks to involve lawyers at the national, state and local levels in identifying funding sources and exerting leadership and advocacy in support of new and innovative funding mechanisms for providers of civil legal assistance to the poor.
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