
PROPOSAL: Amends Article 31, § 31.7 of the Constitution concerning the Standing Committee on Legal Aid and Indigent Defendants

Amends §31.7 of the Constitution to read as follows (additions underlined, deletions struck through):

§31.7 Legal Aid and Indigent DefendantsDefense.
The Standing Committee on Legal Aid and Indigent DefendantsDefense, which consists of not more than eleven members, shall have jurisdiction over matters relating to the creation, maintenance, and enhancement of effective civil legal aid and defender criminal indigent defense delivery systems and services respecting:

including by: (a) advocating for meaningful access to the justice system for all; (b) supporting viable and effective plans to increase funding for legal aid and indigent defense delivery systems and services; and (c) developing standards and policy, disseminating best practices, and providing training and technical assistance.

(a) the administration of justice as it affects the poor;
(b) remedial measures intended to help the poor protect their legal rights; and
(c) the establishment and efficient maintenance of legal aid and defender organizations and cooperation with other interested agencies, whether public or private.
REPORT

We, the appointed members of the Standing Committee on Legal Aid and Indigent Defendants (SCLAID), propose the foregoing amendment of the Standing Committee’s jurisdictional statement contained within the ABA Bylaws under Article 31, § 31.7. The proposed, amended statement reads:

**Legal Aid and Indigent Defense.** The Standing Committee on Legal Aid and Indigent Defense, which consists of not more than eleven members, shall have jurisdiction over matters related to the creation, maintenance, and enhancement of effective civil legal aid and criminal indigent defense delivery systems and services, including by: (a) advocating for meaningful access to the justice system for all; (b) supporting viable and effective plans to increase funding for legal aid and indigent defense delivery systems and services; and (c) developing standards and policy, disseminating best practices, and providing training and technical assistance.

In the decades since SCLAID’s jurisdictional statement was last amended, both the committee itself and the environment in which it operates have evolved significantly. In marking the 100th anniversary of its founding at the 2020 Annual Meeting, SCLAID believes that this is the ideal time to reexamine its jurisdictional statement and to revise it to more accurately reflect the committee’s current and future mission within the Association. The key substantive changes to the statement are set forth below:

1) **Name Change:** The committee’s name should be revised to change the word “Defendants” to “Defense.” Not only does such a change reflect a better parallel construction (“Legal Aid” and “Public Defense”), it also corrects what SCLAID believes is an inappropriate focus: The emphasis in the name should be on the practice of public defense, not on the defendants themselves as individuals. Note that this change does not affect the existing SCLAID acronym.

2) **Access to Justice:** The core function of funded legal representation today is commonly understood and framed as the provision of meaningful access to the justice system. The term-of-art “access to justice” is comprehensible and commonly used, which was not the case the last time SCLAID’s jurisdictional statement was amended. Provision (a) has been amended to both utilize these current concepts and terminology as well as to directly align SCLAID’s mission with ABA Goal IV’s objective: “Assure meaningful access to justice for all persons.” Thus, provision (a), in part, replaces the language “the administration of justice as it affects the poor” in order to clarify that the concept of access to justice, and SCLAID’s mission to support it, pertains to addressing and overcoming all barriers to the justice system experienced by the clients served by legal aid and public defender programs, barriers which usually include—but may not be exclusively—those of a financial nature. Furthermore, in the context of access to justice, SCLAID’s focus continues to be on legal service delivery through civil legal aid and public defender programs and the clients that they serve, though with the recognition that there are a number of entities within the ABA also carrying out Goal IV in other areas or with different ranges of focus,
such as by the Standing Committee on Pro Bono and Public Service or the Criminal Justice Section. Accordingly, SCLAID’s use of “access to justice” here is nonexclusive, as the work of all ABA Goal IV entities is complementary to SCLAID’s area of focus and continues to present opportunities for collaboration and cooperation, which are priorities for the committee.

3) **Funding for Legal Aid and Public Defense:** Adequate and appropriate public funding for civil legal aid and public defense has emerged as a growing policy priority for the ABA.\(^1\) A particular focus has been on enhancing and defending Congressional funding for the Legal Services Corporation.\(^2\) SCLAID has been a primary proponent of these policies and a key entity in carrying out the ABA’s advocacy in this regard. Provision (b) has been amended in the proposal to expand upon and to better articulate SCLAID’s central role in promoting the availability of funding necessary to ensure access to justice. Furthermore, in both this provision and in the language preceding clause (a), the more expansive term “delivery systems and services” is used rather than simply “services” with the intent to reflect the evolution in the means and manner by which legal services may be delivered by legal aid advocates and public defenders, particularly through innovative uses of technological systems. Throughout the amended provision, however, the use of “delivery systems” is limited solely to mean systems that deliver legal services from civil legal aid and indigent defense staff to members of the public.

4) **Supporting both Systems and Lawyers:** Over the years, SCLAID has focused on promulgation of a wide range of standards, policies, studies, and reports as a means of carrying out its mission to both support and promote improvement of civil legal aid and public defender programs. SCLAID has also exerted enormous influence on state and local bar associations through initiatives such as its Bar Improvement Program, focused on improvement of public defense systems, and its Resource Center for Access to Justice Initiatives, focused on development of the types of Access to Justice Commissions that have now proliferated across the country. SCLAID will continue its long-standing advocacy for constant improvement of these systems, but at the same time it is evolving to also focus directly on the lawyers delivering representation within these systems and examining how it can better support their training and professional development needs through membership in the ABA. The existing provision (c) has been adapted and moved into the amended language’s initial statement of SCLAID’s jurisdiction, and a new provision (c) has been added to reflect all of the work SCLAID has done, and will continue to do, to support ongoing improvement in the systems delivering legal aid and public defender services, as well as the lawyers themselves.

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1 See, e.g., ABA House of Delegates adopted policies 01M106A, 05A107, 06A112A and B, 10A105, 12A107C, 18M114.
2 See, e.g., ABA House of Delegates adopted policies 89M8F, 11M10E, 13M10A.
In summary, SCLAIID’s continually evolving mission to carry out ABA Goal IV in an ever-changing landscape of funded legal service delivery necessitates the long-overdue and significant update of its jurisdictional statement in the ABA Constitution set forth above.

Respectfully submitted,

Theodore A. Howard, Chair
ABA Standing Committee on Legal Aid and Indigent Defendants