

H. Thomas Wells, Jr.
President

AMERICAN BAR ASSOCIATION

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March 6, 2009

Peter Orszag, Director
Office of Management and Budget
Executive Office of the President
725 17th Street, NW
Washington, D.C. 20503

Dear Mr. Orszag:

The American Bar Association (ABA) commends the President for allocating \$435 million for the Legal Services Corporation (LSC) in the Administration's soon-to-be released detailed FY 2010 budget request to the Congress. This is a significant step toward providing more adequate funding for a vital program that has been woefully underfunded for over two decades.

Today, more than 50 million Americans qualify for federally funded legal assistance. Many of these individuals have significant legal needs and may suddenly be poor because of natural disaster, loss of a job, the break-up of their family, housing loss or uninsured medical care.

While the need for civil legal services has increased, LSC funding and our ability to ensure access to the justice system continues to fall far short. New issues that require legal assistance disproportionately affect low-income families, including consumer fraud and now the mortgage foreclosure crisis; foreclosures are forcing both low-income home owners and renters from their homes. The ABA thanks the Obama Administration for its attempt to restore funding to the LSC to help the nation's most vulnerable citizens get through this very difficult time.

At the same time, the ABA urges the Obama Administration to make several additional requests to Congress in the detailed FY 2010 budget that will, without cost to the government, significantly increase the amount of money available to provide legal aid to the poor. The ABA strongly urges that the President's budget language modify two measures that have been included in past versions of the appropriation language and that have impeded LSC in fulfilling its mission. Specifically, we request that the President direct Congress to (1) eliminate the restriction that prevents recipients of LSC funding from freely utilizing – without being subject to federally imposed restrictions – state, local, private and other non-LSC funds to provide needed legal assistance to poor clients and (2) eliminate the restriction that prevents LSC recipient programs from obtaining statutorily permitted attorneys' fees. These changes will not impose any costs on the federal government, but they are sure to expand access to justice for low-income families.

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The restriction on use of other non-LSC funds by local legal aid recipients of LSC funding greatly diminishes the ability of LSC-funded programs to raise other funds from state and local governments, charitable foundations and private individuals. The restriction prevents these other funders from giving money to LSC-funded programs because the funds often cannot be used as the donor intends. The restriction has created great inefficiency in the legal aid system across the nation; entirely new and separate local legal aid programs had to be created to accept non-LSC funds in order to facilitate the donor's intent. The result has created a situation where hundreds of thousands of dollars in limited resources are squandered on needless duplication.

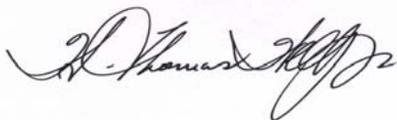
The restriction barring recovery of statutorily authorized attorneys' fees further diminishes the scarce resources available to support civil legal aid programs. Perhaps more important, it eliminates a critical source of leverage in many cases, putting legal aid lawyers at a grave disadvantage in attempting to negotiate settlements for their clients.

Both restrictions offend basic principles of federalism. They require independent legal aid programs to act in ways that are contrary to the expressed desires of state and local governments, local individuals and charities and state fee-recovery statutes. While it is understandable that the federal government dictate what can be done with federal funds, it is unacceptable for the federal government to tell local public service programs what they can do with other funds. Furthermore, states have, in their own sovereign wisdom, chosen to permit fee-shifting in certain situations and have therefore structured an appropriate balance between parties operating within their justice systems. Federal interference denies states the right to determine how their justice systems should operate.

The ABA has longstanding policy favoring a legal aid system that does not interfere with poor persons' full access to the courts or deny advocacy that is available to others in our society. Removal of these two restrictions will be a modest step toward adjusting the legal aid system so that it once again can approach the promise of ensuring equal access to justice for all.

Thank you for your consideration of these requests.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Thomas Wells, Jr.", written in a cursive style.

H. Thomas Wells, Jr.

cc: Deborah G. Hankinson, former Justice, Texas Supreme Court, Chair, ABA Standing Committee on Legal Aid and Indigent Defendants