

DIALOGUE

News and Perspectives from the ABA Division for Legal Services

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IOLTA Innovations and the Foreclosure Crisis

by Sofia Ali-Khan, Assistant Staff Counsel,
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By the time the economy began to decline, several legal aid programs had already developed sophisticated practices to address the issues of low-income consumers, including, among other things, predatory lending to low-income homeowners. The growing volume of these cases was an indication that problematic sub-prime lending practices were on the rise. Still, few programs were prepared for the magnitude of the problem that has emerged. Many Interest on Lawyers' Trust Accounts (IOLTA) programs are now working with grantees to build statewide foreclosure assistance projects to meet this new demand.



Building Stakeholder Coalitions

When the foreclosure crisis hit, the Ohio Legal Aid Foundation (OLAF) had already begun to implement recommendations from the Supreme Court of Ohio's Task Force on Pro Se and Indigent Litigants to improve access to justice for distressed homeowners in Ohio. These included recommendations to increase pro bono involvement and to encourage courts to set up mediation systems to assist self-represented litigants.

Ohio's courts, inundated with foreclosure cases, were eager to implement the latter recommendation quickly. Meanwhile, the attorney general's office was struggling to handle the overwhelming number of calls they were receiving from victims of predatory lending. Several key stakeholders were concerned about marshalling referral, pro bono, and legal aid resources to meet the need.

OLAF became aware of the emerging crisis early on, through a number of channels, including several statewide task forces focused on substantive areas of poverty law, communication with its grantees, and its own needs assessment survey. As a result, OLAF provided discretionary grants in the area of foreclosure

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IOLTA Innovations

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defense and exclusively solicited fellowship proposals related to foreclosure defense in 2007. The fellows selected continued to report back as the crisis emerged.

In December of 2007, OLAF took the decisive step of bringing together key stakeholders on the issue of foreclosure. These included representatives from the Governor's office, the Attorney General, the Ohio Supreme Court, the Ohio State Bar Association, the state treasurer's office, legal aid programs, and housing counselors. OLAF relied heavily on its formal and informal relationships to bring key parties to the table, and to gather resources to address the emerging crisis. For example, a former OLAF board member who is now the Governor's chief of staff brought forth representatives from the Governor's office and OLAF's associate director of pro bono built exceptionally strong pro bono support for the project as the former president of the state bar association.

Each partner and the relationships that they brought to the table formed a critical element of what has become a successful foreclosure defense initiative. This initiative, called "Save the Dream," has mobilized dozens of legal aid attorneys and pro bono attorneys and tied together stakeholders' efforts across the state.

The Save the Dream Initiative now includes a hotline staffed by the attorney general's office, which is advertised statewide. To bolster available legal resources, the state Supreme Court and attorney general's office sent a joint letter recruiting pro bono attorneys to work on foreclosure cases. The Ohio State Bar Association registered pro bono volunteers and worked with legal aid to set up statewide and local Continuing Legal Education

(CLE) trainings. In May, Save the Dream was awarded the National Association of Pro Bono Professional's Best Practice Award.

When six legal aid programs around the state jointly submitted a grant proposal to OLAF to provide foreclosure defense, OLAF asked the applicant programs to create standard practices to serve homeowners facing foreclosure effectively in all parts of the state. The grant terms include the integration of pro bono resources in each program, as well as several advocacy components which integrate additional stakeholders. For example, the terms include advocacy with the courts and counties to properly set up foreclosure mediation programs, development of "Save Our Homes" community advisory groups, and legislative and media advocacy.

The leadership provided by OLAF to unify foreclosure assistance efforts in Ohio is unique, but it need not be so. Its grantees and other stakeholders were responsive to OLAF's efforts because they addressed a critical need felt throughout the legal system. OLAF's leadership has resulted in a model for collaboration that may permanently change how Ohio addresses access to justice issues.

Establishing Pro Bono Recruitment and Training Systems

The Arizona Foundation for Legal Services and Education ("AFLSE") realized there was a problem when signs began appearing in front yards declaring, "Auction tonight, house to the highest bidder!" even before their grantees began to talk about the dramatic increase in foreclosure cases. It was also clear to AFLSE that the existing legal aid program could not meet the swelling demand alone. Grantees were devastated to be turning away many homeowners facing foreclosure whose incomes were between 150% and 250% of poverty, and

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were therefore ineligible for free legal aid.

AFLSE awarded special funds to grantees to subsidize their outreach efforts to homeowners with incomes just above their eligibility guidelines, and provided in-kind services to improve grantees' web-based referral of these homeowners. What remained was to develop a willing group of pro bono attorneys to handle the incoming requests for assistance.

AFLSE worked with the state bar association and grantees to set up a CLE on foreclosure defense, requiring participants to take one case each.

Chief Justice Ruth Gregory of the Arizona Supreme Court became actively involved, identifying a mortgage broker who could provide training to pro bono attorneys, and encouraging members of the bar to donate their time. Twenty attorneys attended the CLE training session each week for five weeks, drawing 100 new attorneys from around the state into the pro bono foreclosure effort.

Pro bono recruitment efforts were so successful that an additional layer of coordination was required. AFLSE supplied the full time support of two legal interns, forming a project called Lawyers Helping Homeowners. Lawyers Helping Homeowners identified an additional partner in Phoenix Law School, and is preparing to refer foreclosure cases to the school's mediation clinic. AFLSE's pro bono recruitment, training, and coordination are a cornerstone of their efforts to cope with the foreclosure crisis in their state.

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Developing Innovative Funding Partnerships

In 2007, Michigan State Bar Foundation (“the Foundation”) realized increased revenues as a result of adopting interest rate comparability. Ultimately, the Foundation allocated increased revenues to reserves and to fund several multi-year project grants targeted at statewide initiatives identified through a grantee

input process. Foreclosure assistance was one of the highest need areas identified and was included in the Foundation’s request for proposals, which prioritized projects using regional or statewide collaborations.

The Foundation received a compelling proposal from a group of legal services providers to provide assistance to clients in foreclosure across the state. The project included legal representation, legal education to help individuals understand their rights, policy advocacy, and

credit/mortgage counseling. The Foundation became actively involved in shaping the project and requested that its proponents connect with other programs doing similar work. The collaboration grew to six main partner programs throughout the state and encourages additional relationships and referral protocols between partner programs and local mortgage counseling agencies. It includes a telephone hotline system for statewide intake, advice, and

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referral of complex cases to participating programs, as well as a statewide web intake portal. Finally, the project includes a staff training plan, provided with assistance from the National Consumer Law Center.

The Foundation recognized that it could not offer enough funding for a project of this magnitude, and it encouraged the group to seek additional funding from the state and from private foundations. The Foundation made a very large project grant of \$500,000 in order to help encourage other funders to contribute. The Foundation then contacted the Ford Foundation (“Ford”) which had also received a proposal for this project, informed them about the Foundation’s grant and suggested a partnership for coordinating the funding and evaluation of the project. Ford made a large grant towards the

project after which several other funders contributed, more than tripling the Foundation’s original funding. The Foundation and Ford remain the major project funders. Together, they agreed upon and provided additional funding for in-depth evaluation to ensure that the statewide initiative would both meet clients’ needs and function as a model for other statewide collaborations. Both foundations agreed that using experienced evaluators would allow them to capture lessons that would benefit others. Evaluation consultants will manage a data-based evaluation, assessing the impact of the project on clients and on the delivery system. In addition, poverty and foreclosure law experts will visit programs and other partners in a series of peer reviews.

The successful partnership of the Foundation and Ford in both funding and capturing data from this project has reinforced the Foundation’s broader interest in engaging the greater philanthropic community. It is a

member of the Michigan Council of Foundations, through which it develops relationships with program officers and keeps apprised of the funding priorities of other grant making institutions. The Foundation has learned from this experience to consider the potential of its grants to attract additional funding for the legal services delivery system.

Each of the programs discussed here has, by stepping outside its traditional grant-making role, helped build an exceptional statewide foreclosure assistance program in its state. In these examples, IOLTA programs participated in statewide networks, gathered grantee feedback, participated in larger grant making forums and paid close attention to what was happening in their communities to inform their innovative leadership. Their efforts to support the delivery of legal aid to homeowners facing foreclosure demonstrate the great potential of IOLTA programs as catalysts in the development of more effective legal aid delivery systems.