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IOLTA Feature

IOLTA

Show Me the Money: Successful Fundraising for Legal Aid in Challenging Times

Fundraising for Legal Aid in Challenging Times

By Meredith McBurney

From the Chair

Fundraising is always a challenge, and it is particularly difficult in the current tough economic times. However, as many access to justice leaders have demonstrated, it is possible to continue generating increased revenues for legal aid.

Grantee Spotlight

News and Notes

At the Summer 2010 IOLTA Workshops in San Francisco, three IOLTA directors who are also among our community's best strategic fundraisers - Betty Balli Torres, Caitlin Carlson, and Susan Erlichman¹ - participated in a session with this article's author to discuss fundraising for legal aid in the current challenging economic time.

Pro Bono

The session focused on three of the many fundraising initiatives that are used to generate resources for legal services. They each have their pluses and minuses, and not all will work in every state or program. But all three have proven to be successful in the past year or so in some states, and they were presented to encourage members of the IOLTA community to think about what might be possible in their states. This article will review the highlights of that presentation.

LAMP

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Overview of Three Initiatives to Consider Pursuing Now

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Filing Fees

State legislative funding, through filing fees and appropriations, is the second largest funding source for legal aid. Virtually every state government is suffering severe economic problems, and that might suggest that this is not a good time to be asking the state legislature for funding. However, because the funding mechanism is a fee or fine, the legislature is not put in the position of using scarce general revenue funds. Filing fees also tend to be more stable than appropriations; in many states, appropriations for legal aid have been reduced in the last two years, while filing fees have been largely untouched. The disadvantage of seeking any state funding is that it requires significant time and resources to be successful.

Cy Pres

Cy pres is the term used for finding another appropriate use for unclaimed funds in class action lawsuits. The decision about the other appropriate use is usually arrived at jointly by counsel and the court, most typically in the context of a settlement agreement. Contributions to legal aid programs based on the doctrine of *cy pres* have increased significantly in recent years. The advantage of running a *cy pres* campaign now is that the number and size of these residuals are unrelated to the economy. The disadvantage is that the funding is unlikely to be available soon, and it is unpredictable – a program cannot budget for these funds.

Bar Dues Check-offs

Bar dues check-offs – a line item added to the bar dues form to make a contribution - provide lawyers with an easy mechanism for donating funds to legal aid. There are two approaches. The first is through an "add-on", where the statement provides a suggested donation amount which the lawyer can add to the total due on the statement. The second approach is

“opt-out”, in which a suggested donation is included and the lawyer must subtract the amount from the total amount due if he/she does not want to make the gift. Opt-out almost always generates more revenue than an add-on. There have been check-offs on bar dues statements for many years, most of them producing relatively small amounts of revenue. In the last couple of years, bar associations in a few states have mounted marketing campaigns when they have introduced dues check-offs, educating attorneys about their responsibility to help fund access to justice, and thus raising more funds.

Case Studies

Court Fees and Fines: Maryland’s Recent Experience

Like many states, Maryland’s IOLTA program, the Maryland Legal Services Corporation (MLSC), has faced a significant loss of annual revenue because of the historic low interest rates. There has been a filing fee surcharge for legal aid in Maryland since 1998, when it generated about \$2.3 million annually. It was increased in 2004 during an earlier IOLTA revenue drop to generate \$7.2 million. Legal aid advocates made the decision to return to the legislature in 2009 to request another increase. This successful effort is generating an additional \$6.3 million, for total filing fee revenue of \$13.5 million. Because of this filing fee increase, MLSC was able to distribute the largest grant awards in its history at a time when the need could not be greater.

Legislative funding initiatives have the potential for huge returns; however, they are a tremendous undertaking that requires sustained long-term effort and planning. The adage that “all politics are local” cannot be overstated; nevertheless, there are strategies that were key to Maryland’s success that will likely prove useful in any legislative campaign:

- Know and assess the local political landscape, in relation to both the legislature and other key stakeholders. Look at current leadership in key legislative committees, as well as leadership among the judiciary and state and local bar associations.
- Know how your state’s filing fees compare with neighboring states and nationwide. Maryland’s filing fees are relatively low compared with surrounding states, thus making it easier to make a case for increasing the fees.
- Make sure you have the support of the bench and bar. Start early to educate key stakeholders on the issues to build support. In Maryland, legal aid advocates began concerted education efforts and lobbying to get the bar and other key stakeholders on board eight months before the legislative session began.
- Seek assistance from allies, like social service agencies, religious groups, and certain legislative caucuses, to help with grassroots efforts
- Hire a professional lobbyist who is well known and well regarded by the legislators *and* truly understands access to justice.
- Generate as much press as possible, including stories in local, regional, and statewide publications, bar and other legal publications, and well-timed editorials.
- Identify your opposition and to the extent possible, try to work out an agreement or at least neutralize their position. The landlord lobby has historically opposed all surcharge increases; this time around MLSC met with them prior to the session, and although they still opposed the bill, the negotiations were more productive, less hostile.
- Prepare for every possible eventuality, but be ready to respond when something totally unexpected occurs.

Other states that have had recent successes obtaining filing fee surcharges for legal aid include Connecticut, South Dakota, and Wyoming.²

Cy Pres: Campaigns in Washington State and Texas Washington State

In 2005, the Legal Foundation of Washington (LFW), Washington’s IOLTA program, petitioned the Washington Supreme Court for a change in State Court Rule 23 to require that 25 percent of residuals in class actions filed in

state court be paid to LFW. The Court granted the rule change in late 2005, making Washington the first state to require a percentage of *cy pres* to be so designated.³

At the time that the rule was under consideration, Congress passed the Class Action Fairness Act, which moved many class actions from state to federal court. To mitigate the impact of this, LFW employed a strategy to encourage volunteer contributions from federal court class actions. Specifically, the program hired a coordinator to educate the bench and bar about the new rule and about the appropriateness of legal aid as a recipient for *cy pres* funds. The coordinator met with various judge's associations, attended bar meetings and wrote articles for bar publications. In addition, LFW developed relationships with lawyers in the class action bar, particularly on the plaintiffs' side. This included inviting them to special events and encouraging them to join boards and committees.

As a result of the Rule 23 change and the education efforts, LFW has received 40 *cy pres* awards totaling approximately \$3 million. Additionally, LFW was just notified that it will be receiving another \$450,000 very shortly. This compares to only four *cy pres* awards between 1993 and 2005 totaling under \$1 million. The awards have ranged in size from \$12 to \$750,000.

Texas

Texas has recently begun a campaign to generate *cy pres* contributions. The effort, a joint project of the Texas Access to Justice Foundation (TAJF), the Texas IOLTA program, and the Texas Access to Justice Commission, is totally voluntary – there has been no rule change. They formed a Court Awards Strategy Committee which studied the issue, produced a toolkit, and educated members of the bench and bar. They recently received their first major *cy pres* gift - more than \$2.6 million has been given to TAJF and five legal aid organizations that provide civil legal services to Texans with disabilities.

Bar Dues Check-offs: The Texas and Washington Experiences

Texas has experimented with various methods of utilizing the bar dues form to provide an opportunity for attorneys to donate to legal aid. Their check-off currently is an opt-out provision with a suggested donation of \$150. In 2010, the approximately 75,000 lawyers in Texas donated \$693,000 through this mechanism. In 2009, the bar dues check-off was an add-on, and generated \$597,000. Texas also has a mandatory fee of \$65⁴ (split equally between civil legal aid and criminal indigent defense), that attorneys must pay as part of their license fee to practice law. As a result, it has been especially important that the dues statement be transparent, ensuring that lawyers understand that the check-off is a voluntary contribution.

The Washington State Bar Association (WSBA) adopted a bar dues opt-out of \$50 in 2009. They also launched a strong public awareness campaign, led by the WSBA president, to encourage attorneys to make the voluntary gift of \$50. The campaign included making presentations about the new check-off to judges, local bar associations, and specialty bar associations as well as publishing articles about the check-off and legal aid in various bar publications.

In this first year, they focused on getting bench and bar leadership to demonstrate their commitment and this effort paid off - judges increased giving from 15 to 42 percent, 100 percent of the members of the WSBA Board of Governors contributed, and several local bar association governing boards and the Young Lawyers Division board also gave at 100 percent. In total, \$380,000 was raised through the bar dues check-off, from 7,777 of Washington's approximately 23,000 lawyers. The vast majority of those attorneys had not given to legal aid in the past.

Assistance Available

The consultants for the ABA Resource Center for Access to Justice Initiatives are available to help identify the best strategies for resource development for your state. Contact Meredith McBurney at meredithmcburney@msn.com

or 303-329-8091 for more information.

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¹ Betty Balli Torres is the Executive Director of the Texas Access to Justice Foundation; Caitlin Carlson is the Executive Director of the Legal Foundation of Washington; and Susan Erlichman is the Executive Director of Maryland Legal Services Corporation. In addition to participating in the panel, they each provided information for the case studies in this article.

² For a more complete list of states with filing fee surcharges, contact the author at meredithmcburney@msn.com.

³ Since then, Illinois, Massachusetts, and North Carolina have adopted similar changes to Rule 23.

⁴ In addition to Texas, five other states (Illinois, Minnesota, Missouri, Pennsylvania and Wisconsin) include a mandatory fee for civil legal assistance as part of the attorney registration or bar dues that lawyers are required to pay to practice law in the state.

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