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**Joint Advisory Task Force on the Legal Representation Pilot Program:
Recommendations, April 30, 2007**

1. Background

The Governor's proposed budget for fiscal year 2007-2008 includes \$5 million in the trial court budget to fund the first year of a three year pilot program to provide legal representation to civil litigants who would otherwise not be represented. In order to ensure that the funds for the local pilot projects can reach the clients of the projects as expeditiously as possible in the budget year, a Joint Advisory Task Force was appointed to develop the details of the model for awarding and expending the funds. That task force includes representatives of the Judicial Council, the Access to Justice Commission of the State Bar, and the Legal Aid Association of California. The charge of the task force was to develop recommendations with regard to the key parameters of the pilot projects. This document contains those recommendations, which have been approved by each of the three entities involved in the task force.

2. Objective of the Legal Representation Pilot Program

The purpose of the Legal Representation Pilot Program (LRPP) is to develop and employ in three sites a system for providing legal representation to low income litigants whose legal needs in crucially important matters would not be met using existing legal resources and to gather information on the outcomes associated with providing these services. The critical need for legal representation in civil cases has been documented repeatedly and the statistics are staggering. Over 4.3 million Californians are unrepresented in family and civil court proceedings. Current funding allows legal services programs to assist fewer than one-third of California's poor and lower-income residents. As a result, many Californians are unable to meaningfully access the courts and obtain justice in a timely and effective manner. The effect is that critical legal decisions are made without the court having the necessary information, or without the parties having an adequate understanding of the orders to which they are subject. LRPP is intended to begin to address this unmet need and develop strategies for delivering services effectively to the clients with the greatest needs. It will do so by providing attorneys to litigants in a range of case types including family law matters, domestic violence, housing, and elder abuse to ensure that these cases are decided on the merits.

Expanding representation will not only improve access to the courts and the quality of justice obtained by these individuals, but allow court calendars that currently include many self-

represented litigants to be handled more effectively and efficiently. Increasing the availability of legal representation for litigants who must currently represent themselves is a key priority of the Judicial Council and Chief Justice Ronald M. George. In his 2007 State of the Judiciary Address to the Legislature, the Chief Justice identified the growing number of self-represented litigants as the “most challenging issue in the coming decade,” adding that “the costs to the judicial system and to the public are high – impairing the ability of the courts to efficiently process heavy caseloads, and eroding the public’s confidence in our judicial system.” The experience and data collected through the LRPP will assist the courts and the legal community in developing new strategies to provide legal representation to overcome this challenge.

3. Funding Model

The \$5 million available for the program would be awarded to three projects – representing small, medium and large courts – pursuant to a competitive grant process and a Request for Proposals (RFP). The selection of the three pilots would be made by a committee appointed by the Judicial Council with representation from key stakeholder groups. Funds would be awarded by the Judicial Council on a formula basis taking into account the eligible population proposed to be served by the project. Each project would be a partnership between the court, a qualified legal service provider that would serve as the lead agency for case assessment and administration, and other legal service providers in the community who are able to provide the services for the project. The lead legal services agency would contract with the court to be the central point of contact for receipt of referrals to the project and to make determinations of eligibility based on uniform criteria. The lead legal services agency would be responsible for providing the representation to the clients or referring the matter to one of the providers that it is contracting with to provide the service, which could include both organizations and individual providers.

A local Advisory Committee would be formed for each project, and would include, at-a-minimum, representatives of the bench and court administration, the lead legal services agency, and the other agencies or providers that are part of the local project team. Other participants might include representatives of local bar associations, etc. The role of the Advisory Committee would be to facilitate the administration of the local project, and to ensure that the project is fulfilling its objectives as laid out in its response to the RFP. In addition, this committee would be able to resolve any issues that arise during the course of the project, including addressing possible concerns over the cases determined to be eligible for service, and to recommend changes in project administration in response to implementation challenges. These committees would be required to meet at least monthly for the first six months of the project, and no less than quarterly for the duration of the pilot period.

4. Clients and Cases Eligible for Services

In order to ensure that the limited funds available for the project are used to serve the most critical cases and the litigants least able to access the courts without representation, the pilots would serve only clients whose household income falls at or below 200 percent of the federal poverty level (at 2006 levels this was \$40,000 for a family of four). Projects would also be able to impose asset limitations consistent with their existing practices in order to ensure optimal use of funds. In addition the case types to be served would be limited to unlawful detainer, family law (including cases under the Domestic Violence Prevention Act), probate conservatorships and

guardianships of the person, and elder abuse and civil harassment restraining orders. These case types would be the universe of allowable cases, but each project could opt in its proposal to serve any or all of these case types based on the particular needs of the community and the available resources.

5. Referrals and Case Assessment

To ensure the most effective use of the funding available, the program model envisions that the lead legal services agency serve as a hub for all referrals and the point at which decisions are made about which referrals will be served and by whom. Referrals would emanate from the court (through the self-help center, the bench, or the Office of the Family Law Facilitator), as well as from the other agencies providing services through the program. Referrals would be directed to the lead agency (in a manner that is not overly burdensome for the prospective client) for review, and that agency, or another agency or attorney to address conflicts, would collect the information necessary to assess whether the case should be served. In performing that case assessment the agency would be required to evaluate a number of issues to determine the relative need for representation of the litigant. These include: (1) case complexity; (2) whether the other party is represented; (3) the availability of other types of services (e.g. self-help) to assist with the case; (4) language issues; (5) disability access issues; (6) literacy issues; and (7) the merits of the case.

Because many of these cases will involve situations in which both sides are financially eligible for representation pursuant to the project, each proposal must ensure that representation for both sides is evaluated to avoid any appearance of bias as a result of the project providing representation for one side of the matter and not the other. In cases such as these, and other cases in which conflict issues arise, the lead agency would need to have referral protocols with other agencies and providers (e.g. a private attorney panel) to address those needs. Each pilot would be responsible for keeping records on the referrals accepted and not accepted for representation, and the reasons for each in a manner that does not violate any privileged communications between the agency and the prospective client.

6. Data Collection and Evaluation

Projects would be provided with standardized data collections tools, and required to track case information for each referral to allow the evaluation to measure the number of cases served, the level of service required, and the outcomes for the clients in each case. In addition to this information on the effect of the representation on the clients, data would be collected regarding the outcomes for the trial courts. This information would be garnered primarily through interviews with and surveys of judicial officers, court personnel, attorneys, clients served, and other stakeholders. In addition to these means, projects will be asked in their proposals to indicate what types of data they would be able to collect and provide without causing an undue burden on the courts, clients, or the providers. The projects will also be asked to catalog changes to the program made during the three-year period based on their experiences with what works best in serving the eligible population.

All of this data and information collected by the projects will be submitted to the Administrative Office of the Courts or an outside evaluator to be analyzed and compiled into an evaluation report. This report would be intended to describe the benefits of providing representation to

those who were previously not represented, both for the clients and the courts, as well as strategies and recommendations for maximizing the benefit of such representation in the future. The evaluation report would also be intended as a vehicle to share the innovative strategies and approaches developed in the different project locations with other courts that may share their demographic characteristics.

7. Responses to Request for Proposals

A local court would take the lead to prepare the response to the RFP, working closely with the proposed legal services agency as well as other local providers. Each of the elements described above would be included in the RFP as parameters defining the scope of the LRPP. However, each court responding to the RFP would be encouraged to develop a proposal that meets their unique local needs and best serves those in their communities with unmet needs for representation. The RFP would need to identify the nature of the partnership between the court, the lead legal services agency, and the other agencies/providers that would work within the project. It would also need to describe:

- the referral protocols to be used,
- the criteria that would be employed in case assessment,
- the means to certify the cases being served as those that would not previously have received representation,
- the types of cases that the project proposes to serve and why those case types were selected,
- the manner to address conflicts without violating any attorney-client privilege when adverse parties are seeking representation through the project.

In addition, the response would need to describe how the project would be administered, including:

- how the data collection requirements would be complied with,
- the particular objectives of their project,
- strategies to evaluate their success in meeting those objectives, and
- the means by which the project would serve the particular needs of the community (e.g. providing representation to non-English speaking clients in their native languages).

RFPs would be evaluated by the selection committee based upon the likelihood that the project would deliver quality representation in an effective manner that would meet critical needs in the community and address the needs of the court with regard to access to justice and calendar management. As noted above, the selection committee would be appointed by the Judicial Council with representation from key stakeholders. In addition, the selection committee would be seeking to achieve demographic diversity in its awards to ensure that the results of the project are relevant for all courts and counties, whether they are small, medium, or large, northern or southern, urban or rural.