

Date of Hearing: April 4, 2006

ASSEMBLY COMMITTEE ON JUDICIARY
Dave Jones, Chair
AB 2301 (Judiciary) – As Introduced: February 22, 2006

SUBJECT: VOLUNTARY CHARITABLE CONTRIBUTIONS FOR LEGAL SERVICES

KEY ISSUE: SHOULD THE STATE BAR OFFER LAWYERS AN OPPORTUNITY TO MAKE VOLUNTARY CHARITABLE CONTRIBUTIONS TO NONPROFIT ORGANIZATIONS THAT PROVIDE LEGAL SERVICES IN ORDER TO ASSIST LAWYERS TO MEET THEIR PROFESSIONAL OBLIGATIONS?

SYNOPSIS

This bill seeks to address the substantial "justice gap" between the legal needs of low-income people and the legal help they receive due to insufficient funding and increased poverty. Studies show that legal aid providers are currently able to meet only a fraction of the eligible need for assistance. Supporters contend that a lack of representation not only disadvantages people with legal problems, it also burdens the justice system itself and impairs the fair and efficient administration of justice. By this measure California would join other states that have established programs to help lawyers make voluntary charitable contributions to organizations that provide legal services to the poor. The bill has no opposition.

SUMMARY: Facilitates compliance with professional responsibilities of lawyers by promoting voluntary charitable giving to support legal services programs. Specifically, this bill authorizes the State Bar to receive voluntary contributions by members for nonprofit organizations that provide free legal services to persons of limited means.

EXISTING LAW:

- 1) Authorizes the State Bar to collect voluntary contributions to fund the State Bar Foundation, the Conference of Delegates, and the Supreme Court Historical Society. (Business and Professions Code sections 6001, 6031.5, 6032.)
- 2) Authorizes the State Bar to aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public. (Bus. & Prof. Code section 6031(a).)

FISCAL EFFECT: As currently in print, this bill is keyed non-fiscal.

COMMENTS: According to the author, this bill is an outgrowth of the Committee's informational hearing last November, co-sponsored by the Judicial Council, focusing on barriers to equal access to justice for all Californians. This hearing explored issues raised by a number of recent reports by the California Commission on Access to Justice documenting the significant and disturbing disparities in our legal system, and the daunting obstacles faced by the escalating number of people who appear in court without legal assistance. The federal Legal Services Corporation (LSC) has likewise recently reported on this problem, and State Bar President

Heiting has singled out the need for increased funding for equal access as one of the pressing issues facing the profession.

Evidence of The Current Justice Gap. The author states that reports and testimony provided to the Committee show that there is a substantial "justice-gap" between the legal needs of low-income people and the legal help that they receive. Due to insufficient funding and increased poverty, existing programs providing free services in civil matters to indigent and disadvantaged persons – especially underserved groups, such as elderly, disabled and children – do not adequately meet the needs of these persons. Studies show that legal services programs encourage peaceful dispute resolution, efficiently serve millions of poor clients, and promote an ordered society. However, despite the establishment of the state's Equal Access Fund, and impressive gains in efficiency and fundraising by legal aid programs, the current "justice gap" in California is estimated to be at least \$350 million, in large part because of federal funding cuts and escalating poverty rates, particularly among children.

Legal Services Programs Turn Away Many More People Than They Can Serve. Income and other eligibility limits for legal services programs are strict. And even when a potential client falls within the guidelines, programs offer assistance in only certain types of cases. Yet the Access Commission and federal Legal Services Corporation report that legal aid providers are currently able to meet only a fraction of the demand for help. California programs supported by the LSC report that at least 75 percent of all people who meet the strict qualification standards and seek assistance regarding problems for which a legal services office provides service are currently being turned away, simply for lack of resources. Unquestionably, many more poor Californians who fall just outside the eligibility limits and program areas are not counted in this calculation. The Access Commission estimates that at least 80 percent of the legal needs of the state's poor are *not* being addressed.

The following table shows the figures, broken down by type of legal problem:

2005 California "Unable to Serve" Data by Type of Legal Problem

Types of Legal Programs	Unable to Serve	Advice/ Brief Service or Accepted for Representation
Consumer	25848	5538
Education	1734	228
Employment	9240	5766
Family	56142	13356
Juvenile	1422	138
Health	2850	13494
Housing	39072	16170
Income	7788	8376
Individual Rights	7788	24546
Other	18678	3324
Totals	170094	56994

Source: Legal Aid Association of California

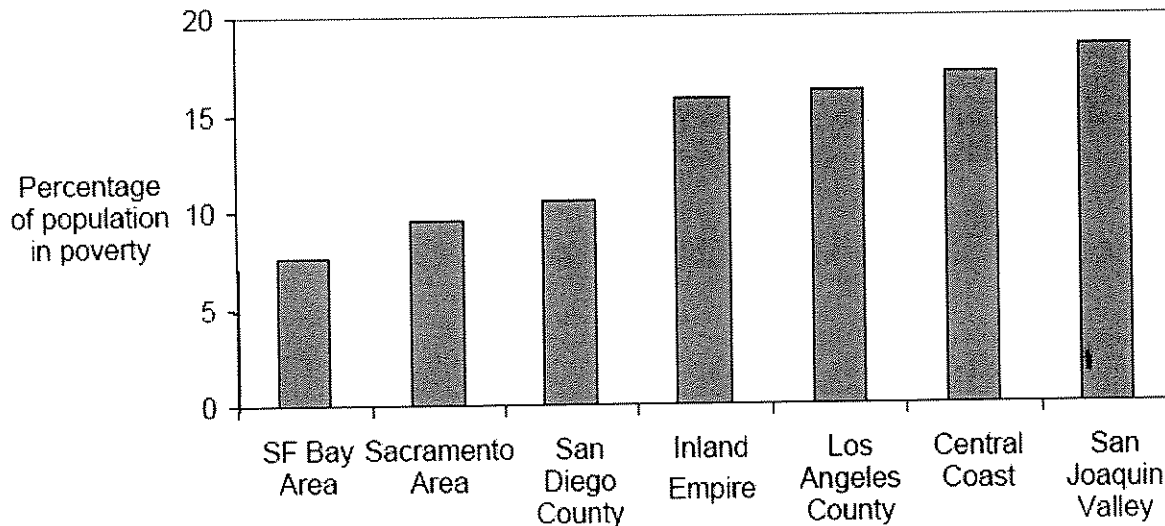
Poor Californians Have Far Less Access to Legal Services Than The General Public. Expressed in terms of the number of lawyers available, the figures are equally stark. The Access Commission reports that the number of legal aid attorneys available to assist the low-income population is a tiny fraction of the number of private attorneys providing civil legal services to the general population. According to federal poverty data, there is currently one legal aid attorney for every 8,373 poor people in California. By contrast, the number of attorneys providing legal services to the general population is approximately one for every 240 people – nearly 35 times higher. In other words, one-half of one percent of California lawyers is available to serve approximately 17 % of the population.

The Value Of Legal Services Per Poor Person In One Year Is About The Cost Of A Bar Membership Certificate – Or Half The Filing Fee For A Single Motion In Court. The extent of the problem can also be illustrated by measuring the value of the legal services being provided. As reflected in the following table, total resources for legal services programs in California averaged only a little over \$22.00 per poor person in 2003 (latest available data), and in some regions much lower. By way of comparison, the cost of a bar membership certificate (unframed) from the State Bar is \$25.00. The filing fee for a single motion in a civil matter is \$40.00.

TOTAL RESOURCES FOR LEGAL SERVICES PROGRAMS IN 2003				
REGION	POVERTY POPULATION 2000	% OF STATE TOTAL	LEGAL SERVICES RESOURCES	RESOURCES PER POOR PERSON
Bay Area	888,172	14.01%	38,085,629	42.88
Los Angeles	2,446,862	38.59%	57,651,670	23.56
Orange	405,041	6.39%	5,577,040	13.77
Northern California	682,303	10.78%	12,784,429	18.74
Central CA	764,751	12.06%	10,894,269	14.25
San Diego	503,152	7.94%	10,328,704	20.53
Inland Empire	648,565	10.23%	7,833,197	12.08
TOTAL	6,338,846	100.00%	143,154,938	22.58

The Distribution of Poverty and Legal Services Is Not Well Matched. Compounding the problem is that poverty and legal services resources are not equally distributed. As reflected in the table above, legal services resources are most available in the Bay area, and least available in the inland areas. Conversely, the Public Policy Institute of California reports that the Bay area has the lowest poverty rate of California's major regions at 8 percent (see chart below), while the San Joaquin Valley and other inland area have the highest poverty rates at or near 18 percent. It should be noted that these figures are based on a national standard that does not take into account the higher cost of living in California.

Regional Poverty Rates in California



Negative Consequences For Administration of Justice. Supporters state that a lack of representation not only disadvantages people with legal problems, it also burdens the justice system itself and impairs the administration of justice. The Judicial Council reports that California courts are facing an ever increasing number of parties who go to court without legal counsel, largely because they cannot afford representation. Unrepresented litigants typically are unfamiliar with court procedures and forms as well as with their rights and obligations, which leaves them disadvantaged in court and consumes significant court resources. Courts are designed to operate with trained legal counsel representing the parties. Our legal system is based on the principle that justice is best done when adversarial parties are represented by knowledgeable advocates who argue the strengths and weaknesses of a case before a neutral fact-finder. The legal system cannot work effectively and efficiently when parties lack even basic knowledge about their rights and the legal process. Commenters have noted that the dramatic increase in the number of parties that appear in court without a lawyer directly followed significant restrictions in federal funding for legal services organizations imposed by Congress in 1995. In effect, the policies of the federal government have simply shifted the cost of responding to the legal needs of poor people from federally-funded legal services programs to state-funded court and related legal services, and of course also put pressure on other social programs.

The Judicial Council comments that AB 2301 will improve access to justice for the poor by increasing the resources available to legal services organizations. While the Council is seeking to improve the availability of resources for self-represented litigants to proceed on their own, it notes that there are many litigants whose cases are too complex for self-representation to be effective. It concludes, "AB 2301 will provide State Bar members with an easy and efficient mechanism to contribute to legal services programs through their annual dues. Because attorneys have a professional responsibility to help meet the legal needs of the poor, it is appropriate to seek financial support for these organizations in this way. Moreover, because any contribution would be voluntary on the part of the member, no financial burden would be placed on an attorney who is unwilling or unable to contribute."

Professional Responsibility of Lawyers To Foster Access To Justice. The Chief Justice of the California Supreme Court, the Judicial Council and the State Bar have consistently emphasized the responsibility of lawyers to provide or otherwise enable at least 50 hours of pro bono legal services to the poor, including to contribute financial support to not-for-profit organizations that provide free legal services. The American Bar Association's Model Rules of Professional Responsibility likewise provide that every lawyer has a professional responsibility to provide 50 hours of pro bono legal services to those unable to pay, and to voluntarily contribute financial support to organizations that provide legal services to persons of limited means. (Rule 6.1.) The ABA rule states that such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. (*Id.*, Comment 9.)

Of course, many lawyers perform substantial pro bono services and/or make financial contributions in lieu of pro bono. However, many lawyers face challenges in providing pro bono services directly, and there is no statewide system to coordinate financial contributions lawyers may wish to make in lieu of direct provision of pro bono services. Certainly the private bar, acting on its own, cannot and should not be called upon to provide full civil representation for California's poor or to shoulder the full societal cost of funding legal services organizations. Nonetheless, the legal profession could take the lead in the effort to improve the justice system, and the State Bar can play an important role in helping lawyers help others.

Legal Services Fundraising In Other States. Although California's higher poverty rate makes the need greater here than they are in other states, California is not alone in confronting the shortage of funding for legal services. Other states have responded with a number of innovative measures, such as rules in Nevada, Maryland, Florida and Mississippi and a pending proposal in Illinois requiring every member to report their pro bono service hours and/or financial contributions. Other states – including Texas, Illinois, Wisconsin, Ohio, Minnesota, West Virginia and Missouri – have imposed rules mandating that bar members pay higher bar dues, typically \$50.00, to support legal aid programs.

Still other states have created more modest voluntary programs of the sort proposed by AB 2301 by which bar members can, if they so choose, make charitable contributions to support legal services programs when they pay their bar dues. These states include Alaska, Arizona, Georgia, Mississippi, New Hampshire, New Mexico, South Carolina, Utah, and Wyoming.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Bar Association
Alliance for Children's Rights
Asian Law Alliance
Asian Law Caucus
Asian Pacific American Legal Center
Bet Tzedek
California Association of Nonprofits
Conference of Delegates of California Bar Associations, Board of Directors
California Center for Law and the Deaf
California Commission on Access to Justice
California Judges Association

CRLA Foundation
Central California Legal Services
Centro Legal de la Raza
Child Care Law Center
Chinese for Affirmative Action
Consumer Attorneys of California
Disability Rights Legal Center
Disability Rights Education and Defense Fund
East Bay Community Law Center
HIV & AIDS Legal Services Alliance
Homeless Action Center
The Impact Fund
Judicial Council of California
Law Center for Families
Lawyer's Committee for Civil Rights of the SF Bay Area
Legal Aid Association of California
Legal Aid Foundation of Los Angeles
Legal Aid Foundation of Santa Barbara
Legal Aid of Marin
Legal Aid Society of Orange County
Legal Aid Society of San Francisco -- Employment Law Center
Legal Aid Society of San Mateo
Legal Center for Elderly and Disabled
Legal Services of Northern California
Legal Services for Prisoners with Children
Mexican American Legal Defense and Educational Fund
National Center for Youth Law
National Economic Development and Law Center
National Housing Law Project
Neighborhood Legal Services of Los Angeles County
Pro Bono Project
Protection and Advocacy, Inc.
Public Advocates
Public Interest Clearinghouse
Public Law Center
VLSP of Northern California
Western Center on Law & Poverty
Worksafe
One individual

Opposition

None on file

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