

March 2009

Supreme Court Hears Status Report on Civil Legal Services

The Supreme Court of Texas invited the Texas legal aid community to report on the status of civil legal services to the poor and the severe funding issues facing legal aid at a hearing held Dec. 10 in Austin. Recent hurricanes and a rise in poverty continue to strain the available resources for free civil legal services to poor Texans, explained legal aid stakeholders from federal, state and local programs.

Since it created the Commission in 2001, the Supreme Court's commitment to access to justice issues has continued to grow stronger, explained Chief Justice Wallace Jefferson. Justice Harriet O'Neill, the Court's liaison to the Commission, explained how the availability of basic civil legal services "...can mean the difference between life and death."

O'Neill was recognized for her steadfast commitment to access to justice issues, and reminded everyone that while a lot has been accomplished for legal services in Texas, there is still much progress to be made.

James B. Sales, chair of the Commission, detailed initiatives accomplished by the Commission since last reporting to the Court in 2004, including the IOLTA comparability rule, student loan repayment program and law student internship program, a trial academy for legal aid attorneys, corporate counsel initiatives and technology grants to legal aid providers.

Helaine Barnett, president of the Legal Services Corporation, provided a national perspective on the delivery of legal services. She presented findings from



a recent nationwide study that indicates half of all qualified legal aid applicants are turned away due to the lack of resources available to help them. The devastating impact of falling interest rates on IOLTA funding was reported by Texas Access to Justice Foundation Chair Richard L. Tate.

Additional testimony by State Bar of Texas President Harper Estes, legal aid program directors and other stakeholders was also offered. Some of the most moving

testimony came from Texans who have directly benefited from legal aid services.

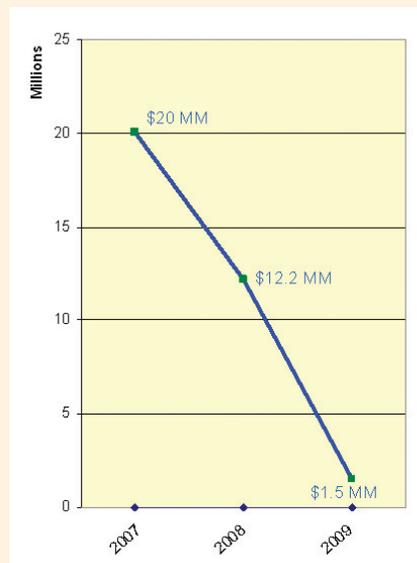
Several solutions for funding issues discussed at the hearing involved leveraging precious resources and partnerships in the private sector.

A copy of the written report presented to the Court is available at www.TexasATJ.org and the hearing can be viewed at: www.stmarytx.edu/law/webcasts.

IOLTA Funding in Crisis

In December 2008, the Federal Reserve lowered its benchmark interest rate to an all-time low range of zero to .25%. This decrease in the interest rate has had a devastating impact on interest on lawyers' trust accounts (IOLTA), which is a major source of funding for civil legal aid in Texas. With little interest accumulating, funding for legal aid programs will be drastically cut or eliminated. Conservative estimates for IOLTA funds in 2009 are less than \$1.5 million – down from \$20 million in 2007.

The Texas Access to Justice Foundation (TAJF), which has administered funds from the IOLTA program for 25 years, supports 40 non-profit legal services programs that rely upon IOLTA funding to help low-income families meet very basic civil legal needs. Legal aid to low-income Texans with civil legal problems, including landlord-tenant issues, foreclosure defense, family law matters, health and employment law, access to public benefits and consumer issues, is in serious jeopardy.



* 2009 figure is a projection

Chair's Report – A Plea For Heroes

By James B. Sales, Commission Chair



"Every noble work is at first impossible"

– Thomas Carlyle

When the Supreme

Court of Texas formed the Texas Access to Justice Commission in 2001, the state of Texas confronted a situation in which approximately three million poor and low-income Texans qualified for legal help. Seven years later, at the end of 2008, the number of poor and low-income Texans had increased to more than five million – almost a fifth of the state's population. Today, this unanticipated demand has simply overwhelmed our justice system. These numbers neither include the newly impoverished resulting from the recent economic collapse

or those still suffering the devastation of Hurricane Ike.

Even before the current economic tsunami, all legal service providers throughout the state, collectively, were able to provide legal assis-

tance to approximately 25 percent of those qualified to seek legal help. The financial resources critical

to supporting the demand for legal assistance have relied on the funds generated by the IOLTA program as supplemented by the Comparability Rule. In May 2008, the income from the IOLTA program, bolstered by the Comparability Rule, was projected to generate

"The challenge to our profession and system of justice has never been greater nor has it ever demanded more from lawyers to pursue service for the public good."

approximately \$28 million. Suddenly, when the Federal Reserve lowered its benchmark interest rate to a range of zero to .25 percent in December 2008, the \$28 million projected for legal

services collapsed to an amount near \$1.5 million. Essentially, the IOLTA funds will now produce barely

enough revenue to cover administrative costs. As expert projections suggest, the economy is not likely to improve for at least one, and possibly two years. This means that projections for IOLTA revenue remain abysmal.

The reality is rather stun-

ning: resources essential to sustain delivery of legal services to poor and low-income Texans have collapsed in a dramatic and alarming fashion, even as demand for legal services has accelerated at a correspondingly astonishing rate. Fundamentally, legal aid lawyers are challenged to do more and more with less and less. This clearly is not a sustainable effort.

We all respect the fact that the rule of law forms the foundation of our society. And, an equally important corollary, our system of justice represents the mechanism by which the rule of law is affirmed and applied. As a matter of right, therefore, every citizen should be entitled access to the justice system. Otherwise, the supremacy and majesty of the rule of law is little more than a meaningless

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Serving Those Who Served

The Houston Bar Association (HBA) is serving those who have served our country through its Veterans' Legal Initiative. HBA president, Travis Sales, announced the veterans' initiative in July, and since then, the program has served nearly 575 veterans with legal advice and representation.

"Providing legal services to veterans, especially to those in need, is a way we as lawyers can uniquely say thank you to our veterans for their service and sacrifice for our country," says Sales.

The HBA and its Houston Volunteer Lawyers Program (HVLV) hold monthly legal advice clinics at the DeBailey

VA Medical Center, where volunteer attorneys provide advice and counsel to 20-25 veterans each Friday afternoon. The program also provides speakers and legal advice clinics for nearly 400 veterans who live in local residential facilities.

In February, the HBA held legal clinics simultaneously at VFW Post 8790 and American Legion Post 560. More than 20 volunteer attorneys, family and disability specialists, support staff, and staff from the HBA and HVLV assisted at each of the clinics.

For more information on the HBA's Veterans' Legal Initiative, visit www.hba.org.



Members of the Commission's ATJ Technology Committee were invited to present "Meeting the Technology Need: How Texas Raised the Technology Bar" at the LSC Technology Initiative Grants Conference in January in Austin. Pictured left to right: Nick Altizer of Lone Star Legal Aid; Mark Hendrick of Baker Botts L.L.P.; Helaine Barnett, President of the Legal Services Corporation (LSC); and Jeff Edwards of Evans Edwards L.L.P.

25 Years of Preserving Access to Justice

By Richard L. Tate, Foundation Chair



As we commemorate the 25th anniversary of the Texas Access to Justice

Foundation this year, we recognize that this is one of the most challenging times facing the Texas IOLTA Program. While we have become the largest funding source of civil legal aid in the state, the dramatic interest rate decline has drastically changed our future ability to

fund legal aid.

Over our 25-year history we have awarded more than \$200 million in grants to legal aid organizations that have helped an estimated six million Texans receive basic civil legal services. The current economic conditions will severely affect the 40 nonprofits that rely on IOLTA funding to support basic civil legal services in their communities and we have prepared them for significant decreases in funding for 2010. With increased demands from

Hurricanes Ike and Dolly, legal aid programs are struggling to help the less fortunate with basic legal issues.

We are proactively working on many efforts to help alleviate the impact of the decline in funding; including rules changes, legislative issues, and attorney involvement.

It is now more important than ever, as the economy spirals downward and the number of persons needing legal services increases, to preserve legal aid in Texas.

Here are some ways you can help in access to justice issues:

- Donate to your local legal aid program or the Texas Access to Justice Foundation
- Take a pro bono case
- Sponsor TAJF's 25th Anniversary Gala – May 27, 2009
- Bank at a Prime Partner, a bank that pays higher interest rates on IOLTA accounts
- Make a contribution to access to justice on the bar dues statement you receive in May.

www.teajf.org

New IOLTA Comparability Rule

The Supreme Court of Texas acted swiftly in helping battle the dramatic decline in interest income by amending the "Rules Governing the Texas Access to Justice Foundation" on Jan. 13, 2009. In 2006 the Court required banks holding Interest on Lawyers' Trust Accounts (IOLTA) to pay comparable rates to those accounts as they do for similar interest-bearing accounts. Among the alternatives to achieve that, banks could utilize a "safe harbor" that pegged interest to the Federal Reserve Bank's rate for overnight loans among banks.

"Because the federal overnight bank-loan 'rate' is no longer a rate but a range, it no longer provides a reasonable benchmark for comparability," said Justice Harriet O'Neill, the Court's liaison to the Texas Access to Justice Commission.

The amended rule makes the benchmark rate the higher of 65 percent of the

federal funds target rate, or 0.65%, for banks that choose the option.

"Without the change," she said, "the money we distribute to help the poor with their legal problems would cover no more than overhead. And in this economy, when more and more clients face foreclosures, fallout from the hurricanes, and other hardships that may demand legal help, this rule change is a slight but needed boost," Justice O'Neill said.

The Foundation is working with financial institutions to comply with the changes by March 1. Financial institutions that go above and beyond the requirements of the rule by paying the higher of one percent or 75 percent of the federal funds target rate are Prime Partner banks. Please visit www.teajf.org for the most current information about eligible banks and Prime Partner banks.

Prime Partners in Justice Awards

The Texas Access to Justice Foundation (TAJF) presented Greenberg Traurig LLP, and Gibbs & Bruns L.L.P., with its first Prime Partners in Justice Award in recognition of moving the law firms' IOLTA accounts to Texas-based Amegy Bank, which is a Prime Partner Bank.



Wendel Skolaski, Senior Vice President & Manager, Amegy Bank; Joe Dodson, Senior Counsel, Gibbs & Bruns, L.L.P.; Texas Supreme Court Justice Harriet O'Neill; TAJF Chair Richard L. Tate



Pati McCandless, Of Counsel, Greenberg Traurig LLP; Justice O'Neill

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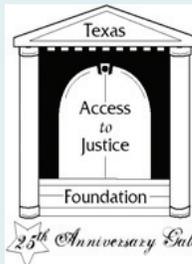
Chair's Report

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abstraction – particularly to those who cannot afford legal representation.

I believe this is one of those unique moments in time when our honored profession has a responsibility to respond. This can only be achieved if we individually volunteer to participate in the process. As Roscoe Pound declared, "public service is the primary purpose of pursuing the learned art of the law." Otherwise, the practice of the art of law is little more than a business pursuit. The challenge to our profession and system of justice has never been

greater nor has it ever demanded more from lawyers to pursue service for the public good. Yet, those of us privileged to practice are presented with an incredible opportunity to perform noble deeds that will turn seemingly impossible adversity into real hope for those who are currently confronted with no hope. As the essayist Thomas Carlyle astutely observed, "every noble work is at [the beginning] impossible." Indeed, it is especially these difficult times and near impossible circumstances that plead for lawyers to be heroes.



Please join us May 27, 2009
AT&T Conference Center, Austin
**Texas Access to Justice Foundation
25th Anniversary Gala**

To sponsor the event and help preserve access to justice, call 512-320-0099 or visit www.teajf.org/gala

New Commission Director



Elma Garcia has been named executive director of the Texas Access to Justice Commission. Garcia joined the Texas Lawyers Care (TLC) department of the State Bar of Texas in 2007 as an administrative attorney and became director of Texas Lawyers Care in 2008. Prior to joining the State Bar, she was a program director for the Texas Advocacy Project. Garcia replaces Emily Jones who retired recently after serving as the Commission's executive director since its inception.