

**Legal Services Planning Commission Recommendations Addressing Resources
Adopted and Possible Additions
DRAFT 4-6-04**

ADOPTED

1. Given the significant well documented cut backs in funds available for civil legal services and continuing very significant unmet needs for legal services to address critical legal problems of low-income persons, the commission **urges the legislature to appropriate additional funds** for such services in accordance with the existing statutory allocation formula and processes. The commission further encourages the legislature to look to an increase in the surcharge on real estate filing fees as a funding source for this appropriation. The commission notes the nexus between legal services and a surcharge on real estate filing fees, given that major areas of legal problems experienced by low-income persons include homelessness, substandard housing, and lack of affordable housing opportunities. The commission further understands that the nexus was recognized by the legislature in 1992 and 1993 when the first surcharge was passed. The commission recommends that an **increase to legal aid funding not be lower than \$2 million per year.**

In the event that additional funding is obtained from the Minnesota legislature and that it is allocated by reference to the 85/15 formula in Minn. Stat. 480.242, that allocation should not be treated as implying an allocation decision by the commission. It is intended that the allocation issue for future appropriations be open for fresh consideration.

In the event that such additional funding is obtained and allocated by the 85/15 formula in the statute, the commission recommends to the Legal Services Advisory Committee that as to the 15% of this appropriation increase, the full amount of the increase administered by LSAC be allocated to meritorious applications directed to the delivery or support of pro bono services. **ADOPTED 12-18-03**

2. The subcommittee recommends that the commission support **requiring reporting of pro bono** and that the commission encourage the MSBA to support this as well. The consensus was that reporting should include dollars contributed to legal aid/pro bono programs as well as hours. **ADOPTED 3-25-04**

3. The commission recommends a **\$75 increase in the attorney registration fee** with one-third earmarked for pro bono programs with allocation to be done by the Legal Services Advisory Committee to civil legal services programs serving eligible clients. The one-third for pro bono should be a minimum and not limit pro bono programs' ability to vie for a larger share of the remainder of this proposed increase and any other new sources of funds. It is the intention of the commission that this not be a funding source for law school programs other than the Minnesota Justice Foundation. The increase would be only \$25 for new and low-income lawyers. The commission supports the resources necessary to implement required pro bono reporting and recommends that one dollar should be dedicated to covering costs to the Court of implementing required reporting of pro bono. The commission also should seek MSBA and broad bar support for this recommendation. **ADOPTED 3-25-04**

OTHER PROPOSALS TO CONSIDER

1. Maintain and Expand Legislative Funding

Consider setting a specific appropriation base, based on identified needs for legal services (note that Penn-Stageberg recommended an approach that would have brought the funding base to \$8,400,000 by July 1999 -- sources proposed included increasing the real estate filing fee, civil court filing fee, and increase in annual filing fee for professional corporations.

Establish a realistic amount based on best information regarding important unmet needs.

Establish annual or biannual goals to reach recommended funding base.

2. Expand other Funding Sources.

(a) LTAB and MSBA continue to work to increase **interest rates on IOLTA accounts** (e.g., US Bank and other banks with significant number of accounts/deposit amount);

(b) Note creation and need for further development of the **MN Legal Aid Foundation Fund** which has assets of over \$1 million and has contributed approximately \$100,000 to IOLTA for statewide distribution;

(c) Recommend further work on **cy pres** funding; education of judges and lawyers; identification of class and collective action lawsuits and approaches on settlement;

(d) Recommend that the MSBA work with the Attorney General's Office and private litigants who enter into **large settlements** to consider having a portion of the settlement proceeds go to fund legal aid. Groups such as the Minnesota Trial Lawyers and Defense Lawyers Associations could also be approached with this recommendation. (copied from Arizona);

(e) Explore the possibilities of providing **sliding fee services** to persons between 125% and 250% of poverty as a means of enhancing access and providing resources to serve eligible clients. (Note Penn-Stageberg recommended a \$10 administrative fee, subject to a hardship exception and recommended that programs report to LSAC with respect to their experiences with such fees);

(f) **Pro Hac Vice Fees.** Minnesota could consider imposing a fee and allocating a portion to fund legal aid. (MN currently has no fee. See Exhibit 1, page 4). For example, in Arizona those appearing pro hac vice are required to pay a nonrefundable application fee equal to 85% of the current registration fee paid by active members of the State Bar of Arizona with the proceeds going to legal aid. The Mississippi Supreme Court recently implemented a similar program that raises funds for

legal aid from fees levied on out-of-state attorneys who practice in Mississippi. Maryland, Oregon and Texas have implemented similar programs in 2002 or 2003; and

(g) Explore raising money for legal aid from the general public.

3. Consider **coordinated fundraising** (for better access to private fundraising resources throughout the state) – already on the referred list.

Consider statewide or regional fundraising. Consider **greater staffing for statewide resource development** efforts to be housed either at the to-be-developed Keystone entity or the MSBA to potentially apply for grants from large corporations, foundations, federal government;

Encourage legal services providers to **partner with each other AND with other agencies serving similar clients** in applying for government and foundation grants. Where another agency is the preferable applicant, work with that agency to include contracting some funds to legal aid in the budget.

4. Continue to have the MSBA provide technical support to assist programs with fundraising efforts and efforts to increase pro bono services.

5. Recruit and use **public relations resources** (pro bono to the extent possible) to better educate the bar and the public about legal services including pro bono – with the goal of increasing pro bono support from the bar and financial support from the bar and the public.

6. Continue **coordination and improvement of fund allocation processes**.

(a) In March 2004 LSAC and LTAB distributed a new joint application form which will reduce the need for filing separate applications and which requests more detailed case and budget information, which should assist both the funding and planning processes. Coordination and improvement should be continued.

(b) Consider joint LTAB/LSAC funding process

(c) Consider implementing statewide peer review process

7. Work on **coordinated expense reduction** programs

(a) Health insurance increases are the single largest increase (up nearly \$1,000,000 for the Coalition programs from 1998 to 2002). A few states (Ky, Okla. MD) have allowed for the inclusion of legal services programs in the state employees' programs.

(b) Examine other potentially "pooled" support; e.g. human resources, technology, training, case management, financial accounting, research, etc.

Pro Hac Vice in Minnesota

Minnesota Code Section 481.02

Subd. 6. Attorneys of other states. Any attorney or counselor at law residing in any other state or territory in which the attorney has been admitted to practice law, who attends any term of the Supreme Court, Court of Appeals, or district court of this state for the purpose of trying or participating in the trial or proceedings of any action or proceedings there pending, may, in the discretion of the court before which the attorney appears in the action or proceeding, be permitted to try, or participate in the trial or proceedings in, the action or proceeding, without being subject to the provisions of this section, other than those set forth in subdivision 2, providing the state in which the attorney is licensed to practice law likewise grants permission to members of the state bar of Minnesota to act as an attorney for a client in that state under the same terms.

Rule 5. Appearance by Out-of-State Lawyers

Lawyers duly admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by a lawyer duly admitted to practice in the State of Minnesota, and (b) such lawyer admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone. In a subsequent appearance in the same action the out-of-state lawyer may, in the discretion of the court, conduct the proceedings without the presence of Minnesota counsel. Any lawyer appearing pursuant to this rule shall be subject to the disciplinary rules and regulations governing Minnesota lawyers and by applying to appear or appearing in any action shall be subject to the jurisdiction of the Minnesota courts.

Task Force Comment--1991 Adoption

This rule is derived from 3rd Dist. R. 1. This rule is intended to supplement Minnesota Statutes, section 481.02 (1990) and would supersede the statute to the extent the rule may be inconsistent with it. This rule recognizes and preserves the power and responsibility of the court to determine the proper role to be played by lawyers not admitted to practice in Minnesota.

Minnesota Rule of Appellate Procedure 143.05 Attorneys

Subdivision 1. Admission Required; Admission Pro Hac Vice. All pleadings filed with the appellate courts must be signed by an attorney licensed to practice in this State, or admitted pro hac vice to practice before the appellate courts. No attorney may present argument to the appellate courts unless licensed to practice in this State or admitted pro hac vice to appear before the appellate court as provided for by this rule.

An attorney licensed to practice law in Minnesota may move for the admission pro hac vice of an attorney admitted to practice law in another state or territory. The motion shall be accompanied by an affidavit of the attorney seeking pro hac vice admission attesting that he or she is a member in good standing of the bar of another state or territory.