

Fee hike could halt staff cuts

by Peter Vieth

Published: January 2nd, 2012

Legal aid advocates will ask the Virginia General Assembly next month to approve a temporary \$4 filing fee increase for civil actions to make up for some of the cuts in federal grants that support legal aid offices around the state.

The Assembly also will again be asked to remove a barrier to mandatory collection of interest on lawyer's trust accounts (IOLTA), a move that failed in the last legislative session.

Virginia now collects a fee of \$10 for every civil action filed in general district and circuit court, with \$9 going to legal aid programs and \$1 to district courts to assist indigent litigants. Del. David Albo, R-Fairfax, said he will introduce a budget amendment to raise that fee to \$14 to boost revenues for the state's regional legal aid programs.

"Legal services are just like every other kind of social service. When times are tough, they end up getting more business," Albo said.

Putting the fee increase in the budget, instead of in the state code, would limit it to the two-year budget cycle, Albo said. "We're looking to bridge the gap for two years until the economy kind of picks up," he said.

The expected budget amendment would be linked directly to jobs for lawyers and staff at one of the largest of those programs. Blue Ridge Legal Services, with four offices in the Shenandoah Valley, has notified five employees they will be laid off if the Assembly does not approve the additional fees, said John E. Whitfield, BRLS executive director.

Other legal aid workers around the state also have jobs on the line. As many as 20 attorneys and 10 support staff could be cut without some relief from the Assembly or private sources, said Mark D. Braley, executive director of Legal Services Corporation of Virginia. LSCV administers funding for nine direct-service programs.

The potential cuts – representing 16 percent of the 125-attorney staff – result from Congressional budget slashing. Grants to state legal aid programs were reduced 15 percent this fall. That reduction followed a 4 percent cut earlier in the year. Together, the federal belt tightening resulted in a \$1.2-million loss for the Legal Services Corp. of Va. and the nine regional programs, the LSCV reported.

While legal aid leaders plan their pitches for funding, Braley said the legal aid system is "on triage," taking only the most serious cases.

Braley compared the operation to an emergency room. "People who are losing the roof over their head or can't afford to feed their children or are facing domestic violence are moved to the front of the line," he said in a news release.

Virginia legal aid programs already have frozen wages, cut retirement benefits, and reduced staff through attrition, LSCV said in a news release.

At the Harrisonburg-based BRLS, Whitfield said his organization faces a \$180,000 shortfall in a budget of less than \$2 million. "We don't have that kind of money in reserves," he said.

The BRLS board on Dec. 6 approved a plan that would cut the staff from five to three at offices in both Winchester and Roanoke, Whitfield said. The Lexington BRLS office would go from three to two and one-half positions. Three attorneys already have been cut from a staff of 12 at the Harrisonburg office, Whitfield said.

Whitfield said the board approved notifying the employees whose jobs are on the line, advising them that they will get 60-day layoff notices triggered by Assembly action to kill the fee increase.

"Their fate is directly tied to the fate of the filing fee bill," Whitfield said.

With nearly a third of his attorneys gone, Whitfield said services would become "a farce."

"We'll be forced to turn away many more people than we can help," he said.

The IOLTA measure would revive a bill that went down on a tie vote in a House committee last year. Virginia lawyers currently have the option of using their trust accounts to generate interest for legal aid, but they are not required to do so. To revive mandatory participation, the General Assembly must first remove a statutory prohibition. The Supreme Court then would have to give its approval.

Braley said he will tell legislators the need is greater than ever. "IOLTA is the least intrusive way to try to help our funding," he said.

It is not clear how much additional legal aid money would be raised through mandatory IOLTA. No figures are available on the number of Virginia lawyer trust accounts that have "opted out" of IOLTA participation.

Congress did not offer any direct explanation for its cuts, and legal aid advocates were hesitant to criticize. "It's hard to understand what the motivation for the cuts is," Whitfield said, saying reductions in federal legal aid money exceeded cuts for other agencies.

The cuts do not affect administration at the national Legal Services Corp., said LSC president James J. Sandman. He said there are five line items in the LSC budget as appropriated by the Congress, with 95 percent of the funding going for "basic field grants" to 136 regional programs. That is the only category that was cut, he said.

Rep. Frank Wolf, R-10th, of Vienna urged private sector lawyers to help close the gap. Wolf, who chairs the House appropriations subcommittee that reviews the federal grants, told The Wall Street Journal legal aid agencies should look to resources from large law firms, state bar dues and law schools.

Virginia State Bar dues do not support legal aid offices, said Karen Gould, VSB executive director, although VSB dues notices include requests for voluntary legal aid contributions.

Private resources are not readily available, legal aid lawyers said.

Large law firms may have well-organized pro bono programs, but they are often far removed from clients who need help. It's a "geographical mismatch," said James J. Sandman, president of the national Legal Services Corp. Much of Virginia's poverty is in the southwest part of the state, Sandman said, "but that's not where most of the lawyers are."

Similarly, Sandman said, law schools establish poverty law clinics that focus on needs in their own local community. "There is a role for them, but it's not a panacea," he said.

Private lawyers often lack the needed expertise to handle domestic crises, foreclosures and government benefits, legal aid lawyers said.

Involving the private bar requires case screening, Whitfield said. With a bare-bones staff, there is no one to interview potential clients to identify their legal issues for referral to private attorneys. "I don't see pro bono as a solution for filling the gap," he said.

Wolf, considered a supporter of federal funds for legal aid, has in the past urged the national LSC to avoid any suggestion of political activity to fend off conservative criticism. Braley said he was unaware of any political attack on legal aid funding in recent years. Of Wolf, he said, "He's had to be part of that group that's cutting funds around the country."

Sandman, a former large firm attorney in Washington, has been at the helm of LSC for just a year. Asked about his game plan for softening the Congressional attitude toward his agency, he chuckled. "We talk to members, explain why access to justice is a fundamental American value," he said, adding, "We have our work cut out for us."

Wolf did not return a call for comment to his office.

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