

Bar Associations Unite to Advocate for Legal Aid, Including Mandatory IOLTA

by Dawn Chase

Virginia's largest voluntary bar associations have united to support increased funding for legal aid, in response to a statewide crisis in availability of civil legal help for the poor.

The associations, which represent a cross-section of legal practices, have signed a resolution to support a bill in the 2013 General Assembly that would pave the way for a mandatory Interest on Lawyers' Trust Accounts (IOLTA) program, which would significantly increase the non-tax income stream to legal aid providers. Currently, lawyers and law firms participate in the IOLTA program on a voluntary basis.

The Virginia Bar Association and Virginia Trial Lawyers Association hosted a meeting of statewide associations in October to discuss how the bar as a whole can help legal aid. The Virginia Association of Defense Attorneys and Virginia Women Attorneys Association joined the VBA and VTLA in the resolution that urges the General Assembly to increase legal aid's appropriations from general revenue and from civil filing fees.

The associations plan to support efforts to lobby the General Assembly to repeal § 54.1-3915.1 of the Code of Virginia, which prohibits the Supreme Court of Virginia from making a rule that would require attorneys to participate in IOLTA.

Legal Services Corporation of Virginia has long sought relief from the statute. Last year, the House Courts of Justice Committee came within one vote of approving the lifting of the prohibition, despite opposition from the Virginia Bankers Association.

At the meeting of statewide bar leaders, Jack L. Harris, executive director of the VTLA, reminded the group,

"When the voluntary bar associations work together, they really can and have achieved some amazing things."

In recent years, the associations successfully joined forces to win an increase in fees for court-appointed criminal counsel and elimination of a freeze on the funding of judicial vacancies. They united to ward off an attempt by the governor to take the reserve fund of the Virginia State Bar, which is funded by lawyers' dues, and add the money to the state general fund. When the legislature decided to redraw judicial boundaries, the associations worked with the judiciary to ensure the changes will be effective and efficient.

The associations currently are supporting a "payee notification" proposal designed to protect clients from attorney theft of the proceeds of insurance settlements.

Harris urged the bar leaders to now come to the support of legal aid, which has suffered financially in the recession and now has fewer employees to serve a greater poverty population.

LSCV Executive Director Mark D. Braley, with support from the Virginia Bar Association, has been very successful in convincing the General Assembly to maintain and even increase the state's financial support through the recession, but it's not enough to keep up with demand for services or the staff losses caused by reductions in federal funding and IOLTA interest rates.

"To take it to the next step involves all of our commitment to this," Harris said.

With the repeal of § 54.1-3915.1, LSCV would be free to petition the Court to require lawyers to deposit client funds held in trust for a short period of time into interest-bearing

IOLTA accounts, where the interest would be paid to LSCV. The Court would do this through its rule-making process, which includes opportunity for comment.

Currently, the IOLTA program in Virginia has an opt-out provision. Some lawyers keep short-term trust funds in non-IOLTA accounts, which do not pay interest. By law, neither the lawyer nor the client can keep interest earned on those accounts.

"[A] mandatory IOLTA program would place no additional administrative burden on attorneys or banks and would generate additional interest revenue funding for legal aid programs instead of allowing trust funds to lie fallow in non-interest-bearing accounts," the Resolution in Support of Increased Funding for Legal Aid states. Banks are free to decline to offer IOLTA accounts.

VBA President Hugh M. Fain III worked for the IOLTA bill in the 2012 General Assembly. He believes that a united bar will send a powerful message to the legislators who have opposed the bill and could overcome the resistance of the bankers to mandatory IOLTA.

He observed that the District of Columbia and all states that border Virginia have mandatory IOLTA, and the big banks are used to the mandatory IOLTA rules that are in place in forty-five states.

The number of eligible client trust accounts that are not in IOLTA accounts is not known. Braley said that other states that went mandatory at least doubled their IOLTA revenues.

In the present economy, making IOLTA mandatory would not solve legal aid's financial woes. Virginia IOLTA now produces less than \$50,000 a month in



Jack L. Harris

revenue from interest — a drop of more than \$4 million since 2006–07, before the recession hit.

But when interest rates pick up again and home sales increase, IOLTA income will grow and again become part of legal aid's financial backbone.

John E. Whitfield, executive director of Blue Ridge Legal Services, outlined other dismal statistics behind legal aid's crisis:

- The poverty population has increased by 32 percent over the last decade.
- The legal aid staff statewide has decreased by 18 percent since 2009, through attrition and layoffs. The ten programs have 32 fewer attorneys, and 11 fewer support staff.
- Access to legal services for the poor in Virginia is vastly limited. There are 349 Virginians per active attorney in



Hugh M. Fain III

Virginia but there are 6,184 poor Virginians per legal aid attorney.

- Federal funding for legal aid has been severely reduced in recent years and has now reached its lowest level in inflation-adjusted dollars since that funding source was initiated in 1976. Those cuts exceeded a million dollars last year.
- Filing fee revenue has dropped more than \$500,000 a year.
- Reductions in grants and private funding are more than \$300,000 a year.
- Legal aid programs statewide are on triage. Clients who would have received representation in the past are now being offered advice only, to help them represent themselves. Many more are not receiving any service.

- With so few staff, programs are having difficulty managing the pro bono assistance that has come forward in response to the need.
- The Emporia legal aid office closed in 2012, and program directors are considering closing others. The time may soon come when legal aid services are not available to Virginia residents in all localities, as they are now.

The VBA not only has lobbied on behalf of LSCV, but also has led an effort to improve the availability and efficiency of pro bono service statewide. “We view support for legal aid as improving the administration of and access to justice,” Fain said.

At the statewide bar meeting, “We were all very alarmed about the statistics. The justice gap is growing.”

“There’s no question that legal aid is fighting for its survival, fighting to keep the doors open, literally,” Harris said.



Dawn Chase is director of communications for Virginia's legal aid system. She works at the Virginia Poverty Law Center, 700 East Main St., Suite 1410, Richmond, Virginia 23219. <http://www.vplc.org>

Free and Low-Cost Pro Bono Training

Visit the Pro Bono page on the VSB website for free and low-cost pro bono training and volunteer opportunities: http://www.vsb.org/site/pro_bono/resources-for-attorneys