



**2014**  
**TASK FORCE ON**  
**LEGAL AID FUNDING**  
  
**FINAL REPORT**

*Adopted by the CEJ Task Force  
on June 3, 2014*

## **Introduction**

In January 2014, the Campaign for Equal Justice convened a Task Force on Legal Aid Funding to address Oregon's legal aid funding crisis. The purpose of the Task Force was to set goals to achieve minimally adequate funding for legal aid. Chaired by Mark Wada and Ed Harnden, the Task Force brought together the Chief Justice, members of Oregon's Legislature, the Attorney General, the Secretary of State, Oregon's legal aid programs, partner organizations including the Oregon State Bar and the Oregon Law Foundation, Oregon foundations, and the corporate community to address the civil legal justice gap in Oregon – the unmet civil legal needs of the poor and elderly. (A full list of participants is included in the Appendix to this report.) The Task Force considered current sources of funding for Oregon's legal aid programs and ideas for new sources for funding. After researching and discussing options for increased funding, the Task Force set short and long-term goals to increase legal aid funding by \$15 million over the next ten years.

## **Oregon's Legal Aid Programs**

Legal aid provides free civil legal services to low-income and elderly Oregonians. Legal aid plays a critical role in providing access to justice and a level playing field for low income people statewide. Legal aid clients need legal aid's help keeping themselves and their children safe from domestic violence, protecting their homes, getting food, finding medical care, and supporting their families. About 40% of the cases are family law cases, usually helping the victims of domestic violence to obtain and enforce restraining orders and create a stable home environment for their children. Recent studies have shown that access to legal services is essential in the process of ending domestic violence. Our legal system is complex, and courts can be like a maze for non-lawyers. Without lawyers, people cannot meaningfully access the legal system to present meritorious claims and defenses.

Oregon's legal aid programs consist of two statewide programs, Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC); and two countywide programs, the Lane County Legal Aid and Advocacy Center (LCLAC) in Eugene and the Center for Non-Profit Legal Services (CNPLS) in Medford. Services are provided to low-income clients through community based offices located in 17 communities throughout Oregon.

## **Legal Aid's Funding Crisis**

Studies of the legal needs of low-income people have identified certain minimum standards necessary to provide access to justice for low-income populations. The minimal level of staffing necessary to provide access to justice has been determined to be two lawyers for every 10,000 poor persons.

In 2000, an assessment of the civil legal needs of low-income Oregonians documented that there was significant unmet need for legal assistance and that lower-income people obtained legal assistance for their problems less than 20% of the time. Two surveys conducted in Oregon since that time confirm this conclusion. Since those surveys were conducted, the low-income population in Oregon has increased dramatically. Between 2000 and 2011, the number of people in Oregon who are eligible for legal aid grew by 61.5%. Oregon had the eighth highest increase in poverty during that period compared to other states. Oregon's legal aid programs are now tasked with serving 850,000 eligible individuals who live across the 98,381 square miles that comprise Oregon.

At the same time that the number of eligible clients was growing, and the severity of the need was increasing, legal aid was shrinking statewide. In a perfect storm of funding cuts, legal aid's funding from most major sources declined in the past three years, resulting in the closure of two legal aid offices and a 20% reduction in staffing. Overall, total funding for Oregon's legal aid programs from all sources was roughly \$14.8 million in 2012 and was roughly \$15 million in 2013.

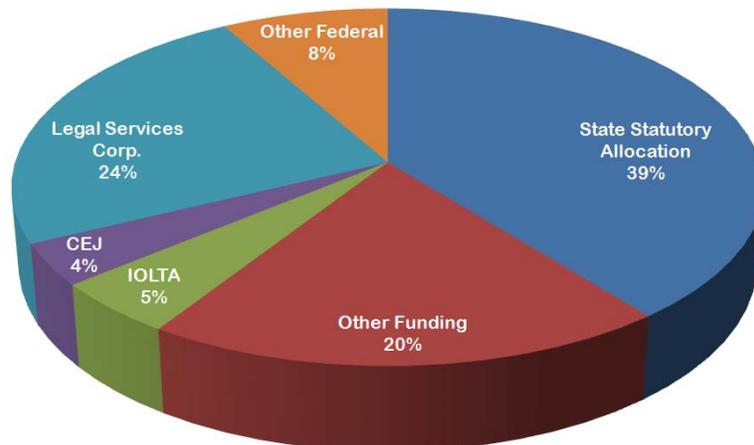
The current legal aid crisis in Oregon leaves many, or even most, low-income families in Oregon without minimum access to legal aid. Oregon’s legal aid programs now estimate that lower-income people obtain legal assistance for their problems less than 15% of the time. There are currently 90 legal aid lawyers to serve the 850,000 people in Oregon whose incomes are low enough to qualify for assistance. To provide minimum access to justice, Oregon should have two legal aid lawyers for every 10,000 individuals who are eligible for services; Oregon currently has one legal aid lawyer for every 9,444. (By comparison, there is approximately one licensed attorney for every 311 people living in Oregon.)

### Funding for Oregon’s Legal Aid Programs

**Overview of Funding:** Oregon’s legal aid programs are a state, federal, and private partnership. The four programs receive funding from about 80 different sources, but the four primary sources are the following:

- OSB Legal Services Program--State Statutory Allocation, pursuant to ORS 9.572, 39%;
- Federal Funding through the Legal Services Corporation (LSC), 24%;
- Interest on Lawyer Trust Accounts (IOLTA), 5% (distributed by the Oregon Law Foundation); and
- Campaign for Equal Justice’s Annual Fund drive, 4%.

The chart below reflects the breakdown of funding from 2012.



What follows here is a more detailed description of the major sources of funding.

**State funding:**

- **Filing Fee/Statutory Allocation:** Beginning in 1977, a portion of legal aid’s funding has come from state court filing fees. Oregon was the second state in the nation to provide funding for legal aid through state court fees, and 32 states have followed suit. In 1996, at the urging of then Senator Neil Bryant, the legislature adopted ORS 9.572, which created the Oregon State Bar Legal Services Program (OSB LSP) to ensure independent government standards, guidelines, evaluation, oversight, and enforcement for the nonprofit corporations providing legal aid. The legislation required the OSB to manage the funds, develop Standards and Guidelines for providers, and create a LSP Committee to provide ongoing oversight and evaluation to ensure compliance with the Standards and Guidelines and to further the program’s goals. In 2011, following the work of the Joint Justice Revenues Committee, the structure changed. Instead of receiving funding from a fee

added to certain court filings, which were adjusted periodically with overall funding increasing as filings increased, legal aid now receives a statutory allocation of \$11.9 million per biennium — or \$5.95 million annually — from the general fund. The legislature intended to review the allocation amount every few years to determine how much it might need to be increased. The first review has yet to be done. The legislature retained the same oversight structure.

- **General fund:** Legal aid received general fund appropriations in the 2007-2009 biennium and 2009-2011 biennium. To date, that funding has not been renewed.
- **Other Funding:**
  - **Abandoned Property — IOLTA funds.** In 2009, the Oregon legislature directed abandoned client funds in lawyer trust accounts to the OSB LSP for distribution to legal aid programs. ORS 98.386(2). The statute went into effect in 2010. Previously the funds were directed to the Department of State Lands. As of May 20, 2014, \$514,450 has been directed to legal aid, including \$191,000 in distribution of unclaimed class action funds from the *Strawn v. Farmers* class action.

The revision to the Uniform Disposition of Unclaimed Property Act was enacted by the 2009 legislature but went into effect in 2010, so the unclaimed funds in lawyer trust accounts were not directed to the LSP until 2010.

- **Pro Hac Vice Fees.** Out-of-state lawyers who are not licensed to practice law in Oregon may appear in Oregon courts subject to certain rules. ORS 9.572. By statute, the fee for such appearances goes to the OSB LSP to fund legal aid. Pursuant to UTCR 3.170(6), the fee is \$250. The fees result in about \$100,000 annually for legal aid. The Oregon Supreme Court sets the fee, which has not been increased since it was referred to the OSB LSP in 2002. Since the early meetings of the Task Force, at the request of OSB President Kranovich on behalf of the Task Force, the fee was increased to \$500, effective July 1, 2014.

**Federal funding:** Funding for legal aid through the LSC has varied from year to year since it began in 1976. Federal funding has steadily decreased as a percentage of legal aid funding in Oregon from a high of 80% to a 2013 low of 24%. In 1996, Congress placed restrictions on federal funding that prevented Oregon’s federally funded program from continuing to provide a full spectrum of legal services to low-income Oregonians. In 2011 and 2012, federal funding for legal aid in Oregon dropped by 18.6%, to \$3.6 million, resulting in a funding loss of \$800,000. The federal appropriation for 2014 for Oregon returned to \$4.2 million, which is the same amount received in 2011 and similar to the amount received in 1995, but less than the amount received in 2010. In addition, because Oregon has the 8<sup>th</sup> highest growth of poverty (at 125% of federal poverty guidelines), Oregon will receive a slightly larger percentage of the LSC appropriation in 2014 -2016 than it has in previous years.

**IOLTA/Oregon Law Foundation (OLF):** In 1989, the Interest on Lawyer Trust Account (IOLTA) program in Oregon became mandatory. A lawyer must hold all client property, including client monies, in a trust account. In cases where the clients’ deposits are large enough and/or held for a significant period of time, the interest on the account is returned to the client. When the deposit(s) for an individual client are too small in amount or held for too short of a time to earn interest net of bank charges or fees, these funds are placed in a pooled interest-bearing trust account. The interest on pooled trust accounts is sent to the Oregon Law Foundation and distributed to law-related public interest programs, with legal aid as a “tier A” recipient that

receives about 75% of the available funding. Because interest rates are at record lows, IOLTA revenues have plummeted in recent years — from a high of \$3.6 million to \$850,000 expected in 2014.

**Campaign for Equal Justice (CEJ) Annual Fund and Endowment Fund:** Since 1991, the Campaign has helped raise more than \$23 million in unrestricted funds for legal aid through an annual fundraising campaign targeting Oregon attorneys. Funding has increased over the years, and with the assistance of Meyer Memorial Trust both in 1991 and again in 2005, the Campaign has grown to over \$1 million annually. In the past few years the annual fund drive has raised between \$1.1 and \$1.2 million each year.

In 2002, the CEJ, the OSB, and the OLF launched the Oregon Access to Justice Endowment Fund to support the future of legal aid. As of January 2014, the Campaign had almost \$500,000 in its endowment, with an estimated \$1,250,000 in legacy gifts. No distributions have been made from the endowment fund. The CEJ board has an active Endowment Committee that is in the process of setting both long and short-term goals for the endowment and reviewing work plans and assessing staffing needs for the endowment. Since the Task Force meetings in January, CEJ has increased pledges to the endowment through a new initiative called Endow Now! As a result of the Endow Now! Initiative, expectancies now total nearly \$2 million.

**Foundation Support/State and Federal Grants:** Legal aid receives grants from the state and federal governments and has also received funding from the Meyer Memorial Trust, the Collins Foundation, the National Institutes of Health, United Way, Oregon Community Foundation, Kaiser Permanente, and others. The Public Welfare and Kresge Foundations have embarked on an initiative called *“Natural Allies: Philanthropy and Civil Legal Aid”* to raise support among foundations for legal aid. Grant funding fluctuates from year to year and decreases during economic downturns.

Recent funding has come from the Oregon Department of Housing and Community Services for foreclosure legal assistance; United Way for education, advocacy and legal assistance relating to sexual assault and sexual harassment and a pro bono project to remove barriers to work and housing for low-income Oregonians by providing assistance to remove criminal records through expungement proceedings; the Bureau of Justice Assistance and the Native American Rights Fund to take cases in tribal courts and to work on projects that improve capacity of tribal courts; and the National Institutes of Health to fund a partnership in its ninth year between public health scientists at major research universities and legal aid educators/advocates to study, report, and improve work safety conditions related to exposure to pesticides for indigenous farm workers in Oregon.

### **Other Legal Aid Funding Mechanisms:**

#### **Oregon Legislative Concepts and Ideas from other Jurisdictions**

**Cy Pres.** The term “cy pres” is used in the trust context and means “as near as possible.” Several states have enacted court rules or statutes that direct unclaimed funds from class actions to non-profits, including legal aid, and these are commonly referred to as “cy pres” statutes. Some states have statutes directing that unclaimed funds do not revert to the defendant and others, such as Washington, provide that any judgment or settlement of a class action shall provide for disbursement of unclaimed funds and that 25% of such unclaimed funds must go to support legal aid. In Washington State, approximately \$7 million in unclaimed funds were generated in 2012-13 under the cy pres statute, a portion of which was directed to Washington’s endowment fund in support of legal aid and a portion of which was paid to legal aid programs.

The Campaign for Equal Justice has been the recipient of cy pres class action funds since 2007, primarily from court settlements in Oregon or from litigation in other states. Since 2007, this has amounted to about \$200,000, in amounts ranging from \$20,000 to \$100,000. The Oregon Law Foundation was a recipient of a cy pres award in 2012 from Washington in the amount of \$286,000.

There are other mechanisms that send money to legal aid that are similar to cy pres. For example, the Attorney General's office designated legal aid case work on domestic violence as the recipient of Oregon's share of a national class action brought by Attorneys General. Some attorneys have directed cy pres funds to Oregon from national class actions. Some Oregon lawyers have used the settlement process and abandoned property mechanisms to direct leftover class money to legal aid.

**Centralized Legal Notice System.** Numerous Oregon statutes require publication of legal notices in newspapers. ORS 193.010-193.100. That publication requirement has come under criticism for being too expensive and not being accessible or easily searchable. The Oregon Law Foundation proposed the development of a web-based centralized legal notice system (CLNS), operated by the Law Foundation or a separate non-profit, which would reduce the costs to those who post legal notices and at the same time provide an internet forum that has accessible and searchable postings. The net revenue generated by the CLNS would be used to fund legal aid. At the request of the Oregon State Bar House of Delegates, the Bar assigned a Task Force to further study the feasibility of a CLNS and also to review how this proposal fits within the mission of the Oregon State Bar. The Task Force issued its report in November 2013, and the report was adopted by the Oregon State Bar Board of Governors on November 23, 2013. The CLNS Task Force report did not identify the amount of revenue that would be generated for legal aid. Although CLNS publication fees would be significantly less than the newspapers charge, the Oregon Law Foundation estimates the revenue would be approximately \$3 million annually, based on rough estimates of current revenue from public notices. The OSB report recommended that the Bar try to work with newspapers to identify a collaborative approach that would work for both newspapers and the OSB. The OSB agreed to not seek a statutory change during 2013 or 2014.

**Expansion of IOLTA to cover real estate closings.** In some states, real estate closings are considered the practice of law and, therefore, the money in escrow for real estate closing is held in IOLTA accounts, generating money for legal aid. Washington has authorized escrow agents as Limited Practicing Officers to complete legal documents. These Limited Practicing Officers are licensed and regulated by the state bar and must keep escrow funds in IOLTA accounts with interest used to fund legal services.

In Oregon, real estate closings are not currently considered to be the practice of law and are not covered by the IOLTA rules. In 2013, the OSB proposed House Bill 2608, which would place real estate escrow funds into IOLTA-style accounts with interest going to the OLF to fund legal services programs. The House Business and Labor Committee formed a Work Group to study the issue. The Work Group met during the fall of 2013, but did not reach agreement, and it is presumed that the bill will not move forward. The Work Group considered: 1) including the interest from real estate escrow accounts to be distributed by the Oregon Law Foundation along with IOLTA funding; 2) assessing a recording fee that would go to fund legal services; or 3) funding for legal services from the general fund or increasing the statutory allocation under ORS Chapter 9 (previously known as court fees). No further action has been taken to forward this concept.

**Tax Credit for Contributions to the Campaign for Equal Justice.** At the request of the OSB, HB 3350 during the 2013 legislative session aimed to create a tax credit for contributions to the Campaign for Equal Justice. Although the bill would not directly create revenue for legal aid, the tax credit would provide an additional incentive for contributions to the Campaign's annual fund drive. The actual increase in funds to the Campaign (and hence legal aid) would be difficult to estimate, but CEJ donors have responded in the past to

incentives such as matching grants. The bill had a hearing and passed out of House Judiciary, but no further action was taken.

**Fee for arbitration proceedings that do not pass through court.** A new idea for funding legal aid is to charge a fee for arbitrations. A large and growing number of cases are resolved by arbitration rather than by judicial proceedings. Arbitrators and arbitration companies such as the American Arbitration Association charge large fees for arbitration services. Many of these cases settle or are otherwise resolved without ever being filed in court. In some cases, the final order or settlement agreement is filed in court, likely generating funds for legal aid through the statutory allocation/filing fees discussed above. Appeal courts are affirming the right of large institutions to mandate arbitration for consumer and employment issues. The trend is likely to continue. Arbitration fees for legal aid could be mandated by statute or they could be generated voluntarily by parties using arbitration services that support access to justice.

**Bar Dues Opt-Out or Add On.** In 2009-10, the Washington Campaign for Equal Justice and the Washington State Bar Association entered into an agreement whereby the WSBA would add on language to WSBA bar dues statements that would automatically add \$50 to the bar dues for legal aid funding, unless the licensee opted out. Washington went with the “opt out” as opposed to an “add on” fee based on data they gathered from other states about the effectiveness of these two methods. Prior to the “opt out,” about 6% of Washington lawyers contributed to the Campaign for Equal Justice. Since their “opt out” rules went into effect, about 86% of lawyers opted out — some simply chose not to contribute, and others contributed in different ways. (About 20% of lawyers currently contribute in Oregon and at much higher amounts than \$50.) The opt-out generates \$300,000 - \$380,000 per year for legal aid in Washington. Washington has almost twice as many lawyers as Oregon, however, so the results for Oregon would likely be much less, and might actually interfere with Oregon’s successful private bar campaign.

**Effective Independent Standards, Oversight and Evaluation.** Existing and new sources of revenue should continue to have appropriate standards, oversight, and evaluation administered by an independent entity to ensure efficient and effective delivery of statewide services focused on the best interests of clients. The Oregon State Bar Legal Services Program provides oversight under the Oregon statute in accordance with Standards and Guidelines that incorporate national best practices. Any structure adopted must provide the necessary insulation from improper influence. See Laura Abel, *Designing Access: Using Institutional Design to Improve Decision Making About the Distribution of Free Civil Legal Aid*, Harvard Law & Policy Review (Winter 2013).

**Other ideas.** Other ideas were discussed at the January 10 and January 22 Task Force meetings but are not included in this report.

### **Task Force Goals to Increase Funding**

After researching and discussing options for increased funding, the Task Force set the following short and long term goals to increase legal aid funding by \$15 million over the next ten years.

#### **Short-Term Goals (2 years: 2014-2016)**

- Campaign for Equal Justice Endowment Fund. Increase legacy gifts by \$2.5 million. (Update: Progress has been made since the initial task force met and CEJ is about \$500,000 from this goal.)
- Campaign annual fund: Build to \$1.5 million, with the assistance of foundation support in terms of capacity building or challenge matches from Oregon’s philanthropic community. (Update: The

Campaign has been meeting with foundations to help build capacity to reach \$1.5 million in the annual fund drive.)

- Work on grassroots lobbying support for increased legal aid funding at the state level. Seek to build more support from the business community for legal aid, reaching out first to general counsel who have demonstrated their strong support for these efforts.
- Pro hac vice fees. Work with Chief Justice to increase the pro hac vice fees to legal aid (could generate an additional \$100,000 - \$130,000 per year). Also, investigate whether an increased pro hac vice in the federal system could be directed to legal aid. (Update: The Supreme Court adopted the amendment proposed to UCTR 3.170 by the bar to increase pro hac vice fees to \$500. The amendment which will go into effect July 1, 2014.)
- Increase in statutory allocation to legal aid. Bill was advanced by the Oregon State Bar during the 2014 legislative session. It passed unanimously through House Judiciary, but died in Ways and Means. The bill provides a platform to educate people about the current justice crisis. The statutory allocation should not be tied to funding for the judiciary. General fund appropriations through the Governor's budget will likely need to be a longer term goal.
- Cy pres (also a long-term goal). HB 4143A during the 2014 session would have sent cy pres funding to a state operated trust fund for legal aid, with the earnings being paid to operate legal aid programs. The bill passed the House but failed 15-15 in the Senate. Efforts will likely be made in the 2015 legislative session.
- Abandoned property in class action cases. Work with OTLA lawyers and others to take advantage of this mechanism for funding for legal aid.
- Continue to work with the Oregon's congressional delegation and national advocacy groups such as the American Bar Association and NLADA to increase federal funding for legal aid.

#### **Other Issues Meriting Further Investigation:**

- Continued monitoring of OSB work on potential revenue from Centralized Legal Notice.
- Consideration of an OSB "opt out" or "opt in" dues for legal aid, in conjunction with OSB licensing issues. It should be noted that Oregon lawyers contribute over \$1 million each year to fund legal aid—with the total from the 2013-14 annual fund drive close to \$1.225 M. This is, on average, about \$100 per active lawyer in Oregon. Washington State has an "opt out" provision and generally does not do as well as Oregon in private bar support.
- Monitor and follow up on the expansion of the IOLTA program to include certain real estate closings.
- Work with the Attorney General to consider whether a portion of the revenue from consumer cases or other matters that is currently collected by the Attorney General's Office could be used to help fund legal aid.
- Fees added to arbitration proceedings.
- Work with Oregon foundations to participate in the Philanthropy and Legal Aid initiative by the Public Welfare and Kresge Foundations.

- Determine whether it is possible to get in the Governor’s budget for a general fund appropriation (long term goal) and identify the best structure that could be used to send revenue to the OSB Legal Services Program.
- Additional ideas listed above and those not listed in this report. Some of these ideas were addressed in the notes from the January 10 Task Force Meeting; some ideas were generated in side bar discussions and will be followed.

#### **Intermediate and Longer Term Goals (3-5 years; 2016-2019; and 10 years)**

- Continue to work with the Judicial and Legislative Branches to seek appropriate state revenue for legal aid.
- Build Campaign annual fund drive to \$2 million.
- Build Campaign for Equal Justice Endowment Fund to \$10 million. Obtain capacity building assistance from Oregon foundations.
- Pursue a cy pres statute to help build the future for legal aid.

#### **Conclusion**

Oregon must recommit itself to the reasonable and necessary goal of providing “minimum access” to justice. The amount of revenue must be significantly increased and the sources of revenue broadened in order to provide the minimum acceptable level of access to justice for low-income people. More revenue must come from sources that remain consistent during times of economic downturn when the largest number of clients will be the most desperate for service. There must be sufficient stable revenue to provide at least two legal aid lawyers per ten thousand low-income clients in order to achieve the goal of minimum access to justice in Oregon.



## **TASK FORCE ON LEGAL AID FUNDING--2014**

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