

INFORMATIONAL BACKGROUND ON CIVIL LEGAL AID INCLUDING 2011-2012 STATE BUDGET REQUEST

PLAN, Inc. is the statewide affiliation of legal aid programs, annually representing over 100,000 low income clients.

BRIEF PROGRAM HISTORY OF CIVIL LEGAL AID AND COMPARISON TO OTHER STATES

Every county in the state is served by a legal aid program, and six specialized programs target special needs such as healthcare and housing. Approximately 54% of the services of civil legal aid are provided to rural Pennsylvanians. Considering the size of a typical family, the annual representation of over 100,000 clients benefits well over 300,000 people, many of them children. *Pro bono* lawyers represent thousands of additional clients, through coordinated projects of legal aid programs and local bar associations.

In these difficult economic times, the need for legal aid has skyrocketed. Because of the recession, many more Pennsylvanians are eligible for representation, and many more face pressing problems, such as the potential loss of their home (legal aid helps nearly 10,000 clients every year, who are faced with mortgage foreclosures), or family medical expenses. Some clients are the victims of domestic violence (legal aid represents about 12,000 of these clients annually); others are involved in disputes over the best interests of children. Many of our fellow Pennsylvanians need basic benefits to live from day to day, including medical care, unemployment compensation, and Social Security or SSI. At the end of this paper is a sampling of cases handled by legal aid program in the last fiscal year.

Legal aid programs receive funding from the Commonwealth of Pennsylvania, the federal Legal Services Corporation, the Pennsylvania Supreme Court (through the Pa. IOLTA Board), as well as other local sources, including foundations, United Ways, local governments, private attorneys, and Bar Associations. Law school clinics and the *pro bono* services of individual lawyers also help out.

The state appropriation to legal services has actually declined in the last three years. In FY 2008-9, DPW implemented a \$100,000 freeze in funding that had already been appropriated. In FY 2009-10, the prior year's freeze was incorporated into the budget and the cut increased to \$108,000. During the 2009-10 fiscal year, another \$31,000 was frozen. And in FY 2010-11, there has been a combination of a cut in the appropriation and a \$30,000 freeze, resulting in yet another reduction in funding. The overall effect is a cut from the FY 2008-9 appropriation of \$3.172M to today's \$3.009M. State general fund support for legal aid today remains very close to the actual amount appropriated in 1976. Federal Social Services Block Grant funding, reflected as a line in the state budget, has been at \$5.049M for many years. (It was at \$8.1M in 1976.)

Even more dramatically, in the current fiscal year legal aid received \$9M less in Interest on Lawyers Trust Account ("IOLTA") revenues than we did two years ago. This severe cut is the result of reduced interest rates paid by banks.

We are appreciative of the General Assembly's adoption of a \$1.00 temporary filing fee which is helping offset losses in the current fiscal year but which is set to expire next fiscal year. In addition, the Act 122 filing fee of 2002, which was renewed in 2006, provides vital support for legal aid. This is to Sunset in 2012.

Stimulus funding is also helping us meet some immediate needs. Combined, the temporary fee and the stimulus funding have made up for nearly half of the cuts in state appropriations and IOLTA funding, but these resources are set to expire in the upcoming fiscal year.

Taking into account the IOLTA and filing fee funding, FY 2010-2011 funding is millions below the inflation-adjusted purchasing power of the 1975-6 appropriation and the actual funding of several years ago. The following graph portrays historic and current state funding but it does not include some occasional one-time funding sources. Twenty two years ago, PLAN's funding supported a total of 358 legal aid lawyers statewide. Today, despite the increased need, PLAN can support only 259 lawyers. Start up funding for legal services in FY 1973 totaled \$3,479,423. By FY 1974-5, funding had increased to \$12,756,397, through a combination of state and federal funding allocated by the state. In the following year, it leveled back down to \$10,400,000. Over the years, state appropriated funding has fluctuated somewhat, but generally, it has held to about the same amount, with funding in FY 2010-11 about equal to the level of funding in FY 1976-7.

The limit on resources causes severe and damaging constraints upon client services, particularly in areas such as the number of lawyers, technology to support the work, and adequacy of office space for client services.

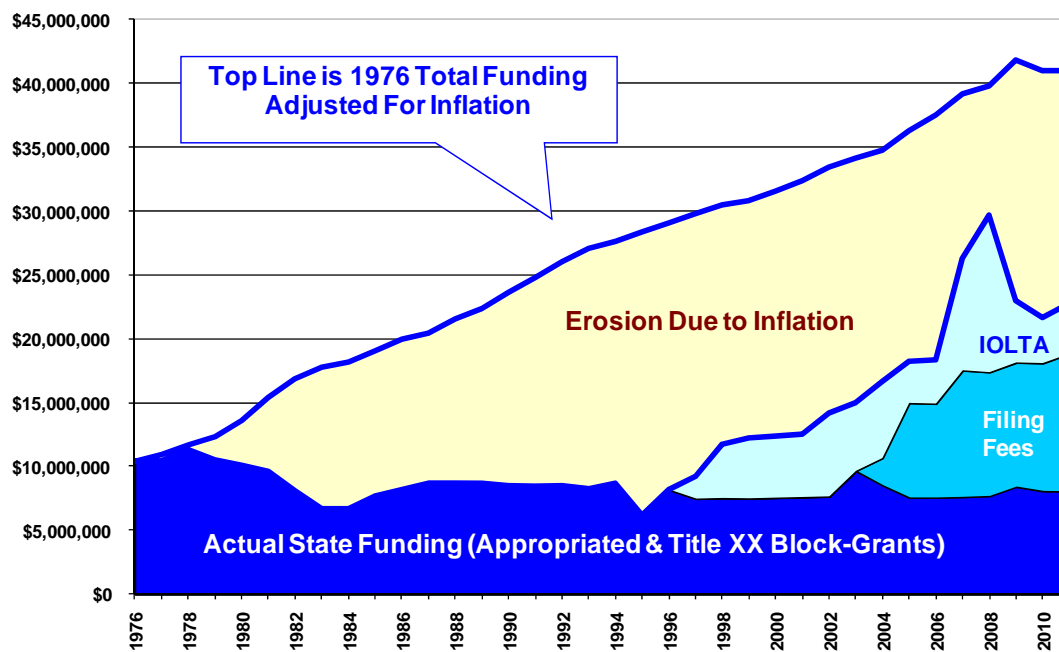
A recent national study (“Documenting the Justice Gap,” by the Legal Services Corporation) revealed that one of every two people who come to a legal aid office in Pennsylvania, eligible for legal aid and in need of representation, had to be turned away due to lack of resources. Many had major needs, such as foreclosure, child support and consumer problems and the majority live in rural areas.

Another way to analyze funding to legal aid is to compare to other states. For example in 2009:

- Arkansas, Colorado, Connecticut, South Dakota, Texas, and West Virginia all adopted new filing fees to support civil legal aid, generating as much as \$7.7M new funding in Connecticut and nearly that much in Texas. California adopted a \$10 filing fee to support access to legal services.
- Oregon, Texas, New Hampshire, West Virginia, and Wisconsin all increased their appropriation for civil legal aid, by as much as \$10M annually in Texas and millions in other states.

State Funding Sources for Civil Legal Services, in Real Dollars, Have Fallen Behind

2010 total is only 1/2 what it was in 1976, taking inflation into account.



REQUEST FOR FY 2011-12

Recognizing the compelling challenges the state faces in the upcoming budget, our request is for a modest cost of living adjustment over the FY 2010-11 general appropriation of \$3.039M in state funding (which is still a lower appropriation than in 2008-09), and we welcome further discussion and creative thinking about how to increase support for civil legal aid.

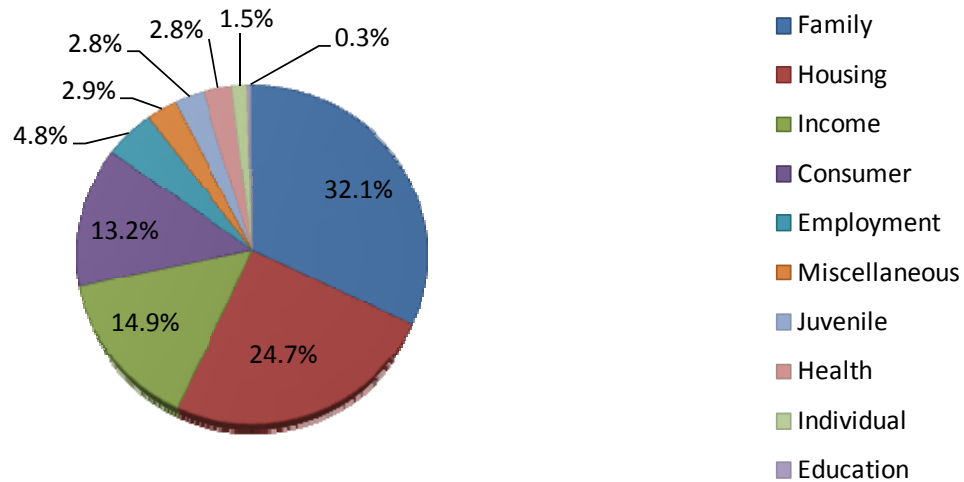
A MORE COMPLETE HISTORY AND OVERVIEW OF LEGAL SERVICES IN PENNSYLVANIA

The Pennsylvania Legal Aid Network, Inc. and its affiliate programs have provided vital civil legal services to Pennsylvanians since 1973. PLAN has been supported with state funding by Republican and Democratic Governors and General Assemblies, who recognized the need for legal aid, as an important feature of our justice system, assuring access for those who have nowhere else to turn when faced with important legal challenges. The graph below portrays the breakdown of types of cases handled by PLAN programs.

Over the 38 year history of legal aid, the names of programs, including our own name, have changed or been added, but the core services have remained the same.

Since funding for civil legal services began, Pennsylvania has appropriated funds through the Department of Public Welfare ("DPW"). However, legislative leaders and Governors also agreed that there should be an intermediary umbrella organization that would be accountable for the program's finances, by contracting with DPW and subcontracting with the programs actually providing services. Pennsylvania Legal Services Center (now PLAN, Inc.)¹ was thus created in 1973.

Legal Aid Handled Cases: Fiscal Year 2009-2010



In the formation stages, many of the legal services programs were single county programs, or at most, they covered only a few counties. Over the years, some of these programs merged into larger programs, resulting in more efficient administration and allowing for greater specialization in various areas of poverty law. By 1986, there were 19 separate programs providing direct legal services in Pennsylvania, not including the specialized statewide programs, such as the Pennsylvania Health Law Project. Today, there are 8 programs providing basic services and there are 6 specialized programs. The reduction in number of programs has increased efficiency in service delivery models.

Initially, the Pennsylvania Legal Services Center (PLSC) provided not only the administrative oversight and accountability for funds and services, but “The Center” also housed some staff who provided direct client representation. During the nineteen-eighties, The Center consolidated its operations, withdrawing from direct client advocacy. Since then, the core functions of PLAN, Inc. have been the administrative accountability for funding, including monitoring and other contract compliance activities with the programs; provision of annual statewide training conferences; provision of legal resource materials for legal services staff; administration of the Martin Luther King, Jr. Internship and Fellowship Programs; housing and maintenance of the Pa Law Help and Pro Bono.Net websites; and the provision of other helpful resources to the programs.

Throughout its history, PLAN, Inc., by all its names, and the legal aid programs it supports, have been committed to advocating for the legal needs of low income Pennsylvanians. The network of programs handles about 100,000 cases each year.

THE NETWORK OF LEGAL SERVICES PROGRAMS IN PENNSYLVANIA

PLAN member programs that provide core services in every county of the state are displayed in the following map. This map also lists the six specialized programs, providing statewide backup and direct client services in particular areas of law.

Pennsylvania Legal Aid Network (PLAN)



*Non-PLAN Funded Program

A FAIR SYSTEM FOR ALLOCATION OF FUNDS IS IN PLACE

State and IOLTA funds are allocated to PLAN, Inc. with the expectation that these funds will in turn be distributed fairly and rationally to the legal aid programs serving clients across the state. The funds are distributed through the following process:

Each cycle, following the results of the decennial census, PLAN, Inc. adjusts the portion of county based funds each program receives, based upon the poverty population counted for that program. The IOLTA Board also allocates its funds according to a census based allocation formula. This means that the proportion of funding is reallocated following each census, to be sure that amounts of funding follow population trends, other than for any specially allotted funding. For the specialized programs, which are not generally tied to a particular population count, funding is distributed through a formula based on the number of attorneys for each of the programs. And in connection with the every-ten-year census count, a review of the formula for specialized programs is also conducted.

IOLTA AND FILING FEE FUNDING SUPPORT CIVIL LEGAL AID

Interest on IOLTA funding is interest generated on client funds held by attorneys. Because an attorney may not ethically retain interest earned from client funds, in the past the banks holding these funds realized a windfall. When the amounts held are too small, or the length of time the funds are held is too short to justify arranging for a separate account to credit interest back to the client, attorneys are now required to hold client funds in IOLTA accounts.ⁱⁱ The interest generated is pooled statewide and is used to help fund legal services. The amount generated annually has ranged from about \$2M now to over \$10M, depending upon interest rates. Currently, interest rates on these accounts are at a very low point.

In 2002, recognizing the underfunding of legal services, the General Assembly enacted Pennsylvania's Access to Justice Act, under which a filing fee surcharge of \$2 is assessed on various courthouse filings, as a user fee. This surcharge now generates \$9M to \$10M annually and is used to help fund legal services. A report on the first five years of the Access to Justice Act was compiled by the IOLTA Board and can be found on their website at <http://www.paiolta.org/AJReport/AJReport.htm>. This Act is scheduled to Sunset in 2012. The Legislative Budget and Finance Committee is currently undertaking a review of this program. In addition, a temporary filing fee was created during the FY 2009-10 budget cycle. This fee provides vital support to make up for the cuts in IOLTA and state funding. Unfortunately, it is set to expire in January 2012.

ATTACHMENT

A SAMPLING OF CASES AND ACTIVITIES IN THE 2009-10 FISCAL YEAR

A. FAMILY LAW CASES:

1) A 20 year old pregnant mother came to Laurel Legal Services after filing a pro se Protection from Abuse petition against her long term boyfriend, the father of her child and her unborn child. The client was 8 months pregnant when her boyfriend attempted to push her out of a moving car shortly before wrecking the car. The client wanted protection from the boyfriend and wanted to know that he would not be able to take the child, as he had threatened to do.

Prior to the hearing, the Defendant was contacted and a settlement of the matter was reached. The stipulated protection order was presented to the Judge and was signed. A three year PFA was entered, ordering the boyfriend to stay away from, and not abuse the client, and granting the client primary custody of the child. The defendant was permitted to have visitation at times the parties could agree upon. The client's mother served as the third party communicator concerning visitation. The client is now able to live, knowing that the defendant is not allowed to show up at her home, or take the child from her.

2) Ms. R. attended the custody information class at the local LASP office. During her interview it was discovered that during Father's most recent visit he refused to return the child unless Mother turned over the child's social security card and birth certificate to Father. Mother believed Father was going to fraudulently obtain welfare benefits with the information so she refused and sought Legal Aid's assistance in obtaining a Custody Order. Her Legal Aid attorney filed a Custody Complaint that afternoon and was able to obtain a court date for the following week. Ms. R. served Father with the Complaint over the weekend and, given the upcoming hearing, he immediately returned the child. Mother and Father attended the custody conciliation, at which time they agreed that Mother would have primary custody and they agreed to a set schedule when Father would see the child.

3) A client of North Penn Legal Services had primary custody of her son per a court order of 2004. The father took the child and did not return him. Father filed an emergency petition for custody in New York. Unaware of the existing custody order in Pennsylvania, the court in New York awarded father primary custody of the child and scheduled the case for a hearing. Mother was not served with the scheduling order and missed the first hearing. The case was continued and the client attended the second hearing. At this time, the New York Court was made aware of the existing Pennsylvania order and sent the case back to Pennsylvania. Father then filed for primary custody. An NPLS attorney represented the mother at the trial and she retained primary physical custody of the child.

4) The client, a 16-year-old girl, sought assistance from Southwestern Pa. Legal Aid Services after being raped by her father. The client, who suffers from slight mental retardation, explained that she was watching television alone late one evening when her father returned home after an evening of drinking at a local bar. He smelled of alcohol and was slurring his words. The client fell asleep, and awoke to find her father raping her. The client did not report the abuse immediately. It took several days before she summoned the courage to contact authorities and disclose the rape to her family. Her mother, who had been physically abused in the past by the same man, contacted the Police and Children & Youth Services, and filed a Protection from Abuse Petition on behalf of the client against the father. The client, through her mother, then sought the assistance of SPLAS. At the PFA hearing, SPLAS secured the consent of the client's father to a three year Protection from Abuse Order, directing the father to refrain from further abuse and to have no contact with the client.

B. FORECLOSURE RELATED REPRESENTATION:

1) The home of a mother and 6 children was being foreclosed upon. The client fell behind because she became disabled and had applied for, but had not received social security prior to the foreclosure action being filed. She later qualified for social security benefits. The foreclosure complaint was wholly inadequate and preliminary objections were prepared and filed with the court by Laurel Legal Services. Because the client later

had some means to pay the mortgage, she was advised to seek a loan modification. As argument on the preliminary objections approached, counsel for the bank agreed to allow the objections to be continued while a workout was in progress. The loan modification was finally approved and the foreclosure was settled and discontinued. The family kept its house and these parents have a home in which to raise their children.

2) Forty-two year old C.J. came to Neighborhood Legal Services Association after his house had been sold at Sheriff's Sale. NLSA reviewed the litigation associated with the sale and determined that the mortgage company had not considered him for a federal mortgage loan modification program, which the lender was required to consider. NLSA moved to set aside the sale on this basis. In addition, they asked the court to issue an order prohibiting the lender from imposing attorney's fees or court costs on C.J. in connection with the foreclosure case, given the lender's error in failing to consider him for modification prior to filing the foreclosure action against him. The court set aside the sale and granted the prohibition. C.J. was considered for loan modification and after initially being rejected was ultimately given a very favorable long term loan modification at a greatly reduced interest rate and much lower monthly payments because NLSA insisted that the court order prohibiting fees must be honored in the terms of the modification. C.J. remains in his home today.

3) Clients of Southwestern Pa. Legal Aid Services were a couple with three minor children; the wife was on a fixed income of Social Security disability benefits. The clients defaulted on their mortgage when the husband lost his job through layoff, and the wife's social security income was insufficient to maintain payments. The clients attended one of the weekly foreclosure counseling sessions which were established by the local County Court of Common Pleas, secured a 90 day stay in the foreclosure proceedings, and retained a legal services attorney to negotiate with their lender. During the course of negotiations the lender had secured judgment and scheduled a Sheriff Sale of the property, but the additional time provided through legal services assistance afforded the husband the opportunity to secure new employment that allowed the family to resume their former monthly payments. Moreover, legal services negotiated an interest rate reduction through a loan modification that reduced their monthly payment, and avoided the Sheriff Sale of the property.

4) RHLS administers the HEMAP (Homeownership Emergency Mortgage Foreclosure Assistance Program) Help Center www.hemap.org, which provides advice and commentary about applications for HEMAP which will be submitted to the Pennsylvania Housing Finance Agency (PHFA). The purpose of the Help Center is to improve the quality of the applications and make it more likely they will be approved, as well as to make other appropriate suggestions and referrals to help people with mortgage problems try to save their homes. The site helps individuals complete an average of 28 HEMAP applications per month, and it builds relationships with housing counseling agencies to increase awareness of HEMAP and the HEMAP Help Center.

C. EMPLOYMENT CASES:

1) Mr. B worked for a small landscaping company outside Philadelphia. His employer fell behind in payment of wages to Mr. B. Mr. B quit, and demanded the wages he was owed. The employer refused to pay. Friends of Farmworkers sued the employer for the unpaid wages of over \$2,000 and obtained a judgment against the employer. Friends of Farmworkers is currently in the process of enforcing the judgment through the local Sheriff's office.

2) North Penn Legal Services represented a woman who was fired from her job at a meatpacking plant after getting her hand caught in a conveyer belt. Her supervisor had directed her to climb up and stop the machine, in violation of plant safety rules. She was able to stop it, but her hand was caught and she was trapped in an awkward position for about 20 minutes. Her injuries caused her pain (surprisingly her hand was not seriously injured) but the employer eventually fired her. North Penn won her unemployment compensation benefits, successfully arguing that the client had not engaged in willful misconduct.

3) A client came to the Northwestern Legal Services' Venango County office because he was under-employed due to a prior criminal record. The client worked as a janitor for a cleaning company, and he was

informed he could not join his crew to clean a local police barracks because he had a criminal record – a summary offense for retail theft that had occurred eleven years ago. The NWLS staff attorney assigned to the case met with the district attorney’s office and together they agreed to move for expungement of the criminal record. The client was able to resume his full employment duties with his cleaning crew as a result.

D. PUBLIC BENEFITS CASE:

Mr. J is an 82-year-old veteran who served in the Korean War in the Army's last segregated infantry division. While serving in combat, Mr. J suffered frost bite and was evacuated to a hospital in Japan. As he became older, Mr. J developed severe arthritis and deformations of the hands and feet which are characteristic results of the injuries. He applied for service-connected disability benefits, but was denied. The VA informed him that his medical records had been destroyed in a fire in the early 1970s, so there was no evidence that he had ever suffered an injury while in service.

Mr. J had been forced to retire early from his construction laborer jobs because of his arthritis. He was living on a small Social Security benefit. His mortgage was in foreclosure and he was unable to fix the serious plumbing problems that sometimes caused water to flow down the walls of his row home. Over a period of several years, Mr. J had unsuccessfully pursued several levels of appeal without any legal representation. By the time he came to CLS, his case had reached the Court of Veterans' Appeals. CLS successfully got the case remanded for a new determination and gathered evidence from his medical providers to show that he was in fact entitled to benefits. Mr. J was thrilled to receive more than \$60,000 in retroactive veterans’ benefits. Now that Mr. J is receiving veterans’ benefits, his monthly income will nearly triple, and he will have access to a wider array of health care services and save his home from foreclosure.

E. HOUSING CASES:

1) Legal Aid of Southeastern Pa. represented Ms. M, a 77 year old woman who requires a motorized wheelchair to move around her apartment, which is in a Housing Authority building for the elderly and disabled. She had extreme difficulty leaving and entering the building through its doorways and had gotten no response to her complaints from the Housing Authority. On Ms. M's behalf, Legal Aid requested a reasonable accommodation and negotiated with staff members of the Housing Authority as well as the Housing Authority's Executive Director and legal counsel. Through LASP efforts and now with the support of the Housing Authority, they obtained funding and completed a new entranceway, complete with remote controlled access so that the client can easily enter or leave her home.

2) North Penn Legal Services assisted a client in negotiating with a utility company that threatened to shut off power. The client contacted NPLS the afternoon prior to the proposed shut off. The client had a series of medical conditions, including dialysis 3 times a week. NPLS provided assistance in stopping the shut off and negotiating a repayment plan for the balance owed so that electricity was provided and the client could maintain needed medical care.

F. IMPACT LITIGATION:

Saint Clair Village Tenant Displacement: Community Justice Project represented approximately 300 public housing residents regarding proposed demolition of St. Clair Village and displacement of its residents. Litigation was prepared against the Housing Authority for the City of Pittsburgh (HACP) after it had begun displacement of all residents without first obtaining HUD approval for the demolition project, without consulting with residents on the relocation or demolition plan as required by the U.S. Housing Act and without providing relocation counseling and assistance required by the Uniform Relocation Act and the Fair Housing Act. After preparing a complaint and motion for special injunctive relief and filing an objection with HUD to the pending demolition application, negotiations with HACP resulted in marked improvement of the status quo for the clients. HACP halted all displacement and, with CJP’s input and participation, conducted a series of meetings with residents. This resulted in an agreed-upon relocation plan. Relief included interviews with each family threatened with displacement, mobility counseling, relocation assistance and the identification of at least one comparable replacement unit to ensure the opportunity for each family to relocate with a Section 8 Voucher

to one of several identified high-opportunity neighborhoods in Pittsburgh or an alternative public housing development.

G. HEALTH RELATED REPRESENTATION:

1) Northwestern Legal Services was contacted by a 65-year-old woman who lives in a personal care home due to cognitive health problems. Income she received from a trust rendered her ineligible for SSI personal care home supplemental and medical assistance, but was insufficient to pay her substantial monthly pharmacy bills. Her only hope was to get the Warren County Court of Common Pleas to modify the trust to pay for her medication and personal care home expenses. The NWLS staff attorney assigned to the case researched the three remainder beneficiaries included in the trust, along with the NWLS client, and discovered that two were deceased. The third beneficiary, a cousin to the client, agreed to modification of the trust and traveled from New York State to Warren to testify before the judge presiding over the case. With all parties in agreement, the judge modified the order enabling the client's bills to be paid.

2) PHLP represented a 53-year-old kidney transplant recipient from Fayette County on Medicaid who was having problems getting his anti-rejection medications. He was having these problems because Medicaid thought he had Medicare coverage which should have been paying for his medications. The client's Medicare coverage had recently ended because, per Medicare rules, individuals who qualify for Medicare only, because they have End-Stage Renal Disease or because they need a kidney transplant, keep their Medicare for only three years after a successful transplant. Medicaid records needed to be updated to show that he no longer had coverage and that Medicaid was his only insurance. PHLP contacted his Medicaid caseworker as well as state agency staff in Harrisburg to have the system updated allowing him to get these health sustaining medications at the pharmacy now and in the future.

3) NLSA and the University of Pittsburgh Medical Center started a Medical Legal Collaborative for Patients (MLCP). NLSA has a full time attorney on-site at UPMC-McKeesport Hospital, 3 days a week, who is representing eligible clients referred from the medical providers and social workers. The attorney is also working to train hospital staff regarding the identification of legal needs. To date there have been 38 cases opened under this project. The representation under this project is generally related to the health needs of the client, such as helping the client get some type of medical insurance coverage, or helping improve medical conditions, such as removal of mold conditions from a rental unit.

ⁱ In 1996, PLSC change its name to Pennsylvania Legal Services and in 2006, PLS changed to its current name, the Pennsylvania Legal Aid Network, Inc. (PLAN, Inc.) and its affiliate programs are referred to as the PLAN.

ⁱⁱ Typical trust accounts may include large amounts of money held for only a few days, in connections with real estate settlements or small amounts of money, such as a \$2,000 client retainer for services, held for a longer period of time, but generating enough interest to justify a separate accounting.