



Funding for Civil Legal Aid: Where Do We Go From Here?

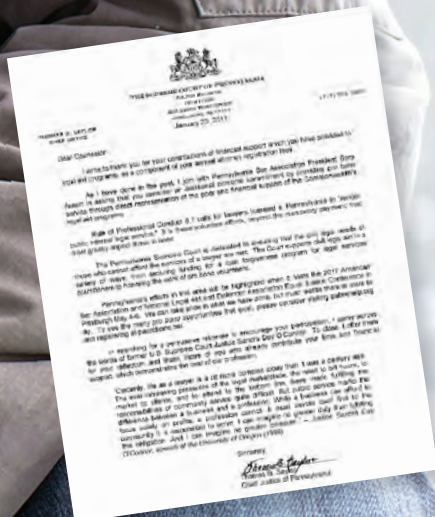
By Samuel W. Milkes

These are precarious times for access to justice for low-income Pennsylvanians who face civil legal challenges and need attorneys. The Pennsylvania Legal Aid Network Inc. (PLAN), along with law school clinics, other legal aid providers and each of you providing pro bono services, plays a key role, making a difference in the lives of so many of our fellow Pennsylvanians.

But the extent to which we can meet the need already falls short, and there are challenges ahead, including President Trump's budget proposal to eliminate federal funding for the Legal Services Corp. (LSC) completely. I call on all lawyers to urge support of decision-makers for access to justice and support of the courts themselves.

There is plenty of good news to report. I appreciate the recent release of Chief Justice of Pennsylvania Thomas G. Saylor's letter to all Pennsylvania lawyers, applauding and commending their helping hands representing clients on a pro bono basis and encouraging their financial contributions to civil legal aid.

As a member of the PBA House of Delegates and a longtime PBA member, I'm pleased to say that since May 1990, there have been 13 resolutions adopted by the PBA that support access to justice. Some of them targeted particular subjects, such as the need for loan repayment assistance for public interest lawyers (a need that has since been addressed by the Pennsylvania Interest on Lawyers' Trust Accounts [IOLTA] Board and the Pennsylvania Bar Foundation) or to address a funding crisis. Some were resolutions adopting reports containing a series





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of recommendations: the 1990 Task Force Report on Legal Services to the Needy, an effort led by Joseph H. Jones, a PBA past president; the 1999 Initial and 2003 Final Task Force Reports on Delivery of Legal Services to the Needy, Part II; and the 2014 report on the establishment of an Access to Justice Commission. Just recently, PBA President Sara A. Austin disseminated a letter to all Congress members in Washington, D.C., urging support for adequate funding for LSC.

In 2013, under the leadership of then-chairman Sen. Stewart Greenleaf, the Pennsylvania Senate Judiciary Committee convened hearings to take testimony on the availability of civil legal aid. There was a report issued on these hearings, available on the PLAN website at www.palegalaid.net, addressing the committee's lead question: "Civil Legal Representation of the Indigent: Have We Achieved Equal Access to Justice?" As I suspect every Pennsylvania lawyer could predict, the answer is a resounding no. Even though committee

members complimented the excellent work of legal aid programs, those programs are overburdened and cannot meet the need. It's not just that Pennsylvania has one lawyer for every 4,198 residents living in poverty, compared to one lawyer for every 177 Pennsylvania residents not living in poverty, it's what is behind such statistics.

Witnesses at the hearings included Supreme Court justices, judges, lawyers in the private sector and in legal services, business representatives, low-income Pennsylvanians, social service providers and many others. There were certainly many positive things to say about the importance of civil legal aid.

- There was the client of North Penn Legal Services who faced the loss of her home due to foreclosure, with an unresponsive bank on the other side. She testified that after extensive representation, "[T]oday I say, I thank God for [my North Penn Legal Services attorney] because I have a home."

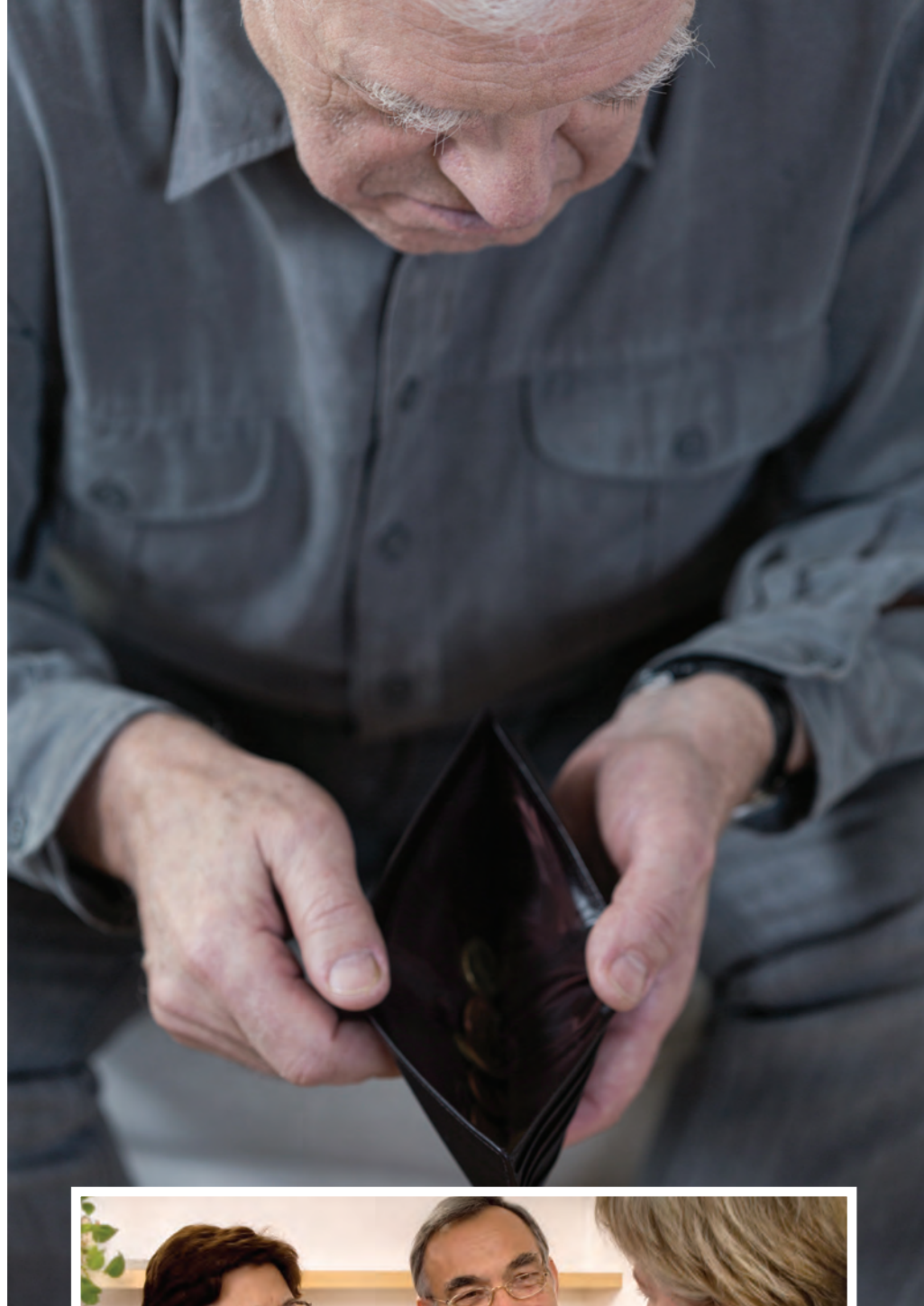


- Elaine Strokoff, executive director of Downtown Daily Bread in Harrisburg, a soup kitchen, had a different perspective. She commented, “So often we see clients who are living on the streets and, if you talk to them, they will tell you about the problems they have had, and we know that if they had had an attorney by their sides at these legal proceedings (like evictions, veterans’ benefits cases and even property distribution in divorces), they would not be where they are.”

- John Lovelace, president of UPMC for You, remarked: “Legal services advocates play an invaluable role in helping us to be sure that people get services to which they are entitled. They help keep us honest.”

- Then there was David Spurgeon, then-Allegheny County deputy district attorney, testifying on behalf of District Attorney Stephen A. Zappala Jr.: “We applaud and we appreciate that the work of legal aid protects crime victims. Whether it be a young mother who is a victim of domestic violence, battered by her partner; a young child who has been neglected or abused or a grandmother facing elder abuse, financial exploitation or consumer fraud, civil legal attorneys provide essential advocacy, representation and protection to make Pennsylvania victims — women, children and seniors — whole, secure and safe. Civil legal services for indigent clients are sound investments. Their work provides a means to help prevent homelessness; keeps children in safe, habitable homes; provides access to economic supports and health care for families, children and elders.”

But there is another side to this coin, where many people go without representation even though they have basic human needs at stake.





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There was the testimony of Judge Chester Harhut (now senior judge) of Lackawanna County, who recalled a series of 15 protection from abuse cases he had just heard the prior week. In four of the cases, there was a legal aid lawyer involved and they were all worked out by agreement: “[T]he legal aid lawyers, they know how to negotiate cases, they are well trained. They know the law, they know how the law will apply to certain situations and they know how the courts will rule in those situations so they could keep that process moving.” In other cases, victims of domestic violence represented themselves and had to cross-examine their abusers; “[I]t’s an awful situation.” Judge Harhut went on to describe situations where he had to send his staff into the halls to try to find pro bono lawyers when there were serious cases involving custody of children, for example, and he felt he just was not getting the necessary facts to make an informed decision.

Pennsylvania Supreme Court Justice Max Baer confirmed that “[C]ounsel can be so valuable because counsel can serve actually as an experienced adviser to these parents.

So if we have lawyers on both sides, then we can talk to the lawyers and the lawyers can talk to the parents and things can be resolved. It’s so important.” Justice Baer also spoke to the “terrible ethical quandary” that judges face with unrepresented parties. “You want to do fundamental justice,” even when unrepresented parties do not know the law, but a judge cannot be seen as advising or helping either side.

On Feb. 27, the Legislative Budget and Finance Committee, a bicameral, bipartisan committee of our Pennsylvania General Assembly, released a report on the use of Access to Justice Act filing-fee funds to help support the provision of legal aid to low-income Pennsylvanians. That report found that the IOLTA board, where the funds are distributed, and PLAN, where the services are delivered, do an excellent job fulfilling their fiduciary responsibility to administer the funds properly and that the actual provision of services with these funds is high quality. The report also made observations in some key areas:



- Funding sources to civil legal aid have generally been stagnant or have declined since 2011.
- Half of the people eligible for legal aid and actually seeking help from a PLAN program have to be turned away due to lack of resources.
- Clients receiving representation from a legal aid program are satisfied with the services they receive.
- Legal aid services have a positive economic impact on the communities where they are situated (producing an \$11 return for every dollar invested).
- Audits of legal aid programs did not identify any significant issues.

The only recommendations made by the committee were to eliminate the sunset on these fees (they are scheduled to sunset in October) and to conduct an updated study on the extent to which people have to be turned away when seeking legal aid. There were no recom-

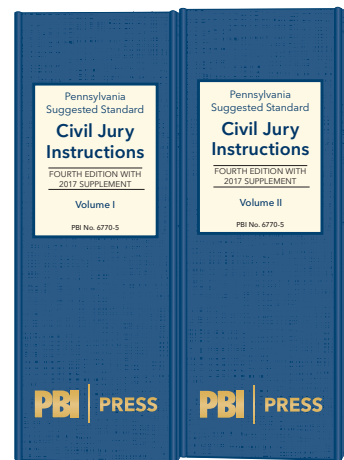
mendations for corrections in the use of these funds.

Where do we go from here? I say we, because this is and should be a concern for all lawyers. We all want a justice system that works. Judges need the informed involvement of lawyers to get disputes worked out or to see that cases are properly presented. This can only happen through adequate support for civil legal aid.

We greatly appreciate the involvement of lawyers who offer their pro bono and financial help. PLAN programs handle about 70,000 cases annually. We are also able to refer another 5,000 cases for pro bono representation. These numbers do not capture the cases handled by other public interest programs or by pro bono lawyers whose cases came to them through other means.

We know that this combination of services is meeting only about 20 percent of the need. What happens otherwise are situations like the ones Judge Harhut described. In fact, the Legislative Budget and Finance

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Committee reported on data from the Senate Judiciary Committee meetings:

- In Dauphin County, 69 percent of custody cases have at least one party unrepresented.
- In Lackawanna County, over 50 percent of custody cases have at least one party unrepresented.
- In Monroe County, 78 percent of foreclosure cases proceeded with the homeowner unrepresented.
- In Philadelphia, 85 percent of landlords are represented in eviction cases while 3 to 5 percent of tenants are represented.

Now more than ever, we need the support of lawyers to get leaders in government at the state and federal levels to know the importance of supporting access to justice through adequate financial support of civil legal aid, especially at a time when the president has proposed to eliminate federal LSC funding completely.

This is not a partisan issue. LSC was signed into law by President Richard Nixon and it has been supported over the years by Republicans and Democrats alike. State support for legal services through appropriations and through modest filing fee surcharges (now just \$4) has been implemented during Republican and Democratic administrations, oftentimes with Republicans in the majority.

The support of our political leaders for civil legal aid is often motivated by a commitment to “liberty and justice for all,” by a belief in due process and equal protection of the law or even by the words inscribed above the Supreme Court main entrance: “Equal Justice Under Law.”

Support for civil legal aid can often be motivated by the pressing needs that we all witness. Constituents make contact with the offices of senators and House members, both federal and state. They want to know who to turn to when they face foreclosure or threatened loss of custody of a child or when they face complex legal questions involving access to health care or public utilities or a whole host of other problems.

These constituents need to have a place to go. For many, even now, there is no recourse.

Please take action now. Contact members of the General Assembly and the Congress. Let them know the importance of access to justice and that their support for funding for civil legal aid is needed. ☞

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Samuel W. Milkes is executive director of the Pennsylvania Legal Aid Network Inc.

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