

**TESTIMONY OF SAMUEL W. MILKES BEFORE
THE HOUSE DEMOCRATIC POLICY COMMITTEE
September 26, 2013**

Good morning. My name is Sam Milkes. I am the Executive Director of the Pennsylvania Legal Aid Network, or PLAN, the umbrella organization for civil legal aid programs representing low income clients throughout Pennsylvania in their civil legal problems. I have spent my career in legal services and was also in private practice a number of years ago.

Thank you very much for inviting me to testify and for this opportunity to discuss the state of civil legal aid in Pennsylvania. I emphasize the term “civil legal aid” because we handle only civil legal problems. You have just heard from the District Attorney and Public Defender representatives, who handle criminal cases.

I want to start by expressing my support for adequate funding for the representation provided by my colleagues who testified earlier today. Without adequately funded District Attorney offices, victims of crime and society as a whole could not be protected from further crime and the laws of our Commonwealth would be rendered largely unenforceable.

Without adequately funded Public Defender offices, residents of our Commonwealth would be found guilty of crimes they did not commit and the fairness of our democratic system, where each person is presumed innocent until proven guilty would be severely undermined.

Let me add to this support how important it is that our Courts be adequately funded. In some states, Courts have had to close down for periods of time, to limit the days of the week they could remain open, or to decline certain types of cases, simply because they did not have adequate funding to remain functional. We need adequately funded Courts to assure that our justice system can be relied upon and to assure that the Courts are open to resolve criminal, civil,

family, business, and other disputes according to the laws of our land.

Without these components, our citizens would not be able to have fair access to justice to resolve the various problems that arise in our society.

The timing of this hearing is appropriate. On Monday, the Pennsylvania House passed HB 1337, which amends the Access to Justice Act, by adding \$1 to the filing fee for certain courthouse filings, as a way to help support legal services. The vote on this bill was 198-0. I want to thank the members of this Committee for their support on this important legislation. The subject matter is appropriately called the Access to Justice Act, since it addresses the need for Pennsylvanians to have access to our justice system through legal services.

PLAN programs represent Pennsylvanians whose incomes fall below 125% of the federal poverty level. They also represent victims of domestic violence, without regard to income. As I will discuss in a moment, we are not able to represent everyone eligible for our services and not even all those who are eligible and actually asking for help. But we handle about 85,000 cases annually.

We have been supported by state funding since 1973.

In your folder of materials is a map that displays the eight regional programs and six specialty programs that provide civil legal services across Pennsylvania. Every county is served, although we are not able to have an office in every county. These are the on-the-ground programs providing the direct representation to clients. Our funding to these programs is allocated in a fair way, based on the census count of low income people in each county, not based upon playing favorites. I mentioned that PLAN is the umbrella organization for these programs. There are also other specialized legal services providers that are not part of PLAN.

Here are just a couple of examples of the kinds of cases handled by PLAN programs: .

E.M. is a woman in her early 90s who is bound to a wheelchair. In 2002, she gave her nephew Power of Attorney to handle matters for her and also decided to sell him her house. She moved into an apartment. The deed to the house was put in the nephew's name and he agreed to pay her \$500.00 per month toward the sale price of \$50,000.00, which he did by depositing the money into the client's bank account. Once he did this, he would report the deposit to E.M. who would give him a handwritten payment receipt.

E.M. realized in December of 2011 that her nephew had used his POA to take \$18,000.00 out of her bank accounts. She contacted Neighborhood Legal Services Association ("NLSA"), who asked the nephew to account for the money withdrawn. He alleged that it was used to pay the client's rent, utilities and food. After confirming with the client that this was not true, NLSA filed a Petition in Orphan's Court asking that the Court make the nephew account for the money taken. Neighborhood Legal Services offered proof at trial that E.M. paid her own rent and utilities, out of a different bank account. E.M. further testified that she gave her nephew cash for food he purchased. Before the nephew testified, his lawyer asked for a recess after which the nephew agreed to pay a lump sum of the \$18,000.00 alleged to have been taken. E.M. got her monies returned to her.

Tanaya was fearful for good reason. After she got her kids back from their father, he terrorized their home. "He hit me in front of the children. I saw them run from their own father. He broke their toys. MidPenn Legal Services helped me get a Protection from Abuse Court Order and then we won the custody case too. I feel so much freer now," says Tanaya. The York County mom believes her children are safe but admits that she will always look over her shoulder when she goes outside.

Not only are the services provided by legal aid programs vital and sometimes life saving

but there is a strong business case to be made. A recent independent study, which is included in your packet of material, found that for every dollar spent on legal services in Pennsylvania, there is a return on investment of eleven dollars. Imagine how much was saved by the fact that the woman represented by Neighborhood Legal Services did not end up losing her home, nor the funds taken by her nephew. Imagine how much money was saved when Tanaya avoided having to go into shelter to protect herself, and when she avoided police services and medical costs by breaking the cycle of violence.

The importance of legal services, and adequate funding for legal services, was probably best stated when Chief Justice Ronald Castille testified before the Senate Judiciary Committee on May 23, 2013. This Committee is studying and conducting hearings on legal services with the last of the three hearings to take place on October 29 in Pittsburgh. Videos of these hearings are posted on our website at www.palegalaid.net.

In his remarks, the Chief Justice stated:

“As a commonwealth, we should be treating civil legal services for indigent individuals and families as an important government service, like roads, like police service, like the courts. There should be a dedicated certain line with equal application to every county for citizens facing serious civil legal situations.”

A professional study conducted by Belden Russonello & Stewart confirmed that this view is not just that of our Chief Justice but it is the general view of Americans. When polled by this independent polling company, the firm found that “there is broad public support for the concept of legal aid. Close to nine in 10 Americans (89%) agree that legal help for civil matters should be provided for low-income people. Over half (55%) of the public *strongly* agrees with this sentiment. Eight in 10 (82% and 42% *strongly*) even support the idea when it is described as a

government funded program.”

I am constantly amazed that in fact, a large portion of our society believes we are already there. I regularly speak in front of groups of average people in our communities, and I ask them some questions. Say a family is faced with loss of their home through foreclosure. It turns out the payments on the mortgage were current but there were some foul-ups on the servicing end of the mortgage because a new bank had taken over the loan and the payments were not getting properly recorded. Is this family entitled to an attorney to represent them, in order to demonstrate that they should not lose their home? While many Pennsylvanians answer yes, at present that is not the case. The family is on its own. It may or may not be eligible for legal services and even if it is, legal services programs do not have the resources to represent all eligible people.

A mother has been subjected to physical violence by her boyfriend, the father of her child. They live together. The violence has gotten worse and she is in fear for herself and for her child. She needs a protection from abuse order to keep the boyfriend out of the home and her place of employment and to refrain from any further violence or threats of violence. Does she have a right to be represented for this purpose? Again, most people believe the answer is yes, but in fact, no such right has been yet established in Pennsylvania.

We support the establishment of a right to counsel in certain civil cases where basic human needs are at stake. For example, cases involving shelter, sustenance, safety, health or custody of a child. The Pennsylvania Bar Association is on record in support of this right, as are the Allegheny County and Philadelphia Bar Associations, and many other county bar associations across the state. Until there is the establishment of a “Civil Gideon,” we will continue to have a justice system that cannot work properly, as Judges cannot be fully informed by the parties of all the relevant facts and law applicable to the dispute.

What is the reality of funding for legal services at present? The graph included in the materials I provided shows that state funding for legal services has remained flat over its 40 year history. In the past few years, state and federal funding have actually declined. And even including other sources of government created funds, taking inflation into account, funding today is only half of its initial levels. Funding in recent years has especially been on the decline due to lowered interest rates, which have impacted revenues from a source of funding called IOLTA.

The primary sources of funding to support legal aid in Pennsylvania are the following:

- Appropriation of state funds, presently about \$2.5 million.
- Appropriation by the state of federal Social Services Block Grant funds.
- Federal Legal Services Corporation funding.
- Interest on Lawyer Trust Account (IOLTA) funds, which are derived from the interest earned on trust accounts held by lawyers.
- A supplement to annual attorney licensing registration fees and a redirection of a part of those fees, producing over 2 million annually.
- Cy pres funding, which is the occasional distribution of unallocated funds in individual lawsuits.
- Other court-generated sources.
- Bar Associations and individual attorney contributions.
- United Ways.
- Local government funding.
- Other local sources of support.

Let me just add that a number of the key sources of support have involved very concrete and proactive steps on the part of the Supreme Court, which has been very supportive of the Pennsylvania Legal Aid Network and in promoting access to counsel in civil cases involving low income residents. The Court created the IOLTA program, as an expansion on the legislative IOLTA program of years ago and has a Pa. IOLTA Board that oversees these funds. The Court added \$25 to the annual attorney registration fee and has redirected an additional \$10 of the registration fee to support legal services funding. The Court adopted a cy pres rule, requiring that at least 50% of residual funds in certain cases be directed to legal services. The court ordered a pro hac vice fee so that when out of state attorneys enter limited appearances in Pennsylvania

cases, this fee is dedicated to help legal services programs. And there have been other supportive actions taken by the Court.

In addition, thousands of private lawyers donate their time to handle many thousands of pro bono cases every year. Private attorneys are doing their part.

But most of these sources have declined or remained flat in recent years. Some have declined substantially. While PLAN programs had historically handled over 100,000 cases annually, that number fell last fiscal year to about 85,000. Offices have been closed and staff have been laid off. We have seen about a 15% reduction in attorney staffing.

While we are able to handle about 85,000 cases annually, including about 10,000 foreclosures each year and about 12,000 domestic violence cases each year, we know we are turning away many others and that many have given up. A study by the Legal Services Corporation concluded that for each person represented by a legal aid program in Pennsylvania, another person who is eligible for services and has asked for help is turned away. That is tragic. Stated another way, we are meeting only about 20% of the need for legal aid representation when taking into account not just those who apply for services, but also those who need legal help and are eligible, but have given up, didn't know it was available, or were told not to try.

One thing we offer is our lawhelp website. This highly acclaimed site is a free access site with a lot of legal information and help, of use to the general public. We have nearly 100,000 page views to the site every month. A flyer for this site is in the materials I provided.

My concluding remark is that the work of legal aid programs is vital to our Commonwealth. Access to justice through civil legal aid produces an eleven-fold return on investment. It solves problems and helps assure courts can run smoothly and fairly. And most of all, it makes a difference in the lives of the people we serve. We keep roofs overhead and protect

against violence, we preserve income and assets of our clients, and we represent clients to assure the best interests of children are preserved.

But funding for our program must improve. The total state appropriation for legal services is about \$2.5 million for services statewide. That is not sufficient to assure access to justice.