

LEGAL ASSISTANCE OF WESTERN NEW YORK, INC.

One Franklin Square, P.O. Box 487, Geneva, New York 14456

Tele: (315)781-1465 (Voice/TDD)

1-866-781-LAFL (Toll Free-Clients Only)

Fax: (315)781-2565

Email: lafl@lafl.org

Website: www.lawny.org

**TESTIMONY: NEW YORK STATE
DIVISION OF BUDGET**

**Rochester, New York
November 17, 2007**

**By: C. Kenneth Perri
Executive Director**



I. INTRODUCTION

On behalf of Legal Assistance of Western New York, Inc. (hereinafter LAWNY), I thank you for the opportunity to share our comments with regard to the 2008 – 2009 fiscal year budget for New York State.

Last year, for the first time ever in the history of New York State, the executive budget included state funding for the delivery of civil legal services to low-income New Yorkers. We are thankful to the governor for the leadership role he played last year. I am here to urge that, in 2008 – 2009, Governor Spitzer continue his leadership role on the issue of state funding for civil legal services and include \$25 million in his budget for general state funding for the general delivery of legal assistance in civil law matters to low-income New Yorkers. The \$25 million requested is the next step in reaching the \$50 million investment needed by 2010.

II. LAWNY

My name is C. Kenneth Perri and I am the executive director of LAWNY. LAWNY is a 501(c)(3) not-for-profit law firm whose mission is to provide access to the justice system to low-income New Yorkers and other vulnerable populations.

We serve our communities through seven staffed offices. Our service area consists of 14 counties.

Our office in Bath serves the residents of Allegany and Steuben Counties. Our office in Elmira serves the residents of Chemung and Schuyler Counties. Our office in Geneva serves the residents of Livingston, Ontario, Seneca, Wayne and Yates Counties. Our office in Ithaca serves the residents of Tioga and Tompkins Counties. Our office in Jamestown serves the residents of Chautauqua County. Our office in Olean serves the residents of Cattaraugus County. Our office in Rochester serves the residents of Monroe County.

We provide core, comprehensive civil legal services in areas of high unmet need.

In 2006, LAWNY closed 4,803 cases benefiting 12,400 individuals. Dollar benefits for clients included nearly \$154,000 in on-going monthly benefits, plus nearly \$2,545,000 in one-time payments for a total payout over 12 months of nearly \$4,392,000. The state and counties realized taxpayer savings of nearly \$705,000.

Representation was provided across a broad spectrum of substantive law areas as follows:

- 1,693 (35.2%) housing cases;
- 1,665 (34.7%) income maintenance cases;
- 828 (17.2%) family law cases;
- 218 (4.5%) consumer/finance cases;
- 114 (2.4 %) health law cases;

- 43 (0.9%) individual rights cases;
- 18 (0.4%) employment law cases;
- 5 (0.1%) education law cases;
- 3 (0.1%) juvenile law cases; and
- 216 (4.5%) other miscellaneous matters.

Our housing work includes representation in the areas of private landlord tenant, public housing, subsidized housing, foreclosures on homes being purchased by low-income people, evictions from mobile home parks and enforcement of fair housing laws which protect people against discrimination in the provision of housing. Our goal in our housing practice is to preserve or enforce the rights of low-income people to decent, safe and habitable housing.

Our income maintenance practice includes representation of families and individuals who are denied benefits or are having benefits terminated from the safety net programs of last resort – public assistance, food stamps, supplemental security income and social security disability benefits. Our ability to preserve or obtain income from these government benefit programs for low-income New Yorkers is critical in allowing them to continue to pay their rent and put food on their tables.

Our family law practice includes representation of victims of domestic violence in their efforts to secure civil orders of protection and become safe from their batterers. We also provide representation in the areas of child support, custody and visitation.

Other miscellaneous matters which we handle include preparing wills, durable powers of attorney and health care proxies for senior citizens.

III. HISTORY OF CORE FUNDING FOR CIVIL LEGAL SERVICES

New York State has a rich diversity of legal services providers supported by a number of federal, state, local and private funding mechanisms.

Our efforts here are to secure general state funding for the general delivery of legal assistance to those in need.

There are three core funding streams that support the general delivery of legal services:

- The federal Legal Services Corporation (LSC);
- The Interest on Lawyers Account (IOLA); and
- The State Funding – provided through the Assembly majority as line items and as part of the Legal Services Assistance Fund (LSAF), and, last year, for the first time by the Governor in his executive budget.

1. Federal. Launched in the 1970s, the federal Legal Services Corporation (LSC) is the national construct for funding civil legal services. In New York today there are seven (7) federally-funded regional LSC providers. These funds are distributed on a per-poor-person basis and support the general delivery of legal services based on local needs assessments.
2. IOLA. Modeled after programs in Canada and Australia, IOLA is now a model of funding used throughout the country to tap into what had been non-interest bearing accounts held in escrow by attorneys and law firms. IOLA funds are distributed based on a per-poor-person allocation within IOLA designated units. Seventy-five percent (75%) of the annual funding must be designated for the direct delivery of services to individuals, while up to 25% can be designated for efforts to advance the Administration of Justice (AOJ). It is under the AOJ category that IOLA funds special programs and populations. IOLA funding ebbs and flows with prevailing interest rates. It is expected to increase in 2008 due to the recent promulgation of a regulation which requires banks to offer interest rates on IOLA accounts similar to those offered to comparably sized customers.
3. State Funding: Line Items. It was in the early 1990s, when interest rates plummeted, that legal services advocates across the country first turned to their state governments for more dedicated, core support for the delivery of legal services. States began creating their own funding streams for the general delivery of civil legal services by setting aside general appropriations and/or dedicating court and legal fees to civil legal services. In New York, this is when the Assembly first made a general appropriation for legal services, setting aside \$3 million for programs across the state based on each program's IOLA losses. Without a partner in the Executive branch, this line-item approach continued - rising to \$7.5 million - and then dropping after the attacks on September 11. Last year's budget included \$4.6 million in these line items.
4. State Funding: Legal Services Assistance Fund. Created in 2003 when the state was raising fees to cover the cost of increased reimbursement for mandated representation on the criminal side, the LSAF is supported by a set-aside of a portion of each criminal history search fee. Rather than dedicate the funds to civil legal services, the LSAF is available for both criminal and civil legal assistance and is allocated based on Memoranda of Understanding between and among the Governor and Legislative Leaders. Last year's budget included approximately \$2 million in LSAF funds for civil legal services providers.
5. State Funding: Executive Budget. Last year, \$8 million was included for civil legal services in the executive budget. \$5 million was housed in the Office of Court Administration. Another \$3 million was housed in IOLA. Of the \$8 million, to date, only \$3.2 million is being made available to the civil legal services providers. An RFP was issued by the Unified Court System which requested proposals by October 29, 2007. It is anticipated that decisions regarding the allocation of the \$3.2 million will be made in the near future.

It should be noted that not all legal services programs receive funding from all sources and that other sources of funding are available to serve particular populations, particular geographic areas or for particular services.

Taken together these core funding streams support the state's infrastructure for the delivery of civil legal services to poor and low income New Yorkers.

IV. THE NEED FOR PERMANENT AND ADEQUATE STATE FUNDING

Nationally, in *Documenting the Justice Gap in America, A Report of the Legal Services Corporation, September 2005*, two of the principal findings were that for every client served by an LSC funded program, at least one person who sought help was turned down because of insufficient resources and only a very small percentage of the legal problems experienced by low-income people (1 in 5 or less) are addressed with the assistance of either a private attorney (pro bono or paid) or a legal aid lawyer. In New York State, LSC's grantees, which serve every county, were unable to serve, or unable to serve fully, two-thirds of low-income people who presented with civil legal problems that fell within the substantive law priorities of the grantees.

The national situation corresponds with the situation in the 14 counties served by LAWNY. LAWNY and the Volunteer Legal Services Project of Monroe County, Inc. (VLSP), which operates a pro bono program that provides services to Monroe County residents, participated in the national study conducted by LSC. Over a two month period, LAWNY and VLSP took in 1,212 new intakes. We were unable to serve 1,573 additional persons and unable to serve fully 310 others. 56.5% of all callers could not be served. An additional 11.1% of all callers could not be served fully, for a total of 67.6% of callers who could not be served or could not be served fully. Extrapolating over one year, 9,438 low-income New Yorkers in our mixed urban/rural service area cannot be served. An additional 1,860 cannot be served fully.

More specifically, by substantive law area, the results were as follows for the callers to LAWNY and VLSP for the time period from March 14 – May 13, 2005. We were unable, or unable to serve fully:

- 67% of callers with consumer law problems (169 of 252);
- 90% of callers with education law problems (28 of 31);
- 99% of callers with employment law problems (169 of 170);
- 70% of callers with family law problems (488 of 694);
- 100% of callers with juvenile law problems (23 of 23);
- 65% of callers with health law problems (88 of 135);
- 62% of callers with housing law problems (308 of 498);
- 47% of callers with income maintenance problems (275 of 585);
- 76% of callers with individual rights problems (133 of 176); and
- 91 % of callers with other miscellaneous problems (202 of 221).

Within our core practice areas, we turn poor people with legally meritorious cases away, every day, because of a lack of resources which preclude us from responsibly offering extended representation in complex civil matters.

V. CONCLUSION

All of New York State's civil legal services providers are struggling, due to a lack of resources, in implementing their missions. As a result, far too many low-income New Yorkers are denied access to justice because they cannot access that which they are most in need of: individual, skilled representation with complex civil legal problems. Last year, Governor Spitzer was a leader in the effort to address this problem. With support from the Assembly and general support within the Senate, we urge the Governor to take the next major step, significantly increasing the state's investment in legal services to \$25 million and creating a solid home for civil legal services within the Executive branch to administer and provide oversight over these funds.

In its 1998 report, The Legal Services Project appointed by Chief Judge Judith S. Kaye called on the state to create a \$40 million Access to Justice Fund noting that "\$40 million annually would do no more than restore legal services funding lost since 1992 (after adjusting for inflation)." Given that almost ten years have passed, we believe the investment now needs to be \$50 million. We urge the governor to take the next step toward this goal and call for:

- maintaining the \$8 million in the executive budget;
- maintaining the \$4.6 million administered by the New York State Department of State;
- maintaining the approximately \$2 million in the Legal Services Assistance Fund administered by the Division of Criminal Justice Services;
- increasing funding to \$25 million, the next step toward the goal of \$50 million by 2010; and
- creating an Office for Civil Justice in the Executive branch to coordinate and oversee distribution of state funds, facilitate reporting on use of funds and take responsibility for ensuring that civil legal services funding is maintained and appropriately expanded in the state budget.

State funds play a critical role by helping to stabilize the legal services community when other funding sources fluctuate. The governor took New York in the right direction last year and we now need to strengthen the state's commitment to fulfilling its obligation to provide access to justice.

Other states have set the precedent for increasing the state commitment even when IOLA revenue has increased as a result of comparability. Florida, Massachusetts, Minnesota and Texas are among the states that have adopted IOLA comparability and have made

significant investments of general state funds for the provision of civil legal services. Our low-income population's vast civil legal needs make it essential for New York to follow suit.

LAWNY and the other civil legal services providers throughout New York State welcome the opportunity to work with you to achieve these results.

Thank you for your time and your consideration.