

Access to Justice



FOR MANY YEARS, ACCESS to justice is a notion that has been a principal goal of the State Bar of California and the judiciary. It can mean courthouse accessibility to people with disabilities, system accessibility to people who do not speak English well or at all, training of judicial officers to avoid the appearance of bias and to be aware how bias may creep in uninvited, or even just attorney-client representation. California has addressed access to justice in many ways.

Numerous organizations in the state are actively involved in coordination efforts to increase access to justice.

The California Access to Justice Commission leads California's Access to Justice efforts. Appointments are made by the State Bar, Judicial Council, California Judges Association, Governor, Attorney General, President Pro Tem of the Senate, Speaker of the Assembly, Chamber of Commerce, Labor Federation, Council of Churches, League of Women Voters, Consumer Attorneys of California and Council of California County Law Librarians.

The Legal Services Coordinating Committee, which includes representatives of the Access to Justice Commission, Judicial Council, State Bar Standing Committee on the Delivery of Legal Services, Legal Services Trust Fund Commission (IOLTA), Legal Aid Association of California and California Clients Council, provides institutional accountability by coordinating justice planning efforts to ensure that planning is ongoing and projects are implemented.

The Judicial Council's Access and Fairness Advisory Committee was first appointed in 1994 to make recommendations to the Judicial Council for improving access to the judicial system and fairness in the court. Among other things, it focuses on judicial education and fairness issues in the courts.

The State Bar has a **Standing Committee on the Delivery of Legal Services** (SCDLS) which is a 20-member advisory committee to the Board of Governors that focuses on the delivery of legal services including to low- and moderate-income people. It prepares reports, does research, tracks legislation and makes recommendations to the Board of Governors.

Boards, committees and commissions are important, but their work must be supported by a commitment of resources. One important source of funding for access programs is the familiar **IOLTA** (Interest on Lawyers' Trust Accounts). California puts its money where its mouth is with IOLTA.

Attorneys who handle money belonging to their clients, including settlement checks, fees advanced for services not yet performed or money to pay court fees, are required to deposit the funds in one or more clearly identifiable trust accounts. If the client funds are not capable of earning income for the client in excess of the costs of securing such income, then they are pooled in a single account with similar funds of other clients. Before IOLTA, these funds were deposited into non-interest bearing checking accounts. With IOLTA, an attorney must pool nominal or short-term client funds in an interest bearing account. In California, IOLTA interest income supports approximately 100 nonprofit legal aid organizations that provide civil legal aid to indigent and low-income people, seniors and persons with disabilities.

Until the passage of AB 1723 last year, IOLTA accounts could only be interest-bearing checking accounts. The interest earned in these accounts averaged less than 1.0%. AB 1723, effective January 1, 2008, amended Business & Professions Code Sections 6091.2, 6211, 6212 and 6213 to require financial institutions to offer bank investment products to their IOLTA customers comparable to the products they offer to their similarly situated customers.

IOLTA is administered by the **Legal Services Trust Fund Program** which was started by the State Bar to fund civil legal services for those Californians who could not otherwise afford needed legal services. It is overseen by the Legal Services Trust Fund Commission which sets the criteria for programs receiving the trust funds, monitors the programs for compliance, and so forth. It is a department within the State Bar of California. The funds available vary from year to year, but about ninety-five percent (95%) of the funds collected are spent for programs. While the current

financial situation is a challenge to most people and certainly will probably affect many programs, the change brought by AB 1753 has meant that most programs did not suffer a loss of IOLTA funds for their current budgets.

The **Equal Access Fund** was created by the Legislature in 1999 to help the most vulnerable Californians when they face issues such as elder abuse, domestic violence, family support, housing, or access to health care. The Equal Access Fund, under the Judicial Council, provides funds to address the need for civil legal aid, providing \$10 million per year for this purpose. The Equal Access Fund provides a supplement to other public and private funds available to nonprofit legal aid providers to meet the civil legal needs of low-income, elderly and disabled people. Ten percent of this money goes to support court-based self-help centers and the rest goes to direct services.

Still, only a small fraction of the need is met each year. Therefore, in 2006, AB 2301 was passed by the Legislature and signed by the Governor. AB 2301 authorizes the State Bar to collect contributions from its members to support legal assistance for low-income Californians, in order to bridge the "justice gap". Contributions are voluntary and can be made through the annual dues statement. The **Justice Gap Fund** is another resource to help pay for legal services for low income people. The Justice Gap Funds are designated to be used for protecting victims of elder abuse and domestic violence; keeping families intact by avoiding homelessness and establishing guardianships; and helping low-income children access health care and special education services through existing legal aid programs.

The importance of these programs cannot be underestimated. Equal access to justice is not just a slogan. It is an important feature and function of a civil society. Access to justice for the poorest of us is a benefit to all of us because it promotes a fair and rational society. It promotes a stable justice system that is supported by all citizens. Even the least of us must have access to the system so that we all may realize the promise of equal justice. 🏹