

## MEMORANDUM

To: Barbara Clark, Joan Fairbanks, Christine Crowell, Scott Smith, Pam Feinstein, Michele Jones, Dick Manning, Dave Savage, Ron Ward, Jan Michels, Sal Mungia, Bill Kinsel, Greg Dallaire

From: Patrick McIntyre  
Ada Shen-Jaffe

Date: August 22, 2003

Re: Need for Civil Equal Justice Reconfiguration Process

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The purpose of this memo is to share with you our assessment of the critical situation we are facing and to solicit your help in effectively engaging the civil equal justice network in a necessary and urgent planning process. We fully appreciate that the ATJ Board is in the process of updating the State Plan and do not mean to preempt or compromise that process either through the presentation of this memo or its suggestion that the statewide staffed programs will need to immediately undertake a process to address a substantial shortfall in available revenues. It is our objective to ensure consistency of any necessary and resulting reconfiguration with the State Plan review effort. At the same time, the crisis is upon us, and without an immediate infusion of substantial new resources, we must move ahead and address the problem.

We also want to advise that we have shared a substantially similar memo with our respective leadership teams, boards and staff, seeking their active involvement and input as we move forward.

### **I. The Current Situation:**

The past two years have presented the Washington ATJ Network and CLS and NJP in particular with the highest level of fiscal uncertainty since either 1981 or 1995. While we face neither the kind of radical cuts to federal funding made by Congress and the Administration in 1981 and 1995, nor the imposition of new restrictions that would further curtail full-range client representation, the current situation also calls for serious actions. The combined and cumulative effect of a number of complex factors contribute to this situation, including the following:

- A. We lost a million dollars for the 2001-2003 biennial period due to cuts in state funding made by the Governor;
- B. We saw IOLTA revenues decline steeply as a result of post-9/11 economic recession, lower interest rates and widespread non-compliance with the IOLTA rule by the LPO (limited practice officers) industry, and this declining trend continues;
- C. Although federal funding through the Legal Services Corporation technically “increased”, it was only by a small amount due to national census shifts, or partial offset adjustments, with funding remaining essentially flat since drastic cuts in 1996;

- D. The Supreme Court’s Equal Justice Funding Task Force’s hard-fought filing fee bill did not pass;
- E. Redundancy costs associated with the necessity of maintaining a bifurcated statewide delivery system in keeping with the *Hallmarks*;
- F. The *Hallmarks* and *State Plan* have called for increasingly higher levels of equal justice community resources to underwrite, leverage other resources, and support the network’s integrated, complex and collaborative client service delivery system based on Regional Planning and Coordination and statewide coordination and support for all aspects of the client service delivery system;
- G. Expenditures associated with expanded levels of access, responsiveness and relevancy to diverse client communities who face disproportionate barriers to the civil equal justice network have risen.

By 2001, CLS was already projecting significant deficit spending, and has been able to “squeak by” only through a combination of selective hiring freezes, having various folks do “double duty” jobs, and by drawing down on reserves which the Legal Foundation of Washington allowed the program to preserve in light of high levels of funding uncertainty.

“Savings” achieved through staff hiring freezes simply meant that CLS could reduce the need to deficit-spend and deplete non-regenerating reserves. The favorable outcome in the IOLTA case only meant that there would continue to be a significant source of support for urgently needed client legal representation and equal justice network support work for which there currently is no other viable source of support. Neither of these factors creates increased funding. Of course, the EJC and WSBA teams have labored for eight long years to try to stabilize, protect and expand public support and public funding for civil equal justice for poor and vulnerable clients in an extremely difficult and uncertain fiscal and political climate. Despite the cuts last year, the legislature is still looking at significant budget deficits, and any effort to generate new \$\$ for civil equal justice will have to contend with this dynamic and a host of related political considerations. While our efforts to secure stabilizing revenues are continuing in earnest, we must simultaneously understand and accept the economic reality that we cannot responsibly manage our programs with the anticipation of significant new funding being available by July 1, 2004.

## **II. The (current) “Bottom Line”:**

As much as we all hoped and worked for passage of the Equal Justice Funding Task Force’s proposed filing fee bill last session, it did not pass. If it had passed, it would have lifted us out of a deficit spending situation, and would have allowed for some modest relief in those client service arenas shown by the matrix process to have disproportionately fewer resources. The effect of these factors and the events summarized above is that we face a combined cumulative budget deficit of about \$5 million by the end of 2005 if we do not change our current levels of spending. Note that NJP’s part of the projected deficit is under \$300,000 of the \$5 million total. This is due to a number of factors related to CLS’s and NJP’s respective roles under the *State Plan*, including:

- CLS is the entity charged with developing and investing all non-federal funding;
- CLS disproportionately bears the risks associated with non-federal (for example, state and IOLTA) revenue;

- the *State Plan* contemplates that NJP use as its primary funding source restricted LSC dollars (augmented by such additional state funding as may be required to ensure its independence and integrity as a separate organization and statewide geographic coverage);
- NJP must comply fully with federal regulations that limit its ability to maintain a significant operating reserve beyond that which is necessary to underwrite a small portion of potential ‘wind-down’ costs;
- CLS has been assigned responsibility to maintain primary field presence in most areas and restricted client representational capacity in all areas; and
- In accordance with the ATJ Board *State Plan*, CLS has been assigned the duty to help underwrite and coordinate its field operations and other essential components of the state delivery infrastructure.

### **III. Need for Reconfiguration Planning and Implementation:**

Because of this situation, we need to begin to address the projected deficit and budgetary crisis through a planning process. While we will do our best to minimize staff reductions, given the magnitude of the projected deficits, it is likely that some reductions in staffing will be necessary in the next 5-6 months. No decisions have been made as the extent or location of any potential staffing reductions; this will be an element of the planning process. We will prepare a draft plan to be disseminated and discussed by our equal justice community so that we can have the benefit of the broadest level of input in our decision making process.

Examples of groups from which input would be sought include:

- The ATJ Board;
- The Legal Foundation of Washington
- The Supreme Court’s Task Force on Civil Equal Justice Funding;
- The Board for Judicial Administration;
- The Washington State Bar Association
- NJP Senior Staff and staff;
- CLS Regional Directors, Project Directors and staff;
- Washington Legal Workers;
- NJP and CLS Boards of Directors, possibly including joint Board committees or teams;
- Other equal justice network partners, stakeholders and funders;

Others that you suggest or those we have inadvertently omitted.

### **IV. Background for Reconfiguration Discussion:**

In stepping back and looking at this harsh landscape, we need to rethink how we can best fulfill complementary roles and functions consistent with the *Hallmarks* and *State Plan* in light of the projected deficit. It is now seven long years after our equal justice network had to drastically reconfigure itself in 1995 in order to preserve and protect a client-centered equal justice delivery system. Some of the premises or assumptions that prompted certain conclusions and directions at that time are no longer applicable, or have become less important, and additional goals and concerns have emerged.

A. Brief “Refresher” on 1995 Reconfiguration Premises and Assumptions:

In 1995, we restructured in such a way as to prepare for the then-very real possibility that LSC funding would be eliminated altogether by Congress between 1995 and 1999, and that NJP would be a short-lived organization. (In contrast with the realities that existed in 1995-96, today LSC is the most “stable” of the three primary sources of civil equal justice funding.) Based on the potentially extreme fragility of NJP’s funding situation during its early years, it was left to CLS to try to put in place the largest possible Regional Offices and special statewide projects to enhance presence and “critical mass” for client service delivery. CLS was also assigned the task of maintaining a *Hallmarks*-based statewide support infrastructure capable of leveraging and coordinating resources for the overall equal justice network.

B. Potential for Changed Roles and Functions Seven Years Into the State Planning Process:

We have matured as an equal justice network, and some of the roles and functions assigned to CLS under the first two *State Plans* could now appropriately be transferred or far more broadly shared with NJP and our other equal justice network partners (we were not able to do this when NJP was just a fledgling entity and CLS was in its infancy as a newly-merged organization). NJP and other network partners could now play expanded roles related to geographic coverage, leadership and infrastructure support. This would in turn allow CLS to focus its energy and resources more exclusively on civil equal justice work that cannot or is unlikely to be done by other partners in the statewide equal justice network. This new increased clarity of roles would strengthen the delivery system’s ability to deliver on the ATJ Board’s *Hallmarks* and *State Plan*.

**V. Guidelines for Reconfiguration:**

As guidelines for this process, we must all apply several important principles:

- A. Fidelity to the *Hallmarks* and *State Plan*, and in particular, to our network's commitment to maintaining sufficient (albeit skeletal) presence of full range capacity in all parts of the state where there are clients who, because of their status or the nature of their legal problems, cannot obtain assistance from NJP or entities funded exclusively with federal or state funding. A reconfiguration effort would ensure that NJP, CLS and all equal justice partners can serve their best possible complementary roles and functions under the *Hallmarks* in the face of fewer overall equal justice network resources;
- B. Restructuring that allows the equal justice network to reach a significantly greater degree of sustainability. For example, the client service delivery system could be strengthened by a smaller, more agile CLS that knows it can survive longer term at about the same level on the base of IOLTA and other funds that might come available in the future, an NJP that can leverage a better mix of federal and state resources to help it support a more sustainable geographic presence and regional leadership role, and volunteer lawyer programs and specialty providers that have increased predictability and sustainability in underwriting resources from the overall equal justice network;

- C. A higher level of clarity of purpose and function between NJP, CLS and other equal justice network partners. Instead of trying to have two statewide programs and partners that, in fact, have a lot of overlapping priorities and work, why should we not reconfigure so that each partner's most effective roles and functions under the *State Plan* would be the touchstone? An example would be NJP and appropriate partners refocusing on leadership in ensuring effective overall Regional Coordination and Planning, and on the most important client advocacy that can be done with restricted dollars, while CLS and appropriate partners refocus on a primary mission of identifying client populations, legal work and initiatives that focus on client communities, legal tools and forums that cannot be handled by NJP and other partners due to limitations on funding, or that are unlikely to be addressed on a systematic basis by the private bar;
- D. Ensuring that the pivotal political and legal considerations and imperatives are not compromised, especially those resulting from LSC rules and requirements that govern NJP's obligation to demonstrate objective integrity and statewide service;
- E. Protecting and preserving funding sources that underwrite civil legal services delivery to poor and vulnerable people consistent with the *Hallmarks* and the *State Plan*;
- F. Achieving the best "bang for the buck" for clients – an updated, clearer and cleaner definition of respective partner organization roles could allow us to find savings by reducing redundancy and overlap, and maximizing high-quality client representation by all partners;
- G. Positioning the equal justice network so that it can take maximum advantage of whatever new dollars come in depending on the character of the funds, and the restrictions, if any, that apply.

## **VI. Proposed Timeline:**

Our goal is to have a firm plan in place by the end of the year. Implementation, to the extent possible, would take place during the first quarter of 2004, although some tasks may best be accomplished earlier or beyond this timeframe.

September through December 2003 (or sooner if possible): development and announcement of a reconfiguration plan with input from broad range of equal justice community stakeholders;

January 2004 through April 2004: implementation of reconfiguration plan in a manner that is consistent with *Hallmarks*, *State Plan*, mission of organizations, and legal and contractual obligations to staff, equal justice network partners, funders and other key entities.

Note that we will be relying on the information generated through the Matrix process to help us with decision-making. When they are available in final form, we will also utilize relevant findings contained in the Civil Legal Needs Study. Such information is important to our ability to make sound and client-centered decisions about the most effective and strategic distribution of limited resources, and this is the case whether we face reductions or increases in funding.

We would like to schedule a conversation with you in early September to discuss the reconfiguration process, its relationship to the State Plan review process, its relationship to the

legislative effort, and how we might best alert and engage the broader civil equal justice community in helping us face these challenges.

Thanks to each of you, as always, for your leadership and commitment to our equal justice vision and goals here in Washington. Mac and Ada