

MEMORANDUM

TO: Melissa Pershing, Director of Grant Programs, Florida Bar Foundation
FROM: Bonnie Allen, Consultant for the Foundation
DATE: September 5, 2014
RE: Findings, Recommendations and Action Steps: Florida's Legal Aid Delivery and Support System

This memorandum includes a set of findings and recommendations for the Foundation to consider as it shifts its strategic framework for grantmaking, capacity building and convening.

INTRODUCTION

Three underlying themes shape the following recommendations to increase the capacity of Florida's legal aid delivery and support system to meaningfully impact the lives of people living in poverty:

FOCUS, SCALE AND COLLABORATION

In today's competitive nonprofit marketplace, successful legal aid organizations must identify their niche and make the case for how they uniquely add value. They must focus on what they do best to advance their mission and generate impact. They must collaborate with other nonprofits serving low-income people to find synergies and holistic solutions to complex social and economic problems, and to attract broad community support. Finally, they must invest in the internal operations needed to support their mission and programs.

These realities often require legal aid leaders and their boards to make hard choices. What tempers this difficulty is staying focused on mission and outcomes that will improve the lives of the people legal aid organizations want to serve. Nonprofits, including legal aid organizations, do not have the luxury of doing things "because we've always done them this way," or of maintaining staff, functions or structures that no longer serve the best interests of the mission. Nor can legal aid organizations be all things to all people, despite the overwhelming needs of their clients and communities. Getting focused on core mission and impact is the starting point. Once the focus is clear, leaders should structure their staffing and programs to align with mission and impact.

Most legal aid organizations in Florida do not adequately staff operational functions, including financial management, human resources, technology, communications, and fundraising. The tendency is to hire lawyers over operations staff. This is shortsighted because the lawyers' work is compromised when the organization's internal operations are not adequately supported. Small nonprofits, including legal aid organizations, face particular challenges because they lack the scale of operations to survive in an increasingly competitive funding environment. Unfortunately, many are not sustainable due to lack of funding and the inability to make significant impact. Some are able to continue their work through mergers or resource sharing with other nonprofits. Others are forced to close their doors.

In many other states, bar foundations and other key stakeholders have already gone through the process of downsizing the number of legal aid organizations through mergers and other restructuring vehicles. Because of high levels of IOTA funding and deep reserves, this process has not yet taken place in Florida. At this time, however, it is clear that the current path is not sustainable due to drastic and prolonged IOTA

reductions, as well as the Foundation’s recognition that the current legal aid delivery and support system is not producing expected results. Now is the time for big and bold change to respond to economic realities, as well as the needs of our clients and communities.

FINDING #1 – REGIONAL STRUCTURE

In the aftermath of the onerous 1995 Congressional restrictions on LSC funding, Florida – along with other states – made a good faith effort to respond to the crisis by creating a “companion delivery system” that included seven legal aid delivery regions across that the state, along with several statewide support and advocacy organizations. The hope was that within each region, one or more “unrestricted” organizations would operate, along with one LSC-funded organization, to provide a full range of legal and policy advocacy. Unfortunately, this experiment has failed due to several factors:

- Most of the organizations that became “unrestricted” had been in existence before, and continued to do the same work they were doing. They had deep ties with local bar associations and community partners that were accustomed to these legal aid organizations doing certain kinds of work. In some cases, funding from local or state government and private bar sources depended on continuing that type of work. Taking on more controversial work, such as suing local or state government, challenging big business, representing undocumented immigrants, or representing incarcerated persons, could jeopardize funding or diminish bar support. As a result, most of these organizations continued to do much of the same kind of work that LSC programs were doing. This has produced duplication and significant gaps in service within the regions.
- In several regions, some of the unrestricted organizations are too small to have the organizational infrastructure or programmatic bandwidth needed to sustain advocacy and operations. The executive directors are under constant pressure to write and manage grants, manage budgets, payroll and other administrative functions, as well as engage in their own legal work. As a result, these leaders are not spending their time on major donor cultivation, board development, and relationship building in the community. These organizations lack professional staff in the critical areas of development, financial operations and communications. Most have not diversified their funding beyond the Foundation and a handful of other sources. With the reduction in Foundation funding, they are not sustainable.
- In other parts of the country, larger “unrestricted” organizations are securing funding from national and regional foundations, attorneys’ fees, cy pres awards, law firms, and major donors. To attract this kind of funding requires a level of development expertise and overall organizational capacity that does not currently exist in most of Florida’s unrestricted organizations.

RECOMMENDATIONS:

1 A. Acknowledge that the regional approach has not worked in Florida, and shift to a grantmaking approach that targets three or four service areas:

North Florida – covers the panhandle, Tallahassee, Gainesville, Jacksonville, and the rural counties surrounding these cities.

Central Florida – covers the counties south of Gainesville and includes Ocala, Orlando, Daytona Beach, Lakeland, the Tampa Bay region, Ft. Myers, and the rural counties surrounding these cities. Note: this service area may need to be two (North Central and South Central).

South Florida – covers Dade, Broward and Palm Beach Counties

1 B. Identify at least one anchor impact advocacy organization in each service area that has the leadership, legal talent, organizational infrastructure, funding base, and clear commitment needed to pursue and sustain a full range of legal and policy advocacy. This kind of advocacy is directed at reforming systems and structures that impact low-income people and communities, along with providing legal assistance to client groups that LSC-funded organizations are prohibited from assisting. To advance this goal, the Foundation should consider various options to ensure that these “anchor” unrestricted organizations have the bandwidth to be viable and sustainable. These options include the “reinvention” or dissolution of currently existing unrestricted grantees, mergers, resource-sharing agreements, and the creation of new entities.

Immediate Action Steps in 2015:

- Where it is clear that an unrestricted legal aid grantee is not viable or sustainable, the Foundation should support a process that dissolves the entity or merges it with another legal aid organization.
- Within each of the three or four service areas, the Foundation should convene and facilitate a planning process to identify or create a viable unrestricted legal aid organization that has the capacity and scale to provide a full range of advocacy to a broad range of client groups.

FINDING #2 – STATEWIDE ADVOCACY AND SUPPORT

The Foundation currently funds several grantee organizations that focus on statewide impact advocacy (legislative advocacy and impact litigation) – meaning that it impacts more than one individual. These include Florida Legal Services (FLS), Southern Legal Counsel, Americans for Immigrant Justice, Florida Justice Institute, and Florida’s Children First. FLS is the largest of these and has the broadest mission and reach. In addition to providing direct legislative advocacy and impact litigation, FLS provides “state support” functions on behalf of other legal aid organizations in the state. These include providing support for pro bono participation and technology, and offering statewide legal aid training programs.

FLS is part of a new national peer network of statewide legal and policy advocacy organizations that have come together to share information and strengthen their respective state level capacities. The Sargent Shriver National Center on Poverty Law convened this network with support from the Kresge Foundation in recognition that state level advocacy lacks the national support, including funding, that once existed. These kinds of organizations exist in approximately half of the states. Some, like FLS, are hybrids, meaning they provide both direct advocacy and state support. This hybrid model is becoming less and less effective due to several factors:

- With the shift toward “access to justice” frameworks and commissions, much of the dialogue around legal aid is now centered on increasing individuals’ access to legal assistance, as opposed to advocating for systemic change to attack the root causes of poverty and injustice. The access to justice framework and commissions yield many benefits, including attracting bipartisan support and bringing key players to the table (state bar associations, state supreme courts and the business community). The big question, however, is access to what kind of justice? Increasingly, legal aid organizations are spending most of their time delivering brief advice and limited legal services. What is being lost is the more controversial work.

- As a result of this shift, states are recognizing that bar and court-based organizations are best positioned to make the case for state support of traditional legal aid. This includes promoting and coordinating pro bono, advocating for state funding in the legislature, engaging the judiciary in access to justice initiatives, and technology. Legal aid organizations need to be actively involved in these issues, but it is critical that the bar and judiciary assume leadership roles.
- To avoid conflicts of interest, statewide advocacy is best housed and funded separately in organizations that have the freedom to take on systemic advocacy and challenge the powers that be, including big business and governmental entities, when needed to represent client interests.

RECOMMENDATIONS

2 A: Target the Foundation’s “state support” grantmaking strategy in ways that clearly differentiate between statewide advocacy and other forms of state support. The Foundation should split these functions through a funding strategy that enables FLS to focus on and strengthen its advocacy capacity. This includes FLS’ own direct advocacy, as well as supporting systemic advocacy taken on by other legal aid organizations.

2 B: Shift the state support functions related to pro bono and technology out of FLS and into other entities (perhaps the Foundation, the State Bar or a new entity). The training programs should remain at FLS because they are tied directly to advocacy.

3 B: Identify significant substantive gaps in statewide advocacy, including immigrant advocacy, and develop a structure and funding strategy to address these gaps. This will require collaboration with other organizations in the state that are not part of the current legal aid system. In other parts of the country, national and regional foundations, law firms and major donors provide substantial financial support to state advocacy organizations. All of the state advocacy organizations in Florida, including FLS, should be aggressively fundraising to reduce their reliance on the Foundation. Southern Legal Counsel is a good model. It recently hired a seasoned, full-time development director who is helping SLC develop an aggressive major donor and law firm campaign.

Immediate Action Steps in 2015:

- The Foundation should support a strategic planning process at FLS designed to reposition and restructure the organization to focus solely on advocacy. This may result in different kinds of staffing and board membership. It also would include support for developing a fundraising capacity.
- The Foundation should convene and facilitate a planning process to identify and address significant substantive gaps in statewide legal and policy advocacy, with a particular focus on immigrant advocacy. This process should include other stakeholders (private foundations and advocacy groups outside of the legal aid community).
- The Foundation should shift its grantmaking for pro bono and technology support out of FLS and into another entity.

FINDING #3 – BAR AND BROADER COMMUNITY SUPPORT

Florida is the fourth largest state in the country with a population of approximately 19.5 million. Florida is ranked 19th nationally in overall income, and it hosts multiple large metropolitan areas with considerable concentrations of wealth. Florida’s legal community continues to grow rapidly, and the

Florida Bar's membership exceeds 90,000. Florida also is home to an increasing number of large corporations and law firms.

Unfortunately, Florida's legal aid community has not yet developed the capacity to tap into our state's abundant resources. While there are many good efforts, Florida is leaving too much money on the table when it comes to accessing funding from lawyers, the business community, and national and regional foundations. There is very little foundation support in Florida compared to other states. The Mississippi Center for Justice, for example, raises over \$3 million a year from national and regional foundations, along with \$1 million a year from national and regional law firms and other major donors. Pisgah Legal Services, based in Asheville, North Carolina, is an unrestricted legal aid organization that raises substantial funds from lawyers and the business community. LSC-funded organizations are also raising substantial funds from the legal community, business community and foundations, including the Atlanta Legal Aid Society and Legal Aid Society of Greater Cincinnati. In Florida, Bay Area Legal Services, the Legal Aid Society of Palm Beach County, Legal Aid Society of the Orange County Bar Association, and Legal Services of Greater Miami have successful private bar campaigns. But their leaders acknowledge that they have not yet tapped into the business community or foundations. Legal aid staff and board leaders across the state also recognize that the legal aid "brand" is not well known in their communities.

RECOMMENDATIONS

3 A: Target funding to help legal aid organizations build their capacity to tap into large law firms, corporations and foundations – both in Florida and nationally. These assets include direct financial support, pro bono support and influence. This capacity building will include support for communications, branding and messaging, as well as promoting partnership models with other types of community-based organizations that can broaden the visibility of legal aid, attract new resources and increase community impact.

3 B: The Foundation should staff and implement a statewide initiative to expand pro bono support, with an emphasis on engaging large law firms.

Immediate Action Steps in 2015:

- The Foundation should convene a statewide conference and provide technical assistance to legal aid grantees to equip them to create or expand their fundraising capacity in the areas of major donor campaigns and foundation support. This also will include technical assistance to strengthen grantees' ability to communicate the value and impact of legal aid to a broad range of audiences.
- The Foundation should convene a Large Law Firm Roundtable that includes senior partners from Florida's large law firms, including national firms with offices in the state, as well as representatives from the national network of Large Law Firm Pro Bono Coordinators. This national network meets annually at the ABA Equal Justice Conference. The Foundation can work with the Florida Roundtable to begin to develop a strategy for actively engaging Florida's large law firms in supporting the full range of legal aid advocacy, including impact litigation, through pro bono work and financial support.

