

**ACCESS TO JUSTICE TASK FORCE  
REPORT TO STATE BAR OF ARIZONA BOARD OF GOVERNORS  
AUGUST 20, 2004**

On October 17, 2003, the State Bar of Arizona's Access to Justice Task Force presented its final report and recommendations to the State Bar of Arizona Board of Governors. The Board voted unanimously to support the proposition that legal aid providers in Arizona lack the funding to meet current and future legal assistance needs. Additionally, the Board voted to support creating an access to justice clearinghouse and panel of lawyers to improve access to justice for Arizonans with moderate incomes. Finally, the Board directed the Task Force to investigate methods of increasing resources to legal aid providers, explore funding proposals contained in the Task Force's report, and present its findings to the Board at a future meeting. This report sets forth the Task Force's findings.

The Task Force has voted unanimously to support a two-tiered approach for addressing the need for legal services in Arizona. First, the Task Force recommends that the Board adopt a \$50 membership dues opt-out program. Second, the Task Force recommends that the Board support legislation that would increase the filing fee in civil cases by \$5.00. The funds raised as a result of these increases would be used entirely to fund legal services.

**I. The Arizona Supreme Court Has the Authority to Raise Bar Dues to Fund Legal Services Programs**

The Arizona Supreme Court has inherent power to regulate the practice of law<sup>1</sup> and the court has established the State Bar to regulate lawyers in order to "advance the administration of justice."<sup>2</sup> The U.S. Constitution, however, limits the activities of bars to those "germane" to the goals of "improving the quality of legal services."<sup>3</sup> State bars, including Arizona, use dues for a variety of activities that improve the administration of justice; such as regulating admission to the bar, administering the Client Protection Fund, and coordinating free advice clinics. Using bar dues to fund legal services programs is germane to improving the quality of legal services and therefore it is constitutional. Additionally, supporting legal services with bar dues falls within the Arizona Supreme Court's ability to regulate the practice of law in order to advance the administration of justice.

**II. Membership Dues Opt-Out Program**

The Task Force recommends that the Board adopt either an "unconditional" or a "conditional" dues opt-out program.<sup>4</sup> Under the "unconditional dues opt-out" program,

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<sup>1</sup> *In re Greer*, 81 P.2d 96 (Ariz. 1938).

<sup>2</sup> Ariz. Sup. Ct. R. 32(a)(1).

<sup>3</sup> *Keller v. State Bar of California*, 496 U.S. 1, 14 (1990).

<sup>4</sup> If the courts were to find that a mandatory dues increase were unconstitutional, a conditional or unconditional opt-out program would cure any defect because it would give members of the bar a

\$50 would be added to each member's dues, which would appear as its own line on the dues statement and would be reflected in the total amount due. There would be a note that the \$50 will be set aside to fund legal aid and that the member may subtract out the \$50 if the member does not wish to contribute to legal aid. Under the "conditional dues opt-out" program, dues would be increased by \$50 (\$1 for each hour that lawyers are expected to provide pro bono representation pursuant to E.R. 6.1). Members, however, could opt-out of the increase by avowing that they provided fifty hours of pro bono representation during the previous year. The income generated by a dues increase would be deposited with the Arizona Foundation for Legal Services and Education for distribution to Arizona's legal aid providers.

Similar fund-raising methods have recently been adopted in other states. In 2003, the Illinois Supreme Court raised attorney licensing fees by \$49, of which \$42 will go to fund legal aid. This increase is expected to generate \$2.4 million each year for legal services. The Texas Legislature recently approved a bill to increase bar dues by \$65, to be split between civil and criminal legal aid. The increase is expected to generate \$1.7 million annually for legal services. The Task Force predicts that a conditional or unconditional dues opt-out program will generate significant funds that may be used to increase the availability of legal services in Arizona.

### III. Surcharge on Civil Filing Fees

The Task Force also voted to advocate that legislation be enacted to increase the filing fee in civil cases by \$5.00, with the increase going to fund legal aid.<sup>5</sup> The Task Force estimates that the increased filing fees will raise over \$1 million annually to fund legal services each year. More than 20 states have chosen to use filing fee surcharges to raise monies to fund legal services for the indigent. Kentucky's state legislature recently voted to double the state's current filing fee surcharge to fund legal aid. The measure is projected to increase funding from this source from \$1.3 million to approximately \$2.6 million annually. Missouri also recently enacted a new filing fee surcharge that is expected to generate \$1.7 million annually.

### IV. Conclusion

Current funding levels for legal services programs are inadequate. Funds generated by IOLTA accounts have been reduced by historically low interest rates and federal appropriations for legal services have increased less than six percent over twenty years. The Arizona Supreme Court has the power to regulate the practice of law to advance the administration of justice. Raising monies through either a conditional or unconditional opt-out program and increasing filing fees in civil cases to fund legal

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constitutional choice. Under *New York v. U.S.*, 505 U.S. 144 (1992), the government may not force a person to choose between two unconstitutional options. Allowing members of the bar to unconditionally opt-out cures this. Additionally, because courts may constitutionally compel members of the bar to perform pro bono service (see, *Powell v. State of Alabama*, 287 U.S. 45 (1932); *U.S. v. Dillon*, 346 F.2d 633 (9th Cir. 1965)), a conditional dues opt-out program would be constitutional under *New York v. U.S.*

<sup>5</sup> Lobbying for increased funding for legal services has been upheld under *Keller* as "clearly justify[ing] bar lobbying activities." *Florida Bar Re. David P. Frankel*, 581 So.2d 1294 (Fla. 1991).

services is constitutional and will advance the administration of justice by opening the judicial system to people who, for financial reasons, may have been excluded. Accordingly, the State Bar of Arizona's Access to Justice Task Force recommends that the State Bar of Arizona adopt the foregoing proposals to demonstrate the Bar's commitment to ensuring that all Arizonans, regardless of economic status, can enjoy the promise of justice for all.