

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO RULE REGULATING
THE FLORIDA BAR 5-1.1(g).

Case No. SC20-1543

**APPENDIX TO COMMENT OF THE FLORIDA CIVIL
LEGAL AID ASSOCIATION**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing notice was filed with the Clerk of Court on February 10, 2021, via the Florida Courts E-Filing Portal, which will serve a notice of electronic filing to all counsel of record.

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IN RE: Task Force on Distribution of IOTA Funds

TELEPHONIC MEETING

DATE TAKEN: March 11, 2020
TIME: 10:01 a.m. until 10:26 a.m.

This cause came on to be heard at the time and place aforesaid, when and where the following proceedings were **stenographically reported** by:

Carman L. Gaetanos
Coastal Court Reporters, LLC
St. Augustine/Jacksonville
(904) 824-3525

1 APPEARANCES:

2 MAYANNE DOWNS, ESQUIRE

3 KAREN LADIS, ESQUIRE

4 LAIRD A. LILE, ESQUIRE

5 HALA A. SANDRIDGE, ESQUIRE

6 HONORABLE EDWIN A. SCALES, III

7 JOHN M. STEWART, ESQUIRE

8 M. SCOTT THOMAS, ESQUIRE

9 ELIZABETH TARBERT, ESQUIRE

10 GARY BLANKENSHIP

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P R O C E E D I N G S

1
2 CHAIRWOMAN DOWNS: Okay. Great for the
3 record, Elizabeth, will you do a role call and
4 determination of quorum, please.

5 MS. TARBERT: Yes.

6 Mayanne Downs.

7 CHAIRMAN DOWNS: Here.

8 MS. TARBERT: Karen Ladis.

9 MS. LADIS: Here.

10 MS. TARBERT: Laird Lile.

11 MR. LILE: Here.

12 MS. TARBERT: Hala Sandridge.

13 MS. SANDRIDGE: Here.

14 MS. TARBERT: Edwin Scales.

15 JUDGE SCALES: Here.

16 MS. TARBERT: John Stewart.

17 MR. STEWART: Here.

18 MS. TARBERT: Scott Thomas.

19 MS. THOMAS: Here.

20 MS. TARBERT: Madam Chair, you have a quorum.
21 Your entire Task Force is here.

22 At this point on the phone call are Gary
23 Blankenship, me, and a gentleman from Palm Beach
24 Legal Aid Society.

25 CHAIRWOMAN DOWNS: Great. Okay. Thank you,

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1 Elizabeth. And thank you everybody.

2 Just a reminder, your agenda and the
3 attachments are on your calendar, on the calendar
4 entry for this meeting and call, and anyone who is
5 on the phone who didn't -- who isn't on the Task
6 Force, you can access the agenda on the website,
7 the Florida Bar website for this Task Force.

8 So we have an agenda, but I'm going to go a
9 little out of order just to be sure we're clear
10 about what we're going to do today and what we're
11 not going to do today.

12 And Elizabeth, don't let me forget the meeting
13 minutes approval.

14 First of all, we're not going to vote on the
15 subcommittee report that is before us today, and
16 that subcommittee report, as we all know, was
17 prepared by Laird Lile and Judge Ed Scales. And
18 we're not going to vote because I'm going to have a
19 little different approach to finishing up our work
20 that we all talked about when we started this
21 process in January. And you may recall that in our
22 first organizational call I proposed using
23 subcommittees to be efficient and we divided up the
24 portions of the Administrative Order that enable
25 and direct our work, and we just somewhat randomly

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1 assigned people. But as we near the completion, I
2 think we can be more efficient toward the ultimate
3 goal of having our proposed report to the Florida
4 Supreme Court, which y'all recall is due in
5 September, out in the universe so that everyone has
6 time to think about it and consider it and we have
7 time to hear from any of those who want to speak
8 about it. I would love to have that draft report
9 finished up around the middle of April.

10 And so I -- my strong suggestion is that we
11 don't vote on the subcommittee report today. That
12 report went a little further and I applaud Ed and
13 Laird for doing that, because the sooner we can get
14 our work out in the world and be transparent about
15 it, the better for everyone, so that everyone has a
16 chance to think about it and be well-informed.

17 So I'm going to change the schedule, and if
18 you -- of all of you who can readily do this, look
19 at the chart of meetings which is the last item in
20 the calendar entry that Elizabeth put together for
21 us, I'm going to eliminate Scott Thomas and Hala
22 Sandridge's subcommittee report. As you will see
23 in the agenda, that's the one on examining
24 alternative models of distribution of IOTA funds.

25 At the time we sketched out this schedule that

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1 seemed to make sense, but I don't think it makes
2 the same kind of sense anymore, so I'm going to
3 eliminate that subcommittee report and then move
4 the final subcommittee report, that is examining
5 whether reporting requirements, including objective
6 benchmarks should be a part of our recommendation
7 to the Court. And that subcommittee is Laird and
8 Karen, and so we're going to move those up to the
9 April 13th, 2020 meeting.

10 And my hope would be very soon after our April
11 13th meeting we would be able to have a final draft
12 and have that circulated to anybody in the state of
13 Florida, or for that matter out of the state of
14 Florida who wants time to think about it, send us
15 comments, plan to be at the annual meeting in June
16 to make comments. You know, the more time
17 everybody has to do that, I think the better.

18 So having said that, I would like to quickly
19 approve the meeting minutes for the last meeting,
20 and then we'll go to Ed and Laird, so they can give
21 us their comments on the report that all of you
22 have seen.

23 So may I have a motion for the approval of the
24 February 24th, 2020 meeting minutes?

25 UNIDENTIFIED SPEAKER: So moved.

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1 UNIDENTIFIED SPEAKER: Second.

2 CHAIRWOMAN DOWNS: All in favor of the
3 approval of the February 24th, 2020 meeting minutes
4 please say aye.

5 (Indicating aye.)

6 CHAIRWOMAN DOWNS: Any opposed, please
7 indicate opposition.

8 The motion carries. The meeting minutes are
9 approved.

10 So let's go to the report of our subcommittee.
11 Again a reminder, we're not going to vote on it
12 today, but I do want to hear, and I know all of you
13 want to hear from Ed and Laird.

14 Ed, why don't we start with you.

15 JUDGE SCALES: All right. Thank you, Madam
16 Chair.

17 The report is self-explanatory. Laird and I
18 spent a lot of time, along with Elizabeth, putting
19 it together. And we tackled two items. Mayanne
20 mentioned that the second item may not have been
21 exactly within the scope of our subcommittee, but
22 Laird and I both thought that considering our
23 recommendation in the first part of the report that
24 an actual -- we would be -- we are recommending to
25 the Task Force that the Task Force recommend to the

1 Supreme Court an amendment to Rule 5 to encompass
2 uses for IOTA funds, allowable uses. Given that,
3 we thought it would be kind of reckless for us not
4 to go forward, especially considering the guidance
5 that we had from the Supreme Court's Order, and
6 suggest kind of a framework for what that rule
7 should say. So we set out to do that.

8 I am very glad that we are not taking a vote
9 today on the approval, because while the first part
10 of the report, I think we probably can all agree
11 on, I'm not sure we can all agree on the second
12 part of the report. It's only been out there a
13 week and we probably need a whole lot more input
14 from a lot more affected stakeholders and people
15 involved in the process, and so we did the best we
16 could given our timeframe. And once we decided to
17 create the framework for the rule, we did the best
18 we could given the parameters and what was in the
19 Court's order. But I think it would be a little
20 too soon at this stage to kind of lock in the
21 framework for a rule.

22 But I really don't have anything to add. I
23 think it is self-explanatory. I would just say
24 this, before we do vote at some point on especially
25 the first part, whether to actually recommend the

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1 adoption of the rule, that -- and this gets really,
2 I know people's eyes start to glaze over when I
3 mention this, please do take a look at the Janus
4 decision that came out of the United States Supreme
5 Court, a five-four decision last year. And there
6 is some language in Alito's majority opinion that
7 may be especially pertinent to our mission here, so
8 please take a look at that.

9 I will just say this, I had little difficulty
10 in recommending that we memorialize uses of IOTA
11 funds with a rule after reading the Janus opinion.

12 And Laird, I would like to turn it over to you
13 now to fill in all of the points that I missed.

14 MR. LILE: Thank you, Judge. And I certainly
15 don't think you missed many points. I will just
16 reiterate and maybe emphasize one or two.

17 The first is that is this report is really two
18 people's view, with input from a few others, and so
19 I too am glad that we're not expected to take
20 action on this, but we can view this as truly a
21 draft, and in particular for the second part of the
22 report, look for some input.

23 Madam Chair, when the Judge was reporting on
24 the first part versus the second part, it occurs to
25 me that you may want to consider bifurcating the

1 action because I think that it may be easier to
2 reach consensus that there should be rules, and
3 then a perhaps more difficult time in suggesting
4 parameters for what those rules will be.

5 And on that note, you'll see some percentages
6 in the specific rule suggestions, and those
7 percentages, I think the Judge would agree, are
8 reasonably uninformed and certainly look for people
9 who are closer to the process to give better
10 information or give some information in terms of
11 what might be more appropriate numbers.

12 In closing my remarks, and I would say that on
13 behalf of myself and I expect my co-chair of the
14 next report, in light of some of the workgroups
15 being eliminated, if someone would like to take
16 over those responsibilities, I know for me who has
17 already served on this committee, and I expect for
18 Karen Ladis who has served on the initial
19 workgroup, that we might certainly be willing to be
20 subbed out, if you will. We don't want anyone to
21 feel excluded from this process in terms of having
22 the opportunity to work on subgroups.

23 So Madam Chair, that would conclude my
24 remarks.

25 CHAIRWOMAN DOWNS: Thank you. And Laird,

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1 that's the perfect segue. You will recall that we
2 have addressed this, I think in every meeting, and
3 I know for sure we talked about it last time.
4 Nobody is ever precluded from any Task Force member
5 working on any subcommittee, and anybody who has a
6 special interest or just wants to be more fully
7 engaged is welcome at any time. Just let us know.
8 Elizabeth, of course, is our laboring -- or on
9 keeping us organized, so she knows when calls are
10 occurring, et cetera. So, I too, just remind
11 everybody that everyone can participate.

12 Also, on that note, I think, Laird, your point
13 about a bifurcated vote, which we won't take in any
14 event today, but I agree. I think that makes very
15 good sense. I echo Judge Scales' comments about
16 the Janus decision, and even if the Janus decision
17 did not exist, the world works better, I think, as
18 a general proposition when people know and
19 understand what the rules are. And the point of
20 rules is to be sure that everybody knows and there
21 isn't any misunderstanding, so you know, the more
22 rules the better I guess, particularly in this
23 profession.

24 All right. Any comments, questions,
25 suggestions for either Judge Scales or Laird or on

1 any other topic?

2 MS. THOMAS: Mayanne, this is Scott. All I
3 would say about the reference to the Janus decision
4 is I really would emphasize the importance of that.
5 I think also if people look at Brown v. Legal
6 Foundation of Washington where the U.S. Supreme
7 Court by a vote of five to four kept its IOLTA
8 programs live. It was Justice Kennedy, you know,
9 in a dissent said, By the way, there's a compelled
10 speech problem here, so the idea that there's not
11 reason to believe that Janus could be applied to
12 the IOTA programs seems to me, it's already been
13 sort of preordained by Judge Kennedy as possible.

14 And also, I think, you know that was a
15 five-four decision with what, Soutor, O'Connor and
16 Stevens in the majority. They're not on the Court
17 any longer and their replacements are such that if
18 anyone doubts that the IOTA program is -- needs to
19 be worried about problems, about the constitutional
20 issues here, they're just mistaken. They're very
21 significant issues that during the longterm
22 survival of the program in my view.

23 CHAIRWOMAN DOWNS: Scott, I think you said
24 that very well. I -- to me anybody who reads
25 simply Janus, but if you add the analysis you just

1 identified, I can't imagine any responsible person
2 saying that a rule shouldn't be put in place and be
3 as clear and direct as possible. And I, too, share
4 your concern about the compelled speech issues
5 implicit in these programs.

6 I spend a lot of time, and I'm sure some of
7 you do with First Amendment issues in various
8 capacities, but I see it in the City of Orlando
9 where we're increasingly unable, for example, to
10 restrict panhandling because of free speech. And
11 we all know watching the Court lightly, you can
12 still know the direction the Court is going with
13 the First Amendment. So I agree. I think all of
14 those are very important things to keep in mind.

15 Thank you, Scott.

16 Other comments, questions, suggestions?

17 MR. STEWART: Mayanne, this is John. Just
18 really quick, and I don't want to (inaudible) keep
19 talking about Janus, but you know, I think it can
20 be part of our analysis. I -- just as we move
21 forward, I would not want to see this be part of
22 any report just because of whatever implications it
23 might have that we're not smart enough to know
24 about. You know, we looked pretty closely, and
25 while I understand everyone's position, having to

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1 move forward (inaudible) on what Janus means, that
2 it doesn't meet the Bar Associations (inaudible)
3 and in fact, the Supreme Court, I serve on FLEX
4 [phonetic] which is the first (inaudible) to apply
5 Janus to those situations, which does not apply.

6 So I just think that (inaudible), we have to
7 remember that there is some tenuous relationships
8 with the Bar and the Foundation, and I wouldn't
9 want to have anything in writing that would be a
10 bad record for us, so I would resist putting that
11 in any report, although I think it's smart for us
12 to talk about it and consider it.

13 CHAIRWOMAN DOWNS: Noted.

14 And I agree, John. It's not a simple issue.
15 You may recall when I was Bar president in 2010, we
16 had to rework our advertising restrictions and
17 rules because of an Eleventh Circuit opinion, and I
18 don't think that's going to change, that direction
19 is going to change. So, but agreed. I don't --
20 I -- let's all think collectively about what is and
21 isn't included, and of course there will be many
22 things that are impactful to all of us that we've
23 heard or read or sometimes vote about a wide range
24 of subjects that isn't necessarily in the report.
25 But the narrow component about the rule may be

1 something that we can address.

2 But thank you, John. We want to be sensitive
3 to all stakeholders, especially discussions with
4 the Bar, so.

5 Other comments?

6 JUDGE SCALES: I -- Mayanne, this is Ed.

7 I just want to be clear, make sure I
8 understand John.

9 John, your concern is -- and I don't want to
10 put words in your mouth. Your concern is not that
11 the rule contain restrictions on IOTA funds, but
12 that our Task force reporting does not expressly
13 link that to Janus for a host of other legal
14 reasons. Am I correct about that?

15 MR. STEWART: Yes, that's exactly right.

16 JUDGE SCALES: Okay. Thank you.

17 Thank you, Madam Chair.

18 CHAIRWOMAN DOWNS: Okay. Well, thank you
19 everybody. I don't believe we have anything else
20 to vote on. The schedule has been changed. And
21 that means that either Laird or anybody who wants
22 to step forward and replace Laird since he's
23 already acted, but we can do all that offline. But
24 that subcommittee needs to get going, and I think
25 everyone will recall that Elizabeth and her team at

1 the Bar are available to assist with research and
2 drafting. And we'll schedule a call with that next
3 subcommittee fairly quickly here so everybody has
4 time to get ready. And we'll continue to try to
5 get reports out about a week before our telephone
6 meetings. And obviously, if we can do it before
7 that, we will.

8 And unless anybody else has anything for the
9 business of order, I believe we're adjourned.

10 MR. STEWART: Mayanne, this is John. I know
11 you mentioned this, but I just want to make sure
12 for Hala's benefit, or for anyone else that might
13 be on the call listening, you know, I'm very happy
14 that you weren't trying to push this forward today.
15 I want to make sure that everyone -- you know, the
16 idea is to get (inaudible) that know more than we
17 do, so we can get valuable feedback as to
18 everything, you know, (inaudible) whether it's too
19 constraining or not constraining enough. I mean I
20 think we really want constructive feedback. I mean
21 while there is no foregone conclusion, I think
22 hopefully that feedback will help with this
23 process, and there's likely to be some (inaudible)
24 like to get some idea of what people are saying
25 (inaudible) or helpful. I know you mentioned that.

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1 I know Hala can take that back to the Foundation
2 (inaudible) to help us out.

3 CHAIRWOMAN DOWNS: John, I think that's a very
4 good point. And actually that reminds me for
5 anybody involved in this process who doesn't know,
6 you know, this is the way rules are made in the
7 state of Florida, by the Florida Supreme Court, and
8 I suspect that's true in every jurisdiction. This
9 is a process that goes on for a period of time
10 that's transparent, that is established by a Court
11 Order that everyone can read, and as we all know
12 from our initial organizational meeting, there are
13 certainly Sunshine components that apply, and we've
14 all taken great care to ensure that everyone who
15 wants to speak has an opportunity to speak to us.
16 We ask, of course, that y'all send us things in
17 writing so we can have them as a part of the record
18 and have a chance to study them. But agreed, John,
19 this is the way the Supreme Court has traditionally
20 changed rules or considered changing rules, and the
21 more conversation we have and the more
22 communication we receive and the more factual
23 information that we don't have that others may
24 have, the better our final work product will be.
25 And in turn, the better prepared the Florida

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1 Supreme Court will be if it elects to do so, to
2 make a change. So more is better.

3 MR. LILE: Madam Chair, just a procedural
4 question. I know you moved the Lile -- currently
5 the Lile/Ladis report to the next telephone
6 meeting. Are you planning on beginning that
7 meeting with more discussion about the Scales
8 report that was agendaed for today, and how do you
9 envision to move things that you're putting
10 together?

11 CHAIRWOMAN DOWNS: Well, what I would like to
12 have at our next meeting, and I'm emphasizing like
13 because everybody here is a volunteer and everybody
14 has other things going on, but what I would like to
15 have is a final draft that would have all of the
16 parts, including the work that you and Judge Scales
17 have done and now presented to us, so that all of
18 the pieces would be together and we'll have
19 discussion and maybe we'll have a vote. And we
20 have -- we have additional time if we want to
21 schedule another meeting, or two other meetings.
22 My goal is to get as close as we think we can get
23 to a final draft that is out there so that people
24 have, I hope, 45 to 60 days between the time we
25 publish, if you will, a final draft and the time we

1 meet at the Bar convention, which is a live meeting
2 and will give people an opportunity to be heard.
3 That's my overarching goal, whether that occurs as
4 approval or not at this next meeting, I guess will
5 depend on all of y'all.

6 I know that's a long-winded answer, but does
7 it answer your question?

8 MR. LILE: I'm not sure it does, so.

9 CHAIRWOMAN DOWNS: Move to strike as
10 nonresponsive.

11 Let me try again. Yes, we're going to put not
12 just your report, but the next report up for
13 potential approval at the next meeting. But, you
14 know, if members of the Task Force say they want
15 and need more time, we'll address that as and when
16 it occurs.

17 MR. LILE: And what are you envisioning in
18 terms of how those informed on the substance of the
19 Scales report -- you like how I named that, Ed?
20 The Scales report.

21 JUDGE SCALES: I was going to comment on that
22 later.

23 MR. LILE: How -- or the (inaudible) report,
24 how the input is going to be provided to the Task
25 Force members. Are you envisioning --

1 CHAIRWOMAN DOWNS: Right.

2 MR. LILE: -- that happening during the next
3 call or between calls or what?

4 CHAIRWOMAN DOWNS: Well, we've said all along
5 that -- and I made reference to it earlier, but I
6 should have been more detailed, that anybody can
7 call any member of the Task Force at any time, of
8 course, but the very best thing is if they send
9 letters to us, whatever materials they want to
10 include. We -- I mean, this group recently got
11 within the last ten days a very helpful letter from
12 Donnie McKenzie, for example. But I do not
13 envision that we will be taking commentary at our
14 next meeting on the phone. I just don't think
15 that's practical.

16 MR. LILE: Got it.

17 CHAIRWOMAN DOWNS: But people should
18 continue -- people have been sending us things all
19 along and that should certainly continue. And I
20 know I read everything and we circulate it. I
21 think the rest of Task Force does as well. And
22 John said it best, the better informed we are, the
23 better everything will be for all.

24 MR. LILE: For sure.

25 All right. Thank you.

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1 CHAIRWOMAN DOWNS: Okay. Everybody cool with
2 adjourning?

3 UNIDENTIFIED SPEAKER: Yep.

4 CHAIRWOMAN DOWNS: Great. Thanks everybody.
5 Appreciate your time.

6 UNIDENTIFIED SPEAKER: Thank you.

7 UNIDENTIFIED SPEAKER: Thanks all.

8 UNIDENTIFIED SPEAKER: Thank you. Thanks all.

9 (Proceedings concluded.)
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CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
)
COUNTY OF ST. JOHNS)

I, Carman L. Gaetanos, Court Reporter and Notary Public, do hereby certify that I was authorized to and did **stenographically report** the foregoing proceedings, and that the transcript, is a true and correct record of my **stenographic notes**.

Dated this 18th of March, 2020.

Carman L. Gaetanos

Carman L. Gaetanos

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In Re: Task Force on Distribution of IOTA Funds

TELEPHONIC MEETING

DATE TAKEN: April 12, 2020
TIME: 10:00 a.m. - 10:35 a.m.

This cause came on to be heard at the time and place aforesaid, when and where the following telephonic meeting was **stenographically reported** by:

Deborah Pacetti Brownell
Registered Professional Reporter
St. Augustine/Jacksonville, Florida
(904) 824-3525

A P P E A R A N C E S

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- MAYANNE DOWNS, Esquire
- KAREN LADIS, Esquire
- LAIRD A. LILE, Esquire
- HALA A. SANDRIDGE, Esquire
- HONORABLE EDWIN A. SCALES, III
- JOHN M. STEWART, Esquire
- M. SCOTT THOMAS, Esquire
- ELIZABETH TARBERT, Esquire
- GARY BLANKENSHIP

1 CHAIRWOMAN DOWNS: Good morning, all. So we
2 have everyone on the call, so we won't make
3 Elizabeth go through the formality of determining a
4 quorum because we have 100 percent attendance,
5 which is my favorite kind of attendance by the way,
6 so thank you, everybody, for making time to have
7 this call at a time when everything is complicated,
8 so I appreciate it.

9 Can we start with a motion to approve the
10 March 11, 2020, meeting minutes?

11 MR. THOMAS: Scott. I'll move for approval.

12 CHAIRWOMAN DOWNS: Do I hear a second?

13 MR. LILE: I'll second, but I do have a
14 question about them, Madam Chair. In No. 3, we're
15 still referring to today's committee as the Lile and
16 Ladis subcommittee, and I don't know if the name of
17 that got changed after the meeting, but I was
18 pegged out by, I think, Scott, or somebody.

19 CHAIRWOMAN DOWNS: That's a good point, and
20 you're right, the minutes should reflect.
21 Elizabeth, we've really got two meeting composition
22 changes, the one that Laird just identified, and
23 also we get to our report here that is now the -- a
24 part of the combined report, I believe that due to
25 her extraordinary commitments and work in

1 connection with COVID, that Karen Ladis was not a
2 part of that report, so Elizabeth, can you make
3 those two corrections?

4 MS. TARBERT: Yes. Why don't I just say the
5 subcommittee who examined that way there's nobody's
6 name attached to that in the minutes because it did
7 happen after the meeting?

8 CHAIRWOMAN DOWNS: Got it. Okay. Then we'll
9 make that change.

10 MR. LILE: Thank you.

11 CHAIRWOMAN DOWNS: We'll make the change that
12 Elizabeth has suggested, and good catch, Laird.

13 Any other comments, suggestions, or changes to
14 the March 11, 2020, meeting minutes?

15 Hearing none, I'll ask for all of those in
16 flavor of approval of the March 11, 2020, meeting
17 minutes as corrected, please say aye.

18 (Collective aye.)

19 CHAIRWOMAN DOWNS: All opposed, say nay or no.

20 The motion carries.

21 So that brings us to the second item on our
22 agenda, and I'm going to ask Scott and Ed to
23 provide us commentary on that combined report, and
24 the reason that I say Ed is because Karen was
25 really unable to participate in a meaningful way,

1 Ed provided some assistance, and he was also the
2 primary draftsman of the subcommittee that has the
3 first part of that combined report, but before we
4 get to those reports, I want to make sure everybody
5 knows that I had a wonderful conversation, as
6 always, with Hala Sandridge who, as everybody
7 knows, is president of the foundation, and y'all
8 will recall that Hala was unable to be at our
9 in-person meeting in connection with the midyear
10 meeting of the Florida Bar at which numerous people
11 spoke and provided information, and there was
12 some -- maybe a slight disconnect between the
13 information we were looking for as a
14 subcommittee and the information that the
15 foundation and the foun- -- foundation grantees
16 provided us, all in good faith, of course, and it
17 was a good educational exercise, but now that we've
18 proceeded down the path of refining by our
19 subcommittees the various sections and directives
20 provided to us by the Florida Supreme Court, Hala
21 made the very good point that as we are more
22 informed and narrowing our scope, that it might be
23 another -- a time for another session, and so she
24 asked on behalf of the foundation, if the
25 foundation could make a presentation to this

1 committee and identify areas of work and services
2 they perform that might -- or I suspect in their
3 opinion does satisfy the focus that is identified
4 and discussed in the combined report. I don't
5 think anybody will mind that I went ahead and said
6 I thought that was a terrific idea. We're ahead of
7 schedule, and so I think what we're going to do is
8 take the May -- I think we actually had penciled
9 in, we may need to adjust it slightly, but I think
10 we actually had penciled in a May 18th conference
11 call between 3:00 and 4:00, you will see that's
12 under TBA, you know, to be announced, what exactly
13 we were going to do at that time. You will also
14 see that, by the way, just as a reminder on our
15 agenda item, that's the IOTA Task Force chart of
16 meetings and assignments that we've been revising
17 as we go along.

18 So we'll have Elizabeth check that date again,
19 but my suggestion would be that we expand that time
20 period by an hour so that the foundation has a full
21 hour to present, and we have a full hour to ask
22 questions, that should be more than we need, but I
23 do think it's important that we hear from them and
24 they hear from us.

25 The last little point I'll make about this,

1 and then we'll get into the combined report, is
2 that I think we will -- we will confirm in writing
3 with the task force not only a meeting date and
4 time when we get that identified, but also,
5 perhaps, some directives from us to them, and
6 anybody who would like to see that letter before it
7 goes out, I'm not talking about anything terribly
8 detailed, but just an opportunity for us to kind of
9 give them a heads up about what might be helpful
10 for us to hear, and by definition, what is not
11 helpful to hear, of course, all information is
12 helpful, but our focus is, of course, on the
13 Court's order giving us our charge, so if anybody
14 wants to weigh in on that letter and see it and
15 have a chance to edit it, let Elizabeth or me know
16 by email, we won't take the time to do that right
17 now, and you'll be included; otherwise, we'll
18 confirm the meeting whenever it is and try to give
19 them some directives. And I'm grateful to Hala for
20 suggesting this, and I know John Stewart and Ed
21 Scales also were a part of those conversations, and
22 anything we can do to be well informed will be
23 beneficial to all.

24 Also, Elizabeth, I think we need to do that
25 May meeting by Zoom, I -- you know, one of the

1 problems with Zoom is that I think to have a free
2 use of that technology, there's a limit to 40
3 minutes. I have bought a license, and if it's not
4 a violation of the license, I'm happy to use my
5 Zoom credentials, but let's do all of that offline,
6 but just a pure conference call to tell us, you
7 know, in terms to receive information, I think a
8 Zoom setup might be better, but, Elizabeth, we can
9 talk about that offline.

10 So I'm sorry for that long introduction, but
11 having said that, Ed, would it make sense for you
12 to remind everybody what the first part of this
13 combined report said, and then I'm going to ask
14 Scott Thomas to tell us what his subcommittee did
15 to contribute to kind of the second part of it, and
16 at the end of that process, we can discuss it.
17 Again, we're not going to ask for a vote as we did
18 not on the first part of this report last time
19 because I think it will be helpful to hear from the
20 foundation one more time before we do that. So
21 with that said, Judge Scales, can you remind us
22 kind of how we got here today with the combined
23 report?

24 JUDGE SCALES: Yeah, thank you, Mayanne, I
25 won't spend a whole lot of time on it. The first

1 two sections of the report appropriately itemed A
2 and B outline what the Laird Lile/Ed Scales
3 subcommittee did a month ago, and essentially, we
4 addressed two issues, one, whether rule 5-1.1(g)
5 should be amended to specify limitations and
6 requirements on the use of IOTA funds, and we
7 concluded that the rule should be amended, and that
8 the codification of the limitations on the use of
9 IOTA funds should be placed in the rule, and that
10 discussion is under subpart A of the report.

11 And subpart B of the report, we put together a
12 draft based on the Supreme Court's order of what
13 such a rule may look like, what limitations and
14 parameters may be, defining the term litigants also
15 in the report, but purporting to say, These are the
16 limitations on how IOTA funds should be used, and
17 that makes up points A and B.

18 I want to reiterate something that Mayanne
19 said, and I said something similar at a foundation
20 board meeting a couple weeks ago, in that this is
21 our crack at it. This was based on my experience
22 on the board of the foundation, and I think based
23 on Laird's experience, and based on the plain
24 language of the order that the Court gave us, so we
25 eagerly anticipate the presentation from the

1 foundation, if the foundation accepts our
2 invitation, to give us a presentation to enlighten
3 us, and I would encourage members of the task force
4 to take Mayanne up on her offer, I certainly plan
5 to, and shoot an email to Elizabeth and Mayanne
6 saying, In the presentation by the foundation, if
7 the foundation accepts our invitation, here
8 specifically is what we would like the foundation
9 to elucidate us on, here's what we would like the
10 foundation to provide us information on because it
11 may well be that in either subpart A or subpart B
12 we've missed something, and if we have, I would
13 like to know from their perspective what we have
14 missed.

15 There are five categories under subpart B of
16 uses of IOTA funds that our subcommittee is
17 recommending that the task force approve, that list
18 may be too narrow, it may be too limited, it may
19 not be, I don't know, but I think the foundation
20 could provide us information with that, and so I
21 just reiterate what Mayanne said.

22 And unless anybody has any questions, I mean,
23 we went all through this last month, I'd turn it
24 over to Scott to talk the about part C, which is
25 linked to really parts A and B of the proposed

1 draft report.

2 MS. LADIS: This is Karen, I wanted to ask a
3 question.

4 CHAIRWOMAN DOWNS: Go ahead, Karen.

5 MS. LADIS: I'd like to thank you -- first
6 thank you for taking the lead, and understanding
7 the circumstances of the director of the Legal Aid
8 program and the burdens that have been placed on us
9 these last four weeks. I do know that the
10 executive directories of the civil legal aid
11 programs in Florida are also preparing some
12 suggestions and remarks as well in writing that are
13 forthcoming, except that they too have been
14 inundated with all the additional legal issues that
15 have been arising the last few weeks, just to let
16 you know.

17 CHAIRWOMAN DOWNS: Good. Thank you. All
18 right. Scott, you're up.

19 MR. THOMAS: Thanks, Mayanne, and thanks,
20 Judge Scales. As Ed indicated, the report, which
21 is subsection C, is certainly linked to the report
22 that was done I think we heard last month from
23 Laird and Ed; although, I would start by saying
24 they're not necessarily linked in that had the
25 Lile/Scales subcommittee not made any

1 recommendations concerning specific limitations or
2 requirements on the use of IOTA funds, I don't know
3 that we still wouldn't have answered the question
4 about whether reporting requirements regarding
5 distribution and use could be adopted in the
6 affirmative still.

7 Currently, there is no requirement in the
8 rule, there's no reporting requirement at all in
9 the rule because the report indicates, though, the
10 foundation certainly makes public their annual
11 audited reports -- auditing -- reporting their
12 audits, but again, those are designed sort of for
13 an objective analysis with the propriety with which
14 the funds are spent, and I don't think are really
15 designed for the sort of the substantive analysis
16 that is envisioned by the Court's order where it
17 says -- asks us to examine whether rule 5-1.1
18 should be amended to better ensure the most
19 effective use of IOTA funds, so that's why I say
20 they're not necessarily linked because even in the
21 absence of specific requirements, I think we would
22 be recommending that we take a look and mimmick the
23 rule that requires a reporting on a periodic basis
24 to the Court that does allow for that subjective
25 analysis.

1 Having said that, because we had the report
2 that's envisioned in section A and B, or set forth
3 in A and B, what we didn't see beyond answering the
4 question that yes, there should be reporting
5 requirements is we set forth -- we looked at --
6 what reporting and so -- because you really have
7 three potential classifications of organizations
8 here, you have the entity that disburses the funds,
9 the department of the Florida Bar Foundation, you
10 have the recipients, the grantees, and you have the
11 Florida Supreme Court, and so the question is,
12 well, what reporting, by whom to whom, and so what
13 the report recommendation is certainly the
14 foundation or anyone -- the distributor of the IOTA
15 funds should make an annual report to the Florida
16 Supreme Court that allows for a review of the
17 effectiveness of the use of those funds.

18 We set forth in this memo six categories, I
19 won't read them to you, you can read them
20 yourselves, but those six categories we set forth
21 were designed really to implement the
22 recommendations in sections A and B. Certainly,
23 if -- those haven't been endorsed, they have not
24 been voted on, they've not been approved, they're
25 subject to change, and I would envision that

1 whatever we do with A and B will affect the final
2 reporting requirements in C, but these six
3 categories were designed to -- were reporting from
4 the distributor to the Court to show the effective
5 use of funds as permitted by A and B.

6 Then the question becomes, well, what about
7 reporting from the grantees to the foundation or to
8 the distributor of the funds? As you can see
9 there, we -- I think the best word to say is we
10 punted. In discussing this, one of the things
11 we're concerned about is that one size may not fit
12 all for grantable organizations, the extent to
13 which IOTA funds are a significant portion of their
14 operating budget versus a small portion may vary
15 greatly, we wouldn't want the uniform reporting
16 requirement that was so burdensome that it -- for
17 the grantee that it may affect their participation.

18 Also, it seemed a little premature to maybe
19 look at that idea when we are -- we're getting
20 several steps down the hypothetical here, which is
21 A and B remain hypothetical, D is a derivative
22 hypothetical, let's hold off on what reporting we
23 may want to recommend to include in the rule, if
24 any, for the grantee organizations. But the idea
25 here is that if you read this as a joint committee

1 report, two subcommittees, A, B, and C, it's
2 designed to develop a scheme that's consistent with
3 the Supreme Court's charge in our order. Happy to
4 discuss it, take any questions, but that's the
5 layout.

6 CHAIRWOMAN DOWNS: All right. Thank you,
7 Scott, that's helpful.

8 Questions, comments, or suggestions from our
9 task force committee members?

10 MR. LILE: This is Laird, I'll start off.
11 Scott -- yeah, will do, thank you. Scott, thanks
12 for putting this together, and to Judge Scales.

13 Ed, I understand from the beginning of
14 subdivision C that you're wanting to address the
15 subjective part of the analysis, but when I read 1
16 through 6, they all sound pretty objective, we've
17 got numbers and names, so am I missing something in
18 that?

19 MR. THOMAS: I think the answer to that would
20 this is intended as objective reporting of the
21 subjective categories permitted in A and B, in
22 other words, the idea is that the specific
23 restrictions -- and Ed can correct me if I'm wrong,
24 the specific restrictions and limitations
25 recommended in subsection B are being recommended

1 because the thought is that would represent an
2 expenditure of funds which would be consistent with
3 an effective use of IOTA funds, so that --
4 subsection B, I think, is really the subjective
5 component, and then -- I guess it's objective in a
6 sense because it's numbers and so forth, but it's
7 numbers to allow a measurement of whether B was or
8 was not accomplished, so I think the effectiveness
9 comes from B, B is the -- and I know we talked
10 about objective from the audit, but C is the
11 objective reporting of the goals set forth in B, if
12 that makes sense.

13 CHAIRWOMAN DOWNS: Does that answer your
14 question?

15 MR. LILE: I think it answers is, but my
16 suggestion would be that you consider deleting the
17 modifier subjective in the paragraph right before
18 analysis so that that would just read, Do not
19 contain the analysis required to evaluate, because
20 it does seem like you then focus a lot on things
21 that -- the reporting that could be considered
22 objective, so I make that observation.

23 And then an overall observation is -- and this
24 is just a structure thing, Madam Chair, but we're
25 referring to our subcommittee in A and B, and our

1 subcommittee in C, and there's actually two
2 subcommittees, I don't know how you want to work
3 that out, but it doesn't really seem to flow or fit
4 very well.

5 And then back to the more substantive comments
6 on C, it looks like we're going to have some -- and
7 I don't think these terms are defined right now,
8 but some types of -- just some defined terms, so
9 this administrator of IOTA funds, and then we have
10 qualified grantee organizations and qualified
11 attorneys. Is qualified attorneys defined
12 someplace and I'm just drawing a blank on where
13 that's defined?

14 MR. THOMAS: Yes, it's defined in paragraph 1
15 of part B. I'm sorry, Ed, go ahead.

16 JUDGE SCALES: No, you're right.

17 MR. LILE: I got it there. Okay. And then
18 No. 6 suggests an account of funded reserves, and
19 accounting sounds historical to me. I think it
20 would be helpful for the administrator to also
21 provide a projection of funded reserves. And I
22 think that concludes my comments, thank you, Madam
23 Chair.

24 CHAIRWOMAN DOWNS: Okay. Let me just
25 summarize those. So your first suggestion is

1 deletion of the word subjective for the reasons you
2 identified, and let me just pause right there.

3 Would deletion of that word subjective in the part
4 of the report that Laird identified, would that
5 give anybody heartburn?

6 JUDGE SCALES: As the author of it, I can tell
7 you no, I think probably because it does create
8 some ambiguity that I didn't appreciate until Laird
9 posed the question.

10 CHAIRWOMAN DOWNS: Right. I think I know what
11 you meant, but we think of objective and subjective
12 as being bright line, and here it's not really.
13 So, Elizabeth, will you make a note that we'll
14 delete the word subjective?

15 And then secondly, Laird, on your issue about
16 formatting and -- or structure and the reference to
17 the subgroups, I think that's an excellent point,
18 and we're going to have to, you know, edit this
19 thing throughout to --

20 MR. LILE: Exactly.

21 CHAIRWOMAN DOWNS: -- put the definitions of
22 who the subcommittees were because I do want the
23 report to be self-contained and also describe the
24 process that we went through because I think the
25 process is also helpful for people to know, the way

1 we divided it up and looked at things over time,
2 so, Elizabeth, if you'll just make a note.

3 MR. LILE: I've always wanted to be a member
4 of the joint committee -- you know, the joint
5 committee on taxation sounds really important, so
6 maybe this can be the joint subcommittees. You'll
7 handle it however you want to, that's fine.

8 CHAIRWOMAN DOWNS: Or I think it -- what we
9 might want to do is just define all the
10 subcommittees by animal, and then we can just be --
11 you know, we can be flexible, the lion committee,
12 the zebra committee, giraffe committee --

13 MR. LILE: That's right.

14 CHAIRWOMAN DOWNS: But, Elizabeth, a second
15 note there then that if -- well, when we get to a
16 point of a final report, and we'll all be looking
17 at that and circulating it, we'll want to both be
18 consistent in those references, but also describe
19 the structure. And then your qualified question
20 was answered. And then No. 6, I think that's a
21 great idea, to both report on existing reserves and
22 projecting reserves over time, so I would be in
23 favor of adding that, which I think you can do with
24 just a couple of words, so we'll make a note of
25 that unless -- unless anybody on the task force

1 here has a problem with that?

2 Okay. Having heard none, we'll proceed.

3 Laird, thank you for those comments, I think
4 they're all helpful. Anybody else have comments,
5 suggestions, questions?

6 MS. SANDRIDGE: This is Hala, I have a
7 question. On 3(b), it says, For each qualified
8 grantee organization, the number of clients served.
9 I know that we have spent some time in prior
10 subcommittee meetings talking about clients and
11 litigants, is there a distinction here or is it any
12 client no matter whether they're involved in
13 litigation?

14 CHAIRWOMAN DOWNS: Well, first of all, can you
15 give us a page number?

16 MS. SANDRIDGE: So this is on page 5, and
17 these are the certifications that -- 1 through 6,
18 and if you take a look at 3, it says, For each
19 qualified organization, and then you look at B.

20 CHAIRWOMAN DOWNS: So we're on the -- okay,
21 got it. Got it. Okay.

22 MS. SANDRIDGE: And I'm fine with clients, I
23 just want to make sure that everybody's on the same
24 page.

25 MR. LILE: Well, this goes back to the term

1 litigant that's addressed in the footnote 1, and
2 I'd rather see client throughout, but the Court
3 uses the term litigant so we were trying to address
4 that, Judge Scales and I in this report tried to
5 address that in the footnote, but I'd love to have
6 client throughout.

7 CHAIRWOMAN DOWNS: You did, you did, and I
8 thought that was a good fleshing out of that
9 identification. You know, here's my suggestion if
10 you're comfortable with it: I think that
11 low-income litigate is properly defined in the
12 footnote that Judge Scales and Laird came up with,
13 and if we want to define that as client, then I
14 think we should capitalize it or refer to it as the
15 client, but in answer to your question, and y'all
16 tell me if you think this is right, Hala, it has to
17 be a client for purposes of this report that fits
18 that definition of a Florida low-income litigant;
19 does everybody agree with that, or does somebody
20 envision that the use of the word client was
21 intended to broaden that category in any way?

22 MR. LILE: Let me say, Mayanne, if I can. It
23 was not intended in 3(b) to broaden the category,
24 in fact, looking at it, it's bad drafting on my
25 part. Certainly, 3(b) shouldn't refer to clients

1 with 3(c) then referring to litigants, so it was
2 not intended that one would capture a group of
3 folks that -- different than what the other
4 captured. If I wrote it over again, I probably
5 would say the number of litigants in 3(b) given the
6 prior definition and footnoted definition of
7 litigants, it's just something that I missed.

8 MR. THOMAS: Scott. Picking up on the Chair's
9 reference to maybe define the term client, maybe at
10 the end of footnote 1 we could make a reference to,
11 In this report, the term that will be used will be
12 client and then go through and change it
13 throughout, and I'd feel much better about that
14 because even with the footnote, when people read
15 litigant, you know, eight pages into the report,
16 they're not going to necessarily remember the
17 footnote.

18 So I guess my suggestion would be to include
19 in footnote 1 that concept, but then in footnote 1
20 indicate, That's defined in this report as capital
21 C client, and then go through and make the change
22 we need to in every place throughout the report.

23 CHAIRWOMAN DOWNS: Yep, I --

24 MS. SANDRIDGE: Wouldn't it be simpler to just
25 change the client to low-income litigants who are

1 clients or something like that?

2 MR. THOMAS: The concern I have with that is
3 when you're reading it, you're just going to think
4 litigate, oh, that means somebody in litigation and
5 not remember that we've defined litigant more
6 broadly, so I'd rather --

7 CHAIRWOMAN DOWNS: I agree. I think it should
8 be defined in the footnote as client because you
9 don't want to use that whole phrase every time,
10 Florida low-income and litigant, litigant being
11 defined, so let's just use the traditional
12 definition in footnote 1, and then refer to the --
13 throughout refer to client. And if anybody has
14 strong feelings about that, let us know. All of
15 these changes that we're talking about will be in a
16 final report, we're not, so far, changing the
17 substance of these two reports that are together
18 referred to as the combined report.

19 Anybody else with comments, suggestions,
20 questions?

21 Okay. That's terrific. Well, I want to thank
22 everybody for the hard work on this, it's a -- the
23 combined report I think is a thing of beauty, I
24 think it's clear, it's well written, and it defines
25 things with the appropriate amount of precision,

1 and it's certainly highly responsive to the Supreme
2 Court's order that brings us here today and
3 multiple days, and we'll all look forward, I know,
4 to hearing from the foundation to see if there
5 should be further modifications made, but as I said
6 at the outset, we're not going to approve this
7 report yet, it's now -- you know, it's out and
8 available for anybody who is interested to read it,
9 and we're ready, willing, and able to hear from
10 people by email, letter, et cetera, so.

11 JUDGE SCALES: Mayanne, this is Ed. A quick
12 question, can you refer to Laird and my committee
13 as the duck-billed platypus committee, please?
14 Thank you.

15 CHAIRWOMAN DOWNS: Yes, here and after,
16 though, we're not going to repeat duck-bill every
17 time, Ed, we're going to define it, and then we'll
18 refer to it as the platypus committee; is that
19 okay?

20 JUDGE SCALES: That will work, thank you.

21 CHAIRWOMAN DOWNS: I thought you might want to
22 go with a sloth, but whatever.

23 JUDGE SCALES: Gator was too obvious, and
24 probably would have been taken, so I think it's
25 more appropriate.

1 CHAIRWOMAN DOWNS: Well, it's funny you say
2 that, Scott, you know, I believe has already filed
3 some kind of trademark for Gator, so good for you
4 for anticipating that.

5 Okay. So as I said at the outset, we will
6 look to find a time -- I'm sorry, is somebody
7 talking?

8 Okay. Got a little crosstalk there.

9 Anyway, we will refine our May 18th, or
10 thereabouts, Elizabeth will check on everybody's
11 continued availability, and remainder, let us,
12 Elizabeth or me or both, know by email if you want
13 to be a part of the editing and crafting of the
14 confirming letter to the foundation, and unless
15 anybody else has something that we all need to
16 discuss, I will consider this meeting adjourned.

17 Thank you, everybody, appreciate it.

18 (Meeting adjourned.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
)
COUNTY OF ST. JOHNS)

I, Deborah P. Brownell, RPR, Seventh Judicial
Circuit of Florida, do hereby certify that I was
authorized to and did **stenographically report** the
foregoing telephonic meeting, and that the transcript is
a true and correct record of my **stenographic notes**.

Dated this 17th day of April, 2020,
St. Augustine, St. Johns County, Florida.


Deborah Pacetti Brownell
Registered Professional Reporter

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IN RE: Task Force on Distribution of IOTA Funds

TELECONFERENCE MEETING VIA ZOOM

DATE TAKEN: May 18, 2020
TIME: 10:00 a.m. - 12:15 p.m.

This cause came on to be heard at the time and place aforesaid, when and where the following meeting was **stenographically reported** by:

Deborah Pacetti Brownell
Registered Professional Reporter
St. Augustine/Jacksonville, Florida
(904) 824-3525

A P P E A R A N C E S

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- MAYANNE DOWNS, Esquire
- KAREN LADIS, Esquire
- LAIRD A. LILE, Esquire
- HALA A. SANDRIDGE, Esquire
- HONORABLE EDWIN A. SCALES, III
- JOHN M. STEWART, Esquire
- M. SCOTT THOMAS, Esquire
- ELIZABETH TARBERT, Esquire
- STEPHEN SENN, Esquire
- DOMINIC MACKENZIE, Esquire

1 CHAIRWOMAN DOWNS: Good morning, everyone. We
2 are all in the brave new world of dealing with Zoom
3 meetings, so we will modify as we go if we have to,
4 but we have a lot of people participating, and
5 that's great. We are going to ask everybody who is
6 participating in the meeting either because they
7 are a member of the task force or because they are
8 designated speakers on behalf of the Florida Bar
9 Foundation. And, Mr. MacKenzie, we'll ask you to
10 perhaps, assist us as we go with who is
11 participating on your behalf, on the Foundation's
12 behalf, because we have a lot of people listening
13 in, and that's terrific, it's a public meeting,
14 we're glad to have those people participating, but
15 we do, for efficiency sake, want to do the best we
16 can to keep our speakers limited so we can do the
17 work that we need to do.

18 So thank you, everybody, for appearing.
19 Everyone, I think, knows that the purpose of this
20 meeting -- we added this meeting into our schedule
21 because we wrote a letter to the Foundation and
22 asked for specific information in response to our
23 specific request, and told them that we would set
24 this meeting so that they would have an opportunity
25 to provide information in advance of the meeting,

1 and also participate in this session, so members of
2 our task force, ask questions and participate in a
3 discussion.

4 We did receive, mid-afternoon on Friday, 1200
5 pages of material, that's 600 a day for Saturday
6 and Sunday. I have spoken to members of the task
7 force, and I know everybody's doing their best to
8 absorb the information, be familiar with it. We
9 also received additional information, and all of
10 that information will ultimately go up on our
11 website, the subsite to the Florida Bar website,
12 but we have to go through an ADA compliance
13 process, so there will be a bit of a delay, but all
14 the members of the task force have received all the
15 information.

16 Elizabeth, would you do our roll call and
17 determination of quorum, and then we'll get
18 started.

19 MS. TARBERT: Okay. Mayanne Downs?

20 CHAIRWOMAN DOWNS: Here.

21 MS. TARBERT: Actually, Mayanne, I would have
22 to -- do you want me to un-mute everybody from
23 this? I would have to do that, it would -- to get
24 people to actually answer.

25 CHAIRWOMAN DOWNS: No, just have them indicate

1 on the screen, you see who's here.

2 MS. TARBERT: Okay. I will tell you the
3 people I can already see on the screen, which is
4 Mayanne Downs, Laird Like, Ed Scales, John Stewart,
5 and Scott Thomas. I cannot see Karen Ladis or Hala
6 Sandridge, and I have emailed to ask them if
7 they're present perhaps by telephone.

8 CHAIRWOMAN DOWNS: I can see Hala.

9 MS. TARBERT: There you are, sorry. It's
10 because you don't have --

11 UNIDENTIFIED SPEAKER: This is Carlos Hallie
12 (phonetic), I'm here, but for some reason, my video
13 is not working.

14 CHAIRWOMAN DOWNS: I'm sorry, could you state
15 your name again?

16 UNIDENTIFIED SPEAKER: It's Carlos Hallie.
17 Can you hear me? It's Carlos Hallie. I'm having
18 problems with my computer, so.

19 Carlos Hallie.

20 CHAIRWOMAN DOWNS: All right, got it. Thank
21 you. And I guess everybody is not muted,
22 Elizabeth, perhaps we can figure out a way for
23 Karen to let us know if she's participating.

24 Judge Scales, you're muted. Judge Scales,
25 you're muted. You're muted.

1 MS. TARBERT: Sorry, Ed.

2 JUDGE SCALES: Karen is texting me saying
3 she's trying to get in but can't. It says, The
4 host will let you in soon.

5 MS. TARBERT: Add more, all right, I'm letting
6 them in now.

7 CHAIRWOMAN DOWNS: Got it. Perfect. All our
8 technology, text, phone, web, everything.

9 JUDGE SCALES: Will you send a carrier pigeon
10 down?

11 CHAIRWOMAN DOWNS: Karen, we see you,
12 terrific, thank you so much.

13 So here's what we're going to have to do going
14 forward, everyone will be muted, and members of the
15 task force, if you have a question or a comment,
16 would like to speak, we're going old school, we're
17 going to have to do what Judge Scales just did,
18 you're going to have to get our attention like
19 that, and I'm sorry, Mr. MacKenzie and Mr. Senn,
20 who I understand are going to be primary, or maybe
21 exclusive presenters on behalf of the Foundation,
22 we're going to have to do that same thing.

23 I want to invite all of our task force members
24 and anybody else who's interested, to pull up the
25 agenda. You all have received it by email, and

1 it's also on the website, so you can find it that
2 way, but I think we'll begin with asking the
3 Foundation, Mr. MacKenzie, maybe we can start with
4 you, you've been our touchstone during all of this,
5 and if you have a statement you would like to make
6 and maybe describe what presentations, if any, you
7 want to make and who's going to do that. Let's
8 start with Mr. MacKenzie, and so, Elizabeth, if you
9 will un-mute Mr. MacKenzie and everyone else will
10 be muted. Those of you who don't show a mute sign,
11 please mute yourself so that we don't get cross
12 signals.

13 All right. Mr. MacKenzie.

14 MR. MACKENZIE: Thank you. My -- the only
15 statement that I'd like to make this morning -- at
16 this time is to thank you everybody for being here.
17 Thank you, task force members, I know your work is
18 daunting. I know that you have a lot of issues and
19 considerations that you need to take, and to answer
20 your question, Mayanne, my understanding is, is
21 that Mr. Senn, Steve, will make a presentation on
22 behalf of the Foundation, and then we will make
23 ourselves available to answer any questions that
24 anyone, not just from task force members, anyone
25 who has taken the time to appear this morning in

1 connection with this cause, they can ask questions
2 and we'll do our best that we can to answer those
3 questions. So again, thank you, Mayanne, for
4 allowing us to make this presentation, thank you to
5 the task force members, and I will turn it over to
6 Steve.

7 CHAIRWOMAN DOWNS: Thank you, Mr. MacKenzie.
8 Mr. Senn, welcome, good morning.

9 MR. SENN: Good morning, everyone. I'm glad
10 to be here. I thank you all for allowing the
11 Foundation to --

12 CHAIRWOMAN DOWNS: I'm so sorry to interrupt,
13 but somebody is not muted and you could have two
14 signals going, the phone and a TV -- pardon me, TV,
15 a monitor, so we're getting that echo, so let's try
16 again.

17 MR. SENN: How I do sound now, do you still
18 have the echo?

19 CHAIRWOMAN DOWNS: You're good, the echo went
20 away. Thank you.

21 MR. SENN: Wonderful. Good morning, everyone,
22 I'm pleased to know several of you, and the rest of
23 you may remember me from your February meeting. By
24 way of brief introduction, I have not received a
25 paycheck from Legal Aid office or the Foundation,

1 like, I believe, all but one of the task force
2 members, my entire career has been in private
3 practice, but I have worked as volunteer to support
4 the work of civil justice for court throughout my
5 legal career, and I've been on the board of the
6 Foundation since 2012. Over the years on the board
7 I have served on nearly all of its committees and
8 now hold the office of first vice president.

9 Before my appointment by the Florida Bar to serve
10 on the board of the Foundation, I served for 13
11 years on the board of one of our grantees, Florida
12 Rural Legal Services, including three years as
13 president of that board, and I also served as
14 president of the board of another grantee, The
15 Florida Equal Justice Center, for three years.
16 That organization no longer exists.

17 While -- over the course of roughly 30 years,
18 I have learned a lot about Florida's Legal Aid
19 infrastructure. I learn something new at almost
20 every board meeting. It is a -- Florida's Legal
21 Aid infrastructure is a big, complex, and dynamic
22 system. It has many moving parts that have
23 developed gradually and organically over time to
24 serve the legal needs of poor and vulnerable
25 Floridians.

1 We pledge justice for all, and the
2 organizations within this system, most of which are
3 supported in some way with IOTA funds, are how we
4 try to honor that pledge, and considering the very
5 limited resources we have to work with, Florida's
6 Legal Aid providers deliver a whole lot of help to
7 Floridians who otherwise would have no help with
8 their legal needs.

9 I have been designated by the Foundation to
10 speak to you today. I -- we have also provided the
11 task force with extensive written materials, which
12 were reviewed and approved by the executive
13 committee of the board of directors last Thursday,
14 that was after an opportunity for input from all of
15 the board members. Some of the comments, thoughts
16 that we were bringing for your consideration may
17 sound familiar. Many of the points that you will
18 see in our written submission and you may hear from
19 me today were also made by some of the presenters
20 you heard at your February meeting. John
21 Patterson, who is now on the board of the Innocence
22 Project of Florida was there, a previous member of
23 our board and president of the Foundation, and also
24 a prior member of Florida's Board of Governors,
25 there you also heard presentations by Robin

1 Rosenberg of Florida's Children First, Jaffee
2 Pecket of Florida Rural Legal Services, Jim
3 Kowalski of Jacksonville Area Legal Services,
4 Carrie Litherland, who came from Tallahassee to
5 speak on behalf of the Legal Aid Foundation of
6 Tallahassee, and Anthony Karrat, Executive Director
7 of Legal Aid Service of Broward County. At the
8 February meeting, Donnie MacKenzie, our executive
9 director, and I also spoke and gave a written
10 submission to the task force.

11 So though not all of which you will hear this
12 morning is new, or what you have received in the
13 past week, what is new, with the most recent
14 submission from the Foundation is our effort to
15 give you a comprehensive overview of the Foundation
16 and its work, and a formal response of the
17 Foundation itself to the specific proposals as
18 stated in the April 13, 2020, revised combined
19 recommendations of the two subcommittees of this
20 task force.

21 In addition, we have tried in our written
22 materials to answer the several questions presented
23 to the Foundation, those answers also were reviewed
24 and approved by the executive committee on behalf
25 of the Foundation.

1 After we worked hard to prepare and submit our
2 written materials, we discovered that the concerns
3 of the Foundation are echoed by written submissions
4 you have received from a number of other
5 organizations in the past week, so we're not the
6 only ones burdening you with additional reading
7 materials, they're all very important.

8 We have seen letters by Americans from
9 Immigrant Justice, and Jacksonville Area Legal Aid,
10 and a joint letter by Southern Legal Counsel of
11 Florida Legal Services and Florida Justice
12 Institute. Each of the last three organizations
13 provide services statewide. And we also have seen
14 a letter from the Florida Civil Legal Aid
15 Association, what we used to call the Project
16 Director's Association, which is signed on behalf
17 of a couple dozen Legal Aid programs, who I
18 understand employ most of the Legal Aid attorneys
19 in the state, but certainly, if you take into
20 account the letters from the other organizations
21 that have written in, I think you've probably heard
22 from the employers of the vast majority of the
23 Legal Aid providers in the state.

24 Most recently, I see that Florida Children's
25 First submitted a letter to the task force making

1 their arguments that the cause of justice can be
2 and has been advanced without necessarily hiring
3 attorneys to provide direct representation to
4 specific clients. I don't claim to be familiar
5 with every single one of these organizations, I do
6 know a number of them from my years of volunteer
7 work, primarily the ones in my area, but I've
8 learned more about the others, and it was
9 gratifying, at least to me, to think that the
10 Foundation board was not confused or missing
11 something dramatic, and that the bulk of the Legal
12 Aid organizations were making many of the same
13 points that we were making and that we thought were
14 important.

15 Now, I am aware that there has been one
16 dissenting voice which has come out in favor of the
17 recommendations of the subcommittee, and I would
18 like to spend some time responding to that letter
19 later on in my presentation. As a preview, the
20 dissenter makes her argument based on factual
21 contentions -- several factual contentions that are
22 simply wrong, and so the bulk of our response is
23 going to be simply responding to some factual
24 things that the author of that letter is simply
25 mistaken on.

1 CHAIRWOMAN DOWNS: Mr. Senn, I'm sorry to
2 interrupt, I -- you know, this not an adversarial
3 proceeding. I welcome, and I know the task force
4 welcomes, and I know the Foundation welcomes
5 everybody's point of view, and I interrupt you only
6 because I'm a little uncomfortable identifying that
7 person as a dissenter in characterizing your
8 rebuttal. Everybody who has given us any
9 information from the outside is a grantee who
10 receives money, and we understand that, and that's
11 an indication of the fact that they are all
12 involved, and that the outcome of the work we're
13 doing at the behest of the Supreme Court may affect
14 them, we understand that. And we understand there
15 may be other people who have the courage, one might
16 suggest, to contract their financial interest in
17 expressing another point of view, but I don't know
18 that we're -- this is not -- this isn't an oral
19 argument, this is not an adversarial proceeding,
20 we're just trying to understand, and we can
21 understand that letter. You're, of course, free to
22 attack it if you'd like, but let's all work in the
23 spirit of respectful understanding that people have
24 different points of view, and they can express
25 those, and everybody on the task force knows and

1 understands the nature of everybody's relationship
2 to all of these issues and the money that flows.
3 It's a lot of money, it's important, we get that,
4 so just a cautionary note there if you don't mind.

5 MR. SENN: Thank you. I'm not here to attack
6 anyone, and I certainly mean no disrespect by
7 characterizing the one letter as a dissenter. My
8 understanding, and perhaps I'm mistaken, is that
9 all of the other public submissions have had a
10 different perspective on that, and that's all I
11 meant by use of that terminology, I certainly mean
12 no disrespect by it. But just looking at the bulk
13 of the submissions that have been made, that was
14 the only one, at least I am aware, but of course, I
15 don't necessarily get everything that you have, so
16 if that's not correct, then I beg forgiveness on
17 that. And I'd also like to beg --

18 CHAIRWOMAN DOWNS: We don't need to
19 characterize anybody as a dissenter, thank you for
20 that.

21 MR. SENN: Judge Scales, I see your lips
22 moving, but I can't hear you.

23 JUDGE SCALES: I was not commenting on that.

24 MR. SENN: Okay. I would like to beg your
25 indulgence to spend a few minutes suffering through

1 some trite old sayings that you've probably heard a
2 thousand times or more, and I say them even though
3 they are trite cliches because I think as a body,
4 they may help reflect, and so may help the members
5 of this task force better see, and I hope better
6 appreciate, the perspective of the Foundation board
7 that I am here to try to represent. I'm not saying
8 any of these things to cause offense, my guess is
9 you've probably heard in your brain's memory, that
10 the memory of your ear, a grandparent or parent at
11 least saying some of these things, and then you've
12 heard them, or a version of them again for
13 subsequent years. I would suggest if there's a
14 saying you've heard repeated so many times through
15 life, perhaps there might be some wisdom behind it,
16 but the idea is to share some kernels of practical
17 thought that underlie the perspective, point of
18 view of the Foundation with regards specifically to
19 the recommendations of the subcommittees.

20 First, don't let the perfect be the enemy of
21 the good. And there's a more colloquial variant of
22 that, the grass is always greener on the other side
23 of the fence. Another one, good intentions can
24 lead to unintended consequences which I've softened
25 from the original version a bit, and another

1 version of that that I like even better, although
2 it's not that common is let's be aware of the
3 impact we have in all ways and not just those ways
4 we wish. There's an old German saying that was
5 borrowed a long time ago into English, don't throw
6 the baby out with the bathwater. Another old
7 English, don't be penny-wise and pound-foolish, and
8 then to quote my friend John Patterson who made the
9 same comment in February quoting back to the
10 ancient Greeks, first, do no harm. Finally, one I
11 can distinctly remember my very southern
12 grandparents saying, if it ain't broke, don't fix
13 it.

14 I relate these sayings because they encompass
15 a set of kernels and I think wisdom that may help
16 you understand how the Foundation has reached its
17 point of view. We firmly believe on the board that
18 we have a great thing going with the IOTA program,
19 and that the Foundation has administered this
20 program well and cost effectively and in accordance
21 with the mission and mandate given it by the
22 Supreme Court. While many of us are openminded
23 about the idea of review and recommendations and
24 continue to be, the overwhelming sense of the board
25 and the overwhelming sense of the Legal Aid

1 providers that we are aware of and that we support
2 by IOTA funds and other grants is that the
3 proposals of the subcommittees with the exception
4 of formalizing reporting of Foundation activities,
5 would impair the ability of the Legal Aid system to
6 help poor Floridians.

7 Among other concerns, the proposals would
8 prohibit some of the most cost-effective methods
9 used, and would also prohibit some of the methods
10 with proven success for achieving tremendous
11 improvements to our system of justice for most
12 venerable Floridians. These unintended
13 consequences threaten far more disruption for the
14 provision of legal service and legal aid than any
15 good that may come from these proposals in our
16 judgment.

17 If a significant number of Legal Aid offices
18 in the state were in disagreement with us, then
19 that would give us some cause to question our
20 position, but the submissions that we have seen are
21 making many of the same points, and these are the
22 people on the ground that do the work for the
23 people that the whole purpose of the Foundation is
24 to support.

25 We and the many other Legal Aid organizations

1 that you have heard from ask this task force to do
2 no harm to a system that has provided remarkable
3 benefits to low-income Floridians. Just last year,
4 the Foundation crossed the \$500 million mark in
5 total grant support to Legal Aid in Florida. Since
6 1982 through June 30 of 2019, because we do work on
7 the same year as the Bar, the Foundation's audited
8 totals were IOTA contributions, \$488 million, other
9 grants, FACULA, Bank of America, Chase, \$39
10 million; investment income, nearly \$39 million, and
11 then other contributions and revenues of \$24
12 million, and of those total receipts, grants
13 awarded through June of last year were,
14 \$501,239,549. I am not here to try to claim that
15 the Foundation is perfect, but where humans are
16 involved, perfection is not an option.

17 We are not perfect, but we are, I sincerely
18 believe, very good and have done a good job, and
19 the design of the Foundation governance and the
20 design of the decision-making process is as good as
21 we can imagine.

22 We should not let perfect be the enemy of the
23 good by crippling a well-functioning legal support
24 system for Legal Aid that has provided over half a
25 billion dollars in support plus a lot of other

1 significant benefits besides simply grant money to
2 Florida's Legal Aid system.

3 The Foundation board is, as most of you I
4 think know, an impressive group of very
5 accomplished people selected for service there by
6 the Supreme Court or by the Florida Bar or as
7 selected by the Foundation board itself. I have
8 served on a lot of boards, and this one is special.
9 The directors put volunteer to put in a lot of time
10 to prepare for and attend board meetings and the
11 committee meetings. If these directors were able
12 to imagine or be shown a better governance or
13 decision-making process to improve our ability to
14 serve the mission, the duty of the board requires
15 us to bring about our own improvement. And in my
16 time with the Foundation, I've seen the board on
17 several occasions take actions to allow us to do
18 the best good within the mission of the Foundation
19 as we possibly can with the assets that we have and
20 continually adapting to the challenges that are
21 presented by fluctuating funding, by changes in the
22 Legal Aid infrastructure, and by changes in the
23 legal problems and needs of low-income Floridians.

24 We recently had a meeting to discuss, among
25 other things, reallocating funds because of the

1 problems with the COVID virus, and redirecting how
2 the grant-making process was going to be handled in
3 order to allow Legal Aid offices to continue to do
4 their good work without having to be worried about
5 grants in the short-term. Earlier we adopted a
6 reserve policy that a special subcommittee was
7 adopted to put together, so the board itself is
8 always conscious of if there's a better way to do
9 it, let's figure it out, put serious thought and
10 study into it, and do what we need to do the real
11 work to support the Legal Aid infrastructure in the
12 state of Florida.

13 I hope this morning with my presentation along
14 with the written submission approved by the
15 executive committee last week to explain not every
16 detail, but the core, essential, indispensable
17 functions of what the Foundation does in relation
18 to the IOTA program and how these functions are
19 performed. That is relevant specifically to the
20 subcommittee's recommendations for a cap on
21 expenses, and our view of that cap is that it would
22 be too low to allow these functions to be performed
23 by qualified personnel.

24 I also intend to try to explain why the
25 Foundation thinks in agreement with nearly all of

1 the Legal Aid organizations who have provided you
2 with written statements, why the proposals of the
3 subcommittees, well-intentioned as they may be,
4 would have a range of adverse, unintended
5 consequences that would wreak havoc generally with
6 Florida's Legal Aid infrastructure and which would
7 defund some of the most cost-effective programs and
8 most cost-effective delivery methods that we
9 currently support.

10 My goal is to help the members of the task
11 force as best I can to be aware of the impact the
12 subcommittees' recommendations may have in all ways
13 and not just in the ways that take task force may
14 intend.

15 If you distill the Foundation down to its
16 essential purposes, and for present purposes, I'm
17 going to set aside some very important work the
18 Foundation does, the Foundation has three essential
19 functions, to get money, we manage money, and we
20 disburse money. While we get funds from other
21 sources, over the history of the program, the
22 majority of the funds we get, manage and disburse
23 them as IOTA receipts. We are required to handle
24 IOTA funds in accordance with the permission given
25 to us by the Supreme Court, and embedded within our

1 corporate structure. Getting the money may sound
2 easy, but it's not a passive process. There are,
3 in the state of Florida, 168 financial institutions
4 who participate in the IOTA program, and within
5 those 168 financial institutions, there are 34,577
6 separate IOTA accounts. Don't memorize those
7 numbers because they're probably changing since
8 they were last given to me. They're not static
9 numbers, banks come and go, they have a peculiar
10 affinity for constantly merging or being acquired,
11 and as the number and identity of these financial
12 institutions regularly change, the employees in the
13 IOTA department are responsible to keep up with
14 that. And obviously, the number of IOTA accounts
15 change, as new law firms open, old law firms close,
16 and the IOTA department has to keep up with that
17 also, and most importantly, the IOTA department has
18 to constantly monitor IOTA receipts to ensure that
19 the financial institutions are making the payments
20 that are required to be made under the IOTA rule.

21 If the Foundation is to responsibly fulfill
22 its mission, it cannot dispense with any of these
23 duties in accurately collecting IOTA receipts, that
24 requires skilled professionals and it really needs
25 to be led by someone who knows about banking,

1 willing to leave behind a banking career because of
2 an interest in helping poor people. Lushawn
3 Phillips joined the Foundation to work in the IOTA
4 department after working as head bookkeeper for the
5 old Union Bank which later merged into Colonial.
6 Lushawn, with the help of IOTA remittent specialist
7 Lizzie Tracy take care of all of this very well
8 ensuring that the IOTA receipts are correct and in
9 accordance with the law, that is an essential
10 activity that cannot be set aside if you were to
11 responsibly administer an IOTA program.

12 Now, to stay that this is the bare minimum
13 requirement for a compliant IOTA program and that
14 these two people and their support staff capably
15 execute this minimum requirement is not a fair and
16 full count of the work done by the IOTA department.
17 The department doesn't only monitor accounts and
18 receipts and check to confirm compliance with the
19 rule, they also spend a lot of time helping both
20 the law firms and the financial institutions comply
21 with the IOTA rule.

22 As banks come and go and employees within
23 banks come and go, it is a constant educational
24 process to make sure that everyone knows and
25 complies with the rules and procedures. The same

1 ongoing education working with law firms takes time
2 of the IOTA department as law firms come and go and
3 employees within those offices. And I understand
4 that IOTA department also spends quite a bit time
5 working with staff of the Florida Bar Foundation --
6 the Florida Bar rather on compliance issues for
7 lawyer trust accounts.

8 Another point about the IOTA department doing
9 more than the bare minimum is its good working
10 relationships with the banks to help the banks
11 understand not just what they have to do because
12 the Supreme Court requires it, but also to
13 understand the real benefits to the state of
14 Florida that IOTA funds help pay for. As a result,
15 and I'm extremely proud of staff for this, we have
16 been able to persuade many banks to provide better
17 terms on their IOTA receipts than the rule
18 requires.

19 While our IOTA staff foster good relations in
20 working with financial institutions, the
21 continuation of historically low interest rates for
22 well over the decade now has prompted the
23 Foundation led by the IOTA department and executive
24 staff to discuss directly with financial
25 institutions the possibility of providing greater

1 levels of support than the bare minimum required by
2 a comparability rule, these efforts have had
3 immense success, and we've recruited over 100
4 financial institutions to be community champions.
5 Because of banks' support the programs that benefit
6 from IOTA funds and because of the good relations
7 with the Foundation, we've received an additional
8 \$9 million in IOTA receipts on an analyzed basis
9 compared with what the basic IOTA comparability
10 rule of compliance would have generated. That
11 number may go up or down in the future, but it's
12 still a very significant addition to IOTA revenues
13 every year so long as the banks continue to support
14 us in this way.

15 CHAIRWOMAN DOWNS: Mr. Senn, while we're
16 talking about IOTA, just a couple quick questions.
17 One is you identified Deshawn, I think is the name,
18 and I'm sorry, I didn't catch the name.

19 MR. SENN: Lushawn Phillips.

20 CHAIRWOMAN DOWNS: Lushawn?

21 MR. SENN: Yes, ma'am.

22 CHAIRWOMAN DOWNS: Lushawn, and Lushawn has,
23 you said, an assistant, is that an administrative
24 assistant, secretarial?

25 MR. SENN: Her title is IOTA specialist, it's

1 a specialist title, she does the administrative
2 work working with the banks. And I'm sorry, the
3 title escapes me at the moment.

4 CHAIRWOMAN DOWNS: And -- so not a secretarial
5 administrative?

6 MR. SENN: No, that is correct, that is not a
7 secretarial person. There is an administrative
8 department that does provide a support staff to --
9 on an as-needed basis.

10 CHAIRWOMAN DOWNS: And this might be something
11 Mr. MacKenzie wants to address, but we asked him to
12 provide us with next year, that's fiscal year '20
13 and '21 projection for IOTA revenue, are you
14 prepared to -- just looking at the number, not a
15 long discussion. Steve.

16 MR. SENN: I don't recall seeing that in your
17 letter, Madame Chair, but let me see if I can get
18 that number for you.

19 CHAIRWOMAN DOWNS: Well, I didn't want to
20 interrupt, but I asked Mr. MacKenzie to provide
21 that, and maybe he's the best one to address it,
22 but you were talking about IOTA revenue so I
23 thought I'd ask. So go ahead.

24 MR. SENN: All right. So what we had just
25 covered is Foundation staff work to get the IOTA

1 money, get it not just in the right amount as is
2 required, but also working to educate and work
3 collegially with the financial institutions, law
4 firms, and the Florida Bar, and also adding
5 tremendous value, literally, millions of dollars in
6 value because of these positive relationships and
7 the good work these institutions are willing to
8 support.

9 The second category of essential indispensable
10 functions for an IOTA program is to make sure that
11 IOTA, as well as any other funds that are held in
12 our trust are properly managed. Any organization
13 which is entrusted with funds for the public good,
14 must responsibly manage those funds to ensure they
15 are properly accounted for with all due oversight
16 as to ensure that the funds are not wasted or
17 worse. That requires personnel with business and
18 accounting backgrounds to make sure that generally
19 accepted accounting principles are followed, and to
20 take care and to ensure that we always following
21 best practices and policies as adopted by the board
22 and is recommended by our auditors.

23 The head of our finance department came to us
24 from a public accounting firm and has an MBA. Our
25 CFO is a CPA, and while I have complete trust in

1 those people based on my work with them over the
2 years, we also have an annual independent audit and
3 ongoing oversight by the board to make sure that
4 everything is correct. It would be irresponsible
5 not to do these things or try to do them with less
6 qualified personnel.

7 Oversight and accounting of financial affairs
8 is fundamental to an organization entrusted with
9 funds. The Foundation staff and board takes this
10 responsibility very much to heart, and is gratified
11 that this charge has been fulfilled with no
12 instance of misuse of funds in the history of the
13 Foundation. The Foundation receives annual clean
14 audits with no material findings. The Foundation
15 properly accounts for the funds to which it is
16 entrusted from a finance and accounting standpoint,
17 and transactions are documented correctly to ensure
18 the protection of the funds.

19 And at the most recent presentation of the
20 board's officers, the auditor advised that no
21 additional levels of auditing, forensic or
22 otherwise, was recommended for the Foundation.

23 We meet with our auditors every year,
24 including meeting with them in executive session
25 where all the staff is asked to leave, and we

1 always ask, Is there more that we should do or are
2 the best practices that you would recommend for us
3 already in place, and we're assured by our
4 independent auditing firm, BDO USA, Inc., that
5 we're doing all that we need to do, and I think the
6 record of the clean audits supports that.

7 Similar to the point I made about the IOTA
8 department doing more than the bare minimum and
9 generate considerable added value as a result, the
10 same can be said of the people that oversee the
11 funds, the finance department, they execute the
12 core indispensable functions well as evidenced by
13 the clean audits, but they do a lot more than that,
14 and the key example of that that I'd like to
15 highlight is that the finance department monitors
16 the investment of funds that the Foundation pools
17 for investment until they are disbursed as grants.

18 Early leaders of the Foundation adopted a
19 conservative approach of using last year's IOTA
20 funds for the following year's grants'
21 disbursements, this allows certainty when
22 considering the grant applications, that you know
23 that the funds are available, and you know the
24 precise amounts that are available to be disbursed.
25 This is far preferable to extending grants based on

1 an expectation of what might come, especially given
2 the fluctuations of IOTA revenues. IOTA programs
3 in other states which did not follow this
4 conservative approach were far less able to take
5 actions to minimize the harms of the programs in
6 those states when revenues precipitously dropped in
7 and after 2008. These funds received by the
8 Foundation, including both IOTA funds and funds
9 from other sources, are therefore not immediately
10 paid out to the grantees, pooled -- they're instead
11 pooled together and invested.

12 We rely upon Graystone Consulting, which is a
13 division of Morgan Stanley, I understand that's the
14 same investment advisor that the Florida Bar relies
15 upon on for its investments. The Foundation's
16 investments are in turn reviewed by the investment
17 committee, the board of directors, which approves
18 all investment decisions, and receives regular
19 reports on these invested assets.

20 In moving funds among investments to serve the
21 mission of the Foundation is also something that
22 the investment committee reviews and either decides
23 on its own behalf or by recommendation for decision
24 by the full board.

25 By prudent management of funds, the Foundation

1 has generated over \$38 million in additional
2 revenue available to support the Legal Aid
3 community since 1982.

4 I've covered the first two points, what we
5 have to do to get the money, what we have to do to
6 manage the money, let me state again that to do
7 these things require competently required personnel
8 with credentials that would generally demand higher
9 compensation in the private sector, but who are
10 willing to accept reduced pay because they support
11 the mission, and we are blessed to have such
12 people. I would add that their support for the
13 mission goes beyond accepting a reduced salary and
14 putting in the extra effort that has, for example,
15 helped with the bank support. Nearly all of our
16 staff have also shown their support by making
17 substantial contributions from their own
18 wherewithal to benefit the Foundation.

19 The third component, the end purpose of all
20 this getting the money and managing the money is
21 ultimately to disburse funds primarily as grants,
22 and, of course, care must be taken to ensure that
23 test disbursements will serve the mission as given
24 to us by the Supreme Court of Florida. That
25 mission is to expand and improve representation and

1 advocacy on behalf of low-income persons in civil
2 legal matters, to improve the fair and effective
3 administration of justice, and to promote public
4 service among lawyers by making it an integral
5 component with the law school experience. While
6 these were established as a three-pronged mission,
7 if you make a review of the Foundation's grants,
8 and we provided to you detailed information on
9 those grants, you will see that in our actual
10 practice, the second and third prongs of the
11 mission can also serve the first prong, that's to
12 say our law school programs and our admission of
13 justice grants also effectively serve to expand and
14 improve representation and advocacy on behalf of
15 low-income people in civil legal matters.

16 On the grant side, it is no small work to
17 design grant programs that serve the mission. The
18 funds must be disbursed responsibly and
19 consistently with the original purposes by which
20 the funds were entrusted to the Foundation. This
21 also requires knowledgeable, professional staff to
22 design the grants, solicit grant applications,
23 score grant applications, and to maintain review of
24 the grantee's performance of the requirements of
25 the grant. It helps if this is led by an attorney

1 with prior experience and working knowledge within
2 the Legal Aid system. Our grants director, Kate
3 York, worked as a staff attorney at the Legal Aid
4 Society of Orange County Bar Association, and with
5 the Guardian ad Litem Program in Miami, and in that
6 prior life, she had extensive experience advocating
7 for foster kids, settling dependency cases,
8 training pro bono attorneys, and litigating bench
9 trials. Her work prior to joining the Foundation
10 was of such impact, that Kate York was a
11 co-recipient with the team of lawyers that she
12 worked with of the Paul Doyle Children's Advocacy
13 Award for work on a case on behalf of a child, and
14 that case wound up being instrumental in winning
15 passage of the Child's [sic] Best Cope Act, which
16 allows judges to apply a child's interest standard
17 in decisions about adoption intervention.

18 I'm not going to go into detail on the various
19 grants programs administered by the Foundation
20 because the topic is simply too large for the time
21 that we have, and because we hopefully have
22 provided all the information you need on that in
23 our written submission and attachments about the
24 grants administered by the Foundation, and frankly,
25 most of that information is also on the

1 Foundation's website and is available for review
2 there as well.

3 You, I'm sure, know that most types of grants
4 administered by the Foundation over our history are
5 funded by IOTA receipts, but we also administer
6 grants supported by funds from other sources, and
7 in particular, the Engel Award and the Bank of
8 America settlement in recent years. The Foundation
9 does provide an easy resource where those kinds of
10 needs arise by the courts or the Attorney General
11 or by others, but there's no way to predict those
12 kinds of sources as being recurring whereas IOTA
13 funds, although the amount goes up and down, are
14 recurring. As to those other kinds of sources, we
15 just have to be ready when called on by courts or
16 by the Attorney General or by any other funding
17 source that wants to support the Legal Aid
18 infrastructure in Florida, we need to be ready,
19 have the resources to honor the trust, and assure
20 them that we will properly account for, manage, and
21 disburse those funds.

22 That brings me to a point that needs to be
23 made in response to a letter that made some
24 statements about funding decisions of the
25 Foundation, and this is the one that I was

1 chastised before not to refer to as a dissenter,
2 but I will just refer to it as the letter, and I
3 believe we all understand who that -- what I'm
4 talking about, and I do so, again, simply to
5 respond to some factual statements that are made
6 there.

7 First, there is a suggestion that the task
8 force should take action in order to ensure that
9 deliverables are required from grantees, that is
10 already the practice of the Foundation, no action
11 is needed to impose a requirement because that's
12 already been done.

13 There is also a statement by the writer, I do
14 not get the impression that the task force intended
15 to restrict how Legal Aid programs use the funds
16 awarded to them, I only want to say on that is
17 that's not the impression of the Legal Aid
18 organizations we're aware of or ours, and there
19 does seem to be a clear proposal to restrict the
20 use of IOTA funds to staff attorneys' compensation
21 and benefits and no other purpose.

22 Third, there is a suggestion that we have
23 dissipated IOTA funds among other organizations
24 that are identified in the letter, the grants to
25 those organizations, which -- have not been IOTA

1 funds, they have been from a Bank of America
2 settlement, which by the terms of that settlement
3 had to be used for community economic development.
4 The only IOTA funds these organizations might have
5 been able to receive would be for their attorneys
6 who participate in the Loan Repayment Assistance
7 Plan. Considering the nature of the work these
8 programs handle, the inclusion of their attorneys
9 in the Loan Repayment Assistance Plan would be
10 perfectly appropriate, and there is one attorney at
11 one of the offices who does participate in that
12 program.

13 CHAIRWOMAN DOWNS: Mr. Senn, this is another
14 question I asked of Mr. MacKenzie, which was, the
15 total number of dollars either characterized as
16 investment or a grant or a loan or any other way
17 you identify dollars that flowed in any way at any
18 time, I'm just trying to be broad here, but I don't
19 mean to sound like a lawyer defining terms, the
20 total amount of all the monies that went from the
21 Florida Bar Foundation to the Florida Justice
22 Technology Association, and again, I don't mean to
23 burden you with Mr. MacKenzie's information, but do
24 you have that as part of your presentation or
25 should we get that from --

1 MR. SENN: Yeah, Donnie is going to speak to
2 that, I know the rough answer is \$2 million.

3 CHAIRWOMAN DOWNS: \$2 million?

4 MR. SENN: Yeah, \$2 million. I think that's
5 not to the penny, but that's --

6 CHAIRWOMAN DOWNS: Are the Bank of America
7 funds segregated?

8 MR. SENN: No, ma'am, the funds that we --

9 CHAIRWOMAN DOWNS: I'm sorry, are the IOTA
10 funds segregated?

11 MR. SENN: No, all funds that we receive from
12 any source are --

13 CHAIRWOMAN DOWNS: All goes into --

14 MR. SENN: -- for investment purposes.

15 CHAIRWOMAN DOWNS: So when you say that no
16 IOTA monies were spent as a part of that \$2 million
17 from the Florida Justice Technology Association,
18 that's -- what do you base that if all the monies
19 are coming out of a common fund?

20 MR. SENN: Well, we know where that money came
21 from, Donnie's going to speak to that later on, but
22 those funds came from the Florida Bar.

23 CHAIRWOMAN DOWNS: Right, but all --

24 MR. SENN: -- specifically for that purpose.

25 CHAIRWOMAN DOWNS: All your monies are

1 co-mingled, correct?

2 MR. SENN: The Florida Bar money I believe we
3 had -- well, I know we were required by the terms
4 of the loan, and it was quite specific.

5 CHAIRWOMAN DOWNS: And I'm not asking --

6 MR. SENN: -- first draw, we had to take a
7 million dollars from the first draw for this --

8 CHAIRWOMAN DOWNS: I'm not asking about the
9 loan, I'm just saying -- well, did you segregate
10 the loan monies?

11 MR. SENN: For the questions you're asking, I
12 think Donnie --

13 CHAIRWOMAN DOWNS: It's a yes-or-no question,
14 were the Florida Bar loan monies ever segregated?

15 MR. SENN: They're accounted for separately.

16 CHAIRWOMAN DOWNS: Right, but they're not
17 segregated?

18 MR. SENN: They're not held in separate
19 accounts I don't believe, I was not on the budget
20 committee at the time.

21 CHAIRWOMAN DOWNS: Right. Nor is IOTA money
22 segregated or kept separate, correct?

23 MR. SENN: IOTA money is invested.

24 CHAIRWOMAN DOWNS: No, no, no, I -- whether
25 it's invested or not, ultimately when it goes out,

1 it flows through Florida Bar Foundation accounts
2 with other -- all your monies are co-mingled; is
3 that a fair statement?

4 MR. SENN: All our monies are pooled for
5 investments. They do account for the funds so that
6 we know what's coming in and going out.

7 CHAIRWOMAN DOWNS: All right. But is it fair
8 to say when you say that no IOTA money went to the
9 \$2 million that was given to the Florida Justice
10 Technology whatever, that that's -- that's not a
11 statement you have any basis for, right? You
12 accounted for it separately, but it's all money
13 that's mingled together, right?

14 MR. SENN: We received a million dollars from
15 the Florida Bar in the first loan that had to --
16 was restricted funds, it was restricted for payment
17 to the creation of an analogue to an entity in the
18 state of Illinois that the Florida Bar wanted us to
19 create for the state of Florida; so those funds
20 were restricted and could only be used for that
21 purpose, and so they were.

22 CHAIRWOMAN DOWNS: So just to make sure I
23 understand, you segregated those monies?
24 Restriction is one thing, segregation is another.
25 Are you saying you segregated a million dollars

1 that the Florida Bar gave you to use for --

2 MR. SENN: If you're asking me if we opened a
3 special account just for that, no, I don't believe
4 we did.

5 CHAIRWOMAN DOWNS: Okay. I mean, we -- we're
6 talking about trust funds here, so we all know what
7 we mean when we segregate monies, right? I mean, I
8 just want to be sure we're clear on --

9 MR. SENN: I don't believe that the funds --
10 they certainly are held in trust, I don't think
11 they're lawyer trust accounts, we get the funds
12 from the lawyer trust accounts.

13 CHAIRWOMAN DOWNS: Great, thank you, and we'll
14 talk to Mr. MacKenzie if we need to, but the \$2
15 million is the absolute sum total of all monies
16 that flowed from the Florida Bar Foundation to
17 date, as of today, or maybe Friday, to the Florida
18 Justice project?

19 MR. SENN: I'd like to leave the rest of your
20 questions on the technology to Mr. MacKenzie.

21 CHAIRWOMAN DOWNS: Fair enough, fair enough.
22 All right. Go ahead. Thank you so much.

23 MR. SENN: No problem. And if anyone else has
24 any questions, please feel free to jump in.

25 CHAIRWOMAN DOWNS: We've already covered that,

1 if they questions, they're going to raise their
2 hands. Are you still in your introduction or are
3 you in your presentation?

4 MR. SENN: I am well through my presentation,
5 and about halfway through.

6 CHAIRWOMAN DOWNS: Okay. Thank you. We've
7 been going coming up on an hour, are you
8 anticipating another hour?

9 MR. SENN: I do not believe so.

10 CHAIRWOMAN DOWNS: Well, while I've
11 interrupted you, and I am sorry to do that, we try
12 to take a comfort break at about an hour, Mr. Senn,
13 is this a decent time to do that, or do you want to
14 go -- does that work for you?

15 MR. SENN: Yes, whenever -- that is entirely
16 your call. If now is a good time for the task
17 force, it's certainly a good time for me.

18 CHAIRWOMAN DOWNS: All right. We'll, it's
19 10:58, why don't we give everybody a chance to
20 attend to whatever they need to, and I want to make
21 it five minutes, but I know everybody is pulled
22 different directions. Let's reconvene with
23 Mr. Senn's presentation at 11:05, so everyone wants
24 to make sure you're muted, we'll come back at
25 11:05. Thank you, and thanks for letting me

1 interrupt you, Mr. Senn, appreciate it.

2 (Short break.)

3 CHAIRWOMAN DOWNS: Okay. Do we have everybody
4 else back?

5 I guess. I see Scott, John, Laird, Ed, and
6 let's see if we have Karen. Let's give Karen --
7 oh, she's on mute. I tell you what, why don't
8 we -- let's go ahead, I'm going to suspect -- all
9 right, Mr. Senn, you're back on.

10 MR. SENN: Thank you very much. I hope y'all
11 hear me, I looks like I've un-muted myself. I had
12 a couple more points to make in response to some of
13 the factual statements in a letter criticizing the
14 Foundation. There was a statement that -- and I
15 hesitate to dilate any further on the FJTC, if I
16 could, I'd like to make a few comments that are
17 limited to the board's perspective on that, and not
18 get back into the accounting issues that I am not
19 in a position to answer your questions any more
20 than I already have --

21 CHAIRWOMAN DOWNS: Sure, go ahead, and I've
22 just been notified that it might be that Mr. Lile
23 wanted to ask a question, so Laird, why don't you
24 let Mr. Senn make his Florida Justice comments, and
25 then if you have anything you want to add, please

1 feel free to do so.

2 MR. SENN: Right. Okay, thank you, Mr. Lile.
3 Just a couple of points. One, there was a
4 statement made that the funds to FJTC set up,
5 quote/unquote, unused websites, we have provided in
6 a written submission information on some of those
7 tools, and while certainly different people might
8 value those sites differently, they were used by a
9 lot of people, in fact, they were used by more
10 people than a typical Legal Aid office might see in
11 a year, and we provide those illustrative usage
12 numbers in our written submission. And the other
13 point I want to make about those expenditures is
14 that if you want to criticize those, and certainly
15 that's a fine thing to do, that the Bar -- or the
16 Foundation was legally obligated to do that by the
17 Bar. The Bar was very gracious in coming to the
18 aid of Florida's Legal Aid community in a time of
19 dire need with a loan offer that was a godsend to
20 our Legal Aid system, but a condition of that loan
21 was that \$2 million of the \$6 million was very
22 specifically restricted. And I'm assuming the task
23 force has a copy of the November 6, 2014, loan
24 agreement, if not, we can certainly provide that to
25 you, but the relevant language is in section 11(a)

1 which states that \$1 million of the first draw and
2 \$1 million of the second draw will be used either
3 directly or indirectly for technology and the
4 implementation of technology that will allow
5 borrower and its grantees to improve access to
6 justice primarily by funding the startup of an
7 independent statewide nonprofit entity with an
8 organizational mission to increase access to
9 justice to Floridians through the use of innovative
10 technology, and to train and support Legal Aid
11 providers and pro bono attorneys in its use. And
12 then it goes on to be even more specific, This
13 shall be modeled generally on Illinois' nationally
14 recognized work, an award-winning statewide
15 nonprofit with a similar mission. Borrower will
16 work with the Bar's Vision, 2016, commission access
17 to Justice Committee consultant and National Legal
18 Aid courts technology expert John Greacen, and seek
19 pro bono assistance to develop and submit a
20 preliminary business plan for the new entity on or
21 before December 31, 2014. And so to the extent
22 that there has been, and there certainly has been,
23 criticism of those expenditures on technology, and
24 I am not here to criticize in any way the decisions
25 of the FJTC, so far as I can tell, they made good

1 use of the funds they were given under the mandate
2 they were given, they developed some very nice
3 tools that have been used to benefit many
4 Floridians, unfortunately, they couldn't locate
5 other funds to keep going, but what I can tell you
6 is that the board of directors of the Florida Bar
7 Foundation had we not been legally obligated to do
8 that, would not have done that, and the decisions
9 that were made by that independent entity, if you
10 want to criticize them, and I'm not here to
11 criticism them, but they were not decisions or
12 expenditures made by the Florida Bar Foundation.

13 While we are on the subject of grant
14 allocations, I would like to make the point that I
15 think should be clear from the other submissions,
16 that there is not a single grant program of the
17 Foundation that would be permitted to continue as
18 presently defined with IOTA funds if the
19 recommendations of the subcommittees were to become
20 binding. As we have stated and you have heard from
21 letters from Jacksonville Area Legal Services,
22 FCLAA, and the others, the subcommittee's proposed
23 restriction to only pay qualified attorneys defines
24 qualified attorneys so narrowly as to make all of
25 us wonder if there is any Legal Aid attorney who

1 would qualify.

2 CHAIRWOMAN DOWNS: I'd like to ask Mr. Lile to
3 address that.

4 MR. SENN: I'm sorry, I forgot about you,
5 Mr. Lile.

6 CHAIRWOMAN DOWNS: Mr. Lile, do you want to
7 address the issue of their interpretation of the
8 phrase "qualified attorney"?

9 MR. LILES: Sure, and thank you, and if I
10 could while I have the microphone, Madam Chair,
11 I've got a couple questions for Mr. Senn, but
12 Stephen, the last comment about the definition, the
13 very narrow definition of qualified attorney I
14 don't believe was ever intended to exclude any
15 person who is allowed to practice law in the state
16 of Florida, and so to the extent this qualified --
17 or this military spouse Chapter 21 might be outside
18 the definition, I think that the task force will
19 agree that those restrictions were intended to be
20 removed, and so I think that will be -- that will
21 take care of itself, but it's really anybody who is
22 allowed to practice law.

23 If I can go to my questions, I had one before
24 the break, then I've got a second one now. The one
25 before the break when you were speaking about the

1 restriction and responding to the chair's questions
2 about segregating the funds and isolating those
3 funds, the point there I think that I was hearing
4 was that cash is cash, and whether the cash was all
5 in one account and accounted for separately, that's
6 how the Foundation was treating that, and let me go
7 ahead ask my second question and you or Don can
8 respond to both of those at your leisure, the
9 second question, the one that was prompted by
10 references to how the Florida Bar -- Board of
11 Governors required to Foundation to spend money,
12 and that it was the Foundation -- the Board of
13 Governors who was offering these funds, you're not
14 suggesting, are you, that the Board of Governors
15 came to the Foundation and said, Hey, here is a
16 portion of our short-term investment portfolio we'd
17 like for you to use, but, in fact, it was the
18 Foundation who solicited the funds, the loan, and
19 I'd also like you to Dom to clarify that you didn't
20 have to take the funds, the \$2 million you referred
21 to if you thought it was for a bad purpose, am I
22 right on that? Thank you, Madam Chair.

23 MR. SENN: Thank you. I've got a few things
24 in there to address, let me deal with the first
25 one -- or the last one first. No, of course, we

1 don't think it was a bad purpose. We thought that
2 was a good idea, and we were happy to agree with
3 the Board of Governors on the idea that if the
4 Florida Bar wanted those investments to be made,
5 that they could be done in a way that certainly
6 could have promise, and the Illinois organization
7 did seem like a good idea, and we weren't going to
8 have that money unless the Bar gave it to us to do
9 those things, but yes, there was a dire need for
10 whatever we could get help-wise from the Florida
11 Bar, and we were glad to get that assistance. I'm
12 not suggesting that we did any of these kicking and
13 screaming whatsoever, it was a great thing. All I
14 am saying is if the Foundation didn't have those
15 funds and we were working with just general IOTA
16 revenues, given the competing demands, the support
17 of technology might have been differently handled.
18 And if you want to criticize, and I'm not going to
19 because I don't think criticism is warranted, but
20 there has been criticism of us for spending by an
21 independent body, and I just want to make very
22 clear that is an independent body that was
23 corrected by us at the direction of the Florida
24 Bar, and I'm not saying it's a bad thing at all.
25 It would have been nice if they could have found

1 other funding sources and able to continue with the
2 work they were doing, they developed some very nice
3 tools, they had some other very nice tools in the
4 works, and I was hoping they would be able to find
5 a way to get it done, but with the priorities that
6 the Foundation has, we made the vote that we were
7 not going to come out to allow that work -- it was
8 not going to be Foundation funds that was going to
9 keep that organization going, and that's why those
10 assets were transferred, and they're presently
11 being held by the Foundation.

12 Judge Scales, I saw you give the hi sign.

13 JUDGE SCALES: Can you hear me?

14 MR. SENN: Yes, sir.

15 JUDGE SCALES: Thank you, Stephen. Just a
16 follow-up question. You may not know the answer to
17 this, this may be directed to Donnie. In the
18 current fiscal year, the one that ends June 30th,
19 how much IOTA funds have been spent toward the
20 assets acquired from the Florida Justice Technology
21 Center, do you know?

22 MR. SENN: I think that figure, Judge, is in
23 the official answer we gave, and it's not a big
24 number, but -- say that again. \$48,000 is the
25 number that was in the official answer.

1 JUDGE SCALES: And a new, either a salaried
2 position or a contract position, to manage that --
3 those assets?

4 MR. SENN: Yeah, there is -- we have retained
5 someone, and I know Judge Scales knows this, but
6 for the benefit of the other task force members,
7 there has been an interim person retained whose
8 charge is to help us figure out what to do with
9 these assets. This all came to us in a fairly
10 compressed crisis situation in which we were given
11 not a lot of warning that FJTC was running out of
12 the money, and the board had to decide what to do.
13 One option was to give them a lot more money to
14 keep going, that's not something that the board
15 voted to do. I can speak to this a little more
16 than perhaps some of the other questions because I
17 was on the -- I chaired the ad hoc committee that
18 dealt with this. Then there was the question of,
19 Well, if we're not going to do that, are we just
20 going to walk away and let the assets develop,
21 dissipate, or are we going to try to preserve them
22 in some way? And also, that led to the bigger
23 question of what roles should the Foundation have
24 in supporting technology. This task force should
25 know that a lot of the grantees had we polled them

1 on this question, would like the Foundation, would
2 like IOTA funds or whatever other revenue sources
3 to be invested more in developing technology, and
4 we have not taken them up on that yet, but we do
5 have interim technology department head and a
6 special technology committee that is chaired by
7 Murray Silverstein that is taking a look at that
8 issue, but when the question was, Is the Foundation
9 going to do again what it did the first time, pay
10 funds to continue FJTC, the vote was not to do
11 that.

12 CHAIRWOMAN DOWNS: Mr. Senn?

13 MR. SENN: Yes, ma'am.

14 CHAIRWOMAN DOWNS: Was there a selection
15 process when Florida Justice Technology was
16 identified as the recipient of \$2 million or was
17 this a sole source?

18 MR. SENN: They were specifically created as
19 we were instructed to do by the Bar, and I was not
20 involved in that, Madam Chair, so I can't give you
21 any real details.

22 CHAIRWOMAN DOWNS: So it's fair to say -- I'm
23 sorry. It's fair to say the Bar told you to do
24 that, the Bar selected the recipient, the Bar did
25 all of that basically?

1 MR. SENN: There was not a recipient. The
2 recipient did not exist. The recipient had to be
3 created by us pursuant to the terms of the notice
4 is my understanding. I wasn't directly involved,
5 but that's what the note says.

6 CHAIRWOMAN DOWNS: Thank you. And, Karen, did
7 you have a question? You're muted.

8 MS. LADIS: -- back to one of the comments
9 about no Legal Aid program be able to qualify, I
10 know we're going to be looking at that terminology,
11 but I know that just, for example, in my program,
12 Legal Aid Society of the Dade County Bar
13 Association, the majority of our attorneys are
14 considered staff attorneys and aren't responsible
15 for doing other types of community lawyer
16 (inaudible) so I just wanted to mention that, and
17 that was it. That goes back to a few conversations
18 ago though.

19 CHAIRWOMAN DOWNS: Thank you. I think we've
20 clarified a qualified attorney, you know, and we'll
21 clarify that, but we really just mean a licensed
22 Florida --

23 MS. LADIS: Exactly.

24 CHAIRWOMAN DOWNS: -- correct our language on
25 the recommendations.

1 Okay. Mr. Senn, anybody -- any other task
2 force member with questions or comments?
3 Otherwise, we'll ask Mr. Senn to finish his
4 remarks.

5 MR. SENN: Thank you. Yes, I think just
6 quickly on the issue of qualified attorney, yes, I
7 think that is something that, certainly, if the
8 task force were to take a closer look at the
9 responses of the Project Developers Association,
10 FCLAA, on this point, that is language that you
11 could presumably tweak to not be as narrow as
12 currently defined, and that was, you know, one
13 of -- one of the common points that has been raised
14 by a number of the Legal Aid organizations, is that
15 it would require them to take away normal duties
16 that are assigned in order to satisfy the
17 exclusive -- exclusivity language, but that's not
18 the only concern that has been raised, there is
19 also the effect of not allowing funding support for
20 programs that rely on resources other than the paid
21 staff attorneys, and that includes, obviously,
22 paralegals. And a lot of these Legal Aid offices,
23 I know Florida Rural Legal Services back in the
24 day, and I know a lot of others have paralegals
25 that have been with the organization for a long

1 time, have a lot of detailed experience, tend to be
2 to focused in some narrow functions where they can
3 on a cost-effective basis do very, very effective
4 work, and certainly they comply with Bar rules
5 about having supervision and those things, and I
6 think a lot of programs rely upon and require
7 funding sources for that staff that this proposal
8 would reject.

9 This proposal would also reject the ability of
10 folks that rely either heavily or exclusively on
11 student interns or pro bono work. You received,
12 for example, a note from a program in Tallahassee,
13 that's all they do is pro bono work, so for that
14 reason, they're very worried that they would, and I
15 think they would be, defunded if not only the
16 proposal as it is currently worded, but also if you
17 tweak it to address the exclusivity dedicated to
18 the provision of direct legal services language,
19 you're still then going to require us to defund
20 support for -- that would be paid to paralegals or
21 any kind of pro bono program or the programs that
22 rely heavily on student interns. Certainly, the
23 ones in towns with law schools rely heavily on
24 them, but other programs also rely heavily on
25 student interns and pro bono, and those are great

1 not only for the many, many poor people that get
2 help they wouldn't otherwise get from a pro bono
3 lawyer or from a student intern, it's also great
4 for the lawyer or lawyer to be, the pro bono lawyer
5 gets some good experience, fulfills their
6 professional responsibility, learns some new stuff,
7 sometimes has some of the more fulfilling,
8 interesting cases that take a break from their
9 normal day work, and the benefits to the law
10 students that get to work on these programs and
11 have some practical experience with real cases,
12 with real clients. I think the benefits to the Bar
13 on the pro bono programs and the student programs
14 also are valuable, and in these kinds of services
15 with paralegals, with student interns and with pro
16 bono, are remarkably cost effective compared to
17 replacing all of those resources with lawyers, and
18 so it would be, we submit, penny-wise and
19 pound-foolish to end support for those kinds of
20 programs.

21 Of course, direct representation of a client
22 by a lawyer for a specific legal matter is often
23 the best way to help someone, and we support
24 funding where that is needed to serve justice, and
25 most IOTA funds, in fact, go to direct

1 representation if you're not quite as strict about
2 how that is defined. But given the limited
3 resources available where most comp cost effective
4 methods can help more people for less money, we
5 urge that those kinds of grant programs should not
6 be precluded.

7 And there are even programs that are not a law
8 firm also at, they never provide direct
9 representation by a staff attorney for a client,
10 but they can provide systemic changes that serve
11 the mission of the Foundation and the mission of
12 IOTA funds and can thereby help far more people en
13 masse by systemic changes than one lawyer and one
14 client.

15 I want to highlight for all of you that
16 Florida Children's First has achieved some amazing
17 things for vulnerable children in Florida. Just to
18 mention one thing that I think we should all be
19 proud of is their advocacy work which resulted in
20 the passage of and appropriations for Florida
21 Statutes, Section 39.01305, which provides the
22 right to court-appointed counsel for dependent
23 children with special needs. These are kids that
24 have just a combination of problems, they're
25 dependent, which is a problem, but they also have

1 the possibility of health -- they have health
2 conditions that require them to be in a skilled
3 nursing facility, or they're prescribed a
4 psychotropic medication and they don't want
5 (inaudible), or they have a diagnosis of a
6 development disability or they are in a residential
7 treatment center or they're a victim of human
8 trafficking, and as a direct result of Florida's
9 children -- Florida's Children First work in
10 advocating for this law, 5,642 children in the
11 state who were parties to dependency proceedings
12 have been provided appointed counsel, and 288
13 attorneys have been paid to represent these kids.

14 Those attorneys are compensated by the state
15 to represent children in the court cases that
16 affect the most important aspect of their lives,
17 and the state has paid \$9 million in the attorney's
18 fees and costs since the law went into effect in
19 July of 2014. This is good for the Bar, and it is
20 especially good for these kids, and this is one of
21 only many impressive achievement by Florida
22 Children's First that they outlined further in
23 their letter that was sent to you yesterday.

24 I urge that let's not throw the baby out with
25 the bathwater. Before the task force takes action

1 that would require defunding this organization for
2 this type of work, I ask that you take a really
3 close look at how important this work is, and how
4 many kids they helped per dollar of IOTA funds
5 granted. Direct legal services are very important,
6 but they are not the only answer, and if the work
7 of Florida Children's First does not persuade you
8 of that, then I don't have anything that might
9 persuade you.

10 CHAIRWOMAN DOWNS: Okay. Mr. Senn, thank you
11 very much. I see Mr. Stewart's hand, and I'm going
12 to get to you in just one moment. Since we have a
13 lot of people on the phone, I would like to invite,
14 perhaps implore everybody who's interested in this
15 matter which so far are grantees and the Florida
16 Bar Foundation, to read the Court's order which we
17 have posted on our Florida Bar website, and a
18 reminder that our charge is not to decide whether
19 the Florida Bar Foundation does good work, I
20 don't -- I can't imagine a world in which anybody
21 thinks that's debatable, our charge, our court
22 order, our directive is to determine whether -- or
23 to recommend, sorry, whether specific priorities
24 should be established for IOTA funds, and in doing
25 that, to give priority consideration to the need

1 for funding direct legal services for low-income
2 litigants in Florida. And the reason that our last
3 subcategory in letter I sent to the Foundation
4 focused on that was to remind all of us that our
5 work is defined by the Florida Supreme Court, not
6 by us, and so the information we received about the
7 good work that is done is interesting and very
8 persuasive. Were the question that we were asked
9 to answer whether the Florida Bar should continue
10 to -- Florida Bar Foundation should continue that
11 work, that's not our charge, and it was our hope
12 that when the Florida Bar Foundation indicated not
13 by directly speaking to us, but by speaking to
14 others that they were unhappy with the
15 recommendations we were considering, that we would
16 receive assistance from the Florida Bar Foundation
17 about what those recommendations within the
18 confines of the court order that we are ordered and
19 directed to follow.

20 Having said all of that, I believe the
21 information is very helpful, and we appreciate the
22 time and energy and passion that's evident in
23 commentary from all your grantees who receive IOTA
24 funds from the Foundation, and from the Foundation
25 which receives IOTA funds and deploys them as

1 described, so as just kind of an introductory
2 comment.

3 So, John Stewart, did you have a comment, and
4 remember you've got -- you're way ahead of me. You
5 un-muted yourself, it's hard to remember to do it.

6 MR. STEWART: Actually, this is a really quick
7 question for Steve at very high level so I make
8 sure that I understand. When we talk -- when you
9 talk about programs being defunded, I just want to
10 make sure that I understand what you're saying,
11 that is that if the committee's recommendations as
12 they were currently prepared were adopted, then
13 it's the position of the Foundation that IOTA funds
14 couldn't be used for these programs, I guess that's
15 No. 1, that's what you mean by defunded, and then
16 No. 2, I guess to my next part of that question is,
17 assuming that's yes, that there aren't other funds
18 that the Foundation has available that are not IOTA
19 funds that could replace those funds so that
20 certain of these entities that may not fit into
21 whatever the recommendations are could still be
22 funded?

23 MR. SENN: Thank you for that question. Two
24 responses. First, yes, there are programs that
25 would be defunded because they do not have staff

1 attorneys who ever provide direct representation to
2 clients, and that's why in our written materials
3 and today I have dilated more on Florida's
4 Children's First because as they are set up, their
5 mission is not to provide direct legal
6 representation. They would no longer -- that
7 program would itself -- that organization would
8 itself no longer be eligible to receive IOTA funds.
9 I know that they work very hard for their own
10 fundraising, they have annual events and things
11 like that, but my understanding is that the amount
12 of revenues they receive from IOTA funds is
13 indispensable to their operations, and provides
14 basically most of their personnel costs, perhaps
15 not all, but, you know, they work on fundraising.

16 As far as whether other funding resources
17 could be provided by the Florida Bar Foundation to
18 them, the answer is maybe, we just don't know. We
19 have come off of a fairly large, historically
20 unusual time period where we had a lot of money
21 from other organizations, that includes the Bank of
22 America funds, which had community economic
23 development restrictions that we were able to
24 distribute, I don't believe Florida Children's
25 First would have been eligible for funding under

1 that program the way the settlement agreement and
2 our charge from Attorney General Bondi was set up,
3 so I don't think they would have been eligible for
4 that kind of funding. The Engel Grant is
5 specifically for law firms within the Middle
6 District that help clients in the federal court,
7 they would not be eligible for that grant.

8 Who knows what kind of funds may be directed
9 to the Foundation in the future, but they tend to
10 be for things other than what would go to Florida
11 Children, so yes, I don't think that we would have
12 any other source of funds other than IOTA that
13 would be able to simply be called upon to replace
14 those funds.

15 Then the second part of your question, there
16 are certainly Legal Aid groups, depending on how
17 you tweak the language, that would have staff
18 attorneys that provide direct legal representation,
19 and they would be able to continue to rely upon
20 IOTA funds for that limited purpose. They would
21 not be able to use IOTA funds, well, for anything
22 else depending on how it's termed, and so the --
23 you know, their pro bono program and their
24 paralegals and all the other things that they
25 currently rely on IOTA funds, rent, whatever, there

1 are generally specific program issues that they
2 have to have now that typically will identify who
3 will be working on the grant, typically, I believe
4 it indicates staffing. I'm not sure if that's
5 always the case, but they would then have to only
6 rely on IOTA funds for those, and, you know,
7 different grantees, I mean, that's one of the
8 points we try to make. It is a very diverse animal
9 kingdom of legal rights' groups, there are all
10 different kinds of them, some of them it's going to
11 be a problem, they're going to have ample funding
12 sources, others will simply not have other sources
13 to cover those expenses.

14 One other type of program that I should
15 mention that would be defunded, no longer eligible
16 for IOTA funds at all is the Legal Aid Foundation
17 of Tallahassee, they have no staff attorneys,
18 that's entirely a pro bono run program. Other
19 organizations are -- may have a staff attorney who
20 does primarily organizational management, things
21 like that, occasionally appears in cases, but a lot
22 of their work is done by paralegals, pro bono, and
23 students. I think that -- and I may be getting
24 outside of my confidence zone here, but I think
25 that describes the Innocence Project, for example,

1 a lot of that work is done by pro bono attorneys
2 and by student interns, but is not -- and certainly
3 they have staff counsel, but the bulk of the work
4 is identifying the cases and then letting pro bono
5 attorneys get involved.

6 Have I answered your questions, Mr. Stewart?

7 CHAIRWOMAN DOWNS: Mr. Senn, if I might, just
8 if you can go back to your notes, you identified
9 \$301 million, do you remember when you were talking
10 the management of -- that you needed a full-time
11 person for management of revenues, and you
12 identified \$301 million.

13 MR. SENN: Are you referring to the comments
14 here today?

15 CHAIRWOMAN DOWNS: Yes, sir, yes, sir. Your
16 comments here today, and I just didn't get that one
17 number down. I believe you said over a period of
18 time, which I want to say was from 1982, the
19 Foundation had received \$301 million from, you
20 know, grants, CIPRES, et cetera, other than IOTA
21 money. Did I get that right or did I mix it up?

22 MR. SENN: I think that's mistaken. Let me
23 give you those numbers again. I'm looking back at
24 my materials. IOTA contributions are a little over
25 \$488 million, that's over the course of history

1 through the program through June 30th of last year.
2 Then other grants, which includes, FACLA, which
3 used to be some money we got; the Florida
4 Legislature, the Bank of America money, Chase
5 settlement, and some other kinds of programs like
6 that, that totaled 39,300,000.

7 CHAIRWOMAN DOWNS: What was 301?

8 MR. SENN: There is no 301 in my numbers that
9 I'm looking at, ma'am. There's a 501, the 501 is
10 total grants awarded during that time period is
11 \$501 million, that's the half-a-billion-dollar
12 figure.

13 CHAIRWOMAN DOWNS: How much return, did you
14 also identify a number that was a return of some
15 kind, an investment return or other?

16 MR. SENN: Yeah, the investment income on
17 those amounts was just a little under \$39 million.
18 It's now -- yeah, it's 38,965,779.

19 CHAIRWOMAN DOWNS: It's the same as the other
20 grant?

21 MR. SENN: I'm sorry, I don't understand your
22 question.

23 CHAIRWOMAN DOWNS: You said 39 million in
24 other grants besides IOTA, and also, just by
25 coincidence, 39 million in investment?

1 MR. SENN: Yes, ma'am, they're very close to
2 each other.

3 CHAIRWOMAN DOWNS: I just wrote the wrong
4 number down. Thank you so much.

5 Other members of the task force.

6 Judge Scales, Mr. Thomas, anybody have
7 questions or comments?

8 JUDGE SCALES: Can you hear me, Mayanne?

9 CHAIRWOMAN DOWNS: I can.

10 MR. SCALES: I don't know if Steve is
11 completed, but I'd prefer to wait until Steve is
12 completed.

13 CHAIRWOMAN DOWNS: You know, I thought he --
14 you're right, and it's 11:40, if he isn't finished,
15 let's, sir, get you to wrap up because that means
16 you've been talking for about an hour and a half.

17 MR. SENN: Yes, ma'am, and that's longer than
18 my --

19 CHAIRWOMAN DOWNS: -- for anybody to have to
20 do that, I understand.

21 MR. SENN: It's been a long time since I've
22 had to talk for this long not in the courtroom.

23 CHAIRWOMAN DOWNS: I understand.

24 MR. SENN: Especially with these social
25 distancing days, it's the first time I've put on a

1 tie in quite a while. I just had a couple closing
2 points that I wanted to address dealing with the
3 percentage of the total budget as a cap on overhead
4 and the reserve cap, we addressed those in our
5 written materials, we -- just in short, rather than
6 restating what we've already said, a fixed
7 percentage is not a good way, in our view, to
8 determine what the overhead of an organization
9 should be. Frankly, this is why I spent some time
10 talking about the essential functions of what you
11 have to do to operate an IOTA system, the people
12 you have to have, and you just have to look at if
13 we're going to do this responsibly, if we're going
14 to have the auditor, if we're going to have the
15 investment advisor, if we're going to have somebody
16 with a CPA, if we're going to have somebody with
17 banking experience, sure, we try to get them for as
18 cheaply as we can, but we want them to have the
19 right credentials for the position and that cost
20 money, that's a fixed cost. It's not going to vary
21 whether we have \$10 million in IOTA revenues or
22 \$50 million in IOTA revenues.

23 What might vary is if we did get the
24 \$50 million, I mean, that's a good problem to have
25 because we would have a lot of grants to

1 administer, and we might have to consider adding to
2 the grants department in order to effectively
3 administer the grants and deal with all the people
4 and make sure they're spending the money the right
5 way, but basically staff and office and those kinds
6 of things are fixed costs. The board's
7 responsibility is to make sure that we are getting
8 good value for our money on that, we work hard to
9 do that, we think that we have good people and they
10 all are being paid less than they probably could
11 make in private sector, but that's not something
12 that a fixed cap is an advisable way to address
13 that.

14 And the other point on the reserve cap that is
15 proposed, we think the lessons of history indicate
16 why that would be unwise, because these funds do
17 fluctuate so much, and in particular, when in
18 the -- before the 2008 collapse, funds were at a
19 very, very high level. Frankly, it would have
20 been, I think, irresponsible for that board to have
21 simply passed all those funds out the door to the
22 Legal Aid community for them to try to figure out
23 how to spend in a year because they all have
24 relatively strict reserves, at least certainly the
25 LLC groups do, and I think a lot of the others do,

1 they have to spend the money as it comes in. And
2 so if we would have done that back in 2007 like
3 some similar programs in other states had done, the
4 Legal Aid groups would have had to hire up a bunch
5 of people just to fire them the next year, we don't
6 think that's a responsible way of doing it, and
7 that's why he set up a -- we haven't had the
8 problem of reserves for a while now, but in hoping
9 that we'd be able to have some in the future, we
10 put together an ad hoc committee specifically to
11 look at the question of what a responsible reserve
12 spending policy would be. They have developed a
13 fairly, I think, nuanced and technically adept
14 approach that's in our materials, we provided you a
15 copy of that, and we think that reserve policy --
16 spending and reserve policy is better suited to the
17 needs and health of the Florida's Legal Aid
18 infrastructure.

19 So I have been talking a long time, I think
20 I've made every point that I wanted to touch upon,
21 and if I missed it, I'm sure it's in our written
22 materials, and if anyone has any questions that I
23 can answer, I'm happy to try.

24 CHAIRWOMAN DOWNS: Okay. Thank you very much,
25 Mr. Senn, it's very interesting and helpful

1 information.

2 Task force members, raise your hands if you'd
3 like to be called on. Judge Scales, why don't you
4 go.

5 JUDGE SCALES: Thank you. Thank you so much,
6 Steve, for that terrific, comprehensive report. I
7 did not have a chance to read the entire submission
8 that was sent to us last week, but I did have a
9 chance to read -- skim it, and I just want to
10 clarify a couple things, and I think you touched on
11 this. If I'm reading the report right, the
12 Foundation characterizes its overhead as around
13 approximately \$2 million annually, and an
14 additional \$1 million in what they refer to as
15 program expenses, expenses of operating the
16 Foundation, but that directly assists programs; is
17 that accurate?

18 MR. SENN: Yes, that's -- the M and G figure,
19 which is what our terminology is, the number we
20 use -- you know, this is something that changes
21 every year, but I think we're using current
22 figures, was \$1,999,885, and M and G is basically
23 the expenses that are left over after grants, after
24 fundraising, and after the types of expenses that
25 we're told should be allocated as program related.

1 JUDGE SCALES: And you just said I think in
2 your presentation, and it's in the written
3 submission that that's a fixed cost, irrespective
4 of the amount of IOTA revenues, that is a cost of
5 collecting and administering and investing IOTA
6 funds?

7 MR. SENN: Well, not every penny of it is, you
8 know, certainly people's salary goes up and down,
9 insurance goes up and down, rent goes up and down,
10 utilities go up and down, I think all of that is in
11 there. It's not a dynamically fluctuating cost,
12 and so to the extent that we have, you know,
13 stability in our personnel and stability in our
14 rent and stability in our -- in those kinds of
15 recurring expenses, which I think we generally do
16 now, then I mean, fixed is probably technically
17 wrong, but practically, it's in the ballpark.

18 MR. SCALES: I understand, I understand. And
19 if maybe Donnie will get to this later, I don't
20 know how much time we've got, but if in the next
21 fiscal year IOTA revenues are only around
22 4-and-a-half-million dollars, would the Foundation
23 be looking at maybe making structural changes to
24 that number or is that number pretty constant at \$2
25 million?

1 MR. SENN: I think if we had \$4 million in
2 IOTA revenues, we would probably have a bloodbath
3 of things that we would really, really hate to do,
4 but would be forced to do. And there are some --
5 and this is why I spent some time talking about the
6 essential personnel that you can't have the program
7 without it. I mean, there comes a point where if
8 the IOTA revenues are too low for too long of a
9 period of time, maybe the math just doesn't make
10 sense, I mean that's kind of above what I'm
11 prepared to talk about here, but, you know,
12 obviously, if it gets down to \$2 million in IOTA
13 revenues and we're spending \$2 million to
14 administer it, you might shut the thing down and
15 shut the IOTA program down, it doesn't make any
16 sense. Where that number is, is a judgment call.

17 I do think that the board would go into, and
18 we've done this time and time again as the board, a
19 mode of desperate times, desperate measures. What
20 do we have to do, we know we don't want to, but do
21 some things that, frankly, would be things that we
22 would hate to do, but we would do them anyway. You
23 know, that's really why the good work of the
24 finance and executive staff in trying to work with
25 the banks to keep them from dropping their funds as

1 low as they might and actually paying more than
2 they have to has been such a godsend.

3 JUDGE SCALES: Steve, I don't mean to
4 interrupt you, I want to make sure other task
5 members get an opportunity to ask questions. You
6 used a term, people-assisted IOTA dollar, is that a
7 formula that we could get from the Foundation for
8 every grant?

9 MR. SENN: No, that is not -- I think I
10 probably borrowed that from the letter I read late
11 last night from Florida Children's First where I
12 think that actually ran that number based on the
13 funding that -- that they administer, and they're
14 able to keep track of that.

15 Because the funds go through so many different
16 organizations, I don't know that -- you know, we
17 certainly try to capture a lot of figures, and
18 there may be a way to capture that once we get a
19 full grant cycle back, and for the benefit of the
20 other task force members, Judge Scales was involved
21 in making sure that we have measurable standards
22 for what we call the reset, where your grants were
23 in large part redesigned where we're requiring our
24 grantees to provide more information than they used
25 to. In the past, they provided certainly a lot of

1 information, but in the past, we had things called
2 general support grant, which is, We know you're a
3 great program, we know you're doing good things, we
4 want to support you and they would get the money,
5 and I'm probably simplifying it too much, but it
6 was a general support grant for their general
7 operations because they were doing good things, we
8 don't do that anymore, that's because we didn't
9 have enough money to do that anymore, and so we're
10 getting these better numbers back, but, Judge, I
11 don't think we have a full grant cycle back, and I
12 don't know a hundred percent for sure whether if we
13 did have a full grant cycle back, that fine detail
14 could be calculated, I just don't know.

15 CHAIRWOMAN DOWNS: Thank you. Judges Scales,
16 are you finished up?

17 JUDGE SCALES: Yes, thank you.

18 CHAIRWOMAN DOWNS: All right. Thank you.
19 Other task force members?

20 Let me make sure I am not missing anybody on
21 my screen. Okay. Going once, going twice for task
22 force members, of course, of you can raise your
23 hand at any time.

24 I do have a question for, I guess, Mr.
25 MacKenzie, and it's a question about what the

1 projected dollar amount is for IOTA revenue for the
2 fiscal year 2021, what is that number?

3 MR. SENN: Mr. MacKenzie is coming around to
4 get online for everyone, he'll be right there in a
5 sec.

6 CHAIRWOMAN DOWNS: While he's coming then,
7 maybe just use the time. Mr. Senn, Judge Scales
8 was asking about the 2 million in fixed costs, I'm
9 not -- there was also reference to another overhead
10 number. If we were trying to understand the net
11 economic effect of your points that you've made in
12 your presentation, what overhead figures should we
13 use? Is 2 million one that we can all count on,
14 that's what it cost the Foundation to administer
15 IOTA as well as the other programs or is it a
16 higher number?

17 MR. SENN: Mr. MacKenzie is now online, if I
18 mute myself -- so if I could throw that to him and
19 mute myself.

20 CHAIRWOMAN DOWNS: All right, great. Thank
21 you so much, Mr. Senn. Mr. MacKenzie, what is the
22 projected IOTA revenue for fiscal year 2021?

23 MR. MACKENZIE: Thank you, Mayanne. What I
24 have done -- we have an echo in here.

25 CHAIRWOMAN DOWNS: Somebody -- that means

1 somebody --

2 MR. MACKENZIE: Okay. What I did was I took
3 notes of the questions that were asked in the order
4 that they were asked. The first question I took
5 was the question that you just asked, Mayanne, and
6 so let me -- and if I may, let my try to answer
7 the -- there are six questions that I understood,
8 but let me try to answer --

9 CHAIRWOMAN DOWNS: We have five minutes
10 just --

11 MR. MACKENZIE: The projections for IOTA
12 receipts for fiscal year 2021 is \$16.3 million.
13 Our fiscal year runs -- I'm sorry, for fiscal year
14 1920 [sic]. Our physical year -- same fiscal year
15 as the Bar. We run from July 1st to June 30, so
16 what we've done is we've tracked IOTA, and
17 literally IOTA accounts can fluctuate on a monthly
18 basis depending on what banks are doing and what
19 the Federal Reserve is doing. We have done our
20 very best to keep our relationships with our banks
21 is that these last two surprise federal interest
22 rate cuts did not hurt us as badly because I think
23 we have a pretty good relationship with a lot of
24 our banks, and they're doing whatever they can not
25 to reduce their rates as precipitously as other

1 banks are doing, so our number for -- total number
2 for this fiscal year is \$16.3 million. We project
3 for next year -- next year's fiscal year we project
4 somewhere about 7.4 million and 12, and again,
5 we're a year out, and it's going to change. If the
6 federal interest rates remain low, we're going to
7 be on that low end of that scale. If we go lower
8 or if we go to positive or negative interest rates,
9 we'll see even lower receipts from IOTA.

10 CHAIRWOMAN DOWNS: Thank you, Mr. MacKenzie,
11 we only have four minutes left, and you said
12 something about addressing six questions, so I just
13 wanted to remind you of that.

14 MR. MACKENZIE: Okay. Real quick, I'll just
15 go in reverse order. If you look at Exhibit 20 in
16 the materials that we sent, Judge Scales, I believe
17 you asked a question about metrics. We have
18 developed metrics to judge the reset, and Exhibit
19 20 is probably the closest thing we have for Judge
20 Scales in terms of what we try to look at on the
21 front end of our grants, and that's one of the --
22 and you'll see a spreadsheet, and you will see all
23 of our metrics that we bake in -- we try to bake
24 into each of our grants, and one of those -- a
25 couple of those metrics are, how many clients are

1 you going to serve, what's the -- what's the dollar
2 amount per client based on the deliverables that
3 the grantees are provided, so if you'll look at
4 Exhibit 20, Judge Scales, and other people on the
5 task force, I think you'll see that.

6 The other thing about the spending and reserve
7 policy is, if we continue with the spending and
8 reserve policy that we've developed, we won't need
9 15 percent of our reserves. Once we reach a
10 threshold, we will get to 10 percent. And I think
11 Steve's words were nuance and adept. We've spent a
12 lot of time in trying to create a spending and
13 reserve policy based on hindsight that will keep
14 the Foundation from going bankrupt, and it will
15 provide transparency for everyone with respect to
16 our spending as well as our reserves, so we don't
17 think a fixed rate is necessarily the best rate, we
18 think a policy that's measured and balanced based
19 on where we are in terms of finances.

20 Mr. Lile, you're absolutely right, the Florida
21 Bar Foundation did solicit the loan from the
22 Florida Bar in connection with the petition to
23 increase dues by \$100, we did solicit that loan,
24 and Mr. Senn's words, he's absolutely correct, that
25 loan was a godsend, and we thought and still think,

1 the concept of a Florida Justice Technology is a
2 great idea, unfortunately, it did not work out.

3 John, Mr. Stewart, President Stewart, excuse
4 me, we are not exaggerating in the sense that there
5 are no other funds to fund many of these programs
6 based on the restrictions that have been
7 preliminarily articulated. We simply do not have
8 other funds other than Bank of America, which we
9 have depleted. That too was a godsend in the time
10 that it came. Other than Engel, which is
11 completely restricted by the Middle District of
12 Florida, that was a relatively recent grant, we
13 have investment income that we rely on, but
14 everybody knows investments in the last three
15 months have been terrible, and we are not expecting
16 any investment income this year that we'll be able
17 to roll back into our grants allocations, and so I
18 don't mean to sound like Chicken Little, but the
19 existential crisis that faces the Florida Bar
20 Foundation is a lack of funding. We need to find
21 an additional funding source that's more reliable
22 than IOTA.

23 I have the numbers with respect to FJTC.
24 We've done the best we can over the weekend to get
25 those for you. I will give you these, or I can

1 send a memo back to the task force that breaks it
2 down, but the monies that were paid to FJTC per the
3 Bar loan directive is \$1,794,058.40. We spent just
4 over \$500,000 on our Gateway Triage Project, that
5 was not monies that were spent by the Bar loan or
6 IOTA, that was money that was generously and
7 graciously given to us by the Attorney General, Pam
8 Bondi, we spent all of that except \$696, and at the
9 Attorney General's request, we donated that \$696 to
10 another grantee.

11 We have paid -- we had an AOJ grant to FJTC
12 last year in the amount of \$350,000, when the
13 situation arose, FJ- -- we requested and received
14 back from FJTC \$150,000 from them, we had disbursed
15 \$175,000, and we withheld the second \$175,000
16 payment, so we actually funded \$25,000 to them on
17 that last AOJ grant.

18 We spent bridge funding when we were -- some
19 of you may remember this, when this -- when this
20 situation arose in June of 2019, there was an ad
21 hoc committee that was created, and we provided
22 bridge funding to the FJTC for three months pending
23 our discussion as to what we were going to do with
24 the FJTC, we provided them \$38,000 per month so
25 that they -- so that we can provide them some

1 bridge funding to get through that three-month
2 period, that was \$114,000, and as Mr. Senn
3 referenced earlier, we spent \$48,058 to buy back
4 the assets that they developed during their tenure.

5 I think that's all the questions that were
6 asked of Mr. Senn that I jotted down that perhaps I
7 would be needed to provide more detail.

8 CHAIRWOMAN DOWNS: (Inaudible.)

9 MR. MACKENZIE: The last thing I would say is
10 we have tried very hard on our budget, and we've
11 been trying very hard on our budget for several
12 years, and the \$1,999,000 in M and G. The actual
13 projected M and G for this year is \$1,642,000. I
14 think people need to keep in mind, I know all of
15 you have worked with budgets with other
16 organizations, what you budget is not necessarily
17 what actually ends up being what you spend, and I
18 can tell you, and I'm fairly proud of this, is that
19 our budget for the last four years, and in
20 particular, the last two years has never gone over,
21 and we have substantially gone under our budget.
22 And we have decreased, from 2019 to 2020, we've
23 decreased personnel cost by 27-and-a-half percent,
24 we've decreased our facilities and equipment, we've
25 decreased our meetings and convenings by

1 44 percent, we've decreased our professional
2 services by 35 percent. My first year here, we
3 decreased them by 34.9 percent, 20 percent,
4 44-percent. Our overall budget first year was
5 10 percent last than the preceding year. Our
6 budget this year is 10-and-a-half percent less than
7 it was the preceding year, and we are proposing
8 even further reductions in our budgets, so we are
9 trying to be good stewards of our money, and be --

10 CHAIRWOMAN DOWNS: Can you send us those
11 percentages you just gave us?

12 MR. MACKENZIE: Absolutely.

13 CHAIRWOMAN DOWNS: It'd be helpful because
14 that's amazing, you know if you have a 25 percent
15 reduction one year, then a further 25 percent the
16 next year, and then a further 10 percent, then your
17 overall budget should have been reduced by 75 or
18 80 percent, or something, so you just let us have
19 those in writing, if you will, that would be --

20 MR. MACKENZIE: Be glad to do.

21 CHAIRWOMAN DOWNS: We're now five minutes
22 over, I gave you an extra six minutes there.

23 MR. MACKENZIE: Well, thank you.

24 CHAIRWOMAN DOWNS: I don't want to cut you
25 off, but you did say you had responded. Does

1 anybody have any questions for Mr. MacKenzie?

2 MR. MACKENZIE: I want to thank everybody for
3 their time and attention. If you have any
4 questions, you know, please send them to us. We
5 gladly send you the comparative overview of our
6 budgets that we just referenced which shows the
7 line items of what we've been doing the past couple
8 years.

9 CHAIRWOMAN DOWNS: And make sure you total it
10 so you get an overall budget reduction because --

11 MR. SENN: We have that.

12 CHAIRWOMAN DOWNS: -- hard to read.

13 Got it.

14 Do I hear a motion to approve the minutes of
15 our last meeting pursuant to our agenda?

16 I'll consider that hand -- sorry. And can
17 someone raise their hand to indicate a second?

18 All right. All you in favor of approval of
19 the minutes from last meeting, please raise your
20 hand.

21 Since we're over, we will communicate with the
22 task force group about having to switch our meeting
23 in June to a virtual meeting, and we will also
24 schedule an additional meeting. I don't want to
25 take everybody's time to go over that right now.

1 We don't have any votes scheduled, you know,
2 we certainly wanted to hear from the Foundation and
3 the Foundation's grantees, and we're deeply
4 grateful for the time and energy spent on the part
5 of all of those people we heard from, certainly
6 Mr. Senn, and Mr. MacKenzie today, and then the
7 grantees who wrote letters to us and provided
8 information as well. It will take us a little time
9 to digest that, and then we'll figure out a time to
10 continue our work.

11 Is there anything else that any task force
12 member has they want to address? If so, raise your
13 hand; otherwise, we'll consider our task force
14 meeting adjourned, and thank you, everybody.

15 And now you can hit that fabulous button that
16 says, leave meeting. Thank you.

17 (Meeting adjourned.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
)
COUNTY OF ST. JOHNS)

I, Deborah P. Brownell, RPR, Seventh Judicial
Circuit of Florida, do hereby certify that I was
authorized to and did **stenographically report** the
foregoing meeting via Zoom, and that the transcript is a
true and correct record of my **stenographic notes**.

Dated this 27th day of May, 2020,
St. Augustine, St. Johns County, Florida.



Deborah Pacetti Brownell
Registered Professional Reporter

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IN RE: Task Force on Distribution of IOTA Funds

ZOOM MEETING

DATE TAKEN: June 12, 2020

TIME: 1:00 p.m. until 1:48 p.m.

This cause came on to be heard at the time and place aforesaid, when and where the following proceedings were **stenographically reported** by:

Carman L. Gaetanos
Coastal Court Reporters, LLC
St. Augustine/Jacksonville
(904) 824-3525

1 APPEARANCES:

2 MAYANNE DOWNS, ESQUIRE

3 KAREN LADIS, ESQUIRE

4 LAIRD A. LILE, ESQUIRE

5 HALA A. SANDRIDGE, ESQUIRE

6 HONORABLE EDWIN A. SCALES, III

7 JOHN M. STEWART, ESQUIRE

8 M. SCOTT THOMAS, ESQUIRE

9 ELIZABETH TARBERT, ESQUIRE

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P R O C E E D I N G S

1
2 CHAIRWOMAN DOWNS: Well good afternoon to all
3 of you who are you joining us electronically and by
4 telephone.

5 We will start our June 12, 2020 meeting of the
6 Task Force on Distribution of IOTA Funds.

7 And Elizabeth, if you will call role of the
8 Task Force Committee members, and let us know.

9 MS. TARBERT: Mayanne Downs.

10 CHAIRWOMAN DOWNS: Here.

11 MS. TARBERT: Karen Ladis.

12 MS. LADIS: Here.

13 MS. TARBERT: Laird Lile.

14 MR. LILE: Here.

15 MS. TARBERT: Hala Sandridge.

16 MS. SANDRIDGE: Here.

17 MS. TARBERT: Ed Scales.

18 JUDGE SCALES: Here.

19 MS. TARBERT: John Stewart.

20 MR. STEWART: Here.

21 MS. TARBERT: Scott Thomas.

22 MS. THOMAS: Here.

23 MS. TARBERT: You have a quorum.

24 CHAIRWOMAN DOWNS: Thank you.

25 Do I hear a motion for approval for the May

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1 18, 2020 meeting minutes.

2 MR. LILE: So approved, or so moved.

3 CHAIRWOMAN DOWNS: Do I hear a second?

4 JUDGE SCALES: I'll second.

5 CHAIRWOMAN DOWNS: Thank you, Judge Scales.

6 All in favor of approval of the May 18th, 2020
7 meeting minutes please say aye.

8 (Simultaneous aye responses.)

9 CHAIRWOMAN DOWNS: Any opposed please say nay.

10 The motion carries and the May 18th, 2020
11 meeting minutes are approved.

12 The next item on our agenda, item No. 2 is
13 review of the combined report -- we actually as we
14 went through this process, we realized we were able
15 for efficiency sake to combine two of the
16 subcommittees to look at whether specific
17 requirements or limitations should be imposed on
18 the use of IOTA funds, and the subcommittee that
19 was charged with examining whether reporting
20 requirements about distribution and the use of IOTA
21 funds should be adopted. And so we will turn to
22 that next, but just briefly before we do that for
23 the benefit of anybody listening, I want to remind
24 everybody that we have a subwebsite on the Florida
25 Bar website. I think the easiest way to get to it

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1 is just type on any search bar Florida Bar IOTA
2 Task Force and you will find there all the
3 submissions that have been made to us, which are a
4 lot of, thousands of pages. You will find the
5 agenda for today. You will find the schedule of
6 meetings, meetings that we have had and will have
7 and you will find the Supreme Court Order that asks
8 this committee to take a look at IOTA funding and
9 distribution of IOTA funds. And we have found
10 going through this process, we have a lot of people
11 really provided helpful information, spent a lot of
12 time ensuring that we were as well informed as we
13 could be. And that's been a very helpful exercise.
14 I will also say, just as a companion statement to
15 that, we have found that an awful lot of people
16 perhaps submitted info or provided info to us have
17 not read the Order. Of course, the Order is both
18 our mission and a boundary for us about what we can
19 do and cannot do. And so anybody who is interested
20 in this subject, I strongly urge you to (inaudible)
21 and see the Supreme Court Order.

22 Having said that, we have Judge Scales, Laird
23 Lile and Scott Thomas who all together have worked
24 on this combined report. Everyone on the Task
25 Force knows that we have asked all the Task Force

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1 members (inaudible) to provide us info and in that
2 process we made a number of changes.

3 So I don't KNOW who wants to go first or how
4 you want to handle it. Judge Scales, Laird Lile
5 and Scott Thomas, but if someone would give us a
6 summary presentation about the report and what you
7 intended to accomplish and maybe just briefly
8 express the changes that were made in response to
9 comments from Task Force members and people around
10 the state.

11 JUDGE SCALES: Thank you, Madam Chair. I will
12 give it a crack and then we'll hear from the other
13 members of the combined subcommittee.

14 If you'll recall, this is the third or fourth
15 iteration of this report. It has been a work in
16 progress, I think over the last several months.
17 And the initial draft had a different framework,
18 and based on the input that we got, especially from
19 the grantees, we changed the framework into, you
20 know, what we think is a lot more flexibility of
21 use of IOTA funds to the grantees, so that the
22 grantees can provide the direct legal services for
23 low-income litigants in Florida, which is how we
24 read the Supreme Court's Order is to give priority
25 consideration to that. We have -- we think that we

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1 have accomplished that in the report.

2 I want to point everyone's attention though to
3 a new section in the -- the initial report had two
4 sections, an A and B, and then we decided to
5 combine that with C which was the reporting
6 requirements. And I think we've added section D,
7 which I think it's very important. And that is, a
8 requirement or an expressed desire that this
9 process be revisited, and any rule change be
10 revisited by the Court to make sure it is
11 accomplishing what the Court would like it to do.
12 And if it's not, obviously they can do it any way,
13 but I think by incorporating that in the report,
14 we're being very specific that we think that the
15 data that is being collected under section C be
16 reviewed to see, to make sure that the IOTA funds
17 are being effectively used, which I think is what
18 our mission was.

19 Other than that, I really don't have a whole
20 lot to add. I think the report speaks for itself.
21 Before I open it up for questions, I would like to
22 give Laird a chance. Laird did a great job in
23 drafting a lot of this. And would like to pass it
24 over to Laird and then Scott if's that okay, Madam
25 Chair.

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1 MR. LILE: I think she said that's okay.

2 CHAIRWOMAN DOWNS: Yes, thank you. The
3 mute/unmute thing didn't go.

4 MR. LILE: Got it.

5 Thank you, Madam Chair, and thank you, Judge
6 Scales.

7 I don't have a lot to add because I do think
8 that the report speaks for itself at this point.
9 And one of the things that I'm particularly proud
10 of with this version of the report is taking into
11 account the -- what I was convinced of in terms of
12 the need of the qualified grantee organizations to
13 have more financial flexibility in terms of not
14 just putting money directly into the pockets of the
15 qualified legal providers, or the qualified
16 providers, the lawyers, but also to recognize that
17 they may need to have, depending on the different
18 structure, they may need to have funds to
19 compensate people, not lawyers, who facilitate and
20 coordinate volunteer providers. And so I think
21 that accomplishes -- this version accomplishes that
22 very nicely. So that's the only comment that I
23 wanted to make at this point.

24 Scott.

25 MS. THOMAS: As the third hitter here, I don't

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1 have much to add to that. I think the report
2 speaks for itself. It does represent a considered
3 effort to maximize efficiencies here, and
4 recognition that we have great existing
5 infrastructure for the delivery of direct legal
6 services, and the idea here is maximizing the use
7 of the IOTA funds, how they can deliver that for
8 that purpose, and so that is, I think as Laird
9 said, the idea here is how to get the existing
10 infrastructure and preserve the flexibility that
11 they need for the direct services, while still
12 providing a regimen for both accountability and
13 incentive to make sure that's done fairly.

14 CHAIRWOMAN DOWNS: I think all of your
15 comments are helpful, and I'll just add briefly
16 having been a small part of the process, the
17 gentlemen who just spoke have spent a great deal of
18 time reviewing the data that was provided and a lot
19 of information to ensure (inaudible) make it mean,
20 as Judge Scales mentioned, what we've been formally
21 calling the two-year look back, that is an
22 opportunity, if this process goes forward,
23 obviously that's up to the Court. We made this
24 report and it may sit on the shelf. We don't know
25 what will happen, but assuming something like this

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1 is formally adopted by the Florida Supreme Court,
2 the reporting requirements which are objective and
3 benchmark based would be available for the two-year
4 period or whatever the Court deems appropriate to
5 then look at that gathered data and ensure that the
6 times (inaudible) to provide legal services for
7 low-income litigants in Florida.

8 And I want to underscore what Laird said,
9 there were different versions of how this money
10 would be distributed. The big picture here, the
11 opportunity for 95 percent plus of all IOTA money
12 to go directly into the hands of the grantees who
13 know how to provide direct legal services to
14 low-income litigants because they've doing it now
15 and have always have done it, together with Laird,
16 as you know, the opportunity to broaden the use of
17 those monies to include facilitating pro bono and
18 legal aid. All of that presents, I think, an
19 extraordinary opportunity for the increasingly
20 limited IOTA funding to be used in this (inaudible)
21 manner. And that's how all of us on the Task
22 Force, I think, all of us agree that is the
23 overarching directive of what the Florida Supreme
24 Court put it its Order.

25 We may have some increasing disagreement about

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1 how that notion translates into practical
2 application, but I saw the iterations of this
3 report and I'm really, really heartened by how it
4 turned out, and plus by the amount of time and
5 energy that this group of three individuals not
6 only put into the process, but what the other
7 members, every other member of the Task Force
8 (inaudible) exceptions actively is a part of making
9 this report better through the number of changes to
10 be responsive to the questions that were raised.
11 Karen was really helpful (inaudible) and trying to
12 see this from their standpoint, so having found
13 that.

14 Do we have any questions or comments or
15 thoughts from any other members of the Task Force?

16 MS. SANDRIDGE: Yes, Madam Chair. This is
17 Hala Sandridge. I have some remarks and was hoping
18 that you could indulge me.

19 CHAIRWOMAN DOWNS: Of course.

20 MS. SANDRIDGE: So I would first like to thank
21 my fellow Task Force members for the time that they
22 put into this report. It really shows, and I do
23 appreciate the review of all the documents, the
24 background material, and for allowing me to express
25 my views on the hard work that they've done.

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1 As the chair reminded us, I believe the
2 starting point is the Administrative Order, and I
3 think it's really important to look at the wording,
4 and as the chair recognized, I think there are some
5 differences among the Task Force members about this
6 Order. And you know, I think that the Supreme
7 Court when it created this Task Force, it was
8 pretty express in what it said. First, it
9 recognized that all IOTA funds flow to the Florida
10 Bar Foundation, and it also recognized that the
11 IOTA funds are to be used to fund programs which
12 are designed to improve the administration of
13 justice, or to expand the delivery of legal
14 services to the poor. And I see nothing in the
15 Order that changes any of that.

16 The Order then establishes the Task Force, and
17 it asks us to examine whether the rules should be
18 amended to better ensure the most effective use of
19 IOTA funds. So the question, as I read the Order,
20 is what's the most effective use of IOTA funds in
21 order to fund programs which are designed to
22 improve the administration of justice, or to expand
23 the delivery of legal services to the poor. And
24 later in the Order the Court says: In conducting
25 its work, the Task Force shall give priority

1 consideration to the need for funding direct legal
2 services for low-income litigants in Florida. And
3 I personally believe that word "consideration"
4 means just that, we're supposed to consider it. I
5 don't believe that this was a mandate to use IOTA
6 funds solely or exclusively for funding direct
7 legal services for low-income litigants in Florida.
8 And that if the Supreme Court had so severely
9 wanted to limit IOTA funds to funding direct legal
10 service for low-income litigants in Florida, the
11 Court would have said so. The Court could have
12 said something along the line of, you know, in
13 conducting the work, the Task Force shall limit
14 IOTA funds to funding direct legal services for
15 low-income litigants in Florida, but it didn't.
16 And so I don't think that we should be some limited
17 in our review.

18 And I have other reasons I believe my reading
19 is correct. In other parts of the Order it asks us
20 to examine whether specific priorities should be
21 established for the use of available IOTA funds,
22 and whether specific requirements or limitations
23 should be imposed on the use of IOTA funds. And I
24 just, you know, question whether the Court would
25 ask us to examine whether these things should be

1 done if the Court had already instructed us to
2 limit IOTA funds to funding direct legal services
3 for low-income litigants in Florida.

4 And based upon my reading of this Order, and
5 this comes as no surprise to anybody on the Task
6 Force because at our February 24th meeting, I was
7 the sole no vote when we adopted the earlier
8 subcommittee report addressing whether specific
9 priorities should be established for the available
10 use of IOTA funds. And I've read my comments that
11 I made. There was a transcript. And it's
12 consistent what I'm saying now. So for those same
13 reasons, I cannot accept the revised combined
14 recommendations of the subcommittees, and it's
15 because I believe it's based upon an incorrect
16 premise that we were ordered to limit all IOTA
17 funds to funding direct legal services for
18 low-income litigants in Florida.

19 In my personal opinion, and this is just my
20 opinion, I think we should instead be considering
21 the information received from all the various
22 stakeholders involved in improving the
23 administration of justice and expanding delivery of
24 legal services to poor. And we should be looking
25 at what they've said to decide what is the most

1 effective use of IOTA funds. And here are my
2 thoughts based on what I've read, what I've heard
3 and discussions I've had. As an aside, I would
4 first like to note that the Florida Civil Legal Aid
5 Association has submitted a request that we seek an
6 extension of time in which to finalize the
7 recommendations because a new system, as we've
8 recommended in this report, would create chaos at a
9 time that basically these legal service
10 organizations need some stability in light of the
11 ravages of COVID-19. So I think that that is a
12 very wise recommendation and one we should
13 consider, but assuming that we're unwilling to seek
14 such an extension, I would modify the
15 recommendation to state our findings that the
16 current use of IOTA funds by the Florida Bar
17 Foundation continue to be the most effective use of
18 IOTA funds.

19 I think we've heard from numerous stakeholders
20 during this process who all appear to agree that
21 the Foundation should continue to receive these
22 funds and disburse these funds. And based upon
23 what I've heard and what I've read, the only tweak
24 that I see from many of the stakeholders is maybe
25 more certainty in the grant-making process. I do

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1 believe that some of that could be accomplished by
2 some percentage or fixed amount of IOTA funds going
3 directly, going directly to the grantees to use for
4 funding direct legal services for low-income
5 litigants, or maybe extending the length of grants
6 by a year or more. And those are things that we've
7 been examining in the Foundation because we've
8 heard some of these requests by the grantees. But
9 to require all of it, 95 percent of it to go
10 directly to grantees to be used solely for funding
11 direct legal services for low-income litigants in
12 Florida, I think, is the mistake. And that's
13 because, I think again, that the Supreme Court's
14 Order states that our task is to examine whether
15 the rules should be amended to ensure the most
16 effective use of IOTA funds, and that leaving only
17 five percent of IOTA funds to the Florida Bar
18 Foundation will effectively, you know, dismantle
19 the Foundation as we know it, and leaves it only as
20 a pass-through organization.

21 But I believe that the Foundation actually
22 uses IOTA funds, not only to fund grants but to
23 multiply the amount of funds available to improve
24 the administration of justice and to expand
25 delivery of legal services in Florida. And what I

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1 mean by that, you know, how does the Foundation
2 take IOTA funds and actually multiply it. A couple
3 of examples, and I know I've shared this before
4 with many of you is the Champions Program. I mean
5 that was an idea developed by Florida Bar
6 Foundation staff. If there was no Florida Bar
7 Foundation staff doing these things, this program
8 would have never existed. And it has, the result
9 of it has increased the amount of IOTA funds by
10 millions and millions of dollars, and if we don't
11 have the Foundation as it exists. What
12 organization in the state of Florida is going to be
13 examining these opportunities and implementing them
14 so that we can get more funds to be used for the
15 goals that the Supreme Court has set forth? So you
16 know, I really do believe that that's a great
17 example of why it's efficient to take IOTA funds
18 and spend them on these type of services.

19 Another one is technology, and you know, this
20 is one where I think I can agree to disagree with
21 some of my fellow task members, but, you know, if
22 you take a new attorney and you fund a new attorney
23 for one organization and they can serve 100 people
24 for a year, well you can take that same amount of
25 money and give it to the Foundation to award a

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1 grant for new a technology program that let's say
2 serves 5,000 Florida residents a year, I submit
3 that that's a more effective use of IOTA funds.

4 So I'm going to end this very long statement
5 by one of my favorite appellate cases. It's out of
6 Fifth DCA and it reversed the sanctions ordered
7 because it said that rather than using the scalpel,
8 the trial judge has chosen to use the atomic bomb.
9 And that's kind of my opinion of this report
10 because it's premised on a misreading of the
11 Supreme Court's Order. We really used an atomic
12 bomb and blown up the whole system, rather than a
13 scalpel to tweak a system that to me is the most
14 efficient system to improve the administration of
15 justice, or to expand the delivery of legal
16 services to the poor.

17 So with that Madam Chair, I thank you very
18 much for all the hard work of the committee, and
19 for allowing me to express my opinions.

20 CHAIRWOMAN DOWNS: Thank you, Hala.

21 I do want to comment briefly on the letter
22 that did request us to extend the deadline, and I
23 certainly understand the concerns that were
24 expressed in that letter and the concerns just
25 expressed by Hala, but frankly, speaking only for

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1 myself, the notion that the Florida Supreme Court
2 would create chaos is though to say the least a
3 dramatic overstatement.

4 The Court will have to take whatever time it
5 has available to get to this matter. I -- I --
6 there's always the possibility the Court will never
7 act on this recommendation, but if the Court does
8 act, I believe that the members of the Florida
9 Supreme Court know and understand how to make a
10 change if they choose to do so in a predictable,
11 judicious and responsible fashion. And (inaudible)
12 because this committee, which has worked hard for
13 months and had additional meetings, two meetings
14 were provided for the Florida Bar Foundation and
15 its grantees and it's board members and people that
16 were involved in the (inaudible) we gave for this,
17 and I don't believe that the Court and this
18 committee should take and extend the time that we
19 agreed to and that we have spent because of some
20 fear that the Florida Supreme Court will blow
21 something up. That's my -- on a personal level I
22 find that argument to be overstated and one that's
23 beyond the cannon of this committee's task. So I
24 would not recommend an extension. Everybody on
25 this Task Force has spent a lot of time on this and

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1 with great effort.

2 Any other comments?

3 MR. LILE: Madam Chair, with respect to the
4 timing and the request for extension, it looks like
5 the Order is expecting a report by September 15,
6 and I did not realize until just now looking at
7 this that our terms on the Task Force don't expire
8 until December 31. That causes me create concern
9 because I thought when we turned this thing in by
10 September 15th, we'd be done, but apparently we
11 continue on the Task Force for another two and a
12 half months.

13 CHAIRWOMAN DOWNS: Well, let's hope that then
14 the Task Force as it exists was a just a cautionary
15 there because once we have finished addressing the
16 very specific questions that the Court gave to us,
17 I'd like to think we're finished, but I hear you.
18 I hear you, Laird. Everybody, and everybody
19 listening and everybody in this profession right
20 now has a lot going on in trying to do what we've
21 always done for a long time (inaudible).

22 So any other comments about the report of the
23 subcommittee from the members of the Task Force?

24 JUDGE SCALES: Madam Chair, on that point, it
25 maybe -- my understanding is that the deliverable

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1 from the Task Force is not a report, but proposed
2 amendments to the Rule.

3 CHAIRWOMAN DOWNS: Correct.

4 JUDGE SCALES: It may well may be, and I don't
5 know this, to Laird's point, that if in September
6 or before we deliver them with a Proposed Rule and
7 they want to send it back to us, they will have the
8 opportunity to do that with several months between
9 September and December to do that, and that may
10 have been built into the timeframe. And that may
11 be part of that dynamic, I don't know.

12 CHAIRWOMAN DOWNS: Could be.

13 And again, none of us have any idea when the
14 Court will find time to act, if it ever choses to
15 act in response to this recommendation. It could
16 cause their members of the Court to (inaudible) all
17 sort of stuff going on.

18 JUDGE SCALES: Madam Chair, if I may address
19 one more thing.

20 CHAIRWOMAN DOWNS: Yes.

21 JUDGE SCALES: This is -- Hala is a terrific,
22 terrific lawyer and great colleague and has been a
23 great president of the Foundation, and she's a
24 hundred percent right in that different people can
25 read Orders and cases and statutes, and what we do

1 is we, you know, we have different views on what
2 the words mean. I just disagree with Hala on this
3 one. I think that the direction that they gave us
4 wasn't really, it was not Foundation-specific. It
5 was IOTA-specific. And I think one of the things,
6 and we kind of softened it in the report, but one
7 of the things I really think that they are
8 concerned about -- John, close your ears -- is
9 there being a mechanism where money is collected
10 from one pot and given to another pot to distribute
11 only with very, very broad direction that's
12 provided in a charter of a private organization or
13 a semi-private organization. That's why I think
14 our deliverable is a Proposed Rule as opposed to
15 proposed charter amendments to the Foundation or
16 restrictions on the Foundation. I -- the way I
17 view our task, and again, there is seven of us, we
18 probably all could view it somewhat differently
19 looking at the Administrative Order, is hey, we
20 want you to give us a Proposed Rule that limits the
21 use of IOTA funds to direct legal services for
22 low-income litigants in Florida. That's the way I
23 read the rule. And again, different people can
24 read it differently. But that's just my
25 perspective.

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1 CHAIRWOMAN DOWNS: Thank you.

2 Any other comments by the subcommittee, the
3 combined subcommittee's report?

4 We circulated --

5 MS. THOMAS: I'm sorry. Madam Chairman, I
6 am -- I don't know if you're ready to take action
7 in connection with the report. I do have a
8 comment, really a motion related to the report, so
9 before we get to consideration of the underlying
10 report. I don't know if that's where you're ready
11 move to, comments, or what your pleasure is.

12 CHAIRWOMAN DOWNS: Go ahead.

13 MS. THOMAS: One of the things, and you
14 addressed it in your comments, one of the things
15 that is to be effected through the report and it's
16 found really in section 4A of the current draft is
17 the notion that no less than 95 percent of the IOTA
18 funds will be distributed, leaving 5 percent, as
19 much as 5 percent for overhead. And I want to
20 emphasize that in preparation of this, that's not
21 arbitrary, that we took a look at what would be
22 appropriate. We relied on the concept of the
23 charitable commitment. This is inherent -- or this
24 is set forth in the email you circulated, I think,
25 for all of the Task Force members to look at to get

1 a better understanding of where that 5 percent, 95
2 percent came from. And I think to avoid confusion,
3 even though I guess I'm an author of this, I would
4 offer a motion to amend the report before its final
5 consideration to include as a footnote in section
6 4A, which is at the bottom of page 4, top of page
7 5 -- hopefully I don't need to read the whole
8 thing, I think the Task Force has it. But as a
9 footnote, the discussion starts with the Task Force
10 about general commitment, what the concept means,
11 what we typically see for a charitable organization
12 in terms of overhead both for operations and
13 fundraising, and in our view of this we analyzed
14 that the Foundation really doesn't have a
15 fundraising overhead component. And for that
16 reason, I would make a motion to amend the
17 subcommittee report to include, I don't know what
18 the footnote would be, I confess what number, but
19 to include a footnote to paragraph 4A, top of the
20 page 5, adopting in full the text of the charitable
21 commitment discussion that was circulated to the
22 Task Force members, I believe it was yesterday, the
23 11th.

24 CHAIRWOMAN DOWNS: Thank you, Scott.

25 Do I hear a second?

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1 JUDGE SCALES: I'll second that.

2 CHAIRWOMAN DOWNS: Any discussion?

3 MR. STEWART: Chairman, my only discussion
4 point is this, and I appreciate that, and I agree
5 with the motion and the report, but that was really
6 why I appreciated section D, because I don't think
7 any of us are experts. We've done the best we can
8 to get up to speed in a short amount of time.
9 There are some things that may not be perfect,
10 particularly in the financial qualifications or the
11 financial restrictions and that's why I like the
12 look-back, right, because it gives anybody an
13 opportunity to say, We collected the data, here's
14 the measurable that we've given and it's not
15 working, you guys did a really poor job, or it is
16 working or something between. That's what to me
17 gave me a lot of comfort because we need that data,
18 we need those measurement tools, and as lawyers we
19 don't always do a good job of that. So, I
20 appreciate what we did and recognize that while we
21 did the best we could, maybe it's not perfect, and
22 I hope that whatever the Court decides to do, it
23 gives an opportunity to look back so that any
24 change can be reviewed with the add-in to make sure
25 what's happened meets its intended purpose.

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1 CHAIRWOMAN DOWNS: Thank you.

2 And John, I agree. That's suggestion to
3 affirmatively put that in, I think, was one of the
4 many really fine ones we received, together with as
5 I said earlier, refinements of some of the
6 information about how this would be used and
7 finding a structure that allows the grantees, you
8 know, the boots on the ground to not only get 95
9 percent-plus of these funds, but you know, there is
10 no indication they have some flexibility in how to
11 spend of funds. But I think the look-back is the
12 thing that kind of gives it a safety net, so I
13 agree.

14 So the footnote that everyone's referring to
15 for the benefit of those who are not on the Task
16 Force is simply one that explains the selection of
17 the 5 percent as a cap or pass-through for the
18 distribution of these monies to ensure that 20 or
19 30 or 35 percent doesn't get eaten up of that money
20 by overhead, and simply explains as Scott says that
21 the money comes unbidden by operation of law to
22 whoever the distributor is. Today, the Florida Bar
23 Foundation is distributor, maybe (inaudible), we
24 don't know. We weren't asked to answer that
25 question. But the point is, most charitable

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1 organizations spend anywhere from 10 to 40 percent
2 of the funds they receive to get money that they
3 then pass on. In other words, it can cost them as
4 much as 40 cents of every dollar they ultimately
5 receive, so that before they even apply overhead,
6 60 -- 40 cents of that dollar is gone. 60 cents of
7 dollar goes to their mission after overhead.

8 In addition, here unlike other charities we
9 have a circumstance with the grantees on the ground
10 have been doing this work for a long time and
11 they're continuing to do this work, so that's
12 another thing that's programming, that's another
13 element of programming that doesn't have to be
14 distributed.

15 So, having said that, we have a motion and a
16 second and we had discussion. All in favor of
17 having the proposed footnote that was identified in
18 my email of yesterday to the report, which we will
19 then move to a vote on, place say aye.

20 (Simultaneous aye responses.)

21 CHAIRWOMAN DOWNS: Any opposed, please say
22 nay.

23 MS. SANDRIDGE: Nay.

24 CHAIRWOMAN DOWNS: Thank you.

25 So Elizabeth, you will record that negative

1 vote and the rest of the Task Force in favor of
2 adding that footnote.

3 And so now we've move to I think we have a --
4 John can tell us, I think it needs to come as a
5 motion requiring a second, so I will simply ask for
6 all the members of the Task Force who are in favor
7 of approving and adopting the report of the
8 combined subcommittee as amended and immediately
9 preceding vote, please say aye.

10 (Simultaneous aye responses.)

11 CHAIRWOMAN DOWNS: All opposed to that motion
12 please say nay.

13 MS. SANDRIDGE: Nay.

14 CHAIRWOMAN DOWNS: Elizabeth, please reflect
15 in the record Hala's negative vote and the rest of
16 the Task Force voting in the affirmative.

17 So the motion carries and the combined
18 subcommittee report is accepted and approved, and
19 again, thank you to all the grantees who provided
20 assistance on this language, and the grantees who
21 have been providing us with information all along.
22 We are grateful. And to all the members of the
23 Task Force who worked on this, and of course the
24 subcommittee.

25 So let's turn it to what's next. We have John

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1 Stewart's virtual Bar Convention next week. I know
2 he is very excited about it. Everybody wants to,
3 you know, do something new and exciting, and really
4 for, you know, John to be responsible for this
5 pandemic to the extent that it now requires him to
6 have a virtual Bar Convention is really something,
7 John. I know how proud your dad is.

8 MR. STEWART: Yeah, not just my dad,
9 everybody. Everybody's dad that didn't want to
10 travel is happy.

11 CHAIRWOMAN DOWNS: That's right.

12 For those of you that don't know, John's
13 father is up for so-to-speak receiving recognition
14 as being a 50-year member of the Florida Bar at
15 this meeting, and I am sure all of you, hope you
16 actually saw the story about that. It was really,
17 really, really cool. And your dad looks actually
18 more tired and rested than you, John.

19 MR. STEWART: He's worked harder this last
20 year in terms of actual legal work.

21 CHAIRWOMAN DOWNS: Okay. So Elizabeth, will
22 you fill us in, give the detail about our meeting
23 next week? One of the reasons we kept on the
24 schedule we had is we wanted to make good on the
25 promise we made from the outset of this work, which

1 was by the time we got to the Convention everybody
2 would know and understand what we were proposing
3 and they be would able to see it in writing. And
4 the adoption and approval of the report we just
5 approved, we can say that that's true, and all of
6 that is to have a meeting next week that allows
7 additional input, which we very much hope will be
8 limited to the actual recommendations rather than
9 anybody interpreting what the Supreme Court said or
10 thought. All of that was really (inaudible).

11 So Elizabeth, what are we doing?

12 MS. TARBERT: You have a Zoom meeting
13 scheduled for Thursday the 18th starting at 9:00
14 a.m., concluding at noon. So I've received one
15 request so far for two speakers, and that is all
16 I've received so far.

17 CHAIRWOMAN DOWNS: Okay. Terrific.

18 JUDGE SCALES: Elizabeth, do you think you'll
19 have the Rule drafted by then for us to vote on
20 Thursday, and all with photographs and backup
21 material?

22 MS. TARBERT: I don't promise any photographs.

23 JUDGE SCALES: Just kidding. I'm just
24 kidding.

25 CHAIRWOMAN DOWNS: Well, I don't know.

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1 MR. LILE: She accepted the job, Ed.

2 CHAIRWOMAN DOWNS: Exactly.

3 JUDGE SCALES: So can we talk a little bit
4 about that, or do you want to postpone that
5 discussion until next week as far as the next
6 steps, Mayanne?

7 CHAIRWOMAN DOWNS: I think so. Unless any
8 member of the Task Force has a burning desire to do
9 it right now. You know, we try to make networking
10 (inaudible) as well as Task Force office.

11 JUDGE SCALES: So Elizabeth, we will not have
12 any Proposed Rule until sometime later in the
13 summer, is that -- give us all time to work with
14 Elizabeth on that? Is that -- I guess that's what
15 my question is.

16 CHAIRWOMAN DOWNS: Well --

17 MS. TARBERT: I can try to draft something and
18 circulate it to the Task Force.

19 CHAIRWOMAN DOWNS: I would like to give a
20 reasonable try to have Lani Fraser draft the Rule.
21 And I -- and here's, if we get, you know, a Rule,
22 Proposed Rule or a reasonable facsimile thereof, we
23 can continue to refine points, but I would like the
24 people who care about this subject to have as much
25 of what, you know, we're ultimately going to submit

1 to the Supreme Court as they can.

2 So, Ed, if it's okay with you, why don't we
3 talk about details offline and see if we can't get
4 a Rule circulated real quickly and try to refine it
5 before our meeting next week. And then at our
6 meeting next week we can talk about what else we
7 need to do.

8 JUDGE SCALES: I was kind of being sarcastic,
9 but okay.

10 CHAIRWOMAN DOWNS: I have more confidence in
11 Elizabeth than you do, I guess.

12 This is (inaudible) we are dealing. This a
13 30-years ethics guru. She is like a yogi, so I may
14 have --

15 MR. LILE: She may have the Rules already
16 drafted, Madam Chair. I mean she may just be
17 sitting on them.

18 CHAIRWOMAN DOWNS: Nice work.

19 She may have drafted them at the outset of the
20 Order.

21 MR. LILE: Exactly.

22 CHAIRWOMAN DOWNS: Thank you.

23 So okay.

24 MS. THOMAS: This is not an easy decision. It
25 takes six months to get a DCA.

1 CHAIRWOMAN DOWNS: I think that was a slap at
2 you, Judge Scales.

3 JUDGE SCALES: I didn't I hear it, which I'm
4 very happy about. Actually, I did hear it, but I
5 pretended like I didn't, which is one of the things
6 that we do in oral arguments sometimes, Scott.

7 MS. THOMAS: I don't know who said it, but
8 with this whole Zoom thing, it could have come from
9 anywhere.

10 CHAIRWOMAN DOWNS: That's true.

11 All right. Well, thank you Task Force Members
12 and all the people who provided us all that
13 information. We're very grateful and we're going
14 to do our very best to try to have a Proposed Rule
15 available up on the website beginning next week.

16 And as always, as I've tried to say at every
17 meeting, I think I have, but if I haven't, my cell
18 phone is available to anybody and I'm available any
19 hours of every day, so if anybody has any questions
20 or comments or thoughts or suggestions, please
21 (inaudible). I continue to be available, as is
22 Elizabeth, and certainly other members of the Task
23 Force.

24 Okay. (inaudible). I thank you very much. I
25 don't think we need a motion to adjourn, so we will

1 just adjourn.

2 Thank you.

3 MR. LILE: Thanks all.

4 (Zoom Video proceedings concluded.)

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COUNTY OF ST. JOHNS)

I, Carman L. Gaetanos, Court Reporter and Notary Public, do hereby certify that I was authorized to and did **stenographically report** the foregoing proceedings, via Zoom Video to the best of my ability and belief, and that the transcript, is a true and correct record of my **stenographic notes.**

Dated this 23rd of June, 2020.

Carman L. Gaetanos
Carman L. Gaetanos

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IN RE: Task Force on Distribution of IOTA Funds
_____ /

VIDEOCONFERENCE MEETING VIA ZOOM

DATE TAKEN: July 15, 2020
TIME: 9:15 a.m. - 10:30 a.m.

This cause came on to be heard at the time and
place aforesaid, when and where the following
meeting was **stenographically reported** by:

Deborah Pacetti Brownell
Registered Professional Reporter
St. Augustine/Jacksonville, Florida
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A P P E A R A N C E S

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MAYANNE DOWNS, Esquire, Chairwoman

KAREN LADIS, Esquire

LAIRD A. LILE, Esquire

HONORABLE EDWIN A. SCALES, III

JOHN M. STEWART, Esquire

M. SCOTT THOMAS, Esquire

ELIZABETH TARBERT, Esquire

ELLIOT SCHERKER, Esquire

MONICA VIGUES-PITAN, Esquire

CHRISTINA SPUDEAS, Esquire

Tony Akarrat

P R O C E E D I N G S

- - -

1 CHAIRWOMAN DOWNS: Good morning, everybody,
2 and thanks for joining us. I apologize for that
3 delay, we wanted to be sure that we met briefly,
4 logistically, to be sure that we had all of the
5 proposals that have been made and the commentary,
6 and we knew it was up and available to everybody
7 before we got started.

8 So I'd would like to start the meeting of --
9 the July meeting of the task force on distribution
10 of IOTA funds by determination of a quorum.
11 Elizabeth, can you handle that for us?

12 MS. TARBERT: Yes, with all members present,
13 you have a quorum, Madam Chairwoman.

14 CHAIRWOMAN DOWNS: Thank you very much. Do I
15 hear a motion for approval of the June 18, 2020,
16 meeting minutes?

17 MS. LADIS: So move.

18 CHAIRWOMAN DOWNS: A second?

19 MS. SANDRIDGE: Second.

20 CHAIRWOMAN DOWNS: All those the favor of
21 approval of the minutes of the June 18, 2020,
22 meeting, please say aye.

23 (Collective aye.)

1 CHAIRWOMAN DOWNS: Any opposed?

2 The motion carries, and the meeting minutes
3 for June 18, 2020, are approved.

4 So that brings us to the next item of
5 business, and just let me kind of set the stage
6 here. As a lot of you on the call know, we have
7 been asking for some months for assistance in
8 drafting the rule the Supreme Court order that
9 established this group suggested that we consider,
10 and I'm really pleased that after a lot of
11 conversation about that, we do have three proposals
12 in the form that we requested. That is not
13 suggestions that, you know, some people think that
14 we should say no to the board, or ignore the
15 Court's order, or whatever you think, which we
16 completely understand a lot of people have strong
17 feelings about that, and it's been helpful to hear
18 that, and it's important to understand, but what we
19 really have needed is input about the rule. So we
20 now have that input, and that is -- is heartening
21 indeed.

22 I have to continue to throw out a shout out to
23 the Innocence Project, which continues. If we were
24 going to give gold stars -- Elizabeth, do we have
25 official Florida Bar gold stars we could borrow?

1 Probably not. If we were going to give gold stars,
2 I just want to say that Innocence Project has from
3 the outside of their participation in this process
4 understood what we were asking, which is
5 specific -- you know, help with the specific rule
6 and they were timely and direct and concise in
7 coaching us through that so we appreciate that, and
8 we appreciate all input as well.

9 So here's what we have, everybody, we have
10 received three proposed edits, changes to our
11 proposed rule, and they are in no particular order
12 a joint submission by the Florida Bar Foundation
13 and FCLAA, and I believe that today Hala Sandridge,
14 who is both president of the Foundation and on this
15 task force, and Monica Vignes-Pitan on behalf of
16 the FCLAA will make a brief presentation to explain
17 their proposal.

18 Also, we have the Innocence Project, as I
19 said, and they will select who will just briefly
20 explain their point of view on their proposal
21 change, and then we also have a representative,
22 Christina Spudeas, I probably have not said that
23 name correctly, but I bet she knows who she is,
24 here on behalf of the Florida Children's First who
25 has submitted a third, not in any particular order,

1 proposed edit.

2 All of the materials, as always, thanks to
3 Elizabeth and the Florida Bar, are online. We had
4 a request some time ago to put those materials in
5 some kind of order, which is something we simply
6 don't have the resources to do, plus, many of you
7 know that there are ADA compliance issues when you
8 have public records requirements and put materials
9 on the Internet. The most voluminous materials
10 have been submitted, of course, by the Foundation,
11 and so if anybody needs any guidance, you know,
12 getting through those materials, we would refer you
13 to the Foundation who I know would be happy to
14 help.

15 So we're going to hear from those people, and
16 then to cut to the chase. We will ask our rule
17 subcommittee, that's Judge Scales and Mr. Lile, to
18 take into account all the input we received both
19 today and through this process from those proposed
20 changes and from others with strong feelings about
21 this, to take all of that and redraft our proposed
22 rule, and then we will at some time in the future
23 have a meeting to go through that process, not
24 trying to be cryptic, but we always set our
25 meetings cooperatively based on the schedules of

1 the task force. Anyway, that's the process for
2 today, thanks for your patience in hearing about
3 that, and with that, Hala, would you like to kick
4 us off this morning with a description of the
5 proposed changes to the task force's proposed rule
6 on behalf of the Florida Bar Foundation?

7 MS. SANDRIDGE: Thank you, Madam Chair, I
8 assume you can hear me just fine?

9 CHAIRWOMAN DOWNS: I can hear you terrific.

10 MS. SANDRIDGE: Perfect. I much appreciate
11 the opportunity to present this proposed rule. As
12 you said, this was a joint effort between the
13 Florida Bar Foundation and the Florida Civil Legal
14 Aid Association. I am going to refer to them as
15 FCLAA, not sure which is easier, but FCLAA are the
16 grantees, as you know, who provide legal services,
17 and they really understand how Florida's poor will
18 be affected by the ultimate rule that this task
19 force proposes. And so the Florida Bar Foundation,
20 we concluded that it was appropriate to have the
21 FCLAA draft the proposed rule so that all
22 stakeholders involved who were concerned about
23 civil legal services to the poor could review it
24 and weigh in. So this proposed rule comes to you
25 with the agreement from the Florida Bar Foundation

1 as to the suggestions of the FCLAA.

2 Much of this joint proposed rule comes from
3 the task force proposed rule. You will see a lot
4 of same language, but there's probably three major
5 differences that I would like to point out. First,
6 excuse me, rather than the possibility of several
7 IOTA fund administrators to receive and disburse
8 IOTA funds, the joint proposed rule expressly names
9 the Florida Bar Foundation. We believe that there
10 was not overwhelming support from all who have
11 spoken or contributed their viewpoints to the task
12 force, that the administrator should really be
13 anyone else other than the Florida Bar Foundation
14 from an experience and historical standpoint, and
15 also the idea that there might be more than one
16 seem to kind of fly in the face of the idea that we
17 be trying to save overhead, so we have suggested
18 the Florida Bar Foundation as the administrator who
19 would receive and administer the IOTA funds.

20 The second major difference is the percentage
21 of amounts that would -- I'm going to use the
22 word -- or the term or the word loosely, overhead,
23 go to overhead. Working with the FCLAA, we arrived
24 at a solution that instead of focusing on overhead,
25 requires that set percentage, and this is

1 important, at least 80 percent go to the grantees,
2 and I say at least 80 percent because, God willing,
3 if we get back to the golden years of higher IOTA
4 rates, we could see 90 percent, or 95 percent of
5 all IOTA funds going to the grantees.

6 This system that we've arrived at would
7 hopefully result in less than 25 percent of IOTA
8 funds being used for overhead through the combined
9 forces of the Foundation and the grantees, which I
10 know was the original focus the original task
11 force's proposed rule, and we think this will work,
12 the system that we've developed, because under the
13 proposed rule, the decision on how IOTA funds will
14 be used requires a review by the IOTA committee
15 which the members on the IOTA committee would also
16 include members of the grantees.

17 So this system, we hope, would create more of
18 a collaborative and cooperative system between the
19 grantees and the Florida Bar Foundation, and would
20 ensure open communications and trans -- and
21 tremendous transparency as to how IOTA funds are
22 used.

23 And finally, we really tried to focus on
24 eliminating anything that might cause a Janice
25 concern, I know that's been a big concern of this

1 task force, and it's also tried to eliminate
2 anything that could get us into Janice territory.
3 So with that, Madam Chair, we present this proposed
4 joint proposal from the Florida Bar Foundation and
5 the FCLAA.

6 CHAIRWOMAN DOWNS: Thank you.

7 MS. SANDRIDGE: Monica may want to add to
8 this, I invited her to if there's something that
9 she wants to add.

10 CHAIRWOMAN DOWNS: Right, well, let's -- the
11 task force may have questions, I don't know if they
12 do, but why don't we move to Monica. Monica, are
13 you here and would you like to address the group?

14 MS. VIGUES-PITAN: Yes, thank you. Maybe I
15 should have touched base with Ms. Sandridge before
16 because my comments are very brief (inaudible) but
17 mirror hers, I'm just going to run through them,
18 and just one point of not disagreement, but
19 clarification on what Ms. Sandridge said, which is
20 important to (inaudible) into the rule.

21 As she said, it was a rule that was submitted
22 in conjunction with the Bar Foundation. It was, in
23 fact, drafted initially the FCLAA (inaudible)
24 that's how we got into the final draft. Much of
25 the language does come from the task force's

1 original rule, but it also comes from after an
2 exhaustive review of all the state rules that
3 govern IOTA distribution, and so we took language
4 from other state rules. Those of you that have
5 looked at other state rules might notice some of
6 the language in certain parts, especially the
7 reporting requirements.

8 To be clear, our goal was to draft a rule that
9 prioritized funding of legal assistance to
10 low-income individuals was the charge of the
11 administrative order, address the task force
12 concerns as we sort of surmise them based on the
13 court's and the task force's initial draft rule,
14 but then also recognize the existing infrastructure
15 and to study the approach that we have in Florida
16 to address the civil legal needs.

17 The Florida civil Legal Aid system is not just
18 several funded grantees working in silos, it's, in
19 fact, a system, and our hope is that any rule
20 exchange that's recommended by the task force would
21 recognize and help us to operate within that system
22 and not be disruptive to the limited resources that
23 we have.

24 And the only point of clarification I want
25 make on Hala's remarks is that she referred to the

1 everything but the 80 percent is overhead, that the
2 Foundation -- as somebody who runs a nonprofit, and
3 maybe other directors felt the same way, when you
4 work doing grant work, overhead is something that
5 is not a direct programmatic outcome, so I would
6 never consider, for example, an attorney that's
7 funded on a grant to do legal work overhead because
8 that's the output. A percentage of me as a
9 director might be, and so when we see the
10 Foundation's work in terms of the collection of
11 IOTA funds from banks, the monitoring of IOTA funds
12 as they go out in terms of grant compliance, we
13 would not view that as necessarily as overhead,
14 that's a direct programmatic piece of what the
15 foundation's output is, that's the only
16 clarification I wanted to make, so it actually --
17 if you're talking about overhead, it's actually a
18 smaller percentage than the full amount. That's
19 all of my remarks, thank you so much.

20 CHAIRWOMAN DOWNS: Thank you both Hala and
21 Monica. Do we have questions for Hala or Monica or
22 both from task force members?

23 JUDGE SCALES: Hey Mayanne, this is Ed, I have
24 question for Hala. Hala you mentioned Janice, is
25 there any concern about using IOTA funds for

1 expenses over and above or outside the scope of
2 collecting and administrating IOTA funds?

3 MR. LILES: You're muted.

4 CHAIRWOMAN DOWNS: Hala, Hala, you're muted.

5 MS. SANDRIDGE: I apologize. Judge Scales, I
6 apologize about that. I don't believe that there
7 would be a Janice problem, but I am not an expert
8 on this, Judge Scales, I know it from a very high
9 level and not the details, but I don't believe it
10 would be because there would not be any funds going
11 directly to anything that could cause a Janice
12 problem. So for instance, if we were taking IOTA
13 funds and using them for either the Foundation or
14 grantee to directly lobby, I think that might cause
15 what is a Janice concern, but if we're using IOTA
16 funds to run the Foundation and the Foundation
17 itself uses its own funds to let's say lobby or it
18 gets a grant from its own funds, not IOTA funds,
19 but other development funds and uses that to fund a
20 grant, that might include some lobbying, I don't
21 believe that would be a Janice problem, but I would
22 have to defer to folks who are more of an expert
23 than me on this issue.

24 JUDGE SCALES: Well, my concern, you and I
25 talked about this offline a couple times, is what

1 the task force is -- our scope is specifically IOTA
2 funds, not the Foundation --

3 MS. SANDRIDGE: Right.

4 JUDGE SCALES: -- and the Foundation can
5 engage in activities that are within the scope of
6 its character irrespective of anything that the
7 rule does with IOTA, but if IOTA funds are being
8 used for general overhead expenses of the
9 Foundation and the Foundation is involved in
10 legislative advocacy, and kind of by definition
11 some IOTA funds if they're being used for general
12 overhead of the Foundation would then support that
13 advocacy, would that be a Janice and its progeny
14 concern, and that is kind of the --

15 MS. SANDRIDGE: Let me give you -- yes, let me
16 give you what I think is a distinction. And again,
17 I'm no expert on this, but having looked at Janice
18 and just trying to understand the policy behind it,
19 if what we're saying is that because we use IOTA
20 funds to pay the lease, and then the Foundation
21 uses its own money that it has developed on its own
22 to pay for, let's say, plane tickets to go to ABA
23 days in Washington, DC, and lobby, I don't see that
24 as a Janice problem, I don't, I don't see the
25 connection because we're using our own money for

1 our own overhead to directly engage in lobbying,
2 and I think it's just too remote to say that
3 because we pay our lease with IOTA funds that that
4 somehow implicates Janice.

5 JUDGE SCALES: And again, I'm no expert
6 either, but would you agree that the Foundation
7 should segregate them and make it easy to determine
8 what expenses are paid from which pot of money?

9 MS. SANDRIDGE: So we've talked about that
10 internally, and the only problem with that is
11 expense, it just -- it creates more overhead, but
12 could it be done, yes, it could be done. I don't
13 think it would be complicated for us to segregate
14 out the funds we use for -- again, I'm just saying
15 ABA days as an example, there may be other
16 examples.

17 JUDGE SCALES: Sure.

18 MS. SANDRIDGE: I'm going to pick on that one
19 right now, but could we show that as a separate
20 line item somewhere that shows the amount of money
21 we used and that those funds didn't come directly
22 from IOTA funds, absolutely, we could do that, but
23 to try to completely segregate all the funds and
24 have different oversight, different accounting,
25 having to, you know, do double work for funds that

1 come in from IOTA and funds that we raise on our
2 own would create more overhead, and that's our only
3 concern.

4 JUDGE SCALES: Understood, understood.

5 CHAIRWOMAN DOWNS: Can I -- Judge Scales, can
6 I just follow up on that point briefly, I just
7 don't want to lose it if you're going a different
8 direction with Hala. I mean, Hala, first of all,
9 you've referred repeatedly to our funds, just for
10 clarification, you're talking to, for example,
11 \$25 million from the Bank of America, that has
12 nothing to do with IOTA, those are monies that the
13 only restriction for the Foundation in terms of
14 expense would be the qualifying 501(c)3, Janice, to
15 the extent it develops, right? When you say "own
16 funds," you're talking about non-IOTA revenue?

17 MS. SANDRIDGE: Non-IOTA. I will say -- just
18 add one thing for, like, Bank of America, those are
19 restricted funds, so we can't use them in any way
20 we want, they are restricted.

21 CHAIRWOMAN DOWNS: Right. So in other words,
22 Bank of America decided when they were going to
23 give you millions and millions of dollars, that he
24 might want to restrict how those funds were used.

25 MS. SANDRIDGE: They did. Not that might,

1 they were only to be used for community economic
2 development.

3 CHAIRWOMAN DOWNS: Not an unusual circumstance
4 for major donors, but I want to go to the Janice
5 question. So I understand and appreciate what
6 you're saying, that you have looked at Janice, and
7 you personally do not believe that there's any risk
8 of co-mingling all these monies together, but would
9 you agree that if you are wrong, then having IOTA
10 money co-mingled with other monies and having
11 expenses paid from a common pot, the Janice line of
12 cases develops going forward of lobbying that you
13 do with the Foundation, by the Foundation, or even
14 on the behalf of the grantees, if that is held to
15 be ultimately not something mandatory, Bar news or
16 other mandatory sources of revenue, would be
17 Constitutionally allowed to occur, if that happens,
18 if you read Janice wrong, and to be fair, I'm being
19 a little facetious because some of this is having a
20 crystal ball.

21 MS. SANDRIDGE: Sure.

22 CHAIRWOMAN DOWNS: What might happen going
23 forward, but if you're wrong, then the IOTA monies,
24 potentially, get -- get affected by the taint of a
25 ruling that advocacy is not something you can do

1 with monies that derive from anything compulsory,
2 and I know I'm super generally describing the
3 Janice issue, but if you're wrong, the IOTA monies
4 could be harmed or affected, would you agree that's
5 a fair statement, it's a possibility?

6 MS. SANDRIDGE: So anything is a possibility,
7 anything is a possibility, and again, I don't claim
8 to be an expert, but I feel as though that there is
9 a solution that insulates the Florida Supreme
10 Court, the Florida Bar Foundation, you know,
11 whoever is involved in this, and it's this: Rather
12 than co-mingling -- I'm sorry, rather than
13 separating, if there is funds that come in that is
14 non-IOTA funds, they can be set up in a separate
15 account, let's say it's \$10,000, right, let's say
16 we raised it through our development efforts, it
17 could be put in an account, and that is where we
18 draw for our ABA days in Washington, and because of
19 that, I don't know how in that scenario anybody
20 could say that the Foundation is using funds for
21 lobbying and causing a Janice problem -- IOTA
22 funds, I'm sorry, IOTA funds.

23 CHAIRWOMAN DOWNS: Got yeah. Okay.

24 MR. LILE: Madam Chair?

25 CHAIRWOMAN DOWNS: Let me follow up with a

1 question, then, Laird, I'll come back to you. In
2 your capacity as president of the Florida Bar
3 Foundation, has the Florida Bar Foundation obtained
4 a written -- obtained a written legal opinion from
5 outside counsel about what you just said?

6 MS. SANDRIDGE: No, no.

7 CHAIRWOMAN DOWNS: If you do it this way,
8 you're okay?

9 MS. SANDRIDGE: No, no, nobody has obtained
10 such an opinion.

11 CHAIRWOMAN DOWNS: Okay. Laird, and then we
12 still were going to go back to Ed because we
13 interrupted him, but go ahead, Laird.

14 MR. LILE: Staying on this same Janice issue
15 for a moment if I could, the -- I guess the concern
16 that I would have about isolating the non-IOTA
17 funds and using those to just for the plane ticket
18 to the ABA days would be that the IOTA funds would
19 be used to pay for the rent, which would be from
20 where the people would leave to go to the ABA days.
21 So I mean, it seems to me a bit disingenuous to
22 approach it that way, but if you could approach it
23 way, why couldn't the Foundation just flip it and
24 keep the IOTA funds segregated, and use other funds
25 for all those expenses, and wouldn't that be a

1 safer more conservative approach to preserve the
2 IOTA funds from a Janet argument?

3 MS. SANDRIDGE: Yeah, so since we have to
4 be -- I mean, we have to pay for leased premises, I
5 don't know how you could say that because somebody
6 leaves from a leased premises, that means we're
7 spending money, I mean, we have to spend the money
8 to begin with for the leased premises, so it's not
9 being -- the leased premises expense is not being
10 spent for the purpose of lobbying, and so I would
11 say, you know, is this money being spent for the
12 purpose -- and again, folks, I'm a lowly lawyer, I
13 am no expert on this. This is my position having
14 read Janice and taking a look at these issues and
15 trying to be as even-keeled and fair-minded about
16 this as possible, so Laird, I would go back to what
17 I said to Mayanne, anything is possible, right, I
18 mean, some crazy scenario could play out where
19 someone would say, Oh, this is connected to your
20 ABA days, but I really do believe that there is a
21 simple solution to this, and the only reason that I
22 say we don't segregate is because it becomes a
23 great expense to monitor two separate accounts,
24 that's it, that's the reason.

25 CHAIRWOMAN DOWNS: We want to go back, Ed,

1 sorry, I wanted to clarify this Janice point, so I
2 interrupted your conversations with Hala.

3 JUDGE SCALES: No, that was my question, thank
4 you.

5 CHAIRWOMAN DOWNS: Okay. Other questions by
6 task force members for Hala or Monica?

7 MR. LILE: I got another one, Madam Chair.

8 CHAIRWOMAN DOWNS: Okay, shoot.

9 MR. LILE: I think I heard you say that at
10 least 80 percent -- under the proposal, the joint
11 proposal I'll call it, 80 percent would go to the
12 qualified grantee organizations, did I hear that
13 correctly?

14 MS. SANDRIDGE: At least.

15 MR. LILE: Fair enough, at least 80 percent.
16 And when you say go to, does the (inaudible)
17 distribute -- from your standpoint on that, that
18 the Foundation would distribute at least 80
19 percent?

20 MS. SANDRIDGE: I'm not sure I understand the
21 distinction. Yes, I would say yes, but --

22 MR. LILE: Yeah, what the distinction is
23 distributed is what the task force, the Scales and
24 modestly supplemented by Lile, edits provided, but
25 the joint submission has avoided that word, and it

1 uses this, what I consider to be sort of loose,
2 allocated, allocated to qualified grantee
3 organizations in the form of grants and
4 program-related expenses, and then it goes on to
5 say, We don't even really mean allocated because --
6 to the organizations because we could allocate it
7 to reserves, and I just wanted to be sure that your
8 words during this report are what is really meant,
9 which is directed, not this loose allocated.

10 MS. SANDRIDGE: I'm sorry, and that is a very
11 good question, and you're right, my language was
12 loose. So it would go to --

13 MR. LILE: Your language was tight, the report
14 is loose, but...

15 MS. SANDRIDGE: Yeah, yeah, yeah.

16 CHAIRWOMAN DOWNS: And I just want to mention
17 because I'd like to hear from this as well, Hala, I
18 mean, this is a very considered difference because
19 when our proposed rule said distribute, distribute,
20 it meant the grantees get the money, they spend the
21 money, you've now got it allocated and
22 program-related expenses and reserves.

23 MS. SANDRIDGE: Yes.

24 CHAIRWOMAN DOWNS: So that kind of negates the
25 80 percent, or potentially eliminates.

1 MS. SANDRIDGE: Well, it's -- so yes, Laird,
2 you're correct, it goes into reserves. So it
3 wouldn't -- it doesn't necessarily all have to be
4 distributed, it could go into reserves, you're
5 correct on that, but when you say -- what it can't
6 go to is Florida Bar Foundation overhead. Reserves
7 are not for the Florida Bar Foundation, they're for
8 grantees, so IOTA money is always, in that amount,
9 that 80 percent amount, going to be going to the
10 grantees, and reserves are for the bad times. I
11 mean, we lived through this, and it was the
12 foresight of others in the Foundation who had a
13 humungous reserve that got us through something
14 that other states didn't, and we want so badly to
15 be in that position again. Higher rates would
16 help, but also working on reserves.

17 So, Laird, the answer is you're correct in
18 that difference, but I feel it's a difference that
19 still is congruent with the goal of the task force
20 to get as much money into the hands of the
21 grantees, it may just be a matter of when it gets
22 into the hands of the grantees.

23 MR. LILE: Just to clarify, so the word
24 allocated is used twice in the joint proposals, but
25 are you -- so would the proposal be able to be

1 modified from your standpoint to change either of
2 those to distributed?

3 MS. SANDRIDGE: I think -- I'm looking at the
4 language.

5 CHAIRWOMAN DOWNS: Hala, why did you change
6 it? I mean, distribute is a very clear word. What
7 did you intend by using the word allocate twice
8 rather than, Hey, guys we're just passing this
9 money through to the grantees who can help the
10 poor.

11 MS. SANDRIDGE: Reserves.

12 CHAIRWOMAN DOWNS: Why was it changed?

13 MS. SANDRIDGE: Reserves.

14 CHAIRWOMAN DOWNS: That's the only reason?

15 MS. SANDRIDGE: And -- as far as I know. If
16 there's something, I will ask Monica to speak up,
17 they were the initial drafters of this, and I can
18 tell you that the Florida Bar Foundation had no
19 problem with this, but we worked very closely with
20 the FCLAA on the reserves issue to make sure that
21 everybody feels comfortable with this particular
22 idea. And remember, it was the FCLAA who came up
23 with the IOTA committee because they wanted to have
24 a say in this. This is part of the collaboration,
25 communication, and transparency to ensure that

1 they're comfortable with the amounts that are going
2 into reserves too.

3 CHAIRWOMAN DOWNS: All right. So what you're
4 saying is the elimination of the word distributed
5 and replaced by allocation was intentional, it
6 wasn't drafted by the Foundation, it was drafted by
7 FCLAA, but the Foundation supports it, and the use
8 of the word was driven by the reserves issue that
9 you have addressed, is that --

10 MS. SANDRIDGE: That's what I believe. I
11 would like to have that confirmed, that's what I
12 believe. And let me add one other really quick
13 point --

14 CHAIRWOMAN DOWNS: This is the Foundation's
15 proposal, so you -- the Foundation stands behind
16 this, correct?

17 MS. SANDRIDGE: Yes. Absolutely, yes.

18 CHAIRWOMAN DOWNS: That's the entire
19 Foundation, your board approves this?

20 MS. SANDRIDGE: Has approved it. We voted and
21 we have approved it, yes. Yes. Let me ask one
22 other thing that's important to understand, is that
23 we have a Foundation on spending and reserves
24 policy that at some point, if our reserves get
25 to -- and I'm trying to remember the exact amount,

1 but after that point, all the money goes directly
2 to grantees. When our reserves are sufficient, the
3 great news is of this 80 percent, all of the
4 80 percent goes to the grantees for programs. So
5 all we're trying to do is build up a fund for that
6 rainy day when the economy collapses on us again,
7 well, here we are, and we need more funds than what
8 IOTA funds are bringing in because interest rates
9 are so low, that's my understanding, but I would
10 love Monica to weigh in on that.

11 CHAIRWOMAN DOWNS: Well, okay. Go ahead,
12 Monica.

13 MS. VIGUES-PITAN: I will be very brief. So
14 there is absolutely a distinction between allocated
15 and distributed, and to Hala's point, it has to do
16 with the reserves because obviously if you had to
17 distribute a minimum, a portion of these funds
18 could be allocated by the IOTA committee to
19 reserves, the language would be consistent within
20 the same section.

21 Additionally, program-related expenses,
22 although paid directly on behalf of grantees may
23 not be distributed to grantees, so -- and this went
24 back to the task force initial -- I can't recall if
25 it was reports or the draft rule that talked

1 about -- must have been the report, the economies
2 of scale, and specifically referencing about the
3 case management, subsidizing the case management
4 for grantees as well as West Law, so that is what
5 that envisions.

6 And in terms of reserves, we think it's
7 important that the Foundation -- excuse me, I'm
8 sorry -- maintain the reserves because, for
9 example, I think the pandemic is probably not a
10 great example, but a hurricane is, the Foundation
11 has reserves traditionally, normally, historically
12 when this happened, knock on wood, that is not what
13 continues to happen, the entire state of Florida is
14 not impacted when there's a hurricane, but when it
15 was Hurricane Michael or Irma in South Florida, we
16 were impacted, so you would not want the -- you
17 would want -- in order to build -- to leverage the
18 reserves as much as possible and most efficiently,
19 you want them to be able to be held by the
20 Foundation and then given out to grantees. Whether
21 there's lean times as Hala is envisioning, you
22 know, if IOTA gets to the point where you're
23 collecting, you know, \$70 million a year in IOTA
24 funds, maybe you put -- the IOTA committee would
25 approve putting more of that into reserves, and

1 also for the purpose of targeted funding, if need
2 be in case of real disasters is what comes up most
3 often, but thank you.

4 CHAIRWOMAN DOWNS: Thank you. Thank you. And
5 Karen, you were patiently holding your hand up, so
6 let me get to you.

7 MS. LADIS: I wanted to mention that I thought
8 that Monica may be able to shed some light, which
9 she has just done.

10 CHAIRWOMAN DOWNS: And she did, so that --

11 MR. LILE: I'm sorry, Madam Chair, I would
12 like to clarify what I think I heard Monica say
13 which was different than what I thought I heard
14 Hala say.

15 Monica, did you say that the program-related
16 expenses would not be amounts distributed?

17 MS. VIGUES-PITAN: Well, they're not, I mean,
18 right now if we -- right now the Foundation helps
19 with West Law, and they -- for a legal server, and
20 that is a check that goes directly to legal server.
21 They don't pay us and then we pay them, it is more
22 efficient if we just pay it out.

23 MR. LILE: So it's not distributed to the
24 grantee organizations for its -- their use of
25 program-related expenses, but, Hala, that's

1 different than what you said because you said only
2 reserves would not be distributed, right?

3 MS. SANDRIDGE: I said -- yes, so you're
4 accurate. So we would be -- to me it's six and one
5 half dozen of the other. We would be paying that,
6 so the Foundation would be the one -- which is what
7 it does now, and so if you want to look at the
8 20 percent or whatever amount that's going to the
9 Foundation, those specific program-related funds,
10 West Law, the case manager, those would come out of
11 the Foundation's fund as it is doing now.

12 MR. LILE: And that's not what this says
13 because what Monica just said, that comes out of
14 the 80 percent, right, Monica?

15 MS. VIGUES-PITAN: That's -- yes, I would --

16 MS. SANDRIDGE: Yes.

17 MR. LILE: So it sounds to me like --

18 MS. SANDRIDGE: It's coming out that 80
19 percent. I'm sorry if I confused you. It's coming
20 out of the 80 percent.

21 MR. LILE: Oh, I thought you said the
22 Foundation would pay it out of its 20 percent?

23 MS. SANDRIDGE: It's paying it out of the 80
24 percent. The Foundation is paying it, but it's
25 coming out --

1 MR. LILE: Right. So the Foundation makes the
2 decision for the grantee organizations on which
3 programs might be beneficial to them, and makes the
4 decision, uses as much of this 80 percent as they
5 want for that, sets aside some reserve, and then
6 makes some distribution to the qualified
7 organizations; is that right?

8 MS. SANDRIDGE: I'm not sure I would
9 characterize it that way. I could see Monica and I
10 both are kind of wincing.

11 MR. LILES: Tell me what I got wrong.

12 MS. VIGUES-PITAN: The way that you presented
13 it was the Foundation makes decisions as to
14 programs that's best for the grantees, I would
15 disagree with that because I think if they switched
16 from -- especially our case management system,
17 grantees would be horrified. We are fully
18 supportive of the benefits that we're deriving from
19 that because I think they're much -- it's not very
20 much collaboration. I don't know if it was done
21 that way years ago, but for example, the legal
22 server contract which is our case manager projects
23 was just renewed, and FCLAA very much took the lead
24 in negotiating with the case management system
25 company in collaboration with the Bar Foundation,

1 so we're a very active partner, it's not as passive
2 as it sounds.

3 JUDGE SCALES: Madam Chair, if I can just
4 interject here. I know Scott has hogged a great
5 deal of the time and wants to say something, but
6 maybe the issue is defining the term
7 program-related expenses so that it harkens back to
8 one of the initial drafts where we talked in terms
9 of the economies of scale expenses, which the most
10 recent draft kind of does not contain that.

11 If I am correct, just to -- with Hala and
12 Monica, is that -- in this subsection B, when it's
13 referred to program-related expenses, is that what
14 you're talking about, those economies of scale
15 services, like West Law contract that would benefit
16 all of the grantees?

17 MS. SANDRIDGE: Yes.

18 JUDGE SCALES: That helps me understand it
19 better, and so maybe this is something we can deal
20 with definitionally if we go that route.

21 CHAIRWOMAN DOWNS: Right, right.

22 JUDGE SCALES: Now, I think Scott probably has
23 ran out of his time.

24 CHAIRWOMAN DOWNS: Scott, I want to call on
25 you next, but I want to be sure, Monica, did we

1 inadvertently cut you off there because I think
2 maybe you were about to say something? Mute,
3 you're on mute.

4 MS. VIGUES-PITAN: I was going to, in terms of
5 Judge Scales' remarks, just anything that benefits
6 statewide grantees, I think could be included in
7 that, such as the contracts or training initiatives
8 that the grantees feel are important, that sort of
9 thing.

10 CHAIRWOMAN DOWNS: Right, because if you don't
11 define it, as you read the rule right now, this
12 proposed rule, there is not one thing that requires
13 that one dime is spent to get poor people a lawyer,
14 nothing in this proposed rule that requires that
15 unless you tighten up program-related expenses
16 because program-related expenses can be anything,
17 they can be -- you know, to be a little facetious,
18 toothbrushes provided for people who are traveling
19 to advocate to Congress for a greater support for
20 legal services.

21 MS. SANDRIDGE: I think, Mayanne --

22 CHAIRWOMAN DOWNS: Program-related expenses
23 is -- now, there may be other definitions people
24 are thinking of, but in this proposed rule, in
25 theory, zero dollars could go to help a poor person

1 with a legal matter, which is what this task force
2 has been asked to do, be sure that these IOTA --
3 not be sure, consider the possibility that the
4 restrictions should occur so that these IOTA monies
5 get to a lawyer who provides legal services to
6 poor people, not rent, not advocacy, not all
7 programs, but gives lawyers to poor people, which
8 is what we believe that task force -- that order
9 says. So I agree, it's definition.

10 Scott, I'm sorry, go ahead.

11 MR. THOMAS: No, I think to follow up on that,
12 maybe the way to close that circle is I'm not
13 terribly sure I understand then what the other
14 20 percent is for. We have this goal of 80 percent
15 which will be allocated in some fashion, whether by
16 direct grant, whether by how we, I guess, report
17 our program expenses on the books, and reserves.
18 How do we draw the distinction? Is this rule
19 between what's program-related expense and what
20 that other 20 percent each year is for, what's the
21 20 percent for, that's left over, is it just
22 overhead?

23 MS. SANDRIDGE: So, so can I respond to that,
24 Mayanne?

25 CHAIRWOMAN DOWNS: Oh, please.

1 MS. SANDRIDGE: So the other 20 percent is
2 going to be used for the Foundation -- the running
3 of the Foundation to administer the IOTA program.
4 So it's the employees, it's the building, it's the
5 computers, it's the insurance, it's -- you name it,
6 that would be in the 20 percent. And I use the
7 term 20 percent, Scott, very loosely because our
8 goal is not to use 20 percent. Our goal is for it
9 to be less than that, it's just that, you know, in
10 a year, I mean, what if -- what if one year our
11 IOTA funds are \$4 million, it's just -- 20 percent,
12 we need that 20 percent, but in a year -- this is
13 the great thing about the way this is set up
14 because it's not set, it just requires at least
15 80 percent to go to the grantees. But in a year
16 where let's say, like I said, God willing, we have
17 \$20 million, and this was the past, when we would
18 get 20 and \$30 million a year, 95 percent of that
19 could be going to the grantees. And if you take a
20 look at our spending and reserving policy, you will
21 see that that's the goal of the good years, the --
22 when we have good years, it allows us to send a lot
23 more to the grantees, so that's why we have the 20
24 percent -- at least 80 percent going to the
25 grantees.

1 MR. THOMAS: Hala, I appreciate that, but my
2 concern is it's especially loose when we don't have
3 within the rule a nice -- or an enforceable
4 definitional boundary between these allocated
5 expenses and the overhead because, you know, it
6 sounds nice to say, Well, it's an 80/20 split, but
7 I'm not terribly sure from this rule I could really
8 figure out in practice it's an 80/20 split because
9 I don't know what this allocation of
10 program-related expenses means as (inaudible)
11 overhead.

12 MS. SANDRIDGE: That's fair. Scott, and I
13 think as Mayanne said, one of the ways to deal with
14 this is it's definitional, and I think that's
15 something that can be hammered out by the
16 subcommittee as we go through this. And the
17 Foundation and the FCLAA are absolutely willing to
18 work on that with the found -- with the task force
19 to hammer that out.

20 CHAIRWOMAN DOWNS: Other questions from the
21 task force for either Monica or Hala?

22 Okay. Thank you, both, very much.

23 Let's move on to the Innocence Project, and I
24 know I see at least one raised hand. That's right.
25 Please, just so you know, your camera says

1 Innocence Project so if you will identify yourself
2 individually, and then just describe for us what
3 you have proposed, that would be terrific.

4 MR. MILLER: Madam Chairwoman, I just changed
5 my --

6 CHAIRWOMAN DOWNS: There we go.

7 MR. MILLER: -- I believe you can see who I
8 am. Sorry about that.

9 Thank you for the opportunity, I just want to
10 mention that I believe a few of the people
11 connected with our organization who are on this
12 Zoom, I wanted to just point out, Brian Tannebaum
13 from Miami, who is our chair for our board of
14 directors; Adele Stone, Fort Lauderdale, who is our
15 chair-elect of our board of directors; John
16 Patterson from Sarasota who is on our board of
17 directors, and Elliot Scherker from Miami who is
18 our outside counsel.

19 CHAIRWOMAN DOWNS: Thank you, and welcome
20 everybody, we're glad you're here.

21 MR. MILLER: On July 7th we submitted a very
22 short letter to this task force in response to
23 Judge Scales and Chairwoman Downs request to do so.
24 We had mentioned before that like Legal Aid
25 grantees, we provide -- we use IOTA funds to

1 provide direct legal services to low-income
2 litigants in Florida, albeit in the post-conviction
3 process, so we were asked to come up with a few
4 options of language about how the rule would be
5 amended to possibly bring that work into the types
6 of services that would be appropriate for use of
7 IOTA funds, and we particularly looked at
8 subsection (g)(1)(g) of the draft of the proposed
9 rule, which is the qualified legal services, what
10 we did to make it as clear as possible is suggested
11 keeping the civil legal needs separate, and adding
12 additional legal. We gave a few options that would
13 focus on direct representation -- direct
14 representation in post-conviction cases for the
15 purposes of either correcting wrongful convictions
16 or calling them innocence cases in Florida, there's
17 a few options here for the task force to consider,
18 and the reason that we kind of honed in in this way
19 was because Judge Scales mentioned that, you know,
20 he wanted to not make it so broad, to make it just
21 criminal, and we didn't even want to make it
22 suggest that it be just post-conviction. We wanted
23 to kind of hone in to take into account the work
24 that we do, or if there's a successor organization
25 that comes later on in time, that they might do, so

1 that's what we offered, and it's very clear and
2 simple, and I'm happy to answer any questions about
3 it.

4 CHAIRWOMAN DOWNS: Thank you, Mr. Miller. I
5 think, Laird, did you have a question you wanted to
6 ask to review the -- again, kind of the
7 definitional issue as we approach the Innocence
8 Project program?

9 MR. LILE: I'm happy to (inaudible) Mr. Miller
10 was very kind with his time, I think it was just
11 yesterday, we're sort of warp-speed time on this
12 things, but we had a telephone conversation, and he
13 helped me understand that at least in Florida,
14 these type of proceedings notwithstanding how
15 beneficial they are to society, are considered
16 criminal in nature, and as a result of that, and
17 after some reflecting after our call, I don't think
18 that I'm going to be able to support including that
19 in this.

20 You will continue to get my individual checks
21 and my very grateful expression of appreciation for
22 what your organization does, but it just seems to
23 me like unless we are able to have a better sense
24 that more of these civil -- the pure civil legal
25 needs are being taken care of by IOTA funds, that I

1 would not want to see the IOTA fund definition
2 expanded here. Doesn't mean the Foundation
3 shouldn't do everything it can to raise money to
4 help with these programs, but it just seems to me
5 like, unless I'm persuaded otherwise on this call,
6 that I would not be in favor of that definitional
7 change, so thank you, Madam Chair.

8 CHAIRWOMAN DOWNS: Thank you, and I'm glad to
9 hear, Laird, that you send checks to this
10 organization, and I do too, so. All right. Task
11 force, this is as Mr. Miller said, it's pretty
12 simple, clear proposal, do you have any questions
13 about the Innocence Project's submission, anything
14 you need to clarify, we will, of course, discuss it
15 as we move forward, and as I said at the outset,
16 I'm going to ask Ed and Laird to incorporate all of
17 these suggestions in their consideration as they
18 move forward in the next draft.

19 JUDGE SCALES: Mayanne.

20 CHAIRWOMAN DOWNS: Yes.

21 JUDGE SCALES: I see Mr. Scherker is on, can I
22 ask him a question? I don't want to put him on the
23 spot, I just have a question.

24 CHAIRWOMAN DOWNS: Well, go ahead, put
25 Mr. Scherker on the spot.

1 JUDGE SCALES: It's not the first time.

2 MR. SCHERKER: It's absolutely not.

3 JUDGE SCALES: The language you have provided
4 for the existing rule --

5 CHAIRWOMAN DOWNS: We need -- yeah, everybody
6 mute if you're not talking. Go ahead.

7 JUDGE SCALES: Do you see any other
8 organization that would -- other than the Innocence
9 Project, be eligible and I don't know if that's a
10 question for you as the lawyer or your executive
11 director, obviously, to Laird's point, with the
12 limited resources, we -- we don't want to subsidize
13 the public defender's office, but is this narrowly
14 drafted so that only the Innocence Project or
15 organizations very similar to the Innocence Project
16 would be eligible?

17 MR. SCHERKER: Judge Scales, I think that's
18 correct. I am certainly not aware of any other
19 organization in Florida that focuses the way that
20 the Innocence Project does. There are, of course,
21 public defender's offices as you noted, there are a
22 few state attorney offices that are developing
23 wrongful convictions units, but again, that's under
24 the government umbrella, so I think that the intent
25 is narrow it exactly the way you suggest, but I

1 will, of course, (inaudible) anything further.

2 MR. MILLER: Thank you, Mr. Scherker. I will
3 say that it should be noted that public defender's
4 offices are statutorily barred from filing --
5 additionally filing post-conviction motions, it can
6 only take on post-conviction issues when they've
7 been appointed by the Court, after an evidentiary
8 hearing has been granted. So I think the way we've
9 written this, both in conjunction with that status
10 would mean that public defender's offices, even in
11 the limited instances where they're doing
12 post-conviction work would not qualify for IOTA
13 funds.

14 JUDGE SCALES: One last question, and this to
15 Elliott. You, I assume, have read the Florida
16 Supreme Court's order that created the task force,
17 would you agree that the services performed by your
18 client constitute direct legal services to
19 low-income litigants as that term is used in that
20 administrative order?

21 MR. SCHERKER: Yes, sir, I would.

22 JUDGE SCALES: Thank you, Madam Chair.

23 CHAIRWOMAN DOWNS: Thank you. You know, we
24 have been on the phone here for over an hour, so
25 let's take a -- try to make it a five-minute

1 comfort break, give everybody a chance to refresh
2 coffee, get rid of some coffee, and all that kind
3 of thing. It is, I believe, 10:07, so let's try to
4 get back here around 10:15, that's longer than five
5 minutes, so we'll just go on a break. Thank you,
6 everybody.

7 (Short break.)

8 CHAIRWOMAN DOWNS: So it's 10:14, we'll give
9 everybody another minute or two to get settled. I
10 think we've got -- nice work.

11 Okay. So our third proposal is from Florida
12 Children's First, and I think we had somebody who
13 wanted to make an explanation and presentation of
14 their proposed rule, do we have someone on the
15 line? Christina, are you here?

16 MS. SPUDEAS: I am here.

17 CHAIRWOMAN DOWNS: There you are. It's great
18 when you speak, you appear, it's wonderful. Well,
19 welcome, we're glad you're here, and proceed away.

20 MS. SPUDEAS: Thank you so much. And I have
21 to admit, I wasn't expecting to speak today, but I
22 thank you for that opportunity, Chair Downs, and
23 for the hard work of the task force.

24 First off, we agree, and we are very happy
25 that we joined with our colleagues that did a lot

1 of work in drafting the proposed rule that's been
2 sent to you by FCLAA and we joined with that, but
3 we also, if you had chosen to keep your own
4 language, we submitted a short revision of that
5 language that we felt would provide for us to be
6 able to continue to receive IOTA funding, and that
7 is just a very simple submission that allows for us
8 to continue our work. Thank you.

9 CHAIRWOMAN DOWNS: I just do the same thing.

10 Thank you, so are you good?

11 MS. SPUDEAS: I'm good.

12 CHAIRWOMAN DOWNS: Okay. Do we have comments,
13 questions, suggestions, thoughts for Christina
14 vis-a-vie the Florida Children's First submission,
15 anybody from the task force?

16 I do have one question. As I recall your
17 submission and also prior presentations and
18 information on the Children's First behalf, I think
19 there the Foundation, and also representatives from
20 your organization, one of -- am I correct in
21 recalling that one of the central features of your
22 work is advocacy on behalf of children?

23 MS. SPUDEAS: Correct.

24 CHAIRWOMAN DOWNS: And I think I recall a
25 pretty impressive description, and I think it was

1 mostly in our February public meeting of the
2 legislative advocacy that your organization
3 described that had been very successful in terms of
4 providing, I think, attorney's fees and direct
5 representation on behalf of children, do I have
6 that right?

7 MS. SPUDEAS: Yes, you do have that right.
8 The funding that we have obtained for counsel for
9 children is opening the door to allow for
10 legislative right to counsel for children with
11 special needs in dependency courts, that funding
12 exceeded the funds that were able to be given by
13 the Bar Foundation and IOTA funding during that
14 time period.

15 CHAIRWOMAN DOWNS: Okay. Any other comments
16 or questions for Christina by the task force?

17 Thank you. We have a limited amount of time,
18 I want to be sure that any of those in attendance
19 on our call, our Zoom conference today who believe
20 that they have a point of view they'd like to
21 express that hasn't been otherwise expressed either
22 today or in submissions or in earlier meetings has
23 a chance to let us hear anything you think we need
24 to know in going forward in considering these edits
25 to our proposed rule, I'm saying it in a caution

1 fashion -- cautious fashion because our time is
2 limited, and we've taken a lot of testimony and
3 heard from a lot of people about a lot of different
4 points of view, so I don't think our task force is
5 interested in repeating that, but there's been a
6 very strong and helpful effort to inform us, but do
7 we have anyone else who would like to make a brief
8 comment or presentation to the task force? And I
9 think maybe the way to do that would be for those
10 of you who are visually present, raise your hand or
11 otherwise indicate.

12 I don't have any raised hands, so we'll -- and
13 for those of you who are not visually available,
14 Elizabeth, do you -- can they indicate to you in
15 your monitoring process through Zoom?

16 MS. TARBERT: They can click yes in the
17 reactions or do the hand in the reaction, and I
18 would be able to see that.

19 CHAIRWOMAN DOWNS: Okay. You will be able to
20 see it?

21 MS. TARBERT: I should be able to see it.

22 CHAIRWOMAN DOWNS: Okay. Okay. All right.
23 So do we have anybody else who would like to
24 address the task force?

25 We've got A-k-a-r-r-a-t, I think I recognize

1 the face, but if you want to unmute, sir, and --
2 there you go.

3 MR. AKARRAT: Thank you, Madam Chair, members
4 of the task force. Very simply, I'm not sure if
5 this was clear when the discussion was had with
6 Hala with regard to being able to make distinctions
7 with regard to how funding is allocated and how you
8 keep track of that, just very simply I would like
9 to say that as Legal Aid programs, we get 20, 30,
10 40 different grants from different funding sources,
11 and we very simply are able to do accounting
12 methods to separate those funds out and be able to
13 report to each of those funders how we specifically
14 allocate those funds, how we spent them, and how
15 they meet the limitations or restrictions that that
16 founding source has, so it is not a difficult
17 process to do it in an accounting method, I mean,
18 the money is all kept in one big pot, you know,
19 we're not going to set up another bank account for
20 every source of funds that we get, but it's through
21 accounting, bookkeeping methods that we are able to
22 very carefully and accurately separate out those
23 funds, identify how we spend them, report that back
24 to a funding source, and we're very clear, we can
25 monitor that all the time, we always meet the

1 monitoring limitations of requirements. So that's
2 my simple response, I just wanted to make sure that
3 that was understood in terms of how that was done,
4 by our programs and could be done by the
5 Foundation.

6 CHAIRWOMAN DOWNS: And for our record, can you
7 identify yourself, sir?

8 MR. AKARRAT: I'm sorry. My name is Tony
9 Akarrat, I'm the executive director at Legal Aid
10 Services in Broward County.

11 CHAIRWOMAN DOWNS: Thank you, appreciate it.
12 Other comments?

13 All right. Thank you, everybody. Like I said
14 at the outset, I am asking Judge Scales and Laird
15 Lile as the subcommittee members who have already
16 drafted the task force proposed rule to review the
17 proposed evidence to that rule that we reviewed
18 today together with additional information we
19 received from the Foundation and others, and to
20 come back to this task force with an edited rule
21 revised to take into account the input we received,
22 and then the task force will figure out meetings
23 and approvals and all of that kind of thing to go
24 into the finalization of this which we need to
25 finish up with sometime in August so that we can

1 meet our September deadline, so we'll start working
2 on that right away. And we will continue to have
3 the ability to review additional information, I
4 think, it's very late in the game to receive
5 additional proposed rules, but we've gotten stuff,
6 you know, almost, you know, hours before our
7 meetings and still managed to digest it, the task
8 force members have proved up to the task and
9 willing to spend a lot of time, so I would much
10 rather that we hear from everybody who has
11 something to say than otherwise, so thank you,
12 everybody, for participating, particularly thanks
13 to our task force members, and unless somebody else
14 has something to say, I will entertain a motion to
15 adjourn.

16 JUDGE SCALES: So moved.

17 CHAIRWOMAN DOWNS: A second?

18 MS. SANDRIDGE: Second.

19 CHAIRWOMAN DOWNS: All those in favor say aye.

20 All right. Thank you very much, we're
21 adjourned. Appreciate it, everybody.

22 MS. SANDRIDGE: Thank you.

23 (Zoom meeting concluded.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
)
COUNTY OF ST. JOHNS)

I, Deborah P. Brownell, RPR, Seventh Judicial Circuit of Florida, do hereby certify that I was authorized to and did **stenographically report** the foregoing Zoom meeting, and that the transcript is a true and correct record of my **stenographic notes**.

Dated this 23rd day of August, 2020,
St. Augustine, St. Johns County, Florida.



Deborah Pacetti Brownell
Registered Professional Reporter

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IN RE: Task Force on Distribution of IOTA Funds

ZOOM VIDEO MEETING

DATE TAKEN: August 14, 2020

TIME: 10:00 a.m. until 11:13 a.m.

This cause came on to be heard at the time and place aforesaid, when and where the following proceedings were **stenographically reported** by:

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1 APPEARANCES:

2
3 KAREN LADIS, ESQUIRE

4 LAIRD A. LILE, ESQUIRE

5 HALA A. SANDRIDGE, ESQUIRE

6 HONORABLE EDWIN A. SCALES, III

7 JOHN M. STEWART, ESQUIRE

8 M. SCOTT THOMAS, ESQUIRE

9 ELIZABETH TARBERT, ESQUIRE

10 UNIDENTIFIED SPEAKERS

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1 JUDGE SCALES: Welcome everybody to the IOTA
2 Task Force meeting. I am sitting in as chair for
3 Mayanne today.

4 We're going to go through the agenda. We
5 likely are not going to take a vote today unless
6 the Task Force is dying to. I know the agenda
7 indicates that we are taking a vote today, but when
8 we get to that item, I will kind of discuss why I
9 don't think that it's a good idea for us to
10 actually take a vote today on the proposed rule.

11 So I think we can dispense, Elizabeth, with
12 taking role because everybody is here except
13 Mayanne on the Task Force. Again, if somebody has
14 an objection to not taking role and would actually
15 like for a formal role to be taken, I certainly can
16 do that. If somebody thinks that an Avatar is
17 actually showing up for a Task Force member.

18 I will entertain a motion.

19 MR. LILE: Move approval.

20 JUDGE SCALES: It's been moved to approve the
21 July 15th meeting minutes by Laird Lile? Is there
22 a second?

23 MR. THOMAS: Second.

24 JUDGE SCALES: I see that Scott Thomas has
25 made a second.

1 All those in favor signify by saying aye.

2 (Indicating.)

3 JUDGE SCALES: All those opposed, like sign.

4 (No indication.)

5 JUDGE SCALES: All right. We will approve the
6 minutes.

7 So the next thing on our agenda is the draft
8 amendments to the rule, and just more for the
9 people who are not Task Force members, but the
10 people who are attending, the Supreme Court's
11 Administrative Order that set us up essentially
12 asks for one primary deliverable, and that was
13 proposed amendments to Rule 5-1.1(g), which is the
14 IOTA rule. And we have been working on a proposed
15 rule after spending several months taking input and
16 there is a draft that is in our package.

17 A few weeks ago, we, the Task Force members,
18 were sent a proposed draft, and I call it kind of
19 the joint submission, jointly by the Foundation and
20 certain grantees. What I did over the weekend is I
21 gave a shot at cobbling together a hybrid of
22 certain items. I just did this on my own hoping
23 that we can kind of reach consensus, cobbling
24 together parts of the joint submission and the
25 submission that is in our agenda. You have not

1 seen that. Members of the Task Force have not seen
2 that with the exception of Hala, who has seen a
3 rough draft. Since I did that, Laird has sent an
4 email out yesterday with some revisions, and John
5 Stewart had sent an email out with a provision that
6 I think we had all agreed on weeks ago that I just
7 overlooked, and that was to have a sunset
8 provision, or a review profession. And I just, I
9 just forgot about that. Not that I generally make
10 it a point to forget about things that John Stewart
11 sends me, but this one I just -- I will take the
12 blame for not -- because he had suggested that. I
13 think we had all agreed to do that months ago.

14 Knowing that this hybrid version has not been
15 reviewed by anyone other than Hala, and without
16 Mayanne here, I don't think that we should take a
17 vote on anything today. And I know that we've been
18 pushing this off and pushing this off. But here is
19 what I would like to suggest. I would like to
20 suggest that we have a discussion today, because
21 I'm going to -- I would like to talk about some of
22 the points, some of the talking points, have a
23 discussion about that, and then later today what I
24 would like to do is to take all of this
25 information, make some revisions to the hybrid that

1 I have prepared, send it to Elizabeth for Elizabeth
2 to prepare a compare version, not to anything that
3 has been submitted, but to the existing rule, and
4 then have that circulated maybe by Monday to the
5 Task Force and to everybody else to take a look at.

6 Here is what I would like to see at the end of
7 the day, and this may not be possible. I would
8 like to see a 7-0 vote on our Task Force. And
9 we've got disparate membership on the Task Force.
10 I would like to see that. It may not be possible.
11 It may just be pie in the sky idealism, but I would
12 like to get there. I think we're gotten a
13 tremendous amount of input from people, and I'd
14 like to get there. And if we're not able to get
15 there, we may have competing rules that we just
16 have to vote on, and put them in our report to the
17 Supreme Court. I would rather not do that. I
18 don't think the Supreme Court wants us to do that,
19 but that's certainly what we can do at the end of
20 the day.

21 Having said that, does anybody have -- it's
22 not going to bother me one bit, if anybody has any
23 objection to using today's meeting schedule to
24 rather than take a vote on anything, to have some
25 discussions I think on the major points, at least

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1 that I have identified in those two rules. Does
2 anybody have a problem with that? And if you do,
3 that's fine. I mean we can have a vote that is
4 called for on the agenda.

5 All right. So let me kind of tell you, and I
6 know this is in the abstract because you don't have
7 a piece of paper in front of you. Let me tell you
8 kind of what this hybrid proposal does and some of
9 the high points of it. One, one thing it does is
10 it captures the idea of having one single IOTA
11 funds administrator rather than multiple IOTA funds
12 administrators. That's one thing it does. The
13 second thing it does is it keeps in the rule the
14 designation of the Florida Bar Foundation as the
15 IOTA funds administrator. Another thing it does in
16 the definitional section, this is from the draft
17 that you have in front of you, it captures the idea
18 of specifically defining the term of costs directly
19 related to administering IOTA funds, and it's very
20 specific about what those funds are. And then in
21 the actual rule, it requires the Foundation as the
22 IOTA funds administrator to distribute, and it uses
23 the verb distribute, all of the IOTA funds within
24 six months of receipt to qualified grantees. And
25 we'll talk about that in a second. Except for

1 those direct costs associated with the
2 administration of IOTA funds. And I think that at
3 least -- I'm not going to say it makes it Janus
4 proof, I would never say that, but I think it would
5 make the IOTA program stronger and easily
6 defensible against, or more easily defensible
7 against a Janus challenge.

8 So let's talk what the hybrid also does with
9 regard to what is a qualified grantee. I pretty
10 much used the definitions that are provided in your
11 draft here as to what constitutes a qualified
12 grantee, and we can certainly talk about that. And
13 one major thing that we do need to discuss today,
14 and that is whether, I will call it whether the
15 Innocence Project and similar organizations that
16 provide essentially post-conviction work in the
17 criminal setting would be qualified grantees.
18 Let's hold that issue aside.

19 The hybrid also keeps the reporting
20 requirements for both the IOTA funds administrator,
21 the Foundation, and the grantees that's manifested
22 in the draft that is included in the packet.

23 Notice I have referred -- not referred to that
24 as the Laird draft because he asked me not to, but
25 it's the Laird draft. And --

1 MR. LILE: And you finally did something I
2 asked you not to do, Judge.

3 JUDGE SCALES: Yeah, that's -- and you're
4 welcome. And those are the principle points of
5 this hybrid. It kind of takes notions, or takes
6 provisions from both of these rules.

7 And again, I know that we're talking about it
8 in the abstract. Nobody has a copy of it in front
9 of them except a draft that I provided to Hala
10 earlier in the week. But that's kind of what I was
11 going to go with. It's -- it's -- it ain't for
12 everybody. I don't think there is anything that we
13 can do that's going to make everybody happy. I
14 don't think that's realistic. But what I would
15 like to do is see if we can at least come to a
16 consensus, and at the end of the day, have a rule
17 that we can all vote on, even if it's not exactly
18 what we would want. Remembering, of course, that
19 this is only part of the exercise, submitting a
20 proposed rule to the Florida Supreme Court. It
21 would be highly presumption for us to say, Well,
22 whatever we submit to the Florida Supreme Court is
23 going to be adopted by the Florida Supreme Court.
24 They are free obviously to do whatever they want to
25 do, and so what we would be presenting them is a

1 proposal along with a final report.

2 Having said that, I kind of -- I wanted to lay
3 out what this rule, what the rule, the hybrid --
4 I'm going to call it the hybrid -- what it does so
5 that everybody has an understanding of what I would
6 like to present. Mayanne hasn't even seen it. So
7 again, just Hala and I have seen it. And Hala is
8 not -- Hala and I talked a long time yesterday.
9 She is not prepared right now to say, Yes, I
10 endorse it, I can support that, but hopefully we
11 can get there at some point really soon.

12 So I'm going to shut up right now. I'm going
13 to kind of turn things over to Hala real quickly to
14 see if she wants to add anything, and then we'll
15 open it up. But there is certain, I think there is
16 certain discussion points that we probably need to
17 discuss to kind of expound on some of these bullet
18 points. So I'm done.

19 Hala, do you want to add anything?

20 MS. SANDRIDGE: Sure. Thank you, Judge
21 Scales.

22 Just a couple of things. You know, I agree
23 with what you just said, which is I think we're
24 working towards something that while nobody is
25 going to be 100 percent happy, it would be

1 acceptable to a lot of our stakeholders in this
2 process. I think we need to really keep working at
3 this to reach that point. I will say that I
4 appreciate everything that Judge Scales has done to
5 try and get us to that point.

6 I, of course, as the president of the
7 Foundation represent the interests of the
8 Foundation. I really would like to get the input
9 of the project directors and other grantees. I
10 have tried to explain some of their positions, but
11 I really think it's important during this time that
12 we spend together now that their input be received
13 and continue to be received as we go forward.

14 I am in agreement with Judge Scales that we
15 can put together whatever we want. Ultimately it's
16 up to the Florida Supreme Court to decide whether
17 it believes that what we have suggested and
18 proposed is acceptable and makes the best sense for
19 our Florida citizens. So I am in line with this
20 process of working together to try and receive, or
21 to create something that's acceptable to everybody,
22 and I will say that I am very positive that that
23 can happen.

24 JUDGE SCALES: Okay. Thank you. Thank you,
25 Hala.

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1 So does anybody else want to say anything at
2 this point because what I would like to do is to go
3 through and talk about a couple of points dealing
4 with grantees especially.

5 Okay. So let's talk about grantees and let's
6 talk about the first issue, and this is dealt
7 with -- and by the way, in my hybrid, I just used
8 what's in the Laird version now with regard to
9 the -- I will call it the Innocence Project issue.
10 And it's a philosophical issue, and we can deal
11 with it any way we want to deal with the issue, and
12 that is whether a qualified grantee, that would be
13 an ultimate grantee that's going to provide direct
14 legal services to the poor, is a qualified grantee
15 if the service that they provide is criminal in
16 nature as opposed to civil in nature, which is what
17 the Innocence Project does.

18 And let me just stop right here. I recognize
19 that there is an argument that habeas is civil in
20 nature and not criminal in nature. I would simply
21 say though that for our purposes when we're talking
22 about post-conviction relief for criminal
23 defendants, we're really talking more about
24 criminal needs than civil needs, at least that's --
25 I think that's how most of us view it. And I'm

1 certainly -- I've never practiced that type of law
2 and deal with habeas petitions very rarely. Most
3 of that stuff goes to different Courts. And we
4 treat post-conviction motions and post-conviction
5 appeals, appeals of denials of post-conviction
6 motions, we treat them in our court as criminal, as
7 do I think all the other DCAs.

8 So having said that, I'm just going to go
9 through and see what you think, how we should
10 present the issue to the Court, if we should
11 present the issue to the Court. I would prefer to
12 have Mayanne here on this discussion, but you know,
13 I think -- I would like to hear your input. And I
14 will just go through who's appearing on my screen
15 and start with you, John. I don't mean to put you
16 on the spot, but do you think IOTA funds should go
17 to the Innocence Project or similar organizations?
18 And if you want to take a pass, you can certainly
19 take a pass.

20 UNIDENTIFIED SPEAKER: I take a pass, Judge.
21 My instinct that it is on the criminal side, but I
22 confess, I have not weighed in on that
23 substantively.

24 JUDGE SCALES: All right. Thank you, Jerry.

25 John Stewart, do you have a view on that?

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1 MR. STEWART: I think that -- I don't think
2 it -- while that may be the representative group, I
3 don't think it needs to be singled out. I think
4 the way that we've currently drafted it for civil
5 legal needs is the way that I would continue to
6 support it. You know, whether that gets adjusted
7 in a conversation with the Court, I think it's
8 fine. You know, there is so many probably
9 variations on the fringes that we can't anticipate,
10 that I think as you start to take one or two, there
11 is ten more that may also make sense. And so while
12 I understand the line is arbitrary, you know, I
13 would leave it to those groups on the fringes to
14 make arguments that they would fall within the
15 definitions, assuming the Court adopts it, and/or
16 make argument to the Court that it should be
17 broadened to include them for some reason and
18 provide some further language.

19 So I think for purposes of our report where we
20 are now with the rule change, I would leave it as
21 is. I think some of the other items that you've
22 touched on for me frankly are more significant
23 changes, for the better, I think.

24 JUDGE SCALES: So really what I'm -- and I
25 appreciate that. What I'm really more specifically

1 interested in is how we should present it the
2 Court. So you like the way it's laid out now,
3 where it's a footnote and the Court can ultimately
4 make that decision, or should we remove the
5 footnote, or do you have any druthers on that one
6 way or the other?

7 MR. STEWART: Well, on that point, I don't
8 like the footnote. I don't like the footnotes at
9 all. But I do think that there are a place for
10 those in the report. I mean part of our exercise,
11 I think which is tough, is I think, I hope, that
12 when our Commission make its final determination, I
13 think it will be easier for us to make a final
14 determination on the rule with a pretty close-end
15 version of the report, because I think our
16 explanation to me is important to what the changes
17 are in the rule.

18 JUDGE SCALES: Got you.

19 MR. STEWART: You know, I don't think that
20 they're totally disconnected. So I wouldn't
21 advocate for the footnote. We can talk about
22 whether or not it should go in the report. But I
23 think there's a variety of issues that ought to be
24 in the report that make it easier to vote for
25 certain things than the rule as we may ultimately

1 see it.

2 JUDGE SCALES: Karen Ladis.

3 MS. LADIS: Good morning. Can you hear me?

4 JUDGE SCALES: Yes, we can.

5 MS. LADIS: I'm not certain at this time. If
6 you won't mind either pass me or come back to me.

7 JUDGE SCALES: You got it.

8 Hala.

9 MS. SANDRIDGE: I think that it doesn't matter
10 to me whether it is a footnote or in a report. I
11 find it essentially the same thing. I just think
12 it's something that we need to bring to the Supreme
13 Court's attention when we send up the rule.

14 JUDGE SCALES: Scott Thomas.

15 MR. THOMAS: Yeah. Thanks, Ed.

16 I certainly think that the rule should
17 authorize the expenditure of IOTA funds for this
18 purpose. I think in context, particularly Janus,
19 it's one of the least objectionable things, but I
20 think we're creating an unnecessary difficulty here
21 with trying to fit into that rubric is it civil, is
22 it criminal, how does it work. I think something
23 the rule doesn't do right now that we could look at
24 addressing, that while our priority, the Supreme
25 Court stated priority is to address civil/legal

1 needs, certainly the access to justice has long
2 been a justified use of these private funds for
3 public purpose. And I think if the rule were to
4 just be up front that these sorts of organization
5 fit within the rubric, the access to justice
6 component of use of these funds, that would perhaps
7 be a better approach.

8 I confess, I have not tried to draft it. No
9 one has. I'm not quite sure how we do that in a
10 way that the exception doesn't swallow the rule
11 here. But I think that the idea of priority on
12 civil/legal needs doesn't exclude something like
13 this, which is -- and I know they do some advocacy
14 work too, public policy advocacy work, but this
15 work, post-conviction work, seems to me to be
16 something that there should be room for. And I am
17 worried, I don't want to get tied down so much in
18 the civil/criminal if there is an out on that so to
19 speak.

20 JUDGE SCALES: And Laird.

21 MR. LILE: Thank you, Judge.

22 And I appreciate John Stewart's focus on the
23 definition of qualified legal services because I
24 think that's where this discussion belongs, as
25 opposed to the definition of a qualified grantee

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1 organization. And I do think differently than Task
2 Force member Thomas, that we should recognize that
3 there are limitations on the funds that are
4 available, and that because the civil/legal needs
5 is to be granted just a focus, but I think we
6 should keep that reference in the rule and I would
7 encourage the report making it clear that, if this
8 is the case, that the Task Force thinks that term
9 would exclude even post-conviction work, so that if
10 the Court wants to expressly broaden it, they can,
11 but not to have what might otherwise be some
12 uncertainty about whether the Project Innocence
13 type of post-conviction work is included or not
14 included here.

15 Thank you.

16 JUDGE SCALES: And Laird, you're right. I'm
17 sorry. It is -- the footnote does reference
18 qualified legal services, the definition of
19 qualified legal services, as opposed to qualified
20 grantee organizations, and we shouldn't get
21 caught -- we shouldn't get caught --

22 MR. LILE: Right.

23 JUDGE SCALES: We shouldn't get caught up on
24 who the grantee may or may not be, but --

25 MR. LILE: What they do with the money.

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1 JUDGE SCALES: Right, right. And I appreciate
2 that.

3 MR. LILE: Yeah.

4 JUDGE SCALES: Anybody else on the Task Force
5 want to address this issue?

6 So I see we plainly have no consensus, which
7 is fine, on that. We'll, we'll -- we will deal
8 with that. I do agree with John Stewart that there
9 are probably other issues that I discussed
10 initially that are more profound and will have more
11 impact on people. But I know that we have spent a
12 lot of time and had a lot of input on that
13 particular issue and I wanted everybody to have an
14 opportunity to speak on that issue.

15 Before I open it up to other people, I kind of
16 would like to address some other things that I
17 touched on to see if I can get some guidance from
18 you. And a couple of things that I did not talk
19 about is in defining the term, direct expenses
20 required to administer the IOTA funds, which if
21 it's okay with everybody, and I hate to do that, I
22 am going to just refer to that as overhead. Okay.
23 That's what we -- it's just a shorter word. And I
24 don't want anybody to make any kind of negative or
25 positive inferences. I'm just going to say

1 overhead.

2 What the current rule, the Laird draft that's
3 in your memo has is a definition of what that
4 overhead is. And it has at the very end of the
5 definition, it has that that amount cannot exceed
6 10 percent of collected IOTA funds in any fiscal
7 year without the prior approval of the Court. So,
8 and I use an example, and again, we're trying to
9 write a rule to cover all circumstances, but if
10 IOTA funds are only \$3 million or something like
11 that, or \$2 million, it may not be a workable thing
12 to have a cap. I will tell you that the hybrid
13 that I will be circulating splits the difference
14 between 20 percent and 10 percent at 15 percent.
15 And -- but does contain that prior approval of the
16 Court, I guess that escape hatch, if you will, for
17 the IOTA funds administrator.

18 Moving down to the -- there is a similar -- in
19 the draft you have in front you, there's a similar
20 restriction on the use of grants to qualified
21 grantee organizations where there is a prohibition
22 that in the grant no more than 20 percent of the
23 IOTA funds can be used by the qualified grantee for
24 establishing reserves, rent or other administrative
25 expenses, training and technology. Again, which I

1 will just call overhead.

2 In the proposed draft, that number is reduced
3 to 10 percent as opposed to 20 percent. So it's
4 essentially making those changes in the proposed
5 draft. Having said that, I'm not a hundred percent
6 sure that whoever the IOTA funds administrator is,
7 whether it's the Foundation or anybody else giving
8 legal needs is going to be in the business of
9 giving grants that cover grantee overhead. They
10 may -- I don't know that the rule needs to get in
11 to that, but I just tell everybody that so when you
12 get the draft, you will see that.

13 I am not married to those numbers, but what I
14 am trying to do is be realistic in that. Again,
15 I'm not married to anything until the IOTA Task
16 Force approves it.

17 But I would like, and I know Laird, you're
18 hearing this for the first time. Conceptually
19 would you be okay with those types of numbers where
20 you essentially have the 15 percent overhead
21 restriction for the Foundation, and then the
22 Foundation grantees are restricted in the grants
23 where essentially the Foundation making the grant
24 would be restricted to no more than 10 percent of
25 the grant go to grantee overhead?

1 MR. LILE: I'm not sure I'm following what
2 you're describing. But let me play back what I
3 think I'm hearing.

4 JUDGE SCALES: Okay.

5 MR. LILE: The definition that was
6 disseminated about direct expenses required to
7 administrate IOTA funds would stay intact --

8 JUDGE SCALES: Yes.

9 MR. LILE: -- is that correct?

10 JUDGE SCALES: Except, except the 10 percent
11 would be 15 percent.

12 MR. LILE: 15 percent.

13 JUDGE SCALES: That number in I right now is
14 at 10 percent, would go to 15 percent.

15 MR. LILE: Okay. And we can talk about the
16 logistics of how that might work, because if prior
17 approval when you don't know what expenses are
18 coming in, there may be some logistical issues
19 there, but that exists whether it's 10 percent, 15
20 percent, whatever the percentage is.

21 JUDGE SCALES: Correct.

22 MR. LILE: So then the other thing you're
23 talking about is at the qualified grantee
24 organization, the current grant --

25 JUDGE SCALES: Line 173, line 173 on the

1 draft.

2 MR. LILE: Right. Has no more than 20
3 percent, and that would change to 15 percent?

4 JUDGE SCALES: To 10 percent.

5 MR. LILE: To 10 percent.

6 And you know, the percentages, I think John
7 Stewart probably said this best, the percentages
8 are certainly arbitrary. I don't know whether
9 they're real or mythical or not. And so I'm not
10 opposed to the change of those percentages, either
11 of them.

12 JUDGE SCALES: Hala.

13 MS. SANDRIDGE: If I could add something on
14 that point, the percentage and them being
15 arbitrary. I think Laird kind of hit the nail on
16 the head with that, and that's why when Ed and I
17 had been talking, it was really important to put
18 John Stewart's sunset provision in there, because
19 we don't know how this is going to play out. And I
20 have kind of a fear that we're underestimating --
21 and we'll talk about this in a little bit. So I
22 really think it's important that we have that
23 sunset provision in there for that reason.

24 JUDGE SCALES: I don't know what we would make
25 it a sunset provision as opposed to a mandatory

1 review because a sunset means that the rule would
2 go away automatically unless it's affirmatively
3 renewed. That's kind of the way that a sunset
4 provision works.

5 MS. SANDRIDGE: And that's fair. And I have
6 no problem with that. It's just -- it's a review.

7 JUDGE SCALES: Yeah. And we can do the
8 Stewart Review.

9 MR. LILE: Ed, let me just say one more thing.
10 With respect to the first part of the direct
11 expenses requiring, that percentage comes in and
12 it's there in the last sentence of that, but that
13 whole concept, I feel like we are avoiding some
14 arbitrariness with the concept in general, and
15 again because it's looking at direct real expenses,
16 so I continue to applaud that.

17 JUDGE SCALES: And I -- and again, I think
18 that gets us -- and I don't want to use this too
19 loudly because John usually gets upset when we use
20 the term Janus, but that helps to address Janus
21 concerns when you specifically define what those
22 expenses are and you limit them to the expenses
23 associated with distributing those funds as opposed
24 to other finds that may be collected, used,
25 distributed by the Foundation.

1 Scott, Karen, John, did any of you want to
2 comment on those two proposed changes?

3 MR. THOMAS: Ed, just to follow-up on what I
4 think Laird was saying. I -- you know, the
5 percentages, they are what they are, I mean based
6 upon on what the needs are on the ground. I'm more
7 concerned that we properly and narrowly define what
8 you've called overhead, what are referred to in the
9 rules as direct expenses required to administer.
10 So that again, we don't have the problem of -- the
11 way we're within the -- whatever the percentages
12 are is with some loose definition of what's a
13 direct expense to do this.

14 I do think a little bit, in terms of
15 percentages moving, and this is the first I've
16 heard this, intuitively it kind of feels to me like
17 it's going the wrong direction. I would think with
18 more flexibility in overhead, it would make more
19 sense that be held at the grantee level where there
20 is more, more differences, you know, as opposed to
21 the administration. But, we'll look at all of
22 that. Again, I just -- to me if you're going to
23 expand one and narrow the other, I -- you ask me
24 intuitively, I would probably be more expansive of
25 what the actual grantees do, but we'll look at

1 that.

2 JUDGE SCALES: Karen.

3 MS. LADIS: Well, since the purpose of our
4 Task Force was to look at priority, giving priority
5 consideration to the direct legal services, civil
6 legal services to the indigent in Florida, I think
7 that having the Foundation as the designated IOTA
8 funds administrator and the new numbers will help
9 lead to the provision of the direct legal services.
10 I think everything is heading in the right
11 direction, but like my predecessor just said, we
12 can definitely move a couple of these numbers
13 around, but I think that the main goal with keeping
14 the Foundation as the sole administrator is very
15 important and the rest we can work out.

16 JUDGE SCALES: Okay. And I, again, I
17 recognize that a lot of this is in the abstract
18 because you don't have language --

19 MS. LADIS: Yeah, I'm writing it down.

20 JUDGE SCALES: -- in front of you.

21 MS. LADIS: I'm trying to recreate it from
22 this, and you know, I do -- it's all coming a
23 little bit of -- it's all good news, and I'm taking
24 it all in.

25 JUDGE SCALES: Okay. Okay. And again, I

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1 apologize for that. This is a dynamic process.

2 MS. LADIS: Very dynamic.

3 JUDGE SCALES: Does anybody else on the Task
4 Force want to address any of these issues?

5 What I intend to do, and I don't want to use a
6 whole lot of people's times and I don't have to
7 have too much of a discussion on things in the
8 abstract, but if there are points that you would
9 like to make, please make them now because what I
10 plan to do is later this afternoon, put the pen to
11 paper, or the keyboard to the computer screen and
12 make some revisions, shoot those to Elizabeth, and
13 as I said before, have Elizabeth do a compare
14 version, because I don't have the technical
15 know-how, to the existing rule. So what you will
16 get either late today or Monday, and what will be
17 available on the website to all of the grantees and
18 the stakeholders will be a proposed rule change
19 showing changes to the existing rule, not to either
20 of the proposed rules that have been circulated.
21 So there won't be kind of authorship issues, or you
22 know, which one did this come from or which did
23 this come from.

24 Does anybody want to discuss anything
25 regarding that process, or for that matter,

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1 anything?

2 Scott, go ahead.

3 MR. THOMAS: Ed, I just wanted to address
4 something that you raised as part of the hybrid
5 that I think we will discuss further, not
6 necessarily before we see it, and that is the idea
7 that the proposed rule would actually identify the
8 Foundation as the single administrator. I think
9 that the various drafts we've circulated, which
10 have not specifically identified the Foundation,
11 but talk generically about one or more, they have
12 been a point of particular controversy. I think
13 that there's the impression that somehow this Task
14 Force is out for the Foundation or was trying to
15 eliminate the Foundation, and certainly nothing is
16 further from the truth.

17 I think as a practical matter, it's almost
18 certain that whether the Foundation is named or
19 not, it's certainly (inaudible) and a mystery that
20 that's exactly who the Florida Supreme Court would
21 appoint as the single administrator. And there's
22 nothing about prior drafts eliminating that that
23 was intended to upset that idea. But I do think
24 that what we're talking about here is a rule
25 designed to establish specific standards for the

1 use of the funds, a rule that's required reporting
2 to evaluate whether those standards are met, and I
3 think it make senses that in that context that the
4 Supreme Court retain the sort of discretion about
5 the ultimate fund administrator without the
6 necessity of a rule amendment down the road. And
7 so something we can talk about when we look at the
8 hybrid, but I just wanted to make that clear, but
9 my view of this is that not -- and I'm not
10 necessarily opposed to the idea that it name the
11 Foundation going forward, but the elimination of
12 the Foundation in the earlier drafts was not
13 intended to eliminate the Foundation or mean that
14 it wouldn't be the administrator, and my view was
15 merely intended to give the Florida Supreme Court
16 the kind of ready discretion that would be
17 consistent with the Janus reporting requirement, so
18 that's my thought on that.

19 JUDGE SCALES: Laird, you had your hand up,
20 and Hala had her hand up, so let's go Laird and
21 then Hala.

22 MR. LILE: Thank you.

23 And I know you don't a want to take any votes
24 today, and certainly out of deference to our formal
25 chair, I appreciate that. But I think you could

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1 probably get unanimous consensus today on the
2 concept of only one IOTA funds administrator, and
3 that might make some drafting easier.

4 You'll recall that the Scales/Lile report, as
5 I like to refer to it, initially came up with the
6 idea of a potential for multiple funds
7 administrators, and then at least half of that
8 drafting team is now pursuing it based upon the
9 comments and the challenges that would otherwise
10 exist that we ought to acknowledge, that there only
11 should be one IOTA funds administrator.

12 I'm not persuaded yet that we should require
13 that IOTA funds administrator in our proposal to be
14 the Foundation, and that's frankly out of respect
15 for the Foundation because I don't think that we
16 ought to be suggesting that they have to accept
17 whatever proposal comes out, because they may
18 decide they don't want that. I'm not at all
19 opposed to the report indicating that if the
20 Foundation would accept, we would expect that the
21 Court would appoint the Foundation as the sole IOTA
22 funds administrator. And so I will conclude my
23 comments on that, but I do think those are good
24 steps for us.

25 JUDGE SCALES: Hala.

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1 MS. SANDRIDGE: So I think my comments are
2 consistent with what Laird is saying. I believe
3 that the reason we were not putting the Foundation
4 as the sole administrator is because there was a
5 concern that the Foundation would not be willing to
6 work under the structure that was being proposed.
7 And so what I'm hoping is that through those
8 conversations we are going to eliminate that
9 concern so that the Task Force will understand that
10 the Foundation is willing to serve under the terms
11 of the report as we send it to the Supreme Court,
12 and would therefore be justified in naming the
13 Foundation as the sole administrator.

14 JUDGE SCALES: And I think maybe we're all
15 saying the same thing, and that's why I was
16 thinking it was important to have a 7-0 vote. You
17 know, that would express, express that.

18 As far as identifying the Foundation by name,
19 here is where I come down on that. The current
20 rule identifies the Foundation by name, but there
21 will be some provisions in this rule that -- to
22 address Laird's point -- significantly effect how
23 the Foundation operates, at least when it comes to
24 IOTA funds, fundamentally change the way that they
25 operate. And under no circumstances would we cram

1 something down the Foundation's throat or try to
2 cram something down the Foundation's throat as far
3 as IOTA funds that they may not, you know, want.
4 That's what the Florida Bar is for.

5 That was a joke. I didn't even get a smile
6 out of John Stewart.

7 MR. LILE: I smiled.

8 JUDGE SCALES: You smiled. But anyway, yes,
9 Karen.

10 MS. LADIS: Yeah. I'm very delighted that it
11 sounds like we have a consensus for one IOTA funds
12 administrator and that it most certainly will be
13 the Foundation based on what Hala said, is that the
14 Foundation would like to be named in the rule which
15 wasn't the -- didn't appear to be the case before.
16 And every current recipient of IOTA funds and
17 grantees would very much be in favor of that taking
18 place, and they are the major stakeholders since
19 they are the ones who are providing the direct
20 legal services to the low income community, so.

21 JUDGE SCALES: One -- one other issue that I
22 want to discuss, and there's been some concern
23 about it, and it has to do -- and I haven't fully
24 looked at it yet, but I know that some of the input
25 that we've received is ensuring that qualified

1 grantee organizations are only not-for-profit
2 501(c)3 organizations. So I -- I want to give
3 Laird an opportunity to address that, but before
4 that I do not think currently that there is any
5 restriction with the Foundation where, any formal
6 restriction where the Foundation could make a grant
7 to a for-profit entity. Let's say A and B law firm
8 has a pro bono program and they request money. It
9 would be -- it would be unprecedented for the
10 Foundation to make a grant, in my opinion, based on
11 my prospective to a for-profit entity like a law
12 firm, but it would not be prohibited unless there
13 is some tax prohibition that I don't know about.

14 But I know we've got some pushback, some
15 comments wanting the definition of qualified
16 grantee organization to expressly note that it is a
17 501(c)3 not-for-profit, and I just would like some
18 discussion on that because I'm -- I'm -- you know,
19 I just know from a practical standpoint, it would
20 be very odd for the IOTA funds administrator,
21 whether it's the Foundation or anybody, to make an
22 IOTA grant to a for-profit company.

23 Laird, did you want to address that issue?

24 Let me have Laird address it first, because I
25 know that he's put some time into it, Karen, and

1 then I'll get to you and Hala and anybody else that
2 wants to have input on that issue.

3 MR. LILE: Yeah, thanks, Judge. And I have
4 spent some time thinking about the terminology here
5 and it's pretty tricky. I think Karen would be
6 disappointed if we said a 501(c)3 organization
7 because my understanding is that she's a part of a
8 governmental organization, which would not strictly
9 be a 501(c)3, and she can respond to that if she
10 cares to.

11 There's been some movement towards, or some
12 request talking about a non-profit organization.
13 I'm not really sure what that is. Does that mean a
14 non-profit corporation formed under the laws of
15 Florida? I'm not sure that should be the case
16 either. Anybody can form a non-profit corporation.

17 And I have great confidence in the IOTA fund
18 administrator, even if -- I mean especially if it's
19 the Foundation, to make the right choices in terms
20 of not handing funds out to someone, because we're
21 defining who it is, but we're not saying it
22 automatically entitles them to receive grants.

23 I know John Stewart's rip on this. I know
24 Hala has reaction, but I'm still here to listen and
25 see how we might get this to a 7-0 vote you would

1 like to have.

2 Thank you.

3 JUDGE SCALES: Hala, did you want to comment
4 on that particular issue?

5 MS. SANDRIDGE: So I would say that I see this
6 as a grantee issue. And I do agree with Laird
7 that, and Judge Scales, I think you said this too,
8 that it's unlikely the Foundation is going to start
9 handing out IOTA money to entities that are making
10 a profit and want our funds to continue a program
11 that might be a side business, but that their
12 pursuit is to make a profit. But I will tell you
13 that the grantees have a great concern about this.
14 And I really defer to Karen and Monica and others
15 who have talked to me about this and have expressed
16 a concern about this.

17 JUDGE SCALES: Karen.

18 MS. LADIS: I agree that the Foundation would
19 always make the right decisions because based on
20 the history of the civil legal aid providers around
21 state where they've built up a network, my
22 understanding was the concern wasn't about who are
23 the current grantees, and they are civil legal aid
24 organizations providing various legal services
25 based on their geographic location and how they can

1 provide legal services to their low income
2 communities. It was more of a concern about many
3 other agencies that are non-profits that are not
4 civil legal aid providers being then able to apply
5 to have an attorney department which would
6 duplicate existing legal aid programs, services.
7 For example, over the last several years, one of
8 the former providers of funding for direct legal
9 services to legal aid programs for victims of
10 domestic violence began funding attorneys in
11 shelters, and they're not supervised by the legal
12 aid attorney model and are not technically part of
13 the legal aid structure itself. It is a lawyer
14 serving victims. So I think part of the concern is
15 for not -- not prohibiting the growth of legal aid
16 providers when needed, but to sort of prevent
17 non-civil legal aid providers from joining the pool
18 of grantees.

19 The funding is very scarce. There is rarely
20 enough now, and my understanding is several
21 qualified grantees have not even received IOTA
22 funding in years. And to add other groups and open
23 it up to other groups is the concern. But again,
24 that's what I said was, I agree with Hala and would
25 defer to the wisdom of the Florida Bar Foundation.

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1 Many years ago people at the Foundation did contact
2 us and say there were law firms that were applying
3 for some funding for something and asked if that
4 enhanced our services or not, and we expressed that
5 our program in-house could do that similar work, so
6 I would -- based on the history of how the
7 Foundation has handled that in the past -- I would
8 say that the Foundation or any IOTA funds
9 administrator could well determine the difference
10 between actual grantees and recipients who can
11 provide the services and others.

12 JUDGE SCALES: Anybody else want to talk on
13 that issue? And it may be one of those things
14 where we address it in the report, and if the
15 Supreme Court wants to limit the rule, they
16 obviously can do that, address that particular
17 issue to them. Again, I, having served on the
18 board of the Foundation now for the past five
19 years, it seemed like a little longer, I would --
20 I've never seen that happen. I've never seen an
21 IOTA funds grant to a for-profit entity. I --
22 though to Karen's point, there has been and there
23 is a lot of competition, but there's a lot of
24 competition for scarce funds. That's just part of
25 the process. And maybe the more flexibility we

1 give the administrator, the Foundation, if the
2 Foundation is the administrator, then maybe it's
3 solved at that level better than at the rule level
4 that would prohibit the Foundation from having that
5 flexibility. I don't know --

6 MS. LADIS: I --

7 JUDGE SCALES: Karen.

8 MS. LADIS: Yeah. I think that based on the
9 strategic grant making for -- in the different
10 regions by the Foundation, or any other
11 administrator. I think the point is that with the
12 qualified civil legal services and everything else,
13 I think the problem seems to resolve itself based
14 on the point of what the IOTA funds are going to be
15 used for. And I think in the rule that Lile had
16 revised again, it provides free civil legal
17 services to low income people, and that's -- and
18 one of the other concerns that the grantees had was
19 that it has to be an organization that has a
20 history of, or was formed for the purpose of, which
21 would eliminate a law firm or a law school that
22 wanted to start -- not a law school, I'm sorry, a
23 law firm that wanted to start a homeless clinic or
24 something like that as being a competitor. But
25 historically, if you go way back, when a new need

1 did arise, such as a homeless situation that's an
2 epidemic statewide, the Foundation would go to a
3 grantee, for example, say in Miami to the legal
4 services program and say, Would you all be willing
5 to take on a new program, here's new funding,
6 rather than create, multiple, multiple programs.
7 And they have done that over the years. They've
8 added some new programs who I don't know whether
9 they would qualify as an IOTA grantee or not, but
10 they have done this with a lot of care, so saying
11 that they have a demonstrated capacity to provide
12 civil legal services or some other words that would
13 be helpful to have a proven track record and
14 demonstrate capacity, but I'm definitely
15 comfortable with narrowing it down. And staying in
16 too as a recipient of IOTA funds because we're a
17 good example of, we're Government (inaudible) grant
18 non-profit status. We don't have a 501(c)3 as a
19 pass-through and have always been a recipient since
20 the beginning, and are filling a certain need in
21 our community, which is why it was devised that
22 way.

23 JUDGE SCALES: Laird and then Hala.

24 MR. LILE: Thanks, Judge.

25 I know that some qualified grantees wanted to

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1 see words such as demonstrate experience and
2 capacity to provide these services, and just
3 philosophically, I'm going to have a really hard
4 time with adopting words like that that would seem
5 to exclude any start-up. And Karen and I have had
6 these conversations. It's not because I think
7 there's necessarily going to be a start-up, but it
8 just feels like we should not suggest in a rule
9 that unless you've been doing it before, you can't
10 qualify, you can't be a (inaudible). So that's my
11 view on that. I could be persuaded to the
12 contrary, but I just wanted to clarify that.

13 Thank you, Judge.

14 JUDGE SCALES: And Hala. Let me get to Hala
15 and then, Karen, back to you.

16 MS. SANDRIDGE: Actually, Judge Scales, I was
17 going to ask if Monica could weigh in on this.
18 Obviously we submitted a joint rule with the
19 project directors, and I know that she would like
20 to weigh in on this particular point.

21 Is that possible?

22 JUDGE SCALES: It's fine with me, let me --
23 but before we go to -- let me get Karen first, and
24 then we'll see if Monica is on. I don't even know
25 if she is on.

1 MS. SANDRIDGE: She is on. I just don't know
2 whether Elizabeth has allowed participants who are
3 watching to speak.

4 JUDGE SCALES: Okay. Okay. Karen, and then
5 we'll go to Monica.

6 MS. LADIS: So anyway, what I was saying
7 before with the way the Foundation in the past with
8 the distribution of IOTA funds with general support
9 grants, which was a very effective method for a
10 very long time. If there was another means, they
11 would go to the existing grantee that has a proven
12 track record because of the fact that they have
13 historically been able to meet those needs. It
14 doesn't mean that the Florida Bar Foundation like
15 many other foundations doesn't have other grant
16 opportunities for start-ups, and in fact, the
17 Foundation has even had over the last few years
18 different types of grants for start-up ideas from
19 grantees and added other very deserving
20 organizations into the mix. But I would, like I
21 think the rest of you are saying, defer to their
22 discretion on that as to who qualifies or not.

23 JUDGE SCALES: And Monica, are you where --
24 can you --

25 UNIDENTIFIED SPEAKER: She's on.

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1 JUDGE SCALES: Can you unmute yourself,
2 because I think you're able to speak. I think
3 Elizabeth has enabled you.

4 Great.

5 UNIDENTIFIED SPEAKER: Thank you so much.

6 I just wanted to speak on this one point
7 because we haven't see the new draft rule, so I'm
8 not even able to comment on it. But there is one
9 point of whether for-profits should be
10 specifically, you know, not allowed, or
11 demonstrated experience. We come at this from the
12 prospective of -- and we think this is where the
13 Court was, which was prioritizing legal services
14 for the indigent community. And we all as we've
15 have been hearing on these calls, IOTA resources
16 are precious and definitely (inaudible), but tend
17 to be scarce, that they don't meet those civil
18 legal needs. The first report was clear.

19 So in terms of the demonstrated experience, as
20 legal aid providers we came at it from that angle
21 because we don't think these are the funds to do
22 those. If you're going to be giving out, you know,
23 money, that's not the place to start these private
24 projects with private organization start-ups to
25 that point because you want to be able to show that

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1 they know how to administer the funds (inaudible)
2 and provided high-quality legal services. Those
3 criteria that in any grant-making process should be
4 taken into account.

5 We are confident that the Foundation currently
6 does that, but the reason we wrote in the rule,
7 because the draft rule that you saw was based on
8 the reports coming out, was that -- as it stands
9 right now, the current rule provides a great deal
10 of discretion to the Foundation.

11 JUDGE SCALES: Sure.

12 UNIDENTIFIED SPEAKER: And so we have faith in
13 their ability to do that, but we didn't know if it
14 would be the Foundation, one, and two, even if it
15 is the Foundation, the second, that the criteria
16 starts being laid out so specifically, are we in
17 some ways not tying the hands because -- but saying
18 what is the criteria -- so if the Foundation, the
19 rules adopting the Foundation tomorrow says in
20 their grant-making process that they're not going
21 to consider grants or award grants to for-profit
22 entities, would this be in some violating the rule
23 and would we be liable. And so we wanted to give,
24 cover, I guess is the right word, to what in
25 essence has already been their practice in terms of

1 to your point, Judge Scales, of not-for-profit
2 (inaudible) or not-for-profit entities.

3 And so I just wanted to point that out in
4 regards to the demonstrated experience, we think
5 that it's important. I don't think it's a big
6 barrier. It's not saying, you know, 20 years of
7 experience in civil legal. It basically says
8 demonstrates, so something they can point to. And
9 anybody who has done grant writing or reviews knows
10 that's typical, you want to show (inaudible). And
11 putting it into the rule will allow the Foundation
12 to, or any fund administrator to make that one of
13 the criteria for the selection and awarding a
14 grant. And so it's not to say new people can't
15 come into the pool, it's just to say when you do
16 come in, you have something backing up that you'll
17 be able to serve this community.

18 This is not an easy community to serve. You
19 have to know the community. You have to meet
20 clients where they're at in terms of their ability
21 to work with you, and so I think demonstrated
22 experience is specifically important for this area.
23 And the for-profit I think I already covered. It
24 is basically provided in the Foundation the ability
25 to continue operating as they have in terms of not

1 awarding where there were concerns.

2 I will tell you after looking at a lot of
3 state IOTA rules, they all either tend to follow
4 two categories, which is one, they provide a great
5 deal of discretion to the fund administrator, or
6 they do pretty clearly lay out who is eligible and
7 who is not. And once you start reading them, it
8 makes sense because if you're just saying, We've
9 got to lay out some criteria, but give the fund
10 administrator the discretion unless that is
11 actually written into the rule, it becomes a
12 problem in administering it.

13 Thank you so much.

14 JUDGE SCALES: Thank you, Monica. And again,
15 I don't -- it's not fair to have people, you know,
16 comment in the abstract on a rule they haven't
17 seen, so I appreciate that, and I know our hour is
18 up.

19 Does anybody else want to add anything or have
20 anything else to say on the Task Force, anybody on
21 the Task Force? And I'm sorry, this is really,
22 it's not really an open meeting. It's an open
23 meeting as far as viewing, but as far as public
24 input, I think there will be another opportunity
25 for that if we take a draft, if we want to think

1 about adopting the hybrid rule or this one and we
2 actually take a vote.

3 So anybody else? Please raise your hand or
4 otherwise.

5 Okay. Discussion of future meeting schedule.
6 What I'm going to ask Elizabeth to do is send out
7 another Google poll, and I know our time is
8 valuable, but see if we can set another meeting,
9 and it will be several days after you receive the
10 hybrid rule, the hybrid draft rule so you can think
11 about that. And at that meeting, we may be taking
12 public input on the draft rule.

13 Does anybody have -- before I adjourn --

14 Yes, John.

15 MR. STEWART: I just have a quick question. I
16 mean is it the consensus of our Commission, or is
17 it just me, and it doesn't need to be at this next
18 meeting, but I'm just of the opinion that our
19 report that would go, that would accompany this is
20 important, you know, to have, maybe not in final,
21 but at least in substance at the time we make our
22 vote on the rule, because to me some of our
23 interpretation that goes into the report bears on
24 what decision I may make on the rule.

25 JUDGE SCALES: I can't argue with that. But I

1 would hate to start putting pen to paper on the
2 report without the rule in concept at least agreed.
3 That's where I'm coming from, because really the
4 deliverable, they didn't ask for a report. They
5 really asked for a proposed rule. I do agree with
6 you, John, that the report is important. But I
7 don't -- I mean I don't -- I wouldn't want to waste
8 somebody's time on doing that, but again, that's
9 just my view. And that's a Mayanne question really
10 unless -- does somebody else have a viewpoint on
11 that?

12 MR. LILE: I thought John was volunteering to
13 write the report.

14 JUDGE SCALES: Now, maybe I heard that wrong.
15 I think you're right, Laird.

16 All right. All those in favor?

17 MR. LILE: 5-1.

18 JUDGE SCALES: Scott, where are you on the
19 report rule issue?

20 MR. THOMAS: My main concern is that I not
21 have to write the report.

22 MR. STEWART: Well, I'm not saying we should
23 hold up voting on the rule, but I think we've all
24 talked about, Scott talked about, for example, the
25 civil versus criminal legal issue, and that vote

1 may be determinative on how we express our -- that
2 issue in a report that, you know --

3 JUDGE SCALES: Well --

4 MR. STEWART: -- put a statement in the
5 report, not to have a different opinion (inaudible)
6 if our report is going to say, Here is our rule
7 change, we may have different vote on that than if
8 our report contains some substantive discussion as
9 to why we came down on that, but that, you know,
10 maybe it's not hard and fast for the Commission.

11 JUDGE SCALES: That's a very good point, and
12 maybe --

13 MR. STEWART: So that begs the question that
14 maybe Scott should write the report.

15 JUDGE SCALES: Right, exactly. Maybe --

16 MR. LILE: (Inaudible.)

17 JUDGE SCALES: -- we'll all have -- and again,
18 there may be a visceral reaction to the hybrid
19 report and we're back -- to the hybrid rule and
20 we'll be back where we are right now, that's why I
21 want to get something to you, Monday if that's the
22 case. But maybe if we can certainly talk without
23 having a meeting and communicate with each other if
24 there is a, I can live with this rule if the report
25 has X, Y and Z in it. We can have that type of

1 informal dialogue, then maybe we can prepare the
2 report and have a vote where we have a report and
3 the rule all together, and maybe, maybe do that,
4 you know, two to three weeks. I know we're -- I
5 think we're a month from tomorrow is our deadline.

6 MR. STEWART: Yes.

7 JUDGE SCALES: Does anybody have a problem
8 with going that route? And I will talk to Mayanne
9 about it. And but again, I think the most
10 important thing for me right now, because again, at
11 the end of the day, I'm in Scott's camp as long as
12 I'm not writing the report, I'm clearly not overly
13 concerned with it. But I don't want to get this
14 hybrid rule thing out to you and then we can say
15 yes, but, or no, but, and have that package
16 together.

17 Is everybody okay with that? You can just hod
18 your head.

19 Laird.

20 MR. LILE: Yeah, let me ask the Court a
21 question. As you're describing the report, and
22 John, I understand what you're saying about the
23 rule, are you thinking there should maybe be some
24 comments that are proposed with the rule and maybe
25 some of these more rule-specific observations

1 should be a proposed comment? Because the report
2 as we have it now goes through a whole lot of stuff
3 that by the time you get down to the discussion of
4 the rule that's being proposed, you've got to get
5 through a whole lot of stuff. So John, are you
6 thinking about comments to the rule? Would you
7 rather see it that way?

8 MR. STEWART: I don't -- see, the challenge
9 with me, the challenge in my mind is doing comments
10 to the rule is that I think the report is going
11 to -- to me, the report is going to identify issues
12 where the Commission made a decision but felt like
13 there was room for discussion or consideration by
14 the Court, you know, any area that we want to
15 particularly identify. Now, it may be appropriate
16 for us to comment, but not until the Court decides
17 the issue.

18 MR. LILE: Yeah, that makes sense. Thank you.

19 JUDGE SCALES: So -- and just going back,
20 Laird, to the Administrative Order, Administrative
21 Order specifically addresses four distinct areas,
22 alternative models for the distribution of IOTA
23 funds, whether specific priorities should be
24 established, whether specific requirements or
25 limitations should be imposed, and whether

1 reporting requirements should be adopted. And I
2 would think that included in our rules should be
3 addressing those four areas, and then with regard
4 to taking all of that into consideration, because
5 we have subcommittee reports on most of those that
6 we can reference and attach, and then with regard
7 to the rule, just point out rather than comment
8 like John was saying --

9 MR. LILE: That make sense.

10 JUDGE SCALES: -- we point the Court's
11 attention to this specific issue. Here was the
12 principal concern of some of the Task Force
13 members, just so they know where --

14 MR. LILE: Yeah.

15 JUDGE SCALES: -- things hung us up, although
16 I am sure all seven Supreme Court Justices are on
17 the edge of their seats watching all of these
18 meetings, that they still probably would like it
19 crystallized in a report.

20 MR. THOMAS: But Ed, I think that just goes to
21 show that we can't really pre-write the report in
22 that the report is really a report of our final
23 discussion on this.

24 JUDGE SCALES: Yeah.

25 MR. THOMAS: And so I think we have discussion

1 on the hybrid rule, what we do with it, and that
2 may generate areas that belong in the report,
3 whether it's discussion about the Innocence
4 Project, about the identity of the administrator,
5 about 501(c)3 issues. We've had some of that
6 discussion today, but it's at a hypothetical level.

7 JUDGE SCALES: Right.

8 MR. THOMAS: But it seems to me that we
9 probably have an idea of what sort of things would
10 be addressed in the report, but until we have that
11 up or down vote with the back and forth before
12 that, I don't know how we really do it at this
13 stage.

14 JUDGE SCALES: All right. Let me talk to
15 Mayanne about it, but maybe we can -- again, a lot
16 of these concerns may go away when you get the
17 hybrid rule. Some may be highlighted, and maybe
18 they can be addressed in a report, but I don't want
19 to put the cart before the horse, so let's see if
20 we can come to consensus on the rule, and if not,
21 we will just -- Mayanne's the chair, I will hand it
22 back to her, and she can handle it at that time.

23 I'm sorry to take you over. I appreciate
24 everybody's time.

25 Elizabeth, I will circle back with you and

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1 send you an email hopefully by the end of the day
2 today, if not tomorrow, and then we can go from
3 there.

4 Elizabeth, are you still with us or have you
5 long since fallen asleep?

6 Karen.

7 MS. LADIS: I wanted to mention that -- let's
8 see, I guess next month, I'll be starting my 29th
9 year at Dade Legal Aid, so another weekend, if you
10 want to contact me over the weekend, another few
11 days, I'm in. So I'm here to help, help. What's
12 another couple days of my time.

13 JUDGE SCALES: Okay.

14 MS. LADIS: I'm not available though, just
15 letting you know, next Thursday until Tuesday.

16 JUDGE SCALES: Okay. Fair enough.

17 MS. LADIS: I'm off the grid.

18 JUDGE SCALES: Good for you. Good for you.

19 All right. Well, thank you all very much.
20 And unless anybody has any burning desires, we'll
21 go ahead adjourn the meeting. And Elizabeth, I
22 will circle back with you later.

23 Thank you all so very, very much.

24 UNIDENTIFIED SPEAKER: Great meeting.

25 MR. LILE: Thank you.

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1 MS. LADIS: Thank you all for taking so much
2 time.

3 (Zoom Video proceedings concluded.)
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STATE OF FLORIDA)
)
COUNTY OF ST. JOHNS)

I, Carman L. Gaetanos, Court Reporter and Notary Public, do hereby certify that I was authorized to and did **stenographically report** the foregoing proceedings, and that the transcript, is a true and correct record of my **stenographic notes**.

Dated this 27th of August, 2020.

Carman L. Gaetanos

Carman L. Gaetanos

From: [John Stewart](#)
To: [Tarbert, Elizabeth](#); [Downs, Mayanne](#); [Ladis, Karen J](#); [Lile, Laird A](#); [Thomas, Milo](#); [Sandridge, Hala](#); [Scales, Edwin A](#)
Subject: RE: Task Force on Distribution of IOTA Funds - Agenda and Backup
Date: Wednesday, August 12, 2020 2:29:38 PM

[This Email Originated From jstewart@rosswayswan.com Which Is External To The Firm]

Fellow Task Force Members:

I wanted to send an e-mail outlining some thoughts of mine after review of the latest iteration of the proposed rule change under consideration by us at our meeting Friday. Underpinning my comments is my belief that The Florida Bar, as the third largest and one of the most well respected Bars in the country, must have an equally robust Foundation. As an additional overriding concern is the lack of a legal opinion obtained by The Florida Bar Foundation as to the applicability, or not, of the Janus line of cases to IOTA funds. To my way of thinking if that line of cases is applied to IOTA funds then the proposed changes along the lines of those currently proposed are not only wise but likely the minimum necessary to comport with the changing legal landscape.

My comments, if the commission agrees, likely do not dramatically change the language of the rule as currently proposed but I believe are very important for the report which I expect will accompany any rule change the commission approves.

At the start I am comfortable with this idea of an IOTA funds administrator which may or may not be The Florida Bar Foundation. That decision should be at the Court's discretion. However, I do believe that this commission should recommend that there be only one IOTA funds administrator for the state. There are economies of scale and a litany of other issues that I think dictate that conclusion. I also do think that we at least need to appreciate that if the Court elected a different fund administrator and say for instance that was housed within OSCA that raises concerns for me about the continued autonomy that The Florida Bar holds as an arm of The Florida Supreme Court. While that may seem like a leap to some or all of you I can say that legislative challenges and opportunists cannot be underestimated.

Next, I hope that we will spend a reasonable amount of time looking at the definition of a Qualified Grantee Organization along with (g)(9) relating to use of IOTA funds by grantee organizations to assure that we are not exponentially growing the number of "qualified" groups entitled to receive funds and thereby diluting the effectiveness of the available funds.

I also hope we look at (g)(1)(H) and consider adding back in "or other law" as I understand that there are those eligible to practice Federal law that may not be a member of The Florida Bar or authorized by TRRTFB to practice law that may well otherwise provide, permissibly, qualified legal services.

Finally, I have always expressed concerns about some of the percentages/timeframes we set forth in the rule such as: (1) distribution within 6 months; (2) expenses of administration of the IFA not to exceed 10%; (3) no more than 20% of the funds received by the Qualified grantee to be used for

reserves or expenses etc. I have no objection to that criteria being in the rule but even with our best efforts those suggestions are arbitrary. This is the primary reason I requested that our report contain a request to the court that a review of the rule change be conducted within 2 years after the effective date so that the Court could be informed of any effects, positive or negative, of the changes based upon data gathered in that timeframe.

PS not that it is likely of much import but the term “qualified legal services provider” is also used in another Chapter of TRRTFB.

If anyone has any questions or concerns please feel free to call or e-mail. I hope everyone is safe and well.

JMS

John M. Stewart, Esq.

jstewart@rosswayswan.com

While we remain committed to the health and well-being of our community, we continue to provide the most responsive, personal service to assist our clients and colleagues during the COVID-19 pandemic. Rossway Swan has initiated remote teleworking environments to comply with the CDC’s physical distancing protocols. Our Firm’s offices remain open and our operations are being conducted in-office, if necessary, and via teleconferencing and virtual meeting platforms. Our attorneys and staff may be contacted by telephone or by email to schedule an appointment at your request. Thank you for your understanding during this difficult time. We will get through this together.



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Subdivisions (G)(8)(9) and (11) of Task Force Proposed Rule:

(8) Distribution of IOTA Funds by the Foundation. Within 6 months of receipt, the foundation must distribute to 1 or more qualified grantee organizations all collected IOTA funds except for direct expenses required to administer the IOTA funds. Prior to distribution, the foundation must maintain IOTA funds separate from other foundation funds. The foundation may not condition distribution of IOTA funds to a qualified grantee organization on payment to the foundation for any purpose, including training, or technology. The foundation must select qualified grantee organizations based on objective standards it develops. When adopted, the foundation must provide those standards to both The Florida Bar and the court and also prominently publish those standards on the foundation's website. The standards must require that IOTA funds be used to provide qualified legal services and, to ensure fair distribution of IOTA funds across Florida, must consider relevant data, including:

(A) demographic data provided by an appropriate governmental agency, such as the U.S. Bureau of Labor Statistics; and

(B) data provided by the qualified grantee organization on the use of any IOTA funds previously received.

(9) Use of IOTA Funds by Qualified Grantee Organizations. A qualified grantee organization must expend at least 90% of the IOTA funds received to facilitate qualified legal service providers providing qualified legal services. A qualified grantee organization must expend no more than 10% of the IOTA funds received for administrative expenses and establishing reserves. Administrative expenses include rent, training, and technology. Expenditures to facilitate qualified legal service providers providing qualified legal services are limited to:

(A) compensation paid to qualified legal service providers;

(B) compensation paid to support staff who are directly assisting qualified legal services providers, such as paralegals;

(C) compensation paid to staff necessary for coordinating volunteer qualified legal service providers; or

(D) expenses that otherwise directly facilitate providing qualified legal services. Compensation includes benefits such as health insurance and bar membership fees.

(11) Reporting by Qualified Grantee Organizations. Qualified grantee organizations must annually certify to the foundation their compliance with this rule's requirements on the use of IOTA funds. This certification must include, but not be limited to:

(A) the number of qualified legal services providers compensated or facilitated by the use of IOTA funds;

(B) the number of clients receiving qualified legal services paid for or facilitated by the use of IOTA funds;

(C) the number of low-income Floridians who, while not directly represented, are nevertheless impacted by qualified legal services paid for or facilitated by the use of IOTA funds;

(D) the number of hours expended delivering qualified legal services paid for or facilitated by the use of IOTA funds;

(E) the types of matters for which clients received qualified legal services paid for or facilitated by the use of IOTA funds;

(F) an accounting of the use of IOTA funds, including the amount used to establish reserves and pay for overhead and administrative expenses;

(G) the total amount received from sources other than IOTA funds by the qualified grantee organization; and

(H) any other information the court determines is relevant.



Momentum for Change: Ending the Nonprofit Starvation Cycle

By Jeri Eckhart-Queenan, Michael Etzel, Jess Lanney, and Julia Silverman

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Introduction

Throughout modern history and around the globe, nonprofits, NGOs, and civil-society organizations have played an essential role in solving humanity’s toughest problems.¹ Supported by a vast web of foundations, public funding, and private donors, these organizations take on challenges from extreme poverty to infectious disease to educational inequity.

However, as a sector, there is a problem in the way we fund these entities. Funding sources—national, state and local governments; multilateral and bilateral institutions; private foundations and individuals—are part of a complex system with inconsistent practices. Indirect-cost reimbursement, the specific focus of this paper, ranges from zero to a funder’s “fair share.”

Five foundations—the Ford Foundation, the William and Flora Hewlett Foundation, the MacArthur Foundation, the Open Society Foundations, and the David and Lucile Packard Foundation—formed a collaborative with The Bridgespan Group in 2016 to examine the problem of insufficient cost recovery. This paper shares what we have learned together, in hopes that it will be useful to the broader social sector.

We have found that despite funders’ intentions, today’s system is not consistently creating strong grantee organizations. In 2017, we examined the financial health of the 274 most highly cofunded nonprofits of the largest 15 US foundations. More than half suffered from frequent or chronic budget deficits, defined as at least two of the past five years. And 40 percent had fewer than three months of reserves in the bank to cushion financial shortfalls. In fact, 30 of the 274 organizations showed negative reserves—making them technically insolvent.

Why is this? Project grants, which represent more than three-quarters of US foundation giving and nearly all government funding globally, are the source of most of this underfunding.² While project grants are an essential tool in philanthropy, they routinely discount the core administrative and operational costs of delivering programs and services.

Over half of the 15 largest US foundations have a flat-rate indirect-cost reimbursement policy of 15 percent or less.³ While state and local governments granting federal money are supposed to provide a minimum reimbursement rate of 10 percent, actual indirect-cost allowances are often lower and sometimes nonexistent.⁴ Many global funders also restrict

1 Throughout this report, the term nonprofits includes all types of nongovernmental organizations, both domestic and international.

2 Niki Jagpal and Kevin Laskowski, *The State of General Operating Support 2011* (Washington, DC: National Committee on Responsive Philanthropy, May 2013), <https://www.issuelab.org/resource/the-state-of-general-operating-support-2011.html>.

3 Based on policies as of December 2018.

4 US Office of Management and Budget, “2 CFR 200 — Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” January 1, 2014.

grants to projects and tend to limit indirect-cost reimbursement to between 5 percent and 8 percent.⁵

Rigorous research confirms that grantees' actual indirect costs nearly always exceed these allocations. In a 2015 Bridgespan study of a large foundation's grantees, for instance, indirect costs ranged from 21 percent to 89 percent of direct program costs, with clear differences in cost structure by type of nonprofit. Nonprofit research labs, for example, had a median indirect-cost rate of 63 percent, two and a half times the 25 percent median rate of direct-service organizations. Similar variation exists in the private sector as well, where indirect-cost rates are not considered a measure of either effectiveness or efficiency. Indeed, for any enterprise, these figures simply reflect the mix of costs required to deliver results.

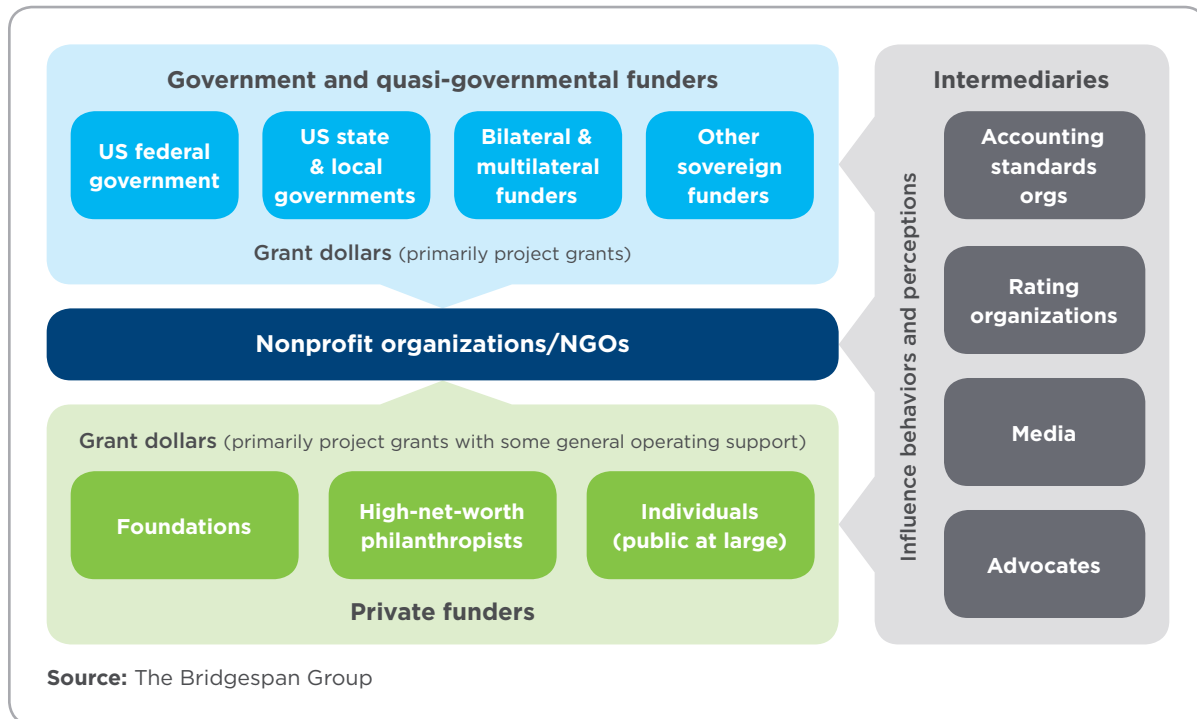
This report synthesizes an array of primary and secondary research documenting the progress made on understanding and addressing this issue. It also highlights the funder collaborative's recent efforts, which demonstrate momentum for change. Specifically, the presidents of the collaborative's member foundations have announced that they will be experimenting with a set of best practices and policies to combat the "starvation cycle" that undercuts the effectiveness of their grantees. They have also reached out by letter to small group of peer philanthropists, inviting them to help advance the work toward solutions. We share their learnings and experience with hopes for continued cross-sector collaboration, which we believe can improve cost recovery and strengthen the nonprofit sector for years to come.

We are grateful to the nearly 80 grantees that have explored the cost recovery challenge with us, as well as the financial experts and nonprofit intermediaries who have contributed to this collaboration, including BDO, CostTree, FMA, GuideStar, Humentum, Independent Sector, KPMG, Nonprofit Finance Fund, and Northern California Grantmakers, and many others who have researched this issue over the years.

5 Interviews conducted by Bridgespan in 2017. European Commission, "Financial Guidelines for Applicants," February 2016, <https://ec.europa.eu/social/BlobServlet?docId=15128&langId=en>.

I. Funder practice and public attitudes shape nonprofit indirect-cost policy

Nonprofits exist in a complicated marketplace, in part because they seek capital from a broad range of funders. As in any marketplace, some influential market makers set the rules. This section of the report primarily focuses on describing the indirect-cost-related policies, practices, and preferences of different funders. Later sections will describe the systemic and individual effects of this market on nonprofits, and the role that intermediaries have played in research and advocacy.



Indirect-cost policies are a historical outgrowth of postwar US government policy

The practice of regulating indirect costs in project grants to nonprofits originates in the US government’s approach to funding research and development at universities after World War II. In “The Economics of University Indirect Cost Reimbursement in Federal Research Grants,” authors Noll and Rogerson explain that “the inherent difficulties in writing performance contracts for R&D” led the federal government to use cost accounting reimbursement for research projects. In the 1940s, agencies funding research began to place caps on indirect costs to curb spending on other university expenses. Ultimately, Congress became “directly involved in setting indirect-cost rates in 1958 by passing legislation that capped the indirect-cost rate at 15 percent.”⁶

6 Roger Noll and William Rogerson, “The economics of university indirect cost reimbursement in federal research grants,” in *Challenges to Research Universities*, ed. Roger Noll (Washington, DC: Brookings Institution Press, 1998), 117, <http://www-siepr.stanford.edu/workp/swp97039.pdf>.

The federal government has changed practice dramatically since 1958, embracing the “fair share” approach—that federal agencies pay their fair share of costs, including indirect costs. In 2014, the Office of Management and Budget (OMB) extended its policy to include federal money being passed through to nonprofits by state and local governments. This OMB Uniform Guidance now requires state and local governments to honor existing Negotiated Indirect Cost Rate Agreements (NICRA) when granting federal money to nonprofits or to provide a *de minimis* indirect-cost rate of 10 percent for organizations without a NICRA. However, the implementation of this guidance has been inconsistent, resulting in continued under-reimbursement of indirect cost at the state and local level.

Establishing terms: Costs

- **Direct costs:** Expenses directly attributable to a specific project.
- **Indirect costs:** Expenses not directly tied to a specific project but shared across multiple projects. Indirect costs are essential and inextricably tied to a nonprofit’s ability to accomplish its goals.
- **Overhead:** Generally understood as administrative costs. Not an adequate substitute for the term “indirect costs,” which is more expansive.
- **Indirect-cost rate:** Indirect costs expressed as a percentage of total direct costs.

Among private foundations, indirect-cost rate policies have been common for decades. A RAND report from the 1980s captures the variance in policies at that time: “Many foundations customarily pay full indirect cost as budgeted in a proposal. Other foundations may pay only a portion of...or specif[y] a cap on the support of indirect costs.”⁷ We spoke to some private grantmakers who introduced more formalized policies capping indirect costs in the 2000s in response to challenges with universities and a need for rules to simplify grantmaking.

While policies and practices have evolved, the absence of high-quality outcome and performance data persists and continues to drive cost-reimbursement policy today.

Today, funding is predominantly restricted or “project-based”

The vast majority of institutional funding is issued as restricted grants and contracts tied to specific projects and programs. The US government⁸ and many global funders (i.e., multilaterals, bilaterals)⁹ are almost exclusively project funders. Among US foundations, between roughly 70 to 90 percent of grantmaking dollars have been restricted over the last two decades.¹⁰ Experts like Paul Brest and Garry Jenkins¹¹ suggest that this pattern is connected to the rise of strategic philanthropy and the notion that “impact is best

7 Rick Eden et al., *Indirect Costs: A Guide for Foundations and Nonprofit Organizations* (Santa Monica, CA: RAND Corporation 1986), <https://www.rand.org/pubs/reports/R3376.html>.

8 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Part III,” 78 Federal Register 78589, December 26, 2013, <https://www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards#h-5>.

9 Rose Longhurst and Tim Boyes-Watson, *Cost recovery: what it means for CSOs*, Bond and Mango, February 2016, <https://www.bond.org.uk/sites/default/files/resource-documents/cost-recovery-0216.pdf>.

10 Niki Jagpal and Kevin Laskowski, “The State of General Operating Support,” National Committee on Responsive Philanthropy, May 2013, <https://www.ncrp.org/files/publications/PhilanthropicLandscape-StateofGeneralOperatingSupport2011.pdf>.

11 Garry Jenkins, “Who’s Afraid of Philanthrocapitalism?” *Case Western Law Review* 61, no. 3 (August 2011), <https://scholarlycommons.law.case.edu/caselrev/vol61/iss3/4/>.

achieved and measured through grantor-initiated projects.”¹²

Funders who give general operating support (see callout below) represent only a fraction of overall funding in the social sector. Understanding current indirect-cost policies and practices is critical to recognizing the realities that nonprofits face in raising and aggregating capital in this marketplace.

General operating support

Some funders eschew the distinction in cost categories entirely, opting for unrestricted general operating support. Paul Brest asserts that “general operating support is an investment in the grantee’s overall expertise, strategy, management, and judgment.”¹³

Grantmakers for Effective Organizations (GEO) has long advocated for funders to allow nonprofits to use unrestricted funding “as they see fit to address urgent and emerging issues, boost salaries and benefits, invest in technology and other infrastructure, strengthen communications and fundraising efforts and meet other operational needs.”¹⁴

Establishing terms: Funding types

- **Cost-minus:** Expense reimbursement from a “buyer” that does not cover the minimum expenses associated with the project being funded and, therefore, produces a deficit.
- **Fair share:** Expense reimbursement from a “buyer” that covers actual direct costs and a “fair” (or proportional) share of actual indirect costs associated with the project.
- **Full cost:** Coined by the Nonprofit Finance Fund, full cost offers an enterprise-level orientation to evaluating the costs (both operating expenses and balance-sheet investments) that an organization needs to “build” a strong enterprise and achieve measurable outcomes.

12 Paul Brest, “Smart Money,” *Stanford Social Innovation Review*, Winter 2003, https://ssir.org/articles/entry/smart_money.

13 *Ibid.*

14 “Support Nonprofit Resilience: Financial Sustainability,” GEO, <https://www.geofunders.org/what-we-offer/the-smarter-grantmaking-playbook/support-nonprofit-resilience>.

Today’s indirect-cost-reimbursement policies are very diverse

Approaches to reimbursing, defining, and calculating direct and indirect costs on project grants vary significantly across the public and private funders that support nonprofit work.

	Federal government	State/local government	Bilaterals and multilaterals	Private foundations
Type	Fair-share funder	Flat-rate funders	Varies, predominantly fair-share funders	Varies, predominately flat-rate funders
Approach to indirect cost for nonprofits ¹⁵	Reimburse actual indirect costs. For economic and ethical reasons, agencies “bear their fair share of cost.” ¹⁶	Fund no indirect costs or low indirect costs at levels that vary by program (typically 0-10%).	Tend to fund indirect costs at very low rates (typically 5–8%). Multilaterals overall average 5.5% indirect-cost reimbursement. ¹⁷	Dominant approach for written policies is a flat indirect-cost rate of 10-15%. ¹⁸ Other approaches include flexible guidelines, program officer discretion, and general operating support.
Policy examples	Negotiated Indirect Cost Rate Agreement (NICRA): ¹⁹ Indirect-cost rate individually negotiated with each nonprofit awardee by primary contracting agency based on audit of nonprofit’s costs	New York examples (2013): ²⁰ <ul style="list-style-type: none"> • NYC Dept. of Education: 0% on universal pre-K • NYC Dept. of Health & Mental Hygiene: 2.3% on adolescent employment/education program • NYC Dept. of Homeless Services: 8.5% on shelters • NYS Education Dept.: 2.6-2.7% on community school, extended day school, and GED program • NYS Office for People with Developmental Disabilities: 9% for family support 	<ul style="list-style-type: none"> • DFID (UK): Up to 7% • European Commission: Up to 7% • Global Fund: 1–7% • United Nations: 5–12% • World Bank and regional development banks (e.g., AfDB, IDB, ADB): Each NGO calculates its contracting rate including indirect costs 	Selected foundation policies (December 2018): <ul style="list-style-type: none"> • California Endowment: 15% • Carnegie 15% • Ford: Minimum 20% • Gates: 15% • Helmsley: 10-20% • Hewlett: PO discretion • Kellogg: 15% • Lilly: 10% • MacArthur: 15% • Mellon: 0% • Moore: 12.5% • Packard: PO discretion • Templeton: 15%

15 Universities are often subject to separate policies.

16 “Uniform Administrative Requirements.”

17 Longhurst and Boyes-Watson, *Cost Recovery*.

18 Jeri Eckhart-Queenan, Michael Etzel, and Sridhar Prasad, “Pay-What-It-Takes Philanthropy,” *Stanford Social Innovation Review*, Summer 2016, https://ssir.org/articles/entry/pay_what_it_takes_philanthropy.

19 The organizations that receive large enough federal funds to warrant a NICRA tend to be larger organizations (including international NGOs, research institutions and universities). An organization and its primary granting or “cognizant agency” periodically renegotiate the NICRA based on a rigorous audit and allocation process. Each federal government agency uses their own procedure when determining NICRAs. Primary government agencies awarding NICRAs: DOD, ONR, OCA, USAID, HHS & NSF.

20 Human Services Council, *New York Nonprofits in the Aftermath of FEES: A Call to Action*, March 2016, <http://www.nysba.org/LessonsFromtheFEESCollapse/>.

The large number of low, flat-rate funders includes some of the most influential institutions in the global funding landscape (see table above). The European Commission (EC) is a prime example of a funder with a low indirect-cost rate that can inadvertently harm grantees. The EC is the primary funder for many NGOs in Europe; it has a 7 percent indirect-cost rate policy, provides short-term project grants, and offers no flexible or general support.²¹ As one program officer noted, “one thing that is common among organizations receiving European Commission funding is that they can’t survive without the funding, but they have many complaints.”

Practices are also inconsistent and may vary from policy

While policy provides the framework for reimbursing indirect costs, day-to-day practices are what translate policy into action. Across funders and the social sector writ large, there is significant inconsistency in key language, term definitions, and methodological approaches. The Full Cost Project has documented these challenges in their work in California.²² Regarding language and definitions, the most common terms include indirect costs, overhead, shared costs, administrative costs, core costs, full costs, true costs, and real costs. Each of these is defined differently by different funders (see Appendix A). In the social sector more broadly, even accounting-standards organizations do not have uniform definitions of these terms.

Moreover, there is evidence of a gap between how funders’ indirect-cost policies are written and how they are implemented. In interviews with 10 well-known US foundations in 2016, leaders identified a range of approaches to working within their indirect-cost policies. Some expressed a preference for line-item budgeting of all costs, particularly when working on new or high-risk projects. Others engaged explicitly with a system of cross-subsidization: leaders acknowledged that their own restricted funding often does not fully cover costs and sought unrestricted funding from others to close the gap. Among their own key grantees, those same leaders acknowledged that their general operating support often plays the same role—closing the gap left by restricted funding from other donors.²³

Individual program officers also take different approaches, as reflected in our interviews with program officers at several large global foundations. Some program officers were more stringent (“My experience with grantees is that they treat indirect cost like bonus money...Generally, I prefer a model in which I reimburse as much direct as possible with minimal indirect-cost reimbursement.”) while others interpreted policy creatively to help reimburse grantees’ costs. Those in the latter category often encourage grantees to “direct charge” and put as many of their indirect costs into direct as possible to maximize recovery. However, this strategy often runs up against the limitation of grant

21 Interviews conducted by Bridgespan in 2017.

22 Real Cost Project, *Barriers to Change: Phase One Report*, 2015, http://calnonprofits.org/images/Overcoming_Barriers_Phase_1_Report.pdf; Real Cost Project, *Overhead Madness: Research Summary*, 2015, <https://www.weingartfnd.org/files/OVERHEAD-MADNESS.pdf>.

23 Interviews conducted by Bridgespan in 2016.

budgets.²⁴ As one program officer based in Mexico put it, “It’s one thing for me to tell a grantee to include time for the executive director in a grant, but at the end of the day they will receive the same amount of money. It’s going to have to get deducted from somewhere else.”²⁵

Furthermore, many foundations do not have a written policy, which can contribute to greater uncertainty and variation in practice. A survey by Grantmakers for Effective Organizations (GEO) in 2014 found that three-quarters of the staffed grantmaking foundations that responded did not have a written indirect-cost policy. GEO’s former vice president of member and partner engagement, Heather Peeler, explains that many program officers avoid taking advantage of that flexibility: “In the absence of clear policy, implicit guidelines and organizational tradition may take root...‘We’ve always done it this way’ becomes the standard response...and everyone misses out on the opportunity for a meaningful conversation about what it costs to achieve results.”²⁶

Institutional philosophies and pragmatic constraints shape indirect-cost policies and practices

A range of philosophical preferences and pragmatic constraints inform the policies and practices of any individual funder. In principle, endowed private funders have stewardship responsibilities to allocate scarce grantmaking capital to its highest and best use. Similarly, funders with accountability to the public are under pressure to demonstrate value for money in their budgeting. Both face the reality of scarcity, being asked to do more with less. Economic theory argues that funders should pay their proportional share of indirect costs in order to understand and manage costs, and make price and quality trade-offs as needed. But pragmatically, simplicity and fairness shape which policies an individual funder is actually able to implement.

Individual funders choose to optimize against these constraints in a variety of ways. For example, the United Kingdom’s foreign aid agency, the Department for International Development (DFID), rationalized and reduced its own management structure and costs, offering themselves as a model for their grantees, reflecting the belief that nonprofits should have low overhead costs as a matter of good management.

24 We heard reports of similar behavior by European Commission program officers as well.

25 Quotes are drawn from conversations with program officers at three different foundations.

26 Heather Peeler, “The Truthiness About Overhead,” GMNsight blog, December 27, 2014, <http://www.gmn-sight.org/the-truthiness-about-overhead/>.

Public attitudes also shape the perception of “overhead”

In the social sector, “overhead” costs have often been characterized as markers of inefficiency. Organizations that rate nonprofits continue to rely on overhead-cost ratios from Form 990 data as part of their nonprofit performance-rating scales (e.g., Charity Navigator). And periodic scandals—in which high-profile organizations are accused of spending too much on executive salaries, fundraising, administration, or even engaging in outright fraud—have reinforced negative attitudes toward “overhead” (e.g., the James Irvine Foundation in 2003, Boys and Girls Clubs of America in 2010, Wounded Warrior Project in 2016).

As a result, there is a widespread belief that indirect costs should typically remain below 10 to 15 percent of direct costs for nonprofits.

Individual donors

Donations from individuals also constitute a significant source of revenue for nonprofits. While individuals primarily give unrestricted cash, there is evidence of “overhead aversion.”

A 2014 study by UC Davis researchers reported that when donors were told that all their money would go directly to the cause (with overhead covered by another funder) they were 80 percent more likely to give.²⁷

27 Uri Gneezy, Elizabeth A. Keenan, and Ayelet Gneezy, “Avoiding Overhead Aversion in Charity,” *Science* 346, no. 6209 (October 2014), <https://science.sciencemag.org/content/346/6209/632.abstract>.

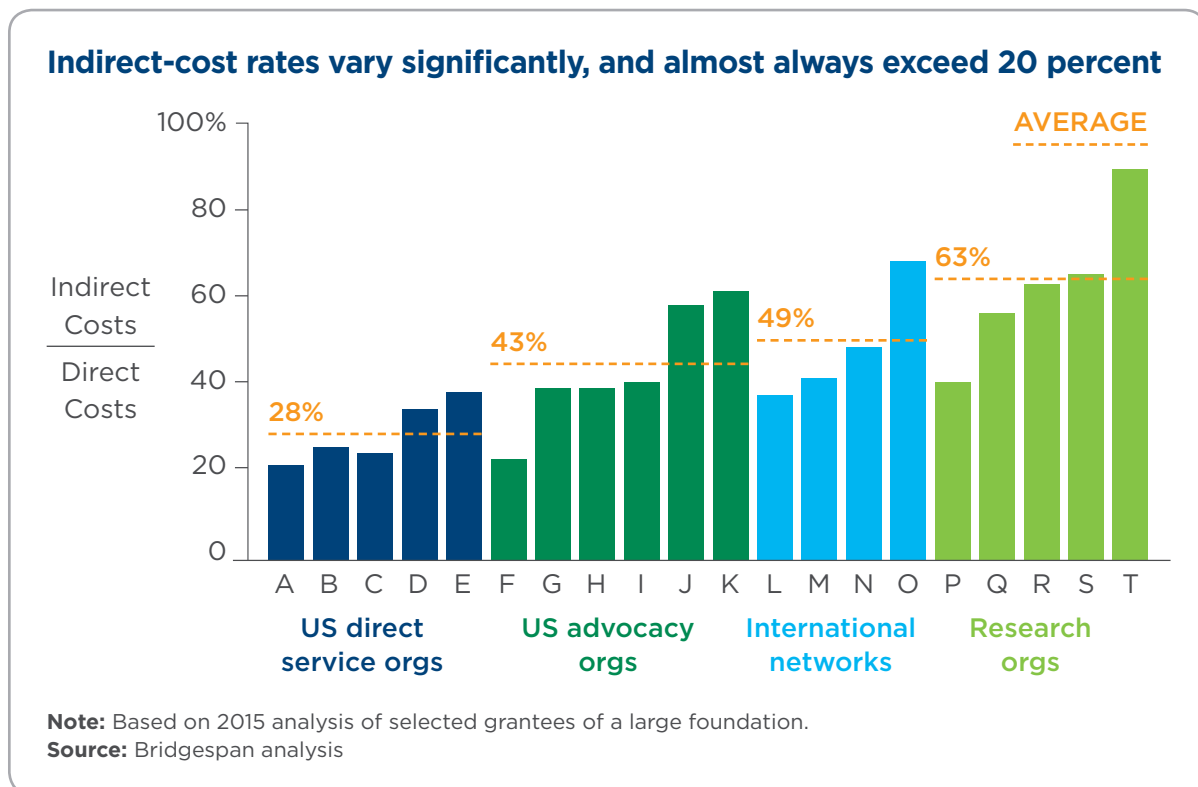
II. Prevailing indirect-cost policies and practices weaken nonprofits

Nonprofits that rely on foundation, government, or global institutional funding face challenges to recovering and managing indirect costs within a complex marketplace. The result is that grantees strive to deliver strong results, but often at great institutional and personal cost. Put simply, today’s system is not consistently creating strong grantee organizations. This section explores the effects of this system on nonprofits.

Project-based grants are usually “priced” at a loss, resulting in insufficient cost recovery

As discussed in the previous section, project-restricted grants are the norm in the social sector. These grants are typically “priced” by budgeting for the direct costs of the work plus a modest allocation for indirect costs. The most common indirect-cost-reimbursement policies are “flat rate” policies with indirect-cost rates of 15 percent or less on project grants (aligned with prevailing attitudes and beliefs). As of December 2018, more than half of the 15 largest US funders by endowment had policies of this type.

However, these common flat rate policies are too low to cover the actual indirect costs of most organizations. In 2015 Bridgespan conducted empirical analysis of the financials of a group of trusted nonprofit partners of a large foundation, finding that their indirect-cost rates varied significantly, and almost always exceeded 20 percent—often by a sizable margin (see chart).²⁸



28 Eckhart-Queenan, Etzel, and Prasad, “Pay-What-It-Takes Philanthropy.”

Therefore, the prevailing flat rate policies of 15 percent or less only cover a portion of most grantees' actual indirect costs. As a result, many of these project grants are priced at a loss with organizations losing money to execute the work.

Seventy percent of the CEOs of international NGOs—including the largest in the world—identify insufficient cost recovery as one of their most pressing problems.²⁹ In the Nonprofit Finance Fund (NFF) 2018 *State of the Sector Survey*, the top two most frequently cited organizational challenges among responding nonprofits were financial sustainability (62 percent) and funding full costs (57 percent). Additionally, over 90 percent of respondents report feeling underfunded by government funders as well as foundations.³⁰

Certain solutions can lead a nonprofit to lose money in executing a project. For example, an organization may decide to “co-fund” an initiative, adding its own, usually unrestricted, capital to a funder’s restricted project support. However, sector surveys suggest the decision to “co-fund” is less a choice than a pernicious pattern that reflects the bargaining power of funders. The Urban Institute found that government payments did not cover the full costs of providing agreed-upon services for 59 percent of nonprofits with budgets over \$1 million.³¹

Insufficient cost recovery leads to financial weakness, distress, and risk of failure

Recovering costs is an important component of basic financial health for organizations. Hilda Polanco, founder and CEO of the nonprofit financial intermediary FMA, explains: “When there is a gap between what [an organization] raise[s] and what it costs to perform the work, a ‘structural deficit’ takes hold... that persistently drains resources from the organization... It’s a roof that, by design, will collapse every single year.”³² Chronic underfunding of indirect costs therefore contributes to financial weakness in the social sector.

More starkly, a 2016 report by SeaChange and Oliver Wyman found that 10 percent of New York City nonprofits are technically insolvent, with 40 percent at financial risk with less than two months of operating costs in the bank. The authors concluded that “cost-minus” funding was at cause: “Most nonprofit funding...comes in the form of [state or local] government contracts or restricted grants that virtually guarantee a deficit.”³³ Similarly, NFF’s 2018 annual sector survey found that 24 percent of nonprofits ended 2017 in the red, and that this shortfall was usually unplanned.³⁴

29 Jeri Eckhart-Queenan, Jacob Allen, and Jari Tuomala, “Stop Starving Scale: Unlocking the Potential of Global NGOs,” The Bridgespan Group, April 2013, <https://www.bridgespan.org/insights/library/pay-what-it-takes/unlocking-the-potential-of-global-ngos>.

30 Nonprofit Finance Fund, *State of the Nonprofit Sector: 2018 Survey*, <https://nff.org/learn/survey>.

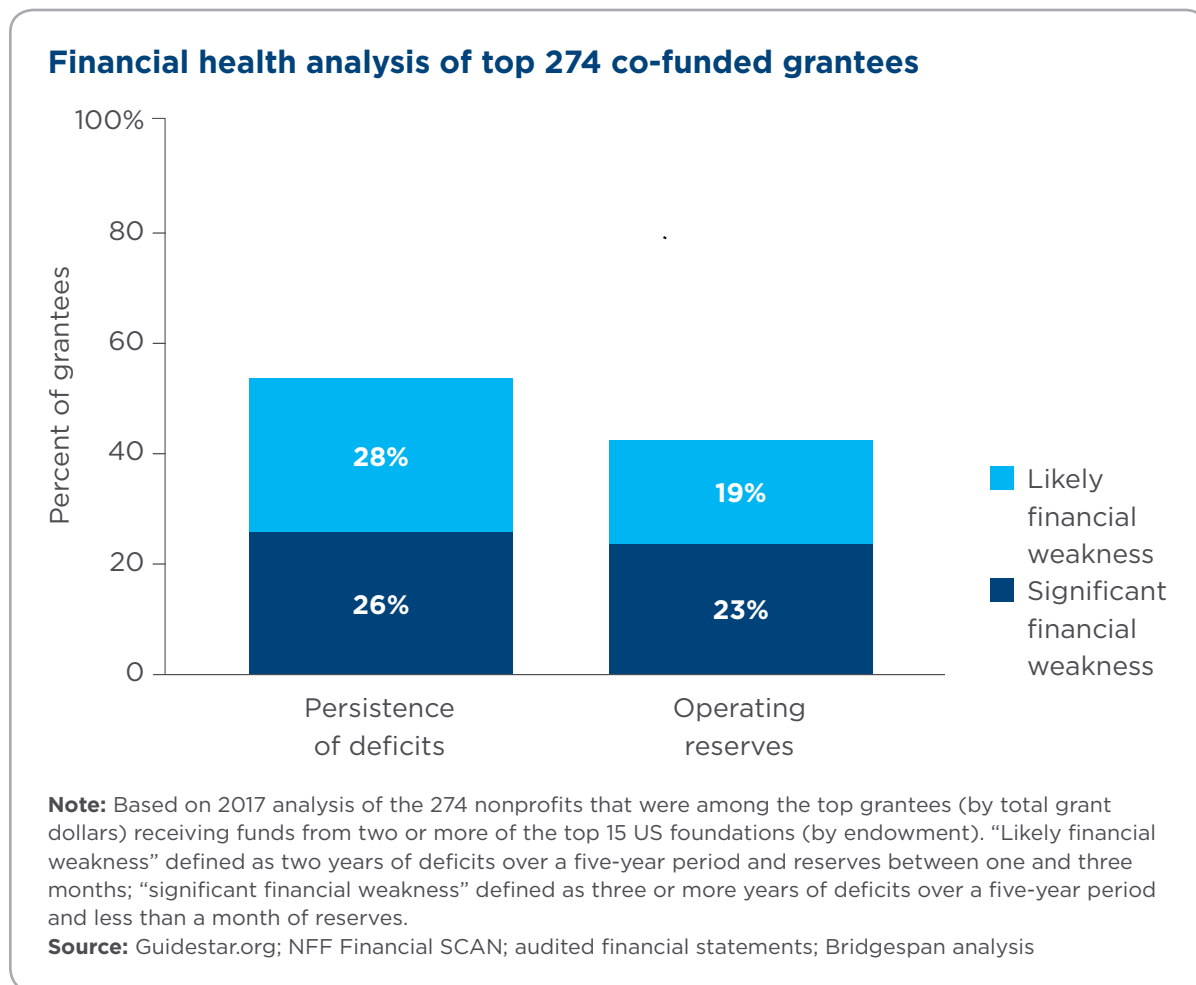
31 Sarah Pettijohn et al., *Nonprofit-Government Contracts and Grants: Findings from the 2013 National Survey*, Urban Institute, December 2013, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412962-Nonprofit-Government-Contracts-and-Grants-Findings-from-the-National-Survey.PDF>.

32 Nell Edgington, “What Nonprofit Sustainability Looks Like: An interview with Hilda Polanco,” Social Velocity, February 21, 2017, <https://www.socialvelocity.net/2017/02/21/what-nonprofit-sustainability-looks-like-an-interview-with-hilda-polanco/>.

33 SeaChange Capital Partners and Oliver Wyman, *Risk Management for Nonprofits*, March 2016, <http://seachangecap.org/wp-content/uploads/2016/03/SeaChange-Oliver-Wyman-Risk-Report.pdf>.

34 Nonprofit Finance Fund, *State of the Nonprofit Sector*.

Empirical analysis by Bridgespan suggests that financial weakness extends to an even broader set of nonprofits. In 2017, Bridgespan analyzed key financial health indicators for 274 nonprofits that were among the top grantees (by total grant dollars) receiving funds from two or more of the top 15 US foundations (by endowment). Between 40 and 50 percent of these grantees showed signs of financial stress, with scarce operating reserves and/or persistent budget deficits. Twenty-six percent of grantees were close to insolvency (having run budget deficits in three of the last five years) and 23 percent had less than one month of operating reserves (see chart). In fact, 30 grantees were technically insolvent and had borrowed against restricted grants to fund critical expenses (see Appendix B).



Insolvency can lead to organizational failure. In 2015, Federation Employment & Guidance Service (FEGS)—one of New York’s largest human services providers with an annual budget of \$250 million—filed for bankruptcy, pointing to shortfalls in government contracts.³⁵ A number of high-profile distress mergers have also occurred in recent years, including the acquisition of AED by what is now FHI 360, and Save the Children’s merger with Merlin. As one global program officer explained, limited cost recovery “has led to a hollowing out of civil society institutions...at a time when they are critically important.”

35 Human Services Council, *New York Nonprofits*.

Organizations are unable to invest adequately in their own capacity

As a result of these dynamics, nonprofits are too often unable to invest enough in their own capacity. The Urban Institute found that among US nonprofits reporting insufficient government payments, 47 percent drew on their reserves and 28 percent reduced their number of employees to cover the gap.³⁶ Similarly, 34 percent of NGOs surveyed by InsideNGO reported diverting resources away from program improvements and expansion in order to cover gaps caused by insufficient indirect cost recovery.³⁷

The Government Accountability Office (GAO) reported in 2010 that US nonprofits may “reduce the population served or the scope of services offered, and may forgo or delay physical infrastructure and technology improvements and staffing needs” in response to cost-minus funding. The GAO reinforced what many in the social sector have noted: due to their inability to recover costs from funders, nonprofits “often compromise vital ‘back-office’ functions, which over time can affect their ability to meet their missions.”³⁸ One global program officer put it more viscerally: “Our human rights grantees [outside of the United States] face the question of which finger to chew off to make ends meet.”

Wing et al. find that lack of reimbursement for overhead led to reduced investments in technology among large international NGOs, reducing productivity and effectiveness.³⁹ NGOs invested only half as much in technology as for-profit peers. One reason for this is that the same NGOs spent nearly 80 percent more on financial management and employed nearly twice as many staff as for-profit counterparts.⁴⁰

Unintended consequences result as nonprofits adapt to recover costs

Grantees have developed a range of adaptive behaviors to recover costs. Individually, these adaptations are rational responses to a complex funding marketplace. Collectively, they create three challenges:

Underreporting and limited knowledge of costs: As Bridgespan’s 2009 “Nonprofit Starvation Cycle” research details, unrealistic expectations around indirect costs create pressure on nonprofits to conform to low overhead rates: “In this context, nonprofits are reluctant to break ranks and be honest in their fundraising literature.”⁴¹ Urban Institute’s review of IRS Form 990 data from more than 160,000 nonprofits found “substantial

36 Pettijohn et al., *Nonprofit-Government Contracts and Grants*.

37 InsideNGO, *Full Cost Recovery Project: Final Research Summary*, 2010. InsideNGO merged with Mango and LINGOs in 2017 to form Humentum.

38 United States Government Accountability Office, *Treatment and Reimbursement of Indirect Costs Vary among Grants, and Depend Significantly on Federal, State, and Local Government Practices* GAO-10-477, May 2010, <https://www.gao.gov/products/GAO-10-477>.

39 Kennard Wing et al., “Paying for Not Paying for Overhead,” *Foundation News and Commentary* 46, no. 3 (2005).

40 Eckhart-Queenan et al., “Stop Starving Scale.”

41 Ann Goggins Gregory and Don Howard, “The Nonprofit Starvation Cycle,” *Stanford Social Innovation Review*, Fall 2009, https://ssir.org/articles/entry/the_nonprofit_starvation_cycle.

inconsistency in the reporting of functional expenses,”⁴² with the usual result of understating the organizations’ administrative and fundraising cost. “Nonprofits are clearly responding to pressure from public and private sector funders to keep real and reported overhead costs low. In addition, nonprofits may be adapting to funder policies against funding adequate levels of overhead costs by classifying some such costs as program costs.”⁴³

In practice, underreporting can result in lack of knowledge of the costs of conducting business, impeding clear strategic decision making for nonprofits and funders alike. Weak financial management capabilities and unclear vision of cost structure and drivers at many organizations also contribute to this dynamic.⁴⁴ As Independent Sector CEO Dan Cardinali put it, “there is a deep responsibility to those in nonprofits to be bold and honest about ‘what does it really take.’ Nonprofits must get clarity about what we can accomplish and the resources required.”⁴⁵

High transaction costs: InsideNGO’s Full Cost Recovery Project found that international NGOs actually experience “an increase in indirect costs as they work to accommodate indirect-cost restrictions.” To comply with funder restrictions, they must often spend more on accounting and reporting systems, or spend more to raise additional unrestricted funds. Though harder to quantify, management time and attention required to negotiate and manage disparate terms and policies across a patchwork of individual grants also contributes to increased transaction costs.

Perverse incentives: Anecdotally, nonprofit CEOs have identified a range of incentives at odds with good decision making. Specific indirect-cost policies can encourage building new facilities, shifting the location of staff, or increasing reliance on sub-contracts regardless of their strategic value. For example, the use of sub-grants—paying other organizations to execute the work—is a common cost recovery tactic, but one that exposes organizations to substantial implementation risk and can “distort design simply to recoup costs,” as one NGO leader explained.

42 Thomas Pollak, Patrick Rooney, and Mark Hager, *Understanding Management and General Expenses in Nonprofits*, Overhead Cost Study Working Paper, 2001, <https://www.semanticscholar.org/paper/Understanding-Management-and-General-Expenses-in-Pollak-Rooney/98ad6564313ff82ac6ad44817fef24e31fd999>.

43 Center on Nonprofits and Philanthropy at Urban Institute and Center on Philanthropy at Indiana University, *The Quality of Financial Reporting by Nonprofits: Findings and Implications*, Nonprofit Overhead Cost Project Brief No 4, August 2004, <https://www.urban.org/sites/default/files/publication/57736/311045-The-Quality-of-Financial-Reporting-by-Nonprofits.PDF>.

44 Hilda Polanco of FMA points to several common challenges among leaders that make it harder for them to accurately price and fund their work, including unclear vision of costs to deliver services and associated revenue/cost drivers, a lack of focus on balance sheet health, and insufficient long-term financial planning (Edgington, “What Nonprofit Sustainability Looks Like.”).

45 GuideStar Webinar, “How Much Does It Cost to Do Good: Conversations on Nonprofit Overhead, Part 2,” December 19, 2016.

III. Several factors affect cost recovery for individual organizations

The systemic effects of today's indirect-cost-policy environment are outlined above. However, these dynamics affect individual organizations differently, and as a result, the adverse effects of insufficient cost recovery are not distributed equally across the sector. In 2016, through 60 nonprofit indirect-cost diagnostics and over 320 interviews across a variety of grantees and funders, Bridgespan identified four key factors that influence cost recovery (see Appendix C).⁴⁶ The first two—type of organization and funding model—are intrinsic. The latter two are more dynamic: financial acumen and social capital.

Success in recovering costs is linked more closely to factors unrelated to impact than to the work of the organization. We have observed an inequity among grantees that are able to capitalize on these factors. While some organizations are able to deploy adaptive techniques to survive in the current funding environment, others cannot—and struggle with cost recovery and poor financial health as a result.

Type of organization sets the “starting size” of the indirect cost gap

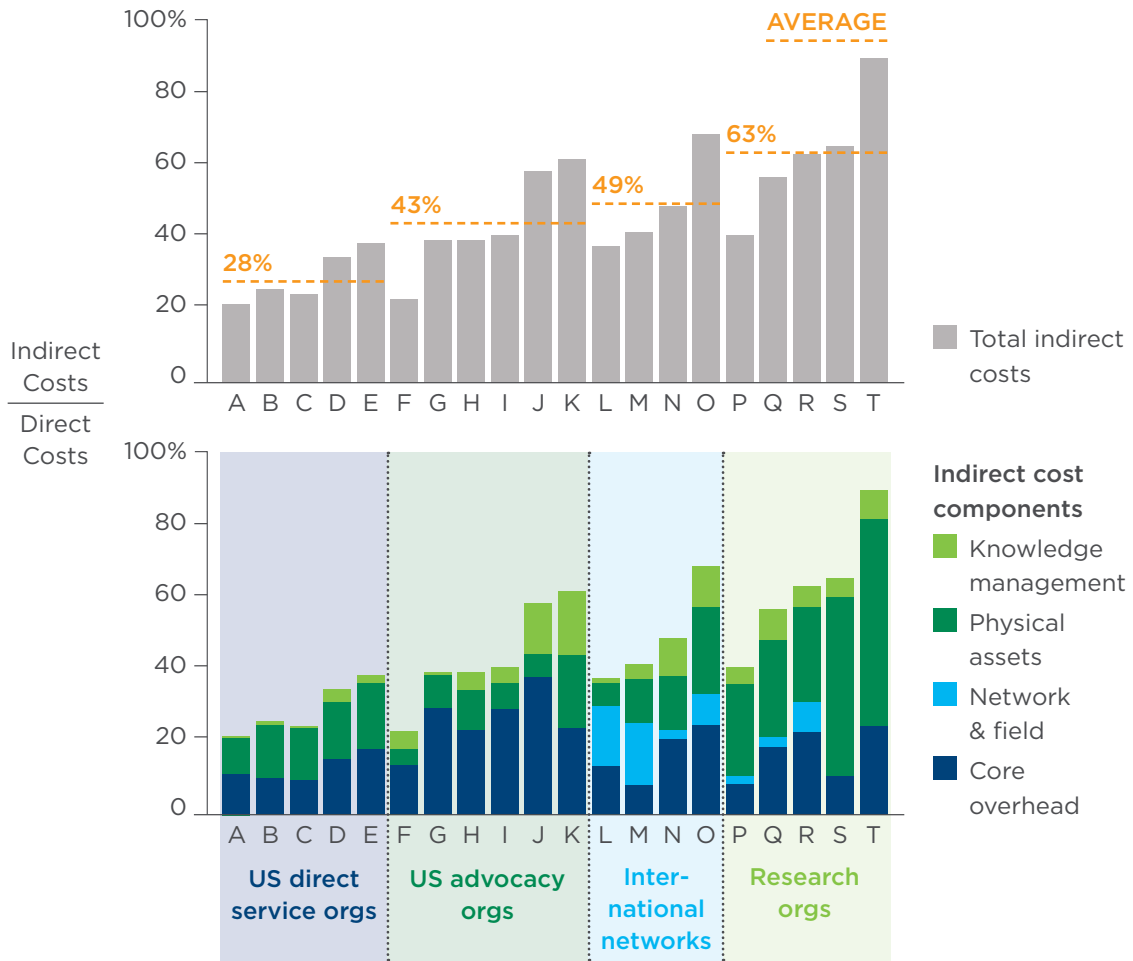
As discussed earlier, Bridgespan's research on cost structures of organizations reveals significant variation in indirect-cost rates across different types of nonprofits. The mix of direct and indirect costs required to deliver impact varies, as does the composition of indirect costs (see chart next page).

Some nonprofits, such as research organizations, require asset-intensive, shared capital investments (e.g., laboratory equipment). Others, like advocacy organizations, do not operate on a project basis, and therefore need robust centralized resources in order to remain responsive and accommodate the fluid, unpredictable nature of their work.

All else being equal, types of organizations characterized by higher indirect-cost rates face comparatively steeper cost-recovery challenges than those with lower rates. The “flat rate” indirect-cost-reimbursement policies used widely by foundations—typically 20 percent or less—already fall well below the actual indirect costs of most grantees; for organizations with a higher share of indirect costs, the funding gap created by cost-minus grantmaking is that much greater. In order to address shortfalls, these grantees need to raise or allocate more unrestricted resources.

⁴⁶ Factors affecting cost recovery for individual organizations were surfaced through the 60 indirect cost diagnostics that Bridgespan conducted in 2016 (i.e., it does not include the 26 indirect cost verifications executed for the funder collaborative pilot in 2018). See Appendix C for further detail.

The composition of indirect costs varies across types of nonprofits



Note: Based on 2015 analysis of selected grantees of a large foundation.
Source: Bridgespan analysis

Funding model informs the nature of cost recovery challenges

How an organization raises its revenue—its “funding model”—significantly affects its ability to recover costs. Two factors are key: extent of cost-minus funding (i.e., grants that do not reimburse actual direct and indirect costs) and access to unrestricted capital.

For one global government-transparency organization, half of its funding is cost-minus, coming from multilaterals and sovereign funders like the European Commission, which provides roughly 7 percent reimbursement for indirect costs. “Despite the low indirect-cost rates, we know that taking UK and European government funding is also a means of gaining leverage to shape their broader development agenda in pursuit of our mission,” said a leader of that government-transparency organization. “As a result, we try to get unrestricted funding from [named private foundations] to not hobble ourselves with restrictions.”

Conversely, a prominent science-research organization struggles to cover its costs when receiving cost-minus project grants from foundations because it has almost no unrestricted capital. This grantee gets three-quarters of its funding from the federal government, receiving its “fair share” of indirect costs through a NICRA. As the CFO explained, “we don’t have buckets of unrestricted money, and so we can’t subsidize the work of foundations by chipping in to cover the additional cost of the work that they don’t reimburse us for.”

In short, cost recovery is more challenging for grantees whose primary revenue sources provide predominantly cost-minus and/or restricted project funding.

Financial acumen enables technical cost recovery strategies

The ways in which organizations allocate, account for, and present their finances enable different approaches to cost recovery. Two examples illustrate this range:

- One US think tank has invested in a highly detailed cost allocation system to attribute and directly charge as many expenses as possible to projects (including expense codes to track copier, printer, supplies, and timesheets for all administrative staff across 100 projects). According to the leadership of this organization, “we rethought how to allocate expenses—particularly within IT and front-end operations—because we were not covering very real expenses critical to our ability to accomplish the work.” This approach has helped the organization build and sustain its capacity.
- Conversely, a grassroots workers’-rights organization receives primarily project-based funds but has limited knowledge of its costs and a CFO from the for-profit sector who is not familiar with the idiosyncrasies of accounting for multiple programs, grants, and locations. “We’re really struggling with this and although we don’t know how much, we know there is a gap between what we get and what it costs to execute,” said a leader of this organization. The consequence has been underinvestment in critical capabilities: “The work gets done, but people burn out, and we have to make tradeoffs. For example, we don’t have computers that are less than 12 years old. Everyone has to bring their personal laptop because we can’t spend money on that. We’re out there to help beneficiaries, but it prevents our staff from working efficiently and expanding our reach.”

As these examples illustrate, grantees’ understanding of their own cost structure varies. Organizations that are more financially sophisticated are better able to adopt systems and processes that enable the attribution of shared expenses to specific programs.

Social capital empowers some organizations to overcome cost recovery challenges

Finally, social capital can play an important role in an organization’s ability to advocate for favorable funding terms. “Social capital” refers to the deployment of social, cultural, and/or economic power by the staff of an organization—including their social networks, personal information, and skillsets—to productive ends.

For example, a community-development nonprofit led by a former foundation program officer has been able to secure primarily unrestricted funding for operations. As the CEO explains: “I bring a lot of knowledge, relationships, experience, and expertise to bear and know how to navigate the system. We don’t suffer with this indirect cost issue.”

The CEO of a cultural organization serving an at-risk community of color painted a very different picture: “Organizations like ours, rooted in and predominantly serving communities of color, have been historically under-capitalized. Foundation program officers have asked us if our board members have connections to someone on their board or if we could get another foundation president to call theirs and encourage an investment. We don’t have those connections or networks, and so we can’t easily secure that kind of funding.”

Social capital can also affect a grantee’s willingness to be candid with funders about indirect-cost challenges for fear of jeopardizing their funding. NFF’s 2014 State of the Sector Report found that three-quarters of nonprofits surveyed did not feel they could have an open dialogue with their funders about their need for general operating support.⁴⁷ The Full Cost Project concluded that the “uneven power dynamic between grantmaker and grantee creates a culture where nonprofits feel they cannot be transparent on issues around financial challenges and the true cost of delivering services.”⁴⁸ These are likely to be magnified for less powerful organizations that already start from weaker bargaining positions in the grantmaking process.

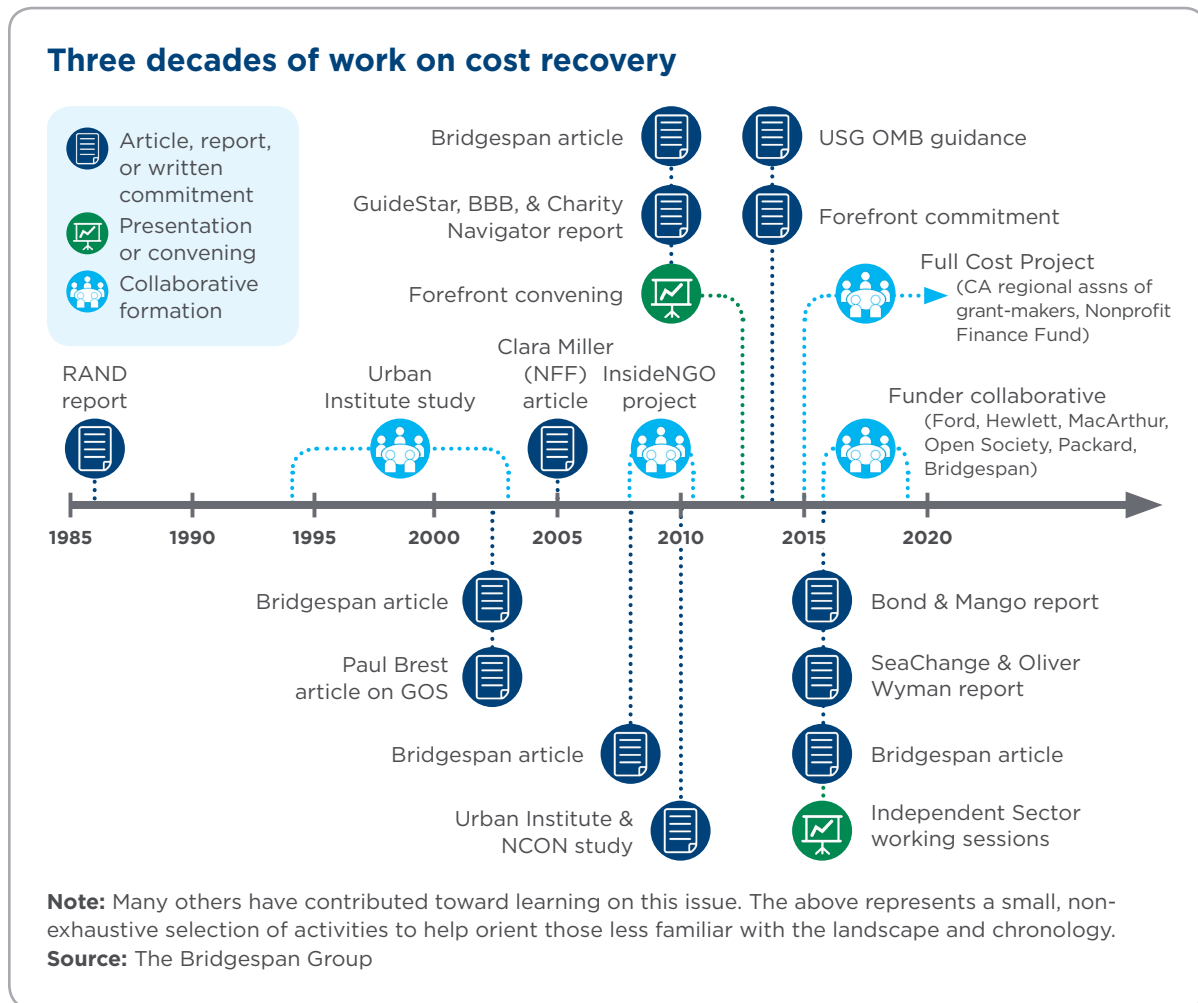
Improving understanding of cost recovery, among both funders and nonprofits, is critical to enabling more constructive communication and partnerships between grantors and grantees.

47 Nonprofit Finance Fund, *State of the Nonprofit Sector*.

48 Real Cost Project, *Barriers to Change*.

IV. A wide range of efforts have sought to understand and address insufficient cost recovery

Over the past few decades, a number of scholars and advocates have shed light on issues related to indirect cost recovery; their findings and efforts to change practice have informed the content in this report. The following offers a brief overview of that history.



Many have worked to establish a data-driven foundation for understanding the issue

As early as 1986, a RAND report highlighted the lack of shared language, definitions, and common policies on indirect costs. “A nonprofit that fails to identify and fully recover its indirect costs,” noted the report, “may encounter financial difficulties that hamper its effectiveness and may threaten its existence.” In addition, the “unpredictable support of indirect costs [by foundations] may limit an organization to a short-term, project-to-project planning strategy.”⁴⁹

49 Eden et al., *Indirect Costs*.

From 1994 to 2004, the Urban Institute Nonprofit Overhead Cost Study analyzed how nonprofits allocate and report costs.⁵⁰ It found that nonprofits struggle to accurately report their costs and, “to deal with the inadequate funding for administration, organizations resort to the strategies of *low pay, make do, and do without* that diminish organizational effectiveness.”⁵¹

In 2009, Bridgespan’s “Nonprofit Starvation Cycle” research pointed to unrealistic expectations about the costs of running a nonprofit. To align with funders’ misconceptions, nonprofits sometimes misrepresent their costs. This, in turn, leads to funders having unrealistic expectations. Conforming to those expectations, nonprofits underinvest in basic capacities “leaving [them] so hungry for decent infrastructure that they can barely function as organizations—let alone serve their beneficiaries.”⁵²

This research was followed by a closer look at the effect on global NGOs in Bridgespan’s 2013 article “Stop Starving Scale,”⁵³ which found that many large, international NGOs experience “fragmented growth that feeds the programmatic branches and starves the operational core.” Since 2003’s “Costs Are Cool,”⁵⁴ Bridgespan has stressed that organizations need to “fully understand their programmatic costs to make strategic decisions about the allocation of their resources.”

Similar dynamics are playing out in Europe. In 2016, Mango published a cost-benchmarking study exploring the barriers to cost recovery among UK and internationally based NGOs. In addition to documenting the patterns of underfunding, Mango pointed to “an inadequate understanding of value for money for all stakeholders [and] a distortion of the market, where CSOs [Civil Society Organizations]

Recognizing the importance of government

Throughout the 2000s, much of the work on this issue focused on the relationship between foundations and grantees. But in 2010, the Urban Institute and the National Council of Nonprofits undertook the first comprehensive national study of the effect of government contracting policies and procedures on nonprofit human service providers. The report found that “insufficient government payments” of indirect costs frequently prevented nonprofits from covering their full program costs.⁵⁵ In 2013, a follow-up survey touched on a broader range of sectors (most except hospitals and higher education), finding that insufficient cost recovery was most problematic among human-services providers.

After the 2014 Office of Management and Budget (OMB) guidance, federal pass-through funds to state and local governments needed to cover at least some indirect costs. The National Council of Nonprofits (NCON) has focused on influencing state and local governments toward full implementation of that guidance. NCON calls on nonprofits to “own their costs,” be transparent about their costs and finances, and advocate for their rights.

Focused on California, the Nonprofit Overhead Project (coordinated by CalNonprofits) also seeks adoption of the OMB Guidance while aiming to equip nonprofits with the training they need to engage in discussion about the costs of their outcomes.

50 The project was a collaboration between the Center on Nonprofits and Philanthropy at Urban Institute and the Center on Philanthropy at Indiana University. They analyzed surveys, case studies, and Form 990 data to better understand how nonprofits report costs.

51 Center on Nonprofits and Philanthropy et al., *Getting What We Pay For*, <https://www.urban.org/sites/default/files/publication/57731/311044-Getting-What-We-Pay-For.PDF>.

52 Goggins Gregory and Howard, “The Nonprofit Starvation Cycle.”

53 Eckhart-Queenan et al., “Stop Starving Scale.”

54 Susan Colby and Abigail Rubin, “Costs Are Cool: The Strategic Value of Economic Clarity,” The Bridgespan Group, December 2003, <https://www.bridgespan.org/insights/library/funding-strategy/costs-are-cool-the-strategic-value-of-economic-cla>.

55 Elizabeth T. Boris, Erwin de Leon, Katie Roeger, and Milena Nikolova, *Human Service Nonprofits and Government Collaboration: Findings from the 2010 National Survey of Nonprofit Government Contracting and Grants*, Urban Institute, October 2010, <http://webarchive.urban.org/publications/412227.html>.

without large levels of unrestricted funding appear unduly uncompetitive.”⁵⁶ Mango (now part of Humentum) continues to work with NGOs to understand and articulate their costs more clearly to inform budgeting and cost recovery.

Campaigns have spread the message that overhead is not a good measure of performance

In 2013, GuideStar, BBB Wise Giving Alliance, and Charity Navigator came together to launch the Overhead Myth campaign, advocating that “the percent of charity expenses that go to administrative and fundraising costs...is a poor measure of a charity’s performance.” They urged donors to “pay attention to other factors of nonprofit performance: transparency, governance, leadership, and results.” In 2014, they published a “Letter to the Donors of America,” calling for sharing data on performance and costs.

The Charity Defense Council has also launched public ad campaigns (including “I’m Overhead”), advocating for donors to evaluate nonprofits based on their impact and defending individual organizations in the media. Founder and President Dan Pallotta argues that adequate executive compensation and investments in fundraising are essential for achieving impact, especially since fundraising is the only form of capacity building that “multiplies itself.”⁵⁷

In 2016 and 2017, Independent Sector hosted a series of working sessions with a group of intermediaries and funders aimed at improving understanding of this issue, identifying opportunities for closer coordination, and developing a shared narrative that links cost recovery to organizational resilience and the effectiveness of the social sector as a whole.

Multiple efforts have engaged foundations and nonprofits

In 2013, Forefront (formerly Donors Forum) convened a cross-section of staff from smaller Midwest foundations to discuss barriers and potential solutions to funding indirect costs. Building upon these conversations, in 2014 Forefront began publicly advocating that “supporting the full costs of program outcomes requires support of all aspects of the organization.”⁵⁸

In the past several years, InsideNGO (now part of Humentum) has convened thought leaders, NGOs, and foundations to move the conversation beyond using NGOs’ overhead ratio as the sole measure of mission success.

56 Longhurst and Boyes-Watson, *Cost Recovery*.

57 Kate Torgovnick May, “A new way to judge nonprofits: Dan Pallotta at TED2013,” TEDBlog, March 1, 2013, <https://blog.ted.com/a-new-way-to-judge-nonprofits-dan-pallotta-at-ted2013/>.

58 Valerie S. Lies, “Forefront’s Commitment to Full-Cost Funding,” June 10, 2014, <https://myforefront.org/articles/forefronts-commitment-to-full-cost-funding/>.

From 2015 to 2016, the three California Regional Associations of Grantmakers launched the Real Cost Project (now the Full Cost Project) with the dual goals of increasing the number of funders providing real-cost funding and building the skills and capacity of grantmakers.⁵⁹ Early convenings identified barriers to changing funding practices, including “a lack of well-defined policies to guide real cost evaluation and reimbursements, a reliance on individual staff members to make decisions around real cost funding, and funder practices driven and reinforced by cultural norms in the field.”⁶⁰ The research concluded that changing cultural norms and practices will require both buy-in from foundation CEOs and engagement with grantees about the costs of achieving their outcomes.

In shifting from research to action, the Full Cost Project recognizes the limitations of debating overhead spending and focuses instead on the costs of achieving outcomes. The group seeks to change grantmaker culture by engaging senior leadership on this issue and addressing a “clear need for training” among foundation staff and nonprofit leaders.⁶¹ To support this goal, NFF, the California Community Foundation, and the Weingart Foundation launched a related pilot project early in 2016 to explore how foundation staff and nonprofits can work together to better fund full costs. The pilot included financial training workshops, individual technical assistance and coaching, and convenings for 12 nonprofit grantees and foundation staff to help them understand and implement full cost concepts and methods.

Other foundations and intermediaries—like the Wallace Foundation, FMA, and InsideNGO (now part of Humentum)—have also focused on closing the financial skills gap through training. This work continues as studies suggest that extensive investments are required to achieve long-lasting changes in financial practices (see sidebar).⁶²

Building financial management skills to understand and manage costs

Efforts to address cost-recovery issues are likely to require strengthening financial skills of both grantees and program officers. Evidence suggests that effective financial skill building is a long-term, team-based endeavor for both nonprofit leaders and grantmakers. An MDRC evaluation of the Wallace Foundation’s Strengthening Financial Management in Out-Of-School Time initiative—in which financial management training was provided to a cohort of 25 youth-serving nonprofits in Chicago—found it required between 800 and 1,000 hours of executive, financial, and program staff time over two to three years to achieve long-lasting changes to financial practices.

Looking at the broad range of financial management resources available for nonprofits and foundations reveals wide variation in topic focus, delivery mechanism, and quality. Grantees are the main audience for these resources, with fewer offerings aimed at grantmakers. A smaller set of resources are focused directly on issues related to cost recovery (e.g., grantee training to develop project budgets that reflect total cost of work, grantmaker workshops on evaluating the impact of grants on grantee financial health) including those offered by NFF, Mango, InsideNGO, and FMA (the training provider for the Wallace Foundation’s initiative).

59 The Real Cost Project was executed by the California Regional Association of Grantmakers, a collaborative of Northern California Grantmakers, Southern California Grantmakers, and San Diego Grantmakers. The Project was funded by the California Community Foundation, The William and Flora Hewlett Foundation, The David and Lucile Packard Foundation, The Parker Foundation, The Ralph M. Parsons Foundation, and the Weingart Foundation. The Project is organized by David Greco, president and CEO at Social Sector Partners and a former vice president at NFF.

60 Real Cost Project, *Barriers to Change*.

61 Real Cost Project, *Increasing the Impact of Philanthropy in California*, August 2016, <https://ncg.org/resources/real-cost-project-increasing-impact-philanthropy-california>.

62 Karen Walker et al., *The Skills to Pay the Bills: An Evaluation of an Effort to Help Nonprofits Manage Their Finances*, MDRC, February 2015, <https://www.mdrc.org/publication/skills-pay-bills>.

In 2016, Bridgespan and five US foundations—Ford, Hewlett, MacArthur, Open Society, and Packard—launched a collaborative with the goal of identifying a shared, scalable solution to the problem of insufficient cost recovery among nonprofits. From 2016 to 2017, the funder collaborative developed a deeper understanding of the issue through analysis of funder portfolios and primary research with grantees, both to assess their indirect-cost rates and also to determine the factors affecting their cost recovery.⁶³ Based on the learnings from these activities—and with a view toward identifying a shared solution for paying fair share on project grants—the foundation presidents agreed to pilot third-party verification of grantee indirect-cost rates in 2018.

A 2018 pilot by a funder collaborative explored potential solutions

Through third-party verification of indirect-cost rates for 22 grantees, the funder collaborative's 2018 pilot assessed the viability of potential solutions for paying fair share. Considerations included pathways for integration into existing practice, process credibility and value, and ability to develop shared standards (see Appendix C).

The outcomes of the verification process reaffirmed key findings from Bridgespan's previous primary research with grantees. There was significant variation in cost structure across participating nonprofits; verified indirect-cost rates ranged from 12 to 60 percent. Additionally, in comparing verified grantee indirect-cost rates to the reimbursement rates in recent grants of the collaborative foundations, the pilot found that grantees' verified indirect-cost rates exceeded foundation allocations by an average of 17 percentage points.

From a process perspective, the pilot indicated that integrating third-party rate verification into existing practice is feasible. For example, verification could be added onto a grantee's existing audit process. Furthermore, verification was shown to be a relatively inexpensive and efficient process: the average pilot verification cost \$21,000 and took just eight weeks to complete.

Those who participated in the pilot found the verification process valuable—nonprofits learned about their cost structures, and program officers developed a deeper understanding of their grantees. Ninety-five percent of pilot grantees found it easy to work with the verification partners, and 95 percent of program officers found verifications credible.

The verification partners—FMA and BDO/Humentum—developed their own costing and process standards for their work with grantees during the pilot. Reflecting on their respective approaches, these providers were enthusiastic about the possibility of reconciling their methodologies to produce a cohesive set of voluntary standards and shared definitions for use in indirect-cost rate calculation.

⁶³ This report is a product of the funder collaborative's research efforts conducted by Bridgespan.

The five members of the funder collaborative have committed to overcoming the underfunding of grantees' indirect costs

After more than two years of research and analysis, the five members of the funder collaborative announced in September 2019 that they had agreed to experiment with a set of best practices and policies to combat the “starvation cycle” that undercuts the effectiveness of their grantees. The presidents of the Ford, Hewlett, MacArthur, Open Society, and Packard Foundations also reached out by letter to a small group of peer philanthropists, inviting them to help advance the work toward solutions.

Ford Foundation President Darren Walker characterized the presidents' unified commitment to change as a “breakthrough” in addressing chronic grantee underfunding. “As funders, we bear responsibility for the state of this funding ecosystem,” said Walker. “It is only by working together that we are able to advance solutions that work beyond the walls of any one institution.” “[Five Foundations Address the ‘Starvation Cycle’](#)” in the *Chronicle of Philanthropy* details of the collaborative's “learning journey” and findings.⁶⁴

The foundation presidents and their staffs understand that systemic change is hard to accomplish, no matter how compelling the data and rationale. It will require patience and persistence to alter deeply embedded policies and practices shared by countless foundations, government and multilateral funders, nonprofits, and the intermediaries.

The difficult work of implementing the presidents' proposed solutions to chronic nonprofit underfunding is just beginning. Thoughtful, long-term collaboration across the social sector will be crucial to sustaining momentum and ultimately putting an end to the “starvation cycle.”

⁶⁴ Jeri Eckhart-Queenan, Michael Etzel, and Julia Silverman, “Five Foundations Address the ‘Starvation Cycle,’” *Chronicle of Philanthropy*, September 4, 2019, <https://www.philanthropy.com/paid-article/five-foundations-address-the/293>.

Appendices

Appendix A: Variation in language and definitions around indirect costs

Below is a list of the language and definitions used by campaigns and organizations that are addressing how nonprofit indirect costs should be funded. Note that the list is not exhaustive.

Campaign or organization	Language	Definition(s)
BBB Wise Giving	<ul style="list-style-type: none"> Administrative costs 	<ul style="list-style-type: none"> None given
The Bridgespan Group	<ul style="list-style-type: none"> Non-programmatic costs <ul style="list-style-type: none"> Real costs, indirect costs (2016) Overhead, indirect-cost rates (2009) Full costs (2003) Cost architecture Allocation⁶⁵ 	<ul style="list-style-type: none"> Non-programmatic costs <ul style="list-style-type: none"> Indirect costs (2016): All costs that are not directly attributable to a specific project, including all non-production costs, such as executive salaries, staff training, office space, equipment, research, travel, and technology (four sub-categories: administrative costs, network and field, physical assets, knowledge management); does not include fundraising Overhead (2009): No clear definition; implied that it includes information technology systems, financial systems, skills training, fundraising processes, staff salaries, and other infrastructure costs⁶⁶ Full costs (2003): Direct and indirect costs of program⁶⁷ Cost architecture <ul style="list-style-type: none"> Main cost categories: Fundamental cost categories (e.g., direct and indirect; program, shared program, and indirect) Cost taxonomy: Structure and nomenclature for functional expenses; specifically, what line items are used, and how they are grouped together into cost families Cost assignment: Designation of line items or cost families to a particular main cost category (e.g., non-programmatic office rents are assigned to indirect) Allocation <ul style="list-style-type: none"> Allocation methods: Specific approaches applied to spread costs from one cost category to another (e.g., how costs are allocated from the indirect or shared program main cost categories to a specific program) Allocation principles: Shared guidelines for cost allocation that apply to multiple methods; intended to establish parameters for permissible approaches (e.g., specifying acceptable cost bases, identifying minimum requirements for input cost data, etc.)

65 Cost architecture and allocation definitions stem from materials prepared for a workshop of the funder collaborative held on September 26, 2017.

66 Goggins Gregory and Howard, "The Nonprofit Starvation Cycle."

67 Colby and Rubin, "Costs Are Cool."

Campaign or organization	Language	Definition(s)
Center for Effective Philanthropy	<ul style="list-style-type: none"> Overhead 	<ul style="list-style-type: none"> None found
Charity Defense Council, Dan Pallotta	<ul style="list-style-type: none"> Overhead 	<ul style="list-style-type: none"> None found
Charity Navigator	<ul style="list-style-type: none"> Administrative expenses Overhead 	<ul style="list-style-type: none"> Administrative expenses: “Percent of total budget that a charity spends on overhead, administrative staff and associated costs, and organizational meetings;” dividing a charity’s administrative expenses by its total functional expenses yields this percentage (lower is better)⁶⁸ Segments nonprofits into four groups (food banks, food pantries, and food distribution; fundraising organizations; community foundations; and museums) and has different guidelines for acceptable levels of administrative expenses⁶⁹
FASB	<ul style="list-style-type: none"> Supporting activities 	<ul style="list-style-type: none"> Supporting activities: All activities of a nonprofit other than program services (e.g., supervision, oversight, accounting, human resources, purchasing, program development); generally, supporting activities include the following activities: <ul style="list-style-type: none"> – Management and general activities – Fundraising activities – Membership development activities⁷⁰
GEO	<ul style="list-style-type: none"> General operating support 	<ul style="list-style-type: none"> General operating support: A grant in support of a nonprofit organization’s mission rather than specific projects or programs; also the working capital nonprofits need to sustain their day-to-day operations
Independent Sector	<ul style="list-style-type: none"> Core support General operating support (2004)⁷¹ Overhead 	<ul style="list-style-type: none"> Core support or general operating support (2004): Funding directed to an organization’s operations as a whole rather than to particular projects; may be used not only for the delivery of services or other activities directly in pursuit of the organization’s mission, but also for administrative and fundraising expenses (overhead)
InsideNGO (now part of Humentum)	<ul style="list-style-type: none"> Overhead Indirect costs 	<ul style="list-style-type: none"> Overhead: Functions and activities necessary to conduct the affairs of the organization Indirect costs: Program and overhead costs not needed to reach particular project objectives

68 “Glossary – Administrative Expenses,” Charity Navigator, <https://www.charitynavigator.org/index.cfm/bay/glossary.list/word/Administrative%20Expenses/print/1.htm?>

69 “Financial Score Conversions and Tables,” Charity Navigator, <https://www.charitynavigator.org/index.cfm?bay=content.view&cpid=48#.VxD-B3pVZpv>.

70 FASB, *Proposed Accounting Standards Update: Not-for-Profit Entities (Topic 958) and Health Care Entities (Topic 954): Presentation of Financial Statements of Not-for-Profit Entities*, April 22, 2015.

71 Independent Sector, *Guidelines for the Funding of Nonprofit Organizations*, (Washington, DC: Independent Sector, 2004).

Campaign or organization	Language	Definition(s)
Leap of Reason, Mario Morino	<ul style="list-style-type: none"> Overhead 	<ul style="list-style-type: none"> None given
National Council of Nonprofits	<ul style="list-style-type: none"> Indirect costs Full costs Overhead 	<ul style="list-style-type: none"> Indirect costs: Rent, utilities, technology, administration, professional fees, and other expenses that are not tied to any one program but are vital to sustaining a healthy organization⁷² Overhead: Combination of “management,” “general,” and “fundraising” expenses⁷³
Nonprofit Finance Fund	<ul style="list-style-type: none"> Full costs 	<ul style="list-style-type: none"> Full costs: Day-to-day operating expenses, working capital, reserves, fixed asset additions, and debt principal repayment⁷⁴ “What ends up classified as overhead is so open to interpretation, even manipulation, that we cannot provide a useful or consistent definition...”
Nonprofit Overhead Project (in CA)	<ul style="list-style-type: none"> Overhead Full costs 	<ul style="list-style-type: none"> Overhead: (management and general expenses plus fundraising expenses) divided by (management and general expenses plus fundraising expenses plus program services)⁷⁵ Recognizes that these categories are often interpreted differently
Overhead Myth (GuideStar, Charity Navigator, BBB Wise Giving Alliance)	<ul style="list-style-type: none"> Overhead ratio Real costs True costs 	<ul style="list-style-type: none"> Overhead ratio: Percentage of a nonprofit organization’s expenses that is devoted to administrative costs and fundraising costs; calculated by adding administrative (IRS Form 990, Part IX, Line 25, Column C) and fundraising (IRS Form 990, Part IX, Line 25, Column D) costs and dividing by total expenses (IRS Form 990, Part IX, Line 25, Column A).⁷⁶ Administrative expenses include investments in an organization’s infrastructure and operations
Real Cost Project	<ul style="list-style-type: none"> Real costs 	<ul style="list-style-type: none"> Real costs: Administrative and operating costs plus programmatic costs plus reserve and capital costs⁷⁷ All of the necessary costs for a nonprofit organization to deliver on mission and to be sustainable over the long term
Real Costs Strategic Initiative-Forefront	<ul style="list-style-type: none"> Full cost funding Real costs⁷⁸ Fully-funding the mission 	<ul style="list-style-type: none"> Full costs: Cost of doing business

72 National Council of Nonprofits, *Investing for Impact: Indirect Costs Are Essential for Success*, September 2013, <https://www.councilofnonprofits.org/trends-policy-issues/investing-impact-indirect-costs-are-essential-success>.

73 “(Mis)Understanding Overhead,” National Council of Nonprofits, <https://www.councilofnonprofits.org/tools-resources/misunderstanding-overhead>.

74 Claire Knowlton, “Why Funding Overhead Is not the Real Issue: The Case to Cover Full Costs,” *Nonprofit Quarterly*, Winter 2015, <http://nonprofitquarterly.org/2016/01/25/why-funding-overhead-is-not-the-real-issue-the-case-to-cover-full-costs/>.

75 What is overhead... and why does it matter?” CalNonprofits Nonprofit Overhead Project, <http://calnonprofits.org/programs/overhead/about-the-nonprofit-overhead-project/what-is>.

76 “Frequently Asked Questions,” Overhead Myth, <http://overheadmyth.com/faqs/#q1>.

77 “What does ‘real cost’ mean?” Real Cost Project.

78 “Donors Forum’s Real Costs Strategic Initiative Moves Forward,” Forefront, June 25, 2015, <https://myforefront.org/news/donors-forums-real-costs-strategic-initiative-moves-forward>.

Campaign or organization	Language	Definition(s)
SeaChange	<ul style="list-style-type: none"> Cost-minus funding 	<ul style="list-style-type: none"> Cost-minus funding: Government contracts or restricted grants to nonprofits that virtually guarantee a deficit. Government contracts create working capital needs because funding arrives after expenses paid and are subject to unpredictable delays in payment
Social Venture Partners, Paul Shoemaker	<ul style="list-style-type: none"> Restricted funds 	<ul style="list-style-type: none"> Restricted funds: “Quite damaging dollars”
Urban Institute	<ul style="list-style-type: none"> Organizational overhead Admin expenses Admin overhead costs⁷⁹ 	<ul style="list-style-type: none"> None given
USAID	<ul style="list-style-type: none"> Negotiated Indirect Cost Rate Agreement (NICRA) 	<ul style="list-style-type: none"> Indirect-cost rate: Total allowable indirect costs divided by equitable distribution base “Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective (e.g., office space rental, utilities, and clerical and managerial staff salaries)...to facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.” <i>De minimis</i>-10% “It is USAID’s policy that grantees that agree to an indirect cost rate ceiling that is less than the government-wide NICRA rate in a contract or grant for cost sharing or other reasons shall not recoup the amounts occasioned by the reduction in the rates on other agreements with the U.S. Government.”⁸⁰
Health and Human Services	<ul style="list-style-type: none"> Indirect-cost rate 	<ul style="list-style-type: none"> Refers applicants to OMB circular
Corporation for National and Community Service	<ul style="list-style-type: none"> Indirect-cost rate 	<ul style="list-style-type: none"> Same language as OMB circular

79 Brice McKeever, Marcus Gaddy, and Elizaebth Boris, *Nonprofit-Government Contracts and Grants: California Findings*, Urban Institute, September 2015, <https://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000348-Nonprofit-Government-Contracts-and-Grants-California-Findings.pdf>.

80 “An Indirect-Cost Rate Guide for Non-Profit Organizations,” USAID, <https://www.usaid.gov/work-usaid/resources-for-partners/indirect-cost-rate-guide-non-profit-organizations>.

Campaign or organization	Language	Definition(s)
State government	<ul style="list-style-type: none"> • Indirect costs • Central service costs • General administration 	<p>Illustrative examples:</p> <ul style="list-style-type: none"> • Massachusetts Community Block Grants: Up to 18% of the total grant amount can be used for general administrative expenses; these include such personnel costs as financial/secretarial support and a grant manager to oversee program operations, as well as certain non-personnel expenses such as telephone, copying charges, audit, and other “overhead” types of costs • Texas Dept. of Family and Protective Services: “An indirect-cost rate is a method for determining, in a reasonable manner, the proportion of indirect costs that each contract should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base” • Contractors may use a NICRA or de minimus of 10%⁸¹
Bill & Melinda Gates Foundation	<ul style="list-style-type: none"> • Indirect costs 	<ul style="list-style-type: none"> • Indirect costs: Overhead expenses or ongoing operational costs incurred by the applicant organization on behalf of the organization’s activities and projects, but that are not easily identified with any specific project • Administrative or other expenses which are not directly allocable to a particular activity or project • Expenses related to general operations of an organization that are shared among projects and/or functions • Basic examples include executive oversight, existing facilities costs, accounting, grants management, legal expenses, utilities, and technology support • Indirect-cost rate varies from 0-15%; indirect cost reimbursement = rate (%) * total project costs (including personnel, subcontracts, supplies, equipment, etc.)⁸²
Ford Foundation	<ul style="list-style-type: none"> • Overhead 	<ul style="list-style-type: none"> • Overhead: Actual costs to administer a project⁸³
Robert Wood Johnson Foundation	<ul style="list-style-type: none"> • Indirect costs 	<ul style="list-style-type: none"> • Indirect costs: Those costs that are not easily identified but are necessary to conduct the grant, such as payroll processing, accounting support, human resource department costs, etc. It is also referred to as overhead. The RWJF standard rate is 12%⁸⁴
Walmart Foundation	<ul style="list-style-type: none"> • Indirect costs 	<ul style="list-style-type: none"> • Indirect costs: Non-program-related expenses; may not exceed 10% of the total program budget

81 “Contracting with DFPS: Contract Handbook, Chapter 5, Indirect-cost rates,” Texas Department of Family and Protective Services..

82 “Indirect Cost Policy for Project Grants and Contracts for Applicable Organizations,” Bill & Melinda Gates Foundation, https://docs.gatesfoundation.org/Documents/Indirect_Cost_Policy.pdf.

83 Darren Walker. “Moving the Ford Foundation Forward,” Ford Foundation, November 8, 2015, <https://www.fordfoundation.org/ideas/equals-change-blog/posts/moving-the-ford-foundation-forward/>.

84 “Financial Glossary,” Robert Wood Johnson Foundation, <http://www.rwjf.org/en/how-we-work/grants/grantee-resources/reporting-and-accounting-information/financial-glossary.html>.

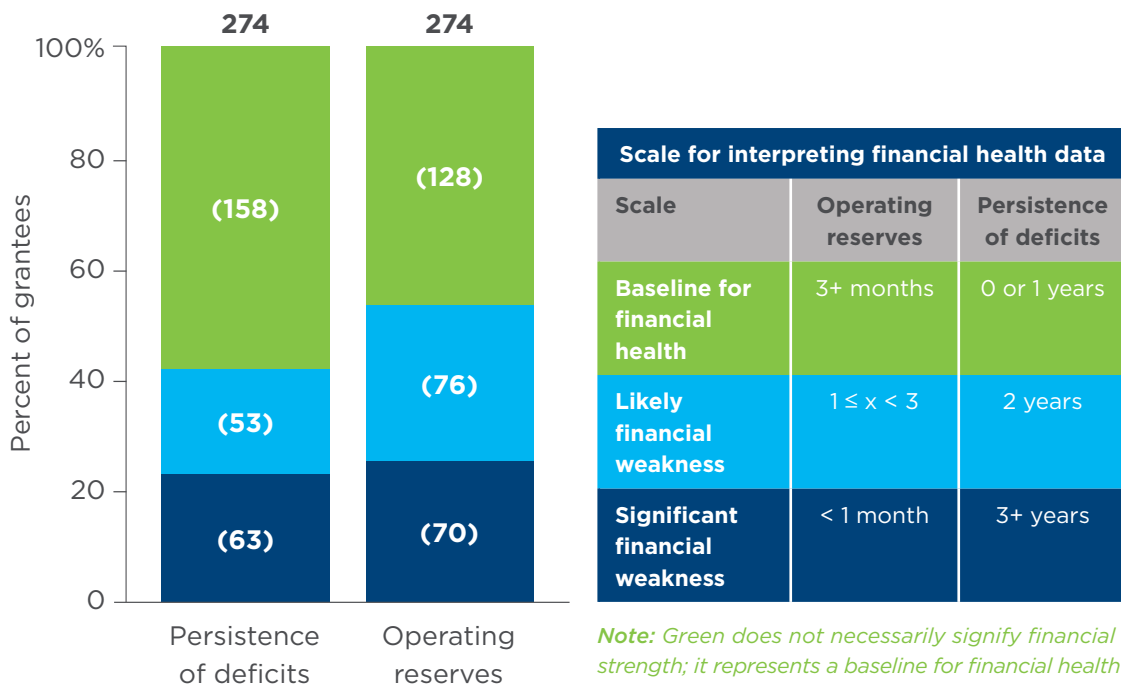
Appendix B: Portfolio analysis of top 15 foundations' grantees' financial health

Bridgespan analyzed the financial health of grantees of the top 15 US foundations (by endowment). The analysis included 274 nonprofits that were the most highly co-funded grantees—i.e., those receiving funding from more than one of the foundations—by grant dollars received from 2008 through 2014. Hospitals, universities, museums and other arts-related institutions, as well as organizations based outside of the United States or those without available data, were removed from the analysis.

Bridgespan examined financial indicators such as operating reserves and persistence of deficits. Results of this analysis are displayed and summarized below:

- 40 to 50 percent of grantees showing signs of financial stress
- 23 percent of grantees have less than one month of operating reserves. In fact, about 30 such organizations are technically insolvent and have borrowed against their restricted grants to fund critical expenses
- 26 percent of grantees have run deficits in at least three of the five years studied

Financial health indicator scores for major co-funded grantees of the top 15 US foundations



Note: Based on 2017 analysis of the 274 nonprofits that were among the top grantees (by total grant dollars) receiving funds from two or more of the top 15 US foundations (by endowment). Persistence of deficits examined over five years of data.

Source: Guidestar.org; NFF Financial SCAN; audited financial statements; Bridgespan analysis.

Appendix C: Primary research (2015-2018)

Funder research

To understand how funders engage with the issue of indirect cost, Bridgespan interviewed over 300 foundation staff across 20 foundations, including 40 percent of the top 20 US foundations. These conversations included in-depth discussions with program officers to learn more about the stakeholder dynamics and systemic barriers that make indirect cost recovery such a complex problem for both grantees and funders.

Indirect-cost diagnostic (2016)

The Bridgespan team dedicated over 1,000 hours to interviews with, and in-depth financial analysis of, diverse social sector organizations in order to hear grantee perspectives on the challenges of covering indirect costs and learn more about cost structures across a range of nonprofit segments.

Bridgespan's primary research efforts with grantees entailed:

- Conducting approximately 180 interviews with CEOs and finance staff members across 52 nonprofits
- Executing 60 indirect-cost diagnostics (note: multiple diagnostics were done for some of the 52 participating grantees in order to test the effects of methodological adaptations)

For reference, an indirect-cost diagnostic is an in-depth financial analysis to develop a customized, enterprise-level indirect-cost rate for a given nonprofit. This analysis modifies, classifies, and allocates costs to reflect the nonprofit's actual direct and indirect costs of executing its work. Bridgespan's diagnostic approach is outlined in the visual on the next page.

Tactically, the indirect-cost-diagnostic approach outlined in the visual required the following steps to execute:

- Up-front call with grantee finance staff member and CEO to learn about the organization, the type of work it does, experiences with funder indirect policies and systems, and process for this work
- Grantee finance staff member assembles financial data and other supporting documentation and shares with Bridgespan
- Bridgespan conducts first phase of cost analysis
- Bridgespan and grantee finance staff member hold a call to clarify any outstanding questions that arise from review of the data and materials
- As needed, there is additional data-sharing and discussion between Bridgespan and grantee staff member
- Bridgespan finalizes cost analysis, and then Bridgespan and grantee finance staff member hold a call (ideally including CEO) to review final analysis of indirect-cost rate

Indirect-cost diagnostic approach used in 2016 study

Inputs from organization

Documentation

Interviews

Diagnostic process

- Analyze inputs to understand program area definitions, overall cost structure, and current cost allocation methodology
- Isolate specific line items and categorize

Categories of cost

Indirect (shared) costs

All costs that are not directly attributable to a specific program, including:

- Investments in mission-critical capabilities and infrastructure
- Programmatic resources not dedicated to a specific program
 - For programmatic personnel and facilities resources, allocations to a specific program that are <10% are considered “shared”

Direct costs

Costs that are directly attributable to a specific program

- Personnel and facilities allocations to a specific program must be ≥10% in order to be considered direct

Indirect-cost rate calculation

Total indirect costs

÷

Total direct costs

Note: Methodology used in Bridgespan’s 2016 indirect-cost diagnostic.

Source: The Bridgespan Group

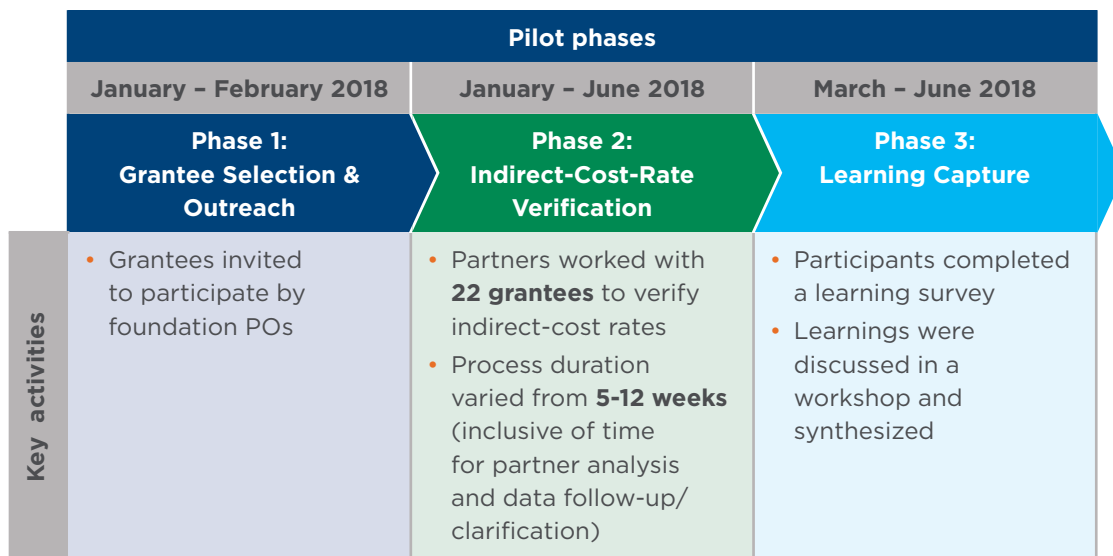
Funder collaborative verification pilot (2018)

The central purpose of the funder collaborative’s pilot was to test third-party indirect-cost rate verification as a method for pricing indirect-cost rate-based, project-restricted grants at actual cost. To execute the pilot, the collaborative partnered with a set of trusted financial experts: FMA, BDO, and Humentum. These third-party verification partners worked with a total of 22 of the collaborative foundations’ grantees to establish and verify an indirect-cost rate for each participating nonprofit. Of the 22 participating grantees, four underwent “dual verification” by both FMA and BDO/Humentum, thus yielding a total of 26 verified rates.

The visuals below provide an overview of the pilot’s design, the underlying learning goals, and the set of verified rates generated by the process:

Funder collaborative pilot overview

Stakeholder roles	
Funder Collaborative Steering Group	<ul style="list-style-type: none"> Designed and coordinated the pilot, captured learnings and implications
Verification Partners	<ul style="list-style-type: none"> Worked with grantees to verify indirect-cost rate; provided technical expertise, thought partnership, and support in learning capture
Grantees	<ul style="list-style-type: none"> Provided data and collaborated to verify indirect-cost rates
Program Officers (POs)	<ul style="list-style-type: none"> Helped in grantee selection, outreach, and onboarding; participated in kick-off and process-end calls with grantee



Source: The Bridgespan Group

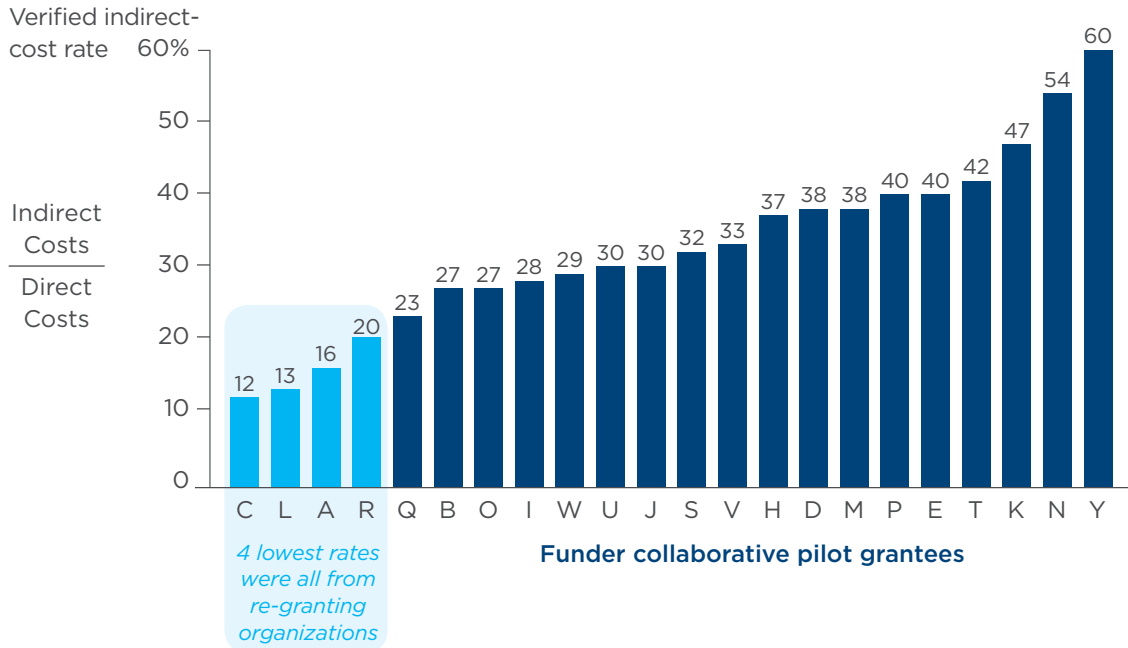
The funder collaborative pilot was designed around four key learning goals

Pilot learning goals			
Experience and application of process	Substance of solution and standards		
1 Integrating verification into existing practice	2 Ensuring credibility & internal consistency	3 Assessing value of third-party verification	4 Developing standards
Specific learning questions			
<ul style="list-style-type: none"> How does verification fit within foundation grantmaking processes? Within grantee accounting practices? What incremental resources and/or staff time does the verification process require? 	<ul style="list-style-type: none"> Does verification of the same grantee by different third-party partners lead to credible outcomes? For grantees with a NICRA* rate, is there internal consistency between that rate and the pilot verified rate? Can the output of verification be used consistently across multiple foundations? 	<ul style="list-style-type: none"> Do grantees think the verification process is valuable? Do program officers? Does verification increase understanding of organizational cost structure for grantees? For program officers? 	<ul style="list-style-type: none"> What is the feasibility of developing shared standards for third-party verification? What types of standards might providers be able to align on (e.g., cost definitions, allocation methods, process templates)?

Note: For grantees with a US Government Negotiated Indirect Cost Rate Agreement (NICRA), the “crosswalk” from a grantee’s NICRA rate to their pilot verified rate was approximated by removing fundraising costs from the pilot verified rate.

Source: The Bridgespan Group

Verified grantee indirect-cost rates ranged widely, with over half being at or above 30 percent



Note: For dual verification grantees, an average of the two independently calculated rates is reflected.

Source: BDO/Humentum and FMA verification results (2018).

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The Quest for the Best: Attorney Recruitment and Retention Challenges for Florida Civil Legal Aid



Prepared for The Florida Bar Foundation and the Recruitment,
Retention, Development and Diversity Subcommittee of the
Florida Project Directors Association

By

Kelly Carmody and Associates

September 2007

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PREFACE

I am pleased to present this report, *The Quest for the Best: Attorney Recruitment and Retention Challenges for Florida Civil Legal Aid*, to the Florida civil legal aid community. This report is the result of a study designed and undertaken by Kelly Carmody of Phoenix, Arizona, a consultant to the Foundation. Kelly's experience with and insight into legal aid programs was an invaluable benefit in this undertaking. The Florida Bar Foundation, a partner with the legal aid community for more than twenty years, believes that funding a high quality civil legal aid system is critical to ensuring access to justice for low-income families residing in Florida.

This report grew out of a realization in 2005 that the Foundation was experiencing historically high levels of revenue from Interest On Trust Accounts (IOTA), which would produce significant increases in the Foundation's funding for legal services grants. In fact, these grants have grown from \$10.5 million in 2005 to \$24.2 million in 2007. This increased funding creates real opportunities to strengthen and expand ongoing efforts to support legal services for the poor as well as develop new initiatives to address unmet client and programmatic needs.

The Foundation's Legal Assistance for the Poor Grant Committee asked the staff to develop a funding plan that addresses new initiatives and increases historical grant program funding. The Foundation staff began by exploring an initiative to raise attorney salaries, and the civil legal aid program's executive directors formed a special committee, the Recruitment, Retention, Development and Diversity Committee, to work on the initiative.

The Foundation staff and the committee realized that in order to maximize the impact of a new initiative, more information was needed about attorneys' salaries, educational debt, when and why attorneys were leaving programs, and what attorneys needed and wanted in order to have a satisfying career in Florida civil legal aid. This report is the result of a significant effort to gather information from current and former legal aid attorneys through web-based surveys, personal and telephone interviews and focus groups. The 88 percent participation rate by current legal aid attorneys is a strong indication of their concern about these issues.

This report gives the Foundation and the civil legal aid programs a comprehensive look at the financial and workplace issues legal aid attorneys are facing and provides recommendations for how to address them. It is rich with information directly from the attorneys who labor every day to provide legal assistance for the poor. Our challenge now is to undertake a plan of action, based on this information, which ensures we can successfully recruit and retain attorneys who are highly effective, committed and aggressive advocates to continue this critical work.

This report's recommendations provide a vision and steps to achieve the vision to a community dedicated to providing the best legal assistance possible to Florida's poor. The Foundation is committed to continuing its partnership with the legal aid community to achieve this vision.

Paul Doyle
Legal Services Director
The Florida Bar Foundation

*The Quest for the Best:
Attorney Recruitment and Retention Challenges for Florida Civil Legal Aid*

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**Many thanks to the hundreds of
current and former attorneys who
took the time to complete surveys, be
interviewed and participate in focus
groups. This report would not have
been possible without their dedicated
participation.**

EXECUTIVE SUMMARY

“I love my job, but my bills don’t accept love for payment.” That statement, made by an attorney during an interview for this study, sums up at least one of the challenges facing many Florida civil legal aid attorneys. That legal aid attorney salaries are low was known before this study. However, the extent of the salary problem and all the other factors involved in successfully recruiting and retaining high quality civil legal aid attorneys was not known. This report fills that void by providing comprehensive quantitative and qualitative data that details the major attorney recruitment and retention challenges facing Florida civil legal aid.

Much of the report’s data is from the attorneys themselves, both those who currently work for legal aid and those who have left in the last five years. Data was also gathered from law students and law school staff to ensure that prospective attorneys were heard from as well. One of the goals of the study was to make sure that the individuals affected by programs’ recruitment and retention policies and practices were heard from directly and their views documented. This goal was successfully achieved with a wealth of rich data supplied. Because of the volume of the data, the primary findings are outlined in Highlights of Findings (Attachment 1).

Dramatic Attorney Turnover and Recruitment Difficulties

Florida civil legal aid attorneys are leaving the programs at an alarming rate. During the past five years, the average annual turnover rate for the programs combined has been 20 percent with *one out of five* attorneys leaving each year. Some programs have more than *one out of two* attorneys leaving each year. When one looks back five years to the beginning of 2002 and asks how many attorneys are still employed with the program they were with at that point, the answer is *only 39 percent*. Perhaps more startling is that of those who left in the last five years, half left before they had been with their programs two years.

Top five reasons (in order) attorneys left:

- *Financial pressure due to low salary*
- *Poor management*
- *Financial pressure due to student loans*
- *Lack of professional support*
- *Poor supervision*

This level of turnover has taken a toll on legal aid attorneys, their clients and the programs. The constant churning of attorneys means that those who remain have to pick up the open cases and try to provide assistance to more clients while positions are being filled. Many times these cases fall to the supervisors who also bear the burden of training new attorneys who often leave soon afterwards. High turnover is also bound to take a toll on the quality of the work.

Unless action is taken soon, turnover looks to get even worse. More than one out of two (56 percent) of the current attorneys think they will leave within the next five years. Given that half of the attorneys who have left in the past five years did so within two years, many attorneys that will leave within the next five years have not even joined a program yet.

The problems caused by turnover are compounded by the increasing difficulty programs are having recruiting quality applicants for attorney positions. Some programs, including large programs in cities in desirable locations, report receiving few or no qualified applicants for positions that have been open for more than a year.

However, this report is not just about why attorneys have left or may leave or why attorneys do not apply to work for Florida civil legal aid. It is also about the situations of attorneys who provide legal assistance to the poor day after day, and what they need in order to have a positive, financially-rewarding work experience.

Causes of Recruitment and Retention Challenges

Salaries: The primary cause for attorneys leaving and not applying for positions is the abysmally low salaries paid by Florida civil legal aid. The median starting salary of \$38,500 is below what most new attorneys need to meet the cost of living and far below the salary one would expect for a highly-educated professional. Just as troubling is the rate at which salaries increase. It takes a median of nine years for a staff attorney to reach a salary of more than \$50,000.

Many current attorneys are suffering severe financial hardship and stress because of their low salaries, stress that detrimentally affects their effectiveness at work. Many attorneys do not know whether they will receive an annual salary increase, or what the amount might be, because many programs do not use a salary scale. This lack of transparency leads to concerns about the fairness of salary determinations.

Top five reasons (in order) attorneys think they will leave:

- *Financial pressure due to low salary*
- *Financial pressure due to student loans*
- *Burn-out*
- *Financial pressure due to other extraordinary expenses*
- *Personal reason*

Sixty-five percent of the attorneys who said they think they will leave within the next five years said that a salary increase would definitely or probably impact their decision. Ten thousand dollars was the median amount given by those who said an increase would make a difference. This is the same amount as the median salary increase attorneys who left in 2006 received in their new jobs.

Educational Debt: Florida civil legal aid attorneys' educational debt is crushing and another major reason attorneys have left and think they will leave. More than half (54 percent) have educational debt, with a median amount of \$70,000 - \$79,000. However, the percentage of attorneys with educational debt and the amount of debt increases sharply for the more recent law school graduates, with *100 percent of the 2006 graduates having debt—and at a median of \$110,000*. Many attorneys are forced to consolidate their loans and extend their terms to 25 or 30 years to afford the payments, which dramatically increases the total payments and leaves the attorneys paying primarily interest for years.

The Florida Bar Foundation has a commendable Loan Repayment Assistance Program (LRAP) that, with some funding from the programs, provides assistance to approximately 40 percent of the attorneys who have law school educational debt. In total, 59 percent of the attorneys with educational debt receive assistance from LRAPs sponsored by the Foundation, employers, Equal Justice Works, AmeriCorps, or law schools. However, that leaves more than 40 percent who do not receive any level of assistance with their loans.

Supervision: One of the top five reasons attorneys cited for leaving in the last five years was poor supervision. Many current attorneys, particularly new ones, need and want more extensive and improved supervision. Many supervisors are too busy with their own caseloads and other responsibilities to provide the amount and quality of supervision they would like and their

supervisees need. In addition, supervisors say they need, and many want, training in how to supervise.

“I adore my job. It makes me really sad that the poor salaries (and...less than sufficient supervision, training and support staff) are the reason that I likely will not make this job a life-long career.” (Current Attorney)

Job Diversity, Job Stress and Burn-out: Burn-out is the #3 reason why attorneys think they will leave. Civil legal aid jobs are notoriously stressful, and some attorneys and programs believe constant, high stress is inevitable. Inadequate staffing and reliance upon special grants with high deliverables can also make legal aid jobs repetitive and stifle professional growth and reward. Many attorneys would like their jobs to be more diverse in the type of case and skill required to provide assistance. And many also want more challenging work.

Leadership Development and Advancement Opportunities: Many current attorneys would like to advance in their programs, but believe they have no way to do so. Former attorneys expressed

the same belief. Many current attorneys, as well, are ready and willing to work on projects that develop their leadership abilities and/or improve their advancement opportunities, but are not given the occasion to do so.

Recruitment and Hiring: Despite the need, recruitment and hiring of attorneys are not prioritized by most of the programs. Necessary time and financial resources are not invested in these crucial functions. Hiring is generally slow and cumbersome, which causes programs to miss opportunities to hire interested candidates. Recruitment efforts, outside of the Summer Fellows program and career fairs, are conducted by individual programs and not coordinated statewide.

Recommendations to Meet the Challenges

This report provides detailed recommendations to the Foundation and the civil legal aid programs about actions to take to meet Florida’s recruitment and retention challenges. The major recommendations, in summary, include the following:

Salaries: Attorneys should receive, on average, a salary increase of \$10,000 over the next two years. The Foundation should provide grants specifically for attorney salaries in 2008 and 2009. The receipt of a grant should be contingent on a program having a board-approved salary scale and salary plan. By the end of 2009, the minimum starting salary should be \$48,000. Programs or offices in high cost areas should have a higher minimum starting salary.

Loan Repayment Assistance: The Foundation’s LRAP should be expanded and enhanced in four primary ways: (1) all attorneys with educational debt should receive assistance; (2) all educational debt, not just law school debt, should be eligible for repayment; (3) assistance should be based on the debt balance instead of a percentage of the annual payments; and (4) the annual amount paid should be increased to \$8,400. All programs should participate financially (20 percent match) in the Foundation’s program.

Supervision: Programs should (1) provide more time for supervisors to supervise; (2) develop standards or guidelines for supervisors; and (3) develop a supervisor skill-building program for new and experienced supervisors. The Foundation should support the development of supervisory skills-building programs.

Job Diversity, Job Stress and Burn-out: Programs should (1) develop and provide more opportunities for attorneys who want to handle a broader variety of cases and develop and use additional skills; and (2) develop and implement ways to create a work environment that minimizes high stress and burn-out.

Leadership Development and Advancement Opportunities: Programs should (1) provide leadership development opportunities within the programs for all attorneys; (2) coordinate regional and/or state leadership development projects and training; and (3) develop job positions which provide more responsibility and compensation. The Foundation should support the coordination of regional and/or state leadership development projects and training.

Recruitment and Hiring: Programs should (1) streamline hiring practices and develop an updated package of information and financial incentives for potential applicants; (2) build and maintain strong relationships with promising candidates, particularly law students and attorneys of color; and (3) coordinate recruitment at the regional and/or state level.

Another current attorney's comments describe, in a personal way, why the Florida civil legal aid community must meet the challenges presented swiftly and completely.

"Honestly, I like my job. I really enjoy helping people, and there are those days that I truly feel that I am making an impact in society. That really matters to me. But these sentiments are tempered with stress --both financial and emotional. There are those days when I feel that I definitely do not receive enough compensation to deal with the job and its stressors. I went to law school, worked hard, and graduated with honors, and sometimes I just get by for rent, car payment, insurance, a random car repair, food, and daily living. Also, working in this position causes stress! I know that's true with any job, but I believe it can be amplified working with people living in poverty. Emotional and work help would go a long way in combating these stressors."

METHODOLOGY

A wide variety of data collection methods including surveys, interviews and focus groups was used to ensure a comprehensive review of current and former attorneys in Florida civil legal aid and the programs for which they work. The data was collected from February to June 2007.

Survey of Current Attorneys

Attorneys employed by 28 Florida civil legal aid programs¹ in February 2007 were sent a 122-question web-based survey, covering the topics of demographics, education, educational loans, law licenses, civil legal aid background, current job situation, future plans, current recruitment, interviewing and hiring processes, and attorney recognition and development. (See Appendix 3 for a list of programs and Appendix 4 for the Current Attorney survey questions.)

Of the 377 current attorneys, 332 completed the survey for an 88 percent response rate. The characteristics of the survey respondents are all very similar to or the same as those of the current 377 attorneys, making the survey respondents' results representative of the actual current attorneys. The response rate of attorneys in individual programs ranges from 33 to 100 percent, with a response rate of 70 percent or more of the attorneys per program except for one small program. The survey respondents' characteristics are compared with the actual current attorneys' characteristics in Table 1.

Notes about the Data for the Reader

For purposes of analysis, attorneys were divided into two groups, those without supervisory/management responsibilities and those with supervisory/management responsibilities. In the report, the first group is called staff attorneys and the second group is called managing/supervising attorneys or managing attorneys.

Some information was analyzed by program¹ size. For this purpose, the programs were divided into small (1 to 5 attorneys), medium (6 – 20 attorneys), and large (20+ attorneys).

Not every survey respondent answered every question, so the number of total respondents may vary slightly when answers to two or more survey questions are analyzed together.

All percentages are rounded to the nearest whole number, so response totals may not add up to 100 percent.

Data is presented throughout the report in numerous tables, graphs and charts. An index can be found in Appendix 2.

¹ Civil legal aid programs are included in the study if they employ at least one staff attorney. Executive Directors are not included in the study.

Table 1: Comparison of Characteristics of Current Attorney Survey Respondents² and Current Attorneys			
		Current Attorney Survey Respondents	Current Attorneys
Position³	Staff Attorney	72 percent	70 percent
	Managing/Supervising Attorney	28 percent	30 percent
Working Time	Full-time	92 percent	90 percent
	Part-time	8 percent	10 percent
Gender	Female	73 percent	73 percent
	Male	27 percent	27 percent
Race/Ethnicity	White/Caucasian	73 percent	71 percent
	Hispanic/Latino	13 percent	11 percent
	Black/African American	10 percent	14 percent
	Asian/Pacific Islander	2 percent	2 percent
	Other	2 percent	2 percent
Age⁴	Under 25	0 percent	2 percent
	25-29	16 percent	19 percent
	30 – 34	22 percent	18 percent
	35 – 39	12 percent	12 percent
	40 – 44	11 percent	12 percent
	45 – 49	13 percent	13 percent
	50 – 54	12 percent	9 percent
	55 – 59	8 percent	8 percent
	60 – 64	5 percent	5 percent
	65 – 69	1 percent	1 percent
70+	1 percent	1 percent	

Survey of Former Attorneys

Attorneys who left employment with a Florida civil legal aid program from 2002 through 2006 were sent a web-based survey that also contained 122 questions, covering the topics of demographics, education, educational loans, law licenses, civil legal aid background, job situation while at civil legal aid employer, reasons for leaving civil legal aid employment, employment since leaving, and attorney recruitment, interviewing, hiring, recognition and development processes of Florida civil legal aid. (See Appendix 5.)

Of the 322 attorneys who left a Florida program during the five year period, 23 are employed with another Florida program and were not sent the former attorney survey. Of the remaining 299 attorneys, the survey was sent to 217 attorneys with identified working e-mail addresses. Ninety-seven attorneys completed the survey for a response rate of 45 percent of those contacted and 32 percent of all former attorneys no longer working in Florida civil legal aid.

² The percentages are of those who answered the specific question. Answers were not given to one or more of these questions by up to seven respondents.

³ Up to ten current attorneys may be characterized as staff attorneys for the report, but have supervisory responsibilities because of the differences in programs' position titles.

⁴ Age categories for the program data of the current attorneys are one year older, so not completely comparable. This likely accounts for some of the difference in the first two age categories. There was also a three month difference in timing between program data and survey results, which would result in survey respondents reporting older ages.

The characteristics of the survey respondents are all very similar to or the same as the actual former attorneys, making the survey respondents' results representative of the actual former attorneys. The response rates of former attorneys per program range from 0 to 100 percent, with responses from former attorneys from all but three of the 25 programs that have former attorneys. The survey respondents' characteristics, are compared with the actual former attorney's characteristics in Table 2. Note that the age of respondents is their current age, not the age when they left employment with civil legal aid.

Table 2: Comparison of Characteristics of Former Attorney Survey Respondents⁵ and Former Attorneys			
		Former Attorney Survey Respondents	Former Attorneys
Position	Staff	86 percent	87 percent
	Managing/Supervising Attorney	14 percent	13 percent
Working Time	Full-time	98 percent	98 percent
	Part-time	2 percent	2 percent
Gender	Female	76 percent	72 percent
	Male	24 percent	28 percent
Race/Ethnicity	White/Caucasian	66 percent	63 percent
	Hispanic/Latino	13 percent	15 percent
	Black/African American	18 percent	20 percent
	Asian/Pacific Islander	3 percent	1 percent
	Other	0 percent	1 percent
Age	Under 25	0 percent	1 percent
	25-29	15 percent	19 percent
	30 – 34	27 percent	27 percent
	35 – 39	18 percent	17 percent
	40 – 44	6 percent	6 percent
	45 – 49	14 percent	13 percent
	50 – 54	7 percent	6 percent
	55 – 59	5 percent	6 percent
	60 – 64	4 percent	3 percent
	65 – 69	1 percent	1 percent
	70+	2 percent	1 percent

Survey of Former Summer Fellows

The Florida Bar Foundation sponsors law students, known as summer fellows, who intern in the civil legal aid programs funded by the Foundation. See page 38 for a full description. One hundred eighteen individuals served as fellows during the summers of 2001-2006. A 32-question web-based survey was sent to 103 of them—the number who had usable e-mail addresses. (See Appendix 6.)

⁵ The percentages are of those who answered the specific question. Answers were not given to one or more of these questions by up to seven respondents.

Fifty-four former summer fellows completed the survey for a response rate of 46 percent for all of the former summer fellows and 52 percent of those who received the survey. Survey respondents had worked for 20 of the 24 programs that had summer fellows during that time period. The range of response rates from fellows who had worked for different programs was 0 – 83 percent. The median response rate per program was 40 percent. Thirteen respondents are currently legal aid attorneys with one of nine of the programs. Characteristics of the full group cannot be compared to the survey respondents as the full group's characteristics are unavailable.

Survey of Top Candidates from Career Fairs

A 22-question survey was e-mailed to attorneys who had been identified as law students who were top job candidates at legal career fairs from 2003 – 2006, but did not take a position with a civil legal aid program in Florida. (See Appendix 7.) Of the 82 identified individuals, forty-one had identifiable, usable e-mail addresses. Six individuals completed the survey for a seven percent response rate of all individuals and 15 percent of those contacted. Five of the survey respondents were Black/African Americans and one was Spanish-speaking Hispanic/Latino. (The racial/ethnicity make-up of all of the top candidates is unavailable.) The respondents were from five different law schools—three of which were outside Florida, and they had attended six different fairs during 2004-2006.

Although they may not be representative of all of the candidates, their responses are particularly useful because they come from members of racial and ethnic groups from which programs specifically recruit from for diversity.

Interviews and Focus Groups of Current Attorneys

Volunteers for interviews of current attorneys were solicited through the survey instrument, an e-mail to all current attorneys, and a follow-up e-mail to the attorneys in two programs that had not had attorneys volunteer and were large or rural programs. Forty-three attorneys were interviewed in person, 33 attorneys were interviewed by telephone, and 24 attorneys participated in focus groups.

Eleven attorneys were both interviewed in person and participated in focus groups, so a total of 89 attorneys—24 percent of current attorneys—were interviewed, in a focus group or both. This was nearly all of the attorneys who volunteered. The participants' characteristics were similar to all current attorneys. The characteristics in Table 3 can be compared with the actual current attorney's characteristics in Table 1.

The interviews lasted 30 to 60 minutes, and primarily included follow-up questions to the interviewees' survey responses. This allowed for discussions about the topics covered on the survey.

Focus groups were conducted in four locations. Each lasted 60 to 90 minutes. The Miami group included nine attorneys who had graduated within the last five years (2002 – 2006), and included attorneys from Legal Services of Greater Miami and Florida Immigrant Advocacy Center. The Jacksonville group included six supervisors from Jacksonville Area Legal Aid and Three Rivers Legal Services. The Tampa group included six attorneys who, by chance, were very experienced attorneys—law school graduation dates of 1977 – 1990. The St. Petersburg group had five attorneys with a mix of experience levels and supervisory responsibilities. Salaries were a large part of the discussions, but many topics were covered by all of the groups.

Table 3: Characteristics of Current Attorney Interviewees and Focus Group Participants				
Programs	Response rates range from one to 15 attorneys from a program, with a median of 3.5 attorneys from a total of 21 programs			
Supervisor	34 percent			
Gender	Female	78 percent	Male	22 percent
Race/Ethnicity	White/Caucasian	73 percent	Asian/Pacific Islander	0 percent
	Hispanic/Latino	15 percent	Other	1 percent
	Black/African American	11 percent		
EJW	11 current		6 former	
Graduation Date	Range of 1971 – 2006		Median of 2001	
Think will leave current job within 5 years	35 percent			

Interviews of Former Attorneys

Volunteers for former attorney interviews were solicited on the survey instrument and through a follow-up e-mail to those that volunteered on the survey. Sixteen—almost all of the volunteers—were interviewed by telephone. This is five percent of the 299 attorneys who left a Florida civil legal aid program from 2002 – 2006 and did not go to another Florida program. The interviewees’ characteristics are in Table 4, and can be compared with the characteristics of the former attorneys in Table 2.

Table 4: Characteristics of Former Attorney Interviewees				
Programs	Response rates range from one to three attorneys from 11 programs			
Gender	Female	81 percent	Male	19 percent
Race/Ethnicity	White/Caucasian	69 percent	Asian/Pacific Islander	0 percent
	Hispanic/Latino	19 percent	Other	0 percent
	Black/African American	13 percent		
EJW	0 current		3 former	
Graduation Date	Range of 2002 - 2006		Median of 2005	

Interviews of Executive Directors

Interviews were conducted of 14 of the 28 executive directors of the programs. Their programs were a mix of size, statewide/regional, union/non-union, and LSC-funded/non-

LSC-funded, and the executive directors were evenly divided by gender. Topics varied depending on the program, with salaries a large part of the discussions.

Interviews of Florida Law School Staff and Faculty

Staff or faculty members from five of Florida's ten law schools were interviewed about public interest activity at their schools (including loan repayment assistance) and law student recruitment. The law schools were at Florida State University, University of Florida, Florida Coastal School of Law, Nova Southeastern University, and University of Miami.

Program Data Review

The programs provided extensive information about salaries, benefits, attorneys who left in the last five years, hiring processes, payment of bar review and bar exam expenses, training and professional development policies, educational loan repayment policies, technology, human resources, and miscellaneous other topics.

Other Research

Research was conducted on a variety of topics affecting attorney recruitment and retention, including gathering comparison data about policies and their effects.

FINDINGS

A. DEMOGRAPHICS OF CURRENT ATTORNEYS

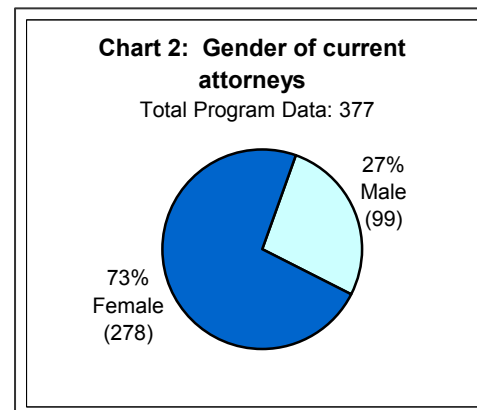
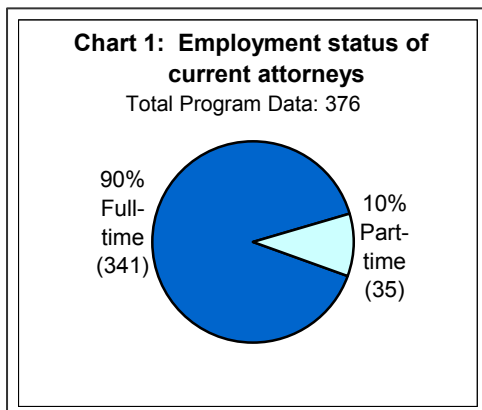
An in-depth look was taken at the demographics of current attorneys to find out exactly who is working for Florida civil legal aid programs. Much of this information is based on data received in February 2007 from the programs.⁶

Number of Attorneys. The 28 Florida programs employ 377 attorneys.⁷ One program currently has no staff attorneys, and the largest number of attorneys in a program is forty-one.

Positions. Seventy percent of the attorneys are staff attorneys. Thirty percent are managing attorneys or supervising attorneys—this includes all attorneys with management or supervisory responsibilities, i.e, advocacy directors, etc.

Full-time/Part-time. Ninety percent are employed full-time and ten percent are part-time. (See Chart 1.)

Gender. Nearly three-fourths of the attorneys (73 percent) are female. (See Chart 2.) The disproportionate number of female attorneys is a trend in civil legal aid nationwide, with the Legal Services Corporation (LSC) reporting that 74 percent of all full-time attorneys employed by a LSC-funded program are female.⁸ This is the opposite of all Florida attorneys—68 percent male and 32 percent female.⁹



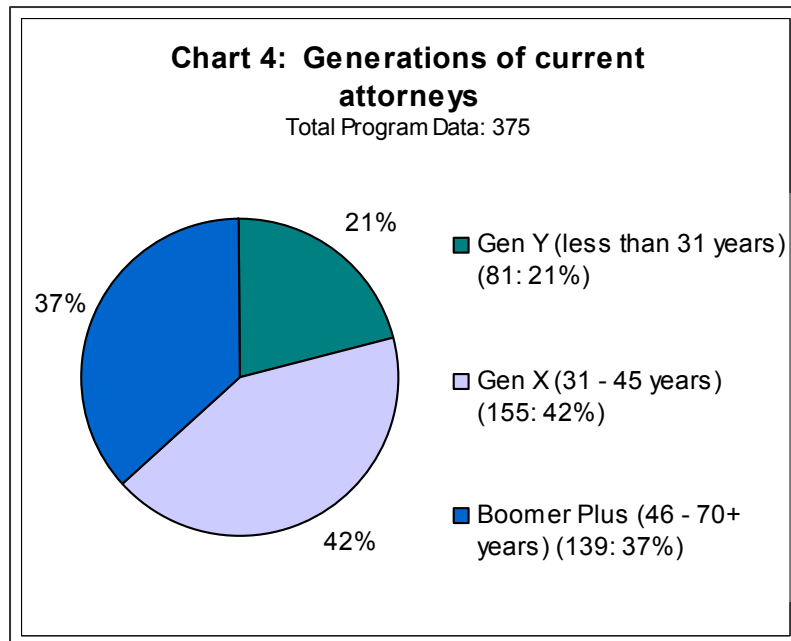
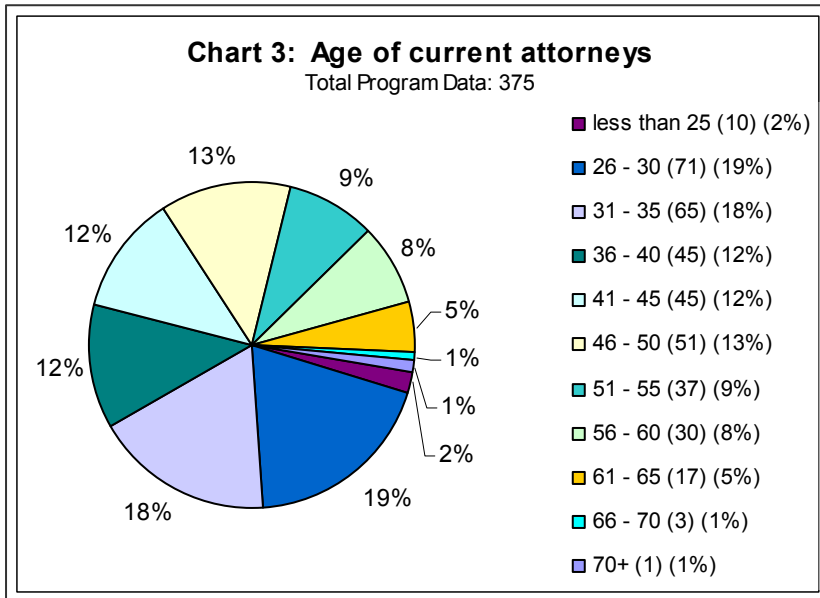
⁶ Survey data is noted by using the word “respondents” when survey data is used. Given the large number and similar characteristics of the survey respondents to the total current attorneys, the survey data is representative of the current attorneys. (See Methodology Section.)

⁷ The executive directors of the programs, all of whom are attorneys, are not included in the attorney data as the scope of the study does not include recruitment and retention of executive directors.

⁸ Legal Services Corporation, *Fact Book 2006*, June 2007.

⁹ The Florida Bar, *Results of the 2006 Economics and Law Office Management Survey*, December 2006.

Age and Generation. Attorneys range in age from under 25 to over 70. (See Chart 3.) The largest percentage of attorneys (19 percent) is 26 to 30 years of age. Three-fourths of the attorneys (76 percent) are 50 or younger. The median age range is 36 to 40. When divided by generations¹⁰, the largest generation is Generation X at 42 percent of all current attorneys. (See Chart 4.)



¹⁰ Definitions of the generations vary. The Baby Boom generation is usually defined as those born between (and including) 1946 and 1964. Generation X is defined as those born between 1965 and 1976 or 1981. Generation Y is defined as those born in the 1980's or some say in 1977 and after. The data for the current attorneys was divided into five year increments and then assigned into generations as follows: 30 years of age and under for Generation Y, 31 – 45 for Generation X, and 46 – 70+ for Boomers Plus. See Appendix 8 for a description of the generations' characteristics.

Race/Ethnicity. The race or ethnicity of the current attorneys is shown in Chart 5.

The percentages of Latino/Hispanic attorneys and Black/African American attorneys in civil legal aid, 14 and 11 percent, respectively, are larger than the percentages of these racial/ethnic groups in the Florida Bar. The Bar's 2006 Economics and Law Office Management Survey found that seven percent of Florida attorneys are Latino/Hispanic and two percent are Black/African American. However, civil legal aid's racial/ethnic diversity is lower than that of the Florida poverty or client population, which is two percent Asian, nine percent Other, 24 percent Hispanic, and 29 percent Black. (See Table 5.)

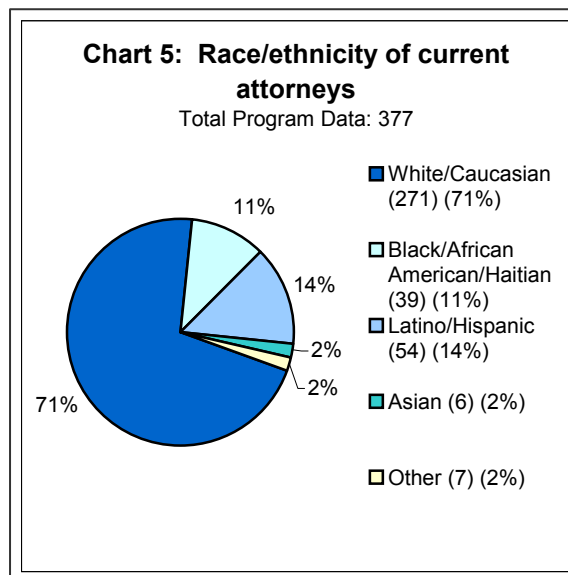


Table 5: Race/Ethnicity of Florida Poverty Population ¹¹ compared with Race/ethnicity of Current Attorneys					
	White	Black	Asian	Other	Hispanic ¹² origin
Percent of poverty population	59 (Hispanic included)	29	2	9	24
Percent of current attorneys	71	11	2	2	14

Other Languages. Thirty-seven percent of the current attorney survey respondents speak another language well enough to use it in their work. The survey data was more complete than the program data, which may indicate that programs do not collect this data. Three-fourths of the respondents who speak another language speak Spanish. Five percent speak Creole. These are the two primary languages other than English spoken by Florida civil legal aid clients.

Of the attorneys who speak Spanish, 80 percent are female, which is higher than the percentage of female attorneys (73 percent). This may be due partially to the more

¹¹ 2000 Census of Population and Housing, Summary File 3, Tables P-159A-G.

¹² Note that in the U.S. Census data, individuals of Hispanic origin may be of any race. Hence, people who identified themselves as Spanish, Hispanic or Latino may include people who also identified themselves as White, Black, Asian or Other. Since the data from the programs put Hispanic attorneys into only the Hispanic category, there is not an exact correlation between the census and program data.

recent graduates being bi-lingual, along with the more recent hires being disproportionately female. Fifty-five percent of the Spanish speakers and 80 percent of the Creole speakers graduated in 2000 or later. The trend of hiring bi-lingual staff is positive as 72 percent of the Spanish-speakers and 83 percent of the Creole-speakers have been hired since 2000. See Charts 6-11 for further information about languages spoken.

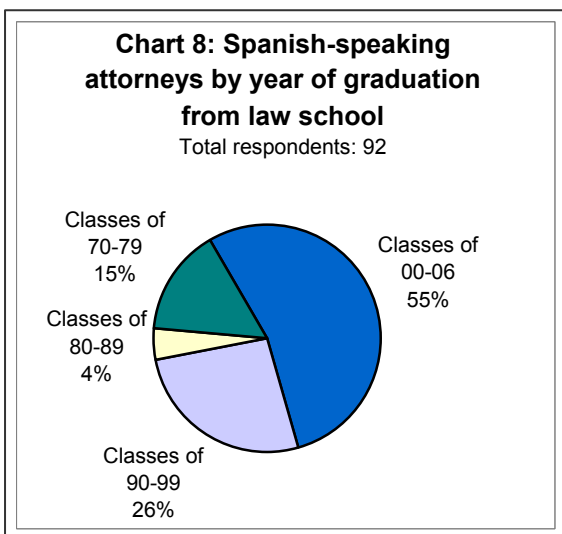
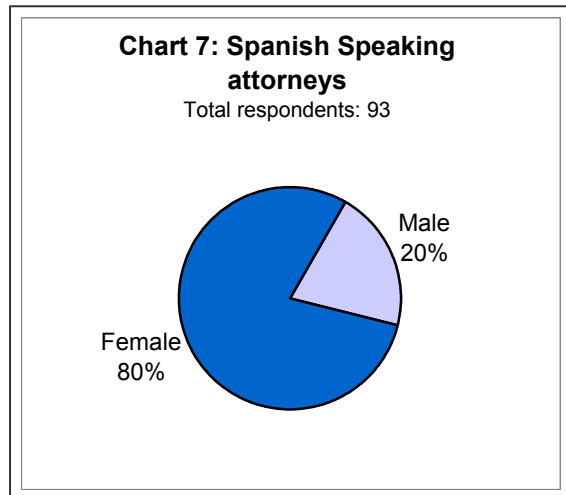
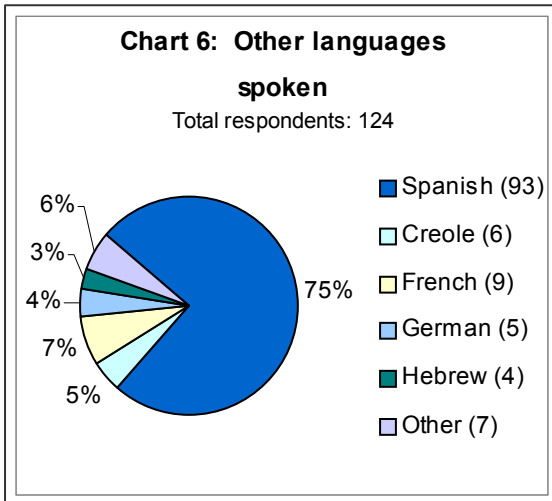


Chart 9: Creole-speaking attorneys by year of graduation from law school

Total respondents: 5

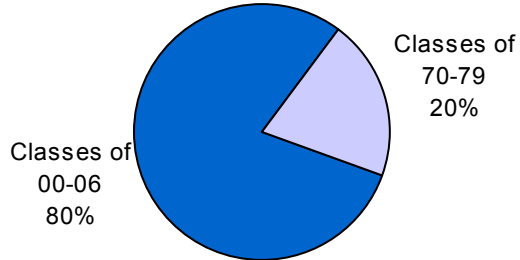


Chart 10: Spanish-speaking attorneys by year employed by present employer

Total respondents: 91

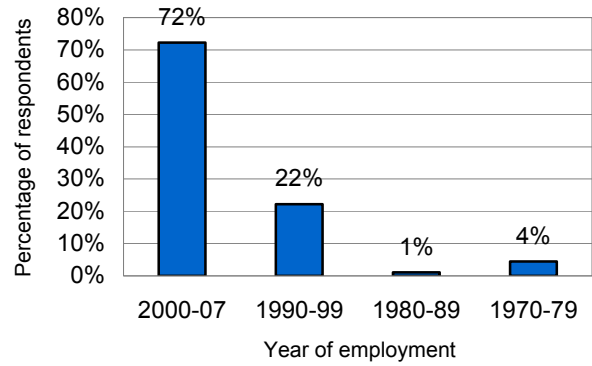
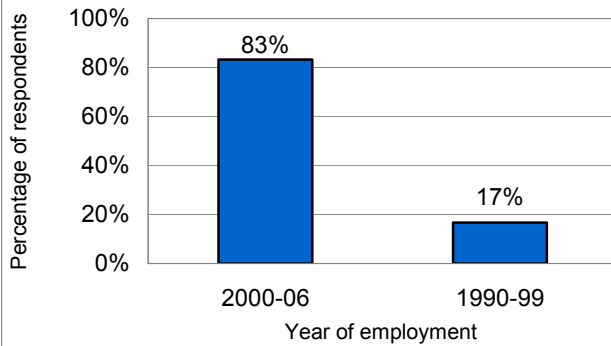


Chart 11: Creole-speaking attorneys by year employed by present employer

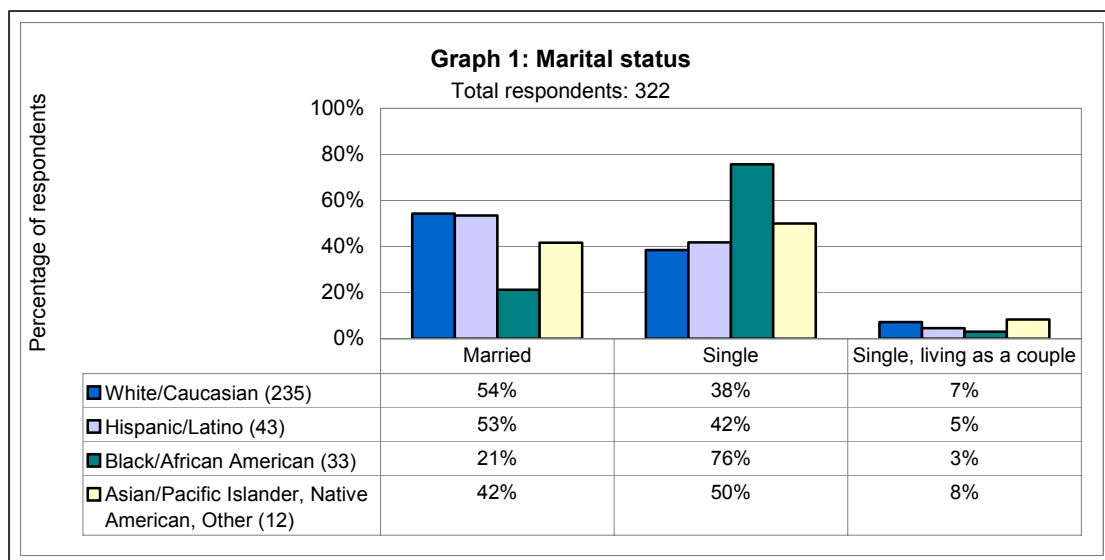
Total respondents: 6



Marital Status. Fifty percent of the current attorney respondents are married and six percent live with someone as a couple. (See Table 6.) Of the attorneys who are married, 70 percent are female and 30 percent are male. Similar percentages are true for single¹³ attorneys—tracking the overall respondents’ gender.

Table 6: Demographics of Current Attorneys					
Marital Status	Total	Percent	Primary Breadwinner	Total	Percent
Married	165	50%	Yes	208	66%
Single	142	43%	No	109	34%
Single but living as couple	21	6%	Total Respondents	317	100%
Total Respondents	328	100%			
# of Earners	Total	Percent	Children	Total	Percent
One	136	42%	None	188	58%
Two	180	56%	One	53	16%
More than two	7	2%	Two	56	17%
Total Respondents	323	100%	Three	16	5%
Roommates	Total	Percent	Four	Total	Percent
Yes	14	5%	Five	3	1%
No	268	95%	Total Respondents	322	100%
Total Respondents	282	100%			

The median age of married attorneys is 40 - 44, whereas, the median age of single attorneys is 35 - 39. Black/African American attorneys are more likely to be single (76 percent) as compared to White/Caucasian attorneys (38 percent). However, Black/African American attorneys are also disproportionately younger (Median of 30 – 34) than White/Caucasian attorneys (Median of 40 - 44). (See Graph 1.)



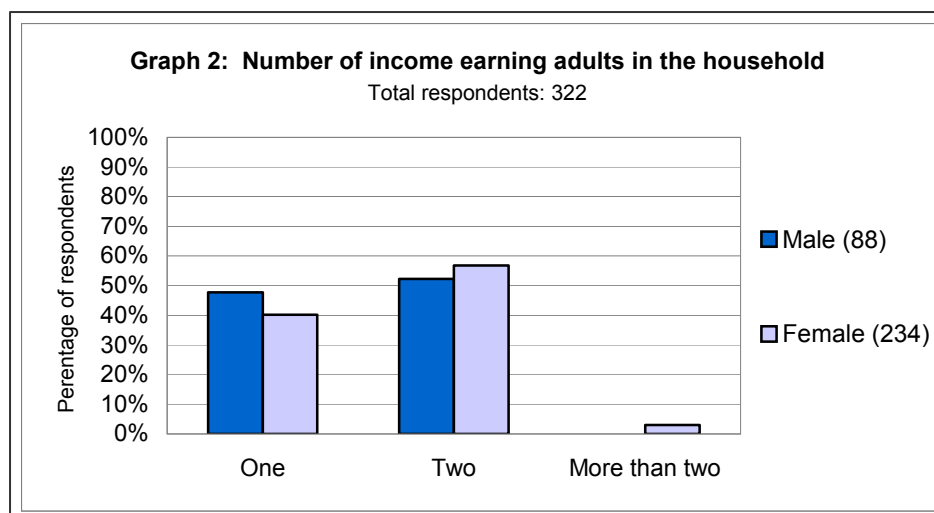
¹³ Single is defined as never married, separated, divorced or widowed.

Children. Forty-two percent of the current attorney respondents have children under 22. Sixteen percent have one child, seventeen percent have two children, and eight percent have three or more. A higher percentage of female attorneys are parents—44 percent as compared to 36 percent of male attorneys. Single female attorneys are more likely to be parents than single male attorneys—26 percent as compared to 14 percent of single males. Female attorneys also have a larger number of children. Some of these differences may be a function of age. (See Table 7.)

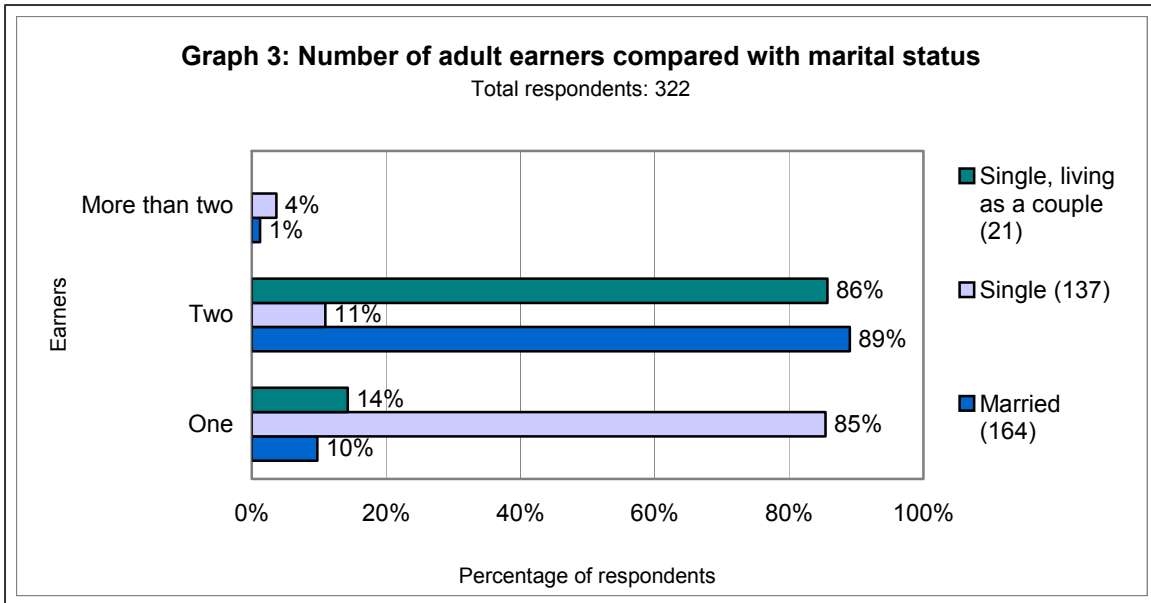
Table 7: Current Attorneys: Gender compared with Children					
Total Respondents: 322					
Number of children	All	All Females	All Males	Single Females	Single Males
0	58 percent	56 percent	64 percent	74 percent	86 percent
1	17 percent	16 percent	18 percent	13 percent	8 percent
2	17 percent	21 percent	8 percent	7 percent	3 percent
3	5 percent	5 percent	6 percent	5 percent	3 percent
4	2 percent	1 percent	4 percent	0 percent	0 percent
5	1 percent	1 percent	0 percent	1 percent	0 percent

Earners. The majority of attorney respondents (56 percent) have two earners, and two percent have more than two earners. However, 42 percent have only one adult earner in their household. (See Table 6.)

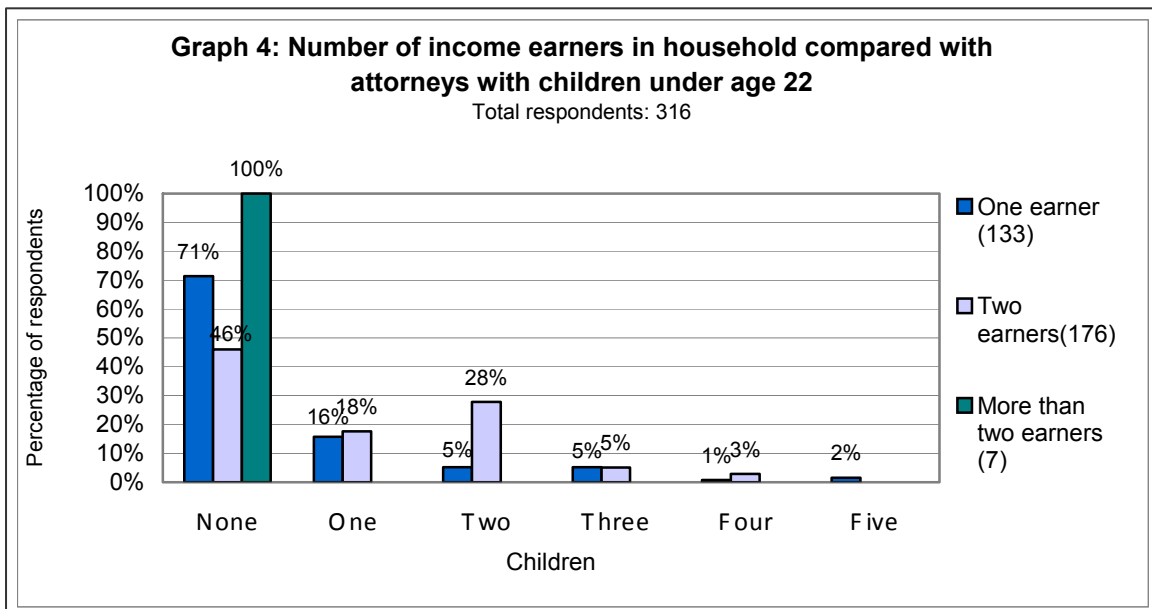
Males are more likely to have one earner in the household—48 percent as compared to 40 percent of female attorneys. Only female attorneys report having more than two adult earners in the household. Although the question was not asked about living with parents, based on interviews and narrative responses to the survey questions, the other earners are likely parents with whom the attorneys live. (See Graph 2.)



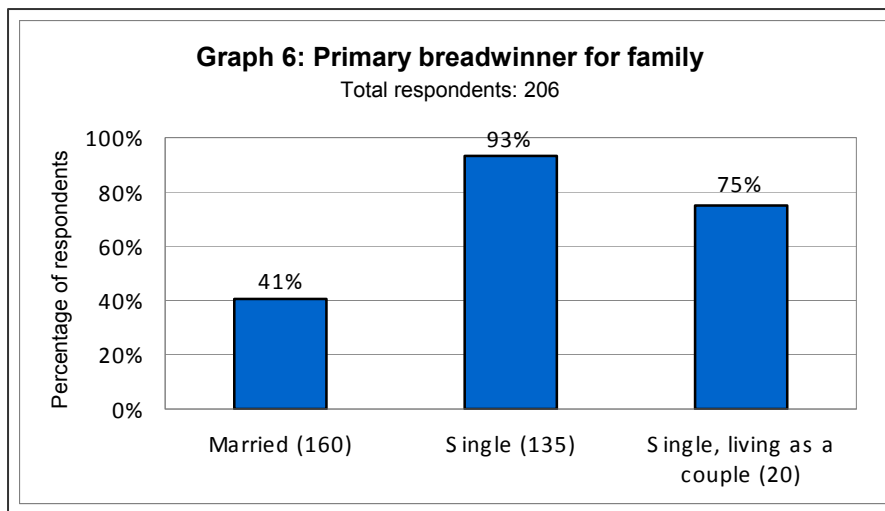
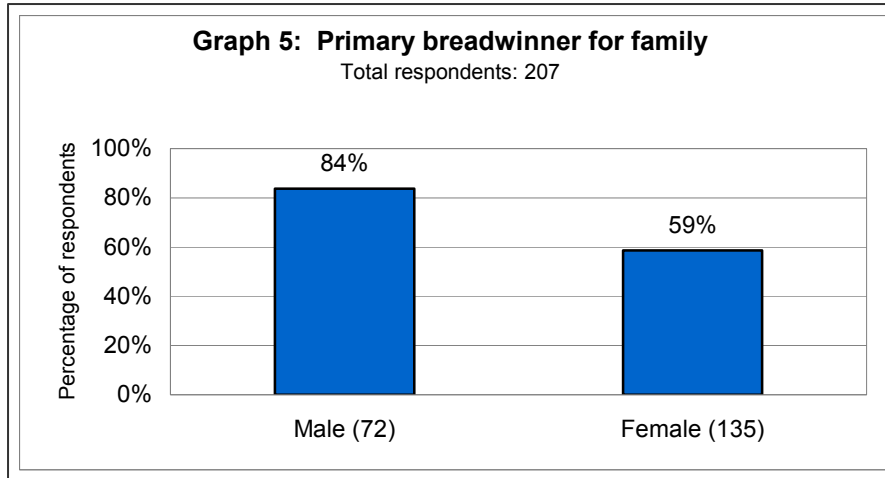
Ten percent of married attorneys and fourteen percent of the single attorneys living as a couple have only one earner in the household, whereas eighty-five percent of the single attorneys have one earner. (See Graph 3).



Twenty-nine percent of the attorneys with children have only one earner in the household. See (Graph 4).



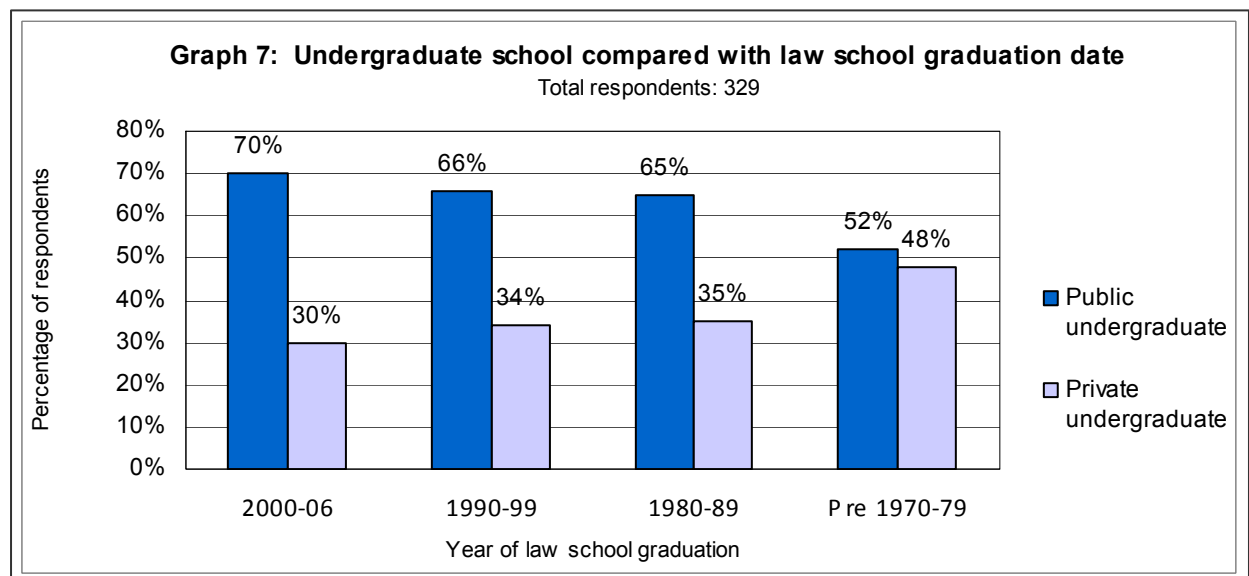
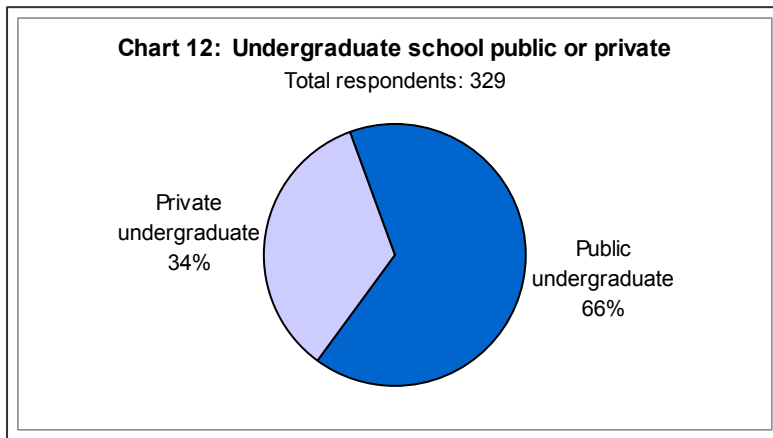
Primary Breadwinner. Two-thirds of the current attorney respondents are the primary breadwinners in their households. (See Table 6.) However, male attorneys are disproportionately the primary breadwinner—84 percent as compared to 59 percent of the female attorneys. (See Graph 5.) Only 41 percent of the married attorneys are the primary breadwinners. (See Graph 6.)



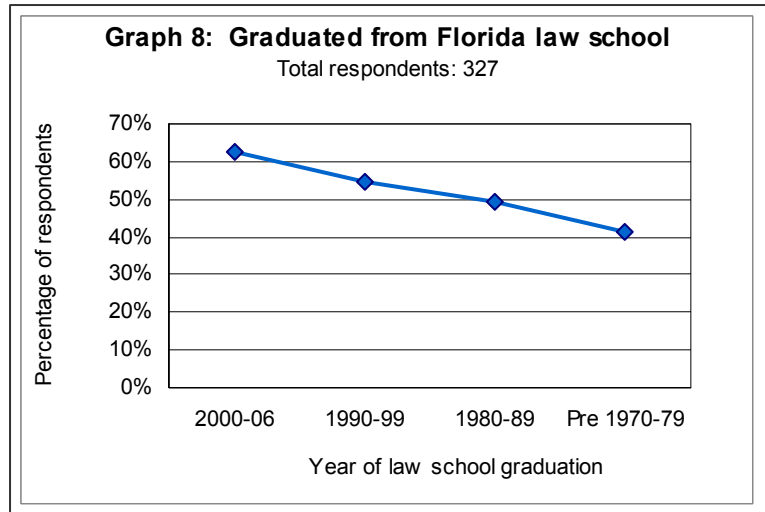
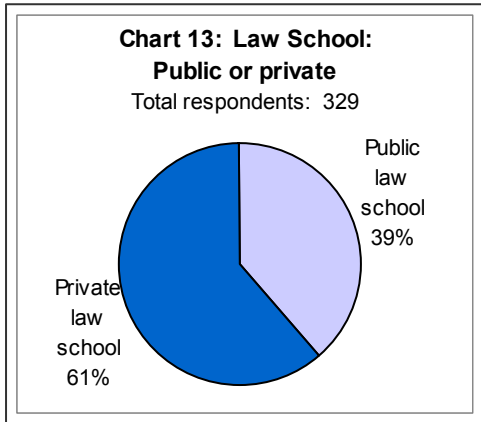
Roommates. Fourteen of 282 current attorney respondents live with an adult earner who is a roommate only. The median salary of the attorneys with roommates is \$40,000.

B. UNDERGRADUATE AND LAW SCHOOL EDUCATION OF CURRENT ATTORNEYS

Undergraduate Education. Two-thirds of the current attorney respondents attended a public undergraduate school. (See Chart 12.) The trend has been toward public undergraduate education, with 70 percent of more recent law school graduates attending a public school as compared to only 52 percent of the pre-1980 law school graduates. (See Graph 7.)

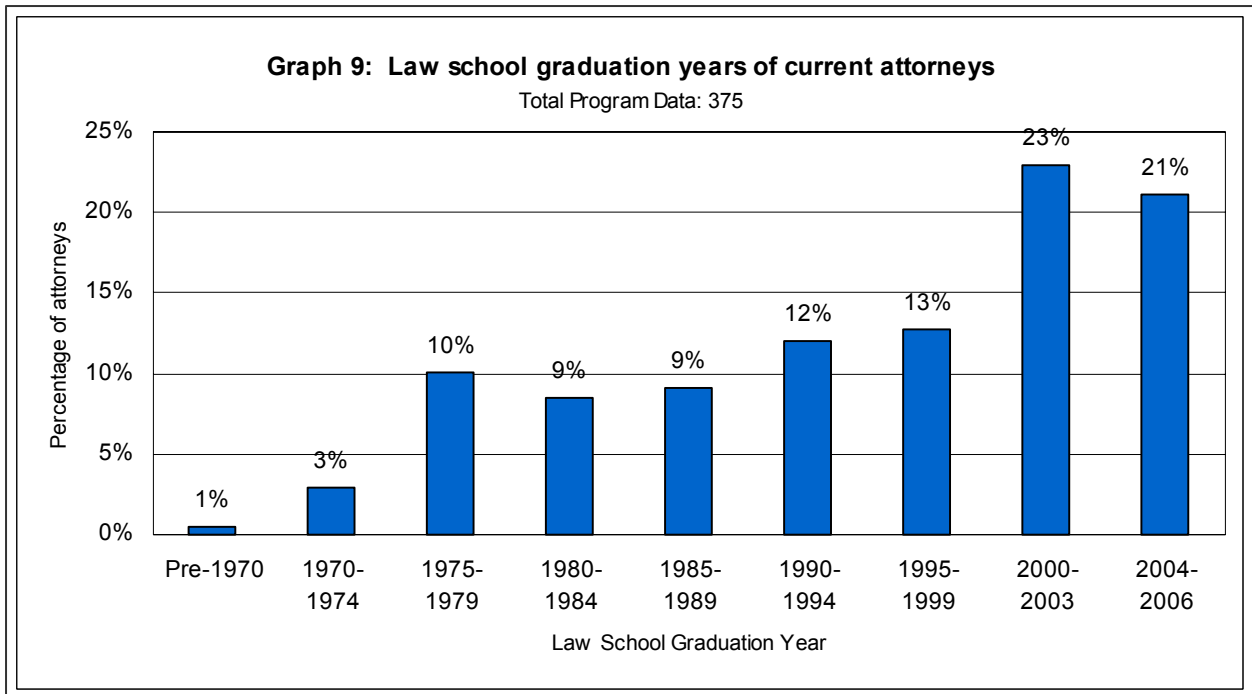


Law School Education. The percentages of private and public schools are nearly reversed for law school education compared to undergraduate education. Sixty-one percent of current attorney respondents attended a private law school. (See Chart 13.) This percentage is fairly steady—from 60 to 63 percent—over the range of graduation dates. More than half of the current attorneys (55 percent) graduated from a Florida law school. This is an increasing trend as 62 percent of the more recent graduates graduated from a Florida law school, as compared to 41 percent of the pre-1980 graduates. (See Graph 8.)



Law School Graduation Dates.

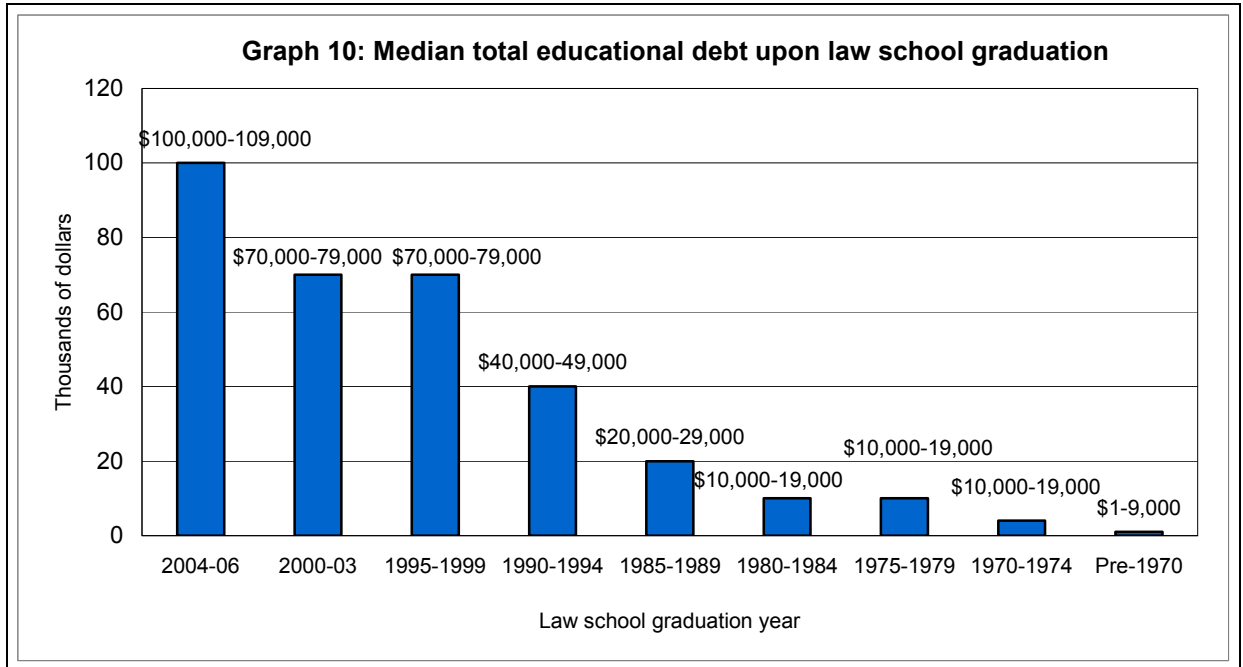
The current attorneys graduated from law school from 1961 through 2006 and have a median graduation year of 1997. However, more than 20 percent graduated in the last three years. (See Graph 9.)



C. EDUCATIONAL DEBT AND LOAN REPAYMENT ASSISTANCE

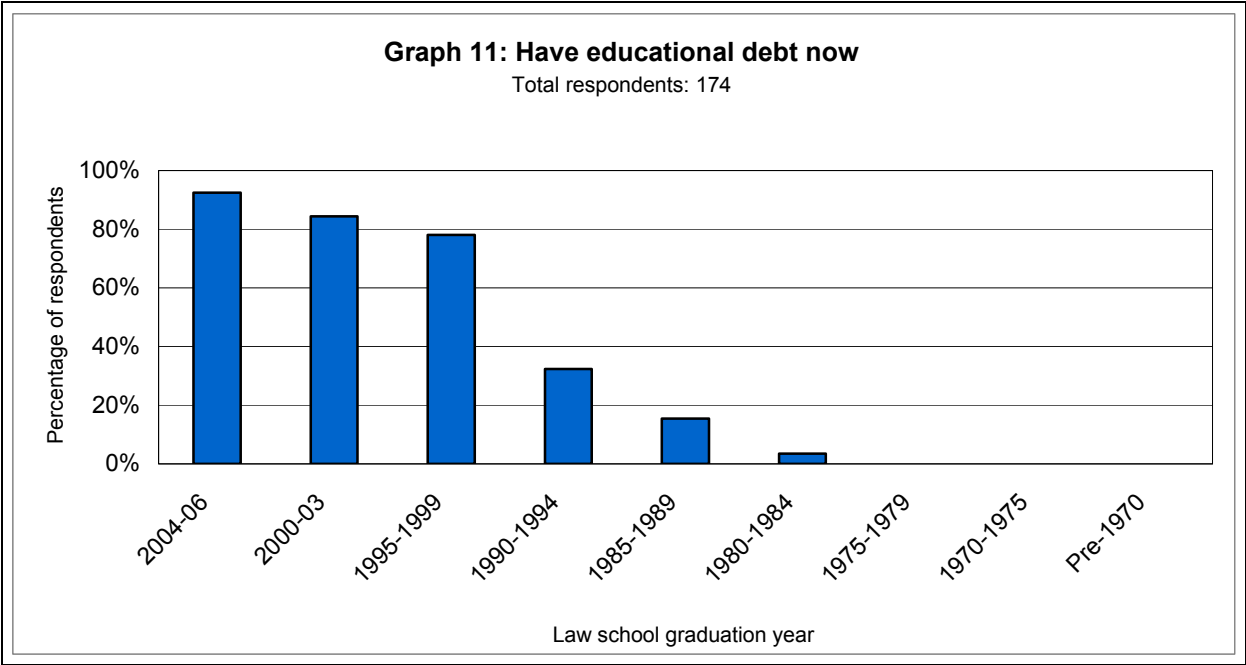
Educational Debt after Law School. Seventy-eight percent of the current attorney respondents had educational debt when they graduated from law school.

The trend of having educational debt is increasing with only 11 percent of the attorneys who graduated from 1995 through 2006 graduating with no debt. The amount of debt is inversely proportional to the attorney’s length of time from graduation. (See Graph 10.)

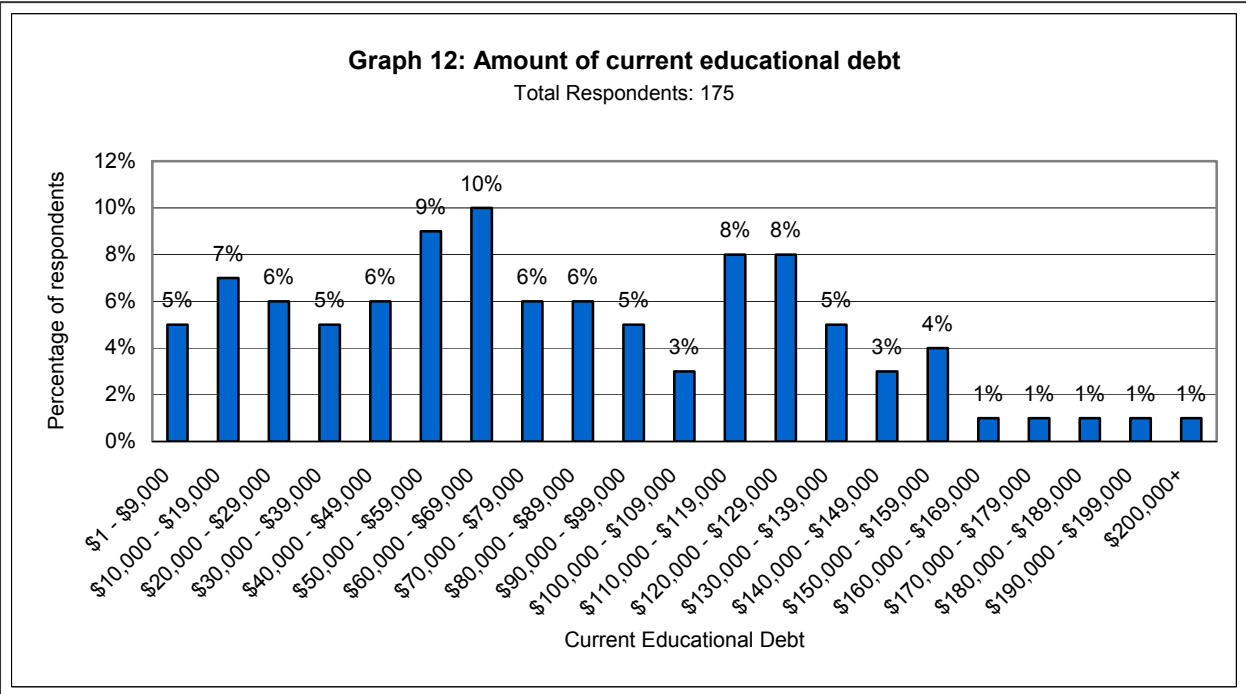


Educational Debt Now. More than half of the current attorney respondents (54 percent) have educational debt now. One hundred percent (19) of the attorney survey respondents who graduated from law school in 2006 have educational debt. Eighty-nine percent of those who graduated in the last five years (2002 through 2006) have educational debt. The percentage does not drop significantly until the classes of 1990 – 1994—thirty-two percent have debt. (See Graph 11.)

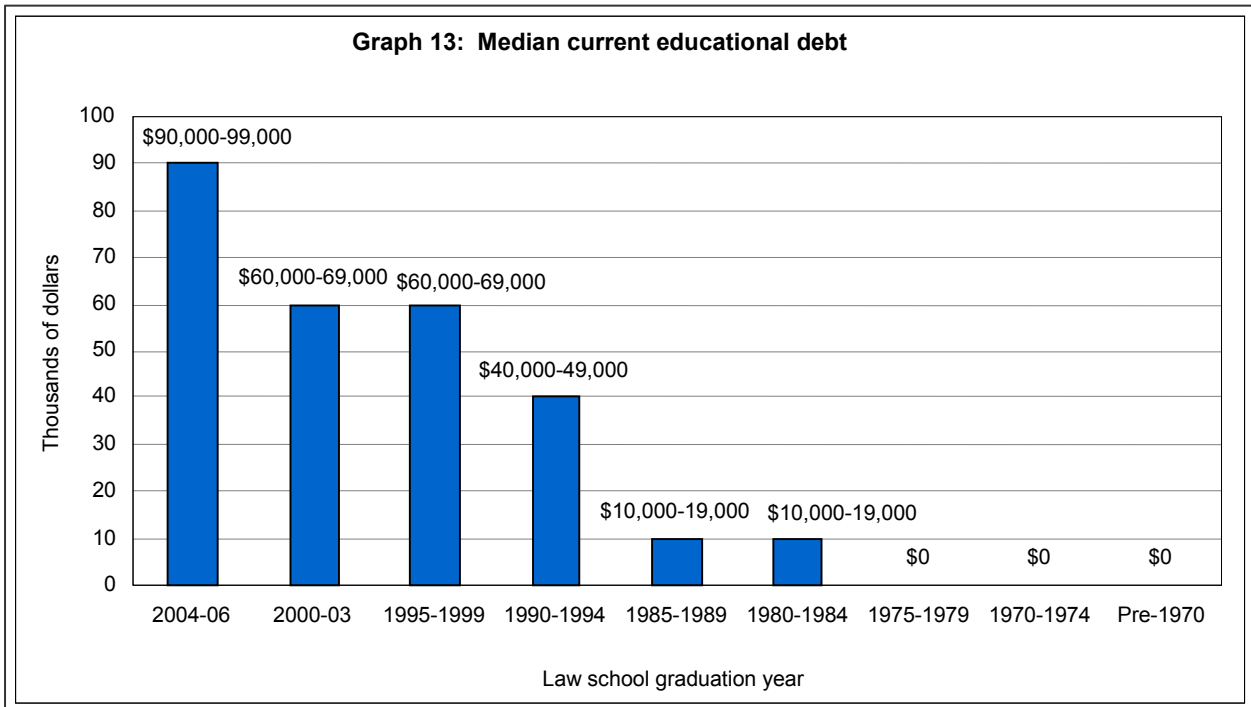
Finding: *Fifty-four percent of the current attorneys have educational debt now, and all current attorneys who are 2006 law school graduates have educational debt.*



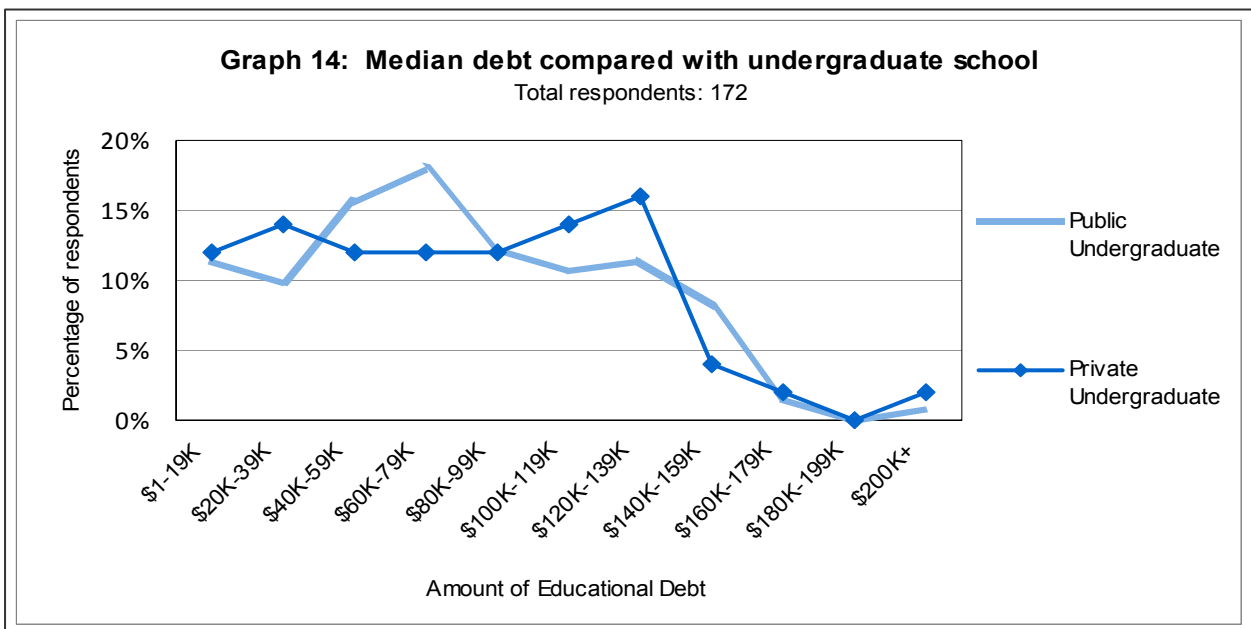
The amount of educational debt for current attorneys ranges from \$1—\$9,000 to more than \$200,000. The median amount of debt is \$70,000—\$79,000. (See Graph 12.)



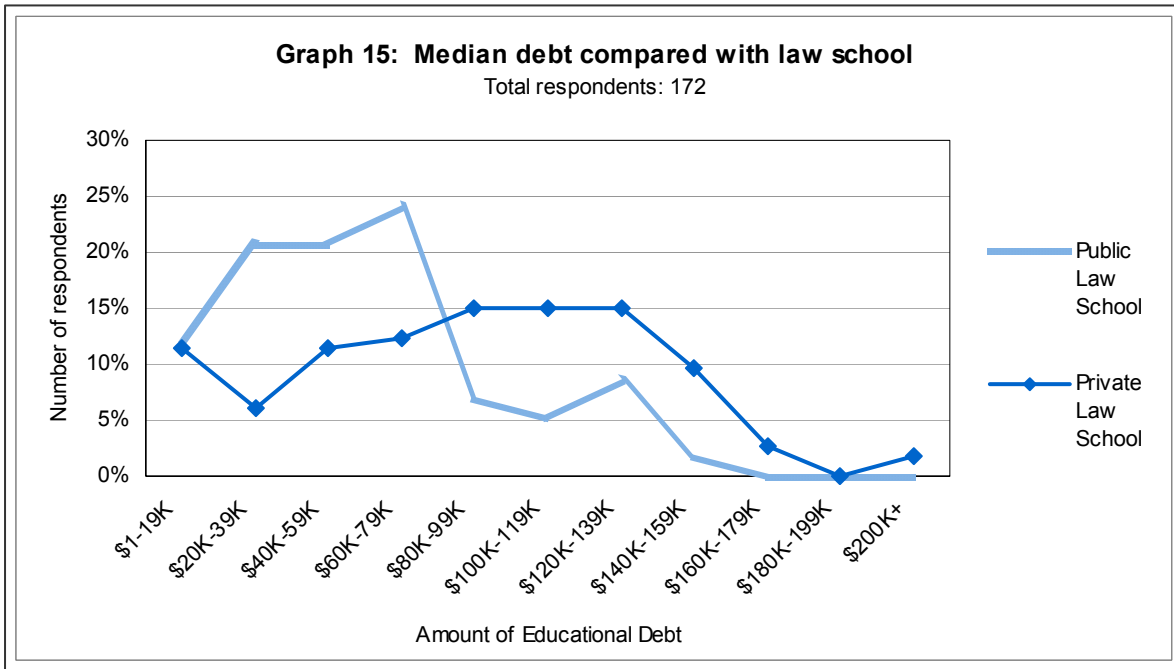
The more recent graduates have the largest amount of debt, with a median for those who graduated from 2004 through 2006 of \$90,000—\$99,000. (See Graph 13.) 2006 graduates have a median debt of \$110,000.



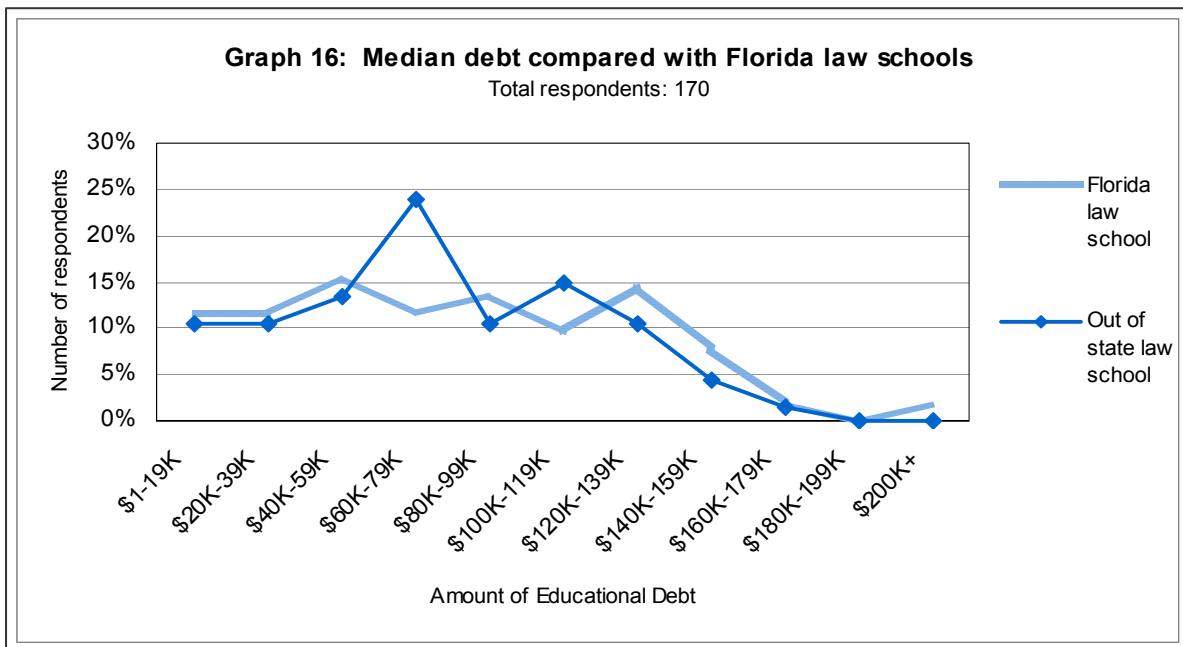
Attorneys who went to private undergraduate schools have a higher median educational debt than those who went to a public undergraduate school—\$70,000 - \$79,000 as compared to \$60,000 – \$69,000. (See Graph 14.)



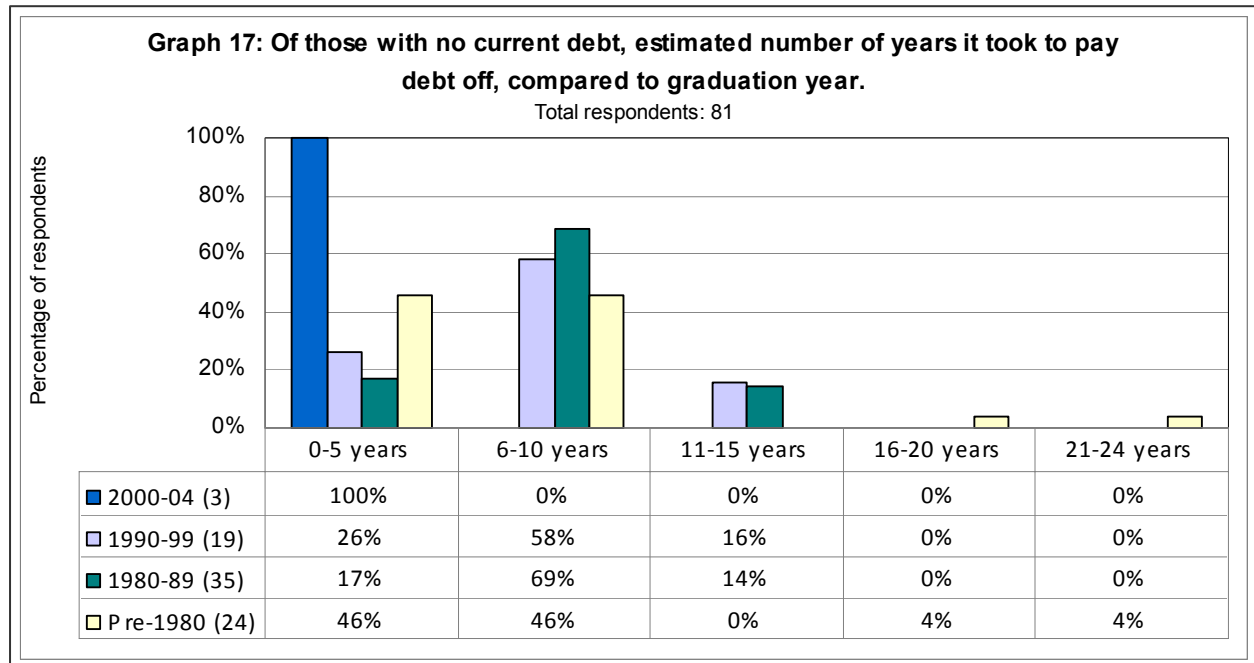
Those who graduated from a private law school have a significantly higher debt than those who graduated from a public law school—\$90,000 - \$99,000 as compared to \$50,000 - \$59,000. (See Graph 15.)



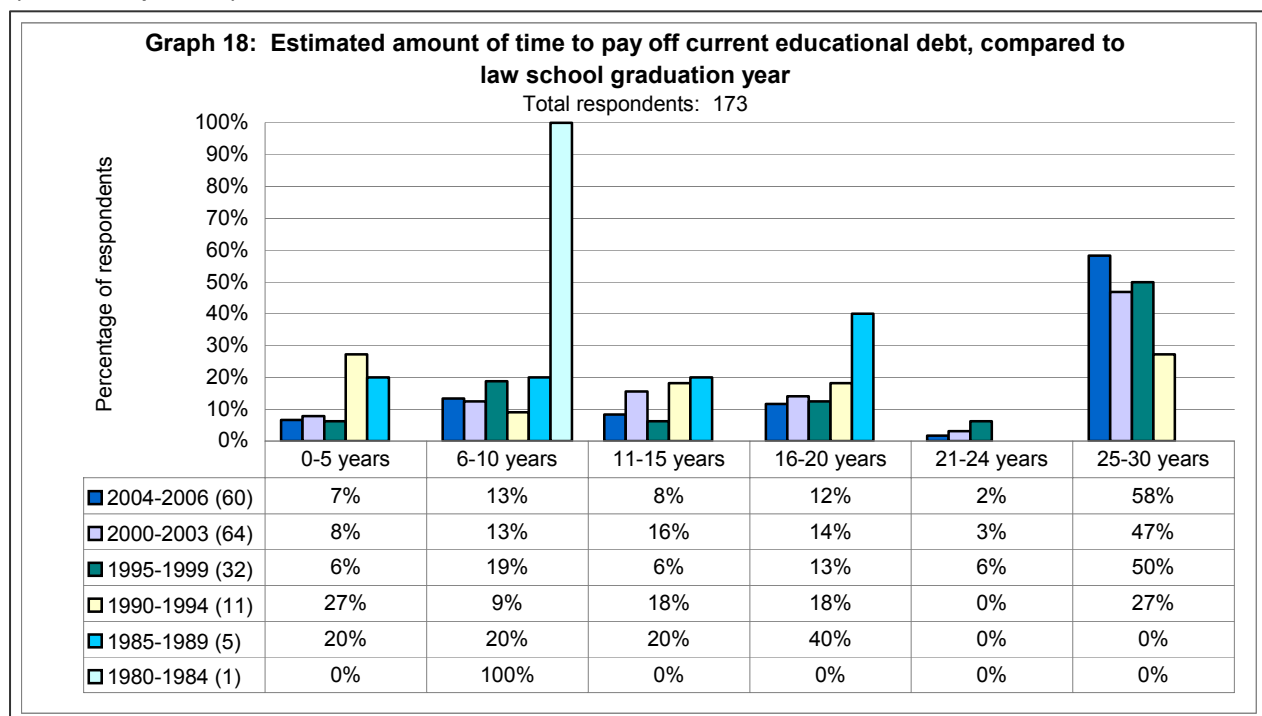
Those who graduated from a Florida law school have higher median debt than those who graduated from law school in another state—\$70,000 - \$79,000 as compared to \$60,000 - \$69,000. This could be due to the trend of the more recent graduates graduating from a Florida law school in larger percentages than the older graduates. (See Graph 16.)



Estimated Time to Pay Off Educational Debt. Of the 255 current attorney respondents who graduated from law school with educational debt, 81 (28 percent) have paid it off. The median time to pay it off was 6 to 10 years. Two attorneys—one each—took 16 – 20 years and 21 – 24 years. (See Graph 17).



Of the 174 attorneys who have current debt, the largest number (84) estimate it will take them 25 – 30 years to pay off their debt. The median estimated length of pay-off is 21-24 years. This is at least fifteen years longer than for those who no longer have debt. (See Graph 18.)



Sample Student Loan Repayment Terms and Amounts. Interest rates vary depending on when an attorney went to school and the type of loans they have. A 7.5 percent rate, however, is likely the average interest rate for attorneys who have debt currently. Table 7 demonstrates the payment amounts for various levels of debt beginning with \$75,000—the mid-point of the median for all attorneys with current debt (\$70,000 - \$79,000) and two amounts more in the range of the recent graduates.

Finding: *The median amount of educational debt for all current attorneys is in the range of \$70,000 - \$79,000, but 2006 graduates have a median educational debt of \$110,000.*

Many recent graduates have to consolidate their loans for a 30 year term to lower the monthly payments. Although the monthly payments are less, the total payments increase dramatically. Those with \$75,000 of debt will pay nearly \$82,000 more over a 30-year loan as compared to a 10-year loan.

Table 8: Examples of Student Loan Payments						
Loan Amount	Rate	Term (Years)	Monthly Payments	Annual Payments	Total Payments	Total Interest
\$75,000	7.5	10	\$890	\$10,683	\$106,831	\$31,832
\$75,000	7.5	15	\$695	\$8,343	\$125,147	\$50,147
\$75,000	7.5	20	\$604	\$7,250	\$145,006	\$70,007
\$75,000	7.5	30	\$524	\$6,293	\$188,788	\$113,788
\$90,000	7.5	10	\$1,068	\$12,820	\$128,198	\$38,198
\$90,000	7.5	15	\$834	\$10,012	\$150,176	\$60,176
\$90,000	7.5	20	\$725	\$8,700	\$174,007	\$84,008
\$90,000	7.5	30	\$629	\$7,551	\$226,544	\$136,546
\$110,000	7.5	10	\$1,306	\$15,669	\$156,686	\$46,686
\$110,000	7.5	15	\$1,020	\$12,237	\$183,548	\$73,548
\$110,000	7.5	20	\$886	\$10,634	\$212,676	\$102,677
\$110,000	7.5	30	\$769	\$9,230	\$276,890	\$166,889

Comparison of Educational Debt with Other Attorneys. Extensive surveys were conducted of civil legal aid attorneys in Ohio and South Carolina in 2006.¹⁴ Both states' median attorney current educational debt was \$61,000 - \$75,000, which is similar to Florida's median debt of \$70,000 - \$79,000. Forty-seven percent of South Carolina's civil legal aid attorneys and 46 percent of Ohio's had current educational debt. These are lower percentages than Florida's 54 percent. Also in 2006, NLADA conducted a survey of civil legal aid attorneys in the U.S. who were 35 years of age or younger, and found that the median educational debt was \$60,000 - \$74,999—also in a similar range to Florida's attorneys' debt.

¹⁴ Ohio Legal Assistance Foundation (prepared by Kelly Carmody), *Survey Results, Attorney Educational Debt and Loan Repayment*, June 27, 2006; South Carolina Legal Services (prepared by Kelly Carmody), *Survey Results, Attorney Educational Debt and Loan Repayment*, November 10, 2006.

Law School Tuition. Knowing the amount of law school tuition helps to understand why attorneys' educational debt is so high. Three years of tuition and fees in Florida ranges from \$22,701 for Florida A&M to nearly \$104,000 for University of Miami. (See Table 8.) Law schools estimate annual living expenses and book expenses between \$10,000 and \$18,000. Using a very conservative estimate of \$15,000 per year for these expenses, the total cost is \$67,700 to \$149,000 for a Florida graduate.

Table 9: Florida Law School Tuition				
Law School	City	In-state or Private Tuition & Fees	Out-of-state Tuition & Fees	Three Year Total for In-state Tuition & Fees
Public Law Schools				
University of Florida	Gainesville	\$10,808	\$30,173	\$32,425
Florida State University*	Tallahassee	\$9,621	\$29,187	\$28,863
Florida A & M	Orlando	\$7,567	\$26,828	\$22,701
Florida International University	Miami	\$9,648	\$23,501	\$28,945
Private Law Schools				
Barry University	Orlando	\$29,300	same	\$87,900
Florida Coastal School of Law	Jacksonville	\$28,940	same	\$86,820
Nova Southeastern University	Ft. Lauderdale	\$28,680	same	\$86,040
Stetson University	St. Petersburg	\$29,240	same	\$87,720
St. Thomas University	Miami Gardens	\$27,840	same	\$83,520
University of Miami	Miami	\$34,652	same	\$103,956

*2006-2007 tuition

Nationally in 2006, the median in-state tuition for a public law school was \$13,107. The out-of-state tuition was \$25,262; and for a private school, \$30,670.¹⁵ The public school tuition medians are even higher than Florida's tuition. An in-state resident of a public law school outside Florida, with conservative expenses of \$45,000 for three years, would need more than \$84,000 to go to law school.

Receipt of Loan Repayment Assistance. Of the 175 current attorney respondents who currently have educational debt, 103 or 59 percent receive assistance from a Loan Repayment Assistance Program (LRAP). (See Graph 19.) The largest number of recipients graduated from 1995 through 1999. The sources of LRAP assistance include the Florida Bar Foundation¹⁶, employers, Equal Justice Works (9), Americorps (3), other fellowships (1), Perkins cancellation (1), and law schools (7). Eight attorneys receive assistance from more than one source. None of the seven attorneys receiving assistance from a law school graduated from a law school in Florida.

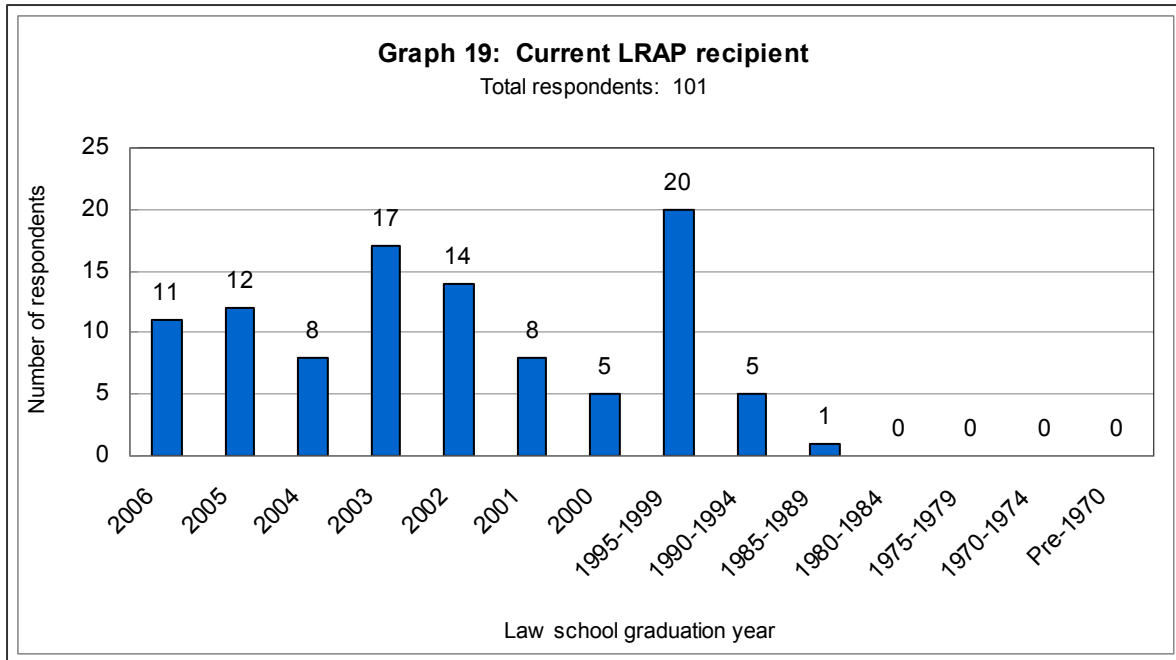
Finding: *Fifty-nine percent of the current attorneys with educational debt receive assistance from a Loan Repayment Assistance Program (LRAP).*

¹⁵ <http://www.abanet.org/legaled/statistics/charts/stats%20-%205.pdf>.

¹⁶ The respondents may have confused the Foundation and employer assistance, so numbers are not reported for those sources here.

Of the more than 40 percent of attorneys with debt who do not receive loan repayment assistance, seven are part-time employees; 32 of the full-time attorneys have salaries of less than \$45,000; and, they all have a medium educational debt of \$60,000 - \$69,000.

Florida Law School LRAPs. Of Florida’s law schools, only one—St. Thomas University School of Law—has an LRAP. Maximum annual assistance of \$3,600 is provided to a limited number of St. Thomas graduates who serve the poor and disadvantaged.



Florida Bar Foundation LRAP. The Foundation administers an extensive LRAP, with two parts—the Regular LRAP and the Supplemental LRAP. Eligibility requirements and benefits of the Regular LRAP include: (1) full-time employment with a civil legal aid program; (2) an income cap of \$46,000 for a newly graduated staff attorney, with \$3,000 increments for each year of experience; (3) law school loans only are eligible; and (4) up to eight years of benefits. The amount of benefits is 80 percent of annual debt payments up to \$6,400 per year. The benefits are designed to be non-taxable and are given in the form of a forgivable loan. The Foundation funds this partially by reducing a program’s general support grant from the Foundation for 20 percent of the cost of the benefits for each participant employed by that program. Sixty attorneys are funded in 2007 by the Regular LRAP.

The Supplemental LRAP allows a program to nominate the same attorneys for additional benefits up to \$6,400 annually and other attorneys for benefits up to \$6,400 annually. The eligibility criteria are set by the individual programs, except only law school loans are covered. The Supplemental LRAP is partially funded by reducing a program’s general support grant from the Foundation for 80 percent of the cost of the

benefits for each participant employed by that program. Twenty-five attorneys receive benefits in 2007 from the Supplemental LRAP.

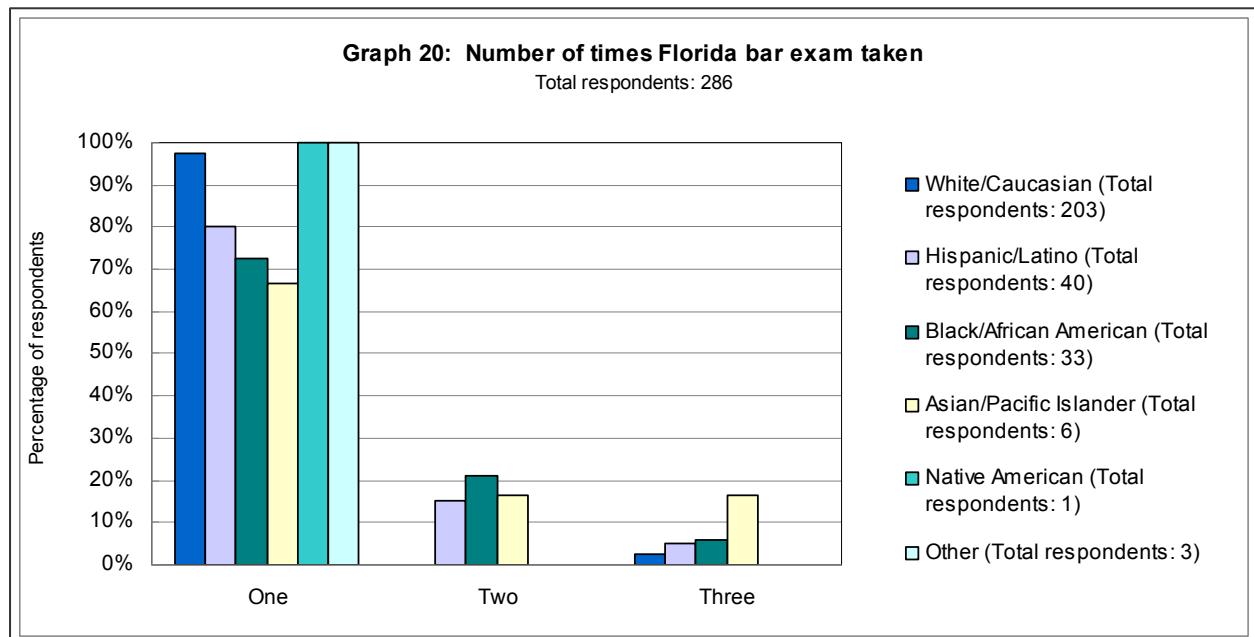
A total of 85 attorneys receive benefits from one or both of the LRAPs—fourteen attorneys receive benefits from both. The median debt balance is \$75,144. The median payments due annually total \$5,909. The range of LRAP benefits provided is \$270 to \$12,800, with a median of \$4,400. Only seven attorneys receive more than \$6,400. The total assistance given is nearly \$390,000.

One executive director of a program reports that his/her organization’s salaries are kept below the Foundation’s LRAP salary cap to ensure eligibility for the assistance.

Employer LRAP. Twenty of the twenty-eight programs participate in the Regular LRAP, and sixteen of the twenty also participate in the Supplemental LRAP. A few programs also provide assistance to attorneys who are ineligible for the Foundation’s program, and a few provide loan repayment assistance during the gap between an attorney starting employment with the program and the Foundation’s LRAP providing assistance. The Foundation’s LRAPs are on a calendar year of assistance, so someone who starts after January is unable to receive Foundation LRAP benefits until the following year.

D. BAR EXAMS and LICENSES

Florida Bar Exam. Eighty-five percent of the current attorney respondents (321 total) who have taken the Florida Bar exam have taken it once; eleven percent have taken it twice; and 3 percent have taken it three times. The ten attorneys who took it three times are all licensed. Two each of the individuals who have taken it once or twice are not licensed yet. A disproportionate percentage of attorneys who are not White/Caucasian have taken the bar exam more than once. (See Graph 20.)



The cost of the BarBri course in Florida is \$2,645 plus tax and \$175 for a refundable book deposit. The Celebration on-line course is \$2,295 with full mentoring (writing critiques, phone and e-mail support). Nineteen of the Florida programs do not pay for bar review courses. Nine programs do one of the following: would consider it (one program); paid for one attorney (one program); pay 50 percent of the cost (one program); pay up to a maximum of \$1,500 (two programs); give a forgivable loan (one program); or pay the full cost (three programs).

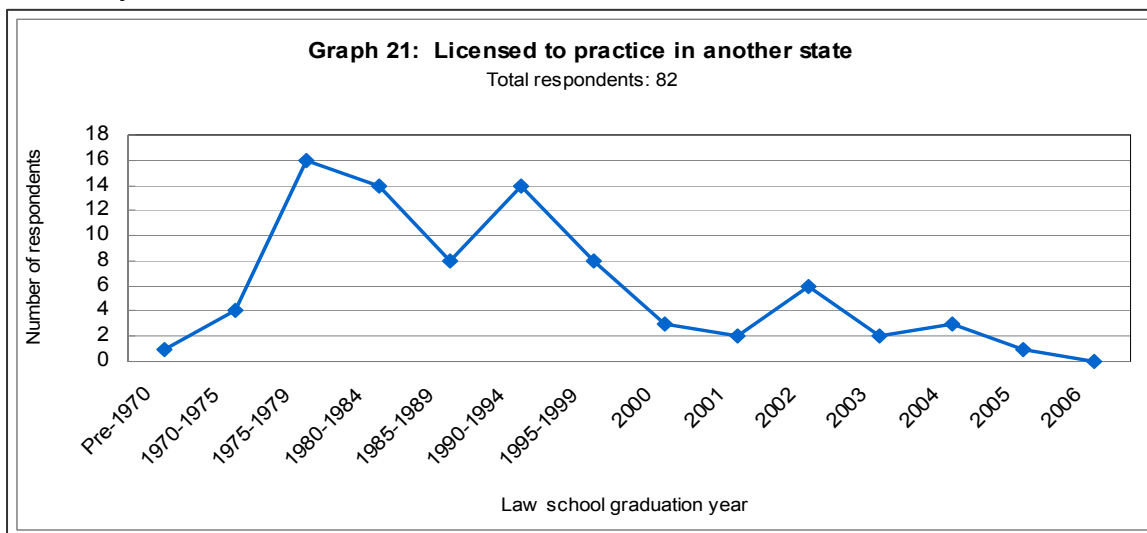
One-half of the programs (fourteen) provide paid leave outside of regular time off to study for the Bar exam. The paid time off ranges from 10 to 20 work days.

The fee for the Florida Bar exam and license varies depending on whether an applicant registered while in law school or whether they are admitted to the Bar in another jurisdiction. An individual who registers during law school is charged between \$450 and \$575. Applicants who did not register during law school or have been admitted less than 12 months in another jurisdiction pay a fee of \$875. Attorneys licensed in another state pay a fee of \$1,300 to \$2,500, depending on how long they have been licensed.

Finding: *Most programs do not pay for a bar review course or the Bar exam fee, and half of the programs do not provide paid time off (outside of vacation time) to study for and take the Bar exam.*

Twenty-one of the programs do not pay the fee to take the Bar exam/become licensed in Florida. Of the seven who do pay, their payment policies are as follow: forgivable loan (one program); one exam (three programs); one exam for out-of-state licensed attorney (one program); two exams (one program); more than two exams (one program).

Licensed in Another State. Eighty-two of 327 current attorney respondents are licensed to practice law in another state. These attorneys largely graduated from law school between (and including) 1975 and 1994. (See Graph 21.) It is not known whether these attorneys moved to Florida early or later in their careers, given that they may have worked for another employer before Florida civil legal aid. Therefore, no trend analysis is made.



E. ATTORNEY RECRUITMENT, HIRING, and RETENTION

Open Attorney Positions. In early February 2007, seventeen programs had a total of 28 open attorney positions. These vacancies—a seven percent rate—were a mixture of turnover and new positions, with one position being held open due to uncertain funding. Vacancies varied from two weeks to more than a year. Four programs reported that no qualified attorneys had applied and some said they get very few applications at all. Two programs, including the program with the highest number of vacancies—five—said the reasons for the vacancies are the cost of living, educational debt and low salaries.

Recruitment of Florida Law Students. Education of law students in Florida about civil legal aid and recruitment of them while in law school is currently not undertaken in a coordinated way, except for some elements of the Summer Fellows program and national career fairs, described below. A number of the programs participate in classes or other activities at a law school in their area, but program efforts seem to be all individual.

Public interest staff or faculty was interviewed at five of the ten Florida law schools. All five have a student public interest law group. Many of the interviewees' comments and suggestions were similar. Their primary points are listed below.

- **Law School Public Interest Staff/Faculty Comments about Recruitment:**

- *Salary is the number one concern of students interested in public interest law at three of the law schools. Other concerns include wanting to be able to have a life outside of work, not willing to work all the time if they do not make much money, and getting good litigation experience. They also do not want to practice in one area of the law, but rather want the ability to learn about a variety of areas.*
- *Students do not know about the Loan Repayment Assistance Program.*
- *Civil legal aid does not conduct on-campus interviewing. Public defenders and State Attorneys do on-campus interviewing.*
- *Civil legal aid's marketing needs to be more enticing or "jazzed up." The job ads are not well-written. They do not mention the possible LRAP. The program's websites are not used as a recruitment tool. Alumni use the schools to look for jobs, but civil legal aid does not send information about jobs for experienced attorneys.*

Career Fairs. The Foundation has been coordinating recruiting trips to legal career fairs since 2000. One or two attorneys from the Florida programs or the Foundation's Legal Services Director attend the Equal Justice Works Career Fair in Washington, DC (the largest public interest career fair in the country) and the Southeastern Minority Career Fair in Atlanta. A team also attended the Massachusetts Law School Consortium Career Fair in Boston and a legal career fair in Texas once, as well. The

Foundation is attending the ABA's Law Student Division Career Fair in San Francisco in 2007.

Law students are interviewed and then given a ranking for their potential as civil legal aid attorneys. The list of top candidates, along with their resumes is sent to each Florida program for use in their recruitment efforts. In the years 2003 – 2006, 89 candidates were identified for the programs. Of these, seven (8 percent) became staff attorneys with a Florida program—three Caucasian, two Black/African-American, and two Latino/Hispanic. Six of the seven attorneys are still with Florida civil legal aid.

A survey was sent to the top candidates from the career fairs who did *not* take a position with a Florida civil legal aid program. (See Methodology section.) Six attorneys responded. Although not necessarily representative—their comments reflect recruitment experiences similar to those described by some of the attorneys who were hired.

Only six of the programs contacted any of the candidates before the candidate got in touch with them. It is possible that only six programs had an opening, but unlikely given that seventeen programs have an opening currently. One of the programs contacted four of the candidates. One candidate was not contacted by any of the programs.

Four candidates applied for and interviewed for a position. Three were offered positions—one with two programs. The reasons given for declining the offers varied.

- **Top Candidates' Reasons for Declining Positions:**

- *"With all my loans and other household bills I could not afford to live on the pay,"*
- *"...informed post-interview that the organization was poorly managed."*
- *One candidate had taken another job by the time the offer was made, and went on to say, "Most students are looking to secure employment at the latest during the first semester of their third year of law school. I found that most Florida civil legal aid programs were not in a position to offer positions this early due to the fact that they were unsure of their budgets for the upcoming year and were not sure of how many applicants they would be able to hire; as a result offers from Florida civil legal aid came during the second semester of the third year of law school when most students have secured employment. Furthermore the lack of an offer early on, gives students the impression that there is no interest in them as a candidate."*

The current jobs of the respondents include prosecutor (2), private practice (2), private business (1) and a civil rights non-profit (1). Two have been public defenders, but left those positions. Five out of six work in Florida. Two respondents would like to be employed by a civil legal aid program in Florida, but both said the pay is too low. One said, as well, that legal aid should offer loan forgiveness.

- **Suggestions Made by Candidates for Improving the Recruitment Process:**

- *“Follow up if a person is indeed a top candidate.”*
- *“Make it shorter—i.e. make offers before December.”*
- *“Be more aggressive in recruiting and express an interest in potential candidates early on and continue to have contact with the candidate until the legal aid program is able to make a solid job offer.”*

Summer Fellows. The Florida Bar Foundation sponsors Summer Fellows to intern in the Foundation-funded civil legal aid programs. From 2001 through 2006, 118 law students were placed in 125 fellowships in 24 programs. Seventeen of the 78 former fellows (22 percent) who have graduated from law school are currently attorneys with ten of the programs.¹⁷ Their racial/ethnic make-up is thirteen White/Caucasian, three Black/African American and one Latino/Hispanic. One program employs four attorneys who have been recent summer fellows.

The Foundation sponsored 34 fellows in the summer of 2007. A statewide two-day orientation/training seminar is held before the fellowships begin. A variety of sessions on substantive areas of the law and on the history of legal aid and law practice management are provided. Former fellows and current Equal Justice Works fellows also speak about the legal aid experience.

A survey was conducted of the former fellows from 2001 through 2006. (See Methodology section.) The survey results from the 54 respondents are instructive about how to improve the fellowship experience, which may result in better recruitment of fellows, either by the program in which they did their fellowship or another civil legal aid program.

- **Comments from Former Summer Fellows about their Fellowship Experiences:**

Many fellows said they liked the “hands-on work” and the “client contact” of their fellowships, as well as learning about a variety of areas.

- *“The level of client contact and the balance between research and active lawyering was really appealing to me. I also appreciated the confidence the attorneys had in me and their willingness to listen to me and problem solve with me. Giving me the opportunity to actually work on “real” work, rather than busy work also helped realize the implications of abstract concepts vis a vis real world situations.”*
- *“I liked the energy and dedication in the office as well as the wide variety of case types I was working on. It exposed me to a wide range of public interest law and assured that I would not get bored.”*

¹⁷ One of the seventeen attorneys left after the data was collected, but is considered a current attorney for purposes of the study.

- *“Being able to experience many (or even another) program would have been cool. I would have liked working one week at a legal aid office in another area of law, just for the comparative experience.”*

Being able to interact with the other fellows was mentioned by numerous former fellows as a way to improve the fellowship experience.

- *Would have liked: “More opportunities to interact with the other fellows; I only saw them during orientation. I thought it could have been beneficial to continue to meet with each other because of mutual interest in public interest law.”*
- *Would have liked: Conference or weekly follow-up phone calls where all fellows could participate in giving reports on their work and maybe present case studies so all fellows get glimpses of the different experiences throughout the state.*
- *“I would suggest some more networking through the Florida Bar -- dinners or community service projects on the weekends where we could have the opportunity to meet other attorneys who were doing public interest law.”*

Networking, active recruitment, and investing fellows in civil legal aid were among the suggestions for effectively recruiting summer fellows for staff attorney positions.

- *“When staff attorneys view summer fellows as potential hires, it tends to work that way.”*
- *“My office turned my summer fellowship into an Equal Justice Works fellowship. The EJW fellowship turned into a permanent position. The fellowship project gave me a sense of responsibility for a big case in the office and made me feel invested in legal services. I also had a supportive boss and flexible hours.”*
- *“Perhaps provide a networking opportunity such as cocktail hour or seminars during the summer so that Fellows can get a chance to familiarize themselves with other civil legal aid programs.”*
- *“I would have probably accepted a position at (program) if I was offered one. I think toward the end of the fellowship, the supervisor should determine whether some of the summer fellows would be interested to work there and contact them directly when there are openings. Also, other agencies should try to focus on recruiting former summer fellows during their third year.”*
- *“I think having an invitation-only job fair for summer fellows and the legal services organizations would be among the most effective ways to recruit.”*

Former fellows who would like to work for a Florida civil legal aid program, but did not currently, mentioned a variety of reasons why, including a lack of available positions and not being bi-lingual; but money was the primary reason:

- *“unsure I can take a severe pay cut”*
- *“student loan payments”*
- *“salary”*

- *“the starting salary vs. the caseload”*
- *“low pay and high student loan debt”*
- *“location and salary”*
- *“money”*

Current attorneys were also asked how to better recruit summer fellows. Most of them answered, with great conviction and passion, that salaries need to be increased. Many mentioned the need for loan repayment assistance. Other responses included the following:

- **Current Attorney Ideas for Recruiting Summer Fellows, in Addition to Increasing Salaries and Loan Repayment Assistance:**

Provide a quality professional experience.

- *“Be more prepared for them when they start their fellowships, have work for them to do and supervise them appropriately.”*
- *“Systematically placing summer fellows in offices with clear work plans so that both the fellow has a meaningful summer and the program has a fair opportunity to evaluate the fellow as a prospective long-term employee.”*
- *“Better supervision to create actual relationships with fellows so they maintain contact as they finish their law school.”*
- *“If we could craft positions on issues that are important to the fellow rather than the program identifying a need and pigeonholing the applicant.”*
- *“By offering them as much interaction with the clients as possible.”*

Offer mentoring and networking opportunities.

- *“More time for mentoring in the summer.”*
- *“Some type of annual networking event where fellows can meet attorneys from the various legal services programs; the establishment of LRAP programs at all FL law schools.”*
- *“Make them feel a part of the program. Include them.”*

Keep in touch.

- *“More opportunities for continued communication with their summer employers after they leave...opportunities for them to be involved in training and or recruitment of future summer fellows.”*
- *“Giving summer fellows the opportunity to return to the same organization for a second summer.”*

Make offers early.

- *“As with a private law firm an offer should be made to the fellow prior to the conclusion of his/her fellowship. The offer should be contingent on bar passage.”*
- *“Make employment offers early...before they go back to school.”*
- *“Offering them jobs earlier in law school so they feel secure and don’t start the job search process, paying moving costs or giving a signing bonus.”*

Make offers more financially attractive.

- *“Pay more; offer better mentoring and networking; more support staff, up to date technology and equipment, pension/retirement planning and funding.”*
- *“Offer reimbursement for preparation in taking the Florida Bar examination such as paying for BAR/BRI and PMBR and/or application fees for the Florida Bar in return for 1 year of service regardless if passed or fail the bar.”*
- *“Hiring bonuses giving credit for their prior experience and passion for legal services work.”*
- *“Guaranteed LRAP (not just from EJW and then the post-EJW FBF priority). Assistance in finding housing. Increase in salary that reflects the very high cost of living in my area.”*

Equal Justice Works Fellows. The Florida Bar Foundation assists in recruiting high quality, new law school graduates through its sponsorship of Equal Justice Works fellows. Since 1999, 48 attorneys have been supported at 16 programs through the Foundation’s partnerships with law firms, the Florida Bar and other matching fund partners. Six additional fellows from 1996 through 2001 worked in one of the Florida programs, but were not a part of the Foundation’s sponsorship.

Finding: *Seventeen percent (9 of 54) of the Equal Justice Works fellows are now attorneys with a Florida civil legal aid program.*

Nine of the 54 fellows (17 percent) remain employed by a Florida program. Eight of these nine are in the program with which they did their fellowship. Some fellows left because the program did not have or fund a position for them after the fellowship ended. Others left voluntarily.

Recruitment, Interviewing and Hiring Processes. Half of the programs (14) use a hiring committee. Thirteen programs interview attorney applicants more than once, and eleven of the programs sometimes have more than one interview.

Ten programs reimburse attorney applicant travel expenses for interviews. Five of these programs restrict reimbursements in one of the following ways: out-of-state

applicants only, cap of \$500, only for high level positions, only if offer is accepted, or decide amount on case-by-case basis.

Thirteen programs reimburse moving expenses for newly hired attorneys, and most have a cap on the amount of the reimbursement (\$500 - \$1,500).

The respondents to the current attorney survey (304) gave civil legal aid programs the following combined ratings, using a 5 point scale from poor to excellent:

Recruitment: 2.82 Interviewing: 2.57 Hiring: 2.62

All of these ratings are between average and below average.

Below are some observations and ideas for improvement identified by the current attorneys.

- **Current Attorney Ideas:**

Many attorneys said the hiring process takes too long and programs lose good candidates as a result.

- *“There is always a huge gap between when someone leaves and when the replacement person starts, leaving existing staff to cover. Seems we are always in this mode. Supervisors and managers are too busy to focus first and foremost on recruitment and hiring.”*

Finding: *Current civil legal aid attorneys rate the Florida programs’ recruitment, interviewing and hiring processes between below average and average.*

- *“Sometimes a person is gone for several months before an advertisement is published. Then, sometimes there is a long period of time between when people are interviewed and when someone is offered a job. We have lost out on some good applicants because they had accepted another job during that window of time.”*

- *“When I applied, I was called back right away, and interviewed the next week, but it was several weeks before I was asked back for a second interview, and after that interview several more weeks before I was offered the position. I felt like they did not really want me, but could not find anyone better, so were settling for me. Maybe that was true, but it is still not the impression I should have been given.”*

Many attorneys felt their programs needed to recruit much more actively and had some ideas how.

- *“No recruitment, which is a big problem. Anyone who is around (from local law school usually) appears to get hired. The staff turn-over is impossible to even*

keep up with. Of course this contributes to difficulties. Recruitment in general requires time, energy, and desire to do it.”

- *“Oftentimes our organization only advertises for available positions in the local newspaper. I do not believe this is an effective tool for obtaining good employees in this day and age.”*
- *“Would like to see more national recruiting and increase in salary scales to attract better qualified applicants.”*
- *“Employer should pay expenses to come to interview.”*
- *“Maybe sending young attorneys who are excited about the program to go to recruit at law schools.”*

Looking within to interns, fellows and persons known to the program can be effective, but also narrowing. More effort needs to be made to recruit diverse attorneys.

- *“Employer needs to advertise for positions more widely to attract a more diverse group of candidates.”*
- *“We don’t interview too many “unknown” people. We don’t have effective practices for increasing, or even retaining, a diverse staff.”*
- *“Too much of giving positions to friends, not enough recruiting qualified staff members committed to public service and a diverse environment.”*

There are some practices that produce good results.

- *“The director seeks out motivated people and works with them to create projects that suit their interests...The director and supervising attorneys encourage candidates and bright law students to apply for fellowships, both during law school and afterwards with EJW.”*
- *“Our ED personally speaks with our interns during and at the end of their time here. (He or she) discusses their goals and ideas about future work, and encourages them to pursue employment with legal services here or somewhere. (He or she) is very good at identifying people that will dedicate themselves to helping the low-income community, and to helping them develop professionally.”*
- *“The interviewing and hiring process is always collaborative, with all attorneys on staff having the ability to participate in both the interviewing and decision-making process. This approach allows all attorneys to have a vested interest in the process and feel comfortable with the hiring of new employees.”*
- *“We had recent training on how to improve this aspect of our operation. We received specific management training on how to improve these skills and what factors to consider in hiring new staff. I would recommend to all managers and directors.”*

Recruitment for Rural Locations. Florida civil legal aid programs have offices in twelve rural locations¹⁸, and executive directors have identified this as a particular recruitment challenge. Interviewees report that most attorneys who work in rural locations do not live in those locations. They commute from more populated areas.

Finding: *Most attorneys who work in rural locations do not live in those locations.*

Current attorneys were asked for their ideas on how to better recruit attorneys to work in rural or remote areas. Most answered that salaries need to be raised and loan repayment given. Other ideas, that are more particular to rural and remote issues, include the following:

- **Current Attorney Ideas for Rural Areas in Addition to Increasing Salaries and Loan Repayment Assistance:**

Be positive about, and promote the opportunity to work in a quality office in a rural or remote area.

- *“First of all there has to be an appreciation that there is a good quality of life in rural areas and that not everyone is looking for South Beach. If one starts from the premise no one in their right mind would want to work in (rural) County or that it is somehow an inherently dangerous or unenlightened place, the prophecy become self-fulfilling. Know what your area has to offer. Promote it. Recruit from rural areas. If transportation is an issue, offer some payment for mileage.”*

Consider a different pool of candidates.

- *“It would probably be helpful for the programs to seek out experienced attorneys who may want to relocate to rural areas. This survey is putting a lot of emphasis on recruitment of attorneys who have recently graduated from law school. There should be more emphasis on recruiting experienced attorneys.”*
- *“My suggestion would be to start from the ground up. Market towards attorneys already setting up shop in that area. Find new members of the Bar (website) who list addresses from that area and take a shot with direct contact.”*
- *“Need to recruit from the rural areas itself which may include looking to older attorneys that may be looking to slow down from the pace of private practice.”*
- *“I think a statewide survey/diagnostic to determine who in legal services are from rural areas and want to go back or who is tired of living in an urban area and would like to relocate to a rural area (family reasons).... Most likely, your staff attorney is a family person and not young and single in a rural area so tailor rural offices to attract family oriented staff.”*

¹⁸ Bartow, Belle Glade, Brooksville, Bunnell, Dade City, Immokalee, Inverness, Lake City, Palatka, Quincy, Tavares, Wimauma

Provide more support and flexibility.

- *“Provide some telecommuting options... and advanced technology to enable off-site interviewing, ability to do research/writing at home.”*
- *“Need frequent contact and support from the main office. Need to provide a lot of training and supervision to prevent staff in rural or remote areas from feeling overwhelmed and isolated.”*
- *“... provide adequate staff support. Do not place one attorney or one attorney with a paralegal in a remote location. Neither will last long. Think heavy concentration of resources in remote locations.”*

Help avoid isolation.

- *“I have actually met many people who want to be in a rural area, so the ‘rural’ is not the problem. But being left drifting, direction-less, with little support from a distant, central office who acts as if they do not know you exist, that is a killer problem. The attorneys in the rural areas must be made to feel that they belong to the organization, frequent personal contacts (emails/personal calls and even video-teleconferencing, are not personal) between the different offices, including closing the office once or twice per year and having an all-office get-together, introduction lunch with maybe a brief HR training thrown in, would help keep “unit cohesion” and motivation in the ranks.”*
- *“Put in place a structure to avoid isolation - they need access to a network of specialists. Possibly rotate people on a yearly basis (unless they want to stay longer). That is what the court system does with judges.”*
- *“Have a strong support system. Don't bring in new attorneys and just forget about them after 5:00....”*
- *“Provide networking opportunities...ensure that they join the nearest local bar association and support their involvement in it. Don't let them feel stranded...”*
- *“... organize conferences of rural lawyers and encourage rural lawyers to network with other lawyers to reduce isolation.”*

Offer some special benefits.

- *“More vacation time. That way we can get out of the rural area and go spend a significant amount of time, in some nice place several times a year!!”*
- *“Vehicle and drive time allowances above and beyond the norm.”*
- *“Offer them a free airline ticket (annually) capped at \$500(?)”*
- *“Salaries should be higher in these areas of the program.”*
- *“Extra loan repayment assistance for those attorneys.”*

Recruitment for High Cost Areas. Florida also has some very high cost areas, which can add to recruiting difficulties. Current attorneys were asked on the survey for their ideas on how to better recruit for high cost areas. The bulk of the respondents answered, again with conviction and passion, that salaries need to be raised and loan repayment assistance given. Many also suggested that additional financial incentives, including salary increments, be given in recognition of the higher cost of living.

Some have the views that if attorneys are dedicated, the high cost should not matter, and gave answers such as, *“These programs must seek out individuals who are dedicated to serving the needs of the poor”*, or that marketing needed to be better, *“Advertise that there is litigation training and more opportunity to be hands on with clients on a daily basis.”* A number of attorneys placed special emphasis on helping staff with housing.

- **Current Attorney Ideas in Addition to Increasing Salaries and Loan Repayment Assistance:**

- **Help with housing.**

- *“Provide housing allowances! I very much wanted to take a position at another Legal Aid program in my hometown to be near my family, but the cost of housing had risen so much that I could not afford any home.”*
- *“Assistance in locating housing.. (this is what the corporate sector does when they transfer people to an area).. ie: have a realtor on retainer who will help new attorneys find decent and affordable housing.”*
- *“If cost of housing or day care is a problem, provide referrals and help people find quality/ low cost services. The program could actually own or have an arrangement to offer a couple of apartments to new people to live in while they get to know the area.”*
- *“Bonuses, higher annual increases, create a home buyers program in return for 3 years service where (program) pays for closing costs or other costs or partial financing, relocation costs reimbursed, if the commute is more than a certain number of miles reimbursement for travel, etc.”*

Recruitment of Racially/Ethnically Diverse Attorneys. As noted in the Demographics of Current Attorneys section, Florida’s legal aid attorneys are less racially and ethnically diverse than their potential clients. To achieve similar racial/ethnic diversity, the programs, on a statewide basis, need nearly three times as many Black/African American attorneys and nearly twice as many Latino/Hispanic attorneys.

Current attorneys were asked on the survey for their ideas on how to better recruit a racially/ethnically diverse attorney population. Many answers were the same as given for recruiting all attorneys—pay more, provide loan assistance, provide better benefits,

including more vacation time. Ideas more particular to this challenge include those below.

- **Current Attorney Ideas in Addition to Increasing Salaries, Loan Repayment Assistance and Benefits:**

Make the workplace more diverse and inclusive at all levels.

- *“If the program shows a commitment to diversity, minority attorneys will be more comfortable applying and staying with the program.”*
- *“Having a workplace that is diverse helps recruit from diverse groups. So diversity at all levels is important, not just attorney staff.”*
- *“Change the makeup of the office. More diversity. Diversity in just support staff is not enough. Need MORE new attorneys of color, students/interns of color, need to PRIORITIZE this or it will never happen.”*
- *“Offer diversity training within the program and make it a requirement that all staff attend at one point or another within a given year. Celebrate the diversity and encourage staff attorneys to join bar associations that may reflect their racial/ethnic group. Pay for that bar membership as well as Florida Bar membership/local bar membership.”*

Improve legal aid’s prestige and image.

- *“Make our image more prestigious. It’s the best way to counterbalance the private sector’s new scramble to be ethnically and racially diverse.”*
- *“Because I often speak at (name) law school about my cases and issues, I also find that other ethnic groups, including the same that I represent, often shy away from the work (I ask for volunteers, and get them, but usually they are white.) I’ve come to hypothesize that since I feel poor working here, it is a problem for others as well. For those trying to leave poverty, why would they want to feel poor and work for the poor? Most often they don’t. I think that to get around it, programs should find a way to build prestige into what they do. Get recognized for excellent projects and programs. If public colleges can do it, so can we.”*
- *“I do not think that higher salaries is the answer here, because other agencies/firms can always outbid us. I think it’s necessary to stress the satisfactions of the job, maybe loan repayment assistance, and time flexibility and ability to be involved in community organizations.”*

Recruit aggressively, especially among minority bar and law school associations.

- *“Aggressively recruit at schools with high numbers of minority students and work extra hard to mentor and support these attorneys when they come on board.”*

- “Maintain relationships with the racial and ethnically oriented bar associations in law schools and on the local level. Attend the minority career fairs.”
- “Recruit more in areas with higher racial/ethnic group populations. Put students on contract and pay for schooling like the military does.”
- “Encourage summer internships or work with local law schools in offering internships for elective credit with the legal service organizations. Assist the soon to be law graduate in identifying/locating sources of fellowship applications. Participate in mentoring programs that the local law school sets up. Establish a relationship with the various racial/ethnic student bar associations.”

One of the ideas often expressed is to recruit from law schools that have higher percentages of racial or ethnically diverse students. Nationally, 27 percent of law students are racially/ethnically diverse.¹⁹ The ten Florida law schools have a combined rate of 27 percent racially/ethnically diverse students, as well. Individual schools, however, range from 19 percent to 69 percent. (See Table 9.)

Finding: *The ten Florida law schools have a combined rate of 27 percent racially/ethnically diverse students, the same percentage as law schools nationwide.*

Table 10: Law School Minority²⁰ Enrollment - Florida & Nationally			
Law School	Total	Minority Percent	Total Minority
Florida A&M University College of Law	541	69%	371
Florida International University College of Law	382	54%	206
St. Thomas University School of Law	665	41%	273
Nova Southeastern University—Shepard Broad Law Center	927	24%	226
University of Miami School of Law	1208	23%	280
University of Florida, Fredric G. Levin College of Law	1364	21%	280
Barry University Dwayne O. Andreas School of Law	563	20%	111
Stetson University College of Law	1033	20%	201
The Florida State University College of Law	765	19%	143
Florida Coastal School of Law	1278	19%	233
Florida Total	8,726	27%	2,324
Nationally	104,178	27%	28,377

The individual racial/ethnic group numbers for the Florida law schools are in Appendix 9, as well as the numbers for law schools in the South, Mid-Atlantic, and New England that have 20 percent or more minority students.

¹⁹ *Official Guide to ABA-approved Law Schools*, Law School Admission Council and American Bar Association, <http://officialguide.lsac.org>, 2008.

²⁰ “Minority” includes African American, American Indian, Asian American, Puerto Rican, and Hispanic.

Recruitment of Bi-lingual Attorneys. As noted earlier, the programs do not have comprehensive or completely accurate information about attorneys' bi-lingual skills. Of the 332 current attorney survey respondents, 93 speak Spanish and 5 speak Creole.

Although no statistics are available for the client population, the general population of Florida has more than eleven percent who speak English "less than very well." Most of these individuals speak Spanish and Spanish Creole.²¹

When the current attorneys were asked how to recruit more bi-lingual attorneys, most again emphasized the need for higher salaries and loan repayment to recruit any attorneys, including bi-lingual attorneys. Other ideas are to give a pay incentive to bi-lingual attorneys (whether on-staff or newly recruited) and to pay for language classes. The Florida Bar Foundation has paid for five or six attorneys to go to language immersion school in Mexico over the last six years. Survey respondents also suggest that (1) current attorneys be paid for taking classes, (2) programs offer language classes, (3) programs give paid leave for time to study a language, and (4) programs recruit in Miami where there is a high percentage of Spanish-speaking attorneys.

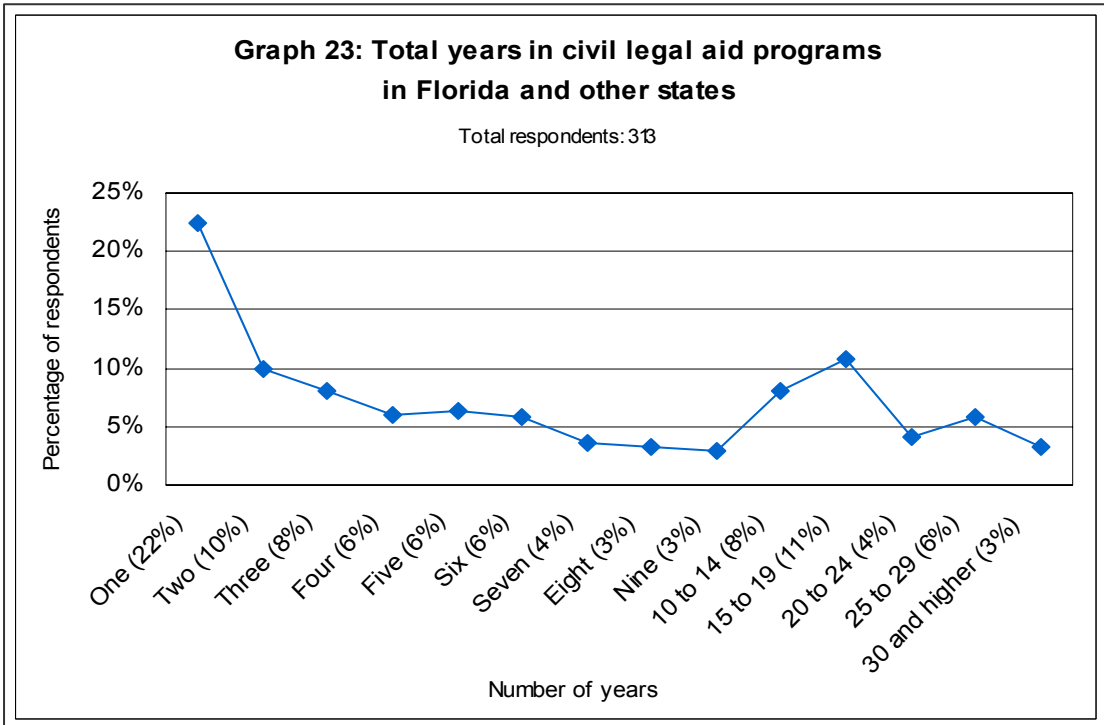
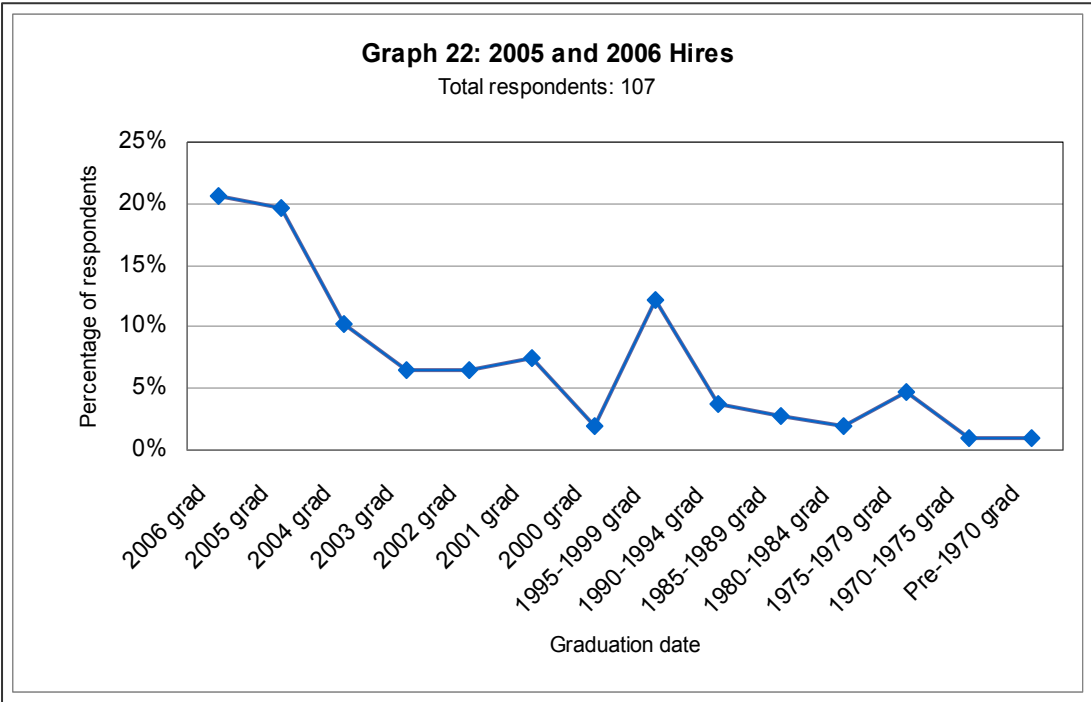
Two responses were more about retention, but useful for recruitment, suggesting that programs are using bi-lingual attorneys as translators in ways that are inappropriate: *"It would help if they are not used around the office to translate but to do meaningful attorney level work"*, and *"If I am an attorney with a normal (legal aid) work load and I am constantly being pulled to translate for others I would get frustrated. We have to make sure the translating activities do not take away from the legal work."*

New Hires. Statewide, the programs are not hiring only new graduates, but rather are hiring attorneys with varying experience. Of the attorneys hired in 2005 and 2006, 28 percent of survey respondents graduated from law school prior to 2000; thirty-three percent graduated from 2000 through 2004; and forty-one percent graduated in 2005 or 2006. (See Graph 22.)

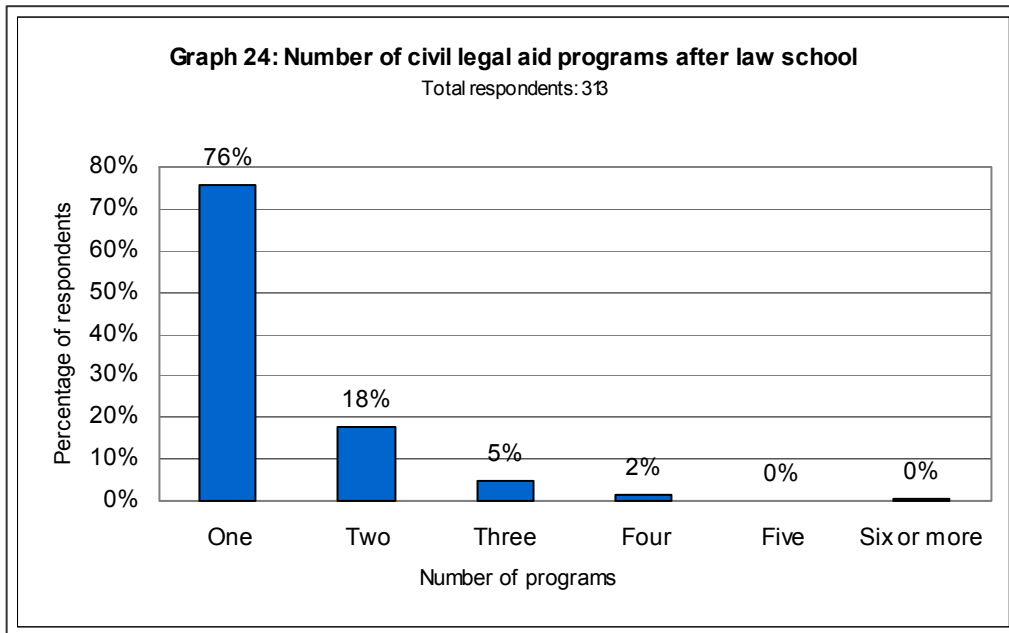
Length of Employment with Current Employer and all Civil Legal Aid. The median length of time an attorney has been employed by their current employer is 36 months or 3 years. However, the combined median length of time an attorney has worked in any civil legal aid programs is 5 years. (See Graph 23.)

Finding: *A Florida civil legal aid attorney has been employed a median of 36 months by the program they currently work for.*

²¹ U.S. Census Bureau, *American Community Survey*, 2005



Three-fourths of current attorneys have only worked for one civil legal aid program, but one-fourth have worked for up to six programs. (See Graph 24.)



F. SALARIES

Current Salary Determinations. Slightly more than half (15) of the programs have salary scales. However, only eleven of the fifteen programs adhere to them. The salary scales vary in how they are determined. Factors and methods used in determining the scale include the Florida Bar Salary Survey, salaries of other civil legal aid programs, public defenders, state attorneys, and private firms, comparability studies within the area, review of salary surveys, management/staff decision, and union negotiations. Most compare salaries with other public interest and government employers.

Some of the programs without a salary scale report that their boards of directors determine what salaries will be. Three programs determine the salaries based on funding, with one of the three stating they have paid “whatever we could afford to pay.”

With or without a scale, most of the programs that provided information state that actual salaries are based on years of experience. Some also use the type of experience, length of service with the program, and level of work. One program also uses quality of work and effort, one uses achievement of goals, and another uses pay-for-performance. No program reports paying a higher salary to bi-lingual attorneys.

All of the programs with salary scales report revising them between 2005 and 2007. Some changes were percentage increases, and others were flat amounts—with the largest reported at \$3,500. One program is converting to a pay-for-performance evaluation system in late 2007, with merit increases in 2008.

Recent Salary Increases. Most programs gave salary increases in 2006 or 2007. Some were percentages—ranging from three percent to 18 percent. Others were flat amounts—ranging from \$2,000 - \$10,000. Some programs gave both a percentage and flat amount raise.

Bonuses. Ten programs give either annual bonuses or bonuses based on performance or available funding. The bonuses range from \$200 - \$4,000.

Starting Salaries²². The starting salaries for licensed attorneys in Florida programs range from \$32,500²³ to \$45,500, with a median of \$38,500. (See Table 11.) The median for large programs is slightly higher at \$39,000. Twelve programs pay \$40,000 or above. The starting salaries for unlicensed attorneys are about \$2,000 less than for licensed attorneys. Six programs do not hire unlicensed attorneys.

Finding: *The median starting salary for licensed attorneys is \$38,500.*

²² Note that programs were asked for starting salary data in June 2007, and it appears starting salaries have increased slightly when compared to the median salaries from February 2007 in Table 12..

²³ The starting salary of \$21,800 for AmeriCorps attorneys is not included since the starting salary is set by Americorps.

Table 11: Starting Salaries in Florida Civil Legal Aid		
	Licensed Attorney	Unlicensed Attorney
Range	\$32,500 - \$45,500	\$30,250 - \$43,000
Median	\$38,500	\$36,500
Median of Large Programs	\$39,000	\$37,750
Median of Medium Programs	\$38,000	\$36,500
Median of Small Programs	\$38,500	\$35,500

Salaries have not kept pace with inflation. In 1967, one of the large Florida programs had a starting salary of \$9,000, which was likely a typical salary at that time. Today, factoring in inflation over the last 40 years, that starting salary would need to be \$54,024 for an attorney to have a similar standard of living.

Salaries of Current Attorneys. Salaries of current attorneys (on a full-time basis) range from \$21,800 (AmeriCorps attorney) to \$107,100. The median salary for each law school graduation year is reported in Table 12, along with median salaries divided by attorneys with management/supervisory responsibilities and those without. The median salary of all current attorneys is \$50,000. This salary level is not reached by staff attorneys generally until they have been out of law school for nine years.

The median for 2006 and 2005 graduates is \$38,000 and \$38,500, respectively. It is not until the third year out of law school (2004 graduate) that the median reaches \$40,000. There is a significant difference in salary for the prior year's graduates (2003) who are staff attorneys, when the median reaches \$44,000.

Finding: *Staff attorneys do not reach a median salary of \$50,000 until nine years after law school graduation.*

Salary increases then compress again and salaries rise slowly. The median salary for an attorney who graduated 10 years ago (1997) is \$59,000. The median salary for an attorney who graduated 20 years ago (1987) is \$55,876. The progression in salaries is not predictable or smooth.

Table 12: Florida Civil Legal Aid Median Attorney Salaries

Graduation Year	# of All Attorneys	Overall Median Salary	# of SA	Median SA Salary	Average SA Salary	# of MA	Median MA Salary	Average MA Salary
1961-1975	21	\$77,000	10	\$61,025	\$63,312	11	\$88,884	\$85,650
1976	5	\$68,621	2	\$60,653	\$60,653	3	\$78,920	\$74,307
1977	10	\$70,577	4	\$61,121	\$54,251	6	\$84,849	\$85,310
1978	7	\$80,556	3	\$56,000	\$63,446	4	\$88,898	\$88,157
1979	8	\$79,116	4	\$75,563	\$72,989	4	\$79,938	\$80,243
1980	6	\$77,120	3	\$64,050	\$52,504	3	\$84,537	\$86,307
1981	10	\$57,810	5	\$51,605	\$53,321	5	\$67,284	\$68,394
1982	4	\$74,071	2	\$69,227	\$69,227	2	\$85,741	\$85,741
1983	6	\$73,500	3	\$70,000	\$66,667	3	\$77,000	\$76,380
1984	6	\$67,705	4	\$61,010	\$59,357	2	\$74,973	\$74,973
1985	7	\$81,395	2	\$54,148	\$54,148	5	\$84,341	\$81,088
1986	6	\$69,549	3	\$57,337	\$55,116	3	\$74,500	\$73,920
1987	4	\$57,601	4	\$57,601	\$56,150			
1988	12	\$66,000	4	\$56,395	\$58,373	8	\$69,951	\$69,592
1989	5	\$58,656	4	\$53,828	\$55,487	1	\$82,270	\$82,270
1990	11	\$63,063	4	\$60,850	\$60,602	7	\$63,063	\$62,986
1991	8	\$55,876	5	\$55,000	\$51,820	3	\$58,460	\$59,986
1992	10	\$57,659	6	\$52,969	\$51,875	4	\$58,250	\$59,167
1993	11	\$58,000	8	\$56,005	\$56,916	3	\$66,000	\$67,000
1994	5	\$64,000	2	\$54,489	\$54,489	3	\$66,000	\$70,000
1995	8	\$53,770	5	\$43,328	\$43,661	3	\$58,513	\$65,671
1996	6	\$59,000	5	\$60,000	\$64,661	1	\$58,000	\$58,000
1997	12	\$53,900	10	\$51,650	\$52,248	2	\$56,875	\$56,875
1998	15	\$50,000	8	\$46,397	\$47,106	7	\$56,000	\$56,403
1999	7	\$47,840	5	\$44,920	\$44,835	2	\$53,750	\$53,750
2000	12	\$45,235	10	\$45,000	\$47,769	2	\$47,400	\$47,400
2001	19	\$46,789	16	\$45,818	\$46,205	3	\$50,000	\$56,167
2002	28	\$46,250	22	\$45,750	\$46,815	6	\$47,250	\$46,833
2003	27	\$46,350	21	\$44,000	\$44,737	6	\$51,000	\$53,417
2004	19	\$40,000	19	\$40,000	\$41,237			
2005	31	\$38,500	31	\$38,500	\$39,576			
2006	29	\$38,000	29	\$38,000	\$38,163			
Total	375		263			112		

Median
Graduation
1997

Median
Graduation
2001

Median
Graduation
1988

SA = Staff Attorney
MA = Attorneys with Supervisory or Management Responsibilities

Other Florida Public Interest Salaries. Many civil legal aid executive directors and attorneys see the primary competitors for attorneys as the public defenders' offices, the state attorneys' offices, the Florida Department for Children and Families and the Florida Attorney General's Office. Repeatedly—on the surveys, in interviews, and in focus groups—civil legal aid attorneys say that salaries need to be competitive with these organizations. When asked what starting salaries should be, they often say, *“Our salaries need to be competitive with the public defenders and the state attorneys.”*

The minimum and maximum salaries for both assistant public defenders and assistant state attorneys are set by statute. The minimum for a licensed attorney is \$39,084 and the maximum is equivalent to what the elected public defenders and state attorneys for each circuit can be paid—\$153,140.

Statewide salary data is only collected by the attorneys' date of employment with the state each year, so comparisons cannot be made using this data with civil legal aid lawyers by law school graduation date. Accordingly, more comparable data based on years of experience was obtained from public defenders' offices and state attorneys' offices in five judicial circuits in urban and more rural areas. Though this data was acknowledged as less than exact, it was felt to be fairly accurate.²⁴

Neither type of office uses a salary scale. The attorneys are sometimes given cost of living adjustments or bonuses by the state—each state employee will receive a \$1,000 bonus in November of 2007. Additionally, the individual circuits set salaries for attorneys by individual, so there are wide variances, not just between a rural and urban area. Nonetheless, the data enables some useful comparisons with civil legal aid programs.

The starting salaries of the two types of offices range from \$39,084 to \$44,000. The median salaries for attorneys with five years of experience range from \$49,763 to \$71,009.

One of the other major differences between civil legal aid programs and the public defenders' and state attorneys' offices' financial compensation is the assistant public defenders and assistant state's attorneys receive a pension. Only one civil legal aid program has a pension. Others that provide retirement benefits pay a small percentage of an attorney's salary into a 401(k) or a 403(b). The amount of a pension for an attorney who has worked as an assistant public defender or assistant state attorney for 30 years is estimated at \$72,000 per year during retirement.²⁵

Finding: *One of the other major differences between civil legal aid programs and the public defenders' and state attorneys' offices' financial compensation is the assistant public defenders and assistant state's attorneys receive a pension estimated at \$72,000 per year after 30 years.*

²⁴ In some offices, the data is only of attorneys who had no experience when they started with the office, but this is 90 percent or more of the current attorneys.

²⁵ Kathy Weintraub, Executive Director, State Attorney's Office, 4th Circuit

The salary details for assistant public defenders are reported in Table 13. Some of the highlights include:

Assistant public defenders' salary ranges

Starting salary: \$39,084 in Tallahassee to \$42,000 in Miami
 Five years experience: \$49,763 in Pensacola to \$64,652 in Jacksonville
 Ten years experience: \$52,584 in Pensacola to \$82,541 in Miami
 Twenty years experience: \$67,644 in Tallahassee to \$90,209 in Miami

Table 13: Salaries of Assistant Public Defenders in Florida								
Years of Experience	1st Circuit (Pensacola)		2nd Circuit (Tallahassee)		4th Circuit (Jacksonville)		11th Circuit (Miami)	
	Number of Attorneys Analyzed	Average Salary	Number of Attorneys Analyzed	Average Salary	Number of Attorneys Analyzed	Average Salary	Number of Attorneys Analyzed	Average Salary
Starting		\$40,000		\$39,084		\$40,500	1	\$42,000
less than 1	3	\$41,533	2	\$39,276	15	\$43,482	35	\$46,255
1	2	\$42,715	7	\$41,114	13	\$44,647	19	\$43,362
2	1	\$48,000	6	\$45,833	8	\$47,403	40	\$51,450
3			1	\$54,442	3	\$45,624	7	\$52,266
4	1	\$50,940	1	\$49,086	5	\$59,820	10	\$61,664
5	1	\$49,763	1	\$53,560	9	\$64,652	10	\$64,007
6			4	\$58,885	3	\$57,167	4	\$70,806
7			3	\$51,306	1	\$71,575	3	\$77,505
8			1	\$53,353	1	\$68,650	4	\$84,405
9	1	\$68,293	2	\$56,706	2	\$65,385	6	\$71,530
10	1	\$52,584	5	\$55,053			2	\$82,541
11			4	\$59,282			1	\$74,199
12					1	\$132,712	2	\$77,684
13							2	\$87,447
14			2	\$51,296			3	\$84,462
15			1	\$46,000	2	\$93,103	1	\$76,593
16			1	\$56,073	1	\$80,000	4	\$82,541
17	1	\$74,665	1	\$76,917	1	\$75,000	1	\$79,383
18							2	\$96,218
19			1	\$56,079	3	\$73,199	3	\$99,832
20			3	\$67,644	2	\$85,997	2	\$90,209
21-25	1	\$83,657	9	\$68,731	4	\$87,319	8	\$105,173
26-30			11	\$69,461	5	\$105,633	13	\$116,102
31-40	3	\$91,691	4	\$76,742			1	\$132,062
Total	15		70		79		184	

The salary details for assistant state attorneys are reported in Table 14. Some of the highlights include:

Assistant state attorneys' salary ranges

Starting salary: \$39,084 in Miami to \$44,000 in Pensacola
 Five years experience: \$56,706 in Pensacola to \$71,009 in Jacksonville
 Ten years experience: \$64,514 in Miami to \$99,103 in Tampa
 Twenty years experience: \$103,920 in Tampa to \$136,844 in Jacksonville

Table 14: Salaries of Assistant State Attorneys in Florida								
Years of experience	1st Circuit (Pensacola)		4th Circuit (Jacksonville)		11th Circuit (Miami)		13th Circuit (Tampa)	
	Number of Attorneys Analyzed	Average Salary	Number of Attorneys Analyzed	Average Salary	Number of Attorneys Analyzed	Average Salary	Number of Attorneys Analyzed	Average Salary
Starting	1	\$44,000	14	\$40,000	0	\$39,084	1	\$40,000
less than 1	19	\$44,221	13	\$40,126	61	\$40,794	35	\$42,497
1	15	\$46,634	14	\$45,450	49	\$43,838	22	\$58,280
2	3	\$55,698	6	\$51,623	23	\$47,862	14	\$61,859
3	7	\$51,005	2	\$56,448	15	\$52,221	8	\$65,165
4	3	\$50,637	8	\$64,774	9	\$59,386	8	\$71,213
5	1	\$56,706	9	\$71,009	8	\$59,794	9	\$65,362
6	3	\$55,463	4	\$70,438	5	\$61,294	5	\$102,717
7	2	\$72,253	2	\$84,313	5	\$60,055	5	\$76,549
8	3	\$58,012	1	\$82,184	2	\$66,870	3	\$85,019
9	1	\$63,913	2	\$82,967	3	\$72,688	2	\$91,441
10	1	\$79,086	5	\$95,039	1	\$64,514	2	\$99,103
11	1	\$58,329	1	\$97,660	4	\$82,724	2	\$65,946
12	2	\$76,376	0		3	\$81,415		
13	1	\$68,616	1	\$93,713	4	\$74,676	4	\$79,177
14	1	\$72,127	1	\$108,125	3	\$83,953	3	\$84,496
15	1	\$78,639			4	\$78,864		
16	2	\$87,549			3	\$92,784	1	\$107,674
17	1	\$76,635			3	\$98,018		
18	2	\$118,348			3	\$81,632	1	\$103,535
19			2	\$109,241	6	\$98,842	1	\$101,693
20	2	\$109,985	2	\$136,844	4	\$107,504	2	\$103,920
21-25	5		2	\$127,585	11	\$104,423	2	\$111,487
26-30	4	\$88,410	1	\$128,754	10	\$118,399		
31-40		\$107,795	2	\$132,773	2	\$142,989		
Total	81		92		241		130	

The data for the other government attorneys in Florida is not extensive. See Table 15 for salary data from the Florida Department for Children and Families. It is not divided by years of experience or law school graduation date. An attorney is eligible for a senior attorney position after two years of experience.

Table 15: Attorney Salaries of Florida Department for Children and Families			
Title	Minimum	Average	Total FTE
Attorney	\$39,083	\$46,435	22.5
Senior Attorney	\$51,627	\$57,628	206
Attorney Supervisor	\$64,534	\$69,170	31

The Florida Guardian Ad Litem has a starting salary for licensed attorneys of \$41,268, which is nearly \$2,000 more than the median salary of Florida civil legal aid's median of \$38,500. (See Table 16.)

Table 16: Attorney Salaries of Florida Guardian Ad Litem		
CLASS TITLE	Minimum	Maximum
Program Attorney: Unlicensed	\$37,141	
Program Attorney	\$41,268	\$75,072
Program Director	\$43,193	\$78,574
Senior Program Attorney	\$45,304	\$82,413
Supervising Attorney	\$47,569	\$86,534
Deputy General Counsel	\$57,820	\$105,183
General Counsel - Guardian Ad Litem	\$63,747	\$115,964

The salaries for the Office of the Attorney General and the Office of Statewide Prosecution are the most difficult to compare because only the ranges are available, with no data about what attorneys are actually paid. (See Table 17.)

Table 17: Attorney Salaries of the Office of the Attorney General and Office of Statewide Prosecution			
Class Title	Minimum Years of Experience	Minimum	Maximum
Attorney--Assistant Attorney General	0	\$36,382	\$94,547
Assistant Statewide Prosecutor--Attorney	0	\$36,382	\$94,547
Assistant Attorney General	3	\$51,355	\$133,460
Assistant Statewide Prosecutor--Senior Attorney	3	\$51,355	\$133,460
Assistant Statewide Prosecutor--Chief Assistant	5	\$33,057	\$137,453
Attorney Supervisor--Assistant Attorney General	6	\$61,016	\$158,565
Senior Assistant Attorney General	6	\$61,016	\$158,565
Chief--Assistant Attorney General	10	\$33,057	\$137,453
Special Counsel--Assistant Attorney General	10	\$61,016	\$158,565

More Salary Comparisons. A 2006 salary survey of attorneys who work in the public sector or public interest received responses from 22 percent of the civil legal aid programs in the United States. The median entry-level salary reported was \$36,000 for an attorney with one year or less experience.²⁶ This was the lowest when compared with other public interest organizations (\$40,000), public defenders (\$43,300) and prosecutors (\$43,915).

It was reported recently that in non-profit organizations generally, attorneys have a bigger disparity in pay from corporate positions than other professionals.²⁷ The differences are reflected in Table 18.

Table 18: Salary Comparison Between For-profit and Non-profit Organizations			
Professional Position	Average For-profit Salary	Average Non-profit Salary	Difference
Attorney	\$113,923	\$64,105	78%
HR Specialist	\$49,318	\$39,935	23%
Senior Accountant	\$61,731	\$50,575	22%
Project Manager	\$87,164	\$72,282	21%
Contracts Administrator	\$55,417	\$53,986	3%

The for-profit salary noted in Table 18 is not indicative of large private firms. It was reported recently that two national firms in South Florida are now hiring associates at \$160,000. A number of others have starting salaries in excess of \$130,000.²⁸ Holland & Knight in Tampa start entry-level associates at \$110,000, while Fowler White Boggs Banker, with 220 attorneys in nine Florida offices, start associates at \$95,000.

The Florida Bar's 2006 Economics and Law Office Management Survey found the following net medians for attorney's incomes in 2005:

<u>Attorney Position (all experience levels)</u>	<u>Net Median Income</u>
State Government Attorneys	\$ 70,000
Associates	\$ 85,000
Corporate Counsels	\$100,000
Solo Practitioners	\$105,000
Partners	\$185,000
<u>All Attorneys (no partners)</u>	<u>Net Median Income</u>
Recent law grad with no experience	\$50,000
Recent law grad with internship, etc.	\$55,000
Less than 3 years experience	\$65,000
3 to 5 years experience	\$75,000
6 to 8 years experience	\$90,000
More than 8 years experience	\$110,000

²⁶ NALP—The Association for Legal Career Professionals, *Public Sector & Public Interest Attorney Salary Report*, 2006.

²⁷ Rachel Zuppek, *CareerBuilder.com*, 2007. Salary data provided by PayScale.com for CBSalary.com

²⁸ Daniel Ostrovksy, *Meeting the Challenge*, www.dailybusinessreview.com, June 18, 2007.

How Current Attorneys Feel About Civil Legal Aid Salaries. Current attorneys were asked to rate their satisfaction with several aspects of their jobs. The scale was from a rating of one for “very unsatisfied” to a rating of five for “very satisfied.” Out of 38 different aspects, “current salary” and “salary progression” were the only ones rated below a three. They received compilation ratings of 2.78 and 2.77, respectively.

Many attorneys explained their feelings about the salaries in the survey and in interviews and focus groups. Below are comments about their salaries and the financial struggles often caused by trying to live on them.

Low salaries make it next to impossible for many attorneys to keep doing work they value and love.

- *“Most people who work in legal aid settings do it out of love for the work that they do. It gets hard to keep that love alive when you have to worry about financial stability, especially when planning for a family and the future.”*
- *“This is a tough thing, and legal services employers have a tough job to keep their attorneys satisfied with low salaries.... Most of us do this work because of a personal commitment to the mission of our office and we don't care about getting rich. But we can only do this for a living as long as we can support families (existing or potential) and meet at least minimal financial goals, which are getting harder to do on legal services salaries. I wish I had a suggestion other than "raise salaries", but I don't.”*
- *“...I struggle to support my family and have absolutely no financial freedom. My financial situation creates a lot of stress in my life and I am not sure how long I can continue to work in this sector, even though I believe in the importance of the work my (organization) does and absolutely love my job.”*
- *“...I worry that someday I will need to move back into private practice in order to keep up with my expenses. I do not want my financial needs to get in the way of my commitment to the work that I do.”*
- *“The money issue is what is crushing dreams to do good works.”*

Many staff noted the correlation between low salaries and high loans and high turnover – and its disturbing effects.

- *“We're losing people. Of the people who came just before and just after me, I'm the only one left at my program. I've seen my friends leave and their incomes double. It's hard to see that too many times without wondering what the problem is...”*
- *“Salaries are the most crucial issue facing legal aid attorneys. We all have bills to pay and many attorneys leave because they just can't justify working as hard as we do for low salaries. It is very disheartening to be paid lower than counterparts at the public defender and state attorney offices. In general, we are in a very thankless job. Our clients are struggling just to survive from day to day. It is rare when they are able to show appreciation. Increases in salaries make us feel appreciated by the program.”*

- *“Loan repayment assistance and a salary that can keep pace with inflation will go a long way to preventing the long term loss of mindpower that is currently afflicting legal aid. The cost of college both undergrad and law school has increased tremendously in the last 30-40 years and has dramatically outpaced inflation. People still want to do this work, but there needs to be more money and loan repayment assistance to make that a reality.”*
- *“I think we can retain a lot of people if the salaries were higher and there were more programs that assisted with student loan debt”*

Several attorneys provided examples of the difficulty of living on low salaries, and how low compensation makes them feel.

- *“I adore my job. It makes me really sad that the poor salaries (and lack of funding that result in less than sufficient supervision, training and support staff) are the reason that I likely will not make this job a life-long career.”*
- *“I am not satisfied with the salary because I do not make enough money. I feel that I need to get a second job in order to keep up with the rising costs of gas, real estate, etc., in my area. The yearly raises of \$2,000 that employees receive are not enough to keep up with attorneys in the private sector. I feel unappreciated sometimes because we are not compensated for the many hours that we invest in our workload. I love what I do, but am not satisfied with the salary.”*
- *“My problem is money. I should not be dealing with the same housing issues as my clients. I should not be dealing with living on credit as my clients do. I should not worry if I have enough money for (monthly parking).”*
- *“Everyone has to be married to work here.”*
- *“Tallying up the number of attorneys who have left Legal Aid due to low salary will not give an accurate picture of the substandard pay that many of us receive. That is because so many of us make a significant personal financial sacrifice in order to do this good work.”*
- *“I have worked for non-profit agencies for years and I understand the struggle of obtaining grants and workers who care about the specific social service causes. With that said, attorneys have special skills and training which do not come cheaply. We have worked just as hard or harder than those earning \$100,000 + as a starting salary and I do not think we should be exploited because of our belief in assisting our underprivileged clients.”*
- *“We do important work, but many legal aid organizations are treated as though they deserve only handouts because the people we represent are poor and needy. A decent work environment, with competent support staff and available resources to vigorously represent client interests and salary/benefits comparable to the private sector will go a long way toward recruiting and retaining the right staff.”*

The problem affects attorneys of all ages and levels of experience.

- *“...we need to be cognizant of the life situations of our staff. Newer attorneys have debt loads. Middle-aged attorneys have children in college and/or aging parents who need help. (Some of us come from blue-collar backgrounds ourselves, and we are the ones helping our parents financially, not the other way around.) All of us need to pay attention to our ability to retire at some point in our lives as well, without suffering a dramatic decrease in our lifestyles - since we already sacrifice our lifestyles for the sake of the work.”*
- *“The salaries for entry level attorneys in Florida are abysmally low. Until these salaries are improved – especially in high cost of living areas such as south Florida – there is little prospect of retaining young attorneys.”*
- *“...Furthermore, attorneys need to earn a living wage and those that are experienced should not be penalized by having their salaries capped.”*
- *“Someone needs to fix the low pay and lack of salary structure or the poor people of the state will lose good, experienced advocates. Too many legal aid programs get new money and hire new attorneys so that they can say we have X number of attorneys, but programs should focus on retaining experienced skilled attorneys and pay them higher wages.”*
- *“...Many of us are older, nearing retirement without adequate financial resources. Many of us did not have enough to pay for college for our children and are now facing high \$\$\$ parent loan debt for them. I am an (Ivy League law school) graduate and gave up substantial earning power to stay committed to this poverty law mission. In some ways I have financially short changed my kids as a result. I also do not want to become a burden to them because I made this choice.”*

When asked what would improve their quality of life, salaries were often mentioned:

- *“...a higher salary with raises at least once a year would help. Currently I have to decide whether to buy the medication or have enough money to eat/pay bills on time. I also worry about ever being able to retire when I don't have enough money to save regularly.”*
- *“By giving meaningful increases each year. I started making \$36,000 almost 8 years ago. I received a promotion and I am currently at \$50,000. Even with a promotion, my salary did not increase more than \$14,000 in almost 8 years. That's bad. I am a supervisor and my salary is less than \$10,000 more than the starting salary.”*
- *“Salary and student loan repayment programs. I have vacation time but can't go anywhere or spend any more other than pay bills. It is not easy being an attorney and living check to check and only paying bills. I am not able to save any money and can't put away for retirement.”*

How Current Attorneys Deal with Civil Legal Aid Salaries: A single attorney with a year’s experience and a \$40,000 salary was asked to share his income and expenses. His budget, in Table 19, is actually in the black when there is no unexpected expense. However, this attorney does not live in what is considered a high cost area and there are several expenses that are not in the budget, including any medical co-payments. Nor is he able to put aside any funds for a house down payment or for retirement.

He went to a private law school in Florida, and at the current rate of payment—\$762 per month—will be paying off his loans for 29 more years. This attorney, who is in his mid-30’s because he was in a different profession before law school, realizes now he is unlikely to be able to stay in civil legal aid and pay his loans and save for retirement and have a decent lifestyle.

Table 19: A Real Budget in Florida Civil Legal Aid	
Monthly Income	
take-home from \$40,000 salary*	\$2,470
LRAP (loan repayment assistance)	\$533
	\$3,003
Monthly Expenses	
rent	\$750
utilities	\$75
groceries & household supplies	\$125
student loans**	\$762
car payment	\$400
car insurance	\$100
gasoline (lives 20 miles from work)	\$175
cell phone	\$110
cable	\$75
Internet access	\$25
dry cleaning	\$50
clothing/shoes	\$50
hair care	\$20
restaurants and entertainment	\$150
gifts/cards	\$25
renters' insurance	\$0
home phone	\$0
travel/vacation	\$0
credit card debt	\$0
medical co-payments	\$0
newspaper	\$0
vet/pet supplies	\$0
	\$2,892
Difference	\$111

*Taxes and 25% of health premium are deducted.

**\$158,000 in student loans with 30 year terms.

Standard of Living. What is a decent lifestyle? How do you measure the cost of living? There are many differing opinions on both of these questions. Housing costs is one fairly objective, but major factor. Rental prices for apartments in some of Florida’s major cities are listed in Table 20. In Miami, over \$1,150 would be needed for rent for a one-bedroom apartment. Note that if an attorney in Miami was in a similar financial situation to the attorney in the example in Table 19, he or she would not be able to afford the rent in Miami.

Table 20: Fair Market Rents in Selected Florida Cities*			
Metropolitan Area	One Bedroom	Two Bedroom	Three Bedroom
Cape Coral-Fort Myers	\$770	\$895	\$1,110
Gainesville	\$888	\$1,104	\$1,286
Jacksonville	\$783	\$1,002	\$1,247
Miami-Miami Beach-Kendall	\$1,154	\$1,444	\$2,664
Orlando-Kissimmee	\$791	\$965	\$1,141
Pensacola-Ferry Pass-Brent	\$714	\$840	\$1,096
Tallahassee	\$695	\$830	\$981
Tampa-St. Petersburg-Clearwater	\$633	\$768	\$1,008

*average of rents at www.rentnet.com, August 2007

Buying and owning a home is even more costly than renting. Table 21 has examples of median house prices in late June 2007. The monthly payment for a mortgage for these amounts (assuming no down payment) ranges from \$1,468 for the median house in Tampa to \$2,140 in Miami. These amounts do not include insurance and taxes, and are clearly out of reach for many civil legal aid attorneys.

Table 21: House Prices in Florida Cities			
City	Median Price	City	Median Price
Cape Coral	\$288,900	Miami	\$357,000
Jacksonville	\$280,000	Orlando	\$284,900
Tampa	\$244,900	www.housingtracker.net, 6/27/07	

All of the current attorneys who were interviewed who did not currently own a home—primarily single and young to middle age—said they have no idea how they will ever be able to buy a home. If buying/owning a home is the standard for a middle class lifestyle, many civil legal aid attorneys in Florida are not there and have no hope for how they will get there.

G. ATTORNEY TURNOVER

Florida Civil Legal Aid Attorney Turnover in the Last Five Years. Three hundred twenty-two (322) attorneys left a Florida civil legal aid program during the five years between (and including) January 2, 2002 and December 31, 2006. Twenty-three of these attorneys went to work for another Florida program. Of these, five did so as the result of regionalization of the delivery system and are not included in the turnover data. Two others are also excluded because of incomplete data. A total of 315 attorneys who left from 2002 through 2006 are included in the turnover data below.

Table 22 contains the compilation of turnover rates. Statewide turnover rates range from a low of 17 percent in 2003 and 2004 to a high of 23 percent in 2005 and 2006.

Table 22: Florida Civil Legal Aid Attorney Turnover Rates									
	2002	2003	2004	2005	2006	Annual Average	Programs' Annual Average Range	Five-year Average	Programs' Five-year Range
All Programs	22%	17%	17%	23%	23%	20%	1 - 53%	61%	0 - 100%
Large Programs	22%	20%	14%	22%	23%	20%	10 - 26%	51%	21 - 66%
Medium Programs	24%	17%	20%	25%	17%	21%	1 - 28%	42%	0 - 73%
Small Programs	38%	31%	18%	11%	42%	29%	4 - 53%	83%	33 - 100%

Turnover is calculated as the ratio of individual attorneys who were employed by a program on January 1st or after of a year and not employed on January 1st of the following year. For example, if two attorneys left in 2006 from a program that employed ten attorneys in 2006, the turnover rate would be 20 percent.

Finding: *An average of twenty percent of the attorneys have left every year from 2002-2006.*

The average annual turnover rate is the average of the individual program turnover rates for the five years. At a statewide rate of 20 percent, it means that on average one in five attorneys left each year for the past five years. In some programs, more than half of the attorneys have left each year on average.

The five-year average is the turnover rate of individual attorneys who were employed by a program on January 1, 2002 and not employed by the same program on January 1, 2007. At 61 percent statewide, more than 6 out of ten attorneys have left during the last five years.

Finding: *Of attorneys who were employed with Florida civil legal aid programs on January 1, 2002, only 39 percent are still employed with that same program.*

The rates are also compared by the size of program since smaller programs have higher percentages if even one attorney leaves. However, there do not seem to be trends within the same size programs. One of the most striking figures is that 83 percent of the attorneys who worked for small programs on January 1, 2002 have left.

The median length of employment of attorneys in the last five years was 23 months—less than two years. Half left before they had been at a program for 23 months and half left after that time.

Finding: *The median length of time attorneys have stayed at a program from 2002 through 2006 is 23 months – less than two years.*

Comparison with Turnover of Other Attorneys.

Florida Public Defenders and State Attorneys. The average annual turnover rates for FY02 – FY 06 for the Florida assistant public defenders and assistant state attorneys are similar to Florida’s rate of 21 percent, at 22 and 19 percent, respectively. Both groups saw an increase in their FY06 rates, with the assistant public defenders’ rate at 26 percent and the assistant state attorneys’ rate at 20 percent.²⁹ (See Table 23.)

Table 23: Turnover of Florida Assistant Public Defenders and Assistant State Attorneys						
	FY02	FY03	FY04	FY05	FY06	Annual Average
Assistant Public Defenders	21%	20%	21%	22%	26%	22%
Assistant State Attorneys	20%	19%	17%	17%	20%	19%

n

Illinois Civil Legal Aid. The only recent turnover data for other civil legal aid programs in the United States is from Illinois.³⁰ Florida programs’ turnover rates are higher than those found in Illinois. The annual average rates from 2000 through 2004 in Illinois were 11 percent in small organizations, five percent in medium programs and 14 percent in large programs,³¹ compared with 29 percent, 21 percent and 20 percent, respectively in Florida from 2002 – 2006.

Associates. A study of associate turnover in law firms in the United States found an overall turnover rate of 19 percent. However, the study’s data was from only 118 firms and was not from a random sample.³²

Demographics of Attorneys who Left in the Last Five Years. A close review was performed of information about the 322 attorneys who left a civil legal aid program in the past five years. A survey was completed by 97 of the former attorneys who are no longer civil legal aid attorneys. As noted in the Methodology section, the characteristics

²⁹ Florida Justice Administrative Commission

³⁰ Chicago Bar Foundation and Illinois Coalition for Equal Justice, *Investing in Justice: A Framework for Effective Recruitment and Retention of Illinois Legal Aid Attorneys*, November 2006.

³¹ These dates are one year earlier than Florida’s data.

³² The NALP Foundation, Update on Associate Attrition: Findings from a National Study of Law Firm Associate Hiring and Departures - 2006

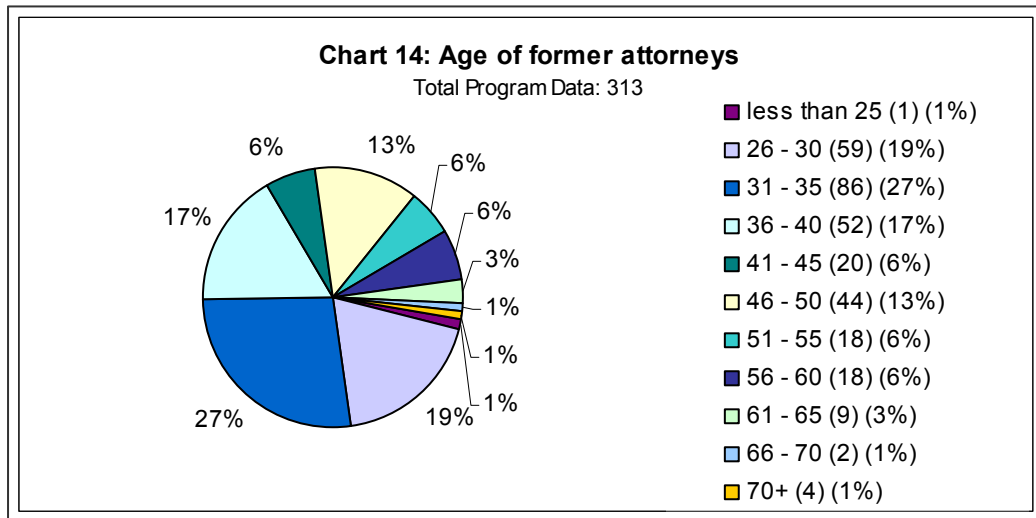
of the survey respondents are the same or very similar to the characteristics of all the former attorneys. When survey data is reported below, the word “respondents” is used.

Positions. Eighty-seven percent of the attorneys who left were staff attorneys (including AmeriCorps attorneys and Equal Justice Works fellows). This is disproportionate to the 70 percent of attorneys who are currently in staff attorney positions.

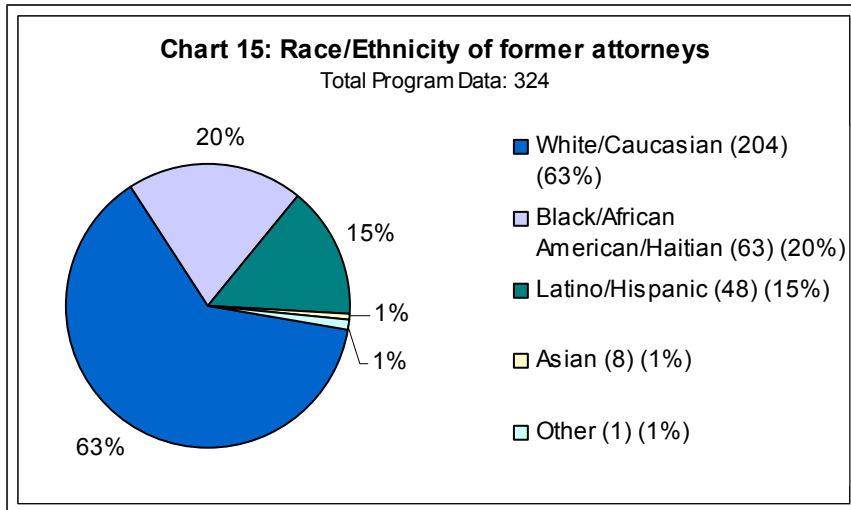
Full-time/Part-time. Although ten percent of current attorneys are part-time, only two percent of the former attorneys were part-time.

Gender. The gender of former attorneys is very similar to current attorneys—72 percent female for former attorneys and 73 percent for current attorneys.

Age. The age group with the largest percentage of attorneys who left (27 percent) is 31 – 35 years old, and the second largest group is 26 – 30 years old (19 percent). The 31 – 35 year group is only 18 percent of the current attorneys. The other age groups are fairly similar between the current attorneys and the former attorneys. (See Charts 14 and 3.)



Race/Ethnicity. Twenty percent of the attorneys who left their programs over the past five years are African American. This disproportionately compares to the current African American attorney percentage of eleven percent. Percentages for other groups are fairly similar, except for White/Caucasian who represent 63 percent of the attorneys who left, and now comprise 71 percent of the current attorneys. (See Charts 15 and 5 Chart.)



Graduation Dates. Of those attorneys who left in 2006, their median graduation date is the year 2000.

Other Languages (Respondents). The program data about other languages spoken by former attorneys is incomplete. Based on the survey data, one-third of the attorneys who left (33 of 97 respondents) spoke another language. This is slightly less than the 37 percent of current attorneys who speak another language. The Spanish-speaking percentage is very similar—76 percent (25) for former attorneys as compared to 75 percent for current attorneys. The percentage of Creole-speaking attorneys who left (12 percent of attorneys who speak another language) is higher than the current attorneys (5 percent), but both numbers are very small—four and six.

Personal Situations (Respondents). A slightly larger percentage of former attorneys than current attorneys are in personal situations that may have contributed to their leaving for financial reasons. More are the primary breadwinner—70 percent of former attorneys as compared to 64 percent of current attorneys. More are single or single living as a couple (55 percent) than current attorneys (49 percent). More are single income earners as well—47 percent of former attorneys as compared to 42 percent of current attorneys. They also are more likely to have a roommate—9 percent of former attorneys and 5 percent of current attorneys. However, fewer former attorneys have children (34 percent) than do current attorneys (42 percent).

Educational Debt (Respondents). The median amount of debt that former attorneys have is the same as current attorneys—\$70,000 - \$79,000. However, a higher percentage of former attorneys had debt when they graduated than current attorneys (90 percent compared to 78 percent). More importantly, 73 percent of the former attorneys have debt now as compared to 54 percent of current attorneys. Only 5 percent are current LRAP recipients, two from employers and three from law schools.

Finding: *Seventy-three percent of the former attorneys have debt, compared to 54 percent of current attorneys.*

Bar Exams and Law Licenses (Respondents). A higher percentage of former attorneys took the Florida Bar exam more than once compared to current attorneys (25 percent vs. 14 percent).

Reasons Why Attorneys Left in Last Five Years. Survey respondents were asked to rate reasons why they left their job with civil legal aid. They rated multiple reasons. (See Table 24.)

Of the seventy-seven attorneys that answered the question, the number one reason given was “financial pressure due to low salary.” This was given an average rating of 3.29 on a scale of one to five with one being “very unimportant” and five being “very important.” Thirty-six percent of the respondents rated it as very important.

The third highest rating was also financially-related—“financial pressure due to student loans.” Nearly 30 percent rated this as very important. The number two reason was “poor management,” given an average rating of 2.97 and rated very important by 30 percent of the respondents. The other answer that was rated very important by at least 25 percent of the respondents was “poor supervision” with an average rating of 2.71.

Top five reasons (in order) attorneys left:

- *Financial pressure due to low salary*
- *Poor management*
- *Financial pressure due to student loans*
- *Lack of professional support*
- *Poor supervision*

Twenty-three percent of the respondents rated “personal reason” as very important and twenty percent rated “family reason” as very important.

Table 24: Reasons Former Attorneys Gave for Leaving Previous Employment							
Reason	Rating Average	Very Important				Very Unimportant	Number of Responses
		5	4	3	2	1	
Financial pressure due to low salary	3.29	36%	14%	14%	12%	23%	77
Poor management	2.97	30%	12%	11%	20%	28%	76
Financial pressure due to student loans	2.74	29%	8%	10%	16%	38%	77
Lack of professional support	2.74	22%	14%	13%	17%	34%	77
Poor supervision	2.71	25%	8%	13%	21%	33%	76
Case load stress	2.69	14%	14%	25%	20%	27%	77
Personal reason	2.60	23%	13%	8%	13%	43%	75
Lack of professional development	2.55	17%	10%	17%	22%	34%	77
Financial pressure due to other extraordinary expenses	2.51	21%	12%	11%	11%	46%	76
Lack of skill development opportunities	2.44	13%	11%	20%	19%	37%	75
Family reason	2.36	20%	11%	9%	7%	54%	76
Lack of job security	2.30	16%	11%	9%	17%	47%	76
Burn-out	2.29	8%	12%	21%	20%	40%	76
Need for more balanced life	2.25	7%	13%	21%	17%	42%	76
Lack of flexibility	2.18	5%	11%	21%	24%	40%	76
Need more interesting work	1.99	8%	8%	15%	12%	57%	74
Lack of retirement benefits	1.88	5%	5%	17%	17%	55%	76

When asked if certain changes would have made a difference, here is how they responded:

<u>Change</u>	<u>Would Have Impacted Decision to Leave</u>
Salary increase	45 percent (35 of 78)
Higher position available	43 percent (33 of 77)
Annual salary increase	33 percent (26 of 78)
LRAP	32 percent (25 of 78)

The salary information for the thirty-one respondents who left in 2006 was reviewed. Their median salary when they left their civil legal aid program was \$45,000. Their median salary now is \$55,000, a \$10,000 difference.

When asked what they had lost by leaving their position, many respondents said their co-workers and their opportunity to help those who need it.

Finding: *Of the former attorneys who left Florida civil legal aid in 2006 and responded to the survey, their median salary when they left was \$45,000 and their median salary now is \$55,000 – a \$10,000 increase.*

When former attorneys were asked what else it would have taken for them to stay, many responses included comments about management of the program:

- *“Lower my caseload and give me a situation where I can effectively do my job.”*
- *“greater respect from administration; greater skill from support staff.”*
- *“Recognition of hard work and sacrifices in light of difficult situations.”*
- *“Better upper management. There were some poor decisions made to retain staff that were acting in ways that lowered the integrity of the entire organization. Also favoritism of certain units over others.”*
- *“Management to value their employees...”*

Former attorneys also gave many comments about the need for a lower workload and more assistance from support staff:

- *“Hours – I can’t work 55-60 hours a week on the salary I was given. With the caseload I had, I literally never stopped working. The kids had my cell phone number. It was 24/7. The program could have responded by limiting our caseloads to a reasonable, manageable number at which I can effectively do my job.”*
- *“I had no support staff for the last several years of my employment and had to do all secretarial and clerical work myself. What a waste!”*
- *“Be more involved in the training that I needed in order to perform my duties.”*

When asked for any other comments, many respondents provided answers that are instructive for retention efforts:

- *“SALARY and LRAP is the biggest issue. Then comes the issue of promotions.”*
- *“as we all know, it's the lack of money when you have large educational loans that is the biggest killer for civil legal aid attorneys everywhere”*
- *“Money really is an issue - I was in a relatively good position financially at that time since I already owned my house and cars outright, but it would be really hard for someone to come up with down-payments, etc, on that salary.”*
- *“Not to sound like a broken record, but attorney salaries at (program) had been literally the same for many years when I worked at (program) - no cost of living adjustments, and no increases for additional years at the organization. I was young and single, so it was ok, but it would be hard to go back to making \$37,000 with no real possibility of an increase now.”*
- *“Beyond salary and loan repayment, the programs need to train their supervisors to make sure the supervisors are being supportive to their new and old attorneys, provide good fiscal management so there is greater job security. By supportive-- provide adequate training and supervision so that attorneys aren't in over their head -- provide learning opportunities.”*
- *“I cannot stress enough that engaging EJW Fellows (or other newer attorneys) to help welcome and support new attorneys is something that should be considered. Many of us would be willing to play that role, even though we have moved on. Some might consider*

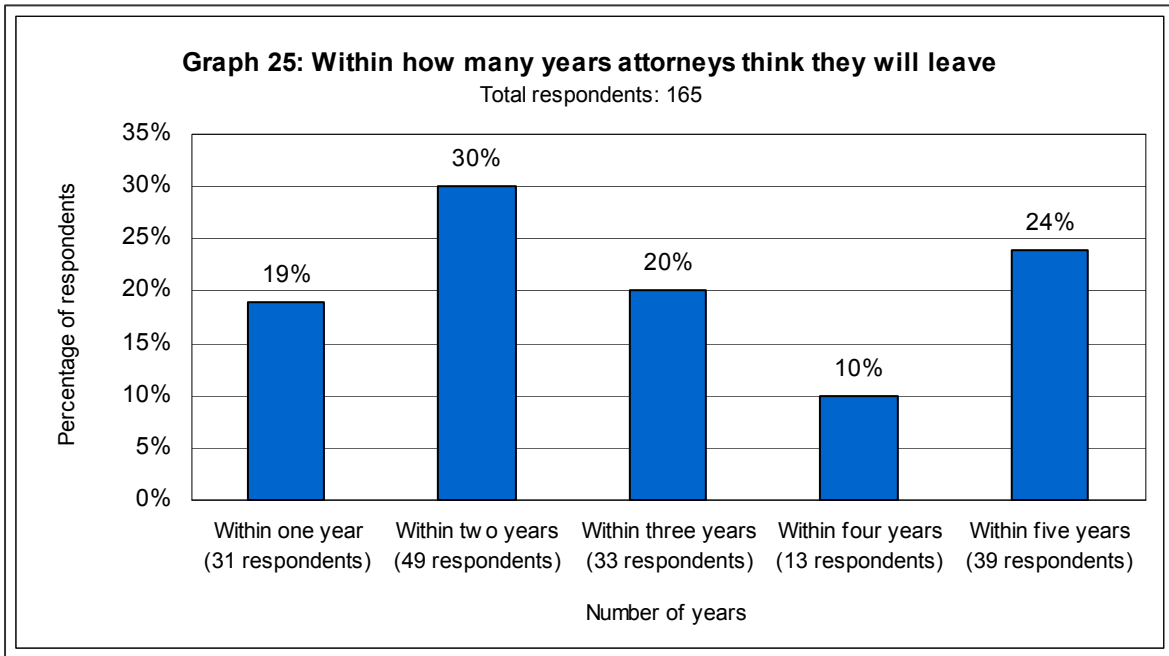
returning to Florida but people need to be vested and feel valued. I have spoken to many fellows about this and they are interested and willing. This would be a natural way to get younger leadership involved in some of the decision making occurring in civil legal aid programs. This type of involvement might help to recruit new attorneys and retain them. They will feel like they have an opportunity to shape the landscape of legal services and will likely stay to fulfill these goals.”

- “I recognize that the salary and benefits (though good) will never be the same as in the private world, so...legal aid programs have to make up for it in work environment (i.e. great management and administration, helpful support staff).”

The main types of employment the former attorney respondents went to include the following: private practice (32 percent); government (15 percent); public defender (11 percent); civil legal aid outside Florida (7 percent); academia (6 percent) other civil legal aid in Florida (5 percent); and prosecutor (5 percent).

Current Attorneys Who Think They Will Leave Within the Next Five Years. The current attorney survey asked if respondents thought they would leave their civil legal aid position within the next five years. Fifty-six percent (56%) answered “yes.”³³

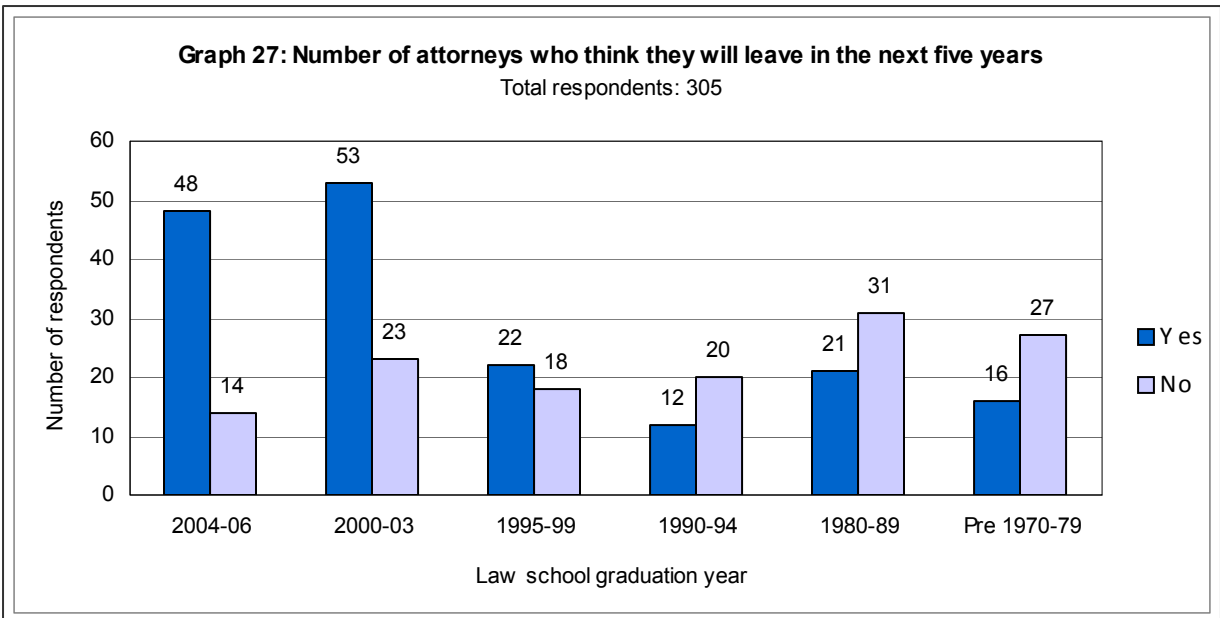
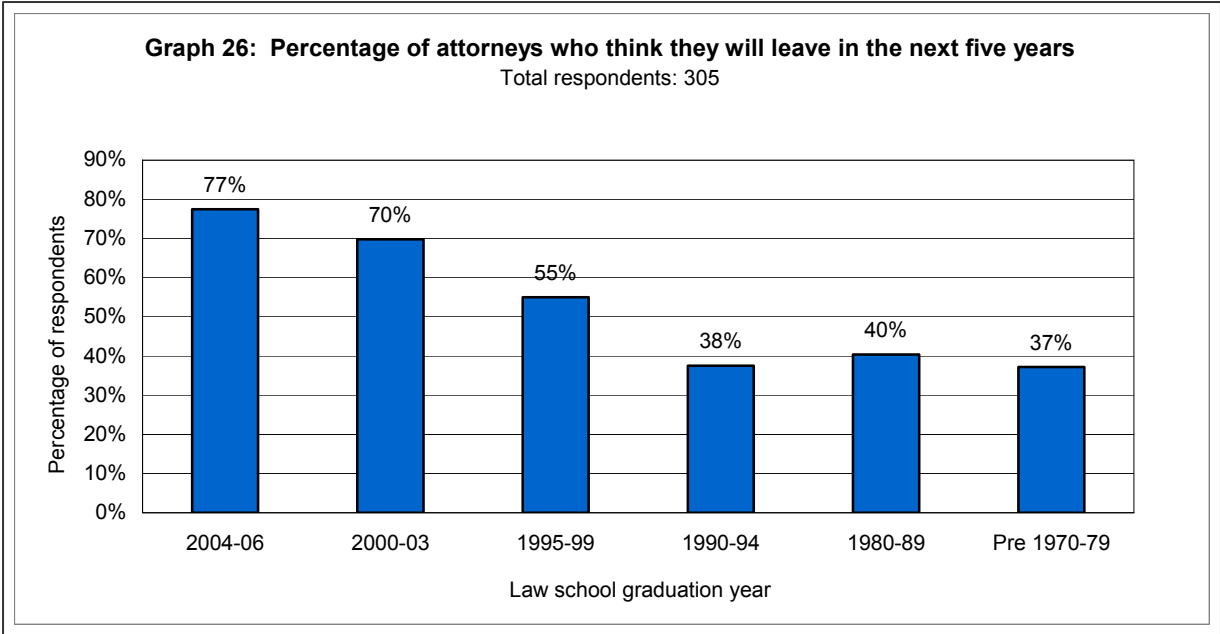
Forty-nine percent of the attorneys who think they will leave say it will be within the next two years. (See Graph 25.)



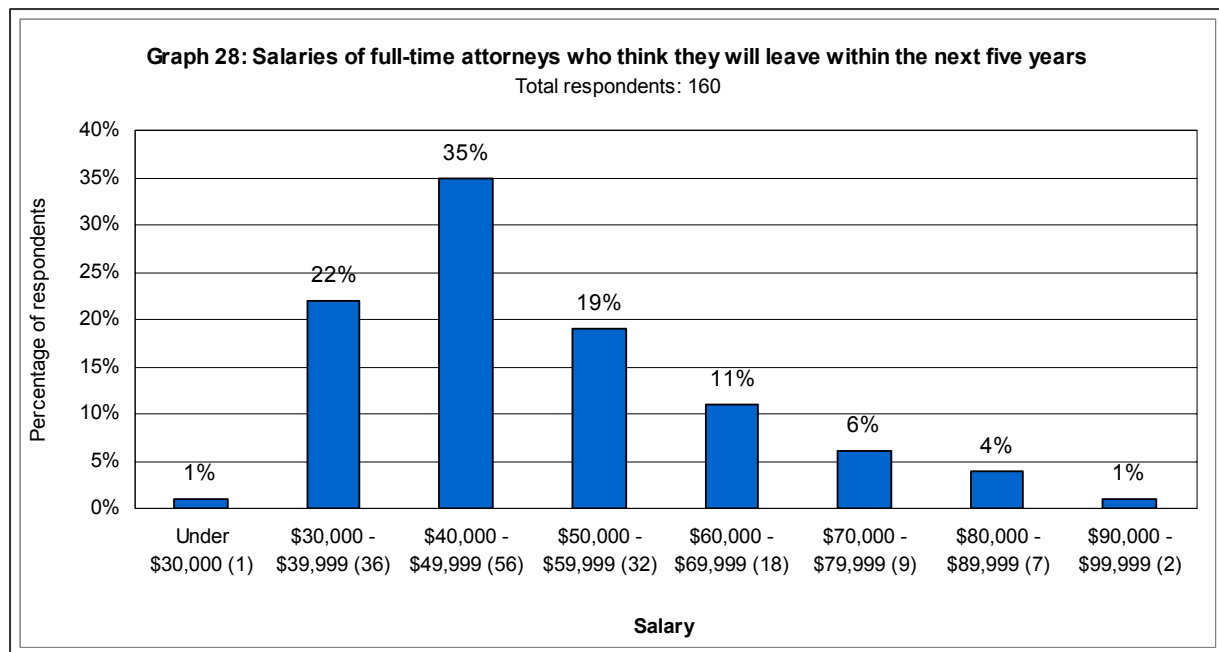
³³ The question was answered by 311 attorneys, meaning that 82 percent of all current attorneys (377) answered the question.

Finding: *Fifty-six percent of all current attorneys and 77 percent of 2004 – 2006 graduates think they will leave within the next five years.*

The percentage of attorneys who think they will leave generally increases with a more recent law school graduation date, with 77 percent of the 2004 through 2006 graduates saying they think they will leave within five years. See Graphs 26 and 27 for the numbers and percentages grouped by graduation dates.



Twenty-three percent of the full-time attorneys who think they will leave have salaries of less than \$40,000 and 35 percent have salaries between \$40,000 and \$49,999. The percentages of attorneys then decrease with each \$10,000 in salary. (See Graph 28.)



The attorneys who think they will leave are employed by 25 of the 28 programs. Most striking is one large program that has 81 percent of its attorneys saying they think they will leave within the next five years.

Other characteristics of the attorneys who think they will leave include the following:

Age: Disproportionate percentages of the younger age groups (68 percent of attorneys 25 – 29 and 70 percent of attorneys 30 – 34 years of age) think they will leave within the next five years. The age group with the lowest percentage of attorneys indicating they think they will leave is those 55 – 59 years of age.

Finding: *More attorneys in the younger age groups – 68 percent of attorneys 25-29 and 70 percent of attorneys 30-34 years of age – think they will leave within the next five years.*

Race/Ethnicity: A larger percentage of Blacks/African Americans, Asians and Native Americans (74 percent) think they will leave, compared to 56 percent of all attorneys.

Finding: *A larger percentage of Black/African American, Asian, and Native American attorneys think they will leave in the next five years – 74 percent – compared to 56 percent of all attorneys.*

Equal Justice Works Fellows. Six of the 11 current EJW fellows indicated they think they will leave within the next five years.

Educational Debt. A larger percentage of the attorneys who think they will leave have educational debt than those who do not think they will leave—65 percent compared to 40 percent. They also have higher median debt—\$80,000 - \$89,000 compared to \$60,000 - \$69,000. Thirty-seven percent are LRAP recipients.

Finding: *Attorneys who think they will leave are more likely to have educational debt than those who do not think they will leave – 65 percent compared to 40 percent. They also have higher median debt - \$80,000 - \$89,000 compared to \$60,000 - \$69,000.*

Job Diversity. More than 2.5 times the percentage of attorneys who think they will leave would like their job to be more diverse than those who do not think they will leave—37 percent compared to 14 percent.

Supervision. Differences exist as well in how the attorneys rate their supervisor. Fifteen percent of those who think they will leave rate their supervision below average or poor. Only 3 percent of attorneys who do not think they will leave give these ratings.

Finding: *Fifteen percent of those who think they will leave rate their supervision below average or poor. Only 3 percent of attorneys who do not think they will leave give these ratings.*

Job Stress. When asked to rate how emotionally draining they find their job, 35 percent of the attorneys who think they will leave find it “very” emotionally draining (the highest rating) as compared to 24 percent of

the other attorneys. The survey respondents also rated a variety of situations. The top three situations they experienced “always” or “frequently” and the differences between the attorneys are displayed below:

	<u>Attorneys Leaving</u>	<u>Attorneys Not Leaving</u>
Emotional exhaustion	41%	19%
Demanding client interactions	43%	21%
Frustration	45%	17%

Opportunity to Advance. The attorneys were asked, if there are positions they would like to advance to in their program, do they feel they have the opportunity to do so. Fifty-nine percent of the attorneys who do not think they are leaving said yes, compared to 44 percent of the attorneys who do think they are leaving.

Attorneys who think they are leaving were asked to rate the reasons for leaving. They rated multiple reasons. (See Table 25.)

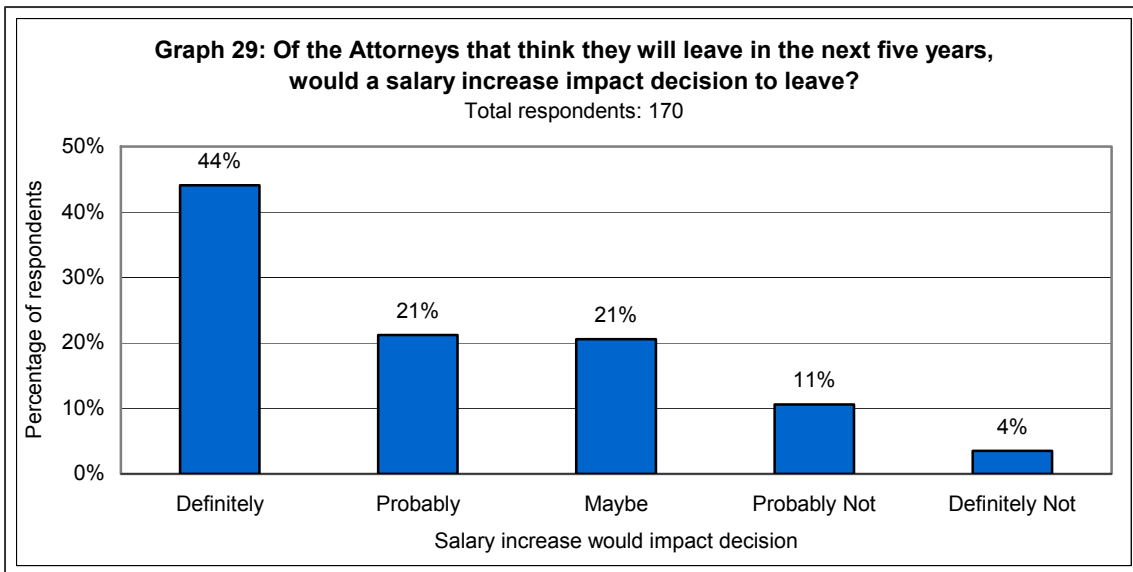
Table 25: Reasons Current Attorneys Give for Leaving Within Five Years							
Reason	Rating Average	Very Important				Very Unimportant	Number of Responses
		5	4	3	2	1	
Financial pressure due to low salary	3.99	56%	16%	11%	7%	11%	162
Financial pressure due to student loans	3.13	38%	14%	8%	3%	37%	160
Burn-out	2.99	20%	25%	17%	11%	27%	157
Financial pressure due to other extraordinary expenses	2.94	26%	16%	15%	13%	31%	154
Personal reason	2.72	22%	15%	15%	9%	39%	152
Case load stress	2.64	12%	20%	20%	17%	32%	154
Family reason	2.59	20%	15%	13%	9%	43%	149
Need for more balanced life	2.50	15%	15%	16%	14%	40%	151
Lack of retirement benefits	2.37	11%	11%	22%	15%	40%	156
Lack of professional development	2.33	9%	11%	18%	29%	33%	150
Lack of skill development opportunities	2.30	8%	9%	20%	30%	33%	150
Lack of professional support	2.19	5%	13%	21%	22%	40%	151
Poor management	2.18	10%	11%	16%	14%	49%	153
Need more interesting work	2.10	8%	13%	12%	16%	51%	148
Lack of flexibility	2.02	6%	9%	14%	22%	48%	153
Poor supervision	1.91	5%	9%	14%	17%	56%	151
Lack of job security	1.85	9%	3%	12%	19%	58%	152

Reasons rated #1, 2 and 4 are financial, with the top reason being “financial pressure due to low salary. Fifty-six of the respondents rated that as very important. “Burn-out” ranked #3. Twenty-two percent of the respondents rated “personal reason” as very important and twenty percent rated “family reason” as very important, which are very similar to the percentages from the former attorney survey.

Top five reasons (in order) attorneys think they will leave:

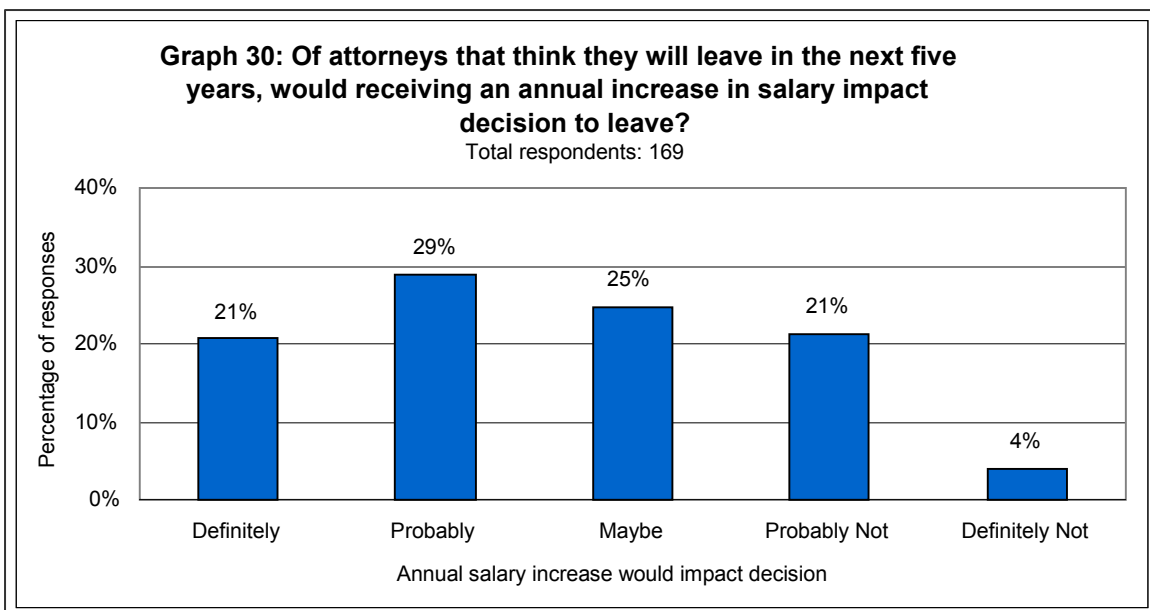
- *Financial pressure due to low salary*
- *Financial pressure due to student loans*
- *Burn-out*
- *Financial pressure due to other extraordinary expenses*
- *Personal reason*

Attorneys who think they will leave were asked if an increase in salary would impact their decision to remain in their position. Sixty-five percent answered “definitely” or “probably.” (See Graph 29.)

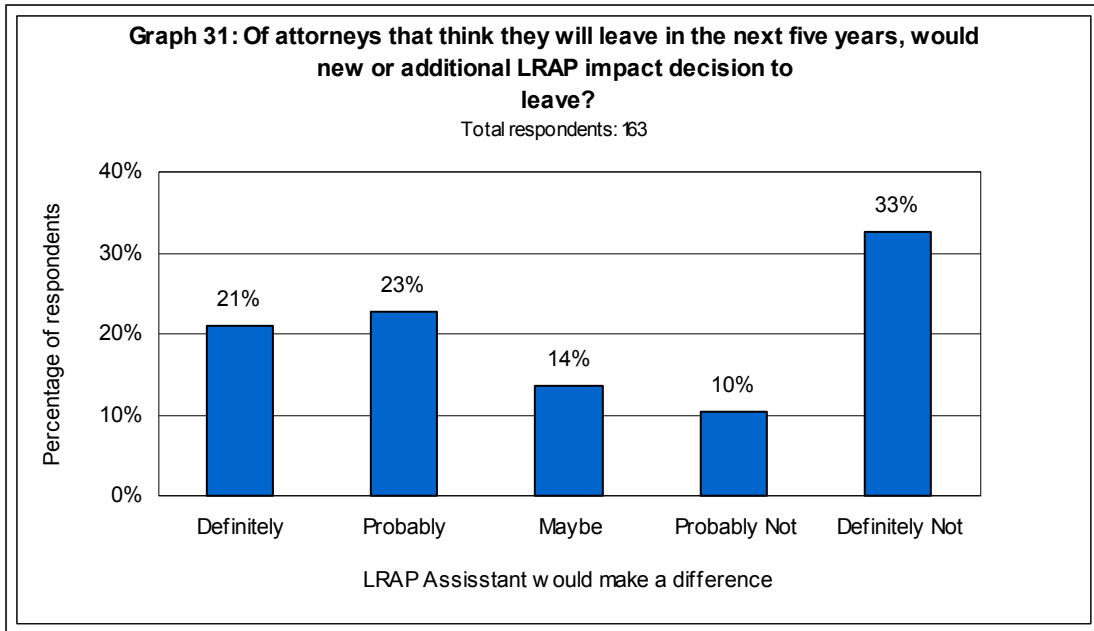


When asked what dollar amount would impact their decision, the answers ranged from \$2,000 to \$53,000. The median is \$12,000 and the most frequent answer is \$10,000 (27 of 125 respondents).

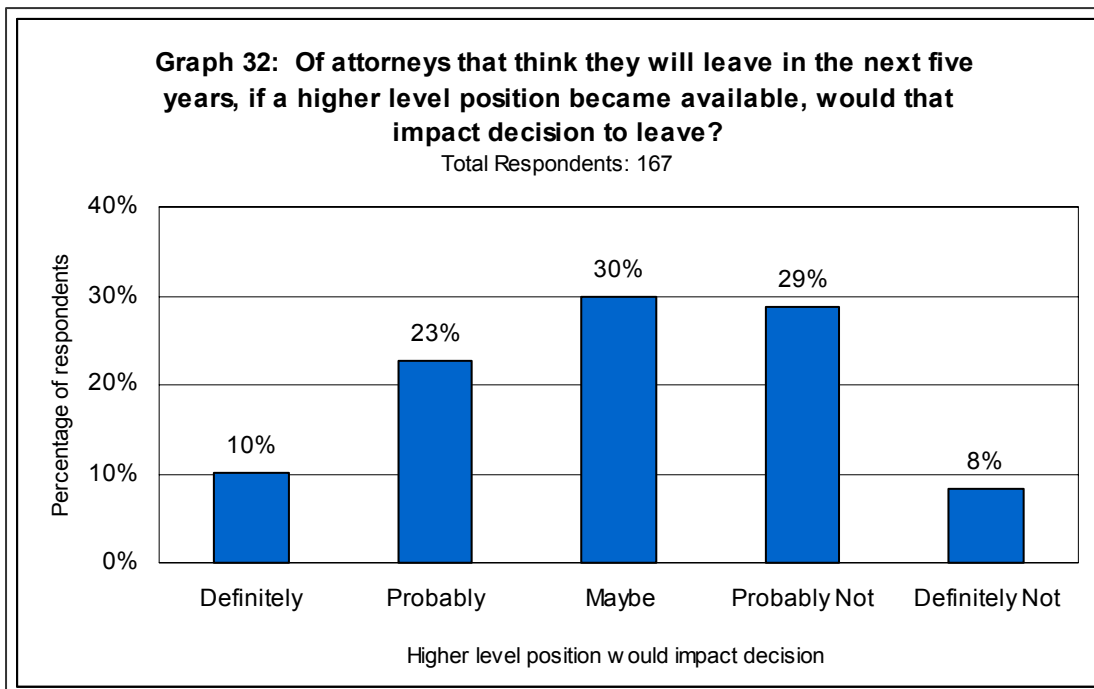
Fifty percent of the attorneys who think they will leave said knowing they would receive annual increases in salary would “definitely” or “probably” impact their decision to remain in their position. (See Graph 30.)



When asked if new or additional LRAP assistance would impact their decision, 44 percent answered “definitely” or “probably.” (See Graph 31.)



Finally, attorneys were asked if a higher level position became available at their program, would that impact their decision. Thirty-three percent answered “definitely” or “probably.” (See Graph 32.)



The above four areas were the only ones specifically asked about on the survey with multiple choice answers. Attorneys who think they will leave were also asked in a narrative question what else it would take for them to stay.

- **What Else May Keep Attorneys Longer:**

- Better management, supervision and support staff assistance.**

- *“Restructuring of management to better train, supervise and work with staff.”*
 - *“Change in management staff and the management of the program”*
 - *“Better supervision on substantive areas, less non-substantive demands on my time”*
 - *“Having support staff and supervision that knows about the types of cases I handle.”*
 - *“Better supervision and better support staff. I love the job, but the stress is not worth the ridiculously low salary.”*

- Help managing workload and stress.**

- *“Honestly, I like my job. I really enjoy helping people, and there are those days that I truly feel that I am making an impact in society. That really matters to me. But these sentiments are tempered with stress --both financial and emotional. There are those days when I feel that I definitely do not receive enough compensation to deal with the job and its stressors. I went to law school, worked hard, and graduated with honors, and sometimes I just get by for rent, car payment, insurance, a random car repair, food, and daily living. Also, working in this position causes stress! I know that's true with any job, but I believe it can be amplified working with people living in poverty. Emotional and work help would go a long way in combating these stressors.”*
 - *“It's just too stressful and I don't know how to deal with the stress.”*
 - *“The key factor for me is workload and the ability to go home with emotional reserves left.”*

- Better health benefits, flexible work-time, and more vacation.**

- *“Better health insurance”*
 - *“Reduced health care costs. I pay \$270.00 bi-weekly for family coverage.”*
 - *“More flex time, working part-time, working from home, taking leave if needed, more training”*
 - *“Significantly more vacation time! (Two weeks annually is just not acceptable!)”*

Finding: Many attorneys talked about how much they appreciate the flexible schedule they are allowed in their programs, including flexible hours or the flexibility to take care of family matters during the day.

Opportunities for more diverse and challenging work.

- “More aggressive advocacy”
- “More intellectually challenging work”
- “Freedom to do litigation with adequate time to work on it.”
- “More diversity in my workload”
- “I’ve thought about this alot... 1. A substantial salary increase 2. The opportunity to do new kinds of cases”

Finding: Twenty-seven percent of the current attorney respondents and 37 percent of those who think they will leave in the next five years would like their jobs to be more diverse.

H. HUMAN RESOURCES MANAGEMENT

Several areas explored in the study involve how civil legal aid attorneys are developed, supported and managed. These areas include non-salary compensation, work-time policies, leave policies, technology resources, orientation and training, supervision, job diversity, leadership development, recognition, and job stress.

Most programs do not have dedicated, professional human services managers. In many programs the executive director and administrator share responsibility for human resources. Most staff who perform HR functions have attended training given by the Southeast Administrators Association. Some have attended the MIE Administrators training. Executive directors often cite their knowledge of employment law and compliance. Some of the larger programs have trained HR professionals, including an HR director who is certified by the national HR institute, an administrator who has taken two 9-month courses; and a finance director who has worked for major companies in HR. A fourth large program is currently hiring its first HR professional.

Non-salary compensation.

Health Insurance. All 28 programs provide health insurance. The full premium for the employee is paid by 19 programs. The other eleven programs pay 50 - 91 percent of the premium.

Only five programs pay the full premium for family coverage. Eight of the programs, including one large program³⁴, do not pay for any portion of the premium. The remaining programs pay 40 to 89 percent of the premium.

More affordable health insurance and better coverage were mentioned as major needs by numerous attorneys in both the survey and interviews. In one large program, family coverage costs the employee more than \$540 per month where the

³⁴ For the Report, programs are divided into small (1 to 5 attorneys), medium (6 to 20 attorneys), and large (more than 20 attorneys).

employer is paying 40 percent of the cost. Some attorneys report having difficulty paying the required co-payments as well as their share of the premiums.

Dental Insurance. Twenty-three of the programs provide dental insurance for employees and their families. Three small programs and two medium programs do not. Seventeen of those that provide dental insurance pay 100 percent of the premium for the employee. The others pay 25 to 85 percent of the employee's premium. Five programs pay 100 percent of the family premium, and the rest pay 0 to 70 percent.

Disability Insurance. Short-term disability insurance is provided by 17 programs and long-term disability is provided by 25 programs. Of those that provide the coverage, all but one program pays 100 percent of the premium. The other program pays none of the premium.

Life Insurance. Twenty-six programs provide life insurance coverage and pay 100 percent of the premium.

Retirement Benefits. Twenty-five programs have a 403(b) or 401(k) plan. Three of these programs do not provide an employer contribution. The other 22 programs contribute between 2 and 10.71 percent of the employee's salary. Some have waiting periods for contributions. Eighteen of the programs with these benefits have made an employer contribution annually for the last five years. One program has a pension, and two programs have no retirement benefits.

Current attorney respondents gave a cumulative rating of 3.11 for retirement benefits when asked to rate their satisfaction with their retirement benefits, where 1.0 is "very unsatisfied" and 5.0 is "very satisfied." Many respondents and interviewees expressed the need for better retirement benefits.

Mileage Reimbursement. Twenty-seven of the programs provide mileage reimbursement. Most programs (17) pay at the IRS rate—currently 48.5 cents per mile. The others' reimbursement varies from 30 cents to 45 cents a mile. Two programs restrict the reimbursement to travel over 10 miles or outside city limits.

Work-time Policies. Six programs have written policies that allow for attorneys to work for the program part-time. Other programs have mixed practices, with some allowing it on a case by case basis and others encouraging it. Some of the older current attorney respondents said they would like to work part-time before they retire.

Many respondents and interviewees talked about how much they appreciate the flexible schedule they are allowed in their programs, including flexible hours or the flexibility to take care of family matters during the day. Most of these attorneys are parents. Others with a four-day work week said how even though they may end up working five days, there is less pressure on the fifth day when the office is closed. Some attorneys would like to be able to work remotely more often, particularly those with a significant commute

to the office. Attorneys in one program talked about how inflexible their program's schedule is and how they did not feel they are treated like professionals, but rather held to a strict clock.

Leave Policies. Programs' annual leave policies were not reviewed, but received mixed comments from the current attorneys. Some wanted more vacation time, often citing a need to alleviate job stress. Others said having vacation time was not that beneficial to them because they had too much work to ever take time off and/or they did not have the money to go anywhere.

Many attorneys mentioned the need for sabbaticals in the current attorney survey, so the programs were asked about these policies. Only seven programs provide paid sabbaticals. The amount of time varies from 15 days to 20 days every four or five years to 60 days every seven years.

Technology Resources. Programs provide various technologies that may affect an attorney's efficiency and job satisfaction, particularly that of younger attorneys who are used to a high level of technology.

Computer to printer ratio:	Average of 2.85 to 1
Laptops for outside office use:	23 programs
PDA's for managers and/or staff attorneys:	4 programs
Cell phone provided or reimbursed for some or all attorneys:	13 programs
Use Word Perfect only:	2 programs

Orientation and Training.

Training/Professional Development Policy. Four of the programs have a written training or professional development policy. The others generally require executive director approval for attorneys to attend trainings. Some encourage as much training as an attorney wants and needs. One program rarely has a training budget and sends attorneys only to trainings that are mandated by funders or that are free.

Orientation. Seventeen of the programs report having a standard orientation for new attorneys. However, interviews of attorneys found that often these orientations involve learning about employee benefits or having the new employee initiate meetings with department heads, and many attorneys said it would have been helpful to have more extensive orientation about program policies and procedures, local legal policies and procedures, and legal practice areas.

First Year Milestones. One program has standard first year milestones—passing the Bar and attending Basic Lawyer Skills Training. One other program sets individual attorney milestones.

Mentors. Twenty-two programs report that mentors are provided for inexperienced attorneys. When asked on the current attorney survey whether they feel they have

been mentored by someone in their program, 78 percent of the 2005 and 2006 law graduates said yes. Sixty-four percent of these said their supervisor was their mentor.

Supervision. As reported in the Turnover section of the Report, two-thirds of the current attorney respondents rate the supervision given them “excellent” or “above average.” Another 23 percent give their supervisor an “average” rating, and 10 percent rate their supervision as “below average” or “poor.”

When interviewed, many attorneys, particularly newer attorneys, expressed a desire for closer supervision. Many said their supervisors have an “open door policy,” but they hesitate to interrupt their supervisor or ask questions because they know how busy he or she is with their own caseload or other responsibilities.

Supervisors, in interviews, also expressed a desire to be better supervisors, but said they feel torn by their own caseload, as well. Many supervisors expressed frustration and disappointment with the time they had available to help new attorneys. Some said they feel like they do not end up doing anything well because they have too many responsibilities.

Finding: *Many attorneys, particularly newer attorneys, expressed a desire for closer supervision, and many supervisors expressed frustration and disappointment with the time they had available to help new attorneys.*

Responses to the survey question that asked what improvements attorneys desire in their supervision are instructive. Most say they want more contact with their supervisor.

- **Current Attorney Comments on Supervision**

Most attorneys like their supervisors and wish they had more time to provide supervision.

- *“My supervisor is great, but I wish she were available more often.”*
- *“The supervisors have too many responsibilities, so I feel the quality of the supervision is decreased because they have insufficient time to supervise all of the staff they are in charge of.”*
- *“I have a great supervisor. I wish she had more support staff to help her so that she might have a bit more time when questions need to be answered.”*

A number of attorneys say they want more pro-active supervision.

- *“My supervisor allows me free reign to handle my cases which is both good and bad. As a new attorney I feel I must work 10 times harder to search for information which could more easily be shared with me through closer supervision. I would like to see my supervisor check in with me more instead of me always checking in with him.”*

- *“Attend hearings on occasion to gain feedback on litigation skills, training/development, and initiate more discussion for case review to oversee proper case management - if I'm on the right track for handling the case and/or legal theories.”*
- *“More in depth discussion of the cases that I handle. Taking an interest in systemic issues that face our clients. Not always worrying about the numbers.”*

Some attorneys mentioned their desire for more feedback, both informal and structured.

- *“Feedback - perhaps an evaluation”*
- *“Doing the basics - checking in from time to time; acknowledging when I've done a good job - or a bad job! Spending some attention on professional development.”*
- *“If I were to make a suggestion, I might say (the program) work to provide employees with feedback a bit more often (3 or 4 times annually). I would also suggest that a manager or evaluator take a day once every 6 mos. and "shadow" employees to get a better sense of organizational work to better provide feedback.”*

Fourteen programs report that supervisors receive training. When asked in interviews and focus groups, many supervisors report that they went to a supervision training sponsored by MIE (Management Information Exchange) when they were first in the position. Some reported they have attended more than one MIE training. All supervisors, when asked, said they would like additional training, particularly in the areas of case reviews, evaluations, and how to deal with low performing attorney and non-attorney staff.

Job Diversity and Rotations. Twenty-seven percent of the current attorney respondents and 37 percent of those who think they will leave in the next five years would like their jobs to be more diverse. Their sense of the barriers and their thoughts about how to address them are noted below.

Current Attorney Ideas on Enhancing Job Diversity

Many attorneys would like to handle cases in different substantive areas and would like training to do so.

- *“I realize that it probably isn't realistic or practical, but I would really like to have the opportunity to work on something from each of the different areas in my program to get a deeper understanding of what my co-workers do and to learn how I can work with them to achieve success in the areas in which I specialize.”*
- *“Staying in one practice area which has such a high emotional drain like DV is not good. I wish that my duties were more diverse.”*
- *“Getting training on new legal areas that I haven't done before AND getting support from management to attend these trainings. Getting mentoring on new legal areas.”*

Many attorneys say they would like to take on more challenging work but feel constrained by resources, caseloads and other responsibilities. Similar barriers were mentioned with respect to moving into new substantive areas.

- *“I would like to do more impact advocacy work and litigation, but I cannot dedicate the time to do this based on the daily demands of my current caseload, staff and management responsibilities. It may be possible to do this with the addition of staff and additional staff training.”*
- *“Currently, my unit is overwhelmed with applicants and I haven't been able to accept a varied case load. I am hopeful as the recent staffing changes become settled I will have the opportunity to accept different cases within my unit.”*
- *“I would like the opportunity to develop more challenges to the law on an appellate level. There is so much work, you can't really concentrate meaningfully on any one thing unless you cut back on something else or if you work 80+”*
- *“I have experience in complex litigation but no time to do it. Too many responsibilities for experienced attorneys in management, supervision and meeting local office grant requirements. New grants do not translate into new attorney hires, we just get more work:*

Current attorneys were also asked if they think rotations within and between programs should be offered and whether they would like to do a rotation, if offered. Seventy-eight percent think inner-program rotations should be offered and 72 percent agree with inter-program rotations. Nearly half (49 percent) would like to do a rotation.

Leadership Development. Current attorneys were asked if they think leaders are developed by their program. Sixty-five percent responded “yes.” All but one program had at least one attorney answer “yes.” In nine programs all of the attorney respondents who answered the question answered “yes.”

Finding: *Seventy-six percent of the attorneys identify themselves as a leader. Of those who did not, 55 percent would like to be.*

Seventy-six percent of the respondents identify themselves as a leader. Of those who did not, 55 percent would like to be. Ideas and comments from current attorneys about leadership development follow.

- **Current Attorney Ideas on Leadership Development**

- Involve staff in shaping the program.**

- *“Leaders could be developed by having new visions and not being restricted by ‘it has always been done this way’.”*
 - *“Give staff the opportunity to shape the program.”*
 - *“Program should allow non-management attorneys to have a meaningful say in the policies, procedures, and types of cases handled by the program.”*

Not all staff can be or want to be leaders, but there are steps a program can take to find, encourage and provide support for those with interest and ability.

- *“I think leaders tend to naturally emerge. But when someone shows good leadership skills, that should be fostered and they should be given the opportunity to handle greater responsibility.”*
- *“People need a little encouragement and if someone shows interest and ability, give them some responsibility and let them make some decisions. Then don’t let others ignore them and go over their heads. If you give people responsibility, then give them some authority.”*
- *“I think that for people who want to advance, there are any number of trainings that our office could promote - basic seminars on non-profit management, seminars on grant writing, seminars on managing employees. People could attend these trainings before an opening is available.”*

Provide mentoring and leadership training.

- *“The skills of management and supervision are different than those necessary to work as a staff attorney. Training needs to be provided on the skills necessary to supervise well and to effectively manage the practice.”*
- *“We have some outstanding leaders here. I’ve been lucky to have been mentored by two of them... Mentoring is the best leadership development tool that I’ve seen deployed here.”*
- *“Mentoring and leadership training. Moreover, give the opportunity to staff attorneys for the development of their own projects. Reward initiative and creativity.”*
- *‘Shadowing other supervisors or leaders in the program.’*

Provide opportunities to lead substantive work.

- *“In our program we identify leaders and assign them projects. Leaders could be developed by encouraging staff to identify needs in the community and putting together a project to fit the need.”*
- *“By taking on leadership responsibilities for particular advocacy projects (e.g. coordinating the activities of a number of other advocates to accomplish particular advocacy goals) or office administrative projects.”*
- *“If a major case comes in designate a project leader for that case, next major case switch project leaders.”*

Other efforts include:

- *“Executive Director allows staff to participate in community organizations and regional orgs and is supportive of staff efforts.”*

- *“We try to include younger attorneys in administrative activities and encourage/require participation in regional/statewide activities.”*
- *“Staff are invited to join subcommittees or committees involving program activities; staff are invited to chair or co-chair a committee; staff are asked to provide or develop trainings for program staff or agencies; staff are invited to attend local, regional or state meetings in place of immediate supervisor...”*

Recognition. Most attorneys appreciate their program’s efforts at recognition; though a high percentage - nearly one-third - of the current attorneys say they do not receive the amount and kind of recognition for their work that they would like. Eight programs give awards, nine give acknowledgement of achievements in program newsletters, and twelve send program e-mails to recognize attorneys. Other methods used by one or a few programs include staff lunches, an annual dinner, an annual employee retreat, postings on website, announcements at staff meetings and Board meetings, notices for the Bar publications, parties, and bonuses. Six programs did not report any recognition activities.

Many recognition ideas from the current attorney respondents echo what some programs do. Some of those comments and others are noted below.

- **Current Attorney Ideas on Recognition**

Many attorneys say they appreciate public recognition and value their program’s efforts.

- *“We have an annual employee appreciation lunch where employees are recognized for their achievements and job longevity. Special achievements are praised by the Executive Director and managers, both in person and through e-mails to all staff. I think those are both very effective means for recognizing employee achievement.”*
- *“I actually think our program does a very good job of recognition. Each week we have a newsletter that goes to everyone. If someone has done something great, it is in the letter.”*
- *“It matters a great deal that my supervisor is generous with praise of me in the office AND in the community.”*

Several attorneys believe recognition should come in the form of salary increases or bonuses. Merit raises and bonuses were mentioned often.

- *“Without sounding ungrateful, most of us receive recognition by the impact our work/efforts have on our clients. Recognition needs to also come in the form of monetary compensation. It’s great to get an award, but if we can’t pay our student loans, it really doesn’t have us feeling that great for too long”*
- *“Salary increases should be based on performance. Those who perform at a low level but still get a standard raise have little incentive to improve. Those who perform at a high*

level and also get a standard raise feel unappreciated, no matter how much written or verbal praise they receive.”

- “performance/merit bonuses or raises based on feedback from clients, court, co-workers and track record/litigation outcome”

Some attorneys gave other ways to value staff and boost morale.

- “Recognition does not need to be done with an award but rather acknowledging the work being done by providing proper support, workspace, and assistance would help in making you feel that your work is important.”
- “A simple call saying you are doing a great job with a difficult case would do since we don’t get bonuses for cases or periodic merit raises.”
- “It really doesn’t cost the program anything to reward folks with a day off here and there... I think that periodic simple gestures throughout the year - bringing in bagels, sandwiches, afternoon ice cream parties - sometimes the little things show administration cares. I understand that our money needs to focus on delivery of legal services. But, we have an exceptionally devoted staff, and we **MUST** be good to ourselves to best serve others. There need to be morale boosters.”
- “I think it is important for members of an organization to communicate with one another, to be informed of what others are doing, to share struggles in dealing with cases and provide opportunities for mentoring within the organization. In addition, it is important for staff to be involved in the constant evolution of the organization and its values. This gives each attorney a sense of appreciation and motivates all of us to continue working towards a common goal.”

Job Stress. A striking finding of the current attorney survey, but more particularly from the attorney interviews, is the level of stress felt by attorneys. Nearly one-third of survey respondents (31 percent) report they find their job “very” emotionally draining and another 48 percent find it “somewhat” draining. Feeling frustration or emotional exhaustion was given “always” or “frequently” ratings by 32 percent and 33 percent, respectively.

Finding: *A striking finding...is the level of stress felt by attorneys. The stress associated with turning away clients, feeling like they cannot do enough for their clients, feeling like they cannot do a good job on anything because they have too many cases or responsibilities, and many add that their financial stress affects their concentration at work and their ability to do well.*

Attorneys talk about the stress associated with turning away clients, feeling like they cannot do enough for their clients, feeling like they cannot do a good job on anything because they have too many cases or responsibilities. And, many add that their financial stress affects their concentration at work and their ability to do well. Some talked about how they are burning out and feel the only way to solve it is to leave because they are asked to do more and more or they feel like they should do more and more. Many have a difficult time saying “no” or cutting back.

CONCLUSIONS AND RECOMMENDATIONS

This Report analyzes four areas affecting the recruitment and retention of civil legal aid attorneys in Florida: (1) salaries and other factors that help build a stable and productive workforce; (2) the demographics of attorneys currently working for Florida programs; (3) the characteristics of the attorneys who have left and those who think they may leave their programs; and (4) the rate of turnover.

The findings show that attorneys are leaving the programs at an alarming rate. On average, each year, over the past five years, one out of five attorneys has left. The long-term loss is even worse. Six of every 10 attorneys that worked for a civil legal aid program five years ago are no longer there. This is devastating to programs, their clients, and the delivery system statewide. In addition to the tremendous loss of experience and disruption in client service, this turnover prevents the cultivation of a new generation of attorneys who make civil legal aid a career.

Many of the attorneys who have left civil legal aid or think they will leave are doing so because of the low salaries and/or their high educational debt. However, financial reasons are not the only reasons for the high turnover. Attorneys are also leaving because of poor management, lack of professional support, poor supervision, case load stress, and burn-out.

These recommendations are not just about how to make changes to better recruit attorneys or make them less likely to leave. They are also about making changes for attorneys who stay, not just to retain them, but to give them a positive, financially-rewarding work experience.

This Report makes recommendations in six areas: (1) salaries; (2) loan repayment; (3) supervision; (4) job diversity, job stress and burn-out; (5) leadership development and advancement opportunities; and (6) recruitment. These recommendations, if adopted, will improve the recruitment and retention of attorneys and lead to stronger, more effective legal aid programs in which clients are served by attorneys at their best.

A. SALARIES

Conclusions

Salaries for Florida civil legal aid attorneys are abysmally low, and the principal cause of Florida's increasing turnover and difficulty filling vacant positions.

The median starting salary of \$38,500 is below what most new attorneys need to meet the cost of living and far below the salary one would expect for a highly-educated professional.

Just as troubling, the rate at which salaries increase after the first year is extremely slow. It takes a median of nine years for a staff attorney to reach a salary of more than \$50,000. Even then, the salary is approximately one-third less than that paid a comparably experienced assistant public defender or state's attorney. At higher experience levels, the gap grows to 48 percent. Programs need to raise salaries at all levels of experience, not only to retain current attorneys, but to continue to successfully recruit attorneys of all experience levels.

Attorneys who left in the past five years and those who think they will leave within the next five, cite low salaries as the primary reason. Many current attorneys are suffering severe financial hardship and stress because of their low salaries, stress that detrimentally affects their effectiveness at work.

Many attorneys do not know whether they will receive an annual salary increase or what the amount might be, because many programs do not use a salary scale. Attorneys do not know what they will earn in the future. This lack of transparency leads to concerns about the fairness of salary determinations. Attorneys want to know and should know they will receive an annual salary increase and its amount.

By failing to acknowledge the financial need, the professional status, and the good work of civil legal aid attorneys, Florida's legal aid salaries also ignore basic principles of fairness and equity.

Sixty-five percent of the attorneys who said they think they will leave in the next five years said that a salary increase would definitely or probably impact their decision. Ten thousand dollars was the median amount given by those who said an increase would make a difference. And, \$10,000 is the median salary increase that attorneys who left in 2006 received in their new jobs. Accordingly, \$10,000 is a useful benchmark to determine the salary increase needed to retain current attorneys.

Recommendations

- **Foundation:** Provide attorney-salary grants in 2008 and 2009 to programs that have a board-approved salary scale and salary plan.
- **Programs:** Adopt a salary plan that includes a uniformly-applied attorney salary scale with a starting salary of \$48,000 by the end of 2009. Each full-time attorney should, on average, receive at least a \$10,000 increase in salary by the end of 2009. Part-time attorneys should receive a pro rata salary increase.
- **Programs in High Cost Areas:** Implement a salary scale with a starting salary higher than \$48,000 to account for the high cost of living in the program area.

- **Programs and Foundation:** Incorporate principles of basic fairness and equity in salary determinations and grants for salaries to acknowledge the financial need, the professional status, and the good work of civil legal aid attorneys.

B. EDUCATIONAL DEBT AND LOAN REPAYMENT ASSISTANCE PROGRAMS

Conclusions

The Foundation has a commendable Loan Repayment Assistance Program (LRAP), but improvements are needed to make it a more effective recruitment and retention tool. Educational debt is at such a high level—more than \$100,000 for recent law school graduates—that salary increases alone will not be enough to deal adequately with debt payments and balances.

Fifty-four percent of Florida civil legal aid attorneys have educational debt. Currently, more than 40 percent of them do not receive loan assistance from the Foundation or any LRAP.

Attorneys seeking to participate in the Foundation's LRAP must compete for assistance and can do so only if their employer elects to participate. Not all do. Moreover, even when their employer does participate, current and prospective attorneys do not know if they will receive assistance. This lack of certainty deters prospective legal aid attorneys and causes additional stress for current ones.

The Foundation's LRAP provides benefits of up to 80 percent of the LRAP participant's annual debt payments, up to \$6,400 per year.³⁵ Though generous, this is insufficient to enable attorneys to climb out from under their educational debt. Many attorneys are forced to consolidate their loans and extend their terms to 25 to 30 years to afford the monthly payments.³⁶ This dramatically increases the total payments and leaves the attorneys primarily paying interest for years. Unless the Foundation's LRAP helps attorneys pay down the principal of their loans, educational debt will be a 30-year problem.

Although the Foundation's LRAP is less complicated than others, some elements make it fairly complicated to administer, such as paying only for law school loans, income cap tiers and operating a regular and supplemental program.

Recommendations

- **Foundation:** Improve the regular LRAP to cover more attorneys and simplify administration:

³⁵ Attorneys are eligible for an additional \$6,400 (funded 20 percent by the Foundation), but most programs do not participate.

³⁶ The largest number of attorneys with educational debt estimates they need 25 to 30 years to pay it off. Because of the Foundation's percentage formula, participants who need to consolidate their loans with a 25 or 30 year term to make the payments affordable receive less assistance than participants with loans at a 10 or 15 year term.

- Eliminate the supplemental LRAP and provide assistance to these recipients through the regular LRAP.
- Provide assistance to all attorneys with educational debt who work for Florida civil legal aid (including pro-rata assistance for permanent part-time attorneys), making LRAP a certainty for current and prospective attorneys.
- Eliminate the income cap. This removes programs' incentive to pay low salaries to establish LRAP eligibility and allows experienced (higher paid) attorneys to eliminate their debt sooner.
- Cover all educational debt. Although this will increase the eligible debt balances, it will also ease administration because most educational loans are consolidated. An undergraduate degree is needed to obtain a law degree, and all debt is a burden at legal aid salaries, even if they are increased.
- Calculate benefit levels using debt balances instead of annual payments. Pay ten percent of the debt balance up to a maximum of \$8,400. Attorneys will pay off their principal faster.³⁷
- **Foundation and programs:** Fund the LRAP with 80 percent Foundation funding and 20 percent program funding.
- **Programs:** All programs should participate fully in the Foundation's LRAP.
- **Programs:** Hold harmless attorneys who currently receive more than \$8,400 annually from the Foundation's regular and supplemental LRAP.
- **Programs:** Develop or keep program-based LRAPs to provide assistance to attorneys from month of hire to month of Foundation LRAP coverage—"gap LRAP."
- **Foundation and programs:** Work with Florida law schools, particularly the privately-funded schools, to develop law school LRAPs.

C. SUPERVISION

Conclusions

Good supervision and mentoring make a significant difference in the quality of legal work performed and the quality of a staff attorney's work experience.

³⁷ A 15 year loan of \$75,000 requires \$695/month payments at a 7.5% interest rate. This is approximately \$8,400/year. A rough estimate is that half of the approximately 204 attorneys with educational debt (54 percent of the 377 total current attorneys) would receive \$8,400 because the median educational debt is \$70,000 - \$79,000, and half would receive an average of \$4,200: $102 \times \$8,400 = \$856,800$ and $102 \times \$4,200 = \$428,400$ for a total of \$1,285,200.

Many attorneys, particularly new ones, need and want more extensive and improved supervision.

Many supervisors are too busy with their own caseloads and other responsibilities to provide the amount and quality of supervision they want to give and that their supervisees would like and need.

Supervisors need, and many want, training in how to supervise. Although virtually all civil legal aid attorneys are motivated by helping low-income individuals access the justice system, some need additional motivation to work as a team or on a particular project.

Recommendations

- **Programs:** Develop a supervisor skill-building program for new and experienced supervisors.
- **Programs:** Provide more time for supervisors to supervise and develop supervisor standards or guidelines.
- **Foundation:** Support the development of supervisor skill-building programs.

D. JOB DIVERSITY, JOB STRESS AND BURN-OUT

Conclusions

Civil legal aid jobs are notoriously stressful, and some attorneys and programs believe constant, high stress is inevitable. Inadequate staffing and reliance upon special grants with high deliverables can also make them repetitive and stifle professional growth and reward. Both factors can lead to burn-out and turnover.

Many attorneys would like their jobs to be more diverse in the type of case and skill required to provide assistance. And many also want more challenging work.

Recommendations

- **Programs:** Develop and provide more opportunities for attorneys who want to handle a broader variety of cases and to develop and use additional skills.
- **Programs:** Develop and implement ways to create a work environment that minimizes high stress and burn-out.

E. LEADERSHIP DEVELOPMENT AND ADVANCEMENT OPPORTUNITIES

Conclusions

To retain staff and remain vital, civil legal aid programs need a constant stream of new leaders in a variety of positions. Many of Florida's attorneys are ready and willing to work on projects that will develop their leadership abilities and/or improve their advancement opportunities. Many attorneys would like to advance in their programs, but believe they have no way to do so.

There are many ways to identify and nurture leaders. One very important way, noted by many newer and experienced attorneys, is for programs to give attorneys input into the program's goals and to mesh the attorney's personal career goals with the program's.

Recommendations

- **Programs:** Provide leadership development opportunities within the programs for all attorneys.
- **Programs:** Coordinate leadership development projects and training at the regional and/or state level.
- **Programs:** Develop job positions, such as senior attorney and project leader, which provide more responsibility and compensation. Also, delegate management responsibilities to attorneys who want management experience.
- **Foundation:** Support the coordination of regional and/or state level leadership development projects and training

F. RECRUITMENT AND HIRING

Conclusions

Recruitment and hiring processes are not prioritized by most of the programs. Necessary time and financial resources are not invested in these crucial functions. Hiring is generally slow and cumbersome which causes programs to miss opportunities to hire interested candidates.

Though the number of vacancies may decrease over time if programs increase salaries, active recruitment will still be necessary, especially among attorneys of color and for rural parts of the state.

Recruitment efforts, outside of the Summer Fellows program and career fairs, are conducted by individual programs and not coordinated statewide. Programs are not taking advantage of interviewing top candidates from career fairs.

Recommendations

- **Programs:** Streamline hiring practices; develop an updated package of recruitment information; and provide significant financial incentives for potential applicants.
- **Programs:** Build and maintain strong relationships with promising candidates, particularly law students and attorneys of color, even if there are no current openings.
- **Programs:** Coordinate recruitment at the regional and/or state level.
- **Foundation:** Create a brochure about the Foundation's LRAP that can be used by programs and broadly distributed to Florida law students and other potential attorney applicants.
- **Foundation and Programs:** Work to change the rule to allow admission on motion for attorneys who have been licensed in another state for five years and are going to be employed in Florida civil legal aid.

APPENDICES

Appendix 1

Highlights of Findings

A. Demographics of Current Attorneys

- **number of attorneys:** 377
- **positions:** 70% are staff attorneys and 30% have supervision or management responsibilities
- **full-time/part-time:** 90% full-time; 10% part-time
- **gender:** 73% female; 27% male
- **age:** median age range of 36 to 40 years; largest number in age range of 26 to 30 years
- **largest generation:** Generation X
- **race/ethnicity:** 25% are Latino/Hispanic or Black/African American, but these groups make up 53% of Florida's poverty population—the client base
- **bi-lingual:** 37% speak a second language—75% of these speak Spanish and 5% Creole
- **marital status:** 50% married; 43% single; 6% live as a couple
- **children:** 42% have children under age 22; females are more likely to be parents
- **earners:** 42% are the sole earners; 29% of attorneys with children have only one earner
- **primary breadwinner:** Two-thirds are primary breadwinner, but there is a gender difference; 84% of males and 59% of females

B. Undergraduate and Law School Education of Current Attorneys

- **graduate of public undergraduate school:** 66%
- **graduate of private law school:** 61%
- **graduate of Florida law school:** 55%
- **median graduation date:** 1997

C. Educational Debt and Loan Repayment Assistance

- **have educational debt now:** 54 percent of all current attorneys; 100% of 2006 graduates
- **median current educational debt:** \$70,000 - \$79,000 of all current attorneys; \$90,000 - \$99,000 for 2004 - 2006 graduates; more than \$100,000 for 2006 graduates
- **receive LRAP assistance from any source:** 59%
- **receive LRAP assistance from the Foundation:** 85 attorneys
- **Florida law school LRAPs:** only a small program at St. Thomas University School of Law

D. Bar Exams and Licenses

- **cost of bar review courses:** About \$2,500; 21 programs do not reimburse some or all of the cost
- **provide paid time off to study for the Bar:** 14 programs
- **Florida Bar exam:** 14% of current attorneys took the bar 2 or 3 times and are disproportionately minority attorneys

E. Attorney Recruitment, Hiring and Retention

Florida law student recruitment. Recruitment efforts, outside of the Summer Fellows program and national career fairs, are carried out by individual programs, and not coordinated statewide. Law school public interest staff and faculty suggested improving recruitment by increasing salaries, better marketing, specific marketing about the Foundation's LRAP, and on-campus interviews.

Career fairs

- 7 of 89 top candidates from national legal career fairs were hired
- Most programs do not follow up with potential applicants

Summer fellows. One hundred eighteen (118) law students were summer fellows in the last five years. Seventeen of the 78 who have graduated (22%) are currently attorneys with ten of the programs. Low salaries is the primary reason given by former fellows for not working for Florida civil legal aid now. Ideas given by former fellows or current attorneys for better recruitment of summer fellows include:

- Provide a quality "hands-on" experience
- Offer mentoring and networking opportunities
- Keep in touch with the former fellows
- Make offers early
- Make offers more financially attractive

Equal Justice Works fellows. Nine of the 54 former Florida EJW fellows are attorneys with Florida civil legal aid.

Recruitment, interviewing and hiring processes. Current attorneys rate these processes of their employers between average and below average. They think these processes should be prioritized and speeded up. Suggestions are made for more active, widespread recruitment, particularly for more racially/ethnically diverse candidates. Many said that salaries and LRAP assistance have to be increased to have successful recruitment. Several ideas are given for recruitment of attorneys for rural and high cost areas, as well as racially/ethnically diverse and bi-lingual attorneys.

New hires. Attorneys with varied experience levels were hired in 2005 and 2006.

- Pre-2000 law graduates: 28%
- 2000 through 2004 law graduates: 33%
- 2005 or 2006 law graduates: 41%

Length of employment with current employer and all civil legal aid. The median length of time of employment attorneys have with their current legal aid employer is 36 months. The combined median length of time attorneys have worked for any civil legal aid program is 5 years.

F. Salaries

Current salary determinations. Fifteen of the programs have salary scales, but only eleven adhere to them. With or without a scale, most of the programs that provided information report that actual salaries are based on years of experience. Some use other factors such as type of experience, length of service, level of work, quality of work and merit, achievement of goals, and pay for performance.

Recent salary increases

- most programs gave salary increases in 2006 or 2007
- increases ranged from three percent to 18 percent (if percentage) and \$2,000 - \$10,000 (if flat amount), or some programs gave both.

Bonuses

- # of programs that gave bonuses in 2006: 10
- range of bonuses: \$200 - \$4,000

Starting salaries

- median starting salary for licensed attorneys: \$38,500
- # of programs that pay \$40,000 or above: 12 programs

Median salaries of current staff attorneys

- 2006 graduate (less than a year) \$38,000
- 2005 graduate (1 year) \$38,500
- 2004 graduate (2 years) \$40,000
- 2001 graduate (5 years) \$45,818
- 1996 graduate (10 years) \$60,000
- 1986 graduate (20 years) \$57,337

Median salary of all current attorneys: \$50,000

Assistant public defenders' salary ranges

- starting salary \$39,084 (Tallahassee) to \$42,000 (Miami)
- 5 years experience \$49,763 (Pensacola) to \$64,652 (Jacksonville)
- 10 years experience \$52,584 (Pensacola) to \$82,541 (Miami)
- 20 years experience \$67,644 (Tallahassee) to \$90,209 (Miami)

Assistant state’s attorneys’ salary ranges

- starting salary \$39,084 (Miami) to \$44,000 (Pensacola)
- 5 years experience \$56,706 (Pensacola) to \$71,009 (Jacksonville)
- 10 years experience \$64,514 (Miami) to \$99,103 (Tampa)
- 20 years experience \$103,920 (Tampa) to \$136,844 (Jacksonville)

Starting salaries for all types of Florida attorneys

- Median starting salary with no experience \$50,000
- Median starting for those with internship experience \$55,000

How current attorneys feel about civil legal aid salaries. Current attorneys were asked to rate their satisfaction with several aspects of their jobs. The scale was from a rating of one for “very unsatisfied” to a rating of five for “very satisfied.” Out of 38 different aspects of their jobs, “current salary” and “salary progression” were the only job aspects rated below a three. They received compilation ratings of 2.78 and 2.77, respectively.

The Report contains numerous quotes from current attorneys about the financial hardship caused by their low salaries, such as “...I struggle to support my family and have absolutely no financial freedom. My financial situation creates a lot of stress in my life and I am not sure how long I can continue to work in this sector, even though I believe in the importance of the work (the program) does and absolutely love my job.”

Standard of living. Buying a home is out-of-reach for many current attorneys with median home prices of \$244,900 to \$357,000 in the major Florida cities.

G. Turnover

Turnover in the last five years

- # of attorneys that left a Florida civil legal aid program: 317 (322 total but five changed programs due to regionalization)
- Average annual turnover rate: 20%
- 2005 and 2006 turnover rates: 23%
- Median length of employment of attorneys who left: 23 months

Comparison with Florida public defenders and state’s attorneys

- Public Defender average annual turnover rate for FY02-06: 22%
- State’s Attorney average annual turnover rate for FY02-06: 19%
- Public Defender FY06 rate: 26%
- State’s Attorney FY06 rate: 20%

Demographics of attorneys who left in the last five years

- # of attorneys: 322 (317 were analyzed because 5 changed programs due to regionalization)
- 87% were staff attorneys even though they are only 70% of current attorneys
- 2% part-time, compared to 10% of current attorneys

- 72% female, compared to 73% of current attorneys
- largest group who left is 31-35 years old (27%), compared to 18% of current attorneys in this age group
- 20% Black/African American, compared to 11% of current attorneys
- median graduation date of 2000 for those who left in 2006
- higher percentages of personal situations that could contribute to financial reasons for leaving (primary breadwinner, single, single income earner), compared to current attorneys
- median debt of \$70,000 - \$79,000 the same as current attorneys, but 73% have debt, compared to 54% of current attorneys
- 25% took the Florida bar exam more than once, compared to 14% of current attorneys

Top 5 reasons why attorneys left in the last five years (in order)

- financial pressure due to low salary
- poor management
- financial pressure due to student loans
- lack of professional support
- poor supervision

Current attorneys who think they will leave within the next five years

- percentage of attorneys: 56%
- more likely to be recent graduates—77% of 2004 – 2006 graduates
- generally have lower salaries
- more likely to have educational debt—65% compared to 40% of the attorneys who do not think they will leave
- more likely to want more job diversity—37% compared to 14% of other current attorneys
- more likely to give their supervisor a poor or below average rating—15% compared to 3% of other current attorneys
- more likely to experience emotional exhaustion, demanding client interactions, and frustration than other current attorneys

Top 5 reasons (in order) why attorneys think they will leave in the next five years

- financial pressure due to low salary
- financial pressure due to student loans
- burn-out
- financial pressure due to other extraordinary expenses
- personal reason

Changes that would “definitely” or “probably” impact decision of attorneys to leave

- salary increase: 65% say it would impact decision
- amount of increase that would have impact: median of \$12,000 & most frequent answer of \$10,000
- annual increase in salary: 50% say it would impact decision

- new or additional LRAP assistance: 44% say it would impact decision
- higher level position became available: 33% say it would impact decision

Other changes attorneys say are needed for them to stay

- better management, supervision and support staff assistance
- more manageable workload and less stress
- better health benefits, more flexible work-time, and more vacation
- other types of work and diversity of work

H. Human Resources Management

Non-Salary Compensation

- Health insurance: Although all programs provide health insurance, the premium share and co-payments are a financial struggle for many attorneys.
- Dental insurance: 23 programs provide coverage and 17 pay the full premium.
- Disability insurance: 17 programs provide short-term disability and 25 provide long-term disability. All but one pay 100% of the premium.
- Life insurance: 26 programs provide life insurance and pay 100% of the premium.
- Retirement benefits: 25 programs have a 403(b) or a 401(k) plan. 22 programs contribute 2 to 10.71% annually. One program has a pension. Many current attorneys expressed the need for better retirement benefits.
- Mileage reimbursement: 17 programs pay the IRS rate of 48.5 cents. Other programs pay less, and one program pays nothing.

Work-time Policies. Most programs do not have part-time policies, but many allow it. Some older attorneys would like to work part-time. Many, many current attorneys appreciate the flexible schedules of their programs.

Leave Policies. Some attorneys would like more vacation time, and others said they do not have the time or money to take a vacation. Longer term attorneys would like to be able to take a paid sabbatical.

Orientation and Training

- 4 programs have written training policies
- 17 programs have standard orientation for new attorneys; current attorneys would like more extensive orientation
- 76% of 2005 and 2006 graduates have a mentor in their program; 64% of their mentors are their supervisor

Supervision. Many attorneys would like closer supervision, and supervisors would like additional training and more time to supervise.

Diversity and Rotations

- 78% of current attorneys think an inner-program rotation should be offered
- 72% of current attorneys think an inter-program rotation should be offered
- 49% of current attorneys would like to do a rotation

Leadership Development

- 65% of current attorneys think leaders are developed by their program
- 76% of current attorneys identify themselves as a leader

Recognition. Nearly one-third of the current attorneys do not receive the amount and kind of recognition for their work they would like.

Job Stress

- 31% of current attorneys find their job “very” emotionally draining
- 65% of current attorneys experience frustration or emotional exhaustion on the job “always” or “frequently”

Tables, Charts and Graphs

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Florida Civil Legal Aid Programs included in the Study

1. Bay Area Legal Services
2. Brevard County Legal Aid
3. Coast to Coast Legal Aid of South Florida
4. Community Law Program
5. Community Legal Services of Mid-Florida
6. Florida Equal Justice Center
7. Florida Immigrant Advocacy Center
8. Florida Institutional Legal Services
9. Florida Justice Institute
10. Florida Legal Services
11. Florida Rural Legal Services
12. Guardianship Program of Dade County
13. Gulfcoast Legal Services
14. Heart of Florida Legal Aid Society
15. Jacksonville Area Legal Aid
16. Lee County Legal Aid Society
17. Legal Advocacy Center of Central Florida
18. Legal Aid of Manasota
19. Legal Aid Service of Broward County
20. Legal Aid Society of the Dade County Bar Association
21. Legal Aid Society of the Orange County Bar Association
22. Legal Aid Society of Palm Beach County
23. Legal Services of Greater Miami
24. Legal Services of North Florida
25. Northwest Florida Legal Services
26. Seminole County Bar Association Legal Aid Society
27. Southern Legal Counsel
28. Three Rivers Legal Services

Florida Civil Legal Aid Recruitment and Retention Study Current Attorney Survey Questions

1. DEMOGRAPHICS

1. What civil legal aid program do you work for?
2. In what city do you work?
3. What is your current position?
4. Are you full-time or part-time?
5. If part-time, for what percentage of part-time are you employed in your position?
6. What is your gender?
7. What is your age?
8. What is your race or ethnic origin?
9. What languages, other than English, do you know well enough to use in your work?
10. What is your marital status?
11. How many adults earn income in your household?
12. Are any of these adults roommates only?
13. Are you the primary breadwinner for your family?
14. How many children under age 22 do you have?
15. How many dependents (children or adult) live with you or do you pay child support for?
16. In what range is your salary?
17. What is your salary? (The previous question allows for easy analysis between groups. This question allows for analysis within groups, if certain trends require it.)
18. Did you receive a bonus in 2006?
19. If you received a bonus in 2006, how much was it?

2. EDUCATION AND LAW LICENSES

20. Did you attend a public or private undergraduate school?
21. Did you attend a public or private law school?
22. Did you graduate from law school in Florida?
23. What year did you graduate from law school?
24. How many times did you take the Florida Bar exam?
25. Are you licensed in Florida?
26. What year did you become licensed in Florida?
27. Are you licensed to practice law in another state?
28. Are you licensed to practice in federal court?

3. EDUCATIONAL LOANS

29. What was your total educational debt (from all schooling) when you graduated from law school? (round to nearest thousand)
30. Do you have educational debt now?
31. If you no longer have educational debt, how long did it take you to pay off your debt?
32. If you still have educational debt, how much is your educational debt?

33. If you still have educational debt, when do you estimate you will pay off your loans?
34. Are you currently the recipient of a Loan Repayment Assistance Program (LRAP)?
35. If you are the recipient of an LRAP, what is the source? (check all that apply)
36. Are you a previous recipient of an LRAP?
37. If you are a previous LRAP recipient, what was the source? (check all that apply)

4. CIVIL LEGAL AID BACKGROUND

38. Are you currently an Equal Justice Works Fellow?
39. Were you an EJW Fellow previously?
40. If you were previously an EJW Fellow, where did you do your fellowship?
41. Were you a Summer Fellow with your present employer?
42. Were you a Summer Fellow with another civil legal aid program?
43. Were you a Public Service Fellow with your present employer?
44. Were you a Public Service Fellow with another Florida civil legal aid program?
45. Did you do another type of clerkship during law school with your present employer?
46. Did you do another type of clerkship during law school with another civil legal aid program?
47. Are you in your first legal job after graduation from law school?
48. Please check your post-college work experience prior to this position. (Check all that apply.)
49. What was your original goal(s) for pursuing a civil legal aid position?
50. How well have your initial career goals been met?
51. When you chose your present employer, did you apply only to civil legal aid programs?
52. How did you choose the legal organizations to which you applied when you chose your present employer? (check all that apply)
53. Do you feel you were specifically recruited for this position, i.e., you did not know about it and someone asked you to look into it or apply?
54. How did you find out about your present position?
55. What affected your decision on where to interview? (check all that apply)
56. What affected your decision on accepting a position with your present employer? (check all that apply)
57. In what year did you become employed with your present employer?
58. Please check all the positions you have had with your present employer.
59. How many total years have you worked for civil legal aid programs in Florida and other states? (round to the nearest number of years)
60. Please check all the positions you have had with any civil legal aid program.
61. Please check the number of civil legal aid programs you have worked for after law school.

5. CURRENT JOB SITUATION

62. How many hours per week do you work in a typical week?
63. Please rate the frequency of the following activities in your current position.
64. If you practice exclusively or almost exclusively in one area of the law, please check that area:
65. Approximately how many total cases did you handle, not just close, in 2006?
66. How emotionally draining do you find your job?

- 67. How often do you experience the following situations?
- 68. Please rate the importance to you of the following aspects of your job.
- 69. Please rate your satisfaction with the following aspects of your job.
Rating of 1 to 5 with 1 being Very Unsatisfied and 5 being Very Satisfied
- 70. Please identify any other aspect(s) of your job you consider important and rate your satisfaction with it/them.
- 71. Would you like your position to involve more diverse types of work or cases or challenges?
- 72. If you would like your position to be more diverse, how would you like it changed?
- 73. Do you feel you know how to utilize support staff?
- 74. What do you think your salary should be in your present position?
- 75. How would you rate your supervisor's supervision of you?
- 76. If your supervisor would make improvements in their supervision of you, what would you suggest?
- 77. In what ways would you like your program to improve "quality of life" aspects of the program?
(You can define quality of life as you like.)

6. FUTURE PLANS

- 78. Do you think you will leave your program in the next five years?
(If you answered no, please skip to Question 87.)
- 79. Within how many years do you think you will leave?
- 80. Please rate the reasons you think you will leave.
Rating of 1 to 5 with 1 being Very Unimportant and 5 being Very Important
- 81. What is the primary reason you think you will leave?
- 82. Would an increase in your salary impact your decision to remain in your position?
- 83. If a salary increase would make a difference, what dollar amount would impact your decision?
- 84. Would knowing that you would receive annual increases in your salary impact your decision to remain in your position?
- 85. Would new or additional assistance from a Loan Repayment Assistance Program (LRAP) impact your decision to leave your position?
- 86. If LRAP assistance would make a difference, what dollar amount would impact your decision?
- 87. If a higher level position became available for you at your employer, would that impact your decision to remain with your employer?
- 88. What else would it take for you to stay?
- 89. What type of employment do you think you will go to? (check all that apply)
- 90. What do you expect to gain by leaving your current position?

7. RESPONDENTS NOT PLANNING TO LEAVE; PLEASE BEGIN ANSWERING QUESTIONS AGAIN HERE

- 91. If you are not planning on leaving, how would you like your job to change so you have more satisfaction or effectiveness?

8. CURRENT RECRUITMENT, INTERVIEWING AND HIRING PROCESSES

- 92. How would you rate these processes of your current employer?
- 93. Please share aspects about your employer's recruitment, interviewing and hiring process that you think would be helpful to know (good and/or bad) in designing effective processes.

94. How could summer fellows and public service fellows, who are good, be recruited more effectively as staff attorneys?
95. How can programs recruit and retain attorneys successfully in rural or remote areas?
96. How can programs recruit and retain attorneys successfully in high cost areas?
97. How can programs recruit and retain attorneys successfully in areas at risk of hurricanes?
98. How can programs recruit and retain more attorneys from a variety of racial/ethnic groups?
99. How can programs recruit and retain more bi-lingual attorneys?

9. ATTORNEY RECOGNITION AND DEVELOPMENT

100. Do you receive the amount and kind of recognition for your work that you would like?
101. What are your thoughts on how recognition is or can be done effectively by your program?
102. What "people-skills" training would improve your job performance?
103. What legal (substantive or skills) training would improve your job performance?
104. Do you have an individual development plan or staff development plan that you have developed with your supervisor?
105. Do you feel you have been or are mentored by someone in your program?
106. If you do feel you are or have been mentored by someone in your program, was the mentor your supervisor?
107. Are there positions you would like to advance to in your program?
108. If there are positions you would like to advance to in your program, do you feel you have the opportunity to do that?
109. If you do not feel you have the opportunity to advance to other positions in your program, why not?
110. If there are positions you would like to advance to in your program and you think you have the opportunity to do so, what additional skills or experiences do you need and how could you obtain them?
111. Do you think Florida civil legal aid should give attorneys the ability to rotate within their program if they would like, in order to get different experiences or to stimulate new activity/thinking? (A rotation would be a short-term assignment, maybe between 3 and 12 months.)
112. Do you think Florida civil legal aid should give attorneys the ability to rotate through other programs if they would like, in order to get different experiences or to stimulate new activity/thinking? (A rotation would be a short-term assignment, maybe between 3 and 12 months.)
113. If rotations were offered, would you like to do one or more?
114. Do you think leaders are developed in your program?
115. How do you think leaders are developed or could be developed in your program?
116. Do you define yourself as a leader?
117. If you do not define yourself as a leader, would you like to become a leader?
118. How do you define a leader?

10. OTHER COMMENTS/SUGGESTIONS

119. Are there any other comments and suggestions you would like to make about recruitment and retention of civil legal aid attorneys in Florida?

11. OTHER INFORMATION FOR THE STUDY

120. The study will also include talking about recruitment and retention issues with current attorneys through telephone interviews, in-person interviews and focus groups. The information gathered will be confidential. Please check if you would like to be considered for an interview or focus group.

121. Please identify anyone that is not currently an attorney in a Florida civil legal aid program that you think has useful insight into recruitment and retention issues and may be willing to share their thoughts. Please include their name, position or former position, e-mail and telephone.

122. As stated at the beginning of the survey, all individual information will be held confidential.

Even if you do not want to be interviewed or participate in a focus group, you are encouraged to provide your contact information for possible follow-up on answers with you and to correlate some individual data with program data.

If you marked that you would like to be considered for an interview or focus group, then you must include your contact information so you can be reached.

Please include your name, e-mail address and telephone number.

Florida Civil Legal Aid Recruitment and Retention Study
Former Attorney Survey Questions
(Attorneys who left in 2002-2006)

1. DEMOGRAPHICS

1. What civil legal aid program did you work for when you left your last civil legal aid position?
2. In what city did you work when you left your previous employer?
3. What was the position you left?
4. Were you full-time or part-time?
5. If part-time, for what percentage of part-time were you employed in your position?
6. What is your gender?
7. What is your age?
8. What is your race or ethnic origin?
9. What languages, other than English, do you know well enough to use in your work?
10. What was your marital status when you were in your previous employment?
11. How many adults earned income in your household when you were in your previous employment?
12. Were any of these adults roommates only?
13. Were you the primary breadwinner for your family?
14. How many children under age 22 did you have when you were in your previous employment?
15. How many dependents (children or adult) lived with you or did you pay child support for when you were in your previous employment?

2. EDUCATION AND LAW LICENSES

16. Did you attend a public or private undergraduate school?
17. Did you attend a public or private law school?
18. Did you graduate from law school in Florida?
19. What year did you graduate from law school?
20. How many times did you take the Florida Bar exam?
21. Are you licensed in Florida?
22. What year did you become licensed in Florida?
23. Are you licensed to practice law in another state?
24. Are you licensed to practice in federal court?

3. EDUCATIONAL LOANS

25. What was your total educational debt (from all schooling) when you graduated from law school? (round to nearest thousand)
26. Do you have educational debt now?
27. If you no longer have educational debt, how long did it take you to pay off your debt?
28. If you still have educational debt, how much is your educational debt?
29. If you still have educational debt, when do you estimate you will pay off your loans?
30. Are you currently the recipient of a Loan Repayment Assistance Program (LRAP)?
31. If you are the recipient of an LRAP, what is the source? (check all that apply)
32. Are you a previous recipient of an LRAP?
33. If you are a previous LRAP recipient, what was the source? (check all that apply)

4. CIVIL LEGAL AID BACKGROUND

34. Were you an Equal Justice Works Fellow?
35. If you were an EJW Fellow, where did you do your fellowship?
36. Were you a Summer Fellow with your previous employer?
37. Were you a Summer Fellow with another civil legal aid program?
38. Were you a Public Service Fellow with your previous employer?
39. Were you a Public Service Fellow with another Florida civil legal aid program?

40. Did you do another type of clerkship during law school with your previous employer?
41. Did you do another type of clerkship during law school with another civil legal aid program?
42. Was the civil legal aid employment you left your first legal job after graduation from law school?
43. If it was not your first legal job, what job(s) did you have prior to your previous employment? (check all that apply)
44. What was your original goal(s) for pursuing a civil legal aid position?
45. How well were your initial career goals met?
46. When you chose to work for your previous employer, did you apply only to civil legal aid programs?
47. How did you choose the legal organizations to which you applied when you chose your previous employment? (check all that apply)
48. Do you feel you were specifically recruited for the position you had with your previous employer, i.e., you did not know about it and someone asked you to look into it or apply?
49. How did you find out about the position?
50. What affected your decision on where to interview when you interviewed with your previous employer? (check all that apply)
51. What affected your decision on accepting a position with your previous employer? (check all that apply)
52. In what year did you become employed with your previous employer?
53. In what year did you leave that program?
54. Please check all the positions you had with your previous employer.
55. How many total years have you worked for civil legal aid programs in Florida and other states? (round to the nearest number of years)
56. Please check all the positions you have had with any civil legal aid program.
57. Please check the number of civil legal aid programs you have worked for after law school.

5. JOB SITUATION WHILE YOU WERE AT YOUR PREVIOUS EMPLOYER

58. In what range was your salary when you left your previous employer?
59. What was your actual salary? (The previous question allows for easy analysis between groups. This question allows for analysis within groups, if certain trends require it.)
60. How many hours per week did you work in a typical week?
61. Please rate the frequency of the following activities in that position.
62. If you practiced exclusively or almost exclusively in one area of the law, please check that area:
63. Approximately how many total cases did you handle, not just close, in the last year you were with the program?
64. How emotionally draining did you find your job?
65. How often did you experience the following situations?
66. Please rate the importance to you of the following aspects of your previous employment.
67. Please rate your satisfaction with the following aspects of your previous employment.
68. Please identify any other aspect(s) of that job you considered important and rate your satisfaction with it/them when you left.
69. Would you have liked your position to involve more diverse types of work or cases or challenges?
70. If you would have liked your position to be more diverse, how would you have liked it changed?
71. Did you feel you knew how to utilize support staff?
72. What did you think your salary should have been when you left your previous employment?
73. How would you rate your supervisor's supervision of you?
74. If your supervisor would have made improvements in their supervision of you, what would you have suggested?
75. In what ways would you have liked your previous employer to improve "quality of life" aspects of the program? (You can define quality of life as you like.)

6. WHY YOU LEFT AND EMPLOYMENT SINCE LEAVING

76. Please rate the reasons you left your previous employment.
Rating of 1 to 5 with 1 being Very Unimportant and 5 being Very Important
77. Would an increase in your salary have impacted your decision to leave?
78. If a salary increase would have made a difference, what dollar amount would have impacted your decision?
79. Would knowing that you would receive annual increases in your salary have impacted your decision to leave?
80. Would new or additional assistance from a Loan Repayment Assistance Program (LRAP) have impacted your decision to leave?
81. If LRAP assistance would have made a difference, what dollar amount would have impacted your decision?
82. If a higher level position would have become available for you at your previous employer, would that have impacted your decision to leave?
83. What else would it take for you to stay?
84. What type of employment did you take when you left your previous employment?
85. What did you expect to gain by leaving your previous employment and did you gain it?
86. What do you feel you lost by leaving your previous employment?
87. How many jobs have you had since you left your last civil legal aid position in Florida?
88. How long do you expect to stay in your present employment?
89. What was the difference in your salary when you left your former civil legal aid position and took your next position?
90. What is your current salary? (Do not include bonuses.)
91. If you received a bonus in 2006, how much was it?
92. If you are not planning on leaving, how would you like your job to change so you have more satisfaction or effectiveness?

7. RECRUITMENT, INTERVIEWING AND HIRING PROCESSES IN FLORIDA CIVIL LEGAL AID

93. How would you rate these processes of your previous employer?
94. Please share aspects about your previous employer's recruitment, interviewing and hiring process that you think would be helpful to know (good and/or bad) in designing effective processes.
95. How could summer fellows and public service fellows, who are good, be recruited more effectively as staff attorneys in Florida civil legal aid programs?
96. How can Florida civil legal aid programs recruit and retain attorneys successfully in rural or remote areas?
97. How can programs recruit and retain attorneys successfully in high cost areas?
98. How can programs recruit and retain attorneys successfully in areas at risk of hurricanes?
99. How can programs recruit and retain more attorneys from a variety of racial/ethnic groups?
100. How can programs recruit and retain more bi-lingual attorneys?

8. YOUR PREVIOUS EMPLOYER'S ATTORNEY RECOGNITION AND DEVELOPMENT

101. Did you receive the amount and kind of recognition for your work that you would have liked?
102. What are your thoughts on how recognition was or could have been done effectively by your previous employer?
103. What "people-skills" training would have improved your job performance?
104. What legal (substantive or skills) training would have improved your job performance?
105. Did you have an individual development plan or staff development plan that you developed with your supervisor?
106. Were you mentored by someone at your previous employment?
107. If you were mentored, was the mentor your supervisor?
108. Were there positions you would have liked to advance to in your previous employment?
109. If there were positions you would have liked to have advanced to in your previous employment, do you feel you had the opportunity to do that?
110. If you do not feel you had the opportunity to advance to other positions in your previous employment, why not?

111. Do you think Florida civil legal aid should give attorneys the ability to rotate within their program if they would like, in order to get different experiences or to stimulate new activity/thinking? (A rotation would be a short-term assignment, maybe between 3 and 12 months.)

112. Do you think Florida civil legal aid should give attorneys the ability to rotate through other programs if they would like, in order to get different experiences or to stimulate new activity/thinking? (A rotation would be a short-term assignment, maybe between 3 and 12 months.)

113. If rotations were offered, would you have liked to have done one or more?

114. Do you think leaders are developed in your previous employment?

115. How do you think leaders are developed or could be developed in your previous employment?

116. Do you define yourself as a leader?

117. If you do not define yourself as a leader, would you like to become a leader?

118. How do you define a leader?

9. OTHER COMMENTS/SUGGESTIONS

119. Are there any other comments and suggestions you would like to make about recruitment and retention of civil legal aid attorneys in Florida?

10. OTHER INFORMATION FOR THE STUDY

120. Please identify anyone that you think has useful insight into Florida civil legal aid's recruitment and retention issues, and may be willing to share his or her thoughts. Please include their name, position or former position, e-mail and telephone.

121. The study will also include talking about recruitment and retention issues with attorneys who have left civil legal aid, through telephone interviews, in-person interviews and focus groups. The individual conversations will be confidential. Please check if you would like to be considered for an interview or focus group.

11. CONTACT INFORMATION

As stated at the beginning of the survey, all individual information will be held confidential.

Even if you do not want to be interviewed or participate in a focus group, you are encouraged to provide your contact information for possible follow-up on answers with you and to correlate some individual data with program data.

If you marked that you would like to be considered for an interview or focus group, then you must include your contact information so you may be reached.

122. Please include your name, e-mail address and telephone number.

Florida Civil Legal Aid Recruitment and Retention Study Former Summer Fellows Survey Questions

1. DEMOGRAPHICS

1. In what civil legal aid program were you a Florida Bar Foundation Summer Fellow?
2. In what city did you do your fellowship?
3. During what summer did you do your fellowship?
4. What is your gender?
5. What was your age when you did your summer fellowship?
6. What is your race or ethnic origin?
7. What languages, other than English, do you know well enough to use in your work?

2. FELLOWSHIP

8. Please rate the frequency of the following activities during your fellowship.
9. Please rate your satisfaction with the following aspects of your fellowship. Rating of 1 to 5 with 1 being Very Unsatisfied and 5 being Very Satisfied
10. Please identify any other aspect(s) of your fellowship you considered important and rate your satisfaction with it/them.
11. How would you rate your supervisor's supervision of you?
12. If your supervisor would have made improvements in their supervision of you, what would you have suggested?
13. What did you like about your fellowship?
14. What are your suggestions for improving the Summer Fellow experience?
15. Please provide any additional comments about your fellowship.
16. How can Summer Fellows be recruited effectively for staff attorney positions in Florida civil legal aid?

3. LAW SCHOOL

17. Did you attend or are you attending a public or private law school?
18. Did you or will you graduate from law school in Florida?
19. From what law school did you or will you graduate?
20. What year did you or will you graduate from law school?

4. LEGAL CAREER

IF YOU HAVE NOT GRADUATED FROM LAW SCHOOL YET, PLEASE SKIP TO QUESTION 31 IN SECTION 5.

21. What type(s) of legal jobs have you had since law school graduation? (check all that apply)
22. What type of job do you have currently?
23. Do you work in Florida?
24. Are you currently employed by a civil legal aid program in Florida?
25. If you ARE currently employed by a civil legal aid program in Florida, is it the program at which you were a Summer Fellow?
26. If you are NOT currently employed by a civil legal aid program in Florida, were you ever employed after law school by the program at which you were a Summer Fellow?
27. If you are NOT currently employed by a civil legal aid program in Florida, would you like to be?
28. If you are NOT currently employed by a Florida civil legal aid program and would like to be, why are you not employed by one of the programs or what are the barriers to that employment?
29. If you have worked or are working for a civil legal aid program in Florida or other states, how many total years have you worked in civil legal aid after law school? (round to the nearest number of years)
30. Please check the answer that applies regarding your support of legal services for the poor.

5. OTHER COMMENTS/ SUGGESTIONS

31. Are there any other comments and suggestions you would like to make about recruitment and retention of civil legal aid attorneys in Florida? (If you had two fellowships, please add any comments about the other fellowship here.)

CONTACT INFORMATION

As stated at the beginning of the survey, all individual information will be held confidential. However, you are encouraged to provide your contact information for possible follow-up on answers with you.

32. Please include your name, e-mail address and telephone number.

Florida Civil Legal Aid Recruitment and Retention Study Top Career Fair Candidates Survey Questions

1. **DEMOGRAPHICS**

1. What is your gender?
2. What is your race or ethnic origin?
3. What languages, other than English, do you know well enough to use in your work?
4. What year did you or will you graduate from law school?
5. From what law school did you or will you graduate?

2. **CAREER FAIRS AND RECRUITMENT BY FLORIDA CIVIL LEGAL AID PROGRAMS**

6. Please check the career fair(s) you attended. (These are the fairs at which Florida civil legal aid programs recruited.)
7. Check the civil legal aid programs in Florida that contacted you after the career fair.
8. Check the civil legal aid programs in Florida that you contacted without them contacting you first.
9. Check the civil legal aid programs in Florida with which you applied for a position.
10. Check the civil legal aid programs in Florida with which you interviewed for a position.
11. Check the civil legal aid programs in Florida with which you were offered a position.
12. If you were offered a position with a Florida civil legal aid program, why did you not take it?

3. **RECRUITMENT PROCESS**

13. How would you rate the recruitment process of civil legal aid programs in Florida?
14. What did you like about the recruitment process?
15. What are your suggestions for improving the recruitment process?
16. Please provide any additional comments about the recruitment process.

4. **LEGAL CAREER**

17. What type(s) of legal jobs have you had or accepted (if 2007 graduate) since law school graduation? (check all that apply)
18. What type of job do you have currently?
19. Do you work in Florida?
20. Would you like to be employed by a civil legal aid program in Florida?

5. **OTHER COMMENTS/SUGGESTIONS**

21. Are there any other comments and suggestions you would like to make about recruitment and retention of civil legal aid attorneys in Florida?

6. **CONTACT INFORMATION**

- As stated at the beginning of the survey, all individual information will be held confidential. However, you are encouraged to provide your contact information for possible follow-up on answers with you.
22. Please include your name, e-mail address and telephone number.

Characteristics of Generations

Generations of Americans have differences in experiences, how they see the world, how they relate to people, and what is important to them. Susan Etheridge and Ann Skalaski developed a list of generational characteristics and their implications for lawyer satisfaction/retention strategies in law firms for a NALP presentation that is a good summary of many researchers' findings about the generations. Their retention strategies are in italics.³⁸

Veterans (born before 1946)

- Financially and socially conservative.
- Respectful of authority.
- Loyal to company.

Baby Boomers (born between 1946 and 1964)

- Experienced increased competition for jobs and limited upward mobility.
- Tend to question authority and the status quo.
- Generally believe that hard work and long service will yield rewards.

Generation X (born between 1965 and 1979)

- Techno-savvy and entrepreneurial. *Encourage their marketing efforts.*
- Watched as Veterans and Boomers were downsized.
- Interested in developing their individual skills. *Professional development is critical to job satisfaction and loyalty.*
- Loyal to projects and possibly clients, but willing to move from firm to firm. *Client involvement can reduce attrition.*

Millennial Generation or Generation Y (born after 1980)

- Loyal and hardworking when they see value in what they do.
- Truth detectors are always on and they do not give second chances if deceived. Honesty and integrity are the attributes that they admire most. *Communicate honestly with them.*
- They equate training and development with opportunity and reward. *Provide professional development opportunities.*
- Want to understand the big picture both in legal matters and firm issues.
- Advise elders on technological issues and expect to be asked for input. *Need to make them feel like part of the team.*
- Used to setting and achieving goals. *Firm needs to help them set realistic goals.*

³⁸ NALP 2007 Annual Education Conference, *Why Lawyers Leave: Myth versus Reality*, Susan Etheridge and Ann Skalaski, Professional Placement Services, Inc.

Appendix 9

**Florida Law School Racial/Ethnic Make-up and New England, Mid-Atlantic & Southern Law Schools
With Over 20% Minority Students**

	State	Total Enrollment	Total Minority	Per Cent Minority	African Amer.	Amer. Indian	Asian Amer.	Mex. Amer.	Puerto Rican	Hispanic
Florida										
Florida A&M University College of Law	FL	541	371	69%	255	6	18	0	12	80
Florida International University College of Law	FL	382	206	54%	37	2	9	0	0	158
St. Thomas University School of Law	FL	665	273	41%	60	1	31	7	9	165
Nova Southeastern University—Shepard Broad Law Center	FL	927	226	24%	42	3	25	4	13	139
University of Miami School of Law	FL	1,208	280	23%	84	3	51	0	0	142
University of Florida, Fredric G. Levin College of Law	FL	1,364	279	21%	80	3	68	0	0	128
Barry University Dwayne O. Andreas School of Law	FL	563	111	20%	29	4	24	3	0	51
Stetson University College of Law	FL	1,033	201	20%	60	6	27	4	16	88
The Florida State University College of Law	FL	765	143	19%	43	6	33	1	12	48
Florida Coastal School of Law	FL	1,278	233	18%	95	15	53	4	8	58
Florida Total		8,726	2,323	27%	785	49	339	23	70	1,057
Florida Percent		-	-	27%	9%	1%	4%	0%	1%	12%
New England										
Yale Law School	CT	579	171	30%	44	1	80	10	3	33
Boston University School of Law	MA	836	174	21%	33	2	111	6	3	19
Harvard Law School	MA	1,719	526	31%	190	14	203	29	13	77
Northeastern University School of Law	MA	626	169	27%	38	6	71	0	0	54
New England Total		4,541	1,227	27%	345	24	559	64	25	210
New England Percent				27%	8%	1%	12%	1%	1%	5%
Mid-Atlantic										
American University, Washington College of Law	DC	1,483	503	34%	122	15	172	37	14	143
Georgetown University Law Center	DC	1,978	478	24%	189	5	179	18	10	77
Howard University School of Law	DC	430	361	84%	322	3	25	0	0	11
The George Washington University Law School	DC	1,693	438	26%	146	8	166	0	0	118

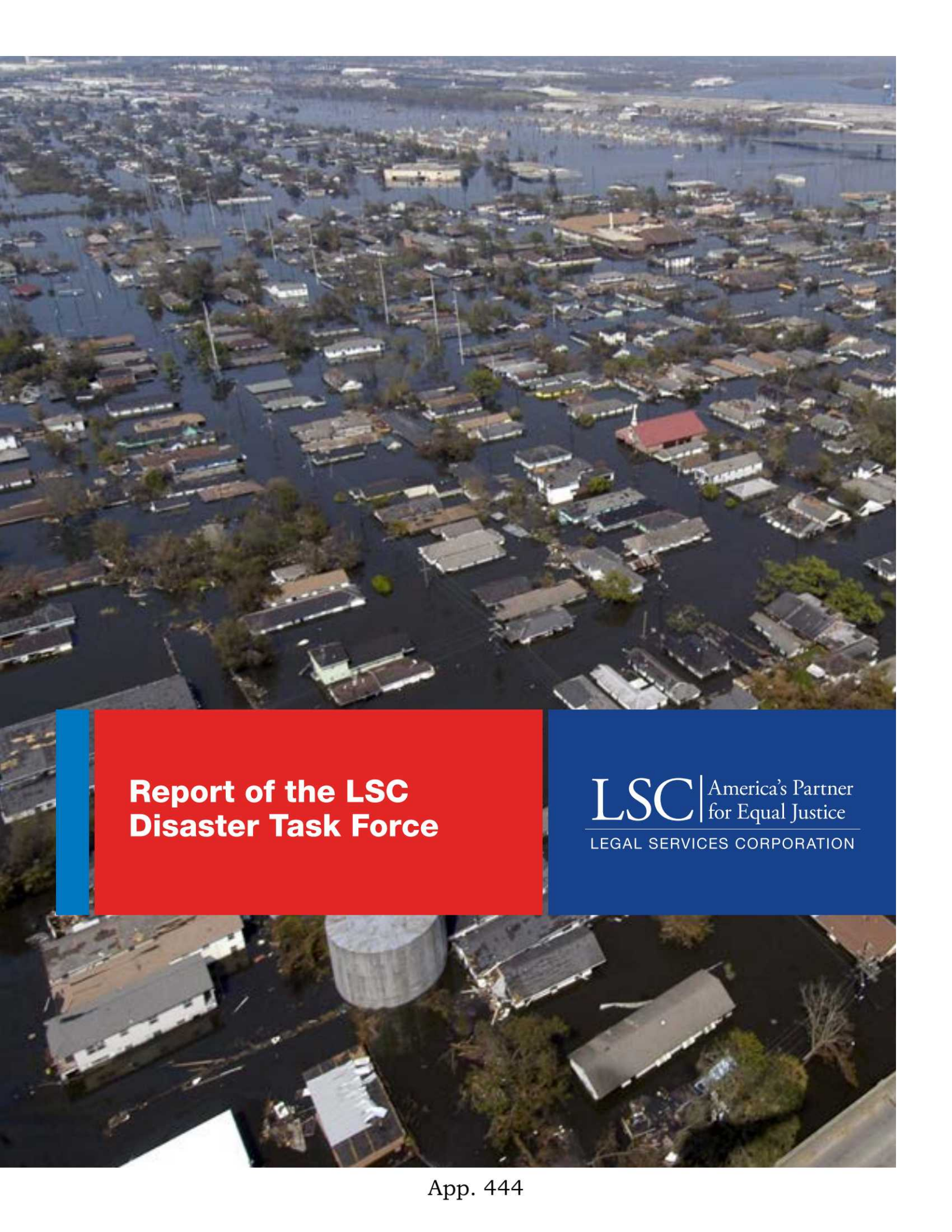
	State	Total Enrollment	Total Minority	Per Cent Minority	African Amer.	Amer. Indian	Asian Amer.	Mex. Amer.	Puerto Rican	Hispanic
University of the District of Columbia School of Law	DC	235	103	44%	71	2	12	5	0	13
University of Maryland School of Law	MD	826	262	32%	123	4	81	1	0	53
Rutgers University School of Law—Newark	NJ	815	312	38%	120	2	102	9	30	49
Rutgers—SUNJ—School of Law—Camden	NJ	766	163	21%	41	1	65	9	10	37
Benjamin N. Cardozo School of Law, Yeshiva University	NY	1,036	215	21%	39	3	109	15	10	39
Brooklyn Law School	NY	1,494	394	26%	88	2	221	12	18	53
City University of New York School of Law	NY	421	131	31%	30	1	66	0	2	32
Columbia University School of Law	NY	1,233	360	29%	95	11	174	43	14	23
Cornell Law School	NY	561	140	25%	36	6	69	9	10	10
Fordham University School of Law	NY	1,512	381	25%	76	11	163	6	12	113
Hofstra University School of Law	NY	1,129	249	22%	88	2	96	0	0	63
New York Law School	NY	1,511	346	23%	88	3	140	17	17	81
New York University School of Law	NY	1,442	345	24%	124	0	153	8	6	54
St. John's University School of Law	NY	921	210	23%	54	2	89	5	8	52
Syracuse University College of Law	NY	689	138	20%	32	9	70	0	0	27
Touro College—Jacob D. Fuchsberg Law Center	NY	732	167	23%	76	4	59	0	0	28
Penn State University, The Dickinson School of Law	PA	608	138	23%	59	1	42	0	12	24
University of Pennsylvania Law School	PA	762	231	30%	61	5	110	9	8	38
Temple University—James E. Beasley School of Law	PA	1,004	236	24%	81	6	108	8	9	24
Mid-Atlantic Total		23,281	6,301	27%	2,161	106	2,471	211	190	1,162
Mid-Atlantic Percent				27%	9%	0%	11%	1%	1%	5%
The South - not including Florida										
University of Arkansas School of Law	AK	428	110	26%	77	8	16	2	1	6
Emory University School of Law	GA	674	177	26%	62	0	72	0	0	43
John Marshall Law School—Atlanta	GA	358	84	23%	52	2	11	0	0	19
University of Georgia School of Law	GA	670	131	20%	94	2	21	0	0	14
Loyola University New Orleans College of Law	LA	796	196	25%	98	7	35	7	2	47
Southern University Law Center	LA	480	276	58%	267	0	5	0	0	4
Duke University School of Law	NC	630	149	24%	64	2	60	2	1	20
North Carolina Central University School of Law	NC	537	277	52%	242	5	18	1	3	8
University of North Carolina School of Law	NC	712	150	21%	51	14	45	5	0	35
South Total - not including Florida		5,285	1,550	29%	1,007	40	283	17	7	196

State	Total Enrollment	Total Minority	Per Cent Minority	African Amer.	Amer. Indian	Asian Amer.	Mex. Amer.	Puerto Rican	Hispanic
South Percent - not including Florida			29%	19%	1%	5%	0%	0%	4%



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**Report of the LSC
Disaster Task Force**

LSC | America's Partner
for Equal Justice
LEGAL SERVICES CORPORATION

ABOUT THE LEGAL SERVICES CORPORATION

The Legal Services Corporation (LSC) was established by Congress in 1974 to promote equal access to justice. LSC operates as an independent 501(c)(3) non-profit corporation and currently serves as the single largest funder of civil legal aid for low-income Americans. To achieve its mission of helping to provide high-quality civil legal aid to low-income people, LSC currently distributes more than 93% of its total funding to 132 independent non-profit legal aid programs with more than 850 offices across America. To learn more about LSC, please visit www.lsc.gov.

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Flooding in New Orleans after
Hurricane Katrina—August 2005.

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EXECUTIVE SUMMARY

From January 2014 to July 2019, there have been 537 Presidential disaster-related declarations, including 288 major disaster declarations,ⁱ 51 emergency declarations, and 198 fire management assistance declarations. This number does not include state or locally declared disasters or emergencies. The past few years was particularly devastating. In the first half of 2019, there was an earthquake in California, a tropical storm on the Gulf Coast, and extensive flooding in the Midwest.ⁱⁱ In 2018, the United States and its territories experienced destruction caused by Hurricanes Florence, Michael, and Lane, Typhoons Yutu and Mangkhut, wildfires in California, volcanic eruptions in Hawaii, and an earthquake in Alaska.ⁱⁱⁱ In 2017, three major Hurricanes—Harvey, Maria, and Irma—ravaged parts of Texas, Florida, the U.S. Virgin Islands, and Puerto Rico, as well as some of the largest wildfires that California had ever experienced.^{iv} The total cost of these disasters has surpassed \$500 billion and more than 3,800 people have died.^v During this time period, there have been 67 disasters that have each exceeded \$1 billion in damages; it will take years for the hardest hit communities to fully recover; low-income survivors are typically the hardest hit by a disaster and will face significant obstacles in their path to recovery.

THE IMPACT OF DISASTERS ON LOW-INCOME SURVIVORS.

Deprivation and hardship are a constant in the lives of low-income individuals. They struggle to find employment, affordable housing, and ways to provide for basic needs including healthcare, food, and safety for themselves and their families. With the assistance of legal aid lawyers and other service providers, many low-income families and individuals can navigate complex bureaucracies and systems to address some of their basic needs for food stamps, unemployment benefits, subsidized housing assistance, and health insurance. For low-income disaster survivors, basic subsistence and re-establishing their lives can involve months and even years of serious challenges. Law can be both a barrier and a tool as disaster survivors work to regain their lives.

In the immediate wake of a disaster or crisis, disaster-related civil legal issues follow a common pattern. Some of the common civil legal issues that arise are:

Landlord-Tenant: The need for adequate housing is often a major issue for disaster survivors. When a disaster occurs, the available housing stock dwindles in the impacted areas. Some landlords find they can rent units at a higher rate and evict tenants from once-affordable units. Some landlords may also refuse to make necessary repairs to housing units that were damaged by the disaster, leaving many tenants to live in uninhabitable conditions. Illegal evictions often occur after major disasters if courts are closed and tenants are temporarily evacuated.

Income Protection: There is an immediate need for cash assistance post-disaster, including unemployment benefits, food stamps, and other public benefits.

Document Replacement: Survivors often need help obtaining copies of important documents, such as birth certificates, driver's licenses, and Social Security cards to apply for or restore benefits and support.

Title Clearing: Some disaster survivors have difficulty establishing title to their homes because the property has been passed down through generations without formal paperwork or recording. Without proper proof of ownership, the disaster survivor cannot receive benefits, insurance proceeds, or access capital to rebuild or make repairs.

FEMA Appeals: Often, disaster survivors' applications for Federal Emergency Management Agency (FEMA) assistance are rejected, but they are given a right to appeal. For example, FEMA denied at least 335,748 applications^{vi} from Puerto Ricans asking for disaster assistance to fix their hurricane-ravaged homes. The assistance of a trained attorney or volunteer increases the likelihood that survivors will receive the assistance for which they have applied.

Domestic Violence: With families experiencing even more stressors after a disaster, it is common to see a spike in domestic violence. With critical housing shortages, many domestic abuse survivors may have to co-habitate with their abusers.

Consumer and Fraud Issues: Unscrupulous individuals often try to take advantage of disaster survivors who are trying to rebuild their lives, either through outright fraud, exorbitant pricing, or impermissible contract terms.

Despite legal aid's potential in the aftermath of disaster, there can be a significant gap in the disaster-response landscape when there is a lack of a coordinated effort to deal with the legal needs of disaster survivors. Most emergency management and disaster-response organizations are unaware of the legal issues faced by disaster survivors and the particular needs of low-income communities.

In April 2018, LSC's Board of Directors established LSC's Disaster Task Force. The focus of the Task Force was to foster and promote better cooperation, coordination, and communication between and among the emergency management community, legal services providers, the private bar, the judiciary,

community-based organizations, and the business community to ensure that low-income disaster survivors receive the legal assistance they need. The Disaster Task Force held three in-person meetings and field hearings in Washington, D.C., Houston, TX, and Miami, FL between May 2018 and March 2019.

The Disaster Task Force's Recommendations highlight the concrete steps that legal services providers can take to build a systematic, coordinated, and sustainable approach to helping low-income individuals, families, and communities prepare for, respond to, and recover from a disaster.

The Task Force's recommendations focus on relationship-building, training attorneys and volunteers to recognize disaster-related civil legal issues and to represent low-income disaster survivors, as well as enabling legal services providers, courts, individuals, families, and communities to better prepare for disasters.

LSC's follow-up on these recommendations is critical to ensuring that they are implemented in a meaningful way. The Disaster Task Force recommends that LSC:

- Establish a multi-disciplinary working group to assist in implementing the recommendations.
- Continue to educate the emergency management community about the importance of integrating legal services providers into their work;
- Embrace a leadership role in promoting civil legal aid as a critical component of a community's disaster preparedness, response, and recovery.

This Report organizes its recommendations by the committee structure the 60-member Task Force established to conduct its work: (1) Relationship-Building and Integration of Legal Services into the Nation's Emergency Management Infrastructure; (2) Training Pro Bono Lawyers, Other Volunteers, and Legal Services Providers; (3) Continuity of Operations Planning for Legal Services Providers and the Courts; and (4) Preparing Individuals, Families, and Communities for a Disaster.

“ [Disaster] Survivors, after working with first responders to take care of life and limb, should be able to turn to a second wave of responders from the legal community to preserve their rights and ensure their security. Floods, tornadoes, hurricanes, and other disasters leave survivors to face a host of civil legal challenges: just replacing their identification, applying for benefits, dealing with insurance claims, preventing unlawful evictions and foreclosures, and combating all too frequent scams of one kind or another. ”

**JOHN LEVI, BOARD CHAIR,
LEGAL SERVICES CORPORATION**

Almost 15 years later, LSC grantees are still responding to Katrina-related disaster issues for vulnerable families such as FEMA recoupments. In the past two years, Congress has appropriated \$30 million to LSC to help low-income families and individuals recover from the multitude of natural disasters that occurred between 2017 and 2019.^{vii} LSC provides these resources to its grantees in disaster-impacted areas to deliver civil legal aid to those in need. The disaster funds provided by the U.S. Congress are critical resources that help low-income individuals and families recover from a disaster. The Task Force underscores the importance of these resources and believes that Congress should continue to include funding for civil legal needs in future Supplemental Disaster Appropriations.

EXECUTIVE SUMMARY

Recommendations Related to Relationship-Building and Providing Coordinated Legal Services

RECOMMENDATION A1

Building Relationships with Federal, State, Local, and Tribal Emergency Management Organizations and Other Government Officials

Preparedness is critical, and legal services providers need to develop relationships with their federal, state, local, and tribal emergency management agencies and organization(s), as well as other government officials. Legal services providers should ensure they have a seat at the table prior to, during, and after a disaster. They can help advance this goal by identifying their key state and local emergency managers and, where applicable, federal and tribal emergency manager(s) in their areas, and sharing the legal expertise, resources, and organization needed in preparing for, responding to, and recovering from a disaster.

RECOMMENDATION A2

Building Relationships with Community-Based Organizations

Legal services providers should develop relationships with voluntary organizations active in disaster, faith-based organizations, and disability groups. Legal services providers should develop long-term relationships with community-based and other volunteer organizations in the areas they serve. It is important for legal services providers to have a seat at the table to participate in pre-disaster planning activities and to provide much-needed resources and expertise post-disaster.

RECOMMENDATION A3

Building Relationships with the Private Bar, Law Schools, and Other Stakeholders in the Legal and Business Communities

Prior to a disaster, legal services providers and bar associations need to proactively identify, recruit, and cultivate relationships with members of the private bar, law schools, and other volunteers in the legal and business communities with the goal of promptly enlisting their support after a disaster. Legal services providers should identify and recruit volunteers from the private bar and the business community and connect with them pre-disaster. Outreach and recruitment strategies and trainings also should target law students, paralegals, and other legal professionals who are eager to assist post-disaster.

RECOMMENDATION A4

Providing Legal Assistance at Disaster Recovery Centers or Multi-Agency Resource Centers

Legal services providers should establish pre-disaster connections to ensure that emergency managers invite legal services providers to the Disaster Recovery Centers (DRCs), Multi-Agency Resource Centers (MARC)s, or similar entities, to provide initial legal assistance to disaster survivors. Legal services providers should demonstrate their ability to staff centers and connect with the most vulnerable disaster survivors immediately after a disaster to make them aware of their rights and available services.

RECOMMENDATION A5

Providing Training on How to Identify Disaster-Related Civil Legal Issues

Legal services providers should train emergency managers and Volunteer Organizations Active in Disaster (VOAD) and Community Organizations Active in Disaster (COAD) case workers to identify civil legal issues so they can efficiently recognize and communicate survivor needs to lawyers. Disaster survivors may face several problems but might not recognize them as legal issues. Legal services providers should train emergency managers and disaster caseworkers on how to identify civil legal issues immediately following a disaster.

RECOMMENDATION A6

Establishing Communication with and Outreach to Disaster Survivors

Legal services providers should establish lines of communication with disaster survivors by working with emergency management organizations through hotlines, on-line resources, and other available modes of communication. The lines of communication must be accessible to all disaster survivors, including those with disabilities who might require reasonable accommodations to access legal services (e.g., physical accessibility, website or telephone accessibility, print materials in relevant languages, and sign language interpretation).

RECOMMENDATION A7

Deploying Pro Bono Attorneys and Volunteers Post-Disaster Efficiently

Organizations that facilitate pro bono participation should explore avenues to increase coordination and information-sharing to deploy volunteer legal expertise post-disaster. Numerous entities, including state and local bar associations, the American Bar Association's (ABA) Young Lawyers Division, ABA Free Legal Answers,^{viii} the Association of Pro Bono Counsel, the Pro Bono Institute, and the Association of Corporate Counsel, facilitate pro bono participation. The members of these organizations have tremendous knowledge and expertise to contribute in times of crisis. Currently, there is no coordinating mechanism among all these various entities to ensure efficient deployment of volunteer legal expertise following a disaster.

RECOMMENDATION A8

Dedicating Adequate and Properly Trained Resources to Manage Volunteers

Legal services providers should devote appropriate resources to coordinate pro bono work. There should be communication and coordination between and among persons handling the intake of pro bono volunteers and those handling the day-to-day work. Legal services providers should routinely train and mentor volunteers from law schools, law firms, and the business community. Legal aid staff attorneys can focus on training, mentoring, and overseeing the volunteers to maximize their utility. This includes using remote communication and training to maximize volunteer participation.

RECOMMENDATION A9

Participating in Long-Term Disaster Recovery Efforts

Legal services providers should participate in long-term disaster recovery efforts. The recovery process does not end in the weeks immediately following the disaster. Instead, it may extend for many years, and community organizations may be faced with aiding survivors with long-term issues including contractor fraud, insurance and benefit issues, title disputes, social service eligibility disputes, replacement of significant documents, and housing issues such as evictions and foreclosures.

EXECUTIVE SUMMARY

Recommendations Related to Training Pro Bono Lawyers, Volunteers, and Legal Services Providers

RECOMMENDATION B1

Customizing Trainings to Location

Trainings should cover the common federal and state legal issues disaster survivors are most likely to encounter in their area. The legal issues survivors face will evolve over time and will vary depending on the type, risk level, and form of disaster. Trainings should be updated regularly to account for changes in agency practice and policy, particularly those of federal administrative agencies, as well as state and local laws.

RECOMMENDATION B2

Building on Best Practices for Disaster-Related Trainings

Hundreds if not thousands of handbooks, PowerPoint presentations, webinars, and videos have been developed to train volunteers on disaster-related civil legal issues. As new trainings are developed, they should build on the best practices and lessons learned from this body of work.

RECOMMENDATION B3

Creating a One-Stop Resource for Training and Expertise

The legal services community should work together to create an online “one-stop” resource for disaster training materials and expertise. This site should target several audiences, including pro bono attorneys and other volunteers, legal aid attorneys, and disaster survivors. In addition to providing basic training information, the site should include template documents. This site will be a critical resource for providing training materials on disaster-related civil issues. The site should also include a nationwide “Brain Bank” of experts to address critical questions and fill any legal expertise gaps, such as insurance, tribal law, or small business issues.

RECOMMENDATION B4

Training Often

Legal volunteers should be trained or retrained close in time to when they will be helping disaster survivors. When practicable, trainings should occur before a disaster, if disasters follow a predictable or seasonal cycle, or as soon as possible after a disaster occurs. Legal volunteers should be mobilized efficiently, such that local volunteers can triage and address local and state legal issues, and remote legal volunteers can focus on federal legal issues and the many issues that will remain long after a disaster happens.^{ix}

RECOMMENDATION B5

Maintaining Relationships with Volunteers

It is important to maintain and constantly reinvigorate relationships with volunteers throughout the recovery process. In the long tail of disaster recovery, maintaining a trained and enthusiastic army of legal volunteers is critical. Regular retraining and celebration of accomplishments will help make trained and capable pro bono resources available for years to come.

Recommendations Related to Continuity of Operations Planning for Legal Services Providers and Courts and Adoption of Model Court Reforms

RECOMMENDATION C1

Legal Services Providers Must Maintain Comprehensive, Up-to-Date Continuity of Operations Plans (COOP)

Legal services providers are a critical resource for both existing clients and disadvantaged disaster survivors confronting a broad range of legal needs and challenges. Legal services providers, should have a comprehensive COOP in place that is designed to (1) ensure the safety of the organization's employees, and (2) safeguard critical information, including client files.

RECOMMENDATION C2

Courts Must Maintain Comprehensive, Up-to-Date Continuity of Operations Plans

Courts are not immune to the effects of disasters. Disruption of court operations following a disaster interferes with ongoing legal proceedings and leaves individuals without recourse in the face of emerging legal needs. A comprehensive COOP should serve to protect court staff and resume operations to preserve access to the justice system, safeguard litigant rights, and enable the court to support the influx of post-disaster demands.

RECOMMENDATION C3

States Should Adopt Model Court Reforms

States should adopt model court reforms to facilitate post-disaster recovery. Each state should engage the relevant stakeholders and assess whether certain model reforms are appropriate for their respective court infrastructures. Many courts have implemented measures that have improved their ability to respond to post-disaster legal needs and resume operations more efficiently. We recommend consideration of the following reforms:

- **Adoption of the "Katrina Rule":** Following Hurricane Katrina, the American Bar Association issued a model court rule that permits out-of-state lawyers to provide temporary pro bono services in a state affected by a major disaster.
- **Extensions of Time:** Extensions of deadlines and tolling provisions for statutes of limitations should be considered to safeguard litigant rights.
- **Court System Coordination:** Unification of court systems facilitates the flow of information and orders to lower courts in a timely and streamlined manner.
- **Geographic Flexibility:** If the court should be displaced outside of the geographic jurisdiction, temporary allowances permitting matters to be heard elsewhere allows for uninterrupted access to the courts.
- **Specialized Procedures:** Courts should adopt specialized procedures on a case-by-case basis regarding certain areas of law that are uniquely affected by disasters, including landlord/tenant, criminal, family, title disputes, estate, and bankruptcy issues.

EXECUTIVE SUMMARY

Recommendations Related to Preparing Individuals, Families, and Communities for Disaster

RECOMMENDATION D1

Improving Individual, Family, and Community Preparedness

Individuals and communities need to increase their level of preparedness for a disaster. There are several low-cost ways for individuals and communities to prepare for a disaster. FEMA provides several resources for individual, family, business, and community preparedness.

RECOMMENDATION D2

Increasing the Legal Preparedness of Low-Income Individuals, Families, and Communities

Legal services providers have a role to play in increasing the level of legal preparedness of low-income individuals, families, and communities. Legal services providers can develop checklists to help low-income individuals, families, and communities prepare for their legal needs pre- and post-disaster. The checklists help individuals and families identify and prepare for common legal issues in various legal areas, and are divided into action steps to be taken pre- and post-disaster.

RECOMMENDATION D3

Providing Disaster Preparedness Information in a Time, Place, and Manner that Promotes Acceptance

Legal preparedness checklists should employ communications best practices and be simple and tailored to the client audience. Checklists should use simple, clear language and identify specific, discrete action steps that individuals can take. Checklists should be easy to find, and may incorporate graphics, symbols, and/or translations to reach their target audiences more effectively or to highlight particularly salient information.

RECOMMENDATION D4

Disseminating the Checklists Through Trusted Messengers and Community Partners

To ensure that the disaster legal preparedness checklists reach their intended audiences, legal services providers should collaborate with trusted community organizations, non-profits, faith-based organizations, and private sector businesses within their target communities. Individuals are more likely to trust and act upon information that they view as credible. The credibility of a message is enhanced when it is repeated, and when it is disseminated via trusted community partners and/or media organizations and platforms.

INTRODUCTION

FAIRDALE, IL

A violent and long-lasting EF-4 tornado's path extended for more than 30 miles—April 2015.



INTRODUCTION

For natural disaster survivors, basic subsistence and re-establishing their lives can involve months and even years of serious challenges. Law can be both a barrier and a tool as disaster survivors work to regain their lives. This report identifies the concrete steps that legal services providers can take to build a systematic, coordinated, and sustainable approach to helping low-income individuals, families, and communities prepare for, respond to, and recover from a disaster.

From January 2014 to July 2019, there have been 537 Presidential disaster-related declarations, including 288 major disaster declarations,¹ 51 emergency declarations, and 198 fire management assistance declarations. This number does not include state or locally declared disasters or emergencies. The past few years was particularly devastating. In the first half of 2019, there was an earthquake in California, a tropical storm on the Gulf Coast, and extensive flooding in the Midwest.² In 2018, the United States and its territories experienced destruction caused by Hurricanes Florence, Michael, and Lane, Typhoons Yutu and Mangkhut, wildfires in California, volcanic eruptions in Hawaii, and an earthquake in Alaska.³ In 2017, three major Hurricanes—Harvey, Maria, and Irma—ravaged parts of Texas, Florida, the U.S. Virgin Islands, and Puerto Rico, as well as some of the largest wildfires that California had ever experienced.⁴ The total cost of these disasters has surpassed \$500 billion and more than 3,800 people have died.⁵ During this time period, there have been 67 disasters that have each exceeded \$1 billion in damages; it will take years for the hardest hit communities to fully recover; low-income survivors are typically the hardest hit by a disaster and will face significant obstacles in their path to recovery.

THE IMPACT OF DISASTERS ON LOW-INCOME SURVIVORS.

Deprivation and hardship are a constant in the lives of low-income individuals. They struggle to find employment, affordable housing, and ways to provide for basic needs including healthcare, food, and safety for themselves and their families. With the assistance of legal aid lawyers and other service providers, many low-income families and individuals can navigate complex bureaucracies and systems to address some of their basic needs with food stamps, unemployment benefits, subsidized housing assistance, and health insurance. When a community experiences a disaster, the needs and vulnerabilities of low-income people are amplified, and the need for legal assistance becomes even more critical.

In the immediate wake of a disaster or crisis, disaster-related legal issues follow a common pattern. Some of the common civil legal issues that arise are:

Landlord-Tenant: The need for adequate housing is often a major issue for disaster survivors. When a disaster occurs, the available housing stock dwindles in the impacted areas. Some landlords find they can rent units at a higher rate and evict tenants from once-affordable units. Some landlords may also refuse to make necessary repairs to housing units that were damaged by the disaster, leaving many tenants to live in uninhabitable conditions. Illegal evictions often occur after major disasters if courts are closed and tenants are temporarily evacuated.

Income Protection: There is an immediate need for cash assistance post-disaster, including unemployment benefits, food stamps, and other public benefits.

Document Replacement: Survivors often need help obtaining copies of important documents, such as birth certificates, driver's licenses, and Social Security cards to apply for or restore benefits and support.

Title Clearing: Some disaster survivors have difficulty establishing title to their homes because the property has been passed down through generations without formal paperwork or recording. Without proper proof of ownership, the disaster survivor

cannot receive benefits, insurance proceeds, or access capital to rebuild or make repairs.

FEMA Appeals: Often, disaster survivors' applications for Federal Emergency Management Agency (FEMA) assistance are rejected, they are given a right to appeal. For example, FEMA denied at least 335,748 applications⁶ from Puerto Ricans asking for disaster assistance to fix their hurricane-ravaged homes. The assistance of a trained attorney or volunteer increases the likelihood that survivors will receive the assistance for which they have applied.

Domestic Violence: With families experiencing even more stressors after a disaster, it is common to see a spike in domestic violence. With critical housing shortages, many domestic abuse survivors may have to co-habitate with their abusers.

Consumer and Fraud Issues: Unscrupulous individuals often try to take advantage of disaster survivors who are trying to rebuild their lives, either through outright fraud, exorbitant pricing, or impermissible contract terms.

Diagram 1 on page 14 provides an overview of the cycle of civil legal issues that arise post-disaster.

Despite legal aid's potential in the aftermath of disaster, there can be a significant gap in the disaster-response landscape when there is a lack of a coordinated effort to deal with the legal needs of disaster survivors. Most emergency management and disaster-response organizations are unaware of the legal issues faced by disaster survivors and the particular needs of low-income communities. Legal services providers have deep networks in low-income communities and have experience creating access for people who face barriers to services and information.

ABOUT LSC

The Legal Services Corporation (LSC) is the nation's largest single funder of civil legal aid for low-income Americans. Established by Congress

DIAGRAM 1: Lifecycle of Civil Legal Issues Post-Disaster



SOURCE: Texas Access to Justice Commission

in 1974, LSC is an independent 501(c)(3) nonprofit corporation and promotes equal access to justice by providing grants to nonprofit legal aid organizations in every state and territory and the District of Columbia. Every year, LSC distributes more than 93% of its federal appropriations to 132 independent nonprofit legal aid programs with more than 850 offices. LSC-funded programs assist Americans in households with annual incomes at or below 125% of the federal poverty guidelines.

LSC has worked in the disaster arena since 2005, when it helped respond to Hurricane Katrina. At that time, LSC implemented a coordinated disaster response network to address the devastating effects of this disaster on low-income communities. LSC grantees assisted and successfully represented disaster survivors with issues such as securing or retaining housing, preparing and filing insurance claims, obtaining replacement for lost identity documents, navigating complex benefits programs—including FEMA assistance, and dealing with repair contractors.

Since 2014, LSC has led the Midwest Legal Disaster Coordination Project to support projects that develop coordinated plans between emergency management organizations and legal service providers in the Midwest. This project's goal is to ensure that at-risk communities throughout the Midwest are better prepared when a disaster occurs.

Almost 15 years later, LSC grantees are still responding to Katrina-related disaster issues for vulnerable families such as FEMA recoupments. In the past two years, Congress has appropriated \$30 million to LSC to help low-income families and individuals recover from the multitude of natural disasters that occurred between 2017 and 2019.⁷ LSC provides these resources to its grantees in disaster-impacted areas to deliver civil legal aid to those in need. The disaster funds provided by the U.S. Congress are critical resources that help low-income individuals and families recover from a disaster. The Task Force underscores the importance of these resources and believes that Congress should continue to include funding for civil legal needs in future Supplemental Disaster Appropriations.



Mark Sloan, Homeland Security and Emergency Management Coordinator, Harris County, TX speaks to the importance of legal services providers having a “seat at the table” with their state, local, or tribal emergency managers in preparing for, responding to, and recovering from a disaster.

DISASTER TASK FORCE OVERVIEW

On April 10, 2018, LSC’s Board of Directors established LSC’s Disaster Task Force.⁸ Task Force participants included private sector and legal aid lawyers; judges; federal, state, local, and tribal emergency managers; disaster relief experts; and members of the business community and LSC’s Leader’s Council. The focus of the Task Force was to foster and promote better cooperation, coordination, and communication of stakeholders’ expertise and resources to ensure that low-income disaster survivors receive the legal assistance they need. The Disaster Task Force held three meetings in Washington, D.C., Houston, TX, and Miami, FL between May 2018 and March 2019. In between meetings, the 60-member Task Force conducted its work in four committees: (1) Relationship-Building and Integration of Legal Services into the Nation’s Emergency Management Infrastructure; (2) Training Pro Bono Lawyers, Other Volunteers, and Legal Services Providers; (3) Continuity of Operations Planning for Legal Services Providers and the Courts; and (4) Preparing Individuals, Families, and Communities for a Disaster.

OVERVIEW OF THE NATION’S EMERGENCY MANAGEMENT INFRASTRUCTURE

The United States has a well-established emergency management infrastructure that is divided into the following phases—mitigation,

INTRODUCTION

preparedness, response, and recovery—at the federal, state, local, and tribal levels. Experts at all levels agree that disaster response and recovery is not just the responsibility of government but is a shared responsibility among the entire community. One of the Task Force's key objectives is to educate its non-emergency management Task Force members and the broader legal services community about the need to integrate into and navigate in an existing emergency management infrastructure to effectively deliver disaster legal services. A brief description of each phase of emergency management is provided below.

A. Mitigation

Mitigation includes any activities that prevent an emergency, reduce the likelihood of occurrence, or reduce the damaging effects of unavoidable hazards. Mitigation activities should be considered long before an emergency.⁹

B. Preparedness

FEMA has issued the National Preparedness Goal,¹⁰ which defines what it means for the whole community to be prepared for all types of disasters and emergencies.

Across the country, states act as coordinators, and service delivery occurs at the local level. Another element of a state's preparedness strategy is leveraging the resources of other states. These types of arrangements are achieved through the Emergency Management Assistance Compact (EMAC), a nationally adopted, mutual aid agreement among states to share resources during times of need. EMAC offers assistance during governor-declared states of emergency or disasters through a system that allows states to send personnel, equipment, and commodities to assist with response and recovery efforts in other states. All fifty states, the District of Columbia, Guam, and the U.S. Virgin Islands have enacted legislation to become EMAC members.¹¹

C. Response

The National Response Framework¹² (NRF) is a guide outlining how the nation responds to all types of disasters and emergencies. The NRF is designed to be

all-hazards, scalable, flexible, and adaptable. There are standard operating procedures across the nation, and it is important to integrate whole communities and to learn from prior disasters. All disasters are local, but when a local government is overwhelmed and cannot adequately respond to an emergency or disaster, it then turns to the state government for assistance. When state resources are insufficient, the state will, in turn, request assistance from the federal government.

Pursuant to the Stafford Act,¹³ there are two types of Presidential disaster declarations: (1) emergency declarations and (2) major disaster declarations. The President can make emergency declarations for a broad range of events to save lives or avert danger, but the assistance provided is limited. Emergency assistance is focused on response activities such as debris removal and limited assistance to families. By contrast, the President can make major disaster declarations only for a narrow list of natural events, but the assistance provided is broader.

D. Recovery

The National Disaster Recovery Framework¹⁴ is a guide to promote effective recovery, with a focus on large-scale or catastrophic events. The goal of recovery is to return the community's systems and activities to normal. Recovery efforts start once an incident has occurred, and some recovery activities may be concurrent with response efforts. Although recovery is primarily the responsibility of local government, if the emergency or disaster receives a Presidential declaration, several assistance programs may be available under the Stafford Act.¹⁵

- **Public Assistance** is for repair of infrastructure, public facilities, and debris removal, and may include repair or replacement of non-federal roads, public buildings, and bridges and implementation of mitigation measures.
- **Individual Assistance** is for damage to residences and businesses or for personal property losses, and may include: grants to individuals and families for temporary housing, repairs, replacement of possessions, and

medical and funeral expenses; U.S. Small Business Administration (SBA) loans to individuals and businesses; crisis counseling for survivors and responders; legal services; and disaster unemployment benefits.

While there is no financial limit on direct assistance, there is a \$34,900 limit for Housing Assistance (HA) and a \$34,900 limit for Other Needs Assistance under the Individuals and Households Program (IHP) assistance.¹⁶ Federal assistance prioritizes homeowners and those who have insurance coverage. As a result, renters are often disproportionately impacted by disaster.¹⁷

Recovery from disaster is unique to each community depending on the amount and kind of damage caused by the disaster and the resources within a community. Long-term recovery can take months or years because it is a complex process of rebuilding homes, businesses, and public infrastructure, as well as revitalizing the community's economy, and restoring the quality of life.

OTHER KEY STAKEHOLDERS IN EMERGENCY MANAGEMENT

In addition to federal, state, local, and tribal first responders and emergency managers, there are other key stakeholders who play a significant role in disaster preparedness, response, and recovery. A summary of their roles is provided below.

A. National Voluntary Organizations Active in Disaster

With more than 100-member organizations, National Voluntary Organizations Active in Disaster (NVOAD) is an association of organizations that “mitigates and alleviates the impact of disasters.”¹⁸ Organizations operating under this umbrella include the American Red Cross, Catholic Charities, and other secular and faith-based groups, including LSC. They work with various non-affiliated local organizations and at all levels of government. Coordination with Voluntary Organizations Active in Disaster (VOAD) has been written into many disaster plans, including the National Disaster Recovery Framework, and

VOAD has a seat at the federal and state disaster relief tables. National VOAD follows the four Cs—coordination, communication, collaboration, and cooperation.¹⁹ At the local level, Community Organizations Active in Disaster (COADs) organize disaster relief and recovery efforts.

B. Tribal Nations

As sovereign nations, tribes may take different approaches to emergency management, but often work within existing national frameworks. Like states, tribes also make assessments and determine whether a Stafford Act declaration is necessary during disasters.²⁰ There is an added layer of complexity when non-tribal members live on the reservation and tribal members live off the reservation, or when a tribal nation is so large that it crosses county or state lines.

Because tribes cannot give up their sovereignty, intergovernmental agreements, like EMACs, are often difficult to achieve. In the past, tribes have worked with others, including Community Emergency Response Teams (CERT), the American Red Cross, and the federal government. Tribes would like to work with other communities in preparedness efforts, and would prefer to be incorporated into state and local planning processes on a regular basis.

C. Disability Community

It is important to be cognizant of the needs of—and legal responsibilities to—disabled individuals in the event of disaster. There are 61 million people²¹ with disabilities in the United States. This does not include elders, pregnant women, and many others with access and functional needs. There has been a lack of planning, accessibility, and accommodation for the millions of people with disabilities impacted by disasters. The Rehabilitation Act of 1973 requires that any recipient of federal funds make programs and services accessible for people with disabilities, and there is no waiver for this requirement. The Americans with Disabilities Act also requires equal access before, during, and after disasters. Consistent efforts need to be made to ensure the needs of people with disabilities are being met through compliance with the law.²²

NEW ORLEANS, LA

One of many houses destroyed
by Category 5 Hurricane
Katrina—August 2005.



A

RECOMMENDATIONS RELATED TO

Relationship-Building and Providing Coordinated Legal Services



SECTION

A

RECOMMENDATIONS RELATED TO

Relationship-Building and Providing Coordinated Legal Services

Providing legal services is an essential element of disaster recovery, and relationship-building between and among legal services providers and various stakeholders in disaster relief is a necessary step for the delivery of those services. There is a need for better coordination between the emergency management community and legal services providers in preparing for, responding to, and recovering from a disaster.

Many emergency managers do not have a full understanding of the role lawyers serve following a disaster. Conversely, many attorneys do not understand the existing emergency management infrastructure and protocols, which makes it hard to coordinate the response efforts of various legal services providers and do not integrate them into other response efforts. It is imperative that legal services providers and the emergency management community work to build relationships during “blue sky” times, before a disaster occurs, to ensure that there is a framework already in place to integrate the delivery of legal services with the emergency management community during the response to a disaster. This will also help open lines of communication and improve information sharing to identify and respond to legal needs of survivors during the recovery.

Based on the Task Force’s review of training manuals and articles discussing post-disaster recovery, as well as interviews and field hearings with relevant stakeholders, the Task Force has compiled the following recommendations to the Legal Services Corporation (LSC) and its grantees on relationship-building and coordination between and among various stakeholders during each phase of the emergency management cycle.

RECOMMENDATION A1

Building Relationships with Federal, State, Local, and Tribal Emergency Management Organizations and Other Government Officials

Preparedness is critical, and legal services providers need to develop relationships with their federal, state, local, and tribal emergency management agencies and organization(s), as well as other government officials. Legal services providers should ensure they have a seat at the table prior to, during, and after a disaster. They can help advance this goal by identifying their key state and local emergency managers and, where applicable, federal and tribal emergency manager(s) in their areas, and sharing the legal expertise, resources, and organization needed in preparing for, responding to, and recovering from a disaster.

“ The important thing is that we know about who you are and what you do. What do you provide back to those individuals? And if I don't know you exist, then we end up exchanging business cards at 2:00 AM—that's not when we should be doing that. We should know each other by face and by name. ”

MARK SLOAN, HOMELAND SECURITY AND EMERGENCY MANAGEMENT COORDINATOR, HARRIS COUNTY, TX

RECOMMENDATION A2

Building Relationships with Community-Based Organizations

Legal services providers should develop relationships with voluntary organizations active in disaster, faith-based organizations, and disability groups. Legal services providers should develop long-term relationships with community-based and other volunteer organizations in the areas they serve. It is important for legal services providers to have a seat at the table to participate in pre-disaster planning activities and to provide much-needed resources and expertise post-disaster.

RECOMMENDATION A4

Providing Legal Assistance at Disaster Recovery Centers or Multi-Agency Resource Centers

Legal services providers should establish pre-disaster connections to ensure that emergency managers invite legal services providers to the Disaster Recovery Centers (DRCs), Multi-Agency Resource Centers (MARC)s, or similar entities, to provide initial legal assistance to disaster survivors. Legal services providers should demonstrate their ability to staff centers and connect with the most vulnerable disaster survivors immediately after a disaster to make them aware of their rights and available services.

RECOMMENDATION A3

Building Relationships with the Private Bar, Law Schools, and Other Stakeholders in the Legal and Business Communities

Prior to a disaster, legal services providers and bar associations need to proactively identify, recruit, and cultivate relationships with members of the private bar, law schools, and other volunteers in the legal and business communities with the goal of promptly enlisting their support after a disaster. Legal services providers should identify and recruit volunteers from the private bar and the business community and connect with them pre-disaster. Outreach and recruitment strategies and trainings also should target law students, paralegals, and other legal professionals who are eager to assist post-disaster.

RECOMMENDATION A5

Providing Training on How to Identify Disaster-Related Civil Legal Issues

Legal services providers should train emergency managers and Volunteer Organizations Active in Disaster (VOAD) and Community Organizations Active in Disaster (COAD) case workers to identify civil legal issues so they can efficiently recognize and communicate survivor needs to lawyers. Disaster survivors may face several problems but might not recognize them as legal issues. Legal services providers should train emergency managers and disaster caseworkers on how to identify civil legal issues immediately following a disaster.

“An effective response requires coordination, coordination requires trust, and trust in turn must precede the chaos.”²³

RECOMMENDATION A6

Establishing Communication with and Outreach to Disaster Survivors

Legal services providers should establish lines of communication with disaster survivors by working with emergency management organizations through hotlines, on-line resources, and other available modes of communication. The lines of communication must be accessible to all disaster survivors, including those with disabilities who might require reasonable accommodations to access legal services (e.g., physical accessibility, website or telephone accessibility, print materials in relevant languages, and sign language interpretation).

RECOMMENDATION A7

Deploying Pro Bono Attorneys and Volunteers Post-Disaster Efficiently

Organizations that facilitate pro bono participation should explore avenues to increase coordination and information-sharing to deploy volunteer legal expertise post-disaster. Numerous entities, including state and local bar associations, the American Bar Association's (ABA) Young Lawyers Division, ABA Free Legal Answers,²⁴ the Association of Pro Bono Counsel, the Pro Bono Institute, and the Association of Corporate Counsel, facilitate pro bono participation. The members of these organizations have tremendous knowledge and expertise to contribute in times of crisis. Currently, there is no coordinating mechanism among all these various entities to ensure efficient deployment of volunteer legal expertise following a disaster.

RECOMMENDATION A8

Dedicating Adequate and Properly Trained Resources to Manage Volunteers

Legal services providers should devote appropriate resources to coordinate pro bono work. There should be communication and coordination between and among persons handling the intake of pro bono volunteers and those handling the day-to-day work. Legal services providers should routinely train and mentor volunteers from law schools, law firms, and the business community. Legal aid staff attorneys can focus on training, mentoring, and overseeing the volunteers to maximize their utility. This includes using remote communication and training to maximize volunteer participation.

Participating in Long-Term Disaster Recovery Efforts

Legal services providers should participate in long-term disaster recovery efforts. The recovery process does not end in the weeks immediately following the disaster. Instead, it may extend for many years, and community organizations may be faced with aiding survivors with long-term issues including contractor fraud, insurance and benefit issues, title disputes, social service eligibility disputes, replacement of significant documents, and housing issues such as evictions and foreclosures.

RECOMMENDATION

A1

**Building Relationships
with Federal, State,
Local, and Tribal
Emergency Management
Organizations and Other
Government Officials**

In the emergency management field, the best time to exchange business cards is prior to a disaster. Providing legal services is an essential element of disaster recovery, but it cannot work in a silo. Legal services providers need to be integrated into the greater emergency management community to ensure they have a seat at the table when a disaster occurs. They should identify and engage with the key state and local emergency managers and, where applicable, federal and tribal emergency manager(s) in their service areas before the next disaster. Legal services providers need to demonstrate the legal expertise, resources, and level of organization they bring to the table in preparing for, responding to, and recovering from a disaster. Building relationships is key to developing trust in a community, requiring collaboration and outreach before a disaster.

Building such relationships involves maintaining regular contact with emergency management representatives. Legal services providers should participate in planning, training, and table-top exercises to foster a sense of trust and to understand the roles and responsibilities of each stakeholder. Participation in periodic, multi-stakeholder exercises can help identify gaps in capabilities and capacity, establish stronger communication protocols, and lead to overall improved preparedness. The Emergency Management Institute²⁵ provides trainings that legal services providers should attend.

For example, Lone Star Legal Aid (Lone Star) has developed a long-term relationship with the Harris County Office of Homeland Security and Emergency Management and the City of Houston. At the Houston field hearing, Mark Sloan, Homeland Security and Emergency Management Coordinator for Harris County, discussed the on-going relationship between Lone Star and Harris County where they keep in contact through monthly VOAD meetings to discuss each other's roles and responsibilities and identify potential gaps in services. Because they know each other by face and by name, they can better coordinate critical responses during emergencies. As a result of this on-going relationship, Lone Star was asked to staff the DRCs after Hurricane Harvey.

Through their work funded by the Midwest Legal Disaster Coordination Project, Iowa Legal Aid (ILA) and Legal Aid of Nebraska (LAN) are fully integrated into the emergency management infrastructures in their states. ILA works regularly with the emergency managers in Cedar Rapids and Des Moines. An ILA representative served as president of the Iowa VOAD in 2018 and ILA is represented on its board of directors. LAN is deeply integrated into the emergency management community, especially in Lincoln, Omaha, and Grand Island and has made significant headway in raising awareness among, and networking with, emergency management communities in more rural parts of the state. LAN is a member of the state's VOAD and seven COADs.

Emergency managers are not the only government officials with whom legal services providers should establish a relationship. In some localities, the police and/or fire department performs the emergency management role and, as such, legal services may need to adapt to these circumstances in relationship-building. Depending on the issues that disaster survivors are confronting, legal services providers may need to work with the local district attorney, county counsel, city attorney, or state attorney general to respond to consumer scams. For example, Legal Aid of Western Missouri (LAWMO) worked closely with the Missouri Attorney General's Office in the aftermath of the Joplin tornado to reign in contractor fraud and other consumer scams.

Additionally, legal services providers should develop relationships with their local elected officials. Their offices and resources can be helpful during the recovery period because many constituents contact their offices for assistance. Legal Services of Greater Miami worked with Senator Marco Rubio's office to provide services to low-income disaster survivors following hurricanes in recent years.

RECOMMENDATION

A2

Building Relationships with Community- Based Organizations

Members of the National VOAD are heavily involved in disaster recovery efforts. They work with various non-affiliated local organizations and all levels of government. Coordination with VOAD is written into many emergency management plans, including the National Disaster Recovery Framework,²⁶ and VOAD has a seat at the table with federal and state disaster relief organizations.

To develop long-lasting relationships and facilitate disaster recovery, legal services providers must recognize the importance of community and volunteer organizations in the communities they serve. In addition, they must establish ties with these COADs and VOADs and demonstrate their value to contribute to the missions these organizations serve. Generally, legal services providers can approach this goal in three

ways. First, legal services providers should prioritize building trust and name recognition with these organizations before a disaster occurs. Second, immediately after a disaster, legal services providers must demonstrate that they understand the impacted communities and connect attorneys and volunteers to address the specific needs of the survivors. Finally, after a disaster, legal services providers should assist VOAD/COADs in getting the resources they need to serve their communities and prepare for long-term recovery efforts.

Legal Services of Alabama's (LSA) relationship with Alabama Voluntary Organizations Active in Disasters (ALVOAD) demonstrates the importance of building the relationship long before a disaster occurs. LSA is an active member of ALVOAD, attends quarterly meetings and conference calls, and provides information to ALVOAD affiliated agencies through presentations and written materials. Further, this early communication fosters closer relationships that can provide benefits beyond disaster relief, such as increasing legal services provider visibility in the general legal community, fund-raising, and building of a volunteer base.

During Task Force meetings, emergency managers stressed the importance of assigning roles prior to disasters. This means that each legal services provider and each VOAD/COAD must have a designated point of contact to coordinate with the other groups. When these lines of communication are clearly delineated prior to a disaster, it enables survivors to be directed to the help they need with greater ease. Once these links are established, they must be maintained as personnel on both sides will change. One example of these nurtured connections comes from the Partnership for Inclusive Disaster Strategies.²⁷ This organization connects local disability advocacy and service providers with legal services providers and protection and advocacy programs. By establishing these connections prior to disasters, organizations already have a strong framework of volunteers and service providers in place to facilitate faster recovery.

The faith-based community also plays a key role in disaster recovery. Legal services providers should also connect with faith-based groups. In Cedar Rapids, Iowa Legal Aid partnered with a faith-based group—Matthew 25—after the 2016 floods. Matthew 25 staff distributed ILA flyers and information and regularly made referrals to the program. Additionally, ILA has a long-standing relationship with a religious sister from St. Mary's Church in Marshalltown, IA. In 2018, a tornado struck Marshalltown and the sister made referrals to ILA and the MARC.²⁸

“So th[is] kind of relationship-building over time and over a wide area are very, very important—that raises the profile of legal aid. Not everybody knows who we are and what we do. So that's one way of relationship-building—education, broadening our breadth, and to make it so our bandwidth can serve more people.”

SAUNDRA BROWN, FORMER MANAGING
ATTORNEY, LONE STAR LEGAL AID

RECOMMENDATION

A3

**Building Relationships
with the Private
Bar, Law Schools, and
Other Stakeholders
in the Legal And
Business Communities**



Ellyn Josef, Pro Bono Counsel, Vinson & Elkins LLP and Doug Neagli, General Counsel, ExxonMobil Risk Management, Inc. speak to the importance of pro bono legal assistance post-disaster.

Prior to a disaster, legal services providers and bar associations need to proactively identify, recruit, and cultivate relationships with members of the private bar, law schools, and other stakeholders in the legal and business communities. It is also important to do this during "blue sky" times, because after a disaster many volunteers come forward to help, but it is challenging to harness their efforts while also responding to the disaster. Outreach and recruitment strategies and trainings also should target law students, paralegals, and other legal professionals who are eager to assist post-disaster. As with the previous two recommendations, these contacts should be regularly updated and renewed.

Lone Star Legal Aid's relationships with Houston-area law firms, particularly Vinson & Elkins and Latham & Watkins, helped the program after its headquarters was destroyed during Hurricane Harvey. LSLA was completely offline and had no technology services. Law firms in Houston came together to get LSLA back online and equipment donated. Vinson & Elkins LLP provided 25,000 fliers

about food stamps and other legal issues that could be distributed at the Disaster Recovery Centers. Latham & Watkins donated space to house some of the displaced LSLA staff members.

Doug Neagli, General Counsel of ExxonMobil Risk Management Inc., described his longstanding relationship and partnership with Lone Star Legal Aid and the law firm of Hunton Andrews Kurth. The two organizations reached out to Neagli for assistance after Hurricane Harvey to represent individuals in FEMA hearings. Lone Star trained Neagli and some of his ExxonMobil colleagues who went on to represent several clients.

Another example of such cooperation is the Disaster Legal Assistance Collaborative (f/k/a Bay Area Resilience Collaborative)—a network of legal services providers and local bar associations that can be activated in the wake of a disaster to help survivors. It was created to plan for responding to a Bay Area earthquake but has since been activated to respond to several wildfires. The network coordinates and helps deploy legal resources for disaster survivors.

RECOMMENDATION

A4

Providing Legal Assistance at Disaster Recovery Centers or Multi-Agency Resource Centers

In the immediate aftermath of a disaster, state, local, or tribal emergency managers should be sufficiently familiar with legal services providers to invite their staff and volunteers to the Disaster Recovery Centers (DRCs), Multi-Agency Resource Centers (MARC), or similar entities to provide initial legal assistance to disaster survivors. These centers provide survivors with a “one-stop shop” to address their issues.²⁹ They also help survivors identify which issues could be solved through legal means rather than through another agency or organization. DRCs and MARCs are typically initially open seven days a week. Staffing the DRCs and MARCs continuously might strain the resources of legal services providers; properly trained pro bono attorneys, law students, and paralegals can provide assistance.

Because Legal Aid of North Carolina (LANC) had been part of the Statewide Disaster Recovery Task Force before Hurricane Florence, it was invited to send staff to DRCs across the state. LANC sent staff to each center to meet with the DRC managers and coordinate their presence in each location. LANC paralegals had been acting as Affordable Care Act navigators for several

years prior to Hurricane Florence and were able to leverage the connections they built in the affected communities to send them to the DRCs quickly. At the centers, their staff provided legal information and directed potential clients to FEMA’s statewide intake hotline.

Because Florence impacted far-flung and rural areas of the state, covering all DRCs every day proved challenging. Through a partnership with the North Carolina Bar Association and the NC Pro Bono Resource Center, LANC trained a corps of volunteer attorneys on common disaster-related legal issues and deployed them to cover the busiest DRCs several days a week. The volunteers in turn freed up LANC’s staff to cover more centers. LANC trained the volunteer attorneys to direct potential clients to the intake hotline, so survivors who qualified received services beyond what the volunteers could provide at the DRCs.

LANC’s participation on the Statewide Disaster Recovery Task Force allowed them to influence high-level decision-making and educate stakeholders about the civil legal needs of disaster survivors and the role that they played to meet those needs. Having a seat at the table institutionalized their role as a critical partner in the disaster recovery process, paving the way for their immediate deployment to the DRCs following the storm.

In addition to staffing the DRCs/MARCs, it is important that legal services providers reach out to communities where disaster survivors live and work. For example, after Hurricane Katrina, Southeast Louisiana Legal Services (SLLS) brought lawyers to shelters to consult with survivors. The department overseeing foster care children had initially set up a toll-free number, but when the phone and power infrastructure were down, it was insufficient. Getting lawyers into the shelters to identify and triage survivors’ needs was the first step in creating a pipeline to address their issues. Additionally, Legal Services of New York City (LSNYC) was able to provide legal services from donated space at a used car dealership in Staten Island after Superstorm Sandy. In Puerto Rico, following Hurricane Maria, people were not seeking out legal assistance, but needed food and water. So, Puerto Rico Legal Services (PRLS) brought their staff to the government stop-and-go centers to meet people where they were.

RECOMMENDATION

A5

**Providing Training
on How to Identify
Disaster-Related
Civil Legal Issues**

Legal services providers need to train emergency managers and VOAD/COAD caseworkers on how to identify civil legal issues likely to arise following a disaster. One Task Force member, Sandra Brown, who has significant experience providing legal assistance to disaster survivors, said when she trains non-lawyers on how to identify a legal issue, her mantra is: "If it feels unfair, it's a legal problem."³⁰

After the flooding in Louisiana in 2016, Southeast Louisiana Legal Service (SLLS) partnered with Catholic Charities—the organization providing case management services for flooding survivors. SLLS trained the disaster caseworkers to spot legal issues and set up a referral system. SLLS and Catholic Charities set up a forum with a joint email address and the caseworkers sent referrals, authorizations, and other types of information through the forum. As a result of the partnership, Catholic Charities referred about 25-30% of the total flood cases that SLLS took on during the first year of the post-disaster response.³¹

As a direct result of the Task Force's work, the Disaster Services Corporation, SVDP-USA (DSC)—the lead case management organization in Puerto Rico after Hurricanes Irma and Maria—asked Puerto Rico Legal Services to train their caseworkers on how to identify civil legal issues. The DSC caseworkers assist client families in developing long-term recovery plans for where each family will be 9-24 months after a disaster.

Legal services providers can be more proactive in seeking out training opportunities. The International Association of Emergency Management³² and the National Emergency Management Association³³ hold annual conferences, and each has extensive participation of emergency management professionals. Additionally, legal service providers should seek out state-specific emergency management conferences to offer this training.



Hadassa Santini, Executive Director, Puerto Rico Legal Services, Inc. and Martha Minow, Board Vice Chair, Legal Services Corporation & 300th Anniversary University Professor, Harvard University discuss Hurricane Maria's impact on disaster survivors.

RECOMMENDATION

A6

Establishing Communications with and Outreach to Disaster Survivors

Legal services providers should establish lines of communication with disaster survivors by working with emergency management and other organizations using technology and in-person outreach, including: hotlines, on-line resources, social and mainstream media, community forums and contacts, and the legal community at large. Communications cannot be passive. Legal services providers should have multi-lingual handouts and pamphlets prepared and ready for distribution for disaster-related civil legal issues that come up repeatedly (*e.g.*, landlord/tenant issues, predatory lending, etc.). Legal services providers should also explore becoming part of their communities' 211 Resource Directories.³⁴ Plans should anticipate contingencies for compromised communications resulting from power outages and cellular phone service disruption, as well as alternative ways to communicate (*e.g.*, face-to-face contact, DRC and MARC, outreach, flyers, posters and cards, call-in numbers for remote legal personnel, and eventual restoration of cellular and landline service, laptops and other means of communication).

Panel moderator, Martha Minow, Board Vice Chair, Legal Services Corporation & 300th Anniversary University Professor, Harvard University; Nalani Fujimori Kaina, Executive Director, Legal Aid Society of Hawaii (middle) and Shelby King Gaddy, Executive Director, Legal Services of the Virgin Islands, Inc. (far right) speak to the challenges of providing legal assistance to disaster survivors in remote and hard-to-reach areas.



RECOMMENDATION A6

During Superstorm Sandy, government agencies and nonprofits started Sandy-information accounts on Facebook and Twitter. For example, a Twitter account called, Sandy Aid (@sandyaid) was created.

Legal Aid of North Carolina began preparing for Hurricane Florence early based on their experience with Hurricane Matthew. The program had disaster manuals, materials for distribution, and new videos ready when the storm hit. They developed culturally sensitive information targeted to the reading levels of their client population.

Legal services providers may set up hotlines after a disaster, but if the program itself is affected by the disaster, it might not have the ability to establish one. The ABA's Young Lawyers' Division has an agreement with FEMA to establish hotlines after a federally-declared disaster. During the 2015 Butte and Valley Fires, Legal Services of Northern California (LSNC) reached out to the California State Bar and they helped coordinate with the ABA's Young Lawyers Division to staff an emergency hotline.

Part of knowing a community is having an in-depth knowledge of the racial and ethnic composition of your service area and how best to communicate a culturally competent message. Establishing access to interpreters may be a critical need for a particular community post-disaster. Puerto Rico Legal Services discussed the need for Spanish speakers for their hotlines. While it received help from another organization outside of Puerto Rico to set up a hotline because they did not have power, it was not staffed with Spanish speakers—limiting the number of survivors it could effectively serve.

The Partnership for Inclusive Disaster Strategies offers a 24/7 hotline to connect people with disabilities who are impacted by disaster with services and assistance related to their needs, including navigating disaster assistance, connecting with local disability rights and service providers, and making available immediate loaner and replacement medical equipment, supplies, and technology such as mobility and independent living devices.

Legal services providers may have to coordinate with providers outside of their service area to broadcast their services. For instance, after Hurricane María, many survivors lost their houses in Puerto Rico and were forced to move to the

“ You have to think about what we put out as messaging. It has to be consistent. We have to be consistent with the city, and the county (Harris County, TX) has to be consistent with us. And we want to make sure that we're providing enough information, so the general public clearly understands that our goal is to manage this impact that has overcome them and direct them back to their new normal. ”

**RICK FLANAGAN, EMERGENCY MANAGEMENT
COORDINATOR, CITY OF HOUSTON**

mainland where they were temporarily placed in motels and hotels by FEMA. While temporarily relocated, they continued to have different legal needs, including assistance with claims against FEMA. Upon leaving Puerto Rico, some left behind pending cases in Puerto Rican courts and administrative agencies, including cases about parental rights and alimony. PRLS coordinated with organizations outside of Puerto Rico to assist these survivors. Because many referrals came from other LSC-funded programs, they did not require eligibility re-screening. PRLS often coordinated by phone with other organizations. These referrals would go directly to their intake system administrator, who would open a case and refer it to the proper branch office.

Task Force members had a concern about being able to reach disaster survivors in remote and rural areas. It was a particularly acute problem during the California wildfires. The traditional model of sending pro bono lawyers into rural communities was impossible because many of those areas were inaccessible. Even if there were volunteer lawyers willing to show up, there was nowhere for them to go without predetermined alternate locations which needed to be simultaneously remote from the wildfires, yet accessible to rural populations.

RECOMMENDATION

A7

Deploying Pro Bono Attorneys and Volunteers Post-Disaster Efficiently

Numerous entities, including state and local bar associations, the ABA Young Lawyers Division, ABA Free Legal Answers, the Association of Pro Bono Counsel, the Pro Bono Institute, and the Association of Corporate Counsel, facilitate pro bono and volunteer participation in their local jurisdictions and across the country. The members of these organizations have tremendous knowledge and expertise to contribute in times of crisis, and their work has had a significant impact. Even so, there is currently no coordinating mechanism among these various entities to ensure efficient deployment of volunteer legal expertise following a disaster. To the extent these organizations can streamline their efforts, they will be able to deploy attorneys and legal professionals even more quickly and effectively, including through the implementation of the Katrina rule as discussed in Section III of this report. To avoid duplication of effort and maximize the services provided to

disaster survivors, it is important for these entities to coordinate their activities with local legal services providers. One approach is to use local volunteers to triage and address local and state legal issues, and to work with remote legal volunteers to focus on federal and long-term issues.³⁵

After the California wildfires in 2017 and 2018, the State Bar of California Office of Access and Inclusion (OAI) coordinated post-disaster pro bono services. OAI's role is to serve as a clearinghouse and connector. It has served in this capacity since 1989 and has developed many contacts with legal aid groups, local bar associations, FEMA, and other key stakeholders. Its role is to connect everyone who needs to be connected during and after a disaster. After a disaster, OAI performs a variety of tasks including: setting up phone trees, scheduling regular stakeholder check-ins, and putting electronic services in the cloud.

Lawyers from all over the country can also volunteer to staff the ABA Free Legal Answers³⁶ portal. Through that portal, attorneys can provide free answers to questions directly from disaster survivors or direct disaster survivors to experts who can help them with their cases. More than 500 attorneys volunteered their services to the Florida Free Legal Answers site, which matched disaster survivors with volunteer attorneys.

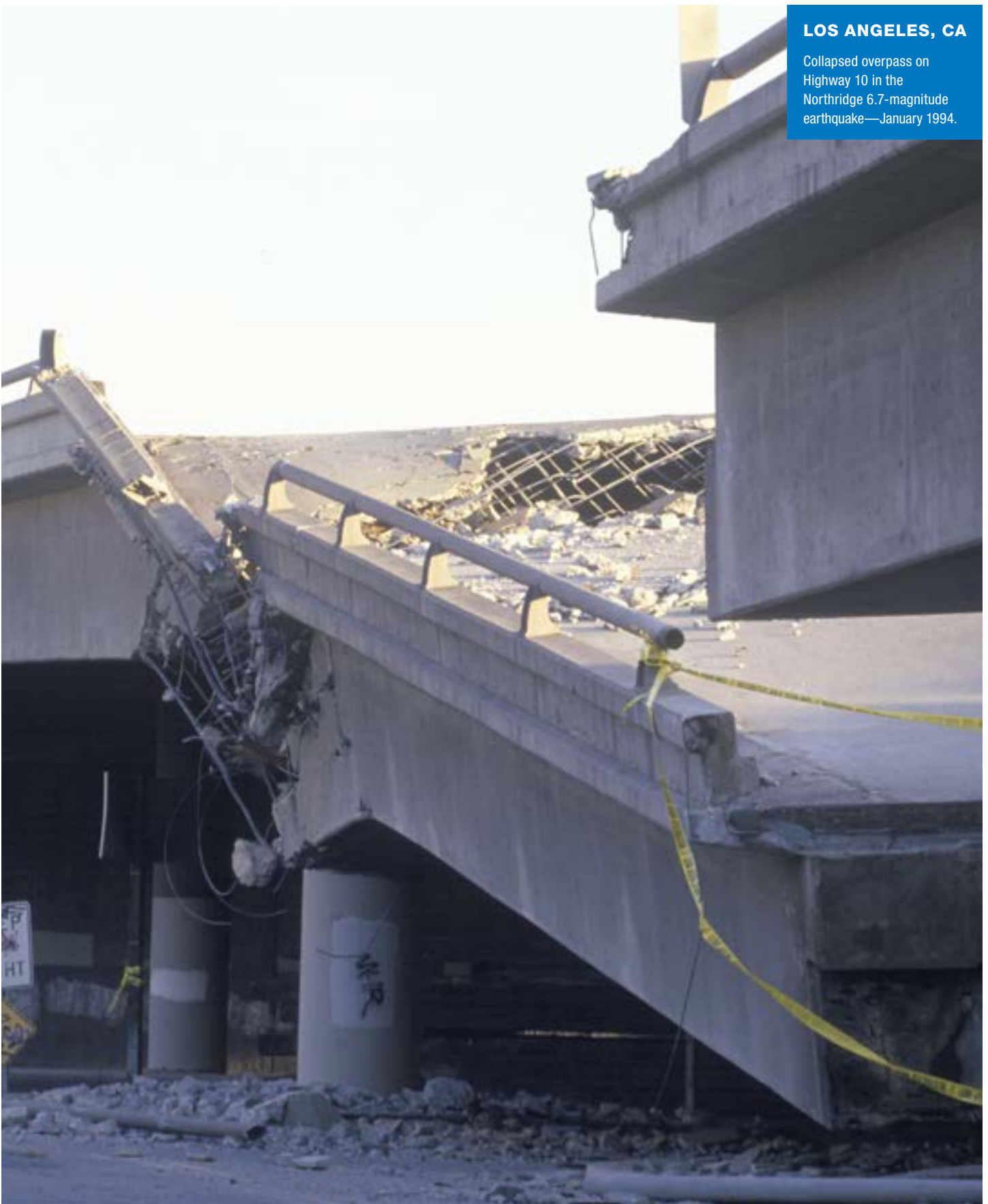
After Hurricane Harvey, New York, Chief Judge Janet DiFiore created the New York Emergency Legal Task Force to organize training and deployment of New York lawyers to help survivors. The Bar Association of the City of New York answered Chief Judge DiFiore's call and hosted multiple trainings run by lawyers from the New York Legal Assistance Group and FEMA. They trained attorneys to help victims navigate applying for, and appealing denials of, FEMA disaster aid.

Another example comes from American Samoa and Saipan, where the Young Lawyers Division created a remote FEMA appeals clinic where stateside attorneys were exclusively responsible for doing appeal work for those residing on the island.

RECOMMENDATION A7

LOS ANGELES, CA

Collapsed overpass on Highway 10 in the Northridge 6.7-magnitude earthquake—January 1994.



RECOMMENDATION

A8

Dedicating Adequate and Properly Trained Resources to Manage Volunteers

“The goal, as it must always be, is to make sure that those who are volunteering actually can be effective and know what they’re doing.”

MARTHA MINOW, BOARD VICE CHAIR,
LEGAL SERVICES CORPORATION &
300TH ANNIVERSARY UNIVERSITY PROFESSOR,
HARVARD UNIVERSITY

In the immediate aftermath of a disaster, there may be an overwhelming outpouring of volunteers wanting to assist. A challenge for emergency managers and legal services providers is how best to channel these volunteers. It is important for legal services providers to dedicate appropriate resources to coordinate and facilitate the work of pro bono attorneys and other volunteers. Properly supervising and training the larger network of pro bono volunteers is worth the time investment. It requires an open line of communication between volunteers and coordinators.

LSNYC’s response during Superstorm Sandy serves as an example.³⁷ With funds from LSC’s SuperStorm Sandy grant, the program hired a full-time pro bono coordinator to recruit and train volunteers to handle Sandy-related cases. With assistance from large New York City law firms, LSNYC designed projects and provided training on issues related to housing repairs, flood insurance, and FEMA appeals. Pro bono attorneys represented clients directly, participated in clinics, and conducted outreach. With the work of a dedicated staff member, LSNYC was able to build an extensive pro bono program to help low-income disaster survivors. Since 2015, the program has greatly increased its pro bono capacity and has an extensive network of partners to call on if they experience another disaster.

Another example is SLLS’ response after Hurricane Katrina. SLLS hired its first ever full-time pro bono coordinator to help manage dozens of lawyers locally and from other states who wanted to help. Notably, the Winston-Salem, North Carolina firm Womble Carlyle (now Womble Bond Dickinson) agreed to take on title clearing matters to help homeowners properly record title to their homes. Between the summers of 2006-2008, Womble sent teams to SLLS every week to assist with preparing probate cases for survivors. Out-of-state attorney involvement tapered off in mid-2008 which turned out to align with the time frame needed for disaster-impacted Louisiana lawyers to have recovered so that they could more robustly engage in this pro bono work. SLLS has continued to refine this pro bono model to help it handle probate work.

Volunteers should be recruited for both short and long-term representation. Potential funding to hire a pro-bono coordinator may be available from LSC disaster funds, as well as private funders like the Robin Hood Foundation.³⁸

RECOMMENDATION

A9

**Participating in
Long-Term Disaster
Recovery Efforts**

As Paul Furrh, Chief Executive Officer, Lone Star Legal Aid, says, when a disaster occurs: “Take a deep breath, you’ll be in this for the long haul....”³⁹ Legal services providers can also add value to long-term disaster recovery efforts by working with COADs and VOADs to provide legal assistance in all stages of disaster recovery. The recovery process does not end in the weeks immediately following the disaster. Depending on the severity of the disaster, the recovery phase may extend for many years, and community organizations are often faced with aiding survivors with long-term civil legal issues including contractor fraud, insurance and benefit issues, and replacement of legal documents. Legal services providers can demonstrate their commitment to rebuilding their communities by continuing to assist the affected community’s Long-Term Recovery Committees (LTRC) to address these problems months and years after the disaster.

Legal Aid of Western Missouri’s participation in the Joplin Long-Term Recovery Committee (Joplin LTRC) is an example of such a long-term commitment. Formed in response to the 2011 tornadoes in Joplin, the Joplin LTRC matched survivors in need with resources based on the severity of the case. To address on-going legal issues, LAWMO



Renee White, Associate Professor, Missouri Southern State University & Former Chair, Joplin Long-Term Recovery Committee; Father Pius Pietrzyk, Board Member, Legal Services Corporation & Chairman, Department of Pastoral Studies, St. Patrick’s Seminary; and Pamela Roychaudhury, Managing Attorney, Legal Aid of Western Missouri discuss the work of the Joplin Long-Term Recovery Committee.

trained other service providers that were LTRC members to identify civil legal issues through regular workshops. From those trainings the LTRC built a referral system. LAWMO also partnered with the local YMCA to conduct outreach, handed out flyers at laundromats and gas stations, and sought help from the Missouri Attorney General’s office to spread the word. LAWMO gave toolkits to other service providers to refer clients to legal aid. Every month for two years post-disaster, LAWMO participated in regular “Disaster Coffees,” where 150 organizations expressed their needs and coordinated recovery work. Because of Joplin LTRC’s efforts, more than 1,600 families with unmet needs received help.

LA GRANGE, TX

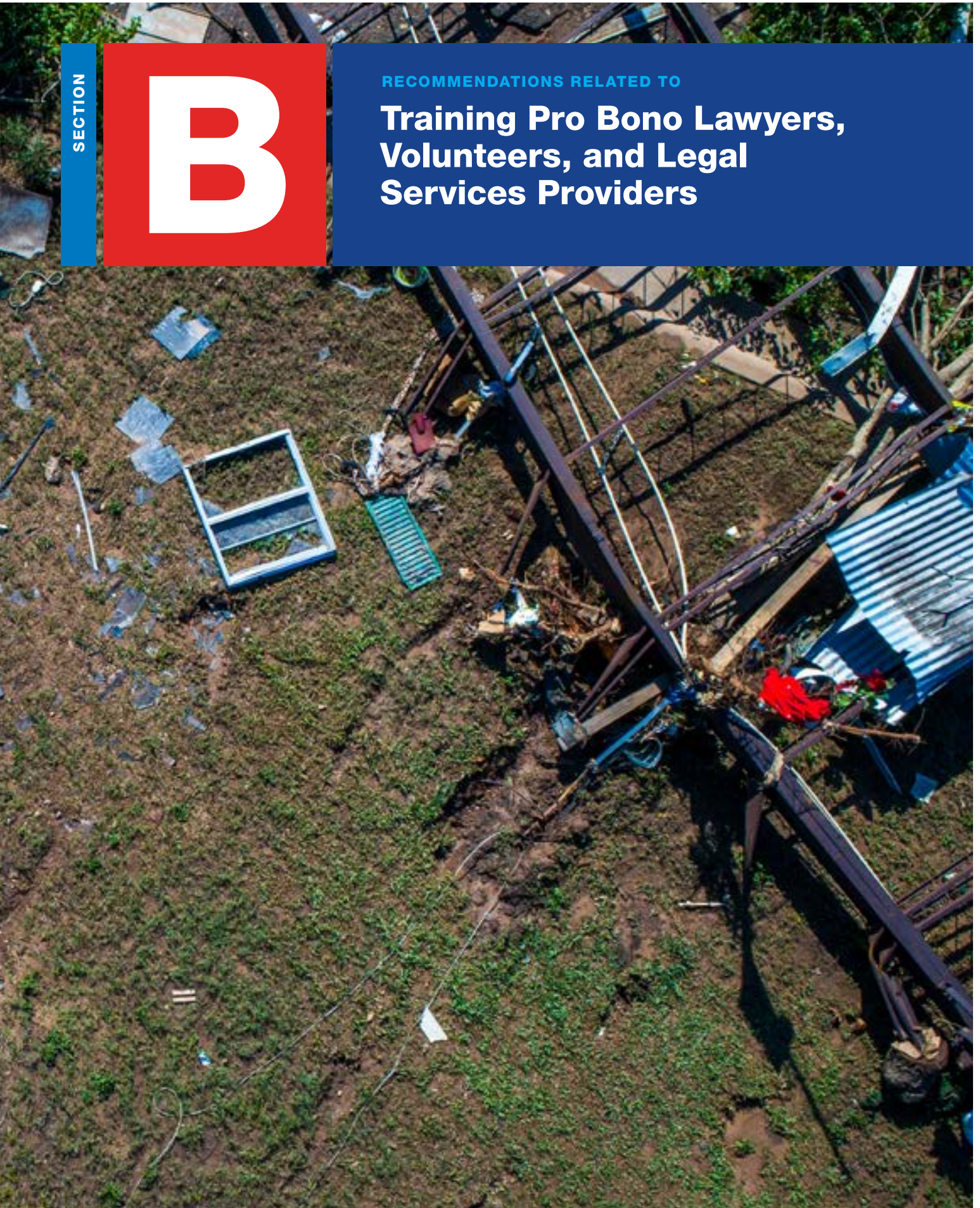
Aerial view of destruction and flooding debris after Category 4 Hurricane Harvey—August 2017.



B

RECOMMENDATIONS RELATED TO

Training Pro Bono Lawyers, Volunteers, and Legal Services Providers



SECTION

B

RECOMMENDATIONS RELATED TO

Training Pro Bono Lawyers, Volunteers, and Legal Services Providers

Disasters can create legal challenges for survivors that continue for months or even years. After a disaster, the instinct among lawyers and other legal professionals to volunteer is strong, but most lack expertise handling the specific legal challenges disaster survivors are likely to face. Attorneys and other legal professionals require training before they can provide effective disaster legal services.

The prior section discussed the importance of building relationships with attorneys and other volunteers. This section provides recommendations on how best to train those volunteers. Task Force members discussed several training-related issues, including: (1) which legal issues warrant focused training; (2) what types of training are available and how should training be delivered; and (3) when should volunteers be trained. The answers to these questions are not necessarily easy or intuitive, but experiences from past disasters can inform the preparation and training of legal services providers prior to and in the wake of future disasters.

Based on the Task Force's comprehensive review of available disaster assistance trainings, as well as interviews and field hearings with many stakeholders, the Task Force has compiled the following recommendations for LSC and its grantees to improve existing disaster legal services and to address gaps in those services:

RECOMMENDATION B1

Customizing Trainings to Location

Trainings should cover the common federal and state legal issues disaster survivors are most likely to encounter in their area. The legal issues survivors face will evolve over time and will vary depending on the type, risk level, and form of disaster. Trainings should be updated regularly to account for changes in agency practice and policy, particularly those of federal administrative agencies, as well as state and local laws.

RECOMMENDATION B2

Building on Best Practices for Disaster-Related Trainings

Hundreds if not thousands of handbooks, PowerPoint presentations, webinars, and videos have been developed to train volunteers on disaster-related civil legal issues. As new trainings are developed, they should build on the best practices and lessons learned from this body of work.

RECOMMENDATION B3

Creating a One-Stop Resource for Training and Expertise

The legal services community should work together to create an online “one-stop” resource for disaster training materials and expertise. This site should target several audiences, including pro bono attorneys and other volunteers, legal aid attorneys, and disaster survivors. In addition to providing basic training information, the site should include template documents. This site will be a critical resource for providing training materials on disaster-related civil issues. The site should also include a nationwide “Brain Bank” of experts to address critical questions and fill any legal expertise gaps, such as insurance, tribal law, or small business issues.

RECOMMENDATION B4

Training Often

Legal volunteers should be trained or retrained close in time to when they will be helping disaster survivors. When practicable, trainings should occur before a disaster, if disasters follow a predictable or seasonal cycle, or as soon as possible after a disaster occurs. Legal volunteers should be mobilized efficiently, such that local volunteers can triage and address local and state legal issues, and remote legal volunteers can focus on federal legal issues and the many issues that will remain long after a disaster happens.⁴⁰

RECOMMENDATION B5

Maintaining Relationships with Volunteers

It is important to maintain and constantly reinvigorate relationships with volunteers throughout the recovery process. In the long tail of disaster recovery, maintaining a trained and enthusiastic army of legal volunteers is critical. Regular retraining and celebration of accomplishments will help make trained and capable pro bono resources available for years to come.

RECOMMENDATION

B1

Customizing Trainings to Location

Trainings should cover the common federal and state legal issues disaster survivors are most likely to encounter. The legal issues survivors face will evolve over time and will vary depending on the type, risk level, and form of disaster. Trainings should be updated regularly to account for changes in agency practice and policy, particularly that of federal administrative agencies, as well as state and local laws. Common legal issues arising after a natural disaster are outlined at right.

Legal services organizations preparing training materials on disaster-related legal issues should be cognizant of these potential legal needs and consult with local experts to ensure that training materials are substantively accurate and sufficiently comprehensive.

In addition, legal services providers are part of a comprehensive response to a disaster. Although they primarily provide legal services, they must be able to see the broader picture of a community's recovery from disaster and be attentive to more than just providing legal help, and assist the whole process of recovery. As a result, volunteers may need training on recognition of and referrals for non-legal issues (*e.g.*, CPR training and psychological counseling).

“ Disasters start local and end local. Unique legal issues are very dependent on your local community. They also differ based on whether or not you're one month post-disaster versus one year post-disaster. ”

**PAMELA ROYCHAUDHURY,
MANAGING ATTORNEY,
LEGAL AID OF WESTERN MISSOURI**

RECOMMENDATION B1

CHART B1: Common Legal Issues Arising After a Natural Disaster

	FEDERAL LAW	STATE LAW
SHORT-TERM	<ul style="list-style-type: none"> ■ FEMA disaster assistance applications and FEMA appeals ■ Small Business Administration loan applications ■ Public and federally-assisted housing displacement ■ Other public benefit programs: <ul style="list-style-type: none"> ■ Indian Affairs Financial Assistance and Social Services ■ Medicaid ■ Children's Health Insurance Program ■ Disaster Supplemental Nutrition Assistance Program ■ Emergency Farm Loans and Crop Insurance ■ National Flood Insurance Program ■ Disability rights: <ul style="list-style-type: none"> ■ Section 504 of the Rehabilitation Act of 1973 ■ Americans with Disabilities Act of 1990 ■ Individuals with Disabilities Education Act of 1975 ■ Non-discrimination laws: <ul style="list-style-type: none"> ■ Housing and neighborhood displacement ■ Document replacement and preservation ■ Foreclosure prevention (loan forbearances and modifications) 	<ul style="list-style-type: none"> ■ Neighborhood disputes ■ Insurance claims and disputes ■ Landlord/tenant disputes ■ Housing and mobile home park habitability disputes ■ Document replacement and preservation ■ Title clearing ■ Healthcare ■ Disability law ■ Family law <ul style="list-style-type: none"> ■ Guardianship ■ Custody
LONG-TERM	<ul style="list-style-type: none"> ■ Renewing FEMA disaster assistance ■ Appealing denials of FEMA disaster assistance ■ Appealing denials of SBA loans ■ Personal bankruptcy ■ Tax issues (also a state issue) ■ Recoupment processes <ul style="list-style-type: none"> ■ FEMA ■ Disaster Supplemental Nutrition Assistance Program (D-SNAP) ■ Community Development Block Grant—Disaster Recovery (CDBG-DR) ■ Small Business Administration ■ Equal access/non-discrimination/Section 504 compliance (applies to every federal dollar spent, granted, or contracted) 	<ul style="list-style-type: none"> ■ Insurance claims and disputes ■ Consumer protection and Contractor disputes ■ Foreclosures ■ Domestic violence ■ Title clearing ■ Employment issues ■ Equal access/non-discrimination

RECOMMENDATION

B2

Building on Best Practices for Disaster-Related Trainings

The disaster recovery process presents a wide array of civil legal issues. As a result, training for attorneys and other volunteers covers many different topics and takes many different forms. Disaster legal trainings are categorized as follows:

1. Trainings on Triage and Issue Spotting—

In the wake of a disaster, attorneys and laypersons will need to triage the range of legal issues survivors may encounter. “Issue spotting manuals” and in-person trainings on issue spotting help attorneys and other legal services providers to direct survivors to specialists who can assist them with their respective legal issues. Issue-spotting manuals also help survivors to identify their legal issues independently and are readily accessible by legal professionals and survivors alike.

2. In-Depth Trainings—Attorneys and legal services providers who need to learn about a specific legal area can be trained using a variety of different media, ranging from hard copy resources to in-person trainings and virtual presentations.

Dorothy Fernandez, Pro Bono Counsel at the law firm of Morrison & Foerster LLP, talks about the firm’s decades-long practice of creating *Helping Handbooks* to help disaster survivors.



RECOMMENDATION B2

Developing trainings for each of these two categories is important for effective, efficient, and well-rounded disaster recovery efforts. Task Force members have analyzed the form and substance of each category to assess what disaster legal issues attorneys need to be trained in and how they should be trained.

When creating and curating trainings and issue-spotting manuals, organizers should leverage large law firms and/or their state bar to assist in preparing the materials. For example, Morrison & Foerster has created *Helping Handbooks* for many of the major disasters over the last two decades. Depending on the disaster, a handbook will have chapters dedicated to different legal issues, including personal finance, taxes, consumer tips and fraud protection, tips on hiring contractors, health care, loss of life, etc. The Handbook is targeted to two audiences: (1) survivors and their families, and (2) the lawyers on the front-line providing aid. It is written in plain English and is not meant to be a training manual for lawyers, even though lawyers often use it as a guide. The firm's lawyers and staff, including librarians, draft the handbook, with at least one lawyer staffing each chapter. It is distributed in a variety of ways, including bar associations, the ABA Young Lawyers Division, public libraries, and on the firm's website at <https://www.mofo.com/culture/community/helping-handbooks.html>.⁴¹

Where feasible, state bar associations should have an employee devoted to managing, updating, and organizing trainings, a practice currently followed by the California Bar Association and potentially suitable for other large states. In addition, where possible and with appropriate permission, states could tailor other states' existing webinars and manuals to suit their needs. This practice has been used in North Carolina, which has adapted materials prepared by Lone Star Legal Aid following Hurricane Harvey.

A. Trainings on Triage and Issue Spotting

Issue-spotting manuals are frequently the initial contact point between a disaster survivor and the legal community. Oftentimes, disaster survivors are not aware that their problem is a legal problem, they just know they need help. Attorneys will review issue-spotting manuals to learn quickly about a legal issue so that they can identify when problems are legal issues and then provide straightforward

“Before Katrina, we did not have any kind of a volunteer or pro bono coordinator. We got such an incredible response from the rest of the country that we found it necessary to create a position, particularly at that time, not just for volunteer attorneys, but for the droves of law students that were coming from all over the country.”

**LAURA TUGGLE, EXECUTIVE DIRECTOR,
SOUTHEAST LOUISIANA LEGAL SERVICES**

legal services, seek out additional training on particular issues, or redirect survivors to an appropriate expert. Similarly, disaster survivors may rely on self-help and use an issue-spotting manual to identify their major legal issues rather than or before reaching out to an attorney.

Issue-spotting manuals carry a heavy burden. They must address a wide variety of legal issues in a way that is meaningful and understandable for attorneys and survivors alike and yet not contain so much detail as to be overwhelming. Five features are common among the best issue-spotting manuals:

- Breadth of topics
- Non-technical language and easy navigation
- “Question and Answer” sections
- Step-by-step instructions
- Contact information for expert resources

Though many excellent issue-spotting manuals do not include all the above features, each improves the quality of such a manual.

1. Breadth of Topics

It is critically important that an issue-spotting manual broadly cover the full suite of legal issues that a disaster survivor is most likely to encounter. Of the issue-spotting manuals surveyed, the *Texas Disaster Assistance Manual* was perhaps the broadest, covering topics ranging from “Falling

RECOMMENDATION B2

Trees, Flying Limbs & Loud Neighbors” to personal bankruptcy issues.⁴² The many topics enable attorneys and survivors to pinpoint what legal needs exist. It is better for a manual to be over-inclusive rather than under-inclusive, as volunteer attorneys try to assess which of the many identified legal issues may be most relevant to a particular survivor.

The breadth of topics does not always mean many areas of law. While many issue-spotting manuals do cover several areas of law, others appropriately focus on a specific topic or population and address a wide range of relevant law within that sub-section of disaster recovery. For example, *Picking Up the Pieces: Restoring Rural Housing and Communities After a Disaster* addresses housing needs specific to rural populations.⁴³

2. Non-Technical Language and Easy Navigation

Issue-spotting manuals are often read by both legal professionals and survivors, so the language must be understandable to people who are not legal professionals. It is a best practice for an online manual, exemplified by the *Texas Disaster Assistance Manual*, to display the definitions of any legal terms when the user’s mouse hovers over the word.⁴⁴

Some issue-spotting manuals are geared primarily to survivors rather than legal professionals. For example, in *Navigating the Road to Housing Recovery*, NeighborWorks America and the Federal Deposit Insurance Corporation created a guide to assist families in securing and restoring housing as they recover from disasters.⁴⁵ This guide outlines steps that a survivor can take in a variety of personal circumstances. Though the guide is intended for survivors, a legal practitioner can also use the guide to assist a survivor in preparing and packaging documents needed to request assistance.

Easy navigation can also mean that some materials should be written in languages other than English. For example, the *Morrison & Foerster: Superstorm Sandy Helping Handbook* was also provided in Spanish and Chinese.⁴⁶ Legal services providers report that disaster survivors who do not speak English as a first language may be less comfortable seeking legal assistance. By making issue-spotting manuals available in multiple languages, legal services organizations may be able to expand their reach into underserved communities.

3. Question and Answer Sections

A notable majority of the issue-spotting manuals

reviewed devote a significant portion of their content to “Question and Answer” sections outlining common questions and crisp, clean answers. Rather than burying information in dense pages of content, the “Question and Answer” format allows readers to discover information in an efficient and effective manner. This structure is also easy to supplement over time with new questions practitioners face. For example, in the North Carolina Bar Association’s *Resource Materials for Responding to Legal Questions from Those Affected By Disasters*, the manual presents the “Most Common Issues/Questions” for each topic, a summary of the relevant law, and responses to the questions along with actions that can be taken to address the issue.⁴⁷

4. Step-by-Step Instructions

Many issue-spotting manuals provide step-by-step instructions for a survivor or an attorney to prepare relevant documentation to assist the survivor. For example, the *North Carolina Disaster Response Manual* includes step-by-step instructions to apply for FEMA disaster assistance, outlining what an individual might expect to occur throughout the process of applying for FEMA assistance.⁴⁸

A few issue-spotting manuals provide copies of or links to sample documents that can assist an attorney or a survivor in preparing appropriate legal documents. To the extent a survivor has a straightforward legal issue, sample documents can be prepared during a quick interaction with an attorney in a disaster recovery shelter or even by the survivor, without subsequent support from an attorney. *Navigating the Road to Housing Recovery* includes an example of a credit report and a sample dispute letter for disputing a credit report believed to be inaccurate.⁴⁹

5. Contact Information for Expert Resources

While issue-spotting manuals play an important role in the provision of disaster legal services, survivors often have much more nuanced legal needs than can be addressed in a handbook. It is also helpful to provide extensive external resources where readers can research more technical questions. Contact information goes beyond just an email address or phone number for a local legal services organization. For example, in the *Texas Disaster Assistance Manual*, each substantive topic includes a relevant phone number or website for further information, additional

RECOMMENDATION B2



JOPLIN, MO

One-third of this small midwestern town sustained massive damage in an historic EF-5 tornado—May 2011.

question and answer resources, and an appendix with contact information for each substantive area and legal services organizations for each county.⁵⁰

B. In-Depth Trainings

In-depth trainings on substantive topics are essential to prepare attorneys to deliver high-quality legal services in pertinent areas in the aftermath of a disaster. There are logistical and administrative strategies that can enhance the delivery of trainings. In this regard, exemplary trainings for both short- and long-term legal issues often share some or all of the following five attributes:

- Ease of access and use of multiple learning styles
- Pairing training with client assignments
- Consideration of wide-ranging issues and diverse potential clients
- Emphasis on “Lessons Learned” and “Question and Answer” supplemental materials
- Creating connections to experts and volunteers

As with issue-spotting manuals, not all of these attributes are necessary or even practical for a single training.

1. Ease of Access and Use of Multiple Learning Styles

Disaster trainings are presented in several ways, including at in-person training sessions, virtually, and in written materials. Regardless of the way the training is delivered, it is vital that the training be readily accessible to pro bono attorneys and volunteers, including those with disabilities. Those designing legal trainings should proactively identify ways in which the training materials can be accessed as effortlessly as possible and through multiple media. For example, a written training might be made available both digitally and in hard copy. In-person trainings can be recorded so that attendees and others can watch or listen again later. Virtual trainings can be presented on websites that involve minimal cost or are already widely used by

“Train frequently and substitute freely. That's the best advice I can give to people about their staff. Everybody needs to get a dose of disaster training. People get exhausted those first few weeks and months, and you need to rotate people through. The same thing can be said of volunteer and pro bono staff.”

**PAUL FURRH, EXECUTIVE DIRECTOR,
LONE STAR LEGAL AID**

attorneys (e.g., the Practising Law Institute (PLI)).⁵¹ The California Bar Association enhanced ease of access by offering courses on a number of different disaster legal issues following the 2017 California wildfires as individual sessions within a full day of training.⁵² In addition to the in-person full-day training, each session was accessible for free, online, with a PLI account and for CLE credit in many states. Participants could elect to attend all the sessions or relevant individual sessions.

In addition to improving ease of access, using varied media helps to address different learning styles, such as auditory, visual, and tactile, and to improve ease of access for disabled persons, which can result in a more impactful, wide-reaching training.

2. Pair Training with Client Assignments

During the Task Force's research, several participants shared that they enhanced the delivery of legal services by pairing a training session with client assignments or client interaction immediately following the training. Pro bono attorneys and other volunteers can leverage and deploy their newly-obtained skills when the information is fresh in their minds. Empirical evidence also supports this approach, as attorney utilization rates rise after attorneys are immediately paired with clients.

3. Consideration of Wide-Ranging Issues and Diverse Potential Clients

While it is important that trainings cover topics that are broadly applicable, it is also important for trainings and materials to address niche issues and specific populations of survivors. The topics relevant to certain groups may differ significantly from those relevant to another group. For example, the laws related to mobile home-ownership and leasing are different from laws governing homeownership or landlord/tenant issues.⁵³ The property issues around Native American land are complicated and may require more in-depth training.⁵⁴

4. Emphasis on “Lessons Learned” and “Question and Answer” Supplemental Materials

Though each disaster is unique, prior disasters—and the lessons learned from them—provide a wealth of information. A section in training or supplementary materials on “lessons learned” or “Frequently Asked Questions” can facilitate this transfer of knowledge from prior disasters. For example, as part of a training and panel discussion, Lone Star Legal Aid prepared a list of 25 Pro Tips for Working with FEMA and tied each tip to the exact time in the presentation where the topic was discussed in more detail.⁵⁵ Many of these tips were not directly tied to legal issues, but were succinct points to help attorneys to deliver services more effectively and efficiently.

5. Utilize Technology to Deliver Training

Technology platforms are a common way to provide training. The Pro Bono Training Institute in California has a web-based training site that is used to accommodate disaster trainings, which are free to the public. Team Rubicon, an organization for veterans, also has a tech platform that uses online trainings.

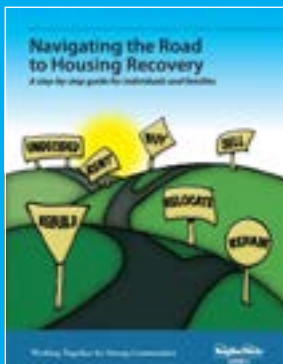
RECOMMENDATION

B3

Creating a One-Stop Resource for Training and Expertise

The legal services community should work together to create an online “one-stop” resource for disaster training materials and expertise. This site should target several audiences including: pro bono attorneys and other volunteers, legal aid attorneys, and disaster survivors. In addition to providing basic training information, the site should include precedent or template documents that address federal and state legal issues. This site will be a critical resource for providing training materials on disaster-related civil issues.

This resource should include a nationwide “Brain Bank” of experts who can address critical questions and fill any legal expertise gaps, such as topics related to insurance, tribal law, or small business issues. For example, in its response to SuperStorm Sandy, Legal Services of New York City found that private attorneys are often conflicted out of pro bono service on insurance and foreclosure claims, and therefore, the program needed to identify non-conflicted pro bono volunteers. Moving forward, legal services providers should identify these experts before a disaster.



Examples of resources that would be available on the One-Stop website.

RECOMMENDATION

B4

Training Often

Some natural disasters have “seasons.” The Gulf and Atlantic Coasts have a hurricane season; the Southwest and Pacific Coast have a wildfire season; and the Plains and Southeast have a tornado and flood season. Though the duration, severity, and geographic reach of a natural disaster season may not be entirely predictable, the annual cycle from low to high probability of a disaster still

creates a natural calendar for training legal volunteers. Legal service providers should work with their state and local emergency managers to identify the likeliest types of disasters and when they might occur. In areas in which disasters are seasonal, it is most efficient to train volunteer lawyers preemptively before the season starts so that they are ready to deploy in the immediate aftermath of a disaster. In addition to reaching new volunteers before a disaster occurs, “annualized” courses allow trainers to share updates on the law and to disseminate best practices learned from responses to disasters in prior seasons.

For example, in 2018, Legal Services of Greater Miami began an initiative to preemptively train volunteer lawyers before the start of hurricane season. After Hurricane Irma in 2017, they recognized that waiting to train volunteer lawyers until after the disaster was inefficient. The time it took to train lawyers in the wake of the hurricane took the experts from the Legal Services of Greater Miami away from their primary jobs and delayed the deployment of volunteer lawyers until after trainings were scheduled and completed.

Of course, disasters do not always occur on a predictable schedule. There inevitably will also be first-time volunteers who are moved to help only after a disaster and thus they cannot be preemptively trained. To prepare for these scenarios, legal services organizations should be ready with trainings they can present on short notice to local bar associations and private firms. If trainings are not available before a disaster, legal services organizations can utilize the best practices outlined in this report and the precedent materials coordinated by DLA to help create trainings.

Both lawyers who are local to the disaster area and those located across the country can be trained in the wake of a disaster. Lone Star Legal Aid, based in Houston, trained nearly 2,000 lawyers over three days at the shelters set up to house Hurricane Harvey survivors. Their trainings focused on equipping lawyers to triage the legal issues that survivors faced.

Once the immediate aftermath of a disaster has faded, legal services organizations should leverage local law firms as well as community organizations to provide venues for training. As discussed above, trainings also should be made available online so that individuals may train remotely at their convenience.

Monica Vignes-Pitan, Executive Director, Legal Services of Greater Miami, Inc. discusses the strategy around and timing for providing training on disaster-related civil legal issues to pro bono attorneys and volunteers.



B5

Maintaining Relationships with Volunteers

“Volunteers are particularly needed and particularly absent in rural areas when a disaster strikes. And I think we need a rural focus on organizing volunteers. Sometimes you can get volunteers in an immediate response. It’s very rarely long-term, and it’s very difficult even immediately (after a disaster) in rural areas.”

ILLENE JACOBS, DIRECTOR OF LITIGATION, ADVOCACY, AND TRAINING, CALIFORNIA RURAL LEGAL ASSISTANCE

Few disaster survivors, lawyers, or other volunteers recognize how long disaster recovery will take at the outset. The disaster recovery from Hurricane Katrina is, in some ways, ongoing and experts say that the recovery process following Hurricane Harvey could take more than a decade. Legal services providers and other organizations that coordinate volunteers following a disaster need to be prepared to maintain and reinvigorate relationships over many months and years following a disaster.

Moreover, legal services organizations and law firms can provide ongoing clinics for extended periods following a disaster as a mechanism to continue addressing legal needs as they arise and to stay connected with volunteers. In Houston, for example, pro bono attorneys and legal services providers jointly operate a Hurricane Harvey Survivors Clinic that continues to address long tail legal issues like contractor disputes.

In Louisiana, SLLS recently started a “Flood Proof” incubator program in partnership with the Louisiana State Bar Association. The program integrates pro bono assistance over an 18-month period from recently licensed attorneys under SLLS’ guidance. These attorneys help disaster survivors with disaster-related title clearing issues three years after the flood. They also help

low-income households in high-risk flood prone areas be more resilient in the future by handling title clearing issues in “blue-sky” times.

Both researchers and experts praise the use of email to keep in contact with attorneys and maintain relationships with volunteers. In *Natural Disasters, Access to Justice, and Legal Services*, one legal services organization found significant value in a very active email listserv and frequent roundtables on specific legal issues to keep volunteers engaged. Other organizations checked in on cases placed with law firms to ensure that the firm was supervising progress on cases.⁵⁶ Legal services providers would offer to take over pro bono cases that had lost momentum and then would try to re-staff them with someone with more capacity.

Finally, legal services providers strive to reinvigorate attorneys and keep volunteers excited about the tremendous work they do following a disaster. This should frequently include expressions of gratitude. The Joplin Long Term Recovery Committee regularly celebrated the work of its volunteers. The committee sent daily emails to volunteers that listed services needed. When volunteers were deployed, they were celebrated with cheering crowds, songs, and t-shirts. The Joplin LTRC recognized that celebrating volunteers made them more likely to continue volunteering.

SANTA ROSA, CA

View through a burned house after the Tubbs Fire destroyed more than 5,000 homes and killed 22 people—October 2017.



C

RECOMMENDATIONS RELATED TO

Continuity of Operations Planning for Legal Services Providers and Courts and the Adoption of Model Court Reforms



SECTION

C

RECOMMENDATIONS RELATED TO

Continuity of Operations Planning for Legal Services Providers and Courts and the Adoption of Model Court Reforms

Interrupted access to effective legal and judicial services in the aftermath of a disaster exacerbates an already chaotic situation. In addition to their existing caseload, attorneys and judges are confronted with an onslaught of disaster survivors facing urgent and often unanticipated legal questions.

Yet legal services providers and court systems may also be disrupted or devastated by a disaster. In addition to resolving their own problems, legal services providers and courts face the challenge of efficiently restoring operations to meet pressing legal needs. Doing so while navigating an often inflexible framework of legal infrastructure and rules adds yet another layer of complexity and stress to the circumstances.

While the timing of disasters and the extent of the damage is unpredictable, legal services providers and court systems can arm themselves with preparedness resources to preempt issues and mitigate disruption. A Continuity of Operations Plan (COOP) aims to facilitate post-disaster recovery by identifying preventative measures and providing a roadmap to follow before, during, and after an emergency. This section provides specific details about the elements of a COOP. The Task Force heard from Gregory Cowan, Senior Management Analyst from the Florida Justice Administrative Commission, who outlined the key principles of a good COOP:⁵⁷

- Address the leadership issue—know who is in charge;
- Dedicate staff to specific tasks/issues;
- Build and strengthen collaborative relationships;
- Develop redundant communications (have multiple ways of communicating after a disaster);
- Develop a self-sufficient workforce;
- Actually write the plans: occupant emergency, COOP, and disaster recovery; and
- Test, exercise, and maintain the plan.

Based on our review of available COOP planning resources, as well as interviews with legal services providers and court administrators, the Task Force has prepared the following recommendations to LSC grantees, legal services providers, and courts to ensure continuity of operations.

RECOMMENDATION C1

Legal Services Providers Must Maintain Comprehensive, Up-to-Date Continuity of Operations Plans (COOP)

Legal services providers are a critical resource for both existing clients and disadvantaged disaster survivors confronting a broad range of legal needs and challenges. Legal services providers should have a comprehensive COOP in place that is designed to (1) ensure the safety of the organization's employees, and (2) safeguard critical information, including client files.

RECOMMENDATION C2

Courts Must Maintain Comprehensive, Up-to-Date Continuity of Operations Plans

Courts are not immune to the effects of disasters. Disruption of court operations following a disaster interferes with ongoing legal proceedings and leaves individuals without recourse in the face of emerging legal needs. A comprehensive COOP should serve to protect court staff and resume operations to preserve access to the justice system, safeguard litigant rights, and enable the court to support the influx of post-disaster demands.

RECOMMENDATION C3

States Should Adopt Model Court Reforms

States should adopt model court reforms to facilitate post-disaster recovery. Each state should engage the relevant stakeholders and assess whether certain model reforms are appropriate for their respective court infrastructures. Many courts have implemented measures that have improved their ability to respond to post-disaster legal needs and resume operations more efficiently. We recommend consideration of the following reforms:

- **Adoption of the “Katrina Rule”:** Following Hurricane Katrina, the American Bar Association issued a model court rule that permits out-of-state lawyers to provide temporary pro bono services in a state affected by a major disaster.
- **Extensions of Time:** Extensions of deadlines and tolling provisions for statutes of limitations should be considered to safeguard litigant rights.
- **Court System Coordination:** Unification of court systems facilitates the flow of information and orders to lower courts in a timely and streamlined manner.
- **Geographic Flexibility:** If the court should be displaced outside of the geographic jurisdiction, temporary allowances permitting matters to be heard elsewhere allows for uninterrupted access to the courts.
- **Specialized Procedures:** Courts should adopt specialized procedures on a case-by-case basis regarding certain areas of law that are uniquely affected by disasters, including landlord/tenant, criminal, family, title disputes, estate, and bankruptcy issues.

RECOMMENDATION

C1

Legal Services Providers Must Maintain Comprehensive, Up-to-Date Continuity of Operations Plans

In preparing this Report, the Task Force engaged in field hearings with various stakeholders in the emergency legal services field from disaster-affected states and territories, ranging from the U.S. Mariana Islands to Alaska. The Task Force reviewed more than fifty COOPs from various LSC grantees and analyzed them to elucidate best practices. The Task Force also reviewed COOP plans from global private-sector organizations, in order to gain perspective on how large organizations mitigate disaster risk. Finally, the Task Force reviewed publicly available reports on LSC grantees' experiences recovering from Hurricanes Maria, Katrina, Florence, the California wildfires, and other natural disasters, with a focus on the role of civil legal aid in helping communities get back on their feet, and long-term issues facing disaster-affected communities.

Legal services providers are a critical resource for both existing clients and disadvantaged disaster survivors confronting a broad range of legal needs and challenges. Legal services providers, including LSC grantees, should have a comprehensive COOP in place that is designed to (1) ensure the safety of the organization's employees, and (2) safeguard critical information, including client files. Another important consideration when developing

a COOP is to assess how the legal services provider will be able to dedicate staff to the emergency needs of disaster survivors and continue to maintain their level of service to other clients. One possibility may be to seek a mutual aid agreement among existing legal services providers to provide back up support when existing legal staff has been assigned to disaster recovery duties.

Disasters are inevitable and legal services providers need to understand that they need to prepare for a disaster. During the field hearings, several Executive Directors and staff from LSC grantees shared their disaster experiences and stressed that before delivering services to clients, legal services providers need to know what is happening with their own staff.

Laura Tuggle, Executive Director of Southeast Louisiana Legal Services, told the Task Force that Hurricane Katrina displaced 100% of the program's staff for six weeks or more, and one-third of the staff never returned. She said that "You must keep in mind that your people, your staff will be affected just as much as the people you're serving."⁵⁸

SLLS updates their COOP annually in April before storm season. Their plan is very detailed down to the very basics, *e.g.*, pull the blinds down before leaving. Every year each staff member fills out a form informing the organization where he or she will be when a hurricane hits. Another change spurred by Katrina was moving servers off-site, occasional testing of those servers, and migrating from paper checks to online banking. SLLS's case management system is uploaded into the cloud, so attorneys and volunteers can access the case management database remotely. SLLS has agreements with sister organizations in the civil legal aid field, so that if SLLS's staff is displaced, they can work from sister organizations' offices. SLLS can text clients and send out a blast when a disaster is coming. SLLS also participates in the Louisiana State Bar Association's Disaster Committee and works within that framework to help annually update the statewide plan and a pro bono volunteer plan. Courts are included in statewide planning.

During the 2017 California wildfires, staff from California Rural Legal Assistance were required to wear masks for two weeks because the air was too toxic to breathe. Staff members had family members who died in the disaster. To help staff be available, legal aid organizations needed to provide

RECOMMENDATION C1



ORANGE, CA

Spreading flames from the fast-moving Canyon Fire 2 wildfire in Anaheim Hills—October 2017.

a way for staff to communicate, which involved donating or loaning laptops or cell phones and even providing hotel vouchers.

Bay Area Legal Aid made it their priority to notify their Napa office when the cell towers burned down in the 2017 fires. The program learned quickly that they needed to improve their ability to work remotely, such as having a cloud-based system for documents. The smoke was so bad that they eventually had to close some offices temporarily but were able to have staff remotely handle an emergency hotline number and continue to provide services to the community.

After Hurricane Maria, all of Puerto Rico was without power and unable to communicate. PRLS staff worked out of their parking lot because their building was flooded. They also only communicated in person with employees that came to the office. They were eventually able to set up an emergency

phone line and then worked with the only functioning radio station to broadcast the emergency phone number for employees and clients. As conditions improved, they were able to communicate with the bar association and other legal service providers. They had no COOP or emergency plan at the time, but have since implemented one.

The following outline provides the elements of a comprehensive COOP⁵⁹ that addresses key issues: a clear hierarchy of decision-making authority, procurement of alternate work locations, storage redundancy to maintain access to important documents, and measures to preserve lines of communication. (See Appendix C.) Each COOP plan should be tailored to the risks, hazards, and vulnerabilities specific to the geographic area and facility. It should be updated regularly to account for lessons learned, technological developments, and changes in law or policy.

RECOMMENDATION C1

A. Primary Goals

Before drafting, a legal services provider should brainstorm the primary goals it envisions for its COOP. An effective plan lays out its strategy and planning assumptions upfront. A list of goals might include the following:

- 1. **Preserve individual safety, especially employee health and safety.**
- 2. **Minimize disruptions to operations, including mitigating damages to facilities and resources.**
- 3. **Safeguard client rights and confidential information.**
- 4. **Prepare for and address needs of disaster survivors.**

B. Organization

- 1. **Cover the four phases of a disaster:**
 - Readiness and preparedness:** understanding how a disaster may impact the organization and how education, outreach, and training may build capacity to effectively respond to and recover from a disaster.
 - Activation and relocation:** specifically authorizing individuals to activate the emergency plan at the proper time and assess emergency needs, including relocation, if necessary.
 - Continuity of operations:** triaging issues to address most pressing needs first and returning the organization to as near-normal function as possible under the circumstances.
 - Reconstitution:** assessing long-term organizational needs and returning organization to full strength, including revision of disaster response plan, if necessary.
- 2. **Incorporate user-friendly formats in the COOP for ease of navigation and comprehension:** (a) Table of Contents; (b) Questions & Answers; (c) Step-by-step lists; (d) Charts; (e) Reference Guides for easy transport; and (f) Checklists.
- 3. **Specify planning assumptions upfront.**
- 4. **Utilize pre-existing planning resources, such as emergency planning software platforms.**

C. Key Elements

- 1. **Disaster Specific Responses**
 - Identify disaster risks relevant to the geographic area (*e.g.*, terrorism, tornado, earthquake, hurricane, wildfire).
 - Identify vulnerabilities specific to the facility (*e.g.*, located in a flood zone).
 - Consider that disasters may extend beyond weather-related events (*e.g.*, terrorism, active shooters, pandemics).
 - Include responses to routine disruptions (*e.g.*, one-hour power outage).
- 2. **Authority**
 - Establish who has the authority to implement disaster procedures and in what capacity. This could take the form of a Disaster Response Team with representatives from different departments and identified alternates if designees are unavailable.
 - Designate responsibilities to specified roles rather than individuals due to employee turnover.
 - Avoid vague instructions when assigning tasks.
 - Create orders of succession with a clear hierarchy.
- 3. **Critical Operations**
 - Identify and prioritize essential functions and resources.
 - Consider applying timelines (*e.g.*, functions that should be restored within 24 hours, 48 hours, one week, etc.).
 - Maintain lists of key suppliers, vendors, insurance contacts, etc.
- 4. **Communications**
 - Create communication trees including contact information for all disaster stakeholders and staff.
 - Account for the possibility of electricity and internet failure.
 - Exhaust communication resources: websites, hotlines, radio, social media, voicemail, email, local media, etc.
 - Account for channels of communication between offices, and with staff, clients, vendors, agencies, and courts.

RECOMMENDATION C1

5. Facilities

- Identify and secure alternate work locations. Prioritize other facilities under the direct control of the organization or court to minimize logistical and contractual issues.
- Consider opportunities for teleworking and remote access, including the possibility that lawyers may be displaced and need to work out of geographic areas in which they are not admitted to practice.
- Consider opportunities to share alternate work locations to cut down on cost.
- Maintain an insurance policy and provide for post disaster assessment and filing of appropriate claims.
- Maintain an inventory of essential equipment.

6. Human Resources

- Take stock of available personnel needs and address workplace injuries immediately following a disaster.
- Consider the range of resources the staff may need (*e.g.*, basic technology, hotel vouchers, food, water, child care, physical and behavioral assistance).
- Include means for aiding personnel with disabilities and personnel with family members with disabilities (if children or parents with disabilities do not have their usual level of support, personnel may not be able to return to work).
- Prepare Disaster Response Kits for staff, packed with essentials.
- Plan for continuation of payroll.
- Provide for additional emergency personnel
 - (1) Note whether the state permits lawyers admitted in other states to provide pro bono legal aid.
 - (2) Consider that pro bono lawyers may be conflicted out of certain work.
 - (3) Provide pro bono lawyers with resources and materials to provide effective aid (*e.g.*, webinars, CLE credit, etc.). *See* Section B of this report for additional information.

7. IT/Records Management

- Storage redundancy: routinely back up important documents to remote servers and safeguard hard copies.

- Track equipment needed to provide essential services and acquire such equipment for designated alternate work locations.
- Secure client files in accordance with fiduciary responsibilities.
- Maintain client confidentiality in securing client documents.

8. Agency Coordination

- Include a directory of federal, state and local agencies.
- Establish relationships and make agencies aware of emergency procedures in advance.
- Cooperate with local government, community organizations, and businesses. *See* Section A of this report on relationship-building with key stakeholder organizations.

D. Implementation

1. Training

- See* Section II of this Report for additional resources.
- Create manuals and employ other training methods to educate staff on COOP procedures.

2. Testing and Exercising

- Conduct regular simulations to test efficacy of COOP.
- Include procedures for documenting and reporting tests and their results.

3. Updates

- Create a flexible document. Routinely incorporate lessons from the organization's own experiences and those of other states about methods that were or were not effective.
- Be prepared to adapt to new technology that could further facilitate continuity of operations.
- Establish a time and team responsible for regular review of the COOP, ideally annually. This team should include representatives from across all functional areas of operations and departments.
- Monitor the development of any state law or policy proposals that could impact the COOP.

RECOMMENDATION

C2

Courts Must Maintain Comprehensive, Up-to-Date Continuity of Operations Plans

“ We need to recognize that as much as it's a trauma for our clients and the community in delivering services, we absorb some of that trauma ourselves. And beyond that, our staff have experienced the trauma directly in terms of loss of their own houses and being survivors themselves of the disaster. And still months after the typhoon, it's still a part of the daily conversation about what people have done, and how people have recovered, and what's going on with you. ”

**LEE PLISCOU, EXECUTIVE DIRECTOR,
MICRONESIAN LEGAL SERVICES CORPORATION**

Courts are not immune to the effects of disasters. Disruption to court operations following a disaster interferes with ongoing legal proceedings and leaves individuals without recourse in the face of emerging legal needs. Those jurisdictions that have experienced several disasters appear to have made progress in COOP planning.

Task Force member Jorge Labarga, Justice of the Supreme Court of Florida, stated that immediately after a natural disaster it is important to communicate a clear and concise message that law and order will be maintained. He also highlighted the importance of COOP planning for the court system. He stated that the first challenge is overcoming complacency: “it hasn’t happened here, so it won’t happen here.” Once a court system begins COOP planning, the planning process must create a culture that makes clear the real risk of going through a disaster. Justice Labarga also commented that a COOP planning process must be inclusive, bringing all stakeholders together, not just internal members of the judiciary. He emphasized that one cannot assume that all parties are thinking the same; a better product will result if everyone is involved.

Texas created an Advisory Committee on Judicial Emergency Preparedness and Court Security to review the state’s existing emergency planning and recommend updates and changes. Texas is in the process of reforming the state’s statutory grant of authority to modify procedures when there is a disaster. Contemplated reforms include decentralizing authority, extending time frames to avoid excessive emergency authority renewal requests, and reducing the burden on the Supreme Court. The state does not have a unified court system; however, some counties have entered into Memoranda of Understanding stating that sister counties could borrow their space in the event of a disaster.⁶⁰

Although the court system of the U.S. Virgin Islands had a COOP, they did not anticipate being hit by two Category 5 storms within 14 days of each other, resulting in extensive damage across all three islands. Neither did the plan anticipate back up power generation becoming the primary source of power for several months. The territory had to adjust and modify its plans almost on a daily basis, based on the availability of power, communications, fuel, and other supplies. COOP plans should not only be flexible in terms of routine amendments, but also aim to provide

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adaptability to account for unforeseen challenges that arise during a disaster.

In the aftermath of the flooding from Hurricane Florence in 2017, a North Carolina court found that not only was its primary location destroyed, but its backup location was as well.⁶¹ In brainstorming solutions, the Safety & COOP Manager is considering conducting certain court hearings, such as first appearances or bond hearings, remotely over video as an option of last resort. While this solution requires power and internet connectivity, it would be useful not only in cases of physical destruction of facilities, but also during other disasters where exposure to others would be unsafe, as in a pandemic.

A comprehensive COOP should serve to protect court staff and resume operations to preserve access to the justice system, safeguard litigant rights, and enable the court to support the influx of post-disaster demands. The COOP should incorporate certain fundamental elements and account for challenges unique to the court system. (See Appendix F.) It will cover relevant constitutional or statutory authority, jurisdictional questions in light of displacement, whether and to what extent to suspend procedures and timelines, and methods to preserve case evidence and filings. The COOP should be updated routinely to reflect the most current law, technological resources, and prior experiences. The following outline provides the elements of a comprehensive COOP for the courts.

A. Primary Goals

Before drafting, a court should brainstorm primary goals it envisions for its COOP. An effective COOP lays out its strategy and planning assumptions upfront. A list of goals might include the following:

- 1. Preserve individual safety, especially employee health and safety.
- 2. Minimize disruptions to operations, including mitigating damages to facilities and resources to maintain access to the justice system.
- 3. Safeguard litigant rights and case materials.
- 4. Prepare for and address arising needs of disaster survivors.

B. Organization

A comprehensive COOP covers the four phases of a disaster: 1) readiness and preparedness; 2) activation and relocation; 3) continuity of operations;

4) reconstitution. (See Appendix A) The COOP should resemble a roadmap for each stage of the life cycle of a disaster. Within that overarching structure, a court should thoughtfully organize its COOP to maximize its utility. A strong COOP incorporates user-friendly formats for ease of navigation, transport and comprehension such as: 1) Table of Contents; 2) Questions & Answers; 3) Step-by-Step lists; 4) Charts; 5) Reference Guides; and 6) Checklists.

Other pre-existing templates, planning resources, and emergency planning software platforms are available to aid the drafting process. Three valuable resources include:

- **1. Conference of Chief Justices and Conference of State Court Administrators**
The Conference of Chief Justices and Conference of State Court Administrators created a Security and Emergency Preparedness Committee to develop strategies for courts. The Committee is currently pursuing a grant from the State Justice Institute to study the experiences of state judiciaries that have recently been afflicted by natural disasters. The Committee is dedicated to ensuring that state judiciaries are integrated into a statewide executive COOP plan. Another goal is to modernize and upgrade the National Disaster Center's COOP planning tools.
- **2. Continuity of Court Operations: Steps for COOP Planning**
With the support of a grant awarded by the U.S. Department of Justice, Bureau of Justice Assistance, the National Center for State Courts collaborated with a national coalition to develop a step-by-step COOP planning guide. The guide walks through the stages of developing a COOP in detail and provides worksheets and a sample template. (See Appendix E.)
- **3. Template for Assessing Status of COOP Planning: Louisiana District Courts**
In 2010, the Louisiana Supreme Court requested the Bureau of Justice Assistance Criminal Courts Technical Assistance Project at American University to provide guidance for assessing the status of COOP planning in Louisiana's District Courts. The resulting report produced an assessment template dividing COOP planning into fifteen functional areas. Each area was then broken down into a structured worksheet so local courts could test their current COOP for comprehensiveness. (See Appendix F.)

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C. Key Elements

A court COOP should address as many of the following issue areas as possible to the extent relevant. A model checklist is available in Appendix F.

1. Disaster Specific Responses

- Identify disaster risks relevant to the geographic area (e.g., tornado, earthquake, hurricane, wildfire).
- Consider that disasters may extend beyond weather-related events (e.g., terrorism, active shooters, pandemics).
- Identify vulnerabilities specific to the facility (e.g., located in a flood zone).
- Include responses to routine disruptions (e.g., one-hour power outage).

2. Authority

- Identify any constitutional or statutory authority relevant to court authority during times of emergency.
- Consider whether the court system is unified and, if not, ensure coordination between or among systems.
- Establish who has the authority to implement disaster procedures and in what capacity. This could take the form of a Disaster Response Team with representatives from many departments, with identified alternates, if designees are unavailable.
- Designate responsibilities to specified roles rather than individuals due to employee turnover.
- Avoid vague instructions when assigning tasks.
- Create orders of succession with a clear hierarchy.

3. Critical Operations

- Identify and prioritize essential functions and resources.
- Consider applying timelines (e.g., functions that should be restored within 24 hours, 48 hours, one week, etc.).
- Maintain lists of key suppliers, vendors, insurance contacts, etc.
- Consider the point at which a court may need

to suspend procedures and how that timeline affects filing rights.

- Consider which cases need to be prioritized. Are current trials in progress? Are there state laws and policies in place suspending or extending statutes governing speedy trial provisions?

4. Communications

- Share the status of court operations with other courts, agencies, legal service organizations, state bar organizations, litigants, and the public.
- Create communication trees including contact information for all disaster stakeholders and staff.
- Account for the possibility of electricity and Internet failure.
- Exhaust communication resources including websites, hotlines, radio, social media, voicemail, email, local media, etc.

5. Facilities

- Identify and secure alternate work locations. Prioritize other facilities under the direct control of the court, to minimize logistical and contractual issues.
- Address potential jurisdiction concerns should the court need to be relocated to an alternate facility.
- Consider opportunities for teleworking and remote access.
- Consider opportunities to share alternate work locations to cut down on cost.
- Maintain an insurance policy and provide for post-disaster assessment and filing of appropriate claims.
- Maintain an inventory of essential equipment.

6. Human Resources

- Take stock of available personnel needs and how to address workplace injuries immediately following a disaster.
- Consider the range of resources the staff may need (e.g., basic technology, hotel vouchers, food, water, child care, physical and behavioral assistance).

RECOMMENDATION C2

- Include means for aiding personnel with disabilities and personnel with family members with disabilities (if children or parents with disabilities do not have their usual level of support, personnel may not be able to return to work).
- Prepare Disaster Response Kits for staff.
- Plan for continuation of payroll.
- Provide for additional emergency personnel.
- 7. IT/Records Management**
 - Account for preservation of evidence and case filings.
 - Implement storage redundancy by routinely backing up important documents to remote servers and safeguarding hard copies.
 - Track equipment needed to provide essential services (and acquire for alternate work locations).
- 8. Agency Coordination**
 - Include a directory of federal, state, and local agencies.
 - Establish relationships and make agencies aware of emergency procedures in advance.

D. Implementation

- 1. Training: Create manuals and employ other training methods to educate staff on COOP procedures.**
- 2. Testing**
 - Conduct regular simulations to test the efficacy of the COOP.
 - Include procedures for documenting and reporting tests and their results.
- 3. Updates**
 - Create a flexible document. Routinely incorporate lessons from the court's own experiences and those of other states about methods that were or were not effective.
 - Be prepared to adapt to new technology that could further facilitate continuity of operations.
 - Establish a time and team responsible for regular review the plan, ideally annually. This team should include representatives from across all functional areas of operations and departments.
 - Monitor the development of any state law or policy proposals that could impact the plan.



Joseph Baxter, State Court Administrator, Rhode Island Supreme Court & President-Elect; Nikole Nelson, Executive Director, Alaska Legal Services Corporation; Justice Jorge Labarga, Florida Supreme Court; Judge Jonathan J. Lippman, Of Counsel, Latham & Watkins LLP & Former Chief Judge of New York; and Chief Justice Paul Reiber, Vermont Supreme Court & President, Conference of Chief Justices, speak to the importance of COOP planning.

RECOMMENDATION

C3

States Should Adopt Model Court Reforms

Each state should engage the relevant stakeholders in conversation and assess whether certain model reforms are appropriate for their respective court infrastructures. Many courts have implemented measures that have improved their ability to respond to post-disaster legal needs and resume operations more efficiently. The following are model reforms the Task Force encourage states to consider adopting to enhance their disaster preparedness approaches.

Laura Tuggle, Executive Director, Southeast Louisiana Legal Services shares her reflections on her program's response to and recovery from Hurricane Katrina.



A. Adoption of the “Katrina Rule”

Following Hurricane Katrina, the American Bar Association published the Model Court Rule on Provision of Legal Services Following Determination of Major Disaster, also known as the “Katrina Rule.” (See Appendix G.) The rule permits out-of-state lawyers under the supervision of civil legal aid or pro bono programs to provide temporary pro bono services to residents of another state during a declared emergency. As of October 1, 2018, eighteen (18) states and 1 U.S. territory had adopted the rule or an equivalent.⁶² See Table 1 below. The reform has proven effective in quickly allowing out-of-state volunteer lawyers to assist on the front lines of disaster relief operations.⁶³

Some states rely on ad-hoc versions of the rule in the form of judicial emergency orders. Other states have institutionalized programs requiring out-of-state lawyers to register with an in-state legal services organization while providing pro bono services. Some states have not considered adopting the Katrina Rule at all, in some cases due to lack of awareness, or in other cases, due to lack of necessity. A select few states have rejected it outright.⁶⁴ In most states, the procedure to adopt the rule would require a proposal to be brought to the highest court in the state (usually by the local bar association), followed by an order adopting the rule by that Court. States looking for even more legal support could consider extending the Katrina Rule to temporarily lift limitations on in-house counsel.

B. Extensions of Time

Strict deadlines set before a disaster could become problematic for litigants' rights if there are delays created by a disaster. Accommodating timing allowances can help states ensure that contemplated rights are adequately protected and preserved. For example, states may consider tolling provisions for statutes of limitations, suspending court processes, or changes to how and when to implement filing extensions.

C. Court System Coordination

Unified court systems can facilitate a streamlined flow of information and orders to lower courts. Preparing administrative order templates in

RECOMMENDATION C3

advance can help reduce any burden in disseminating instructions to the lower courts. Ultimately, states should aim to organize their court systems to strike a delicate balance between concentrating authority in the highest court and devolving power among regional courts. Depending on the state's size and the complexity of its needs, this balance will necessarily be unique to each state.

In non-unified court systems, courts should pay special attention to communication pathways and coordination between the various court branches in the event of an emergency. One model to achieve this balance in a non-unified court system is to follow the lead of the Louisiana state courts. See Appendix F. After Hurricane Katrina, the Louisiana court system asked each court to formulate a COOP. To ensure the plans remain updated, the Louisiana Supreme Court monitors actions taken by lower courts to implement the COOP in its annual Performance Report. It requests each lower court to report actions taken across twelve different metrics, including, for example, whether in the past year they have tested their plan on a regular basis, identified or secured an alternate facility, etc. Thereafter the report is published publicly, providing a means of lower court accountability without the administrative oversight of a unified system.

D. Geographic Flexibility

Courts only have authority over defined geographic jurisdictions. However, depending on the nature and extent of the disaster, holding court within the assigned jurisdiction may be unsafe, impractical, or impossible. Physical displacement of courts may require temporary allowances for matters to be heard outside the geographic boundaries of the court's jurisdiction. States should consider that state legislative cooperation may be necessary to facilitate this effort.

E. Specialized Procedures

Niche areas of the law pose unique challenges that may require specialized procedures on a case-by-case basis. In particular, disasters can lead to new tensions in areas of landlord/tenant, family, title dispute, estate, and bankruptcy law.

TABLE 1: "KATRINA RULE" ADOPTION

ADOPTED THE RULE

AZ	CO	DE	GA	IA
IL	LA	MN	MO	ND
NH	NJ	NY	SC	TN
USVI	VA	WA	WI	

DID NOT ADOPT/HAS NOT CONSIDERED

AK	AL	AR	CA	CT
DC	FL	GUAM	HI	ID
IN	KS	KY	MA	MD
ME	MI	MS	MT	NC
NE	NM	NV	OH	OK
OR	PA	PR	SD	TX
UT	VT	WV	WY	

NAPA, CA

Damage after the largest earthquake in the San Francisco Bay Area since the 1989 Loma Prieta—August 2014.



D

RECOMMENDATIONS RELATED TO

Preparing Individuals, Families, and Communities for Disaster



SECTION

D

RECOMMENDATIONS RELATED TO

Preparing Individuals, Families, and Communities for Disaster

Based on consultations with the Task Force committees, field hearings with various stakeholders, and review of disaster preparedness and communications literature, the Task Force has compiled the following recommendations to help prepare low-income individuals, families, and communities to face the most frequent legal issues that arise post-disaster.

These recommendations are designed to address immediate and near-term legal needs post-disaster and chart proactive steps that individuals can take to prepare. In developing these recommendations, we emphasize resources that focus on the prevention of legal issues before they arise, the mitigation of problems while the disaster is ongoing and in the immediate post-disaster period, and effective response strategies for the most common legal issues typically faced by individuals after disasters.

Emergency managers, community-based organizations, COADs/VOADs, and legal services providers can disseminate legal preparedness checklists to individuals in their communities. The checklists cover five broad topics: family law, FEMA applications and appeals, housing issues (for both homeowners and renters), insurance, and legal issues for small businesses. The checklists identify basic, actionable steps that individuals and families can take to prepare for common disaster legal issues. The checklists also can be modified by legal services providers to meet the needs of a particular community or jurisdiction.

In tandem with the checklists, we reviewed social science and disaster-related literature on effective communications strategies and methods of dissemination. Based on this literature and a review of existing disaster preparedness checklists, we have identified best practices for communicating preparedness information.

RECOMMENDATION D1

Improving Individual, Family, and Community Preparedness

Individuals and communities need to increase their level of preparedness for a disaster. There are several low-cost ways for individuals and communities to prepare for a disaster. FEMA provides several resources for individual, family, business, and community preparedness.

RECOMMENDATION D2

Increasing the Legal Preparedness of Low-Income Individuals, Families, and Communities

Legal services providers have a role to play in increasing the level of legal preparedness of low-income individuals, families, and communities. Legal services providers can develop checklists to help low-income individuals, families, and communities prepare for their legal needs pre- and post-disaster. The checklists help individuals and families identify and prepare for common legal issues in various legal areas, and are divided into action steps to be taken pre- and post-disaster.

RECOMMENDATION D3

Providing Disaster Preparedness Information in a Time, Place, and Manner that Promotes Acceptance

Legal preparedness checklists should employ communications best practices and be simple and tailored to the client audience. Checklists should use simple, clear language and identify specific, discrete action steps that individuals can take. Checklists should be easy to find, and may incorporate graphics, symbols, and/or translations to reach their target audiences more effectively or to highlight particularly salient information.

RECOMMENDATION D4

Disseminating the Checklists Through Trusted Messengers and Community Partners

To ensure that the disaster legal preparedness checklists reach their intended audiences, legal services providers should collaborate with trusted community organizations, non-profits, faith-based organizations, and private sector businesses within their target communities. Individuals are more likely to trust and act upon information that they view as credible. The credibility of a message is enhanced when it is repeated, and when it is disseminated via trusted community partners and/or media organizations and platforms.

RECOMMENDATION

D1

Improving Individual, Family, and Community Preparedness

A. Individual and Family Preparedness

Individuals and families can become better prepared for disasters by taking basic steps that would be helpful in a range of post-disaster situations. For example, individuals and families can save for emergencies and download alert and warning apps from emergency management services or other information providers. FEMA's website, Ready.gov, has helpful hazard information, alert messages, and preparatory activities under its "Be Informed," "Plan Ahead" and "Take Action" sections.

“When thinking about being prepared for disaster relief, it's really sort of a way of just life in Alaska. To live there, you sort of have to understand you may be without water, you may be without food, you may be without electricity. And it happens on a pretty regular basis that I'll get a call from one of my offices saying something, for instance, that there's a storm coming in. They can't get to the office, or they've lost connectivity.”

NIKOLE NELSON, EXECUTIVE DIRECTOR,
ALASKA LEGAL SERVICES CORPORATION

Emergency managers have learned that the true first responders are not any local bureau or department, but neighbors. To that end, FEMA has adopted a campaign called: "You Are the Help Until Help Arrives" that emphasizes the importance of individuals taking basic first aid or CPR courses or participating in Community Emergency Response Team training. In addition to learning useful post-disaster skills, individuals who participate in these trainings or take other preparatory steps often feel more empowered and able to cope with the stress of a disaster should it occur.

At the local level, the City of Seattle is also changing its approach to individual and family preparedness and has stopped emphasizing emergency kits because it became a competition and people thought that "the fanciest kit will get you through anything." Instead, the city is spreading the message that "Preparedness is not an activity. It's a lifestyle."⁶⁵ Seattle launched the Seattle Hazard Explorer⁶⁶ website that provides an interactive hazard risk map that enables individuals to look up any address and see the likely impact of particular disasters. The city also has experimented with a social media program that encourages disaster preparedness. Both the map and the program seek to educate individuals on the specific risks they personally face and provide them with resources to tailor a preparedness plan accordingly. Task Force members have also had success developing personalized websites with preparedness information tailored to the individual user.⁶⁷ In order to engage the whole community, Seattle is working with community organizations like food banks to have COOPs, churches to enhance counseling and social services for disaster survivors, and paying stipends to "Community Safety Ambassadors"—multilingual leaders who teach disaster preparedness programs in 20 languages and provide culturally appropriate approaches to outreach.

It is important for legal services providers to develop relationships with federal, state, local, and tribal emergency managers not only to focus on recovery but also to foster a culture of preparedness.

B. Community Resilience

In recent years, the disaster resilience community has been heavily influenced by Professor Daniel Aldrich's work on social capital. His research finds that communities with robust social networks are more resilient after disasters and better able to

RECOMMENDATION D1



KEY WEST, FL

Aerial view of aftermath of the fierce winds of Hurricane Irma in the Florida Keys—September 2017.

coordinate recovery.⁶⁸ Aldrich and others have concluded that community networks remain strong after a local crisis, as survivors borrow tools and resources from one another, and take advantage of their social networks to learn about recovery efforts or bureaucratic requirements.

The Neighborhood Empowerment Network (NEN) in San Francisco has successfully implemented many of Professor Aldrich's ideas regarding community-based disaster resilience. NEN is a cohort of diverse agencies and institutions that work together to create and deploy tools and resources that empower communities to achieve their self-identified resilience goals. Specifically, NEN leverages techniques such as place-based planning, human-centered design, asset-based organizing, and servant leadership to engage communities and ensure the transfer of ownership back to the neighborhood. Twelve communities in San Francisco have partnered with NEN and built a high performing local cross sector of networks, which, in turn, have crafted culturally-specific

resilience action plans that sustain investments at the individual, organizational, and community levels and increase connection, capacity, and the acquisition of essential resources.⁶⁹

Legal services providers with existing community networks in place can use these connections to reach and serve at-risk residents or can begin to create them well in advance of the next disaster. Working with businesses, and community- and faith-based organizations, legal services providers can help provide a continuum of support to a particular community, ensuring that individuals have trusted sources for disaster preparedness information when the need arises. NEN's experience has shown that, to make a behavioral change, an individual first needs to be encouraged to make the change from several trusted sources. By partnering with organizations that already have the trust of, and standing within, a particular client community, legal services providers will be able to communicate more effectively and help coordinate the post-disaster resolution of legal concerns.

RECOMMENDATION

D2

Increasing the Legal Preparedness of the Low-Income Individuals, Families, and Communities

Legal services providers have a role to play in increasing the level of legal preparedness of low-income individuals, families, and communities. Legal

services providers can develop checklists to help low-income individuals, families, and communities prepare for their legal needs pre- and post-disaster. The checklists provide high-level resources to help individuals and families identify and prepare for common legal issues and are divided into action steps to be taken pre- and post-disaster. Where applicable, the checklists point to issues or resources that may have special application to particular communities, such as tribal communities or residents of rural areas. The checklists are also designed to be modular and adaptable, so that local legal services providers can tailor them to the needs of their specific target audiences.

The following preparedness checklists address some of the most common legal challenges that individuals face after disasters. These checklists are designed for use by individuals both before and after a disaster and are not meant to be exhaustive or tailored to the specifics of any particular jurisdiction or post-disaster situation. Many legal services providers will conduct “legal checkups” with their clients. These checklists can be integrated into those checkups. Legal services providers are encouraged to build upon and modify the checklists to meet the needs of their client populations.⁷⁰

Barb Graff, Director of Emergency Management, City of Seattle; Father Pius Pietrzyk, Board Member, Legal Services Corporation & Chairman, Department of Pastoral Studies, St. Patrick's Seminary; Kathleen Fox, Asst. Vice President for Safety & Security Strategic Operations, George Washington University & Former Assistant Administrator for National Preparedness, FEMA; and Daniel Homsey, Director, Neighborhood Empowerment discuss strategies to increase individual, family, and community preparedness.



RECOMMENDATION D2

A. Family Law Checklist

Disasters can substantially impact family law-related arrangements on which individuals depend. Displacement following a disaster can impact custody, visitation, and child support arrangements. In addition, a 2015 study by the International Federation of Red Cross and Red Crescent Societies concluded that incidents of domestic and sexual violence increase in the wake of a disaster—owing to a loss of family members and homes, scarcity of basic resources, displacement, increased stress, and marital conflict.⁷¹ As a result, past or potential survivors of domestic violence are particularly at risk following a disaster. For all those reasons, families and individuals should plan for the unique family law-related legal challenges that can arise in a disaster's wake.

Before the Disaster

- 1. Make copies of your important legal documents and store the originals somewhere safe, like a fireproof and waterproof safe, a safe deposit box in your bank, or another secure location in your home.**

Keep the copies somewhere safe as well.

If available, you may want to store copies in a password-protected location in the cloud or in a safe physical location. Important documents include identity documents such as:

- driver's license,
- state ID, passport,
- social security card,
- birth certificates,
- marriage and death certificates,
- adoption papers,
- child custody documents,
- divorce decrees, and
- settlement agreements.

- FEMA has a list of important documents available in print and online free of charge in its Emergency Financial First Aid Kit.⁷²
- If you are an immigrant, your important documents may include your green card or residence card, work authorization, and any naturalization or citizenship documents.
- If you are a survivor of domestic violence, your important documents may include protective orders.
- If you have a child custody arrangement, important documents may include your child custody order or authorization agreements.
- If your child is on an Individual Education Plan or 504 Plan, keep a copy of that plan somewhere safe in case your child's schooling is interrupted due to a disaster.

After the Disaster

- 1. Replace Vital Documents as Necessary**

- If you need to replace vital documents, refer to www.usa.gov.⁷³

- 2. Domestic Violence Issues**

- If you have lost a protective order, contact the court clerk in the court in which you received the protective order for another copy.
- If you have relocated to a different state because of the disaster, a protective order likely is still enforceable. If you believe an attacker is going to breach the protective order, call 9-1-1.

- 3. Child Custody**

- If parents have joint custody and conditions are worsening or disaster is approaching, the custodial parent should make a good faith effort to contact the other parent. To the extent possible, make a record or note of such efforts.
- If it is unreasonable to return children due to disaster-related conditions, take pictures of the conditions to provide proof to the judge.

- 4. Additional Resources for Particular Communities—e.g., Texas Law Help⁷⁴**

RECOMMENDATION D2

B. Housing Issues Checklist—Homeowners

Major disasters can all have significant impacts on the homes of disaster survivors. Whether you rent or own your home, your residence may be uninhabitable for several months following a disaster and require extensive and costly repairs. Some individuals also experience difficulties and delays in obtaining aid from FEMA or other relief organizations because they lack the proper papers showing that their home is their primary residence. The following checklist identifies steps you can take before and after a disaster to alleviate some of the common legal issues related to housing.

Before the Disaster

- 1. **Gather your residency documents and store them somewhere safe, like a waterproof and fireproof safe on your property, a safe deposit box at the bank, or another secure location in your home.** If available to you, a password protected location in the cloud is a good place to store copies.
 - If you own your home, you can prove your ownership by using your deed, title, bill of sale or land installment, mortgage payment booklet or other mortgage documents, property tax bills and/or tax receipts, or your homeowners' insurance policy.
 - If you inherited your home, check that the title is clear and that the title to your home is in your name and that the documentation is in a safe place.
 - This may involve conferring with an estate-planning lawyer who can ensure that the home is properly in your name. Besides ensuring the home is in your name, update the home insurer as well. If there is no insurance on the home, consider purchasing a homeowner's insurance policy.
 - Other documents that can prove you occupy a property include utility bills, a current driver's license, or paystubs made out to your address.
 - Keep a copy of your utility bills or account paperwork so that you can contact your providers after a disaster.
 - Make sure you have the contact information for your lender or bank so that you can contact them after a disaster. This information will probably be included in the ownership documents described above.
- Check in annually with your homeowner's insurance company. If you do not have one, please consider using one.
- See **Insurance Checklist** for more information.
- Keep a list of recommended or previously used contractors (e.g., electrician, roofer, plumber, general contractor) in the event of potential post-disaster repairs. This can help you avoid contractor fraud. See more below.

After the Disaster

- 1. **Do not assume you can stop paying your mortgage.**
 - Contact your lender. Many lenders will offer a grace period during which you may not have to pay your mortgage. The exact terms will vary depending on the lender, and interest may continue to accrue even while payments are deferred.
 - Find out who owns and services your loan. Different lenders will offer different assistance options.
 - Contact your lender to discuss your options. Government lenders with established procedures for helping homeowners in disaster situations are listed below, but many private lenders will also work with affected homeowners to establish a payment plan.
 - Fannie Mae⁷⁵
 - Freddie Mac⁷⁶
 - Federal Housing Administration⁷⁷
 - Rural Development Agency⁷⁸
 - Veterans Administration⁷⁹
 - Continue to pay your maintenance fees to your homeowners or condominium association.
 - Document all your conversations with your lender and keep records of your payments.
 - If you own a farm and have sustained damage to your barn, crops, livestock, etc., contact the Farm Services Agency.⁸⁰
 - Consult with a HUD-approved housing counselor or legal aid attorney if you need further assistance.
 - HUD⁸¹
 - Legal aid⁸²

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2. Avoid contractor fraud.

- Beware of out-of-state contractors, and work with your state's homebuilders' licensure board.
- Ask for written estimates and references from potential contractors.
- Collect contact information from your contractor, including name, phone number, business name, business address, and references.
- Confirm that your contractor has a current, valid license with your state's contracting authority. Do the same for any sub-contractors that will work on your property.
- Confirm that your contractor has the necessary insurance.
- Check for any complaints against your contractor with your state Attorney General's office and the Better Business Bureau.
- Get a contract and read it carefully before signing. Your contract should cover the cost of the project, the work to be done, the materials to be used, the start date and the duration. Typically, contracts will specify that it is the contractor's job to secure any necessary building permits. Take your time reviewing the contract and make sure everything you have been promised by the contractor is included in the contract. **Do not sign a contract with blank spaces that have to be filled in or a contract that you do not understand.**
- If you need a loan to finance your repairs, contact your bank or a reputable lender. Be wary of accepting financing from your contractor. Oftentimes these agreements allow the contractor to place a lien on your home and/or foreclose if you miss a payment.
- Pay your contractor by check, credit card, or money order. Keep records of all your payments. Do not pay your contractor in cash.
- Keep notes or records of your conversations with your contractor. Take photographs of the work done as the project progresses.
- Only make your final payment and sign a release when the work is complete.

“Disasters don't come neatly packaged in a little box and then are over. They tend to have iterative events afterwards that continue to add layers of pressure and stress on these communities.... But the truth is that really, really well-organized communities that take on the responsibility of their resilience every day are really well positioned to survive a disaster.”

**DANIEL HOMSEY, EXECUTIVE DIRECTOR,
NEIGHBORHOOD EMPOWERMENT NETWORK**

RECOMMENDATION D2

C. Housing Issues Checklist—Renters

Major disasters can have a significant impact on the homes of disaster survivors. Whether you rent or own your home, your residence may be uninhabitable for several months following a disaster and require extensive and costly repairs. Some individuals also experience difficulties and delays in obtaining aid from FEMA or other relief organizations because they lack the proper papers showing that their home is their primary residence. The following checklist identifies steps you can take before and after a disaster to alleviate some of the common legal issues related to housing.

Before the Disaster

- 1. Gather your residency documents and store them somewhere safe, like a waterproof and fireproof safe on your property, a safe deposit box at the bank, or another secure location in your home.** If available to you, a password protected location in the cloud is a good place to save additional electronic copies.
 - If you rent, you can use your lease, records of your rent payments, or utility bills to prove your tenancy.
 - Other documents that can prove you occupy a property include utility bills, a current driver's license, or paystubs with your address listed.
 - Keep a copy of your utility bills or account paperwork so that you can contact your providers after a disaster.
 - Make sure you have the contact information for your landlord so that you can contact them after a disaster. This information will probably be included in the rental documents described above.
- 2. If you do not already, obtain renter's insurance and know what types of disasters your policy covers.**
 - Check in annually with your renter's insurance company. If you do not have one, please consider using one.
 - For more information, see the **Insurance Checklist**.

After the Disaster

- 1. Do not assume you can stop paying your rent.**
- 2. Contact your landlord immediately to determine an action plan.**
 - Photograph/document the damage to the apartment.
- 3. Check your lease before making repairs.** Your lease may have provisions that set out your and your landlord's rights and obligations with respect to repairs, notice, and termination of your tenancy. You and your landlord will have to comply with the lease, as well as with any applicable state and local laws before taking action to modify your rent payments or end your tenancy.
 - If your rent is subsidized, contact the government agency that helps you with your rent. You may be entitled to a rent reduction.
 - Document all your conversations with your landlord and keep records of all your rent payments.
 - Speak to a HUD-approved housing counselor or legal aid attorney before deciding to withhold your rent.
 - HUD⁸³
 - Legal aid⁸⁴

RECOMMENDATION D2

D. Insurance Checklist

Obtaining and knowing how to utilize one's insurance is an important component of any effective disaster preparedness plan. Because disaster risks vary by location, it is important that individuals obtain the right insurance coverage for the disaster risks particular to them. In addition, individuals can better prepare to make use of that insurance when a disaster occurs by taking steps ahead of time to inventory their valuables and taking steps after a disaster to document damage and file claims efficiently and thoroughly.

Before a Disaster

- 1. If you do not already have it, obtain necessary homeowner's or renter's insurance and ensure that the policy is sufficient for common disasters in the area.** Note that many standard policies do not cover floods, earthquakes, land movements, and certain hurricane damage. If you live in an area where these events are common, you may wish to obtain additional coverage.
 - Maintain an insurance policy even if your home is paid in full or no longer under a mortgage.
 - If you are a renter and floods are a risk in your area, be sure that your policy covers flood damage or obtain an additional policy. See Heartland Flood Help⁸⁵ or the National Flood Insurance Program⁸⁶ for more information.
 - If you own a car, obtain car insurance if you have not done so. Note that often car insurance policies *do* cover flood damage.
 - If you have questions about your insurance or about getting insurance, consider reaching out to United Policyholders⁸⁷, a nonprofit that provides information on insurance in all 50 states.
- 2. Create a home inventory and store it in a safe location like a waterproof and fireproof safe on your property, a safe deposit box at the bank, or another secure location in your home.** If available to you, a password-protected location in the cloud is a good place to save copies.
 - Your inventory should include copies of important documents, such as the insurance policies themselves, birth and death certificates, wills, and prescriptions.
 - Take photographs of high-value items, using both close-up and wide angle shots.
 - Keep your insurance agent's contact details with your policy and inventory. The contact details should include the agent's phone number, mailing address and website, as well as your policy numbers.
 - A sample home inventory form is available on www.ok.gov.⁸⁸
- 3. Review your inventory every year and make any changes that are necessary.** Consult your insurance agent to clarify your coverage and answer any questions.
- 4. Review your insurance policy.** If you did not confirm when purchasing your policy, make sure your policy covers common disasters in your area.

RECOMMENDATION D2

Acceptable Documentation for Common FEMA Denial Reasons

REASON FOR DENIAL	ACCEPTABLE DOCUMENTATION
<ul style="list-style-type: none"> ■ Identity not verified 	<ul style="list-style-type: none"> ■ Official government document (social security statement, etc.) ■ Copy of driver's license
<ul style="list-style-type: none"> ■ Ownership not verified 	<ul style="list-style-type: none"> ■ Deed, title, or official record ■ Real estate tax bill or receipt ■ Will or proof of inheritance ■ Mortgage statement ■ Proof of insurance coverage (settlement or denial), or statement from insurance provider
<ul style="list-style-type: none"> ■ Occupancy not verified 	<ul style="list-style-type: none"> ■ Official government document (social security statement, etc.) ■ Copy of driver's license ■ Landlord's statement or copy of lease ■ Rent receipts ■ Utility bill reflecting damaged residence address ■ Voter registration card or merchant's statement
<ul style="list-style-type: none"> ■ Insufficient damage/Damage not disaster-caused 	<ul style="list-style-type: none"> ■ Contractor's statement or estimate ■ Mechanic's statement or estimate ■ Statement from local official ■ Receipts for expenses caused by the disaster
<ul style="list-style-type: none"> ■ Insurance may cover losses 	<ul style="list-style-type: none"> ■ Receipts for expenses caused by the disaster ■ Proof of insurance coverage (settlement or denial), or statement from insurance provider

SOURCE: https://www.disasterlegalaid.org/legalhelp/item.5466-Appeal_Your_FEMA_Decision.

After a Disaster

- **1. If you have insurance:**
 - Photograph or videotape the damage before making any repairs.
 - Make temporary repairs if necessary to prevent further damage and keep all receipts.
 - Beware of contractors going door-to-door or using aggressive sales tactics. Ask potential contractors for references, proof of insurance, and their license.
 - When signing a contract with anyone who does home repairs, check that the contract lists all costs for labor and supplies and provides a defined timeline for completion.
 - File your insurance claims as soon as possible. You may not be eligible for other types of aid, including FEMA individual assistance, until your insurance claims have been filed and processed. If the damage is extensive, paint the insurance company's name, your policy number and temporary address on a sheet of plywood so the adjuster can find house easily.
 - Keep records of all your correspondence with the insurance company including contact information, date, time, and notes of what was discussed.
- **2. If you do not have insurance:**
 - Contact government agencies nationally or in your area.
 - You can apply for FEMA assistance if the President declares your state a major disaster area.⁸⁹
 - The Small Business Administration offers low-cost loans to individuals and repair an individual's primary home or damaged belongings.⁹⁰
 - Many non-governmental organizations, such as the Red Cross, Salvation Army and World Renew, offer assistance to those affected by disasters without insurance. There may also be local organizations in your area that can help.
 - Faith-based charitable organizations in your area may also be able to offer assistance. The National Disaster Inter-Faiths Network maintains a list here: <http://www.n-din.org/>

RECOMMENDATION D2

E. FEMA Appeals Checklist

After a disaster, individuals can apply for assistance from FEMA. This assistance is intended to address essential post-disaster needs, such as temporary housing assistance or repairs to your primary residence. FEMA cannot duplicate assistance that an individual receives from his or her insurance company. Once you have submitted your initial application for assistance, FEMA will conduct an inspection of your home and review your application to determine if you qualify for a grant. FEMA will then send you an initial decision letter stating whether you are eligible for assistance. If the agency determines you are not eligible, it will say so in the letter and explain why. Many disaster survivors receive denials of their initial disaster relief applications to FEMA. Following Hurricanes Maria and Harvey in 2017, for example, FEMA denied, partially or fully, over half a million initial requests.⁹¹ Denied applicants have the right to appeal FEMA's decision—so it is important that individuals are properly prepared to submit an appeal. You have an opportunity to appeal FEMA's decision by following the steps in the checklist below.

- 1. Know your deadline.** Unless you can show good cause for delay, you have 60 days from the date of FEMA's initial decision letter to submit your appeal.
- 2. Make sure FEMA has your up-to-date contact information.** You can update your address and telephone number with the agency online at DisasterAssistance.gov⁹² or by calling the FEMA helpline.
- 3. Review FEMA's initial decision letter and determine why you were deemed ineligible.** A list of reasons for FEMA denials can be found on the FEMA website.⁹³
- 4. Prepare your appeal.**
 - Include a copy of your initial decision letter.
 - Write an explanation of why you think FEMA's decision was incorrect.
 - Compile any supporting documentation that supports your claim and that FEMA may have requested. The table at left sets out acceptable documentation for common FEMA denial reasons.
 - If someone from outside your household writes your appeal for you, you must include a separate signed statement stating that the writer was authorized to act on your behalf.
 - Legal services organizations or pro bono attorneys may be available to assist you with preparing your appeal.
- 5. Submit your appeal.** FEMA appeals may be submitted online at DisasterAssistance.gov, in-person at a FEMA Disaster Recovery Center, or by fax or mail. Appeals cannot be submitted by email.
- 6. Additional Resources:** FEMA's Individual Assistance Program & Policy Guide.⁹⁴

RECOMMENDATION D2

F. Small Business Law Checklist

On average, 40% of small businesses fail after experiencing disasters such as hurricanes, floods, or wildfires, and more than 95% of small businesses will experience losses in revenue.⁹⁵ Small business owners can protect themselves and their employees against these risks by taking steps to prepare themselves and their businesses before a disaster hits.

Before a disaster

- 1. Identify risks to your business.** Which natural or man-made disasters could affect your business and would be likely to occur in your area?
 - Examples include physical risks to building and property, damage to suppliers, inability to get clients to your physical location.
 - Use the free worksheet at www.readyrating.org to assess your risks.⁹⁶
 - Review the hazard-specific Ready Business toolkits available in both English and Spanish from FEMA at www.ready.gov/business.⁹⁷
- 2. Create a preparedness plan.**
 - Estimate costs associated with these risks. FEMA has a worksheet to help with these calculations.⁹⁸
 - Ask yourself:
 - How will I ensure the well-being of employees?
 - What is the stability of my business location's environment?
 - How will I keep the business running?
- 3. Prepare your assets.**
 - If possible, put away reserve funds in case of a disaster to continue operations. The general rule of thumb is to reserve enough funds for at least two weeks of operating expenses.
 - <https://www.ready.gov/financial-preparedness>⁹⁹
- 4. Ensure data privacy and protection for your business's records.**
 - Take steps to protect your servers.
 - Back-up your business information to a secure online server.
 - Install a firewall and regularly update it to protect your data. Cyber security attacks increase during a disaster, which can compromise client data.
 - Practice accessing the backup data from remote locations using different equipment.
- 5. Protect your employees.**
 - Develop an Emergency Action Plan for your business. OSHA requires that all organizations with a staff of ten or more have an Emergency Action Plan. (29 CFR 1910.38). Have emergency steps, escape routes and emergency numbers clearly posted.
 - Inform all employees of the preparedness plan. Conduct evacuation drills with your employees.
 - If your business is large enough to have separate departments, develop a committee to identify disaster-related risks in each department.
 - Train staff in first aid and CPR and keep first aid kits stocked and available.
- 6. Review business insurance coverage.** Keep in mind that floods and earthquakes are not typically covered by regular insurance plans. You may wish to purchase additional coverage for these events.

After a Disaster

- 1. Check online for disaster declarations in area.**¹⁰⁰
- 2. Assess the damage and document it by taking photos and/or videos for your insurance company.**
- 3. Contact your insurance agent and file your claim quickly.**
- 4. Apply for a loan from the U.S. Small Business Administration (SBA) for expenses that are not covered by your insurance.** The SBA offers two types of loans to help disaster survivors:
 - Business Physical Disaster Loans for businesses to fund repairs or replace disaster-damaged property of up to \$2 million.
 - Economic Injury Disaster Loans are working capital loans to help small businesses meet their ordinary financial obligations
 - SBA's website is here: <https://disasterloan.sba.gov/ela/Declarations/Index>.¹⁰¹ You can also reach the agency by phone 1-800-659-2955 (TTY: 1-800-877-8339) or email disastercustomerservice@sba.gov.
- 5. Check if the damage to your business qualifies you for any special federal income tax provisions such as casualty loss deductions or deferrals of casualty gains.**

RECOMMENDATION D2

6. Other Resources:

□ American Red Cross Ready Rating Program (www.readyrating.org)

Free program organizations can join to access preparedness assessments, Emergency Action Plan templates and other resources for improving organizational preparedness.¹⁰²

□ Ready.gov/business (FEMA)

Has many business-focused tips and resources on what to do during different types of disasters.¹⁰³

□ National Disaster Help Desk

Provides assistance to businesses struck by disasters across the country. Dial 1-888-MY-BIZ-HELP or 1-888-692-4943 to get help navigating the disaster assistance realm.

□ Information to Help Small Business Owners Make Post-Disaster Business Decisions

Provides perspective and asks the difficult questions that need to be asked after a disaster, such as whether it is a good idea to re-open or not, and long-term issues to consider.

□ Disaster Recovery and Continuity Guide

This guide provides worksheets and question matrices on all things recovery. Starts with basic planning tips, hazard assessment, etc., but the bulk of this guide is in recovery, with useful worksheets (ignore Colorado-specific numbers).

□ Disaster Recovery Guide for Business

A working guide to help a business think through what it needs to do after a disaster using worksheets, checklists, tables, etc. Includes an assessment of the business post-disaster, whether re-opening is feasible, funding, and re-opening steps.

□ Disaster Recovery Toolkit for Small Businesses

Helpful guide with checklists and prompts on all recovery topics.

□ Business Recovery Planning Success Stories

Provides six different lessons-learned stories from businesses affected by disasters.

□ Tax Relief in Disaster Situations

Links to disasters across the US and the resources, information, and tools for each region.

□ Disaster Preparedness and Recovery for Community Development Organizations

Getting Back to Business (pages 37-41) provides tips and thoughts for Community Development Organizations and small businesses. Rest of document covers pre-planning and Business Continuity Planning/COOP.

□ Hurricane Preparedness for Business: What to do Before, During and After a Disaster

Use the Recovery Checklist "After the Storm" (pages 3-5) for bullet points of different ideas and issues to consider.

□ Community Economic Recovery Guidebook

This is a helpful guidebook that covers all phases of planning for a disaster, specifically Recovery (pages 10-12). It gives tips, resources, and other websites that can provide perspective and assistance.

□ Helping Families Recovery After Disaster: The Family Financial Toolkit

As small businesses owners need to also take care of disaster impacts at home, this toolkit provides resources, lessons learned, case examples, etc.

□ Business Continuity and Disaster Recovery Checklist for Small Business Owners

Eleven simple, great tips for recovery.

□ Disaster Cleanup

Tips and resources from the SBA that includes fact sheets and info from CDC, EPA, FEMA, OSHA.

□ "Getting Back to Business" brochure from the Institute for Business and Home Safety.

□ Relief and Recovery Assistance Guide

Great recovery information with good tips to navigate recovery, registrations, national resources, etc. (ignore New Jersey or Sandy-specific contact information).

□ Business Continuity Plan: Components and Sequencing Description

A Recovery Plan template with tables, checklists, Yes/No questions, etc.

□ Small Business Disaster Recovery Checklist

Four quick tips to prepare for recovery.

□ Disaster Recovery: Best Practices

This guide details how to create a recovery plan for businesses.

RECOMMENDATION

D3

Providing Disaster Preparedness Information in a Time, Place, and Manner That Promotes Acceptance

Legal services providers should use best practices to communicate legal preparedness information to prospective disaster survivors. The information presented should be simple, tailored to the client audience, and credible. Checklists should use direct, clear wording and identify specific, discrete action steps that individuals can take. Checklists should be easy to find and to read, and may incorporate graphics, symbols, and/or translations to

more effectively reach their target audiences or to highlight particularly salient information.

In preparing these recommendations, we examined existing disaster preparedness checklists and relevant websites to identify best practices that could be incorporated into checklists for legal preparedness topics. The Taskforce reviewed websites that publish general disaster preparedness materials (e.g., Ready.Gov, FEMA, the Red Cross and the U.S. Small Business Administration), as well as websites with a legal focus (e.g., Legal Aid of West Virginia, Legal Aid of Iowa, and the State of Rhode Island Emergency Management Agency).

This exercise revealed that the most effective checklists are those that are concise and to-the-point. In addition, preparedness checklists benefit from having large icons and check boxes or places for individuals to fill out relevant information. If accessible online, checklists should be easy to find on an organization's webpage. Checklists should be formatted or modifiable in such a way that they are easily printed, so that they can be distributed to disaster survivors in-person at relief stations, community organizations, etc. Finally, checklist providers should consider whether checklists need to be available in multiple languages (including Braille), given the demographics of the affected population.

Preparedness websites may benefit from incorporating short videos or personal narratives to help humanize the checklists and emphasize their importance. Such websites may have separate tabs or side panels for individuals and groups with discrete issues—such as students, the elderly, or small businesses—all of which should be easy to navigate and visible. Lastly, preparedness websites benefit from having clear messages with pictures, illustrations, or other imagery that draw the user's attention and emphasize the importance of taking preparedness actions.

The Task Force surveyed existing social science literature on effective pre-and post-disaster communications to glean lessons regarding dissemination of legal preparedness information. This literature repeatedly emphasizes that establishing the credibility of a preparedness message is key to encouraging individuals to adopt and ultimately act upon the information. The credibility of a message is enhanced when the message is repeated, preferably by multiple sources and across multiple platforms.

“We’re trying to be more sensitive to what people live with, whether they’re low-income or linguistically isolated, or have some other challenge. We try to meet them where they are. We’re also trying to do more survivor stories... to tell their stories on their own behalf. It’s not your government telling you what you should do. It’s people who look like you and sound like you and understand your lifestyle who say: ‘I’ve got an important lesson to share with you. We look alike, we sound alike, you can trust me.’”

**BARB GRAFF, DIRECTOR OF EMERGENCY
MANAGEMENT, CITY OF SEATTLE**

RECOMMENDATION D3



Lone Star Legal Aid Client, Liza Leal and Carla Krystyniak, Equal Justice Works Fellow, Lone Star Legal Aid talked about the legal assistance Ms. Leal received as she and her family recovered from Hurricane Harvey.

Effective disaster preparedness communications should take into account timing. Individuals coping with disasters tend to believe the first message they hear. Being the first to disseminate a communication can establish an organization as a credible source of information and increase its impact. Legal services providers and emergency managers also should consider whether certain preparedness information is best shared pre- or post-disaster. In general, communications should be timed so that their substance is useful when it is received. Agencies and individuals who are using the checklists should get the word out early and to as many people as possible. Partnering with local organizations can help facilitate this goal. The information should be distributed well before a disaster occurs through a variety of methods such as social media, print, and online.

After the disaster, the organizations should communicate as swiftly as practicable (taking into account that individuals may first need to secure their physical safety before they can turn to addressing legal issues) and continue to communicate frequently for those that did not receive the information initially. This outreach can include going door-to-door, broadcasting via radio, television, and social media, and putting up physical flyers.

Effective preparedness communications also promote action by individual recipients. In other words, preparedness information should provide specific guidance about what actions to take and explain how those actions can prevent or minimize future losses. In the experience of Task Force members, individuals are most motivated to prepare for a disaster when working to protect their families or their communities. When legal services providers speak to individuals or organization leaders to enhance their preparedness, providers should stress the negative impacts a family or community would experience if preparedness actions are not taken. Encouraging the public to take affirmative steps reminds individuals of the consequence of inaction; in the context of post-disaster legal issues, these consequences can be devastating, and include the loss of a home or considerable legal and financial frustrations. Giving real life examples, such as describing a person who failed to obtain insurance, could not make mortgage payments after a disaster, and experienced foreclosure, can encourage people to do more than just read the steps they should take. Action steps should be described simply, in short groups or acronyms. Such steps tend to be more effective when framed as positives (*e.g.*, “boil drinking water” or “stay calm”) instead of negatives (*e.g.*, “don’t drink the water” or “don’t panic”).¹⁰⁴

RECOMMENDATION

D4

Disseminating the Checklists Through Trusted Messengers and Community Partners

To ensure that checklists reach their intended audiences, legal services providers should consider partnering with trusted community organizations, non-profits, faith-based organizations, and private sector businesses within their target audience.

In working with specific communities to enhance disaster preparedness, legal services providers should be mindful of how they can tailor particular preparedness information for the client community. Adapting a preparedness message to its target audience may involve focusing on the types of disasters most common in a particular area, the needs of the population, the languages spoken, and the medium that would reach the most people. Legal services providers and emergency managers should consider using specialized and diverse media platforms to communicate preparedness information, such as local radio stations and media outlets or online channels that target particular populations. Having communications in multiple languages or using images to illustrate certain key points also may broaden the reach of the legal preparedness information. When taking into account their prospective audiences, legal disaster preparedness checklists should consider that disaster survivors often experience heightened feelings of vulnerability and uncertainty. Social science literature suggests that effective communications do not disregard this experience, but rather convey empathy and respect.

Contact FEMA's Individual and Community Preparedness Division at FEMA.Prepare@fema.dhs.gov to learn more about preparedness partnership opportunities in your community.

“ We don't do disaster response community education. We just do community education, and disaster response is always part of it. When we go out to the community... you say, we do eviction defense, foreclosure defense, and then you also say, we do disaster response. ”

**MONICA VIGUES-PITAN, EXECUTIVE DIRECTOR,
LEGAL SERVICES OF GREATER MIAMI, INC.**

CONCLUSION

With the frequency and intensity of natural disasters increasing at a dramatic rate, it appears that no community is safe from potential harm. With the disproportionate impact disasters have on low-income individuals and families, it is imperative that the legal services community become better equipped to address the legal issues of disaster survivors. This comprehensive report provides a host of recommendations to guide legal services providers in building a systematic, coordinated, and sustainable approach to helping low-income individuals, families, and communities prepare for, respond to, and recover from a disaster. The foundation for success is engaging with the emergency management community, community-based organizations, pro bono attorneys, the business community, and other volunteers in your service areas. Task Force members and other stakeholders plan to continue work on these important issues. To that end, the Legal Services Corporation welcomes your assistance in helping to implement these recommendations. We look forward to the next phase of our work.

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THE TASK FORCE

This Report is the result of months of hard work by the distinguished and committed members of the Task Force. LSC is grateful for the dedication, energy, and expertise that Task Force members contributed to exploring how legal services providers could better integrate into the nation's emergency management infrastructure to better serve low-income disaster survivors. A complete list of Task Force members appears below.

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HOUSTON, TX

Flooded neighborhood
after Hurricane Harvey
dumped record rainfalls over
four days—August 2017.





APPENDICES

APPENDIX A

Glossary of Terms

211 Resource Directories: 211 is a service provided by United Way and is the most comprehensive source of local human and social services information in the US and most of Canada. People in need of help can dial 211 to speak with a community resource specialist in their local area that can help them find critical services such as emergency information and disaster relief.

Access and Functional Needs (AFN): Access and Functional Needs denotes individuals who are/ have limited English fluency; children; seniors; pregnant women; chronic conditions/injuries; developmental, intellectual, physical disabilities; homeless; transportation disadvantaged; those living in poverty. It is important to integrate this community into disaster plans, since they are disproportionately affected in emergencies.¹⁰⁵

Community Organizations Active in Disaster (COAD): A group of community organizations, businesses, nonprofits and individuals working together to plan community responses to a variety of emergency and disaster situations.¹⁰⁶

Conference of Chief Justices (CCJ): The CCJ is comprised of the chief justices in the United States. It is devoted to discussing methods to improve the administration of justice, rules, procedural issues, and the operation and organizational structures of the judicial system and state courts. Membership in CCJ includes the chief justices from all fifty states, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, Puerto Rico, and the District of Columbia. It is governed by a Board of Directors. Under the CCJ are several committees which help to meet the organization's objectives, addressing issues such as mass torts and violence against women.¹⁰⁷

Conference of State Court Administrators (COSCA): Established in 1955, COSCA's mission is to improve state court systems and services. Membership is comprised of the state court administrator (or equivalent official) from all 50 states, five US territories, and the District of Columbia.¹⁰⁸

Continuity of Operation Planning (COOP): A COOP is a resource plan that allows federal government agencies and departments to continue operating even under national security threats, natural hazards, and technology threats. It establishes plans to activate selected

personnel, equipment, records, and software to an alternative site in order to continue operations.¹⁰⁹

Disaster Recovery Center (DRC): A readily accessible facility or mobile office in federally declared disasters where FEMA provides status information and updates to client applications, as well as general information on FEMA disaster assistance. Representatives from the Governor's Office of Homeland Security and Emergency Preparedness, the Federal Emergency Management Agency, U.S. Small Business Administration (SBA), volunteer groups, and other agencies are at the centers to answer questions about disaster assistance and low-interest disaster loans for homeowners, renters, and businesses. They can also help survivors apply for federal disaster assistance.¹¹⁰ A DRC may act similarly to a MARC (see below) by including other federal, state, local, and voluntary agencies within the same or a similar facility to provide information on their disaster assistance programs.¹¹¹

Emergency Management Assistance Compact (EMAC): The Emergency Management Assistance Compact is an all hazards—all disciplines mutual aid compact that serves as the cornerstone of the nation's mutual aid system. EMAC offers assistance during governor-declared states of emergency or disaster through a responsive, straightforward system that allows states to send personnel, equipment, and commodities to assist with response and recovery efforts in other states.

FEMA's Individuals and Households Program (IHP): Under the Stafford Act, FEMA's IHP provides aid to an individual is either underinsured or uninsured and is affected by disaster. IHP is not structured as a substitute for insurance, nor can it compensate for all losses caused by disaster—rather, it meets basic needs and supplements other aid. FEMA can provide funds to reimburse lodging, pay rent, repairs and construction, among other needs.¹¹²

International Association of Emergency Managers (IAEM): A non-profit educational organization dedicated to promoting the "Principles of Emergency Management" and representing those professionals whose goals are saving lives and protecting property and the environment during emergencies and disasters. IAEM has over 6,000 members worldwide.¹¹³

Long-Term Recovery Group (LTRG): A cooperative body made up of representatives from faith-based, non-profit, government, business, and other organizations working within a community to assist individuals and families as they recover from disaster. LTRG structures vary depending on the community. LTRGs should reflect local needs, available resources, cultural diversity, leadership style, and community support. The goal of an LTRG is to unite recovery resources with community needs to ensure that even the most vulnerable in the community recover from disaster.¹¹⁴

Multi-Agency Resource Center (MARC): A single, “one-stop shop” location where public and private organizations come together to provide efficient, effective assistance to individuals and families affected by a disaster. Specific types of assistance and services provided at a MARC are determined by participating agencies according to community needs and available resources, but may include assistance locating temporary housing, information about the casework process, health and mental health services, and distribution of bulk supplies. MARCs bring together multiple service providers in a single location to provide on-site assistance.¹¹⁵

National Center for State Courts (NCSC): The NCSC is the definitive source for court services. It is an independent, nonprofit organization which provides education, information and resources for judges and court administrators. The accessible aid is intended to improve court functions. Its work is guided by the collaboration between COSCA and CCJ (see below), among other associations of leaders in the judicial realm.¹¹⁶

National Emergency Management Association (NEMA): A nonpartisan, nonprofit 501(c)(3) association dedicated to enhancing public safety by improving the nation's ability to prepare for, respond to, and recover from all emergencies, disasters, and threats to our nation's security. NEMA is the professional association of and for emergency management directors from all 50 states, eight US territories, and the District of Columbia.¹¹⁷

National Flood Insurance Program (NFIP): For over fifty years, the NFIP provides affordable flood insurance to renters, businesses, and property owners to reduce the impact of floods. As a result, NFIP helps to

mitigate the socio-economic damages of floods. The program also encourages groups to adopt floodplain management regulations.¹¹⁸

National Tribal Emergency Management Council (NTEMC): The National Tribal Emergency Management Council is a consortium of tribal emergency management organizations from around the country. NTEMC is not a response organization, but they share best practices, information, and public health/safety issues that affect Native American populations. NTEMC provides the resources for individual groups to create their own internal infrastructure and control the response to natural disasters and emergencies.¹¹⁹

National Voluntary Organizations Active in Disaster (NVOAD): An association of organizations that mitigate and alleviate the impact of disasters, provides a forum promoting cooperation, communication, coordination and collaboration; and fosters more effective delivery of services to communities affected by disaster. The National VOAD coalition includes well more than 100 Member organizations, which represent National members, State VOADs, Local/Regional VOADs and hundreds of other member organizations throughout the country. The National VOAD core purpose are the “4 Cs”: cooperate, communicate, coordinate, collaborate.¹²⁰

The “Katrina Rule”: The “Katrina” Rule is a mandate from the ABA Model Court that allows out-of-state lawyers to temporarily practice in a state affected by disaster. It was inspired by Hurricane Katrina, in which many lawyers attempted to provide pro bono services but were hindered by law statutes. Several states have either adopted the rule, modified it, or have introduced it to their state legislature. For future disasters, the Katrina Rule is intended to help mitigate the disaster’s effects.¹²¹

The Stafford Act: The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 allows the federal government to provide aid to states during disasters and emergencies. FEMA directs the federal aid to the states. If state and local emergency response capabilities are unable to respond to the disaster accordingly, the Stafford Act may be invoked by the governor of that state. Under presidential declaration, the Act provides relief assistance and funds as directed by Congress.¹²²

APPENDIX B

COOP Plan Rubric

ELEMENTS OF A VIABLE COOP PLAN

ESSENTIAL FUNCTIONS: The critical activities performed by organizations, especially after a disruption of normal activities.

DISASTER SPECIFIC RESPONSES: Identification of hazards relevant to specific geographic areas; and vulnerabilities specific to relevant facilities.

ORDERS OF SUCCESSION: Provisions for the assumption of senior agency offices during an emergency in the event that any of those officials are unavailable to execute their legal duties.

DELEGATIONS OF AUTHORITY: Identification, by position, of the authorities for making policy determinations and decisions at HQ, field levels, and all other organizational locations. Generally, pre-determined delegations of authority will take effect when normal channels of direction have been disrupted and will lapse when these channels have been reestablished.

CONTINUITY FACILITIES: Locations, other than the primary facility, used to carry out essential functions, particularly in a continuity event. Continuity Facilities, or "Alternate facilities", refers to not only other locations, but also nontraditional options such as working at home ("teleworking"), telecommuting, and mobile-office concepts.

CONTINUITY COMMUNICATIONS: Communications that provide the capability to perform essential functions, in conjunction with other agencies, under all conditions.

VITAL RECORDS MANAGEMENT: The identification, protection and ready availability of electronic and hard copy documents, references, records, information systems, data management software and equipment needed to support essential functions during a continuity situation.

HUMAN CAPITAL: During a continuity event, emergency employees and other special categories of employees who are activated by an agency to perform assigned response duties.

TESTS, TRAINING, AND EXERCISES (TT&E): Measures to ensure that an agency's continuity plan is capable of supporting the continued execution of the agency's essential functions throughout the duration of a continuity event.

DEVOLUTION OF CONTROL AND DIRECTION: Capability to transfer statutory authority and responsibility for essential functions from an agency's primary operating staff and facilities to other agency employees and facilities.

RECONSTITUTION: The process by which surviving and/or replacement agency personnel resume normal agency operations from the original or replacement primary operating facility.

FOUR PHASES OF CONTINUITY OF OPERATIONS ACTIVATION

PHASE I – READINESS AND PREPAREDNESS

PHASE II – ACTIVATION AND RELOCATION:

Plans, procedures, and schedules to transfer activities, personnel, records, and equipment to alternate facilities are activated

PHASE III – CONTINUITY OPERATIONS:

Full execution of essential operations at alternate operating facilities is commenced

PHASE IV – RECONSTITUTION:

Operations at alternate facility are terminated and normal operations resume

SOURCE: https://www.fema.gov/pdf/about/org/ncp/coop_brochure.pdf

Links to Supplemental Appendices

APPENDIX C

FEMA DISASTER DECLARATIONS FROM JANUARY 1, 2014–JUNE 30, 2019

APPENDIX D

MODEL COOP PLAN FOR LEGAL SERVICES PROVIDERS

APPENDIX E

CONTINUITY OF COURT OPERATIONS: STEPS FOR COOP PLANNING

APPENDIX F

COOP PLAN CHECKLIST FOR COURTS

APPENDIX G

**AMERICAN BAR ASSOCIATION MODEL COURT RULE ON PROVISION
OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER**

ENDNOTES

i See Appendix C for a full list of presidentially-declared disasters between January 1, 2014 and June 30, 2019.

ii Adam Smith, Neal Lott, Tamara Houston, Karsten Shein, Jake Crouch, & Jesse Enloe, Nat'l Oceanic and Atmospheric Admin., Nat'l Ctrs. for Env'tl. Info., *U.S. Billion-Dollar Weather & Climate Disasters 1980-2019* (2019), <https://www.ncdc.noaa.gov/billions/events.pdf>; Hannah Fry, *Even after Huge Earthquakes, Much of Southern California Still Unprepared for The Big One*, Los Angeles Times (July 17, 2019), <https://www.latimes.com/local/lanow/la-me-ln-ridgecrest-earthquake-response-20190716-story.html>; Veronica Rocha, Meg Wagner, Elise Hammond, Paul Murphy & Emily Dixon, *Barry Makes Landfall in Louisiana*, CNN (July 15, 2019), <https://www.cnn.com/us/live-news/tropical-storm-barry-saturday-2019-intl/index.html>.

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v Smith et al., *supra* note 2.

vi Nicole Acevedo, *FEMA Has Either Denied or Not Approved Most Appeals for Housing Aid in Puerto Rico*, NBC News (July 17, 2018), <https://www.nbcnews.com/storyline/puerto-rico-crisis/fema-has-either-denied-or-not-approved-most-appeals-housing-n891716>.

vii See The Bipartisan Budget Act of 2018 Public Law 115-123 (February 9, 2018) and Additional Supplemental Appropriations for Disaster Relief Act, 2019, Public Law 116-20, Title II (June 6, 2019).

viii ABA Free Legal Answers, <https://abafreelegalanswers.org/>.

ix See generally, LSC Disaster Task Force, Houston Field Hearing, Panel on Providing Legal Services for Disaster Survivors of Hurricane Harvey, December 4, 2018.

1 See Appendix C for a full list of presidentially-declared disasters between January 1, 2014 and June 30, 2019.

2 Adam Smith, Neal Lott, Tamara Houston, Karsten Shein, Jake Crouch, & Jesse Enloe, Nat'l Oceanic and Atmospheric Admin., Nat'l Ctrs. for Env'tl. Info., *U.S. Billion-Dollar Weather & Climate Disasters 1980-2019* (2019), <https://www.ncdc.noaa.gov/billions/events.pdf>; Hannah Fry, *Even after Huge Earthquakes, Much of Southern California Still Unprepared for The Big One*, Los Angeles Times (July 17, 2019), <https://www.latimes.com/local/lanow/la-me-ln-ridgecrest-earthquake-response-20190716-story.html>; Veronica Rocha, Meg Wagner, Elise Hammond, Paul Murphy & Emily Dixon, *Barry Makes Landfall in Louisiana*, CNN (July 15, 2019), <https://www.cnn.com/us/live-news/tropical-storm-barry-saturday-2019-intl/index.html>.

3 *Id.* at <https://www.ncdc.noaa.gov/billions/events.pdf>; Steve Kiggins, Ken Altucker & Michael Braun, *Hurricane Michael Leaves 14 Dead, Nearly 1.3 Million Without Power*, USA Today (Oct. 12, 2018), <https://www.usatoday.com/story/news/2018/10/12/michael-moves-into-atlantic-ocean-leaves-damage-across-5-states/1610353002/>; Bard Wilkinson & James Masters, *Philippines Evacuates Thousands Ahead of Super Typhoon Mangkhut*, CNN (Sept. 14, 2018), <https://www.cnn.com/2018/09/14/asia/typhoon-mangkhut-philippines-intl/index.html>; Alex DeMarban, *The Tally of Anchorage Buildings Significantly Damaged by the Quake Surpasses 750—and Counting*, Anchorage Daily News, (Dec. 31, 2018), <https://www.adn.com/alaska-news/anchorage/2018/12/30/the-tally-of-anchorage-buildings-significantly-damaged-by-the-quake-surpasses-750-and-counting/>; Web Staff, *Gov. Ige Seeks Major*

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15 See generally, Stafford Act, Title IV, *supra* at note 13.

16 Please note that these amounts are adjusted annually. The most recent increase was enacted in the Disaster Recovery Reform Act of 2018, Sec. 1212, Public Law 115-254 (Oct. 5, 2018).

17 Alessandra Jerolleman, *Disaster Recovery Through the Lens of Justice*, 71 (2019).

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20 The Sandy Recovery Improvement Act of 2013 amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. §§ 5121 et seq. (Stafford Act), to provide federally recognized Indian tribal governments the option to request a Presidential emergency or major disaster declaration. Once a Preliminary Damage Assessment is complete and the Indian tribal government determines that the damage exceeds the tribe's resources, the Tribal Chief Executive may submit a declaration request to the President through the FEMA Regional Office. <https://www.fema.gov/tribal-declaration-and-disaster-assistance-resources>.

21 *Disability Impacts All of Us*, Centers for Disease Control and Prevention, <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>.

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- 29** *Disaster Recovery Centers*, U.S. Fed. Emer. Management Agency, <https://www.fema.gov/disaster-recovery-centers>.
- 30** Sandra Brown, Former Managing Attorney, Lone Star Legal Aid, LSC Disaster Task Force, Houston Field Hearing, December 4, 2018.
- 31** Laura Tuggle, Executive Director, Legal Services, Southeast Louisiana Legal Services, LSC Board Meeting, Panel on Partnerships with Faith-Based Organizations, January 17, 2019.
- 32** International Association of Emergency Managers, <https://www.iaem.org/>.
- 33** National Emergency Management Association, <https://www.nemaweb.org/>.
- 34** 211 is a service provided by United Way and is the most comprehensive source of local human and social services information in the US and most of Canada. People in need of help can dial 211 to speak with a community resource specialist in their local area that can help them find critical services such as emergency information and disaster relief. See 211.org, <http://www.211.org/>.
- 35** For additional information regarding plans to allow out-of-state attorneys to practice law in a state that has declared a state of emergency, see Section C of this report.
- 36** Please note that attorneys licensed in state X can provide answers only in state X. The only exception to this rule is when there is a "Katrina Rule" in place allowing for out of state attorneys to practice temporarily in the aftermath of a disaster. For example, Alaska currently allows attorneys licensed in any U.S. jurisdiction to register on the Alaska site and answer questions.
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- 43** *Picking Up the Pieces: Restoring Rural Housing and Communities After a Disaster*, RuralHome.org, http://www.ruralhome.org/storage/documents/disaster_guide_2012.pdf?_cldee=c2Fjb3N0YUBubGloYy5vcmc%3d&recipientid=contact-16d989f13481e811a95d000d-3a19907d-c16ab9bfa7764b38867e-40da6a39f913&utm_source=ClickDimensions&utm_medium=email&utm_campaign=2018%20HAC%20News&esid=4e3d0bf5-8c96-e811-a95f-000d3a1991fc.
- 44** Lone Star Legal Aid, *supra* note 41.
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- 46** Morrison & Foerster LLP, *Morrison & Foerster: Superstorm Sandy Helping Handbook*, Morrison & Foerster, <https://media2.mofo.com/documents/Hurricane-Sandy.pdf>.
- 47** *Resource Materials for Responding to Legal Questions from Those Affected by Disasters*, North Carolina Bar Association, <https://www.ncbar.org/media/906615/tx-2016-disaster-manual.pdf>.
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- 49** NeighborWorks America, *supra* note 44.
- 50** Lone Star Legal Aid, *supra* note 42.
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- 52** *Providing Legal Assistance in the Aftermath of Disaster*, Practising Law Institute (April 6, 2016), <https://www.pli.edu/programs/providing-legal-assistance-in-the-aftermath-of-disaster?t=ondemand&p=244040>.
- 53** FLAdvocate.org, *Mobile Home Park Law Webinar*, Youtube.com, <https://www.youtube.com/watch?v=6m9JMpl8tkI>.
- 54** *Federal Indian Law and Tribal Law*, Legal Aid of Nebraska—Disaster Relief Project, http://disaster.legalaidofnebraska.com/wp-content/uploads/2019/01/DRP_FederalIndianLawandTribalLaw_WEB_OP.pdf.

- 55** *25 Pro Tips for Working with FEMA, Lessons Learned that Work*, Disaster Legal Aid, https://www.disasterlegalaid.org/library/item.682989-25_Pro_Tips_for_Working_with_FEMA_Lessons_Learned_That_Work.
- 56** Ballard et. al, *supra* at note 37.
- 57** Gregory J. Cowan, Senior Management Analyst, Florida Justice Administrative Commission, LSC Disaster Task Force, Miami Field Hearing, March 15, 2019.
- 58** Laura Tuggle, Executive Director, Southeast Louisiana Legal Services, Miami Field Hearing LSC Disaster Task Force, Miami Field Hearing, March 15, 2019.
- 59** The Continuity of Operation Plan elements listed here are guidelines and best practices for LSC grantees to follow. LSC is not mandating that grantees address all elements outlined in the Report.
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United States District Court

MIDDLE DISTRICT OF FLORIDA
UNITED STATES COURTHOUSE
300 N. HOGAN STREET, SUITE 11-100
JACKSONVILLE, FLORIDA 32202

TIMOTHY J. CORRIGAN
UNITED STATES DISTRICT JUDGE

(904)-549-1300

May 27, 2020

Via Electronic Mail

Mayanne Downs, Esq.
Chair, Task Force on Distribution of IOTA Funds
c/o Elizabeth Tarbert, Ethics Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Re: Task Force on the Distribution of IOTA Funds

Dear Ms. Downs:

I support the continuation of the Florida Bar Foundation's traditional role in the administration of IOTA funds. I write from my viewpoint as a charter member of the Chief Justice's Florida Commission on Access to Civil Justice and as a federal judge with recent experience utilizing the Florida Bar Foundation to administer a grant program arising out of the Engle tobacco litigation. While I do not pretend to be an expert on the issues the Task Force is facing, I do think that these experiences provide me some perspective I would like to briefly share.

First, if my time on the Access Commission has taught me anything, it is that the current unmet need for legal services for the poor in Florida is staggering and our efforts to address that need are inadequate. The number of legal aid lawyers statewide is miniscule compared to the demand, as is legal aid funding. Pro bono efforts by other members of the Bar, while laudable, do not come close to significantly narrowing the access to justice gap. The Access Commission has championed non-lawyer solutions, such as improved use of technology, to good effect, but at times it feels like we are trying to empty the ocean with a teaspoon.

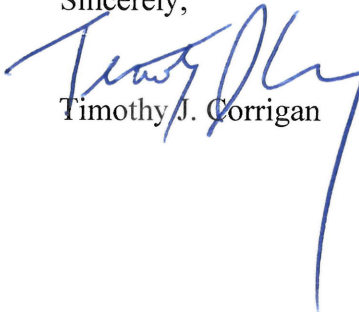
One bright spot in the effort to provide legal services to the poor has been the work of the Florida Bar Foundation. Throughout its storied history, the Florida Bar Foundation has been a national leader in the access to justice field. It is no exaggeration to say that the Florida Bar Foundation is the glue that holds together the legal aid efforts in Florida. This includes its professional management of IOTA funds.

Recently, three of my federal court colleagues and I were faced with a challenge involving how to distribute millions of dollars resulting from Court-imposed sanctions related to the Engle tobacco litigation. We naturally turned to the Florida Bar Foundation. After meeting with the Executive Director and learning how the Foundation would handle the matter, we directed that the funds be given over to the Foundation to create a grant program to distribute the funds to worthy legal aid organizations. While the Court gave the Foundation broad parameters, we recognized that the Foundation should have flexibility to administer the grants to provide legal aid clients with the services they needed, whether that be representation in court, or alternative means of resolving their legal problems. The Foundation staff, under the direction of its Board, established a grant program based on objective scoring criteria and then efficiently distributed the funds to legal aid organizations, where they are now being utilized. We were pleased with the Foundation's work and do not know where else we would have turned. This is but one example of the value of the Florida Bar Foundation's mission.

In reading the April 8, 2020 report, the Task Force Subcommittee states that the "Foundation is simply outside of the task force's scope." But, of course, placing limitations on the use of IOTA funds as suggested in the Subcommittee report would directly and adversely impact the vital work that the Foundation has traditionally performed. The Florida Bar Foundation is the organization that provides the planning, policy, administration, and education infrastructure for legal aid in the state of Florida. While no organization or process is immune from suggestions for improvement, I hope that the Task Force will recommend to the Florida Supreme Court that it preserve the current structure of the Florida Bar Foundation and its essential role of administering IOTA funds. In these turbulent times, the work of the Florida Bar Foundation is more vital than ever.

Thank you for considering my views.

Sincerely,



Timothy J. Corrigan

TJC:sw

cc: Task Force members
Dori Foster-Morales, Esq.
Michael G. Tanner, Esq.
W. Braxton Gillam, IV, Esq.
Michael Fox Orr, Esq.

Florida Civil Legal Aid Association

Ensuring Access to Justice for Floridians

July 10, 2020

Sent Via Email

Mayanne Downs, Esq.
Chair, Task Force on the Distribution of IOTA Funds
c/o The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399

**Re: Task Force on the Distribution of IOTA Funds - FCLAA / FBF
joint proposed Rule**

Dear Ms. Downs:

Attached please find a proposed amendment to Rule 5-1.1(g) Interest on Trust Accounts (IOTA) Program. This proposed Rule has been drafted by the Executive Directors and CEOs of the various civil legal aid law firms throughout Florida, through the Florida Civil Legal Aid Association, and has been approved by our membership and by others, whose names and organizations appear below, and has also been approved by the Florida Bar Foundation. We appreciate your consideration of this proposed Rule, which is crafted against the backdrop of our collective decades of experience on the front lines of civil legal aid in Florida, and with significant assistance from subject matter experts around the country, to reflect lessons learned in the effective administration of IOTA.

In drafting this proposed Rule, we focused on the Court's directive that IOTA revenues should be prioritized to fund direct legal services for low-income litigants in Florida. This Rule achieves that purpose while keeping the core of the IOTA delivery model, the Florida Bar Foundation, in place. The Foundation has a proven history of implementation of IOTA funds and guiding the Foundation through its future actions, as this proposed Rule does, will ensure sustained focus on this priority.

In following the guidance set by the Task Force, we want to highlight continuing issues as we have throughout this process. Drafting a Rule always has unintended consequences, more so during a recession. The proposed FCLAA Rule will allow a number of present recipients of IOTA funds to continue to receive those funds - including Florida Children's First. However, some presently funded efforts may no longer receive IOTA under the proposed rule. A significant number of stakeholders testified to this Task Force, and if the Task Force is focused on keeping one or more as entities funded by IOTA, it should be addressed.

Thank you for your consideration of this matter.

Respectfully Submitted,

Monica Vignes-Pitan
FCLAA President
Legal Services of Greater Miami

Leslie Powell-Boudreaux
FCLAA Vice President
Legal Services of North Florida

Christine Larson
FCLAA Secretary
Three Rivers Legal Services

Cheryl Little
Americans for Immigrant Justice

Patrice Paladino
Coast to Coast Legal Aid of South Florida

Kimberly Rodgers
Community Law Program

Christina Spudeas
Florida Children's First

Jaffe Pickett
Florida Rural Legal Services

James Kowalski
Jacksonville Area Legal Aid

Anthony Karrat
Legal Aid Service of Broward County

Jodi Siegel
Southern Legal Counsel

Carrie Litherland
Legal Aid Foundation of the Tallahassee
Bar Association

Miriam Harmatz
Florida Health Justice Project

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Christopher M. Jones
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Jeffrey Harvey
Community Legal Services of Mid-Florida

Dante Trevisani
Florida Justice Institute

Carly Wohl
Heart of Florida Legal Aid Society

Linda Harradine
Legal Aid of Manasota

Robert Bertisch
Legal Aid Society of Palm Beach County

Robert Johnson
Brevard County Legal Aid Association

Bethanie Barber
Legal Aid Society of the Orange County Bar
Association

Randy McGrorty
Catholic Legal Services

CHAPTER 5. RULES REGULATING TRUST ACCOUNTS
5-1. GENERALLY
RULE 5-1.1 TRUST ACCOUNTS

(g) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions.* As used in this rule, the term:

(A) “Nominal or short term” describes funds of a client or third person that the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income.

(B) “Foundation” means The Florida Bar Foundation, Inc. which shall serve as the designated IOTA fund administrator and shall monitor and receive IOTA funds from eligible institutions and distribute IOTA funds consistent with the obligations and directives in this rule and orders of the Florida Supreme Court.

(C) “IOTA account” means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

(D) “Eligible institution” means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation, any state or federal credit union authorized by federal or state laws to do business in Florida and insured by the National Credit Union Share Insurance Fund, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(E) “Interest or dividend-bearing trust account” means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and have total assets of at least \$250 million. The funds covered by this rule are subject to withdrawal on request and without delay.

(F) A “qualified grantee organization” is a not for profit entity incorporated or chartered for the purpose of providing civil legal assistance to low-income individuals or is a not for profit entity with exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. It must also demonstrate the experience and capacity to provide Qualified Legal Services, as defined herein, by:

(1) employing qualified legal services providers to:

(i) directly provide qualified legal services, and/or

(ii) facilitate the provision of and improve the quality of qualified legal services; or

(2) facilitating qualified legal services by coordinating volunteer qualified legal service providers.

(G) “Qualified Legal Services” are legal services provided directly to low-income clients for their civil legal needs in Florida.

(H) A “Qualified Legal Services provider” is a member of The Florida Bar or other individual authorized by the Rules Regulating The Florida Bar or other law to provide Qualified Legal Services in Florida.

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida must be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term must be deposited into an IOTA account. The Florida **B**bar member must certify annually, in writing, that the bar member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds.* The lawyer must exercise good faith judgment in determining on receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer must consider such factors as the:

(A) amount of a client’s or third person’s funds to be held by the lawyer or law firm;

(B) period of time the funds are expected to be held;

(C) likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) lawyer or law firm’s cost of establishing and maintaining an interest-bearing

account or other appropriate investment for the benefit of the client or third person;
and

(E) minimum balance requirements and/or service charges or fees imposed by the eligible institution.

The determination of whether a client's or third person's funds are nominal or short-term rests in the sound judgment of the lawyer or law firm. No lawyer will be charged with ethical impropriety or other breach of professional conduct based on the exercise of the lawyer's good faith judgment.

(4) *Notice to Foundation.* Lawyers or law firms must advise the foundation, at its current location posted on The Florida Bar's website, of the establishment of an IOTA account for funds covered by this rule. The notice must include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.

(5) *Eligible Institution Participation in IOTA.* Participation in the IOTA program is voluntary for banks, credit unions, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) *Interest Rates and Dividends.* Eligible institutions must maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) *Determination of Interest Rates and Dividends.* In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that these factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

(C) *Remittance and Reporting Instructions.* Eligible institutions must:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the ~~F~~foundation;

(ii) transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

(iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the foundation, the rate of interest applied, and the period for which the statement is made.

(6) *Small Fund Amounts.* The Foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable eligible institution service charges or fees.

(7) *Confidentiality and Disclosure.* The Foundation must protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the Foundation must, on an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

8) Distribution of IOTA Funds. All IOTA funds transmitted to the Foundation shall be used in a manner that gives priority consideration to funding Qualified Legal Services for low-income individuals in Florida, and shall be used only to:

(A) Support qualified grantee organizations that:

a. directly provide Qualified Legal Services, and/or

b. facilitate the provision of and improve the quality of Qualified Legal Services; or

c. facilitate Qualified Legal Services by coordinating volunteer Qualified Legal Service Providers.

(B) Fund necessary and reasonable operating expenses of the Foundation for effective operation of the IOTA program including collection, disbursement, and monitoring and reporting on efficient use of IOTA funds and pursuing the growth of IOTA and development of other sources of civil legal aid funding.

(C) Establish and maintain reasonably prudent reserves for the operations of the IOTA program as well as to promote stability in funding for (A) and (B), above.

(D) At least 80% of IOTA funds received by the Foundation shall be allocated to qualified grantee organizations in the form of grants and program-related expenses. A portion of these funds may be allocated to reserves if approved by the IOTA Funds committee of the Foundation Board.

The Foundation shall develop policies for monitoring the distribution and use of IOTA funds and those policies shall give the highest priority to ensuring the consistent provision of qualified legal services throughout the state of Florida.

(9) IOTA Oversight and Governance. The Foundation shall determine the initial and continuing eligibility of banks, savings and loan associations and investment companies to hold IOTA accounts in accordance with the criteria set forth in this rule and in *In re: Amendments to the Rules Regulating the Florida Bar 5-1.1(e)*, 797 So. 2d 551, 552, (Fla. 2001). The Foundation shall also be responsible for ensuring the efficient and effective distribution and use of IOTA funds. In order to further ensure such efficiency:

(A) The Foundation's Board of Directors will establish a standing committee on IOTA Funds. The committee shall include three members chosen by the Florida Civil Legal Aid Association, Inc. from its members. The committee shall provide feedback on the Foundation's development of a statewide plan for distribution of funds, policies for monitoring the distribution and use of IOTA funds, best practices for use of IOTA funds, and other input and oversight as directed by either the Board of Directors or the Supreme Court of Florida.

(B) The Foundation's Budget and Finance Committee shall be composed of at least four Directors appointed by the Supreme Court of Florida pursuant to the Foundation's bylaws and articles of incorporation.

(10) Reporting by Qualified Grantee Organizations. Qualified Grantee Organizations must report to the Florida Bar Foundation on or before February 15 of each year on metrics developed by the IOTA Funds Committee and approved by the Foundation Board on a regular basis designed to confirm grantee organizations are promoting access to justice on the part of low-income clients, and to ensure IOTA funds are utilized efficiently and effectively. These metrics shall include but are not limited to: the number of clients receiving Qualified Legal Services paid for or facilitated by the use of IOTA funds and other aggregate data showing the impact of civil legal aid in Florida, regardless of funding source.

(11) Reporting by the Foundation. As a condition of continued receipt of IOTA funds, the Foundation shall prepare on or before April 15 of each year a report containing

programmatic and financial analysis of the IOTA funds received and distributed by the Foundation during the previous calendar year and shall prepare an Annual Report that will be available to the public.

(A) The programmatic report shall at a minimum contain the aggregate data reported by the qualified grantee organizations detailed in the previous section. It may also contain other data that details the impact of the IOTA funds provided to the qualified grantee organizations.

(B) The financial portion of the report shall:

(i) Be prepared according to generally accepted accounting principles;

(ii) Include and identify the specific amount of IOTA funds given to the various providers, programs, and projects for the previous year;

(iii) Include and identify the total amount of funds that were awarded to build or maintain the capacity of qualified grantee organizations;

(iv) Include the total amount of IOTA funds that were set aside for reserves;

(v) Include the total amount of IOTA funds that were spent by the Foundation for operating expenses; and

(vi) Include the categories of the rates paid by participating Banks.

(C) Copies of the reports shall be provided to the Chief Justice of the Florida Supreme Court immediately upon completion of such reports, published upon the Foundation's website, and otherwise made available to others of the public upon request.

Jacksonville Area Legal Aid, Inc.

A Wealth of Justice for Those Who Have Neither

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May 15, 2020

Mayanne Downs, Esq.
Chair, Task Force on the Distribution of IOTA Funds
c/o The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399

Re: Task Force on the Distribution of IOTA Funds

Dear Ms. Downs:

This letter is intended as a supplement to the more general letter sent to you by the project directors throughout Florida, on behalf of the FCLAA. I write to emphasize a number of points and to help create a record that we can continue to build on - a record started decades ago, and strengthened through the Access Commission's knowledge database - a record that continues to demonstrate the difference between where we need to go and where the Task Force reports to date take us. Simply put, this Task Force is re-writing a Rule that does not need to be re-written, and is doing so at exactly the wrong time, while turning blinders to the reality of legal aid work in Florida.

I start by reminding the Task Force of the Supreme Court's original instruction: "The Court has determined that it is appropriate to establish a task force to examine **whether** rule 5-1.1(g) should be amended to better ensure the most effective use of IOTA funds." (emphasis added.)

The purpose of this letter is to again ask you to answer the Supreme Court's inquiry with a direct "No, Rule 5-1.1(g) does not need to be amended," and to discuss why.

First, as pointed out by the FCLAA, the work done by civil legal aid in Florida is often not duplicated within the private bar (no one makes a living representing indigent tenants in public housing eviction cases, for example); can be very complex (HUD Handbook 4350.3, covering the occupancy requirements of subsidized multifamily housing programs, is 794 pages); and is critical to Florida's economy, as we are highly reliant on low-income workers to staff our tourism industry.

Put another way: legal aid lawyers do hard work that is different than what is seen in private practice, and legal aid clients are part of the reason why none of us pay state income taxes.

Against this backdrop, we have seen, over the past several years, the State of Florida moving away from general financial support for civil legal aid, and many of our larger cities and counties have done so as well. The well-documented and organized dismantling of our public health system, seen so clearly against the backdrop of the current pandemic, could easily serve as a road map for what has also happened to civil legal aid.

Other states without income taxes, like Texas and Tennessee, have done the opposite.

The lack of state funding has not resulted in any counter-moves to shore up the system. Pro bono hours have dropped, and a few years ago the Florida Bar opposed a dues increase of \$100 per year for civil legal aid. We have thus outsourced much of our legal aid policy - policy that is critical to supporting our economy - to Washington, D.C., and the extensive rules and regulations that govern LSC-funded legal aid firms. Because they are subject to federal regulations, they cannot do much of the legal work necessary for Floridians - they can't handle class action work, which is highly cost-effective, they can't work on certain types of public housing cases, they can't work on public school desegregation cases using LSC dollars, they have significant restrictions on handling cases where the prevailing party is entitled to attorney's fees - the list goes on, and it can change from year to year, and it is a list created in Washington, not Tallahassee.

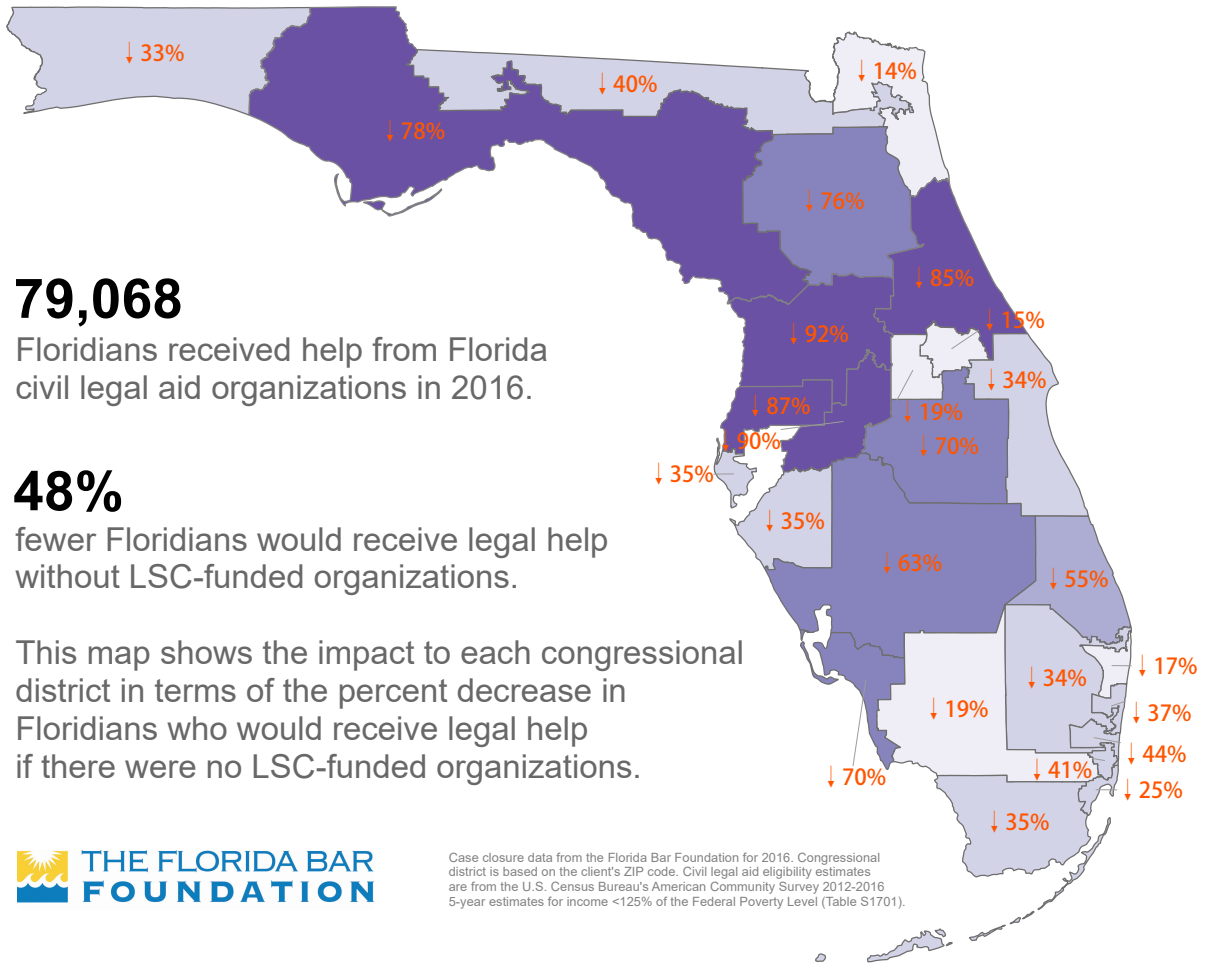
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those rural sections where IOLTA funding would do the most good, and not necessarily in direct representation.

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Floridians received help from Florida civil legal aid organizations in 2016.

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Now, while facially denying that you want to dismantle the Foundation, you suggest a definition for “qualified attorney” that no legal aid lawyer in Florida fits and you recommend a financial straitjacket for the Foundation.

Let’s look at where my region, legal aid Region II, finds itself. I include an infographic based on the United Way ALICE report, demonstrating the percentage of poor and working poor throughout my Region:

Percentage of population struggling to afford basic needs
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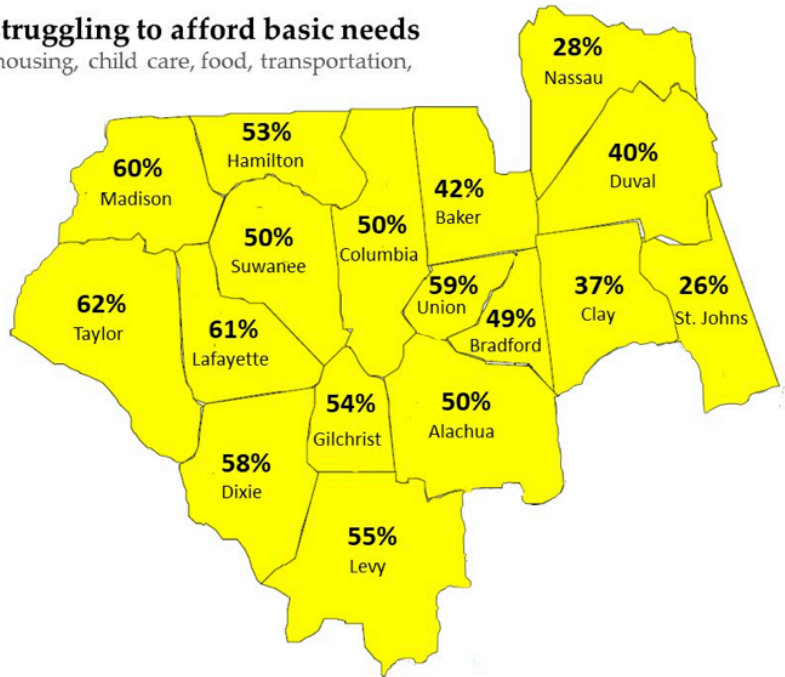


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Against this, let us next look at whether the counties in Region II and throughout Florida provide a uniform funding stream, using Article V dollars as the base. The following graphic illustrates how Duval, home to one of Florida’s largest cities, provides non-taxpayer Article V dollars to Jacksonville Area Legal Aid - and exactly zero general funding over that. Pinellas and Lee, both similarly sized, fund up, as do Clay and St. Johns in my region (as does Nassau); Hillsborough and Miami-Dade also fund up. (In fact, there are a number of Florida counties who collect their Article V dollars from criminals and simply keep it - they don’t provide any of it to legal aid as otherwise mandated by the statute.)

Article V Dollars Collected vs. Legal Aid Dollars Expended Per County in 2018



As a result of the drop in IOLTA after the housing crash, coupled with indifference on the part of the City of Jacksonville, as referenced above, JALA decided to switch to a different model - one we refer to as a modified Civil Gideon approach. Simply put, if JALA has enough money from various sources to handle a particular area of law 100%, where we can show that having a lawyer makes the difference in the case, we do it. We believe we have achieved Civil Gideon in the Jacksonville Metropolitan Statistical Area (Jacksonville MSA) in Fair Housing Act work, in consumer litigation, in related civil issues for victims of crime, in legal issues facing those with HIV / AIDS and in public housing evictions.

If we do not believe we can handle 100% of the work in the Jacksonville MSA, we do none of it - we do zero general family law. We do zero general immigration. This is true even though general family law and general immigration are probably the two biggest areas of need. The decision not to have any meaningful family law assistance for poor people from Jacksonville Beach to Tallahassee is not JALA's decision, however - it is a decision made by others who have determined that lawyers would not be the ones charged with solving the delivery of legal issues to the at-risk and working poor and working middle class citizens of our State.

And, to follow up on one point - the JALA lawyers handling fee-generating cases are expected to weigh the likelihood of the recovery of fees when deciding whether to accept a case.

Do we really want what we have - a highly disparate system where residents of one county who live across the street from residents of another county have a significantly different chance of staying in their homes in the case of a wrongful eviction or wrongful foreclosure? Do we want a legal aid system where the ability to accept a case depends on whether that case generates fees? To be more direct: are there other sources of funding that can be used to equalize opportunities for at-risk Floridians across the State and not force an over reliance on Washington, D.C.?

Certainly, there are: IOLTA and direct funding from the Bar and the State of Florida.

We don't have the latter two sources, and there is little likelihood of change on the horizon, and the Task Force has issued recommendations that would permanently damage the ability of the only remaining, consistent, state-wide source - IOLTA funding - to assist the Floridians it is supposed to help.

First, the Task Force is focusing on the definition of a "qualified attorney" that does not exist in reality. There are no legal aid attorneys (and probably no private firm litigators) that provide direct representation to the exclusion of all other duties and responsibilities. Such a restriction would disqualify attorneys engaged in community education efforts, or grant reporting, or timekeeping, or supervising, or teaching, or local / state Bar activities, for even a portion of their time. Further, restricting the use of IOLTA funds to salary and benefits utterly ignores the reality of a law practice. How exactly does the Task Force expect us to pay for litigation expenses, travel costs, training (to comply ABA and Florida Bar and LSC standards), translation services, administrative support, paralegals, rent, parking, Bar dues or anything else a competent firm needs to serve clients? As noted above, the money is not coming from another source, at least not in this State.

Additionally, as pointed out by the FCLAA, the requirement that a "qualified attorney" be admitted to the Florida Bar would violate the Military Spouse Rule and exclude immigration attorneys who are often admitted in other states but are permitted to practice in Florida.

And, as noted by the FCLAA, the proposed guidance would accelerate the end of pro bono as it currently exists.

It is important to note that, except for the LSC-funded legal aid firms, pro bono is not funded in Florida - legal aid firms come out of pocket to provide the infrastructure necessary to support pro bono referrals, including the expensive malpractice insurance that protects private lawyers who take on pro bono cases. While LSC firms must devote a particular percentage of their budgets to pro bono, in compliance with LSC

regulations, overall, pro bono work is largely self-funded by civil legal aid. Those firms (some of whom testified to this Task Force) that devote their work to the force multiplier that is pro bono would be left out of IOTA funding - and there is nothing to replace this money.

This is also true for technology. FJTC, which was not funded with IOLTA money, and was not based in another state (homework would help here) (it was funded by the Florida Bar, which insisted that part of the bridge loan for legal aid be used for technology, and then by AG Pam Bondi, and, in an attempt to hold down costs, used virtual employees around the country, including Florida lawyers) was a *brilliant* concept, envied throughout the country, that worked well until the money ran out while it was still building and hosting technology tools. None of the stakeholders adequately devoted resources to continued funding of FJTC and the technology that is now critical to delivering services in this pandemic. As a result, what was a promising start stopped at perhaps the worst possible time.

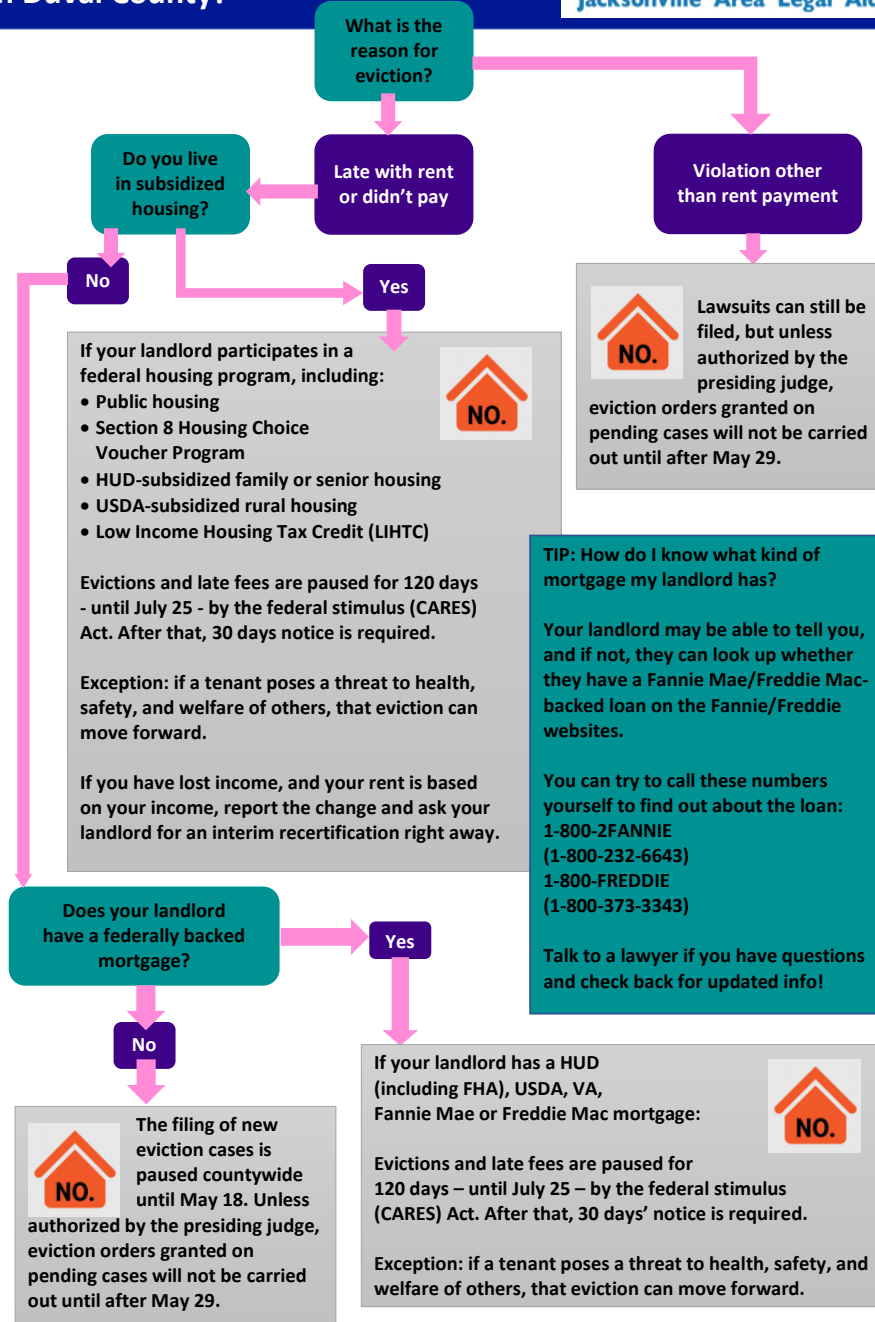
On the next page is an infographic JALA developed and is constantly updating on evictions in Duval County (as you may know, evictions are now completely different for residents of Miami-Dade and Palm Beach and other counties than they are for residents of Duval and Clay county). This infographic resulted from JALA devoting expert attorney hours to technology in hopes of reaching more people than we could ever represent, and it is by far the most shared social media work we have ever done. Anyone who suggests that technology is not a way to reach Floridans when legal aid lawyers cannot is misinformed.

These sorts of tools, funded by IOLTA, are in use throughout the country and reach millions and millions of people. Many are developed using subject matter experts within legal aid, and are extensively user-tested - hallmarks of a design-focused approach.

By contrast, the Task Force's recommendation would eliminate the ability of the Foundation to use IOLTA funding to support technology throughout the State - technology the legal aid programs would again have to come out of pocket to develop and support, since most, if not all, grant programs only pay for direct services.

Under the current Task Force's recommendations, JALA would not be able to use IOLTA funding to help build a device that has been shared (and hopefully helps) thousands and thousands of times, by people we could not ever expect to represent.

CAN I BE EVICTED
during the COVID-19 crisis
in Duval County?



A landlord cannot legally evict a tenant without a court order. It is illegal for your landlord to lock you out, turn off utilities like electric or water, remove the front door, or take other steps to force you to move. If your landlord attempts an illegal eviction, contact law enforcement to stop the threat to the safety of your family. You may also be eligible for free legal help through Jacksonville Area Legal Aid (904-356-8371). Last updated 5/4/2020.

This community education work done by JALA attorneys and staff is not funded by any government source and would not be funded in the future by traditional legal aid IOTA funding based on reports issued by the Supreme Court Task Force on IOTA.

There is a critical need for a network, and *expansion* of IOLTA funding, and an oversight body responsible for reviewing reports from the field (in a more evidence-based manner than the criteria suggested by the Task Force) - and we have that in place, right now, in this State, with the existing legal aid provider network and the Florida Bar Foundation. What we also have, thanks to a long history of indifference, is a patchwork system where residents of one county have dramatically different experiences with their legal issues than residents of another county.

Everything I have referenced above is supported by evidence and research. And, if there is anything I have learned since coming to legal aid full-time almost 7 years ago, after 23 years, first as an Assistant State Attorney and then in private civil practice, is that my knowledge, training and experience as a lawyer did not give me any meaningful guidance on how Florida's less fortunate interact with the legal system, or how civil legal aid does its job. The belief that lawyers, because they are lawyers, know how legal aid works is simply not true, and the Task Force's recommendations would dismantle the system and the structure at exactly the wrong time.

Sincerely,



James A. Kowalski Jr.

cc: Michael G. Tanner, Esq.
Michael Fox Orr, Esq.
W. Braxton Gillam IV, Esq.

<p>Southern Legal Counsel, Inc. 1229 NW 12 Avenue Gainesville, FL 32601 352-271-8890 www.southernlegal.org</p>	<p>Florida Legal Services, Inc. PO Box 533986 Orlando, FL 32853 (407) 801-4344 http://www.floridalegal.org/</p>	<p>Florida Justice Institute 3750 Miami Tower 100 S.E. Second Street Miami, FL 33131-2309 (305) 358-2081 www.floridajusticeinstitute.org</p>
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May 16, 2020

Via email to:

Mayanne Downs, Chair
Karen J. Ladis,
Laird A. Lile
Hala Sandridge
Edwin A. Scales
John M. Stewart
M. Scott Thomas
Elizabeth Clark Tarbert, Ethics Counsel, Florida Bar

Dear Task Force on Distribution of IOTA Funds:

This letter is to provide comments to the Task Force regarding the Combined Recommendations of Subcommittees, dated April 8, 2020. We support the comments submitted by the Florida Civil Legal Aid Association, and offer these additional comments from the perspective of three statewide grantees of The Florida Bar Foundation.

Southern Legal Counsel is a Florida statewide not-for-profit public interest law firm that is committed to the ideal of equal justice for all and the attainment of basic human and civil rights. It primarily assists individuals and groups with public interest issues who otherwise would not have access to the justice system and whose cases may bring about systemic reform. **Florida Legal Services** is a statewide leader in advancing economic, social, and racial justice. It advocates for poor, vulnerable, and hard to reach people through impact litigation, legislative and administrative advocacy, education, and strategic partnerships. **Florida Justice Institute** is a nonprofit public interest law firm that conducts civil rights litigation and advocacy in the areas of prisoners' rights, housing discrimination, disability discrimination, and other areas that impact the lives of Florida's poor and disenfranchised.

These three statewide grantees of The Florida Bar Foundation fill the gap in legal services that local legal aid programs across the state cannot fill. We do not have geographic boundaries. We are not limited by Legal Services Corporation restrictions on representing unpopular or disfavored clients and claims, such as evictions, class actions, welfare reform, immigrants and prisoners. We concentrate on impact work that includes litigation, advocacy, and training of lawyers, lay persons and organizations. We

retain the flexibility to work in areas of unmet need and respond to legal needs that unexpectedly arise. Our goal is to create a lasting impact in people's lives whose voice alone is not heard.

Recognizing our unique role, The Florida Bar Foundation has supported the statewide organizations. We respect the leadership that the Foundation has provided over the years to determine where gaps of justice exist and to establish incentives to meet the need. For example, it has spearheaded grants to specifically address affordable housing, disaster relief, and children's legal services. We believe that this has been vital to ensure that legal services are provided to the most vulnerable and needy Floridians.

As far as the specific recommendation of the Subcommittees that IOTA Funds "be used only for salaries and benefits for members of The Florida Bar who exclusively (i.e. to the exclusion of all other duties and responsibilities) provide direct legal services to low-income litigants in Florida," we believe this restriction is too limiting and will undermine the provision of high quality legal services for several reasons.

One, we have hired excellent attorneys who were not currently members of The Florida Bar, but who became members as soon as was practicable. For the type of complex litigation in which we engage, it has been helpful to have a broad national reach to find the most qualified attorneys for the job.

Two, our attorneys do not exclusively provide direct legal services as there are other job responsibilities that are necessary to sustain not-for-profit public interest law firms. Attorneys at the three statewide organizations have gained expertise in a number of fields and share their knowledge with other legal aid attorneys. We train on substantive law and legal skills, mentor individual legal aid advocates on their cases, and co-counsel systemic federal litigation to ensure that advocacy across the state is effective and high quality. Any limitations on the use of IOTA Funds to solely provide direct representation will eliminate the necessary support and other functions that our attorneys conduct.

Three, similarly, restricting the use of IOTA Funds to salaries and benefits of attorneys would destabilize the financial soundness of our organizations. All law firms need to pay for overhead and administrative support. We need to maintain technology to be able to provide direct legal representation and conduct litigation. We rely on expensive software for document and case management, and excellent paralegals, neither of which would be permitted to be paid with IOTA Funds under the Subcommittees' recommendations. No other funder requires such a limitation on the use of funds as it is recognized that the delivery of successful outcomes relies on more than the work of an attorney. IOTA Funds should as well be permitted to support the entire organization to assist in the provision of direct representation. Only with full support can direct representation be high quality and effective.

The Subcommittees further recommend that reporting requirements be instituted. Grantees already provide a variety of reports to The Florida Bar Foundation, which has worked with grantees to determine what information is needed to show the success and effectiveness of the grants. From the perspective of the statewide grantees, the effectiveness of IOTA Funds should not be defined solely by the number of attorneys and clients, but also to recognize that one client's case may impact many others. A statewide case, for example, may be on behalf of a few clients, but relief could benefit tens of thousands of people. In this way, these types of cases use our limited funds more efficiently, by leveraging a fewer number of clients to achieve a greater impact for hundreds or thousands of people.

Thank you for considering our comments. If you need additional information, please feel free to contact any of us.

Sincerely,

Jodi Siegel
Executive Director, Southern Legal Counsel
Jodi.siegel@southernlegal.org

Christopher Jones
Executive Director, Florida Legal Services
christopher@floridalegal.org

Dante Trevisani
Executive Director, Florida Justice Institute
DTrevisani@floridajusticeinstitute.org

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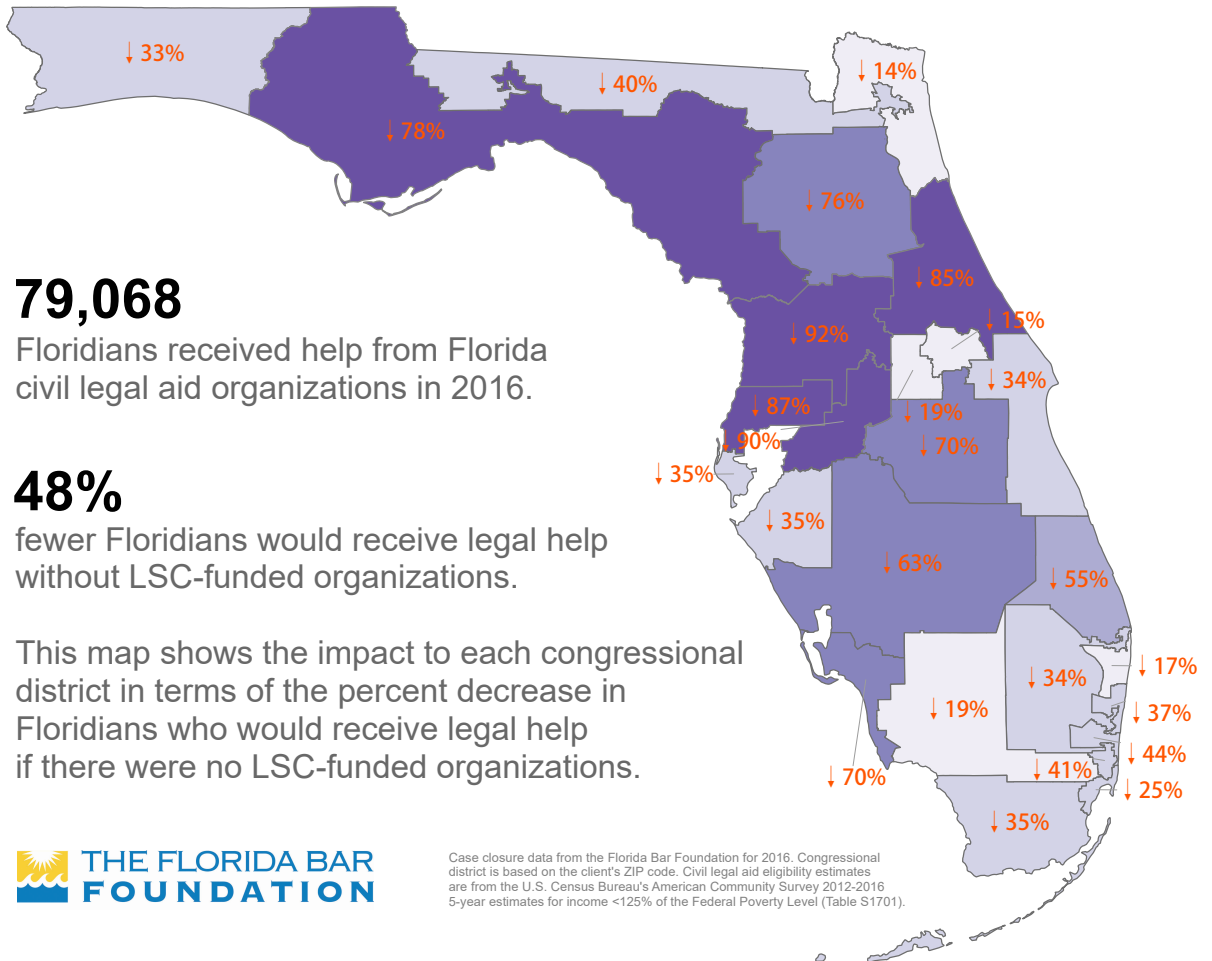
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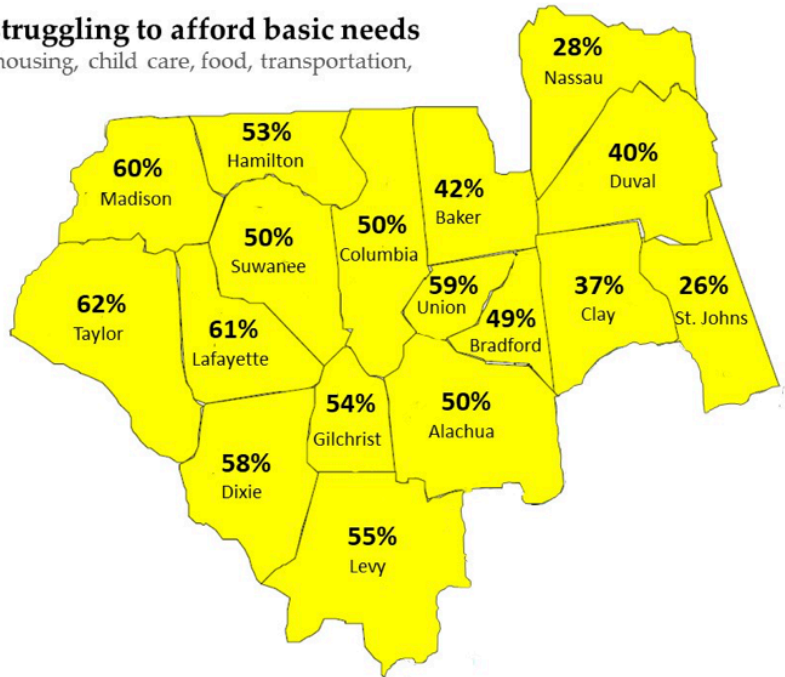


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Certainly, there are: IOLTA and direct funding from the Bar and the State of Florida.

We don't have the latter two sources, and there is little likelihood of change on the horizon, and the Task Force has issued recommendations that would permanently damage the ability of the only remaining, consistent, state-wide source - IOLTA funding - to assist the Floridians it is supposed to help.

First, the Task Force is focusing on the definition of a "qualified attorney" that does not exist in reality. There are no legal aid attorneys (and probably no private firm litigators) that provide direct representation to the exclusion of all other duties and responsibilities. Such a restriction would disqualify attorneys engaged in community education efforts, or grant reporting, or timekeeping, or supervising, or teaching, or local / state Bar activities, for even a portion of their time. Further, restricting the use of IOLTA funds to salary and benefits utterly ignores the reality of a law practice. How exactly does the Task Force expect us to pay for litigation expenses, travel costs, training (to comply ABA and Florida Bar and LSC standards), translation services, administrative support, paralegals, rent, parking, Bar dues or anything else a competent firm needs to serve clients? As noted above, the money is not coming from another source, at least not in this State.

Additionally, as pointed out by the FCLAA, the requirement that a "qualified attorney" be admitted to the Florida Bar would violate the Military Spouse Rule and exclude immigration attorneys who are often admitted in other states but are permitted to practice in Florida.

And, as noted by the FCLAA, the proposed guidance would accelerate the end of pro bono as it currently exists.

It is important to note that, except for the LSC-funded legal aid firms, pro bono is not funded in Florida - legal aid firms come out of pocket to provide the infrastructure necessary to support pro bono referrals, including the expensive malpractice insurance that protects private lawyers who take on pro bono cases. While LSC firms must devote a particular percentage of their budgets to pro bono, in compliance with LSC

regulations, overall, pro bono work is largely self-funded by civil legal aid. Those firms (some of whom testified to this Task Force) that devote their work to the force multiplier that is pro bono would be left out of IOTA funding - and there is nothing to replace this money.

This is also true for technology. FJTC, which was not funded with IOLTA money, and was not based in another state (homework would help here) (it was funded by the Florida Bar, which insisted that part of the bridge loan for legal aid be used for technology, and then by AG Pam Bondi, and, in an attempt to hold down costs, used virtual employees around the country, including Florida lawyers) was a *brilliant* concept, envied throughout the country, that worked well until the money ran out while it was still building and hosting technology tools. None of the stakeholders adequately devoted resources to continued funding of FJTC and the technology that is now critical to delivering services in this pandemic. As a result, what was a promising start stopped at perhaps the worst possible time.

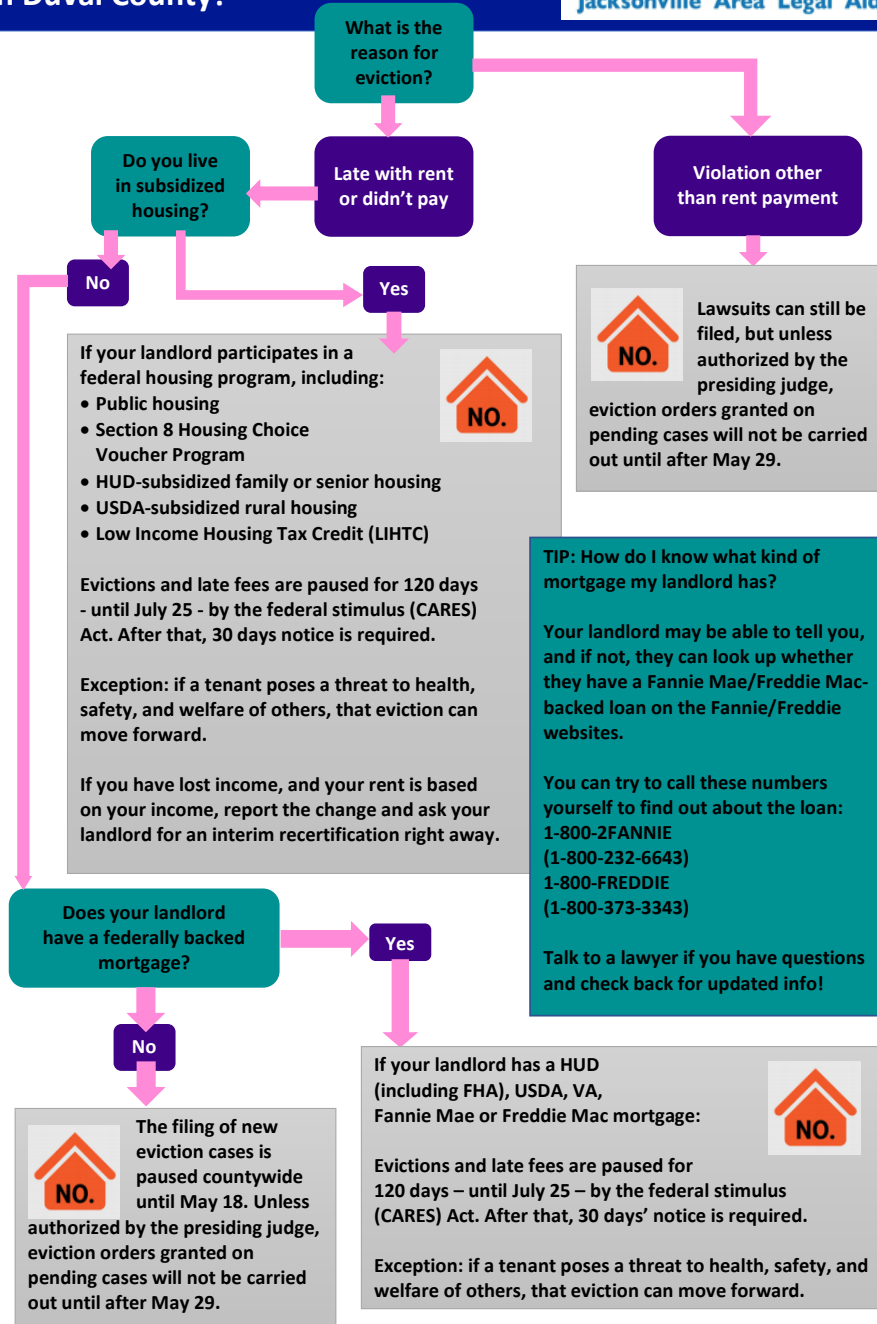
On the next page is an infographic JALA developed and is constantly updating on evictions in Duval County (as you may know, evictions are now completely different for residents of Miami-Dade and Palm Beach and other counties than they are for residents of Duval and Clay county). This infographic resulted from JALA devoting expert attorney hours to technology in hopes of reaching more people than we could ever represent, and it is by far the most shared social media work we have ever done. Anyone who suggests that technology is not a way to reach Floridans when legal aid lawyers cannot is misinformed.

These sorts of tools, funded by IOLTA, are in use throughout the country and reach millions and millions of people. Many are developed using subject matter experts within legal aid, and are extensively user-tested - hallmarks of a design-focused approach.

By contrast, the Task Force's recommendation would eliminate the ability of the Foundation to use IOLTA funding to support technology throughout the State - technology the legal aid programs would again have to come out of pocket to develop and support, since most, if not all, grant programs only pay for direct services.

Under the current Task Force's recommendations, JALA would not be able to use IOLTA funding to help build a device that has been shared (and hopefully helps) thousands and thousands of times, by people we could not ever expect to represent.

CAN I BE EVICTED during the COVID-19 crisis in Duval County?



A landlord cannot legally evict a tenant without a court order. It is illegal for your landlord to lock you out, turn off utilities like electric or water, remove the front door, or take other steps to force you to move. If your landlord attempts an illegal eviction, contact law enforcement to stop the threat to the safety of your family. You may also be eligible for free legal help through Jacksonville Area Legal Aid (904-356-8371). Last updated 5/4/2020.

This community education work done by JALA attorneys and staff is not funded by any government source and would not be funded in the future by traditional legal aid IOTA funding based on reports issued by the Supreme Court Task Force on IOTA.

There is a critical need for a network, and *expansion* of IOLTA funding, and an oversight body responsible for reviewing reports from the field (in a more evidence-based manner than the criteria suggested by the Task Force) - and we have that in place, right now, in this State, with the existing legal aid provider network and the Florida Bar Foundation. What we also have, thanks to a long history of indifference, is a patchwork system where residents of one county have dramatically different experiences with their legal issues than residents of another county.

Everything I have referenced above is supported by evidence and research. And, if there is anything I have learned since coming to legal aid full-time almost 7 years ago, after 23 years, first as an Assistant State Attorney and then in private civil practice, is that my knowledge, training and experience as a lawyer did not give me any meaningful guidance on how Florida's less fortunate interact with the legal system, or how civil legal aid does its job. The belief that lawyers, because they are lawyers, know how legal aid works is simply not true, and the Task Force's recommendations would dismantle the system and the structure at exactly the wrong time.

Sincerely,



James A. Kowalski Jr.

cc: Michael G. Tanner, Esq.
Michael Fox Orr, Esq.
W. Braxton Gillam IV, Esq.

FLORIDA CIVIL LEGAL AID ASSOCIATION
Ensuring Access to Justice for Floridians

May 15, 2020

Sent Via Email

Task Force on Distribution of IOTA Funds
% Elizabeth Tarbert
The Florida Bar

RE: FCLAA Response to IOTA Task Force Reports and Recommendations

Dear Task Force Members:

The Florida Civil Legal Aid Association (FCLAA) is an organization composed of the executive leadership of Florida's civil legal aid programs and represents their interests. FCLAA has been closely monitoring the work of the Task Force and appreciates its time and effort on this complicated matter. This statement both provides greater context and information on the operations of Florida's civil legal aid system and responds to the Task Force's reports and recommendations.

FLORIDA'S CIVIL LEGAL AID SYSTEM

BACKGROUND. In 2019, Florida civil legal aid resolved legal matters in 96,014 individual cases.¹ Florida's civil legal aid system provides legal advocacy in numerous areas, including but not limited to: housing, family law, government benefit programs, domestic violence, immigration, Veterans' rights, prisoners' rights, civil rights, community economic development, consumer, employment, education and disability rights. As previously communicated to the Bar and to the Court, and as is supported by numerous studies, the work done by legal aid lawyers is (1) often not replicated within the private bar; and (2) is some of the most difficult and complex legal work done by Florida lawyers.

Florida's civil legal aid lawyers often dedicate their careers to ensuring that justice for all is a promise fulfilled. Our attorneys are community leaders, experienced and incredibly dedicated. A survey² of 21 of Florida's civil legal aid organizations, employing approximately 410 attorneys, indicates that the average attorney has 13.5 years of experience, and the average salary and benefits cost of an attorney is \$90,280.

There is often a misconception that the legal issues of clients in the low-income community are not complex since, after all, they do not have a lot of resources. Our clients are, however, often preyed upon, deal with complex contracts and bureaucracies, and, since the working poor form the backbone of Florida's economy, justifiably need assistance with these complicated issues.

¹ It is noteworthy that this does not represent the thousands of individuals that benefited from legal rights education, systemic reform litigation, and policy advocacy.

² The methodology for the survey was as follows: legal aid organizations were asked to provide total number of attorneys in organization, total attorney salary budget for current fiscal year, total budgeted benefits for current fiscal year, and total years of experience for all attorneys. All these categories were averaged.

RESPONSIVENESS. The low-income communities that Florida civil legal aid serves are vulnerable and lack economic resilience.³ A natural disaster, such as a hurricane, often has devastating effects on the community and resulting repercussions for the State economy. As documented in the Legal Services Corporation’s (LSC) Disaster Task Force Report, “for low-income disaster survivors, basic sustenance and re-establishing their lives can involve months and even years of serious challenges. Law can be both a barrier and a tool as disaster survivors work to regain their lives.”⁴ After a disaster, low-income communities often require extensive outreach and community education about their legal rights and government programs that can help them recover from the disaster. For a community that lacks economic resilience, it is vital that the legal aid community serving them be responsive and flexible in meeting their needs.

The COVID-19 pandemic mirrors past natural disasters. As before, Florida’s civil legal aid system has risen to the challenge - learning to work remotely, often with less in the way of digital resources, to serve this important community. Our efforts include:

- educating a growing client-eligible community about their legal rights in a rapidly changing legal landscape, through extensive and adapted community outreach, including virtual town halls, media appearances, and editorials;
- creating and publishing legal information via social media and websites to update the community on the eviction moratorium and available income and benefit programs; i.e.: reemployment assistance, economic impact payments;
- engaging agencies administering government benefit programs to provide up-to-date information and to communicate and advocate against barriers to the application process;
- training both legal aid and pro bono attorneys on the substantive areas anticipated to spike in the coming weeks and months;
- providing legal information to clients with questions regarding their legal rights with the goal of resolving their concerns and avoiding legal problems;
- providing legal assistance on both pre-COVID-19 cases as well as COVID-19 cases.

As of today, the unemployment rate is 14.7% – the highest since the Great Depression. In the coming months and years, the demand for civil legal assistance will grow to unprecedented levels that will exceed anything the civil legal aid system has experienced. Additionally, the legal problems will be novel, complex, and voluminous. Experienced civil legal aid attorneys with strong ties and relationships with their client community will be vital in meeting these needs. In responding to this economic disaster, the civil legal aid system must be flexible, responsive, and leverage the resources of the private bar. Some of this Task Force’s recommendations will undermine Florida’s civil legal aid response to the pandemic.

JUSTICE GAP & EFFICIENT USE OF RESOURCES: Even before the pandemic, the need for additional resources for civil legal aid is well-documented. Over the years, the civil legal aid community has worked to educate the judiciary, state legislators, the business community, including through Florida’s Access to Justice Commission, on the need for additional resources. In Florida, the justice gap is exacerbated as we are one of only three states that does not provide state funding for civil legal aid. It is estimated that 71% of low-income households experienced at least one civil legal problem, and 86% of

³ Hoopes, Stephanie (PhD). 2018. [ALICE: A Study of Financial Hardship in Florida](#). United Way of Florida, p. 26

⁴ Executive Summary of LSC Disaster Task Force Report, 2019

the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help.⁵

Given the increasing demand and pressures on our existing civil legal aid system, FCLAA and its members are continually assessing the local legal needs of its community and evaluating the efficient and effective use of our resources. We use both quantitative and qualitative information to assess the impact of our advocacy. These evaluative processes are consistent with best practices, including the ABA Standards for the Provision of Civil Legal Aid (hereafter “ABA Standards”).⁶

The recommendations of the Task Force would restrict the very limited resources available to Florida’s civil legal aid law firms and would reverse Florida’s early leadership on IOTA and, in large part, violate the ABA Standards.

IOTA FUNDING & GENERAL SUPPORT. Florida led the country by establishing the first IOTA program in the country to expand access to justice. Historically, Florida’s IOTA fund administering agency, the Florida Bar Foundation, provided general support, or core operating support, to the civil legal aid programs and was a collaborative partner to Florida’s civil legal aid system.⁷ This collaboration ensured that Florida established a high quality and robust civil legal aid system, including direct legal representation, client education and outreach, systemic/impact advocacy, administrative/policy advocacy, and engagement of pro bono volunteers. The Task Force’s recommendations are in conflict with the original and current design of the Florida civil legal aid system.

After becoming the first state to establish an IOTA program, Florida, through the leadership of the Florida Bar Foundation established a national clearinghouse to replicate IOTA (or IOLTA) programs across the nation. The Foundation also led the nation in expanding funding through innovative changes in the ways banks manage IOTA accounts. The Foundation did not simply fund non-profit legal aid organizations, it helped design a statewide delivery system for civil legal assistance. Working with legal aid programs the Foundation helped design, implement, and monitor a system that created some uniformity of access and resources within regions and across the state. The Foundation and our delivery system established and maintained an unrestricted advocacy capacity both in terms of advocates with a full range of advocacy tools, and services to populations which had been excluded from service by the restrictions imposed on LSC grantees in 1996. The Foundation has also funded targeted grants designed to build regional collaboration, increase systemic and impact litigation, improve recruitment, retention, and diversity in civil legal programs, support statewide training of advocates, foster leadership development, and leverage technologies that would improve efficiency and quality of services to clients. Throughout the 40 year history of the Foundation’s management of IOTA revenues, it has consistently recognized the critical importance of general support funding to non-profit civil legal aid programs. General support funding allowed programs to set local priorities based on the needs of the local community and how the programs could most effectively use those funds based on gaps in

⁵ Executive Summary of LSC Justice Gap Report, 2017

⁶ ABA Standard 2.11: A provider should regularly evaluate the efficiency and effectiveness of its operations and its response to the legal needs of the low income communities it serves.

⁷ It should be noted that not all of the IOTA funds were distributed in a general support model as there were some funds set aside for competitive project based funding. Additionally, in recent years, The Florida Bar Foundation moved away from the general support model under its “Strategic Reset.”

funding. This process allowed for more predictability in funding and an ability to plan, which is crucial in an atmosphere of scarce resources. The Foundation then monitored programs to ensure quality representation and efficient use of funds. The Foundation employed the ABA Standards to assess the quality of the advocacy and client legal services.

It is generally accepted in the nonprofit sector that funds whose only restriction is to support the organization's mission are more valuable than restricted funds, a principle which applies equally to civil legal aid organizations. Funds that support our mission of ensuring access to justice through advocacy are more valuable and allow organizations to leverage existing and limited resources in a manner that restricted funds do not. Restricted funds often require significant matching dollars to accomplish similar activities, and carry an inflexibility that is particularly onerous in an atmosphere of quickly changing legal needs.

FCLAA supports a general support funding model. Although some of the Task Force recommendations appear to support some of the same principles employed in a general support funding model, FCLAA has concerns that some of the recommendations as written are in conflict with the operations of the current legal aid system that has been built over the past 40 years, and with the intent of the original order.

IMPACT ON TASK FORCE RECOMMENDATIONS OF CONCERN FOR ACCESS TO JUSTICE FOR LOW-INCOME FLORIDIANS

QUALIFIED GRANTEE ORGANIZATION. The Task Force recommends that a qualifying legal aid organization be defined as one that employs members of the Florida Bar to provide direct legal services to low-income litigants. Requiring that organizations employ Florida Bar members has the significant and likely unintended consequence of removing from eligibility any program that uses a pro bono model to provide direct legal representation to low income litigants.

Additionally, the Task Force funding restriction recommendation is contrary to the ABA Standards,⁸ which state that providers should integrate the resources of the private bar into its delivery of services. A review of IOTA-funded programs around the country indicates that every state funds pro bono projects with their IOTA funds. Pro bono programs and projects provide vital assistance to further narrow the justice gap and, given their focus on volunteer attorneys, are an efficient use of IOTA funds. Florida is already an outlier in terms of the lack of support for legal aid work - we should not strive to be more so. The Task Force recommendations would accelerate the end of pro bono as it currently exists.

QUALIFIED ATTORNEYS & RESTRICTED TO ATTORNEYS' SALARIES/BENEFITS. The Task Force recommends that funds may only be used for salaries and benefits of qualified attorneys. The recommendation defines "qualified attorneys" as members of the Florida Bar who exclusively (i.e.: to the exclusion of all other duties and responsibilities) provide direct legal services to low-income clients in Florida.

⁸ ABA Standard 2.7: A provider should integrate the resources of the legal profession and individual members of the bar into its delivery system, including in direct representation of clients.

The “**qualified attorney**” recommendation is problematic on many fronts. First and foremost, there are few if any legal aid attorneys (and probably few private firm attorneys) that provide direct representation to the exclusion of all other duties and responsibilities. Such a restriction would disqualify attorneys engaged in client education efforts, grant reporting, timekeeping, supervision, teaching, or local and state Bar activities, for even a portion of their time.

Education on legal rights is effective in avoiding legal problems and the need for legal assistance - mirroring the axiom an ounce of prevention is worth a pound of cure. Civil legal aid organizations both in diverse urban areas and remote rural areas conduct significant and extensive education for the client community. Educating low-income tenants on the proper way to withhold rent due to poor housing conditions or ensuring that individuals know how to properly complete FEMA applications for assistance after a disaster can avoid the problem escalating. Client education serves as preventive legal services, reducing the demand on both legal aid programs and the courts. Client education also ensures that legal aid organizations hear directly from the community what legal problems they are facing, again, allowing better planning and more impactful advocacy. Finally, such a restrictive interpretation of a civil legal aid attorney’s responsibilities and the exclusion of client education is contrary to the ABA Standards.⁹

Additionally, the requirement that a “qualified attorney” be admitted to the Florida Bar violates the Military Spouse Rule and excludes immigration attorneys who are often admitted in other states but are permitted to practice in Florida.¹⁰

FCLAA supports a recommendation that qualified attorneys are those admitted to practice law in a state bar and represent clients consistent with the rules regulating the Florida Bar and state and federal regulatory requirements.

Additionally, restricting the use of IOTA funds to salary and benefits is inconsistent with the business model and operations of both law firms and civil legal aid organizations. Similar to a private law firm, civil legal aid organizations have expenses beyond that of an attorney’s salary and benefits. Excluding these expenses from IOTA grants will significantly hinder the capacity of legal aid to provide direct legal representation. Some of these expenses include, but are not limited to:

- litigation expenses,

⁹ Standard 2.1: A provider should interact with low income individuals and groups serving low income communities to identify compelling legal needs and should implement a plan to address those needs most effectively.

Standards 2.12: A provider should actively seek to achieve institutional stature and credibility in the communities in which it operates - established via effective outreach.

Standard 3.6: Providers may offer general legal information that is not based on particular facts and does not establish an attorney client relationship.

¹⁰ As immigration law is federal administrative practice, attorneys need not be admitted to the Florida Bar to practice immigration law competently. The Federal Regulations and the corresponding Executive Office for Immigration Review rules provide that attorneys may practice before any Immigration Court and before the U.S. Citizenship and Immigration Service as long as the attorney is a “member in good standing of the bar of the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law.” 8 C.F.R. §§ 1001.1(f), 1291.1(a)(1).

- travel expenses, which are crucial and can be high in rural areas,
- training costs— consistent with the ABA standards¹¹,
- translation services, which are vital for access to justice and required by federal law,
- administrative support for the efficient provision of direct legal representation such as paralegal support,
- space costs, technology costs, and other expenses required to provide client services.

The exclusion of these expenses would decrease existing efficiencies in many legal aid organizations. Consistent with the Florida rules and federal and state regulations, many civil legal aid organizations utilize non-attorneys to represent clients in administrative hearings, such as federal and state administrative hearings and for certain immigration matters. This model is consistent with both the law firm business model as well as the ABA Standards.¹² Reconsideration of this exclusion is crucial given the limited resources that currently exist and even more so when coupled with the anticipated spike in demand for services we currently face. Civil legal aid’s existing business model is to provide high quality legal advocacy in the most efficient manner possible and this includes the use of professionals such as paralegals, supervised by attorneys, in providing legal support.

Finally, excluding supervision as an allowable IOTA-funded activity would be inconsistent with best practices and generally accepted grantmaking practices. There is no question that effective supervision is vital to the successful provision of high quality direct legal representation.

FCLAA understands the Task Force’s goal of ensuring that direct legal representation is prioritized – especially considering the limited resources. However, FCLAA encourages the task force to consider the importance of general support for civil legal aid organizations whose mission is to ensure access to justice for the low-income community. For decades, Florida has worked to establish a comprehensive civil legal aid system that advocates for low income clients on many fronts. The current proposed IOTA-funding restrictions would cripple its effectiveness and set Florida’s legal aid delivery systems back a decade or more. Additionally, as one of only three states that does not provide state funding for civil legal aid, further restriction of already limited resources would be another barrier to overcome for successfully ensuring access to justice.

After an analysis of IOTA programs around the country, FCLAA could not identify any other state with a rule that would limit use of IOTA funds to covering salary and benefits of attorneys exclusively providing direct legal representation. On the contrary, many IOTA programs view themselves as collaborative partners in ensuring access to justice.

5% LIMITATION ON ADMINISTRATIVE EXPENSES. The Task Force recommended that IOTA funds, in an amount not to exceed 5% of IOTA funds generated in each fiscal year, may be expended for overhead and administrative expenses directly related to the collection and use of IOTA funds and any

¹¹ ABA Standard 6.5: A provider should provide access to ongoing and comprehensive training for all personnel.

¹² ABA Standard 2.9: A provider should consider using paralegals, tribal advocates, lay advocates, law students and other legal assistants, when authorized by state, federal or tribal law and appropriate ethical rules.

enforcement of the compulsory IOTA program. Administration of the IOTA program requires fiscal oversight and reporting with financial institutions as well as ensuring that programs receiving IOTA funds utilize them consistent with best practices and the provision of high quality legal advocacy. A minimum level of staff is required to execute these objectives.

IOTA fund growth can be highly volatile. For example, there may be years where 5% of the revenue generated is insufficient even to maintain the fiscal staff required for administration of IOTA funds. Limitations on and oversight of expenditures for administration and overhead are traditionally the responsibility of a governing body. Through the appointment process, the Directors can ensure that they favor a conservative approach to overhead and administration to ensure that the funds are prioritized for legal advocacy for the low-income community. FCLAA encourages adoption of a rule consistent with good governance principles, and that ensures the IOTA administration program is adequately staffed to effectuate its mission.

15% LIMIT ON RESERVES. The Task Force recommends that IOTA funds, in an amount not to exceed 15% of IOTA funds generated in each fiscal year, may be held in reserves to account for fluctuations in IOTA revenue. These types of limitations are traditionally decided by a governing body and writing them into a Florida Rule may limit future responsiveness and could have unforeseen consequences with a changing economy and circumstances. The Foundation's Board of Directors is tasked with ensuring that the Foundation is faithfully executing its mission and are accountable for any mismanagement.

REPORTING REQUIREMENTS. The Task Force recommends that the following be reported for each grantee organization: (a) the number of qualified attorneys hired or funded through IOTA Funds; (b) the number of clients served by qualified attorneys; (c) the hours incurred in the delivery of direct legal services to litigants by qualified attorneys; and (d) category of cases handled by qualified attorneys. FCLAA does not have concerns with reporting the above data; however, all current IOTA grantees already collect and provide extensive qualitative and quantitative data which provides a fuller picture on the impact of our collective advocacy. Additionally, Florida civil legal aid lawyers provide high quality legal representation in a variety of substantive areas that often result in extensive systemic impact across the state and even the country. Such legal advocacy is complex and often the number of clients directly represented may not capture the impact of the advocacy.

EXAMINATION OF ALTERNATIVE MODELS. The Administrative Order encouraged the examination of alternative models. FCLAA supports the further analysis of other state models for the distribution of IOTA funding and encourages the Task Force to consider a rule that ensures the provision of direct legal assistance to the poor by supporting the existing civil legal aid system that is designed to provide for access to justice.

CONCLUSION

Over the last 40 years, Florida civil legal aid programs, the Florida Bar Foundation, and the private bar, through its leadership on the governing bodies of both the Foundation and legal aid programs and through its pro bono support, have developed a robust civil legal aid system. This system includes direct legal representation, systemic/impact advocacy, administrative/policy advocacy, and coordination of pro

bono support to leverage the resources of the private bar. The Task Force recommendations appear to substantially alter an intentional and well-established system for the provision of legal aid.

Florida is one of only three states that does not provide state funding to supplement IOTA funding, therefore ensuring that IOTA funds are used for general support is vital to ensure that we continue to provide access to justice for Floridians. As drafted, the proposed changes will have far-reaching consequences to Florida's civil legal aid system at a time that we will experience an unprecedented demand for services. The current recommendations if adopted will restrict our ability to serve and limit access to justice for low-income Floridians.

Respectfully Submitted,

Monica Vignes-Pitan
FCLAA President
Legal Services of Greater Miami

Leslie Powell-Boudreaux
FCLAA Vice President
Legal Services of North Florida

Christine Larson
FCLAA Secretary
Three Rivers Legal Services

Christopher M. Jones
FCLAA Treasurer
Florida Legal Services

Cheryl Little
Americans for Immigrant Justice

Richard C. Woltmann
Bay Area Legal Services

Rob Johnson
Brevard County Legal Aid Association

Patrice Paladino
Coast to Coast Legal Aid of South Florida

Alana Greer
Community Justice Project

Kimberly Rodgers
Community Law Program

Jeffrey Harvey
Community Legal Services of Mid-Florida

Christina Spudeas
Florida Children's First

Dante Trevisani
Florida Justice Institute

Jaffe Pickett
Florida Rural Legal Services

Carly Wohl
Heart of Florida Legal Aid Society

James Kowalski
Jacksonville Area Legal Aid

Linda Harradine
Legal Aid of Manasota

Anthony Karrat
Legal Aid Service of Broward County

Robert Bertisch
Legal Aid Society of Palm Beach County

Doug White
Northwest Florida Legal Services

Jodi Siegel
Southern Legal Counsel

Carrie Litherland
Legal Aid Foundation of the Tallahassee
Bar Association

Florida Civil Legal Aid Association

Ensuring Access to Justice for Floridians

July 10, 2020

Sent Via Email

Mayanne Downs, Esq.
Chair, Task Force on the Distribution of IOTA Funds
c/o The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399

**Re: Task Force on the Distribution of IOTA Funds - FCLAA / FBF
joint proposed Rule**

Dear Ms. Downs:

Attached please find a proposed amendment to Rule 5-1.1(g) Interest on Trust Accounts (IOTA) Program. This proposed Rule has been drafted by the Executive Directors and CEOs of the various civil legal aid law firms throughout Florida, through the Florida Civil Legal Aid Association, and has been approved by our membership and by others, whose names and organizations appear below, and has also been approved by the Florida Bar Foundation. We appreciate your consideration of this proposed Rule, which is crafted against the backdrop of our collective decades of experience on the front lines of civil legal aid in Florida, and with significant assistance from subject matter experts around the country, to reflect lessons learned in the effective administration of IOTA.

In drafting this proposed Rule, we focused on the Court's directive that IOTA revenues should be prioritized to fund direct legal services for low-income litigants in Florida. This Rule achieves that purpose while keeping the core of the IOTA delivery model, the Florida Bar Foundation, in place. The Foundation has a proven history of implementation of IOTA funds and guiding the Foundation through its future actions, as this proposed Rule does, will ensure sustained focus on this priority.

In following the guidance set by the Task Force, we want to highlight continuing issues as we have throughout this process. Drafting a Rule always has unintended consequences, more so during a recession. The proposed FCLAA Rule will allow a number of present recipients of IOTA funds to continue to receive those funds - including Florida Children's First. However, some presently funded efforts may no longer receive IOTA under the proposed rule. A significant number of stakeholders testified to this Task Force, and if the Task Force is focused on keeping one or more as entities funded by IOTA, it should be addressed.

Thank you for your consideration of this matter.

Respectfully Submitted,

Monica Vignes-Pitan
FCLAA President
Legal Services of Greater Miami

Leslie Powell-Boudreaux
FCLAA Vice President
Legal Services of North Florida

Christine Larson
FCLAA Secretary
Three Rivers Legal Services

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Jacksonville Area Legal Aid

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Legal Aid Service of Broward County

Jodi Siegel
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Legal Aid Foundation of the Tallahassee
Bar Association

Miriam Harmatz
Florida Health Justice Project

Betsy Dobbins
Center for Children's Rights

Christopher M. Jones
FCLAA Treasurer
Florida Legal Services

Richard C. Woltmann
Bay Area Legal Services

Alana Greer
Community Justice Project

Jeffrey Harvey
Community Legal Services of Mid-Florida

Dante Trevisani
Florida Justice Institute

Carly Wohl
Heart of Florida Legal Aid Society

Linda Harradine
Legal Aid of Manasota

Robert Bertisch
Legal Aid Society of Palm Beach County

Robert Johnson
Brevard County Legal Aid Association

Bethanie Barber
Legal Aid Society of the Orange County Bar
Association

Randy McGrorty
Catholic Legal Services

CHAPTER 5. RULES REGULATING TRUST ACCOUNTS
5-1. GENERALLY
RULE 5-1.1 TRUST ACCOUNTS

(g) Interest on Trust Accounts (IOTA) Program.

(1) *Definitions.* As used in this rule, the term:

(A) “Nominal or short term” describes funds of a client or third person that the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income.

(B) “Foundation” means The Florida Bar Foundation, Inc. which shall serve as the designated IOTA fund administrator and shall monitor and receive IOTA funds from eligible institutions and distribute IOTA funds consistent with the obligations and directives in this rule and orders of the Florida Supreme Court.

(C) “IOTA account” means an interest or dividend-bearing trust account benefiting The Florida Bar Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

(D) “Eligible institution” means any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation, any state or federal credit union authorized by federal or state laws to do business in Florida and insured by the National Credit Union Share Insurance Fund, or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida, all of which must meet the requirements set out in subdivision (5), below.

(E) “Interest or dividend-bearing trust account” means a federally insured checking account or investment product, including a daily financial institution repurchase agreement or a money market fund. A daily financial institution repurchase agreement must be fully collateralized by, and an open-end money market fund must consist solely of, United States Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and have total assets of at least \$250 million. The funds covered by this rule are subject to withdrawal on request and without delay.

(F) A “qualified grantee organization” is a not for profit entity incorporated or chartered for the purpose of providing civil legal assistance to low-income individuals or is a not for profit entity with exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. It must also demonstrate the experience and capacity to provide Qualified Legal Services, as defined herein, by:

(1) employing qualified legal services providers to:

(i) directly provide qualified legal services, and/or

(ii) facilitate the provision of and improve the quality of qualified legal services; or

(2) facilitating qualified legal services by coordinating volunteer qualified legal service providers.

(G) “Qualified Legal Services” are legal services provided directly to low-income clients for their civil legal needs in Florida.

(H) A “Qualified Legal Services provider” is a member of The Florida Bar or other individual authorized by the Rules Regulating The Florida Bar or other law to provide Qualified Legal Services in Florida.

(2) *Required Participation.* All nominal or short-term funds belonging to clients or third persons that are placed in trust with any member of The Florida Bar practicing law from an office or other business location within the state of Florida must be deposited into one or more IOTA accounts, unless the funds may earn income for the client or third person in excess of the costs incurred to secure the income, except as provided elsewhere in this chapter. Only trust funds that are nominal or short term must be deposited into an IOTA account. The Florida **B**bar member must certify annually, in writing, that the bar member is in compliance with, or is exempt from, the provisions of this rule.

(3) *Determination of Nominal or Short-Term Funds.* The lawyer must exercise good faith judgment in determining on receipt whether the funds of a client or third person are nominal or short term. In the exercise of this good faith judgment, the lawyer must consider such factors as the:

(A) amount of a client’s or third person’s funds to be held by the lawyer or law firm;

(B) period of time the funds are expected to be held;

(C) likelihood of delay in the relevant transaction(s) or proceeding(s);

(D) lawyer or law firm’s cost of establishing and maintaining an interest-bearing

account or other appropriate investment for the benefit of the client or third person;
and

(E) minimum balance requirements and/or service charges or fees imposed by the eligible institution.

The determination of whether a client's or third person's funds are nominal or short-term rests in the sound judgment of the lawyer or law firm. No lawyer will be charged with ethical impropriety or other breach of professional conduct based on the exercise of the lawyer's good faith judgment.

(4) *Notice to Foundation.* Lawyers or law firms must advise the foundation, at its current location posted on The Florida Bar's website, of the establishment of an IOTA account for funds covered by this rule. The notice must include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account.

(5) *Eligible Institution Participation in IOTA.* Participation in the IOTA program is voluntary for banks, credit unions, savings and loan associations, and investment companies. Institutions that choose to offer and maintain IOTA accounts must meet the following requirements:

(A) *Interest Rates and Dividends.* Eligible institutions must maintain IOTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any.

(B) *Determination of Interest Rates and Dividends.* In determining the highest interest rate or dividend generally available from the institution to its non-IOTA accounts in compliance with subdivision (5)(A), above, eligible institutions may consider factors, in addition to the IOTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that these factors do not discriminate between IOTA accounts and accounts of non-IOTA customers, and that these factors do not include that the account is an IOTA account.

(C) *Remittance and Reporting Instructions.* Eligible institutions must:

(i) calculate and remit interest or dividends on the balance of the deposited funds, in accordance with the institution's standard practice for non-IOTA account customers, less reasonable service charges or fees, if any, in connection with the deposited funds, at least quarterly, to the ~~F~~foundation;

(ii) transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm from whose IOTA account the remittance is sent, the lawyer's or law firm's IOTA account number as assigned by the institution, the rate of interest applied, the period for which the remittance is made, the total interest or dividend earned during the remittance period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period; and

(iii) transmit to the depositing lawyer or law firm, for each remittance, a statement showing the amount of interest or dividend paid to the foundation, the rate of interest applied, and the period for which the statement is made.

(6) *Small Fund Amounts.* The Foundation may establish procedures for a lawyer or law firm to maintain an interest-free trust account for client and third-person funds that are nominal or short term when their nominal or short-term trust funds cannot reasonably be expected to produce or have not produced interest income net of reasonable eligible institution service charges or fees.

(7) *Confidentiality and Disclosure.* The Foundation must protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the Foundation must, on an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts.

8) Distribution of IOTA Funds. All IOTA funds transmitted to the Foundation shall be used in a manner that gives priority consideration to funding Qualified Legal Services for low-income individuals in Florida, and shall be used only to:

(A) Support qualified grantee organizations that:

a. directly provide Qualified Legal Services, and/or

b. facilitate the provision of and improve the quality of Qualified Legal Services; or

c. facilitate Qualified Legal Services by coordinating volunteer Qualified Legal Service Providers.

(B) Fund necessary and reasonable operating expenses of the Foundation for effective operation of the IOTA program including collection, disbursement, and monitoring and reporting on efficient use of IOTA funds and pursuing the growth of IOTA and development of other sources of civil legal aid funding.

(C) Establish and maintain reasonably prudent reserves for the operations of the IOTA program as well as to promote stability in funding for (A) and (B), above.

(D) At least 80% of IOTA funds received by the Foundation shall be allocated to qualified grantee organizations in the form of grants and program-related expenses. A portion of these funds may be allocated to reserves if approved by the IOTA Funds committee of the Foundation Board.

The Foundation shall develop policies for monitoring the distribution and use of IOTA funds and those policies shall give the highest priority to ensuring the consistent provision of qualified legal services throughout the state of Florida.

(9) IOTA Oversight and Governance. The Foundation shall determine the initial and continuing eligibility of banks, savings and loan associations and investment companies to hold IOTA accounts in accordance with the criteria set forth in this rule and in *In re: Amendments to the Rules Regulating the Florida Bar 5-1.1(e)*, 797 So. 2d 551, 552, (Fla. 2001). The Foundation shall also be responsible for ensuring the efficient and effective distribution and use of IOTA funds. In order to further ensure such efficiency:

(A) The Foundation's Board of Directors will establish a standing committee on IOTA Funds. The committee shall include three members chosen by the Florida Civil Legal Aid Association, Inc. from its members. The committee shall provide feedback on the Foundation's development of a statewide plan for distribution of funds, policies for monitoring the distribution and use of IOTA funds, best practices for use of IOTA funds, and other input and oversight as directed by either the Board of Directors or the Supreme Court of Florida.

(B) The Foundation's Budget and Finance Committee shall be composed of at least four Directors appointed by the Supreme Court of Florida pursuant to the Foundation's bylaws and articles of incorporation.

(10) Reporting by Qualified Grantee Organizations. Qualified Grantee Organizations must report to the Florida Bar Foundation on or before February 15 of each year on metrics developed by the IOTA Funds Committee and approved by the Foundation Board on a regular basis designed to confirm grantee organizations are promoting access to justice on the part of low-income clients, and to ensure IOTA funds are utilized efficiently and effectively. These metrics shall include but are not limited to: the number of clients receiving Qualified Legal Services paid for or facilitated by the use of IOTA funds and other aggregate data showing the impact of civil legal aid in Florida, regardless of funding source.

(11) Reporting by the Foundation. As a condition of continued receipt of IOTA funds, the Foundation shall prepare on or before April 15 of each year a report containing

programmatic and financial analysis of the IOTA funds received and distributed by the Foundation during the previous calendar year and shall prepare an Annual Report that will be available to the public.

(A) The programmatic report shall at a minimum contain the aggregate data reported by the qualified grantee organizations detailed in the previous section. It may also contain other data that details the impact of the IOTA funds provided to the qualified grantee organizations.

(B) The financial portion of the report shall:

(i) Be prepared according to generally accepted accounting principles;

(ii) Include and identify the specific amount of IOTA funds given to the various providers, programs, and projects for the previous year;

(iii) Include and identify the total amount of funds that were awarded to build or maintain the capacity of qualified grantee organizations;

(iv) Include the total amount of IOTA funds that were set aside for reserves;

(v) Include the total amount of IOTA funds that were spent by the Foundation for operating expenses; and

(vi) Include the categories of the rates paid by participating Banks.

(C) Copies of the reports shall be provided to the Chief Justice of the Florida Supreme Court immediately upon completion of such reports, published upon the Foundation's website, and otherwise made available to others of the public upon request.