

# MINUTES – March 12, 2009

THE WEST VIRGINIA BAR FOUNDATION  
IOLTA ADVISORY COMMITTEE MEETING  
STATE BAR CENTER-CHARLESTON  
March 12, 2009

## MINUTES

**The meeting of the West Virginia Bar Foundation's IOLTA Advisory Committee was called to order by Chairperson Scott Segal on March 12, 2009, at the State Bar Center in Charleston.**

**Members of the Committee in attendance were Roger Osborne and Jim Martin. Also participating by telephone conference call were Dean Joyce McConnell, Professor Charles DiSalvo and Steve Crislip. Bob Baker and Bar Foundation Executive Director Tom Tinder were also in attendance.**

**Chairperson Segal welcomed Mr. Osborne as the newest member of the Committee filling the position of a layperson. He has extensive and varied experiences in accounting, finance, business and community work.**

**The first item on the agenda was a review of the Minutes of the last Committee meeting which was held on December 11, 2008. A motion was duly made, seconded and passed to approve the Minutes as presented.**

**Chairperson Segal requested a report on federal government funding for legal services programs. There were comments made that Congress had just passed an appropriations bill that included \$40 million for the Legal Services Corporation, including approximately \$300,000 to Legal Aid of WV. Mr. Martin stated that he would provide a full report to be included in the Minutes, which follows—**

“Scott asked me to submit a brief update on federal and state legal services issues since we skipped over those in the interest of saving time yesterday. The big news, of course, is the increase in the Legal Services Corporation funding included in the Omnibus Budget bill which passed earlier this week. The total increase for LSC is about 11%, or \$40,000,000. That will mostly go directly to increase local funding—the West Virginia share should be about \$300,000, since our basic LSC contract is just under \$3,000,000. That is very welcome news! The bill, so far as I know now, continued all the current restrictions from 1996, but did not add any new conditions or limitations on our work. Congressman Mollohan continues to chair the House subcommittee on the LSC appropriations, and to assert a strong position in favor of addressing LSC needs.

There have been a few other congressional developments tangentially affecting legal aid programs. Special finding for foreclosure and predatory lending clients remains possible, as part of several stimulus and recovery programs. This likely will be directed to the most severely impacted areas of the country, but West Virginia could receive some of those dollars. The Department of Justice programs against domestic violence seem sure to be

continued—important, since state level funding for this work may drop if the overall state budget shrinks. We receive funds supporting work on behalf of domestic violence survivors from the state and from United Way organizations. While I think both of these resources will continue, there is a strong possibility the levels of support may drop.

The statewide telephone access system for Legal Aid of West Virginia (ATLAS) should be fully in operation by mid-year. This system is designed to not only provide greater client (and public) access to LAWV, but also to give local offices a better chance to focus their work on client needs and case development. In the first few months of operation in Charleston, the number of applicants actually served almost doubled from the year before. Most of those people are receiving limited advice, counsel or other brief assistance, but that is a huge step forward from not being able to reach LAWV at all, or only being told that we could not help them at all. Once the system is fully in place, we also should have addressed (and eliminated) the difficulty in reaching advocates by phone that have plagued the program for the last several years!

Our other news is mostly routine. We are preparing for summer students, with eight to be provided from the PILF programs at WVU. We also have students this year from other law schools in the general region. In several offices we are receiving really valuable support from volunteer lawyers, under the emeritus lawyer program and simply as volunteers. We also have been finding much more support from volunteer paralegals, other students and members of other professional groups, such as CPA's for tax issues. Our audit will be underway shortly for FY/Calendar year 2008, which we always include as part of or a later supplement to the annual IOLTA report. The WV Supreme Court of Appeals did approve a final structure for the Access to Justice Commission, and is now filling positions for the Commission itself—there should be much more to report on this very important development on West Virginia at the June IOLTA meeting. Jennifer Singletary, Special Projects Director Counsel for the Court, is the staff lawyer there currently coordinating developments with Chief Justice Benjamin. Finally, this year LAWV will recognize the Ohio County Bar for their 20 year record of pro bono participation, the most extensive in the state, as part of a Law Day presentation to be held in Wheeling on May 1st.”

Chairperson Segal requested that Professor DiSalvo provide a written report regarding the activities of the special grantees to be included in the Minutes, as follows—

## **ChildLaw Services**

### **Childlaw reports:**

Childlaw has a current caseload of 343 cases which represents 493 children. Of those clients, 108 are custody evaluation/GAL cases, 224 are abuse/neglect cases, 145 are child victims of crime (domestic violence, sexual assault, etc), and 16 are juvenile delinquency & infant guardianship cases.

In just the last four weeks of the reporting period, ChildLaw has opened 28 new cases, representing 37 children.

## **West Virginia CASA**

**CASA reports:**

In 2009, two programs assigned their first cases; Jackson County and Hampshire County. Additionally, Kanawha County swore in its first class of volunteers in December 2008. CASA programs served 1,346 children in 2008, an increase from 1,180 in 2007. There were 352 active CASA volunteers who contributed over 14,000 volunteer hours during 2008. Finally, the Executive Director continues to collaborate with key stakeholders to focus on system improvement to better serve abused and neglected children in our state.

**WV Senior Legal Aid****Senior Legal Aid reports:**

So far this fiscal year we have served 234 individual seniors across 44 counties. We are seeing an increase in Medicare coverage issues including some caused by seniors getting enrolled in Medicare managed care plans when they thought they were only enrolling in prescription drug plans. We are still serving many collection-proof seniors who are being hounded by unsecured creditors, helping them understand their rights and how they exercise them. We have had a few heartbreaking cases of financial exploitation by adult children of seniors, one of which we got early enough to hopefully prevent loss of the home.

We have had a couple of meetings of a new elderlaw task force between WVSLA and LAWV, and are planning an elderlaw CLE as a tool to recruit pro bono attorneys for elderlaw issues. We are resurrecting our joint newsletter on aging and law in WV with the Longterm Care Ombudsman program, and welcome input on a short survey about what readers want at <http://seniorlegalaid.blogspot.com/2009/02/survey-about-wv-aging-and-law.htm>

**The WV Fund for Law in the Public Interest****The Fund reports:**

The Fund has chosen the sixteen students who will serve as summer public interest fellows during 2009. Eleven of these students will be serving in legal aid offices in Beckley, Charleston, Clarksburg, Huntington, Lewisburg, Martinsburg, Morgantown and Wheeling. There will serve in public defender offices, while two will be placed with 501 (c)(3) organizations.

The Fund continues to operate its loan repayment assistance program and its post-graduate fellowship program.

**Appalachian Center for Law and Public Service**

Randy Minor went on the bench January 1, giving up his position as Director of the Center. As Jim Martin pointed out at our meeting of March 12, the Center has not operated since that time. Plans are afoot to hire a new Executive Director. The Executive Director would operate a re-configured Center. Accordingly, the Director's responsibilities would also be re-configured. The Director's responsibilities would include:

- operating the pro bono student volunteer program. The College and LAWV have

discussed a format whereby students volunteering for pro bono work would work with LAWV lawyers in providing free civil legal assistance to the poor. While no final resolution on this format has been reached, the College and LAWV agree that this aspect of the Center's work would be well-served if a LAWV lawyer were located as close to the law school as possible, if not in the law school itself. The Executive Director would promote the advantages of pro bono work by students, conduct a continuing campaign to recruit student volunteers, register student volunteers, link the volunteers up with LAWV, prepare the students for their pro bono service, create and maintain records of the students' work, and see to it that the students were recognized at commencement and elsewhere.

- being responsible for supervising the College's externship program. While this is not an IOLTA activity, there are features of the externship program that could synergistically redound to the benefit of the pro bono program, especially as externship placements are developed with current recipients of IOLTA funds.
- being responsible for administrative activities involving the WV Fund for Law in the Public Interest (an IOLTA special grantee) and the Public Interest Advocates, the student organization that supports the WV Fund for Law in the Public Interest.
- The College of Law understands that this re-configuration of the Director's responsibilities includes activities, such as supervision of externship activities, that may reasonably be viewed by some as not appropriate for IOLTA funding. If the IOLTA Advisory Committee concurs in this view, the College understands that the percentage of IOLTA funding (currently standing at approximately 1.16% of all IOLTA distributions) coming to the Center may have to be adjusted. The College does point out, however, that the Director is expected to spend 20 to 25% of his/her time on the pro bono aspect of the job. Even if current IOLTA receipts were to double, the amount of funds received by the Center at the current distribution rate of 1.16% of all IOLTA funds is unlikely to exceed 20 to 25% of the Director's likely salary.

The Committee members reviewed the financial report for the IOLTA program. A comparison chart of several banks had been distributed which demonstrated an overall reduction in IOLTA funds from December, 2007, through February, 2009. The reductions were not nearly as severe as has been suffered by almost every other state in the nation because of the current recession.

There was a total amount of \$100,453 available for consideration for distribution. After some discussion, a motion was duly made, seconded and passed to reduce the restricted amount in the Rainy Day Fund from \$125,000 (the Committee had previously set a goal of \$200,000 for that Fund) to \$112,500, set aside an additional amount of \$12,500 as the quarterly amount of the annual management fee which would increase that amount to \$37,500 in the Rainy Day Fund and distribute the amount of \$100,453 in accordance with the Supreme Court Order.

The next item for discussion related to a Comparability Rule for the IOLTA program. The Committee members were informed that the proposed Rule had just been unanimously approved by the Supreme Court. However, there had been numerous

questions about the distribution of the IOLTA funds to the grantees and special grantees. The Court had requested that it be given annual report information and financial materials within the next month. The official Court Order should be received in the next few days and action will begin to implement the Rule as soon as possible, although it was understood that there will not be much increase in IOLTA funds with the historically low interest rates at the present time.

Under the topic of Other Business, the Committee members had talked about Cy Pres proceedings and a recent Rule from Massachusetts relating to class action suits and residual funds being distributed to non-profit organizations and the IOLTA program during its last Committee meeting. It was agreed that this matter would be discussed further at the next Committee meeting.

Chairperson Segal announced that the next meeting of the Committee would be on June 11, 2009 at 11:00 AM at the State Bar Center in Charleston.

There being no further business to transact, the meeting was adjourned.