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I. THE PROBLEM STATED

Currently, California Community Action Agency target areas are served by three (3) basic kinds of legal programs:

- A. Urban legal services programs, which are basic staff-attorney offices located near or in target areas;
- B. Rural programs operated by California Rural Legal Assistance, Inc. (CRLA), which are also staff-attorney programs funded by the Office of Economic Opportunity (OEO); and
- C. Special Indian legal services programs, which provide services to the Indian communities throughout the State.

A fourth program, which operated in Washington Township of Southern Alameda County, was recently discontinued by Federal OEO. This program was a pilot "judicare" program. The judicare program was deemed by Regional OEO to be a successful and efficiently operated program; however, there was some question concerning the ability of the Board of Directors to both serve in the program and direct its operation. Steps are now being taken by our office to have that program re-instituted in Washington Township.

This judicare-type proposal will deal primarily with rural legal services programs, many of which are in the service area of CRLA, plus an additional number of counties (eleven [11] CRLA counties and eleven [11] non-CRLA counties).

At present, the target rural service areas are served, in part, by CRLA, a staff-attorney program funded by OEO. CRLA provides its services to eleven (11) counties in the rural parts of the State through nine (9) service offices.

To the extent that CRLA is the only publicly-subsidized legal services program in the target areas, it is a monopoly. Poor clients must accept CRLA's service or none at all. In several of their offices, for substantial periods of time, the program attorneys refused certain kinds of service to clients entitled to it under the terms of the program's grant, while simultaneously pursuing causes and activities proscribed by the grant.

Because of its huge service area, CRLA attorneys are often entirely inaccessible to their clients. These people are unserved by any program.

Many of CRLA's attorneys are young and inexperienced. They typically come into the program with little or no experience and then, in almost every case, leave the service area after a maximum of eighteen (18) months' service. Not only is the present system inefficient, it discourages long-lasting relationships between attorneys and the clients.

We have concluded that most of CRLA's most conspicuous problems can be solved by adopting a "judicare" approach for delivering civil legal services to low-income people in CRLA's service area. Under this approach, the public authority would subsidize the clients, rather than the attorneys, and permit the clients to choose their own attorneys and the kind of service they desire. Among other things, this approach would expand the total number of attorneys available to give assistance to low-income people from approximately thirty-five (35) currently providing service through CRLA to 1100.

It has been argued that established members of the Bar may not respond to the program and that, therefore, the quality of service would decline.

Both the theory and experience of judicare indicate otherwise. Subsidizing the client, rather than the lawyer, merely gives the individual client a choice. It opens to him the option, if he chooses to take it, to go beyond the lawyers provided for him at present through staff-attorney programs. He is not compelled to do so. If he chooses, as we have indicated, to go to staff attorneys now in place (or those formerly with the program, now in private practice), he can do that.

In fact, every sign from the service areas under consideration indicates an enthusiastic attitude by the local Bar Associations toward the program we are presenting. Every Bar Association we have polled on the question has overwhelmingly endorsed the concept.

This enthusiasm mirrors the enthusiasm and participation of local Bar attorneys in other areas where judicare programs have been under way for as long as five (5) years. In Washington Township, for example, the entire Bar participated in the program - thirty-six (36) lawyers out of thirty-six (36) members of the County Bar Association. And in Northern Wisconsin, the site of the country's largest and most highly

touted judicare program, covering twenty-eight (28) rural counties in Northern Wisconsin, the response of the Bar has been very enthusiastic, despite fee arrangements that remain barely fifty per cent (50%) of the minimum Bar fee schedule. On an inspection tour of that program, we found that the local lawyers treat their judicare clients exactly like their paying clients, and that often they do not discover which category a client is in until the service has been entirely rendered. In those rural counties, the sense of professionalism is high, and the lawyers are keenly aware of their responsibilities to do their best work in every situation, whether the bill is paid by the client or at a lower rate by the judicare program.

A concluding point concerns legal service to minority clients. Increasing numbers of minority lawyers are making exactly the opposite argument to that made by supporters of the staff-attorney approach. They are arguing precisely that staff attorneys are without true sensitivity to their communities. They argue that the "poverty lawyers" are typically White and middle class, with no roots in their communities and no intention to stay. They argue, finally, that subsidizing these outsiders is a form of colonialism, in which indigenous minority lawyers are deprived of their natural clientele - a situation that hurts the vitality of the minority Bar and leadership class and presents a distorted picture to the client about the nature of his community.

II. STATEMENT OF OVERALL GOAL

To provide comprehensive civil legal services to low-income people in the fairest and most efficient possible manner, and to afford the low-income people the opportunity to select an attorney of their own choice to represent them in all civil matters covered by the judicare-type program, thus strengthening the client-attorney relationship in the low-income communities of our rural areas.

III. OBJECTIVES

The objectives of the program include, but are not limited to, the following:

- A. To provide freedom of choice for low-income clients with respect to choosing an attorney to represent their civil legal needs;
- B. To increase the base of services and the number of attorneys available to serve low-income people in rural areas Statewide;
- C. To provide direct legal services in the communities where people live, and thereby minimize travel by both clients and attorneys to solve the problems of the "poor";
- D. To encourage relationships between low-income communities and indigenous lawyers, who are the communities' natural leaders;
- E. To encourage young lawyers and potential leaders to return to their racial and ethnic communities to lead the fight against poverty;
- F. To utilize existing local Bar Association resources, which will encourage not only a continuity of service, but also experience and efficiency in meeting the legal needs of the poor;
- G. To maximize the interest and involvement of the legal and low-income community by placing responsibility of the local Bar Associations for management of the program, without compromising individual attorney autonomy;
- H. To make sure that the cause or case is that of the client, not that of the attorney;
- I. To strengthen volunteerism among attorneys and encourage an expansion, not a contraction, of the legal aid spirit; and
- J. To increase the delivery of individual legal services to the poor by local attorneys on non-fee-generating cases and to develop constructive law reform programs to meet community needs.

IV. STRUCTURE OF THE PROGRAM

A. Statewide Judicare Foundation:

1. General. A non-profit legal foundation will be responsible for the conduct of the program Statewide, will devise the overall budget, receive the funds and oversee their expenditure.
2. Policy. The overall policy of the program will be provided by a fifteen (15) man foundation board of directors, consisting of members of the Bench and Bar throughout the service areas of the program. The board members shall serve for three (3) years, one-third (1/3) of the terms expiring each year, the new directors to be elected by the remaining directors. The board shall elect a chairman and other officers from among its members, as well as an executive committee. A special review committee will be selected to assist in reviewing and making decisions on those cases in which extraordinary expenditures of legal fees are anticipated because of the novelty of the question, the need for appeal, etc. It is anticipated that the board will maintain a reserve fund to be employed in meeting these needs and in augmenting service in certain program areas that cannot be fully anticipated at the time of commencing this program.
3. Administration. An attorney administrator will be retained to provide day-to-day administration of the program, to train para-professionals, to effect liaison with the Continuing Education of the Bar program for the purpose of conducting training programs in areas of the law peculiarly related to low-income people, to act as liaison with the Chief Administrator and President of the State Bar of California, and to establish and oversee effective monitoring and evaluation procedures augmented by proper use of electronic data processing for maintenance of the kinds of statistics and data from which we can make realistic cost benefit determinations.

B. Local Bar Association Grantees:

1. General. Each local Bar Association (or groupings of Bar Associations in smaller counties which may comprise a natural service area) will be responsible for the design and implementation of the program in its area. The local Bar Association may receive the funds directly itself or set up a separate legal services non-profit corporation which it controls and through which the program would be implemented.
2. Policy. A board of directors, consisting entirely of attorneys and members of the Bench in the area, would direct the program. An executive committee and a Bar fee review committee would be established to provide day-to-day policy review, as well as to oversee the expenditure of program dollars. An advisory committee, consisting of members of the community at large and low-income people from throughout the service area, would be established to advise, assist and guide the board of directors.
3. Administration. It is not anticipated that any substantial amount of administrative work will be required at the local level. The determination of eligibility is the main administrative requirement within the service area. This will be accomplished through various existing organizations and entities in the communities who will utilize their existing administrative and clerical personnel to determine eligibility, after appropriate training. These will include, but not be limited to, the local Community Action Agency, local Welfare Department, local Courts, local Employment Offices, etc.

V. PROGRAM OPERATIONS

A. Eligibility Determination (Intake Interview)

1. Personnel. Existing administrative and clerical staff in established agencies serving this program will provide the necessary eligibility services. This staff will be trained to provide the proper forms to be filled out and filed for participation in the program, referral to attorneys, keeping of records and submission of vouchers for payment. Some administrative reimbursement for these purposes to the participating agencies will be made in the program.
2. Procedure. The existing Community Action Agency offices in the areas being served, local Department of Human Resources Development and employment centers, city and county offices and other local accessible administrative centers will provide the outreach eligibility services to prospective clients in this program. This will allow for the maximum utilization of existing facilities now operating within the community and minimize the costs for such services or duplication of administrative services, staff, equipment and other administrative resources.

B. Client Eligibility

1. Co-payment Requirement. Low-income persons receiving service under the program pay something toward the legal service, depending upon the level of their income and assets. By this mechanism we can responsibly expand the group of persons who become eligible for some assistance. The part payment by the client helps materially to cover the cost of the program. We can be assured that the cause is that of the client and not of the attorney, since the client is paying some hard cash for the services; and we can be assured that the case will not be carried on to ridiculous or unreasonable lengths (unless, of course, the attorney decides that he wants to do so at his own expense).

2. Co-payment waiver. A "safety valve" will be established, whereby the Bar fee review committee may decide to waive any fee if the client is truly destitute and yet the cause meritorious.

- C. All attorneys in the local Bar Associations will be eligible and qualified to represent clients under this program. It is hoped, and as indicated above, we are confident that the program would have the full cooperation and participation of the local Bar.

The element of volunteerism, an important tradition in the private practice of law, is built into this program in several ways. First, to the extent the fee schedule is less than the normal schedule, attorneys are volunteering the balance of the fee. Second, at any time attorneys may personally waive the co-payment requirement (in effect paying it themselves). Third, attorneys may volunteer time in special circumstances to do additional work above and beyond that for which the program will compensate him. And fourth, attorneys and others will be encouraged to participate in the educational dimension of the program, which will attempt to apprise low-income people of their rights under the law.

- D.
 1. Legal Service Charges. A fee schedule will be established by a Bar foundation board.
 2. Attorney Compensation. Attorneys will be compensated directly upon receipt of attorney billings at the central administrative headquarters of the program, when such billings are accompanied by the required statistical data by which performance under the program can be constantly measured and monitored. When the amount paid to any one attorney for the program year shall be \$4,000 and for any one case, \$300, an automatic review will ensue of both individual case fee limit as well as the total program year fee by the local Bar and by the central staff in Sacramento. Thus, these limits may be waived for attorneys whose performance, diligence and quality in representation is such to merit their continued reimbursement for their representation of low-income clients on both individual case and total fee basis.

- 3.. Unusual Fees. If an attorney anticipates that the fee in a particular matter will exceed that allowed under the fee schedule, the matter should be submitted to the Bar fee review committee for approval. With respect to matters for which no specified fee schedule exists, if the attorney anticipates that the fee will be in excess of \$300, the matter should be submitted to the Bar fee review committee for its advice and approval. This procedure is not designed to discourage the handling of large and costly matters, so long as there are adequate assurances that the cause is sufficiently meritorious to warrant the utilization of substantial resources in its prosecution.

E. Types of Cases Handled

1. Essential Legal Services. The essential civil legal needs of low-income people, such as domestic relations, bankruptcies, landlord-tenant, consumer affairs, disputes with Welfare and other government agencies, etc., are naturally the kinds of matters which most frequently concern low-income people. These would be handled per course.
2. Class Actions, Suits Against the Government, Appeals and Other Substantial Actions. When any of these matters arise (which would exceed the per-case maximum) they shall be considered by the local Bar fee review committee. If the committee determines that a matter does not justify payment by the program, the attorney may seek compensation from the Statewide foundation.
3. Unavailability of Local Counsel. If an eligible client with a meritorious cause cannot, nevertheless, obtain counsel to handle the matter within that service area, the executive director of the foundation shall be empowered to arrange employment of counsel in a convenient adjacent service area. The fees therefor should be borne by the program in the area of residence of the client.
4. Exclusions. The program shall not pay for representations of labor unions or political organizations, nor shall it handle fee-generating cases. Also, criminal representation shall be excluded.

- F. The foundation administrator will devise a legal education program for low-income people, utilizing the materials currently available and others to be devised that will assist in making the low-income persons aware of their legal rights and responsibilities. The objective will be to systematically reduce the necessity to utilize attorney time in some legal problem areas.

VI. PROGRAM EVALUATION

- A. The State Bar Association will be requested to provide an overall evaluation of the judicare program. This evaluation will provide for the following:
1. Report on the year's program activities, including statistical information on the number of persons served, average time given clients, number of cases settled out of court, number litigated, number on appeal, and a breakout of the adjudication of the cases in court by type, action, disposition, etc. The report will also contain a narrative statement on problems and progress of the program in the areas being served.
 2. An assessment will be made as to the services being rendered the low-income community, including an evaluation questionnaire to clients who were served, a questionnaire to the general poverty community and a review by the local Bar Association of each area, as well as the area's judges and governmental administrators for their assessment of the program.
 3. A judgmental evaluation will then be compiled with Federal OEO, the local Community Action Agencies of the area, State OEO and other affected parties to compile a comprehensive evaluation of the program as it affects the poor, the community and the Bar in relation to the goals and objectives of the program.
- B. Changes will be made in the program as determined by the governing board and based upon reasonable needs for improvement of the program. The administration of the program in conjunction with the policy board will affect concurrent programmatic changes as the needs arise. Overall major changes in the goals and objectives of the program will be instituted after a definitive review of the final year's comprehensive evaluation has been made. Major program changes will be made concurrent with the judicare policy board and Federal and State OEO administrators.

VII. GUIDELINE FOR FEE SCHEDULE AND ELIGIBILITY DETERMINATION

- A. The purpose of the fee schedule is to encourage maximum feasible participation of the Bar and to maximize available funds and resources to meet the legal needs of low-income people.
- B. Basic eligibility will be extended to all persons who qualify as low-income under current OEO, Department of Labor and other Federal guidelines, persons on public assistance of any type, persons on State or Federal disability, special hardship cases and persons on unemployment compensation where they do not violate other equity guidelines of the program. In cases where eligibility schedules conflict, the maximum income schedule will be used to assure that clients in need may have their legal services met with the minimum of delay.

The purpose of the eligibility requirements is to provide services to those in need but not disqualify those in marginal "gray" income areas who need services.

A co-payment schedule will be devised and will follow basically a graduated fee payment by the client. All clients will pay a minimum \$5 fee for all services. In cases of extreme hardship, this may be waived by the program administrator, the local Bar or the State central staff.

- C. The payment of fees will be determined by the family income and assets as adjusted by family size.

Families meeting the minimum eligibility requirements will pay a minimum fee of \$5 per action. This may be waived by the Bar fee review committee in cases of extreme hardship or unusual circumstances.

A sliding scale of co-payments will be established, based upon the amount by which the income/asset value of the client is below or above the minimum eligibility requirement as set forth in the eligibility schedule. For example, if, under current practices, a family would be eligible for free legal service if its income were under \$3500 per year but entitled to no legal service if its income were in excess of \$3500, our sliding scale proposal would require that family to begin

to pay a portion of the legal fee if its income were below \$3500, and the portion it would be required to pay would increase as the income rose to, through and beyond \$3500, to a point where the co-payment requirement levied upon that family would be one hundred per cent (100%) of the judicare fee. (NOTE: Even then, there would be advantage to the recipient of service under the program because the fees charged are less than those ordinarily charged by participating attorneys to private clients.) The precise income figures and percentages should be decided upon by the board of directors of the foundation as one of its first orders of business.