

July 2009

Texas Legislature Supports Access to Justice Initiatives

When the legislative session began in January, funding for civil legal services to the poor in Texas had plunged drastically. Faced with the possibility of a shortfall in the millions of dollars, access to justice partners quickly developed strategies to preserve Texas legal aid and fend off a complete collapse. Recognizing the devastating impact this funding crisis could have on access to justice, Chief Justice Wallace B. Jefferson, on behalf of the Supreme Court, urged the legislature to consider an appropriation in the amount of \$37 million to address the funding shortfall. Several months and much hard work later, an appropriation for civil legal services of \$20 million for the biennium has become a reality.

Among efforts to increase awareness of access to justice issues and to educate the

legislature on the funding crisis, the Commission hosted Access to Justice Day (ATJ) at the Texas Legislature in February. The team highlighted measures to address the funding shortfall, in addition to several substantive bills related to access to justice.

As a result of these efforts, the following bills impacting access to justice in Texas were passed this session:

General Appropriation (SB1/HB1; Ogden/Pitts) – State Budget includes a “one-time” \$20 million appropriation for the biennium dedicated to civil legal services;

Filing Fee Increase (HB3637/SB1754; Hughes/Wentworth) – Increases filing fees in JP and County Courts, resulting in approximately \$4.8 million over the biennium for civil legal services;



Texas Supreme Court Justice Harriet O'Neill, at a press conference during ATJ Days, along with Rep. Pete Gallego, Texas Access to Justice Foundation (TAJF) Executive Director Betty Balli Torres, TAJF Chair Dick Tate, and Commission Chair James Sales

Attorney General Civil Fines (HB2517/SB2279; Turner/Ellis) – Directs net funds received from civil penalties relating to the Texas Deceptive Trade Practices Act to civil legal aid, generating approximately \$1.9 million over the biennium;

KinCare (HB1940/SB1598; Herrero/Walle/Watson) –

Authorizes the enactment of a statutory power of attorney for the caregiver of a minor child;

Temporary Assistance for Needy Families (TANF) Judicial Review* (SB 408 Provision, Carona) – Establishes state court judicial review of final

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administrative decisions concerning the granting, payment, denial or withdrawal of TANF;

Appointment of Counsel in Certain Eviction Appeals* (SB 408 Provision, Carona) – Allows for the appointment of pro bono counsel in appeals of certain eviction suits affecting poor persons.

The Commission is grateful to the legislators and the numerous access to justice partners, including the Supreme Court of Texas, who championed these measures on behalf of poor Texans who may otherwise have been foreclosed from the justice system.

*Filed originally as HB614; Naishtat and HB2824; Naishtat, respectively.

The Texas Access to Justice Foundation expresses its appreciation to the State Bar of Texas and the 25th Anniversary Gala Sponsors

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Cy Pres: Impact on Justice Campaign to Raise Funds for Legal Aid

Cy pres, a French term that roughly translates to “as near as possible,” is a concept that may impact funding for civil legal aid. The Texas Access to Justice Commission and Foundation have launched a statewide campaign to seek cy pres awards to help shore up the state’s legal aid system.

Cy pres awards are residual funds from a class action or other proceeding that cannot be distributed to class members or the intended beneficiaries for a variety of reasons. Under the cy pres doctrine, the funds can be distributed to appropriate charitable causes.

A significant award totaling \$230,160, will jumpstart the campaign. The funds are part of a confidential settlement from a lawsuit pertaining to the Fair Labor Standards Act. The participating attorneys involved in the disbursement of the proceeds include Jeff Rasansky of Dallas, Michael C. Smith of Marshall, and Jeremi K. Young of Amarillo.

If you are involved in a class action case and are unable to distribute all the funds, consider the Texas Access to Justice Foundation as a cy pres recipient. To learn more, call 512.320.0099, ext. 105.



Cy Pres: Impact on Justice Award presented to Jeff Rasansky (left), by TAJF Board Member Tom Godbold, and to Jeremi K. Young (right). Not pictured: Michael C. Smith

Chair's Report

By James B. Sales, Chair Emeritus



"A tree is known by its fruit; a man by his deeds."

— St. Basil
As I

complete my service as Chair of the Commission, I feel a tinge of nostalgia as I reflect over my last five years, experiencing both a feeling of pride and a sense of unfulfilled expectations. My pride is prompted by those valiant and incredibly dedicated souls who have given so completely of themselves, their time, talent and effort to make the justice system work for all Texans regardless of economic circumstance. Their heroic deeds are the fruit of their tireless labor. My feeling of unrequited concern is attributable, perhaps in large measure, to the awareness that the promise of our society's justice system remains

disturbingly unfulfilled. There simply are too many people today who have essentially forsaken any hope of solving their legal problems through the justice system.

As members of a historically noble profession, we readily acknowledge that the justice system is the lynchpin of our society; indeed, it is fundamental to an orderly and well-regulated society. Yet today, there are almost 5.1 million Texans who qualify for legal aid because they cannot afford legal representation. However, because of limited resources, legal aid is only able to meet the needs of 20% of the poor and low-income Texans that seek assistance. Only lawyers licensed by the Texas Supreme Court are authorized to practice law, and, therefore, only licensed lawyers, as designated gatekeepers of the justice

system, ultimately determine whether a citizen acquires access to that system. As uncomfortable as the realization may seem, the representation of those in need of legal access rests in our hands; for, if not us, then to whom shall they turn? This is a straightforward and simple issue. In the final accounting, access to the justice system is simply too important for us to ignore.

We have within our society, and certainly, within our profession, the knowledge, the skill, the resourcefulness, and the capability to make the justice system work for all citizens. Access to the justice system was surely intended when our forefathers enshrined the rule of law. We merely require the conscience and the will to act rather than just another opportunity to talk. As Benjamin Franklin astutely observed, "Well done is better than well said." Mr.

Franklin reminds us that people's actions are far more defining than words, and indeed, far more meaningful and enduring. Even in a variation from Proverbs, it is pointedly noted that "Not by words, but by deeds, shall you know them."

As we begin the 21st century, we confront a most frustrating, and without parallel, a most overwhelming challenge – not only to society, but to the justice system itself. At the core, we desperately need the lawyers to step forward and help answer the call; anything less fails the inviolate promise of our profession.

I continue to believe, rather passionately, that when summoned to a noble cause, Texas lawyers, as they have done throughout history, will respond. The integrity of the justice system is that cause; and, as lawyers, we serve no higher calling.

Reasoner Appointed New Commission Chair

The Supreme Court of Texas has chosen prominent Houston trial attorney Harry M. Reasoner to lead the Texas Access to Justice Commission.

Reasoner is a partner in the Houston-based firm of Vinson & Elkins LLP, practicing primarily in complex civil litigation. He was first appointed to the Texas Access to Justice Commission in 2006 and succeeds James B. Sales of Fulbright & Jaworski L.L.P. who served as chair of the Commission since 2004.

"Harry Reasoner has the determination and creativity

to advance innovations begun under Jim Sales' brilliant leadership," said Chief Justice Wallace B. Jefferson. "He has formed relationships among the bench, bar, and the Legislature that will bring additional resources to our access to justice initiatives during these tough economic times. The Court commends Harry for his willingness to give his time and effort to the most important cause of our profession—preserving the rights of those who desperately need, but cannot afford, legal representation."

Reasoner points to recent studies showing that more than five million Texans qualify for legal aid assistance because of their low income levels. Although real progress has been made, only one-in-five of those in need receive the needed help from legal aid services in the state due to inadequate funding.

"Ironically, the recession has both increased the needs and lessened the resources available to provide equal access to justice,"



Reasoner continued. "We must strive to find the resources to give equal access to justice to all our citizens."

25th Anniversary Gala Helps Raise Funds and Awareness

By Richard L. Tate, Foundation Chair

We are delighted with the tremendous support from the legal and business communities for the Texas Access to Justice Foundation's 25th Anniversary Gala, held May 27 in Austin. The event raised \$300,000; the proceeds of which will help fund legal aid programs as they serve the millions of low-income Texans who need basic civil legal services.

Texas Supreme Court Justice Harriet O'Neill, graciously lent her talents as Master of Ceremonies for the Gala that was also attended by Chief Justice Wallace B. Jefferson and all the justices on the Texas Supreme Court. The evening highlighted some of the important accomplishments of Commission Chair James Sales and former Commission Executive Director Emily Jones. Keynote speaker Jeffrey Toobin and entertainer

Marcia Ball helped ensure a great evening for all in attendance. My Gala Co-Chairs Joe Jamail, Charles W. Matthews, and Harry M. Reasoner did a wonderful job in organizing the event and encouraging sponsorships at all levels.

Also deserving recognition are two chairmen who preceded me at the Foundation's helm – Harold F. Kleinman and W. Frank Newton. Without their vision and dedication at the beginning of the Foundation and the IOLTA program, along with several other key figures, we would never have reached our current standing as the largest state funding source for civil legal services in Texas.

It has also been a successful legislative session, thanks to the work and leadership of many, including legislators, the Supreme Court, the Commission, and the

directors and staff of legal aid programs.

As we continue to work with our Prime Partners in the banking industry to increase IOLTA revenue, we are also exploring new avenues to help meet the growing legal aid needs. During the next few months our Cy Pres – Impact on Justice Campaign will begin educating lawyers and judges on the use of cy pres funds as a source for funding legal aid.

While we take time to celebrate our successes from the past 25 years, the Foundation and all its partners in access to justice are working hard to increase and preserve funding resources that can help meet the ever-increasing demand for our next 25 years.



Gala Co-Chairs, Richard L. "Dick" Tate, Harry M. Reasoner, Joe Jamail, Charles W. Matthews



James B. Sales received Kleiman Award from Chief Justice Wallace B. Jefferson



Emily C. Jones honored with Lifetime Achievement Award named in her honor

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See the Prime Partners at www.teajf.org

First ATJ Corporate Counsel Pro Bono Award

Peggy Montgomery (second from left), Counsel, Exxon Mobil Corporation, received the first Access to Justice Corporate Counsel Pro Bono Award June 25 during the State Bar Annual Meeting. The Corporate Counsel and Business Law Sections of the State Bar each donated \$1,000 to a legal aid program in Montgomery's honor. Pictured are Charles W. Matthews, Vice President and General Counsel, Exxon Mobil Corporation; Montgomery; Justice Harriet O'Neill; and James B. Sales, Chair Emeritus of the Commission.

