

Legal Aid

by Mark Braley



Legal Aid Funding Under Threat, Yet Again! But, Still We Persist

As the state funding and oversight agency for Virginia’s legal aid programs, the Legal Services Corporation of Virginia (LSCV) has the responsibility of seeking out more funding to meet the well-documented unmet civil legal needs of Virginia’s poor. Since the beginning of the Great Recession, LSCV has been more preoccupied with trying to prevent cuts to legal aid funding than ever before. Normally, when we make a plea for increased funding for legal aid at the General Assembly, it is based principally on need — the unmet legal needs of over one million Virginians who might be eligible for civil legal aid services. We in legal aid have never had sufficient funding to meet those needs. In a good year, we turn away one person or family for every one we serve. In a good year, we are able to provide something beyond brief advice to someone in need. In a good year, we might suffer a small cut in funding from one source that we can make up, if we scramble, with new funding from another source. We rarely get ahead and we struggle to maintain the funding status quo each year. But, in the end, we help level the playing field for thousands of low-income people, help protect rights, seek redress of others, all in order to achieve justice for some and to help our legal system function fairly. Still we persist.

Filing Fee Add-on

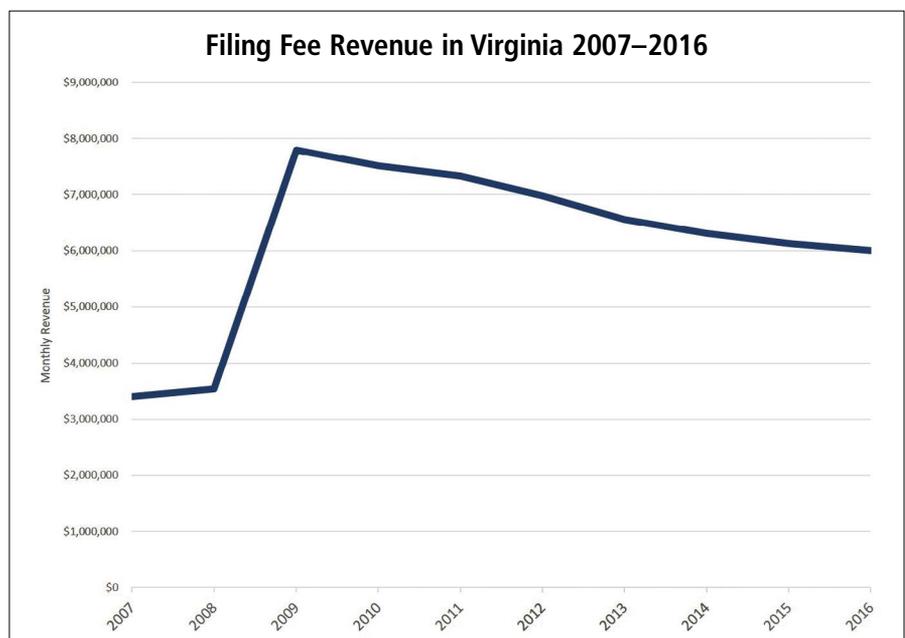
In 2008, at the beginning of the great recession, we were very fortunate to have some champions in the General Assembly led by Delegate Dave Albo,

who realized that our principal state funding mechanism, the filing fee add-on for legal aid, hadn’t been increased in many years and that legal aid funding was long overdue for an infusion. That year, a very strong bi-partisan coalition of legislators supported a \$4 increase in the filing fee add-on for legal aid. At the time, each dollar of filing fee generated about \$850,000 annually for legal aid. But, at the time we increased the filing fee add-on in 2008, we did not know the entire financial house of the country was teetering on the edge of the precipice. While filing fee revenue met our expectations in FY 2008–09 generating about \$7.8 million in revenue for legal aid, it didn’t take long thereafter for the burgeoning recession to affect legal activity. The number of cases filed dropped dramatically in 2010 and kept dropping until

we reached a low point of only \$6 million in filing fee revenue. While the economy has certainly rebounded in the last couple of years, the number of cases filed that generate an add-on fee for legal aid and consequently the overall revenue generated for our operations, has been stuck at \$6 million per year for three or four years. Still we persist.

IOLTA Funding

FY 2008–09 was also the last good year for IOLTA revenue, another key component of legal aid’s funding scheme. That year, we collected \$4.6 million in interest from attorney IOLTA trust accounts. As the recession deepened, the federal interest rate dropped commensurately, reducing our IOLTA funding by a million dollars the first year. Since the federal target rate hit zero, IOLTA



accounts have only been generating about \$600,000 per year for the last four or five years. Still we persist.

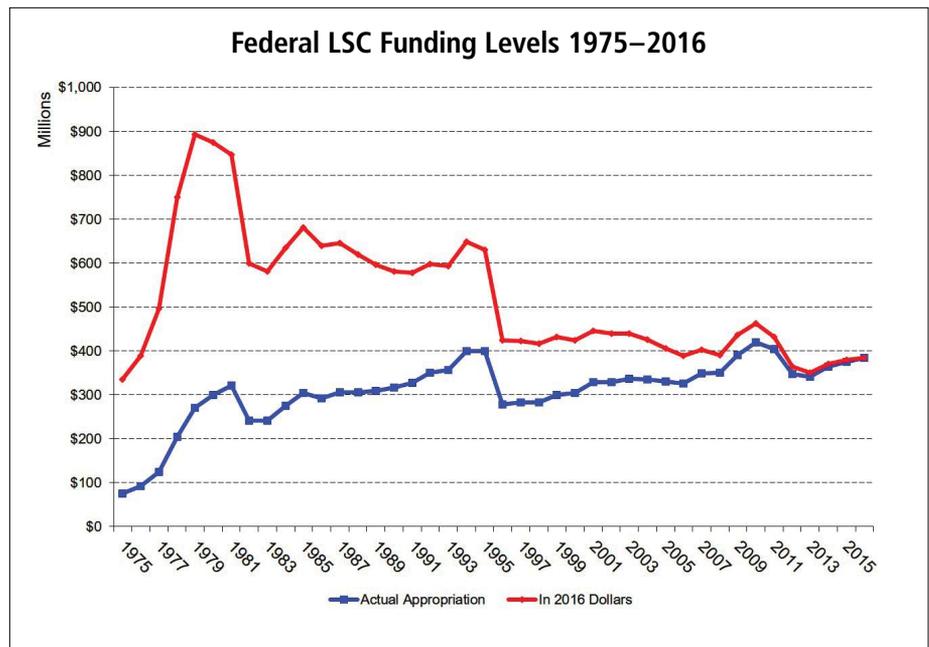
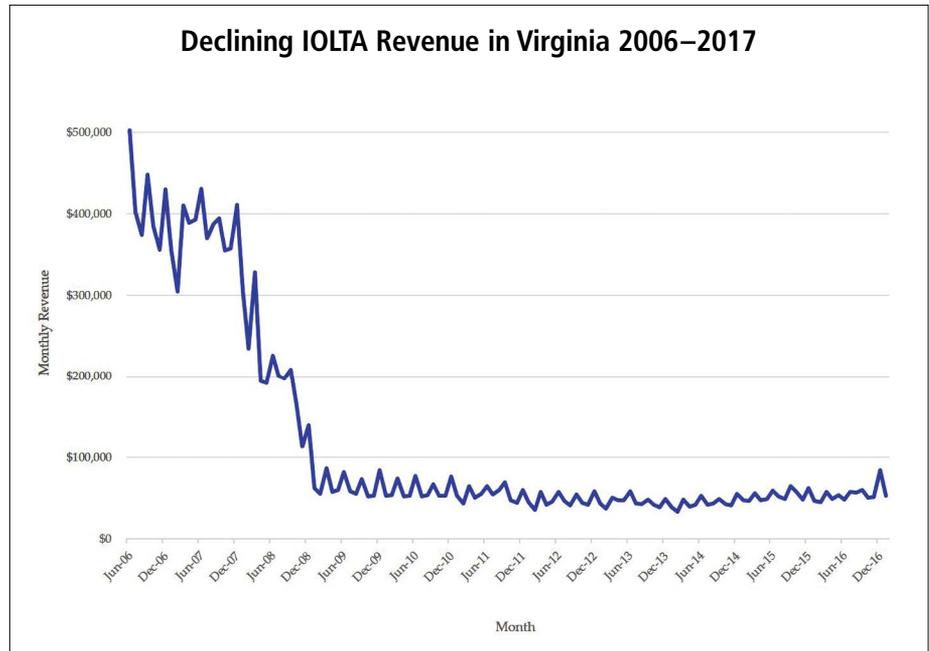
Federal Appropriations

During the recession, the other main funding source for legal aid, federal appropriations to the national Legal Services Corporation (LSC), went on a roller coaster ride of ups and downs. In any given year, we suffered an 8 percent cut or a 2 percent increase with the bottom-line being an appropriation today that is about 4 percent less than it was in 2010. Virginia legal aid programs currently receive about \$6.7 million in federal funding from a high of slightly over \$7 million. Still we persist.

And, during the recession, legal aid once again found a champion at the General Assembly in the person of Senator Tommy Norment, who saw the devastation all the aforementioned funding cuts caused in legal aid. He saw the impact of our having lost over thirty staff attorney positions and an overall 20 percent reduction in our staffs. Senator Norment filed four consecutive budget amendments to help legal aid address the losses from our three main sources of funding and fought for that funding in budget conference year after year. Because of his advocacy, we were able to save many staff positions and remain a vital component of Virginia’s legal system. Still we persist.

Legal Aid Programs at Risk

Now, we face a serious threat to all of our federal funding. The Trump administration presented its FY 2018 (October 2017–September 2018) budget a few weeks ago and appropriated no funds for the Legal Services Corporation. If the administration is successful in pursuing our defunding, we will lose one quarter of our total funding on this coming January 1. To put that in perspective, all those losses in filing fee and IOLTA revenue were less and partially replaced by the General Assembly,



but still we lost 20 percent of our staff. Losing our federal funding would mean additional reductions to our staffs of about forty attorneys and another twenty or thirty support staff.

Our nine local legal aid programs operate out of thirty-five offices statewide, many with only one attorney per office. A cut of the magnitude proposed by the Trump administration would certainly mean closing offices, and as

usual, rural offices will be hurt the most. These are not cuts that can be replaced by more pro-bono, which seems to be the response you get from those supporting the cuts. Legal aid staff attorneys working with Virginia’s low-income population are necessary, not only because of the expertise they have developed, but to handle the sheer numbers

Legal Aid continued on page 20

of people needing and seeking help. It would be difficult to find a pro-bono attorney who could simultaneously handle a complex mortgage foreclosure, a predatory lending collection case, and a domestic violence protection case while also having the ability to help returning veterans with the many economic and health problems they face and provide advice and counseling to an untold number of others in a myriad of situations where we can't provide full representation.

Interestingly, we all act incredulously when informed of the latest attempt to do away with legal aid. "They will never succeed, never get away with it." "Legal aid is the last safety net for too many people and surely our representatives in Congress realize this." Yes, legal aid has had strong bi-partisan support over the years, but too often has had to fight to maintain its viability. And, this latest attempt to defund legal aid does threaten its viability. We can take nothing for granted and must engage our Congress. After the significant growth of federal funding for legal aid under the Carter Administration, President Reagan was elected in a landslide and immediately sought to defund legal aid. We stopped that effort to completely defund (though we suffered 20 percent cuts) by building coalitions and demonstrating the bi-partisan support for legal aid in state and local communities. Now, we can demonstrate even stronger support for our work from nationwide networks of state attorneys general, cor-

porate counsel, and national, statewide, and local bar associations. The next concerted attempt to federally defund legal aid came during the ascendancy of Speaker Gingrich in the mid-nineties. That effort failed as well in the face of the same kind of bi-partisan support for legal aid's work though, again, we suffered cuts to our federal funding of 28 percent. Still we persist.

Engaging with Congress

With the leadership of the American Bar Association and the National Legal Aid and Defender Association and with strong public statements from our own statewide bar associations, we have generated over 30,000 contacts with members of Congress nationwide telling our representatives the importance of legal aid in our communities, regaling them with the stories of the very real people we help every day. Whether it's the veteran returning from Afghanistan finding his home in foreclosure, the elderly man suffering mistreatment in an assisted living facility, the elderly woman barely making ends meet on social security becoming a victim of payday lenders, or the disabled man facing eviction notices for seven consecutive months in which he paid his rent on time. These things happen all the time to people in Virginia and very often, legal aid is their only hope of righting or preventing a wrong. On May 4, 2017, Senator Tim Kaine made a speech on the Senate floor criticizing the Trump administration for its shortsighted attempt to defund legal aid as a step backward in the struggle for justice. He described some of the

ongoing work of our legal aid offices in Virginia and the people helped and fondly related his and his wife's work in and for legal aid over the past decades. The fact is that support for legal aid, the recognition that our system of justice would be a distinctly undemocratic one without its presence is strong, widespread, and evidenced by the ongoing bipartisan support displayed by our own state leaders like Senator Norment and Delegate Albo. They recognize that legal aid in Virginia does great work with tremendous efficiency and a remarkable return on investment for the justice it brings to individuals and the contributions it makes to the health and wellbeing of Virginia's economy. And, because of that, Legal Aid persists.

You can join the fight to preserve legal aid. The ABA has made it very easy. Go to www.americanbar.org where you will find a very obvious banner on the home page called "Legal Aid Defenders." Clicking on this banner provides a really simple way to speak up on our behalf to your congressional representative. It will only take a couple of minutes and will make a real difference to the staff in your local legal aid office and, more importantly, to the people we serve. And, in the coming months, this column will feature profiles of our legal aid offices all around Virginia including their dedicated staffs and client stories.

Mark Braley has served as executive director of the Legal Services Corporation of Virginia since 1992. Prior to 1992, he served as a criminal prosecutor and civil litigator.



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