

AMENDED IN ASSEMBLY APRIL 30, 2009

AMENDED IN ASSEMBLY MARCH 12, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 590

Introduced by Assembly Member Feuer

February 25, 2009

An act to add Article 9.6 (commencing with Section 6159.5) to Chapter 4 of Division 3 of the Business and Professions Code, and to amend ~~Section~~ *Sections 68085.1 and 70626* of, and to add Chapter 2.1 (commencing with Section 68650) to Title 8 of, the Government Code, relating to the practice of law.

LEGISLATIVE COUNSEL'S DIGEST

AB 590, as amended, Feuer. Legal aid.

(1) Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law provides that it is the duty of an attorney to, among other things, never reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed. Existing law provides that a lawyer may fulfill his or her ethical commitment to provide pro bono services, in part, by providing financial support to organizations providing free legal services to persons of limited means.

This bill would state the intent of the Legislature to encourage the legal profession to make further efforts to meet its professional responsibilities and other obligations by providing pro bono legal services and financial support of nonprofit legal organizations that provide free legal services to underserved communities.

This bill would prohibit a person or organization that is not a specified type of legal aid organization, as defined, from using the term “legal aid,” or any confusingly similar name in any firm name, trade name, fictitious business name, or other designation, or on any advertisement, letterhead, business card, or sign. The bill additionally would prohibit any person from charging a fee for any legal form or other document created by a legal aid organization, a court, or other public agency that is available to the public without charge, or from charging a fee to assist in the provision of self-help services that are provided without charge by a court or legal aid organization. The bill would subject a person or organization that violates these prohibitions to specified civil liability.

This bill would, subject to funding specifically provided for this purpose, require the Judicial Council to develop one or more model pilot projects in selected courts *for 3-year periods* pursuant to a competitive grant process and a request for proposals. The bill would provide that legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those courts selected by the Judicial Council, as specified. The bill would provide that each project shall be a partnership between the court, a qualified legal services ~~provider~~ *project* that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the project. The bill would require the lead legal services agency, to the extent practical, to identify and make use of pro bono services in order to maximize available services efficiently and economically. *The bill would provide that the court partner is responsible for providing procedures, personnel, training, and case management and administration practices that reflect best practices, as specified. The bill would require a local advisory committee to be formed to facilitate the administration of the local project and to ensure that the project is fulfilling its objectives. The bill would require the Judicial Council to conduct a study to demonstrate the effectiveness and continued need for the pilot program, and to report its findings and recommendations to the Governor and the Legislature on or before March 1, 2013, and every 3 years thereafter.*

(2) Existing law sets the fees at \$15 or \$20 for various court services, including, but not limited to, issuing a writ for the enforcement of an order or judgment, issuing an abstract of judgment, recording or registering any license or certificate, issuing an order of sale, and filing and entering an award under the Workers’ Compensation Law.

This bill would increase those fees by \$10, and would provide that the \$10 fee increase shall be transmitted quarterly for deposit in the Trial Court Trust Fund and used by the Judicial Council for implementing and administering the civil representation pilot program described in (1) above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) There is an increasingly dire need for legal services for poor
4 Californians. Due to insufficient funding from all sources, existing
5 programs providing free services in civil matters to indigent and
6 disadvantaged persons, especially underserved groups such as
7 elderly, disabled, children, and non-English-speaking persons, are
8 not adequate to meet existing needs.

9 (b) The critical need for legal representation in civil cases has
10 been documented repeatedly, and the statistics are staggering.
11 California courts are facing an ever increasing number of parties
12 who go to court without legal counsel. Over 4.3 million
13 Californians are believed to be currently unrepresented in civil
14 court proceedings, largely because they cannot afford
15 representation. Current funding allows legal services programs to
16 assist less than one-third of California's poor and ~~lower-income~~
17 *lower income* residents. As a result, many Californians are unable
18 to meaningfully access the courts and obtain justice in a timely
19 and effective manner. The effect is that critical legal decisions are
20 made without the court having the necessary information, or
21 without the parties having an adequate understanding of the orders
22 to which they are subject.

23 (c) The modern movement to offer legal services for the poor
24 was spearheaded by Sargent Shriver in 1966, aided by the
25 American Bar Association, then headed by future Supreme Court
26 Justice Lewis Powell, driven by the large disparity that existed
27 between the number of lawyers available for poor Americans
28 compared with the availability of legal services for others. While
29 much progress has been made since then, significant disparity
30 continues. According to federal poverty data, there was one legal

1 aid attorney in 2006 for every 8,373 poor people in California. By
2 contrast, the number of attorneys providing legal services to the
3 general population is approximately one for every 240 people –
4 nearly 35 times higher.

5 (d) *The fair resolution of conflicts through the legal system*
6 *offers financial and economic benefits by reducing the need for*
7 *many state services and allowing people to help themselves.* There
8 are significant social and governmental *fiscal* costs of depriving
9 unrepresented parties of vital legal rights affecting basic human
10 needs, particularly with respect to indigent parties, including the
11 elderly and people with disabilities, and these costs may be avoided
12 or reduced by providing the assistance of counsel where parties
13 have a reasonable possibility of achieving a favorable outcome.

14 (e) Expanding representation will not only improve access to
15 the courts and the quality of justice obtained by these individuals,
16 but will allow court calendars that currently include many
17 self-represented litigants to be handled more effectively and
18 efficiently. Increasing the availability of legal representation for
19 litigants who must currently represent themselves or face loss of
20 their legal rights is a key priority of the Judicial Council and Chief
21 Justice Ronald M. George. As the Chief Justice has noted, the large
22 and growing number of self-represented litigants is one of the most
23 challenging issues in the coming decade, imposing significant
24 costs on the judicial system and the public by impairing the ability
25 of the courts to efficiently process heavy caseloads, and eroding
26 the public's confidence in our judicial system. *While court self-help*
27 *services are important, those services are insufficient alone to*
28 *meet all needs. Experience has shown that those services are much*
29 *less effective when, among other factors, unrepresented parties*
30 *lack income, education, and other skills needed to navigate a*
31 *complex and unfamiliar court process, and particularly when*
32 *unrepresented parties are required to appear in court or face*
33 *opposing counsel. Recognizing that not all indigent parties may*
34 *be allowed representation, even when they have meritorious cases,*
35 *and that self-help services cannot meet the needs of all*
36 *unrepresented parties, courts presented with disputes regarding*
37 *basic human needs that involve low-income litigants facing parties*
38 *who are represented by counsel have a special responsibility to*
39 *employ best practices designed to ensure that unrepresented parties*
40 *obtain meaningful access to justice and to guard against the*

1 involuntary waiver or other loss of rights or the disposition of
2 those cases without appropriate information and regard for
3 potential claims and defenses, consistent with principles of judicial
4 neutrality. The experience and data collected through a pilot
5 program will assist the courts and the legal community in
6 developing new strategies to provide legal representation to
7 overcome this challenge.

8 (f) The doctrine of equal justice under the law is based on two
9 principles. One is that the substantive protections and obligations
10 of the law shall be applied equally to everyone, no matter how
11 high or low their station in life. The second principle involves
12 access to the legal system. Even if we have fair laws and an
13 unbiased judiciary to apply them, true equality before the law will
14 be thwarted if people cannot invoke the laws for their protection.
15 For persons without access, our system provides no justice at all,
16 a situation that may be far worse than one in which the laws
17 expressly favor some and disfavor others.

18 (g) Many judicial leaders acknowledge that the disparity in
19 outcomes is so great that indigent parties who lack representation
20 regularly lose cases that they would win if they had counsel. A
21 growing body of empirical research confirms the widespread
22 perception that parties who attempt to represent themselves are
23 likely to lose, regardless of the merits of their case, particularly
24 when the opposing party has a lawyer, while parties represented
25 by counsel are far more likely to prevail. Judicial leaders and
26 scholars also believe that the presence of counsel encourages
27 settlements. Just as importantly, court opinion surveys show that
28 more than two-thirds of Californians believe low-income people
29 usually receive worse outcomes in court than others. Unfairness
30 in court procedures and outcomes, whether real or perceived,
31 threatens to undermine public trust and confidence in the courts.
32 The sense that court decisions are made through a process that is
33 fair and just, both in substance and procedure, strongly affects
34 public approval and confidence in California courts. As many
35 legal and judicial leaders have noted, the combined effect of
36 widespread financial inability to afford representation coupled
37 with the severe disadvantages of appearing in court without an
38 attorney foster a destructive perception that money drives the
39 judicial system. Respect for the law and the legal system is not

1 encouraged if the public perceives, rightly or wrongly, that justice
2 is mainly for the wealthy.

3 (h) Equal access to justice without regard to income is a
4 fundamental right in a democratic society. It is essential to the
5 enforcement of all other rights and responsibilities in any society
6 governed by the rule of law. It also is essential to the public's
7 confidence in the legal system and its ability to reach just decisions.

8 (i) The adversarial system of justice relied upon in the United
9 States inevitably allocates to the parties the primary responsibility
10 for discovering the relevant evidence, finding the relevant legal
11 principles, and presenting them to a neutral judge or jury.
12 Discharging these responsibilities generally requires the knowledge
13 and skills of a legally trained professional. The absence of
14 representation not only disadvantages parties, it has a negative
15 effect on the functioning of the judicial system. When parties lack
16 legal counsel, courts must cope with the need to provide guidance
17 and assistance to ensure that the matter is properly administered
18 and the parties receive a fair trial or hearing. Those efforts,
19 however, deplete scarce court resources and negatively affect the
20 court's ability to function as intended, including causing erroneous
21 and incomplete pleadings, inaccurate information, unproductive
22 court appearances, improper defaults, unnecessary continuances,
23 delays in proceedings for all court users, and other problems that
24 can ultimately subvert the administration of justice.

25 (j) Because in many civil cases lawyers are as essential as
26 judges and courts to the proper functioning of the justice system,
27 the state has just as great a responsibility to ensure adequate
28 counsel is available to both parties in those cases as it does to
29 supply judges, courthouses, and other forums for the hearing of
30 those cases.

31 (k) Many of those living in this state cannot afford to pay for
32 the services of lawyers when needed for them to enjoy fair and
33 equal access to justice. In some cases, justice is not achievable if
34 one side is unrepresented because the parties cannot afford the
35 cost of representation. The guarantees of due process and equal
36 protection as well as the common law that serves as the rule of
37 decision in California courts underscore the need to provide legal
38 representation in critical civil matters when parties cannot afford
39 the cost of retaining a lawyer. In order for those who are unable
40 to afford representation to exercise this essential right of

1 participants in a democracy, to protect their rights to liberty and
2 property, and to the pursuit of basic human needs, the state has a
3 responsibility to provide legal counsel without cost. In many cases
4 decided in the state's adversarial system of civil justice the parties
5 cannot gain fair and equal access to justice unless they are advised
6 and represented by lawyers. In other cases, there are some forums
7 in which it may be possible for most parties to have fair and equal
8 access if they have the benefit of representation by qualified
9 nonlawyer advocates, and other forums where parties can
10 represent themselves if they receive self-help assistance.

11 (l) The state has an interest in providing publicly funded legal
12 representation and nonlawyer advocates or self-help advice and
13 assistance, when the latter is sufficient, and doing so in a
14 cost-effective manner by ensuring the level and type of service
15 provided is the lowest cost type of service consistent with providing
16 fair and equal access to justice. Several factors can affect the
17 determination of when representation by an attorney is needed for
18 fair and equal access to justice and when other forms of assistance
19 will suffice. These factors include the complexity of the substantive
20 law, the complexity of the forum's procedures and process, the
21 individual's education, sophistication and English language ability,
22 and the presence of counsel on the opposing side of the dispute.

23 (m) If those advised, assisted, or represented by publicly funded
24 lawyers are to have fair and equal access to justice, those lawyers
25 must be as independent, ethical, and loyal to their clients as those
26 serving clients who can afford to pay for counsel.

27 (n) The services provided for in this act are not intended to, and
28 shall not, supplant legal services resources from any other source.
29 This act does not entitle any person to receive services from a
30 particular legal services provider, nor shall this act override the
31 local or national priorities of existing legal services programs.
32 The services provided for in this act are likewise not intended to
33 undermine any existing pilot programs or other efforts to simplify
34 court procedures or provide assistance to unrepresented litigants.
35 Furthermore, nothing in this act shall be construed to prohibit the
36 provision of full legal representation or other appropriate services
37 funded by another source.

38 SEC. 2. In light of the large and ongoing justice gap between
39 the legal needs of low-income Californians and the legal resources
40 available to meet those needs, it is the intent of the Legislature to

1 encourage the legal profession to make further efforts *to* meet its
2 professional responsibilities and other obligations by providing
3 pro bono legal services and financial support of nonprofit legal
4 organizations that provide free legal services to underserved
5 communities.

6 SEC. 3. Article 9.6 (commencing with Section 6159.5) is added
7 to Chapter 4 of Division 3 of the Business and Professions Code,
8 to read:

9
10 Article 9.6. Legal Aid Organizations

11
12 6159.5. The Legislature hereby finds and declares all of the
13 following:

14 (a) Legal aid programs provide a valuable service to the public
15 by providing free legal services to the poor.

16 (b) Private, for-profit organizations that have no lawyers have
17 been using the name “legal aid” in order to obtain business from
18 people who believe they are obtaining services from a nonprofit
19 legal aid organization.

20 (c) Public opinion research has shown that the term “legal aid”
21 is commonly understood by the public to mean free legal assistance
22 for the poor.

23 (d) Members of the public seeking free legal assistance are often
24 referred by telephone and other directory assistance information
25 providers to for-profit organizations that charge a fee for their
26 services, and there are a large number of listings in many telephone
27 directories for “legal aid” that are not nonprofit but are actually
28 for-profit organizations.

29 (e) The Los Angeles Superior Court has held that there is a
30 common law trademark on the name “legal aid,” which means
31 legal services for the poor provided by a nonprofit organization.

32 (f) The public will be benefited if for-profit organizations are
33 prohibited from using the term “legal aid,” in order to avoid
34 confusion.

35 6159.51. For purposes of this article, “legal aid organization”
36 means a nonprofit organization that provides civil legal services
37 for the poor without charge.

38 6159.52. (a) It is unlawful for any person or organization to
39 use the term “legal aid,” “legal aide,” or any confusingly similar
40 name in any firm name, trade name, fictitious business name, or

1 any other designation, or on any advertisement, letterhead, business
2 card, or sign, unless the person or organization is a legal aid
3 organization subject to fair use principles for nominative,
4 descriptive, or noncommercial use.

5 (b) It is unlawful for any person to sell or charge a fee for any
6 legal form or other document created by a legal aid organization
7 or by a court or other public agency of the state regarding or for
8 use in a court action or proceeding if the form or other document
9 is available to the public without charge from the legal aid
10 organization, court, or other public agency.

11 (c) It is unlawful for any person for a fee to assist or offer to
12 assist in the provision of self-help services that are provided
13 without charge by a court or legal aid organization.

14 6159.53. (a) Any consumer injured by a violation of Section
15 6159.52 may file a complaint and seek injunctive relief, restitution,
16 and damages in the superior court of any county in which the
17 defendant maintains an office, advertises, or is listed in a telephone
18 directory.

19 (b) A person who violates Section 6159.52 shall be subject to
20 an injunction against further violation of Section 6159.52 by any
21 legal aid organization that maintains an office in any county in
22 which the defendant maintains an office, advertises, or is listed in
23 a telephone directory. In an action under this subdivision, it is not
24 necessary to allege or prove actual damage to the plaintiff, and
25 irreparable harm and interim harm to the plaintiff shall be
26 presumed.

27 (c) Reasonable attorney's fees shall be awarded to the prevailing
28 plaintiff in any action under this section.

29 *SEC. 4. Section 68085.1 of the Government Code is amended*
30 *to read:*

31 68085.1. (a) This section applies to all fees and fines that are
32 collected on or after January 1, 2006, under all of the following:

33 (1) Sections 177.5, 209, 403.060, 491.150, 631.3, 683.150,
34 704.750, 708.160, 724.100, 1134, 1161.2, 1218, and 1993.2 of,
35 subdivision (g) of Section 411.20 and subdivisions (c) and (g) of
36 Section 411.21 of, and Chapter 5.5 (commencing with Section
37 116.110) of Title 1 of Part 1 of, the Code of Civil Procedure.

38 (2) Section 3112 of the Family Code.

39 (3) Section 31622 of the Food and Agricultural Code.

(4) Subdivision (d) of Section 6103.5, Sections 68086 and 68086.1, subdivision (d) of Section 68511.3, Sections 68926.1 and 69953.5, and Chapter 5.8 (commencing with Section 70600).

(5) Section 103470 of the Health and Safety Code.

(6) Subdivisions (b) and (c) of Section 166 and Section 1214.1 of the Penal Code.

(7) Sections 1835, 1851.5, 2343, 7660, and 13201 of the Probate Code.

(8) Sections 14607.6 and 16373 of the Vehicle Code.

(9) Section 71386 of this code, Sections 304, 7851.5, and 9002 of the Family Code, and Section 1513.1 of the Probate Code, if the reimbursement is for expenses incurred by the court.

(10) Section 3153 of the Family Code, if the amount is paid to the court for the cost of counsel appointed by the court to represent a child.

(b) On and after January 1, 2006, each superior court shall deposit all fees and fines listed in subdivision (a), as soon as practicable after collection and on a regular basis, into a bank account established for this purpose by the Administrative Office of the Courts. Upon direction of the Administrative Office of the Courts, the county shall deposit civil assessments under Section 1214.1 of the Penal Code and any other money it collects under the sections listed in subdivision (a) as soon as practicable after collection and on a regular basis into the bank account established for this purpose and specified by the Administrative Office of the Courts. The deposits shall be made as required by rules adopted by, and financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206. Within 15 days after the end of the month in which the fees and fines are collected, each court, and each county that collects any fines or fees under subdivision (a), shall provide the Administrative Office of the Courts with a report of the fees by categories as specified by the Administrative Office of the Courts. The Administrative Office of the Courts and any court may agree upon a time period greater than 15 days, but in no case more than 30 days after the end of the month in which the fees and fines are collected. The fees and fines listed in subdivision (a) shall be distributed as provided in this section.

(c) (1) Within 45 calendar days after the end of the month in which the fees and fines listed in subdivision (a) are collected, the

1 Administrative Office of the Courts shall make the following
2 distributions:

3 (A) To the small claims advisory services, as described in
4 subdivision (f) of Section 116.230 of the Code of Civil Procedure.

5 (B) To dispute resolution programs, as described in subdivision
6 (b) of Section 68085.3 and subdivision (b) of Section 68085.4.

7 (C) To the county law library funds, as described in Sections
8 116.230 and 116.760 of the Code of Civil Procedure, subdivision
9 (b) of Section 68085.3, subdivision (b) of Section 68085.4, and
10 Section 70621 of this code, and Section 14607.6 of the Vehicle
11 Code.

12 (D) To the courthouse construction funds in the Counties of
13 Riverside, San Bernardino, and San Francisco, as described in
14 Sections 70622, 70624, and 70625.

15 *(E) To the Trial Court Trust Fund, as described in subdivision*
16 *(d) of Section 70626, to be used by the Judicial Council to*
17 *implement and administer the civil representation pilot program*
18 *under Section 68651.*

19 (2) If any distribution under this subdivision is delinquent, the
20 Administrative Office of the Courts shall add a penalty to the
21 distribution as specified in subdivision (i).

22 (d) Within 45 calendar days after the end of the month in which
23 the fees and fines listed in subdivision (a) are collected, the
24 amounts remaining after the distributions in subdivision (c) shall
25 be transmitted to the State Treasury for deposit in the Trial Court
26 Trust Fund and other funds as required by law. This remittance
27 shall be accompanied by a remittance advice identifying the
28 collection month and the appropriate account in the Trial Court
29 Trust Fund or other fund to which it is to be deposited. Upon the
30 receipt of any delinquent payment required under this subdivision,
31 the Controller shall calculate a penalty as provided under
32 subdivision (i).

33 (e) From the money transmitted to the State Treasury under
34 subdivision (d), the Controller shall make deposits as follows:

35 (1) Into the State Court Facilities Construction Fund, the Judges'
36 Retirement Fund, and the Equal Access Fund, as described in
37 subdivision (c) of Section 68085.3 and subdivision (c) of Section
38 68085.4.

(2) Into the Health Statistics Special Fund, as described in subdivision (b) of Section 70670 of this code and Section 103730 of the Health and Safety Code.

(3) Into the Family Law Trust Fund, as described in Section 70674.

(4) Into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5, as described in Sections 68085.3, 68085.4, and 70657.5, and subdivision (e) of Section 70617.

(5) The remainder of the money shall be deposited into the Trial Court Trust Fund.

(f) The amounts collected by each superior court under Section 116.232, subdivision (g) of Section 411.20, and subdivision (g) of Section 411.21 of the Code of Civil Procedure, Sections 304, 3112, 3153, 7851.5, and 9002 of the Family Code, subdivision (d) of Section 6103.5, subdivision (d) of Section 68511.3 and Sections 68926.1, 69953.5, 70627, 70631, 70640, 70661, 70678, and 71386 of this code, and Sections 1513.1, 1835, 1851.5, and 2343 of the Probate Code shall be added to the monthly apportionment for that court under subdivision (a) of Section 68085.

(g) If any of the fees provided in subdivision (a) are partially waived by court order or otherwise reduced, and the fee is to be divided between the Trial Court Trust Fund and any other fund or account, the amount of the reduction shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee. If the fee is paid by installment payments, the amount distributed to each fund or account from each installment shall bear the same proportion to the installment payment as the full distribution to that fund or account does to the full fee. If a court collects a fee that was incurred before January 1, 2006, under a provision that was the predecessor to one of the paragraphs contained in subdivision (a), the fee may be deposited as if it were collected under the paragraph of subdivision (a) that corresponds to the predecessor of that paragraph and distributed in prorated amounts to each fund or account to which the fee in subdivision (a) must be distributed.

(h) Except as provided in Sections 470.5 and 6322.1 of the Business and Professions Code, and Sections 70622, 70624, and 70625 of this code, no agency may take action to change the

amounts allocated to any of the funds described in subdivision (c), (d), or (e).

(i) The amount of the penalty on any delinquent payment under subdivision (c) or (d) shall be calculated by multiplying the amount of the delinquent payment at a daily rate equivalent to 1 ½ percent per month for the number of days the payment is delinquent. The penalty shall be paid from the Trial Court Trust Fund. Penalties on delinquent payments under subdivision (d) shall be calculated only on the amounts to be distributed to the Trial Court Trust Fund and the State Court Facilities Construction Fund, and each penalty shall be distributed proportionately to the funds to which the delinquent payment was to be distributed.

(j) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a superior court under subdivision (b), the court shall reimburse the Trial Court Trust Fund for the amount of the penalty. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse pursuant to this section shall be paid from the court operations fund for that court. The penalty shall be paid by the court to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated. If the penalty is not paid within the specified time, the Administrative Office of the Courts may reduce the amount of a subsequent monthly allocation to the court by the amount of the penalty on the delinquent payment.

(k) If a delinquent payment under subdivision (c) or (d) results from a delinquency by a county in transmitting fees and fines listed in subdivision (a) to the bank account established for this purpose, as described in subdivision (b), the county shall reimburse the Trial Court Trust Fund for the amount of the penalty. The penalty shall be paid by the county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

~~SEC. 4.~~

SEC. 5. Chapter 2.1 (commencing with Section 68650) is added to Title 8 of the Government Code, to read:

CHAPTER 2.1. CIVIL LEGAL REPRESENTATION

68650. *This chapter shall be known, and may be cited, as the Sargent Shriver Civil Counsel Act.*

1 ~~68650.~~

2 68651. (a) Legal counsel shall be appointed to represent
3 low-income parties in civil matters involving critical issues
4 affecting basic human needs in those specified courts selected by
5 the Judicial Council as provided in this section.

6 (b) (1) Subject to funding specifically provided for this purpose
7 pursuant to subdivision (d) of Section 70626, the Judicial Council
8 shall develop one or more model pilot projects in selected courts
9 pursuant to a competitive grant process and a request for proposals.
10 Projects authorized under this section shall provide representation
11 of counsel for low-income persons who require legal services in
12 civil matters involving basic human needs ~~that would not be met~~
13 ~~using existing legal resources, as well as providing court~~
14 ~~procedures, personnel, training, and case management and~~
15 ~~administration methods that reflect best practices to ensure~~
16 ~~unrepresented parties in those cases have meaningful access to~~
17 ~~justice, and to gather information on the outcomes associated with~~
18 ~~providing these services, to guard against the involuntary waiver~~
19 ~~of those rights or their disposition by default. These pilot projects~~
20 ~~should be designed to address the substantial inequities in timely~~
21 ~~and effective access to justice that often give rise to an undue risk~~
22 ~~of erroneous decision because of the nature and complexity of the~~
23 ~~law and the proceeding or disparities between the parties in~~
24 ~~education, sophistication, language proficiency, legal~~
25 ~~representation, access to self-help, and alternative dispute~~
26 ~~resolution services. In order to ensure that the scarce funds~~
27 ~~available for the program are used to serve the most critical cases~~
28 ~~and the parties least able to access the courts without~~
29 ~~representation, eligibility for representation shall be limited to~~
30 ~~clients whose household income falls at or below 200 percent of~~
31 ~~the federal poverty level. Projects shall impose asset limitations~~
32 ~~consistent with their existing practices in order to ensure optimal~~
33 ~~use of funds.~~

34 (2) Each project shall be a partnership between the court, a
35 qualified legal services ~~provider project, as defined by subdivision~~
36 ~~(a) of Section 6213 of the Business and Professions Code, that~~
37 shall serve as the lead agency for case assessment and direction,
38 and other legal services providers in the community who are able
39 to provide the services for the project. The lead legal services
40 agency shall be the central point of contact for receipt of referrals

1 to the project and to make determinations of eligibility based on
 2 uniform criteria. The lead legal services agency shall be responsible
 3 for providing representation to the clients or referring the matter
 4 to one of the organization or individual providers with whom the
 5 legal services agency contracts to provide the service. To the extent
 6 practical, the lead legal services agency shall identify and make
 7 use of pro bono services in order to maximize available services
 8 efficiently and economically. *Recognizing that not all indigent*
 9 *parties can be afforded representation, even when they have*
 10 *meritorious cases, the court partner shall, as a corollary to the*
 11 *services provided by the legal services agency, be responsible for*
 12 *providing procedures, personnel, training, and case management*
 13 *and administration practices that reflect best practices to ensure*
 14 *unrepresented parties meaningful access to justice and to guard*
 15 *against the involuntary waiver of rights, as well as to encourage*
 16 *fair and expeditious voluntary dispute resolution, consistent with*
 17 *principles of judicial neutrality.*

18 (3) *The participating courts shall be selected by a committee*
 19 *appointed by the Judicial Council with representation from key*
 20 *stakeholder groups, including judicial officers, legal services*
 21 *providers, and local government agencies responsible for*
 22 *addressing community impacts resulting from the lack of*
 23 *representation. The committee shall assess the applicants' capacity*
 24 *for success, innovation, and efficiency, including, but not limited*
 25 *to, the likelihood that the project would deliver quality*
 26 *representation in an effective manner that would meet critical*
 27 *needs in the community and address the needs of the court with*
 28 *regard to access to justice and calendar management, and the*
 29 *unique local unmet needs for representation in the community.*
 30 *Projects approved pursuant to this section shall initially be*
 31 *authorized for a three-year period, subject to renewal for a period*
 32 *to be determined by the Judicial Council, in consultation with the*
 33 *participating court in light of the court's capacity and success.*
 34 *Projects shall be selected in light of, and in consideration of, all*
 35 *of the following factors:*

36 (A) *The potential effect that representation may have on the*
 37 *outcome of disputes in the proposed case types.*

38 (B) *The likelihood of reducing the risk of erroneous decision.*

39 (C) *The nature and severity of potential consequences for the*
 40 *unrepresented party if representation is not provided.*

1 (D) Whether the provision of legal services may eliminate or
2 reduce the potential need for and cost of public social services for
3 the client and others in the client's household.

4 (E) The unmet need for services in the geographic area to be
5 served.

6 (F) The likelihood that represented parties would otherwise be
7 opposed by a party who is represented by counsel.

8 (G) The availability and effectiveness of other types of services,
9 such as self-help.

10 (4) Each applicant shall do all of the following:

11 (A) Identify the nature of the partnership between the court, the
12 lead legal services agency, and the other agencies or other
13 providers that would work within the project.

14 (B) Describe the referral protocols to be used, the criteria that
15 would be employed in case assessment, why those case types were
16 selected, the manner to address conflicts without violating any
17 attorney-client privilege when adverse parties are seeking
18 representation through the project, and the means by which
19 language needs will be addressed.

20 (C) Describe how the project would be administered, including
21 how the data collection requirements would be met without causing
22 an undue burden on the courts, clients, or the providers, the
23 particular objectives of the project, strategies to evaluate their
24 success in meeting those objectives, and the means by which the
25 project would serve the particular needs of the community, such
26 as by providing representation to limited-English-speaking clients.

27 (5) To ensure the most effective use of the funding available,
28 the lead legal services agency shall serve as a hub for all referrals,
29 and the point at which decisions are made about which referrals
30 will be served and by whom. Referrals shall emanate from the
31 court, as well as from the other agencies providing services
32 through the program, and shall be directed to the lead agency for
33 review. That agency, or another agency or attorney in the event
34 of conflict, shall collect the information necessary to assess whether
35 the case should be served. In performing that case assessment, the
36 agency shall determine the relative need for representation of the
37 litigant, including all of the following:

38 (A) Case complexity.

39 (B) Whether the other party is represented.

40 (C) The adversarial nature of the proceeding.

1 (D) The availability and effectiveness of other types of services,
2 such as self-help, in light of the client and the nature of the case.

3 (E) Language issues.

4 (F) Disability access issues.

5 (G) Literacy issues.

6 (H) The merits of the case.

7 (I) The nature and severity of potential consequences for the
8 client if representation is not provided.

9 (J) Whether the provision of legal services may eliminate or
10 reduce the need for and cost of public social services for the client
11 and others in the client's household.

12 (6) If both parties to a dispute are financially eligible for
13 representation, each proposal shall ensure that representation for
14 both sides is evaluated. In these and other cases in which conflict
15 issues arise, the lead agency shall have referral protocols with
16 other agencies and providers, such as a private attorney panel, to
17 address those needs.

18 (7) Each pilot project shall be responsible for keeping records
19 on the referrals accepted and those not accepted for representation,
20 and the reasons for each, in a manner that does not violate any
21 privileged communications between the agency and the prospective
22 client. Each pilot project shall be provided with standardized data
23 collection tools, and required to track case information for each
24 referral to allow the evaluation to measure the number of cases
25 served, the level of service required, and the outcomes for the
26 clients in each case. In addition to this information on the effect
27 of the representation on the clients, data shall be collected
28 regarding the outcomes for the trial courts, primarily garnered
29 through interviews with and surveys of judicial officers, court
30 personnel, attorneys, clients served, and other stakeholders.

31 (8) A local advisory committee shall be formed for each pilot
32 project, to include representatives of the bench and court
33 administration, the lead legal services agency, and the other
34 agencies or providers that are part of the local project team. Other
35 participants may include representatives of local bar associations
36 and others as may in the judgment of the Judicial Council improve
37 the success of the pilot project. The role of the advisory committee
38 is to facilitate the administration of the local pilot project, and to
39 ensure that the project is fulfilling its objectives. In addition, the
40 committee shall resolve any issues that arise during the course of

1 the pilot project, including issues concerning case eligibility, and
2 recommend changes in project administration in response to
3 implementation challenges. The committee shall meet at least
4 monthly for the first six months of the project, and no less than
5 quarterly for the duration of the pilot period. Each authorized
6 pilot project shall catalog changes to the program made during
7 the three-year period based on its experiences with best practices
8 in serving the eligible population.

9 (c) The Judicial Council shall conduct a study to demonstrate
10 the effectiveness and continued need for the pilot program
11 established pursuant to this section and shall report its findings
12 and recommendations to the Governor and the Legislature on or
13 before March 1, 2013, and every three years thereafter. The study
14 shall include data on the impact of counsel on equal access to
15 justice, and the effect on court administration and efficiency,
16 including reduced courtroom time for hearings, increased
17 compliance with orders and court schedules, reduced case delays,
18 and enhanced coordination between courts and other government
19 service providers and community resources. This report shall
20 describe the benefits of providing representation to those who were
21 previously not represented, both for the clients and the courts, as
22 well as strategies and recommendations for maximizing the benefit
23 of that representation in the future. The evaluation report is also
24 intended as a vehicle to share the innovative strategies and
25 approaches developed in the different project locations with other
26 courts that may share their demographic characteristics. The
27 Judicial Council may use an independent evaluator to analyze and
28 compile the evaluation report.

29 (d) This section shall not be construed to negate, alter, or limit
30 any right to counsel in a criminal or civil action or proceeding
31 otherwise provided by state or federal law.

32 ~~SEC. 5.~~

33 SEC. 6. Section 70626 of the Government Code is amended
34 to read:

35 70626. (a) The fee for each of the following services is
36 twenty-five dollars (\$25). Subject to subdivision (d), amounts
37 collected shall be distributed to the Trial Court Trust Fund under
38 Section 68085.1.

1 (1) Issuing a writ of attachment, a writ of mandate, a writ of
2 execution, a writ of sale, a writ of possession, a writ of prohibition,
3 or any other writ for the enforcement of any order or judgment.

4 (2) Issuing an abstract of judgment.

5 (3) Issuing a certificate of satisfaction of judgment under Section
6 724.100 of the Code of Civil Procedure.

7 (4) Certifying a copy of any paper, record, or proceeding on file
8 in the office of the clerk of any court.

9 (5) Taking an affidavit, except in criminal cases or adoption
10 proceedings.

11 (6) Acknowledgment of any deed or other instrument, including
12 the certificate.

13 (7) Recording or registering any license or certificate, or issuing
14 any certificate in connection with a license, required by law, for
15 which a charge is not otherwise prescribed.

16 (8) Issuing any certificate for which the fee is not otherwise
17 fixed.

18 (b) The fee for each of the following services is thirty dollars
19 (\$30). Subject to subdivision (d), amounts collected shall be
20 distributed to the Trial Court Trust Fund under Section 68085.1.

21 (1) Issuing an order of sale.

22 (2) Receiving and filing an abstract of judgment rendered by a
23 judge of another court and subsequent services based on it, unless
24 the abstract of judgment is filed under Section 704.750 or 708.160
25 of the Code of Civil Procedure.

26 (3) Filing a confession of judgment under Section 1134 of the
27 Code of Civil Procedure.

28 (4) Filing an application for renewal of judgment under Section
29 683.150 of the Code of Civil Procedure.

30 (5) Issuing a commission to take a deposition in another state
31 or place under Section 2026.010 of the Code of Civil Procedure,
32 or issuing a subpoena under Section 2029.300 to take a deposition
33 in this state for purposes of a proceeding pending in another
34 jurisdiction.

35 (6) Filing and entering an award under the Workers'
36 Compensation Law (Division 4 (commencing with Section 3200)
37 of the Labor Code).

38 (7) Filing an affidavit of publication of notice of dissolution of
39 partnership.

1 (8) Filing an appeal of a determination whether a dog is
2 potentially dangerous or vicious under Section 31622 of the Food
3 and Agricultural Code.

4 (9) Filing an affidavit under Section 13200 of the Probate Code,
5 together with the issuance of one certified copy of the affidavit
6 under Section 13202 of the Probate Code.

7 (10) Filing and indexing all papers for which a charge is not
8 elsewhere provided, other than papers filed in actions or special
9 proceedings, official bonds, or certificates of appointment.

10 (c) The fee for filing a first petition under Section 2029.600 or
11 2029.620 of the Code of Civil Procedure, if the petitioner is not a
12 party to the out-of-state case, is eighty dollars (\$80). Amounts
13 collected shall be distributed to the Trial Court Trust Fund pursuant
14 to Section 68085.1.

15 (d) Of the amounts collected pursuant to subdivisions (a) and
16 (b), ten dollars (\$10) of each fee shall be transmitted quarterly to
17 be deposited in the Trial Court Trust Fund and used by the Judicial
18 Council for the expenses of the Judicial Council in implementing
19 and administering the civil representation pilot program under
20 Section ~~68650~~ 68651.