

**IN THE SUPREME COURT OF TEXAS**

Misc. Docket No. 98-9001

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**ORDER OF THE COURT APPROVING RULES AND PROCEDURES GOVERNING THE ADMINISTRATION OF THE BASIC CIVIL LEGAL SERVICES PROGRAM, INCLUDING THE DISTRIBUTION OF AND SANCTIONS WITH RESPECT TO THE FUNDS**

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WHEREAS, by an Act effective September 1, 1997, the legislature enacted Chapter 51, Government Code, Subchapter J (“Act”), relating to additional court filing fees to provide basic civil legal services to the indigent (“Basic Civil Legal Services Program”), a copy of the Act being attached as Exhibit A; and

WHEREAS, the Act requires the Supreme Court of Texas to adopt rules and procedures for the distribution of funds and the imposition of sanctions;

Now, therefore, pursuant to the Act, the Court adopts the following rules and procedures governing the administration of the Basic Civil Legal Services Program, including the distribution of and sanctions with respect to the funds (“Rules”):

**1. Appointment of the Texas Equal Access to Justice Foundation**

The Court hereby appoints the Texas Equal Access to Justice Foundation (“Foundation”) to administer the Basic Civil Legal Services Program on behalf of the Court, including but not limited to, the application process, the recommendation to the Court of grant recipients, the distribution of funds by vouchers approved by the Court (“Funds”), the monitoring of grant recipients, the recommendation to the Court of sanctions, and the recommendation to the Court of appropriate reports.

**2. Funds for the Basic Civil Legal Services Program**

Pursuant to Section 51.901 of the Act, the clerk of each court shall collect the appropriate filing fees specified in Subsection (a) in the manner provided in Subsection (b), and shall remit the fees collected as provided in the applicable Subsection (c) or (d).

### **3. Funds to be Maintained in the Basic Civil Legal Services Account of the Judicial Fund Administered by the Court**

Funds received by the Comptroller shall be credited to the basic civil legal services account of the judicial fund administered by the Court (“Account”) for use in programs recommended by the Foundation and approved by the Court that provide basic civil legal services to the indigent. The Comptroller may pay money from the Account only on vouchers recommended by the Foundation and approved by the Court. Since the purpose of the Act is to increase the funds available for basic civil legal services to the indigent, Funds from the Account may be supplemented by local or federal funds and private or public grants.

### **4. Organizations Eligible and Criteria for Grants**

The Foundation shall recommend and the Court shall approve grants to organizations, not individuals. To qualify for a grant, an organization must be a nonprofit organization exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code, as amended, or corresponding provisions of any subsequent United States Internal Revenue law or laws, and must provide basic civil legal services to indigent persons meeting the income eligibility requirements defined by the Act, and must be current in all filings required to be made by it with any governmental authority, maintain open records and conduct open meetings (subject to reasonable limitations for an organization of its type), be an equal employment opportunity employer, and be able to demonstrate that it can utilize any funds granted to it in a manner consistent with these Rules and policies adopted by the Foundation. No grantee shall subgrant any Funds to any other organization unless it is approved by the Foundation. The organization receiving a subgrant must read, understand, comply with, and agree in writing to be subject to and bound by the Act, Rules, grant provisions, and other policies of the Foundation. The organization providing the subgrant shall be responsible for monitoring the recipient organization to determine compliance. The organization receiving a subgrant also may be monitored by the Foundation.

### **5. Persons Eligible to Benefit from Grants**

Organizations receiving Funds granted under the Basic Civil Legal Services Program shall use the Funds to provide basic civil legal services to individual indigent persons. “Indigent” means an individual who earns not more than 125% of the federal poverty guidelines published by the United States Department of Health and Human Services.

### **6. Use of Funds Limited to Cases Which Cannot Generate Fees**

6.1 Funds granted under the Basic Civil Legal Services Program to organizations to provide legal services to the indigent in civil matters may not be used for any case or matter that, if undertaken on behalf of an indigent individual by an attorney in private practice, might reasonably be expected to result in payment of a fee for legal services from an award to an individual client from public funds or from an opposing party.

6.2 The provisions of Rule 6.1 shall not be applicable in any case where the organization receiving Funds determines in good faith that the indigent person seeking legal assistance made a reasonable effort to obtain legal services from an attorney in private practice for the particular legal matter, including contacting attorneys who practice law in the judicial district that is the residence of the indigent individual and who normally accept cases of a similar nature, and the indigent individual has been unable to obtain legal services.

6.3 A grantee awarded attorney's fees shall send the attorney's fees to the Comptroller if any attorney representing any party involved in the case was paid in that case directly from funds from a grant made out of the Account. The Comptroller shall deposit the fees to the credit of the Account for use in the Basic Civil Legal Services Program.

6.4 To the extent feasible in its recommendation of grants, the Foundation shall attempt to allocate attorney's fees deposited to the Account pursuant to Rule 6.2 generally to the service area in which they were awarded. A grantee with a federal statutory mandate pursuant to 42 U.S.C. 6041, 6042, 10801, and 10802 to use attorney's fees for a specific purpose and which remits attorney's fees to the Comptroller pursuant to Rule 6.3 shall be awarded a like amount for that specific purpose at the time of the next grant awards.

## **7. Certain Activities of Grantees**

7.1 In addition to all other requirements and not by way of limitation, to be eligible to receive funds:

(i) Grantees will cooperate and collaborate in their service areas with (a) all other organizations providing civil legal services to the indigent, (b) the local organized bar, (c) relevant social and human service organizations, and (d) relevant governmental agencies in the establishment and use of reasonable procedures and processes to effect the referral of potentially fee generating cases to private attorneys. The procedures and processes shall provide reasonable complaint mechanisms for private attorneys.

(ii) In accepting and pursuing matters for clients, grantees shall adhere to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure and any other code or rules of professional responsibility adopted by this state for attorneys and should exercise reasonable prudent judgment and consider all relevant factors, including the legal merits and the economic and practical value of the matter.

(iii) Except for matters involving limited advice and brief services (e.g. clinics, hotlines, and similar services), each grantee shall execute a written retainer agreement, or letter of engagement, containing appropriate provisions for withdrawal of representation, with each client who receives legal services from the grantee. For cases that are referred by grantees to private attorneys, the grantee shall make available to the accepting attorney a standard form retainer agreement which may be modified based on agreement between the attorney and client.

7.2 In addition to all other matters monitored by the Foundation and not by way of limitation, the Foundation shall monitor the foregoing activities of Grantees.

## **8. Funding of Certain Suits and Activities Not Permitted**

Funds from the Account may not be used to directly or indirectly support a class action lawsuit, abortion-related litigation, or a lawsuit against a governmental entity, political party, candidate, or officeholder for an action taken in the individual's official capacity or for lobbying for or against a candidate or issue. Notwithstanding any provision of law to the contrary, funds from the Account may not be used for the representation of an individual who is confined to a local, state, or federal jail or prison. For the purposes of the Basic Civil Legal Services Program, a person is considered to be confined to a jail or prison if that person is so confined as a result of a determination of criminal responsibility by a court of competent jurisdiction or is being held under suspicion of a crime.

Funds from the Account may not be used to provide legal services to an individual who is not legally in this country, unless necessary to protect the physical safety of the individual. Funds from the Account may be used to support a lawsuit brought by an individual, solely on behalf of the individual or the individual's dependent or ward, to compel a governmental entity to provide benefits that the individual or the individual's dependent or ward is expressly eligible to receive, by statute or regulation, including social security benefits, aid to families with dependent children, financial assistance under Chapter 31, Human Resources Code, food stamps, special education for persons with disabilities, Medicare, Medicaid, subsidized or public housing, and other economic, shelter or medical benefits provided by a government directly to an indigent individual, but not to support a claim for actual or punitive damages.

## **9. Records and Reports of Grantees**

9.1 As a condition to the award of a grant to any organization or program, the Court requires the grantee to acquire and maintain certain financial, program and other information and to submit periodic and special reports to assist the Foundation and the Court in monitoring compliance with the Act, these Rules, grant provisions, grant agreement, and other policies of the Foundation.

9.2 The required information is intended, among other matters, to provide the basis for the required reports; to facilitate review of the actual use of the funds granted; to evaluate programs; and to provide statistical data with respect to the level of need for basic civil legal services, the level of legal services provided by the grantee, and the remaining level of unmet need. All such information shall be as required by these Rules and as reasonably required by the Foundation pursuant to its policies, grant application, grant provisions, and grant agreement.

9.3 Each grantee shall keep its financial records in accordance with generally accepted accounting principles or other comprehensive basis of accounting approved by the Foundation for grantees of its type.

(i) Grantees must account for Funds as restricted funds, which specifically requires that any donor-imposed restrictions be met before Funds are expended.

(ii) Accounting records shall be supported by source documentation such as cancelled checks, paid invoices, time cards, time sheets, payrolls or similar data. The Foundation may disallow unsupported expenditures and may require that funds expended for unsupported expenditures be returned.

9.4 Grantees shall submit financial, program activity and other reports to the Foundation at least quarterly during the grant period and at such other times as shall be directed by the Foundation. These reports will be in the form and contain the information specified in these Rules and by the Foundation.

(i) The reports shall be in formats determined by the Foundation and designed to provide reasonable assurance that the restricted funds were spent in compliance with the purposes for which the grant was awarded, the Act and these Rules. Grantees will disclose any facts or events which would make the grantee ineligible for funding if applying for a grant as of the date of the report. Grantees will certify (i) at the commencement of the grant year that no Funds will be used for any activities prohibited by the Act and these Rules and (ii) quarterly during the grant year that no Funds have been used for such prohibited activities.

(ii) The financial report will detail the expenditure of the grant to date and compare those expenditures against the approved budget.

(iii) Grantees shall submit an annual financial statement within 120 days of the close of their fiscal year. The financial statement shall be prepared in conformity with FASB Statement No. 117, Financial Statements of Not-for-Profit Organizations. The financial statement shall include a supplemental schedule showing revenue and expenses from the grant by natural classification. This schedule will report actual expenses and compare them to the final amended approved budget, noting all differences. The financial statement shall be audited by an independent certified public accountant. The audit must be conducted in compliance with the Basic Civil Legal Services Program Compliance Supplement dealing exclusively with restrictions imposed on the Funds. All grantees must be audited regardless of size of the grant award unless the Foundation recommends and the Court approves an exception to this requirement. On receipt of a justified request from the Grantee, the Foundation may recommend and the Court may approve (1) a waiver of the requirement for an audited financial statement, (2) a grant audit in lieu of an audited financial statement, or (3) any other procedure or action as the Foundation may recommend to the Court or the Court may deem appropriate. Each request will be evaluated on a case-by-case basis.

9.5 Visits to one or more of a grantee's places of business by Foundation representatives may be made as determined by the Foundation to inspect the physical facilities, and to review financial and program records, operational policies and procedures, including but not limited to, observation of grantee's delivery of basic civil legal services, and such other aspects of a grantee's program as may be reasonably necessary to ensure compliance with the Act, these Rules, grant provisions, grant agreement, and other policies of the Foundation. Such monitoring visits will be conducted in reliance upon the practices and principles articulated by the American Bar Association in its Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor, adopted in 1991, and Standards for Providers of Civil Legal Services to the Poor, adopted in 1966 and revised in 1970.

9.6 The Foundation may not require that confidential information be divulged in breach of the attorney/client relationship.

9.7 Funds may be used for expenses as follows:

(i) Funds may be used for direct expenses incurred while engaging in activities that are not prohibited by the Rules. Direct expenses are those identified specifically with the provision of basic civil legal services including compensation, employee benefits and other employment costs, of attorneys, paralegals, law clerks, law students and direct support staff for time and effort devoted specifically to the provision of basic civil legal services, as well as, travel, training, litigation support functions, litigation costs, contractual services, and any other costs directly

traceable to and incurred for the sole benefit of the provision of permitted basic civil legal services. With regard to personnel-related direct expenses: Funds may be used only if the person for which the Funds are being used engages in no prohibited activities while working for the funded organization, regardless of the amount or percentage of compensation supplied by these Funds. The restriction of all activities of a person compensated even partially by these Funds does not apply to a person employed by a grantee which has a federal statutory mandate pursuant to 42 U.S.C. 6041, 6042, 10801, and 10802 to conduct activities otherwise prohibited by these Rules. In such instances, Funds may be used to the extent that the person's time spent on permitted activities is equal to or greater than the percentage of compensation paid from the Funds.

(ii) In compliance with Generally Accepted Accounting Principles, overhead expenses may be allocated to the grant but are limited to the lesser of the following:

1. The Dollar amount specified in the Approved Funds Budget; or
2. The dollar amount calculated by the percentage ratio of indirect expenses to direct expenses calculated on an entity-wide basis. That is, the indirect expense to direct expense ratio from the Approved Funds Budget cannot exceed the same ratio on an entity-wide basis.

Overhead expenses are those that are fungible in nature in that they cannot be separately identified as having been incurred for a specific purpose. Some examples of overhead expenses are occupancy, office supplies, utilities, telephone, and other equipment.

## **10. Default**

A grantee shall be deemed in default of the grant conditions upon the occurrence of any of the following:

(i) Any material violation by the grantee of the Act, these Rules, grant provisions, the policies of the Foundation, or the grant agreement;

(ii) Any use of grant funds not in substantial compliance with the approved budget and grant agreement including approved budget revisions for that grant period;

(iii) The occurrence of any event which would make the grantee ineligible to receive a grant if applying for one at that time;

(iv) The submission of any materially false or misleading information to the Foundation as a part of the grant application, approved budget, financial report, financial statements, or otherwise; or

(v) Any failure to return unused grant funds at the end of a grant period.

## **11. Sanctions**

The Board of Directors of the Foundation shall adopt appropriate procedures to be followed by the Foundation in deciding to recommend sanctions, including reasonable notice to the organization involved, an opportunity to correct any deficiency (if reasonably possible to do so) and, if deemed appropriate by the Executive Committee of the Foundation, a hearing before the Executive Committee or the Board of Directors. The Foundation may recommend to the Court sanctioning an organization that is deemed by the Foundation to be in default, as defined above in Rule 10. In the event of a default by a grantee, the Court shall have the right, among others, but not by way of limitation, to implement any of the following sanctions: reduce the grant; terminate the grant; withhold payment of an installment; demand repayment of a portion or all of the grant funds; institute legal action to recover funds; adopt a monthly grant disbursement schedule (including demanding a return of grant funds already disbursed in excess of the pro rata current month's installment); condition payment of subsequent installments on the grantee's cure of the default; or other remedies as the Foundation may recommend to the Court or the Court may deem appropriate.

## **12. Administrative Costs to the Foundation**

The Foundation may expend funds for administrative costs of the Basic Civil Legal Services Program and shall be reimbursed periodically upon application to the Court from the judicial fund in the amount of 3.5% of the funds deposited to the Account.

## **13. Records of the Foundation**

The records of the Foundation with respect to the Basic Civil Legal Services Program, including applications for Funds, whether or not granted, shall be open for public inspection at reasonable times and subject to reasonable restrictions dictated by the operational needs of the Foundation. The Foundation shall maintain its books of account in accordance with generally accepted accounting principles for organizations of its type and shall maintain written minutes of meetings of its Board of

Directors and committees. It shall also maintain such other records as are within reasonable policies established by its Board of Directors.

#### **14. Reports of the Foundation**

The Foundation shall file a report with the Court at the end of each fiscal year showing disbursements from the Account and the purpose for each disbursement and the sanctions imposed, if any, and shall recommend an appropriate report for filing with the Legislative Budget Board.

#### **15. Audits of Funds Received by Grantees**

Funds received by grantees from the Court are subject to audit by the supreme court, the comptroller, and the state auditor. The Foundation will recommend the appropriate procedures for an audit on behalf of the Court.

#### **16. Initial Recommendation for Distribution of Funds by the Foundation**

The recommendation for initial distribution of funds shall be made at a time when, in the determination of the Board of Directors of the Foundation, there are sufficient funds to provide an adequate distribution for a viable Basic Civil Legal Services Program.

#### **17. Appeals**

Grant awards and denials are not subject to appeals by applicants to the Foundation or the Court.

It is further ORDERED that the Texas Equal Access to Justice Foundation proceed immediately with the implementation of the Basic Civil Legal Services Program pursuant to the Rules herein adopted.

In accordance with the Act, the Rules shall become effective as of September 1, 1997.

By the Court, in open Court, this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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Thomas R. Phillips, Chief Justice

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Raul A. Gonzalez, Justice

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Nathan L. Hecht, Justice

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Craig Enoch, Justice

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Rose Spector, Justice

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Priscilla R. Owen, Justice

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James A. Baker, Justice

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Greg Abbott, Justice

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Deborah G. Hankinson, Justice