

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 02-_____

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

On January 11, 2002, the Office of the Attorney General of Texas (OAG) entered into an Interagency Cooperation Contract (IAC) with the Supreme Court of Texas to administer Crime Victims Compensation Funds for the provision of civil legal services to victims, immediate family members, or claimants as defined by Article 56.32 of the Code of Criminal Procedure. In so doing, the Court appoints the Texas Equal Access to Justice Foundation (“Foundation”) to administer the Crime Victims Civil Legal Services Program (“CVCLS”) on behalf of the Court consistent with the following rules.

1. Appointment of the Texas Equal Access to Justice Foundation

The Supreme Court of Texas (Court) delegates to the Texas Equal Access to Justice Foundation (“Foundation”) the administration of the Crime Victims Civil Legal Services Program, including but not limited to, the application process, grant award decisions, 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 to be Maintained in the Basic Civil Legal Services Account

Funds received by the Court shall be credited to the Basic Civil Legal Services Program account (“Account”) for use in programs approved by the Foundation to provide victim-related civil legal services directly to indigent victims, indigent immediate family members of indigent victims, or indigent claimants. The Comptroller may pay money from the Account only on vouchers recommended by the Foundation and approved by the Court. Funds from the Account may be supplemented by local or federal funds and private or public grants.

3. 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 Texas 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 victim-related civil legal services to victims, immediate family members of victims, or claimants meeting the income eligibility requirements as set out in Rule 4, 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 Court and 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, 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.

4. Persons Eligible to Benefit from Grants

Organizations receiving Funds granted under the Crime Victims Civil Legal Services Program shall use the Funds to provide victim-related civil legal services directly to indigent victims, indigent immediate family members of indigent victims, or indigent claimants. "Indigent" means an individual who earns not more than 187 ½% of the federal poverty guidelines published by the United States Department of Health and Human Services. Victims, immediate family members of victims and claimants are defined in Article 56.32 of the Code of Criminal Procedure.

5. Use of Funds Limited to Cases Which Cannot Generate Fees

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

6. Exception to Rule 5

The provisions of Rule 5 shall not be applicable in any case where the organization receiving funds granted by the Foundation determines in good faith that the indigent person seeking legal assistance has made reasonable efforts to obtain the services of an attorney in private practice for the particular matter (including contacting attorneys in private practice in the county of residence of the indigent person who normally accept cases of a similar nature), and has been unable to obtain such services because the potential fee is inadequate, is likely to be uncollectible, would substantially consume any recovery by the client, or because of any other reason which the organization, acting in good

faith, believes prevents the client from obtaining the services of a private attorney.

7. Funding of Certain Suits and Activities Not Permitted

No funds shall be granted by the Foundation to directly fund class action suits, lawsuits against governmental entities, or lobbying for or against any candidate or issue.

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, temporary assistance to needy families, 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.

8. Certain Activities of Grantees

8.1 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, (d) relevant governmental agencies, and (e) other organizations that specifically provide victim related services.

(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.

8.2 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.

9. Records and Reports of Grantees

The Foundation shall require, as a condition to the granting of funds to any organization or

program, that adequate provision be made for reports to the Foundation as to the actual use of the funds so granted and for audit of such reports. Each such organization or program receiving funds from the Foundation shall keep its financial records in accordance with generally accepted accounting principles for organizations of its type and shall furnish reports to the Foundation in such form and containing such information as shall be reasonably requested pursuant to policies adopted by the Board of Directors of the Foundation.

9.1 As a condition to the award of a grant to any organization or program, the Foundation requires the grantee to acquire and maintain certain financial, program and other information and to submit periodic and special reports to assist the Foundation 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, 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.

(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 Crime Victims Civil 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.

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 impose 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. In the event of a default, as defined above in Rule 10, by a grantee, the Foundation 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 deem appropriate.

12. Administrative Costs to the Foundation

Beginning September 1, 2001, the Foundation may expend funds for administrative costs of the Crime Victims Civil Legal Services Program and shall be reimbursed periodically upon application to the Court from the Crime Victims Civil Legal Services Program 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 Crime Victims 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 and the OAG 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 Crime Victims Civil Legal Services Fund are subject to audit by the OAG, Court, the comptroller, and the state auditor. The Foundation will recommend the appropriate procedures for an audit on behalf of the Court.

16. Appeals

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

Signed the _____ day of _____, 2002.

Thomas R. Phillips, Chief Justice

Nathan L. Hecht, Justice

Craig T. Enoch, Justice

Priscilla R. Owen, Justice

James A. Baker, Justice

Deborah G. Hankinson, Justice

Harriet O'Neill, Justice

Wallace Jefferson, Justice

Xavier Rodriguez, Justice