

SUBJECT: Additional court fees for civil legal services to indigents

COMMITTEE: Judicial Affairs — committee substitute recommended

VOTE: 7 ayes — Thompson, Clark, Crabb, Garcia, Luna, Solis, Zbranek
1 nay — Shields
1 absent — Hartnett

WITNESSES: For — Colleen McHugh, State Bar of Texas; Pamela Brown, Lone Star Justice Fund; Laura Martinez; Patricia Bass
Against — Bonnie Wolbrueck and Dianne Wilson, County and District Clerks Association

DIGEST: CSHB 2917 would establish the basic civil legal services account to provide funding for indigent legal services. The account would be established in the judicial fund and administered by the Supreme Court. The Supreme Court would be allowed to adopt rules and procedures for the distribution on the money to programs providing indigent legal services. The Supreme Court would be required to file an annual report with the Legislative Budget Board detailing disbursements.

The basic civil legal services account could not be used to support:

- class action lawsuits;
- abortion-related litigation;
- lawsuits against a governmental entity, political party, candidate or officeholder for an action taken in the individual's official capacity;
- lobbying for or against any candidate or issue, or
- legal services to an individual not legally in the United States in matters of asylum unless necessary to protect the physical safety of the individual.

The legal services funds could be used to sue a governmental entity to secure benefits due to the individual or the individual's dependent under statutory or other regulation.

Funds could not be used to provide legal services for any legal matter that would normally result in a fee provided from the recovery, such as a contingency fee. Individuals could use legal services funds if they could show that they had attempted to obtain legal services from an attorney who normally takes such cases in the individual's home county and were refused.

The basic civil legal services account would be funded with the following filing fees on civil cases:

- \$25 - supreme court and courts of appeals;
- \$10 - district courts other than family law or divorce matters;
- \$5 - district courts, family law and divorce matters;
- \$5 - county courts, and
- \$2 - justice of the peace courts.

CSHB 2917 would state that the purpose of the fees imposed and the fund established would be to increase funding for legal services to the indigent.

CSHB 2917 would take effect on September 1, 1997, and apply to all cases filed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2917 would help allow access to the civil justice system for those who cannot afford an attorney. Legal services programs for indigents have recently suffered significant funding losses. The 11 Texas legal services programs for indigents are currently funded primarily through the federal Legal Services Corporation. In 1996, Congress cut the funding to such programs by nearly one-third and further cuts are threatened in 1998. Supplemental funds are raised through the Interest on Lawyers Trust Accounts (IOLTA) program run by the State Bar of Texas. However, because such funds are tied to interest rates, the amount raised has dropped by nearly half since 1991. The IOLTA program is also facing a challenge to its constitutionality — a recent Fifth U.S. Circuit Court of Appeals opinion held the program unconstitutional, *Washington Legal Foundation v. Texas*

Equal Access to Justice Foundation, 94 F.3d 996 (5th Cir. 1996). The case is currently being appealed to the U.S. Supreme Court. Because of this shortfall in funding, new sources must be tapped in order to provide needed civil legal services to the poor.

The use of court fees to provide legal services is the most efficient way to raise the needed funding. Nearly 20 other states impose similar fees in order to provide legal services to indigents. The imposition of these nominal fees would raise an estimated \$3 million each year. While it may be preferable to fund legal services through the appropriations process, under the current budgeting constraints the necessary funding is not available. The imposition of a fee allows the people who use the court system to help fund greater access to the courts by indigents.

Many cases in which indigents need legal representation and cannot receive it costs society in general. If a person is unable to afford a divorce, it can be a burden on not only the individual but also society, which oftentimes must provide additional social services to the family. The cost of probating a will can sometimes lead to the abandonment of property because no one has clear title to the property to sell it. Often this property is located in poor neighborhoods, creating the possibility of it being used for illegal activities.

The bill includes protections against supporting cases that would be seen as violating the free speech rights of fee payers by forcing them to subsidize promotion of viewpoints with which they may disagree. In the Texas IOLTA case, the court held that the support of cases from death row inmates and aliens seeking asylum was a violation of the free speech rights of the parties whose interest was being used to support the program. By limiting CSHB 2917 to civil cases and specifically excluding cases involving political or social causes, the bill would avoid the traps that caused the Fifth Circuit to hold the IOLTA fund unconstitutional.

**OPPONENTS
SAY:**

The court fees used to fund various programs have proliferated in recent years. There are nearly 20 bills filed this session in the House and Senate proposing new or increased court fees for a variety of purposes. While the goal of providing legal services to the indigent may be laudable, it should be done through the appropriations process. Court fees are a tax on filing suits and are applied to all plaintiffs regardless of their economic situation.

Increased fees would actually be a greater burden on those of limited means who must file suits to protect their rights and would create one more barrier to accessing the courts.

Another option to the imposition of a fee would be to require all attorneys to complete a certain number of hours of pro bono legal work. If attorneys did not wish to complete this work, they could submit a fee. The San Antonio Bar Association has a plan similar to this used for criminal cases, but the same concept could be extended to civil cases. Allowing individual bar associations to develop their own legal aid plans promotes local control of the bar.

While this bill would prohibit legal aid services from using the funds to support certain actions, in reality it is very difficult to track the funds and how they are used to support various cases. In many cases, the administrative costs are all handled by the same office, and the staff attorneys are paid on a monthly basis, not on the hours put in on particular cases. The Texas Equal Access to Justice Foundation, which distributes IOLTA funds, has rules nearly identical to those prohibitions listed in HB 2917. However, those funds have allegedly been used to pay portions of salaries for attorneys working on cases that should be prohibited under the rules.

OTHER
OPPONENTS
SAY:

The imposition of additional court fees would create administrative burdens on court clerks who must separate the fees and remit them to the proper agency with a full accounting of their collection. A portion of the fee should be retained by the clerks who collect it to cover administrative expenses.

NOTES:

The committee substitute would require quarterly, rather than monthly, submission of fees collected. The committee substitute also added:

- the definition of indigent;
- the prohibitions against abortion-related litigation or suits against a governmental entity, political party or candidate or officeholder serving in an official capacity;
- the prohibition against funds being used to provide legal services to aliens seeking asylum, and

- the prohibition against using funds to support a case that would normally be taken by an attorney on a contingency fee basis.

The companion bill, SB 1534 by Barrientos, et al., has been reported favorably by the Senate Finance Committee and placed on the Senate Intent Calendar.

During the 73rd regular session in 1993, a similar bill, SB 1173 by Barrientos, was considered by the Senate, but died when the motion to suspend the regular order of business failed by 16-13 to receive the required two-thirds vote. SB 1173 would not have limited the suits for which the funds could be used and would have made the State Bar of Texas responsible for the administration of the funds.