

THE CONNECTICUT INNOCENCE FUND

PROPOSAL TO FELLOWS

September, 2010

The following is a proposal for a project by the Fellows of the Connecticut Bar Foundation. The purpose would be to assist newly released exonerees who have been recently released from prison based on proof of actual innocence of the crimes for which they were imprisoned. A State statute provides for compensation for such exonerees, but that process is slow and leaves newly released exonerees without support during their first months of freedom.

This proposal would create a tax-deductible fund to provide monetary advances to assist newly released exonerees with immediate financial needs prior to awards of compensation from the State of Connecticut. The advances will be loans, to be repaid out of the exonerees' compensation awards, and will thereby be a self-replenishing fund.

The Need

The need for this fund arises from the delays inherent in Connecticut's State Compensation system for exonerees. Public Act 08-143 provides that individuals released from state prison after proof of their innocence may file a claim for compensation from the State Claims Commissioner. That process is slow and does not include a provision for interim payments before a full compensation award is decided upon. Yet newly released exonerees have immediate financial needs, especially because of the gap between their release and their ability to establish an earnings cash flow upon starting a job. We have concluded that a fund is needed to assist them until their earnings cash flow meets their living needs.

Supporters of the Connecticut Innocence Project conducted a private fundraiser for this purpose to assist James Tillman after his release in 2007. But it is doubtful that such an approach could be conducted effectively for each successive exoneree. It is likely that additional individuals will be exonerated in the future, and it may become successively more difficult to organize private contributions for additional individuals, especially with the speed required to meet the most serious financial needs in the first weeks of an exoneree's freedom. Moreover, contributions through private fundraising for individuals generally are not deductible for federal income tax purposes, which further inhibits our ability to solicit donations. In contrast, the proposed Connecticut Innocence Fund will be established through tax-deductible contributions made a single time to establish the fund, which will then be self-replenishing by repayment of the advances from exonerees' compensation awards.

Structure

Upon their release they will be invited to apply for advances from the fund to meet their immediate needs until they can become self-supporting. The exoneree would sign documents pledging repayment of the advances out of any money he or she receives State compensation or other settlement of claims related to his or her wrongful conviction and incarceration. This repayment will replenish the fund so that it remains available to future exonerees.

The funds will be held by the Connecticut Bar Foundation, which will invest them under the management of its Finance Committee. It is anticipated that the funds will be invested so as to minimize volatility and to be readily available to be drawn upon. The CBF will be responsible for record-keeping as to the principal of the fund and the delivery of advances and their repayment. The CBF will be responsible for tax letters to donors acknowledging the deductibility of their contributions for tax purposes.

The reasons for choice of the CBF for the custodian role are several. First, because the fund is intended to be permanent, a foundation is an appropriate entity to be the custodian. Second, the CBF Finance Committee already is constituted and competent to manage a low-volatility fund (expected to be in the mid-five figures). Third, the fund is consistent with the CBF's mission, which includes promotion of the rule of law in society. (It was a CBF grantee agency, Greater Hartford Legal Aid, which performed the crucial role of preserving the DNA evidence that eventually cleared James Tillman, Connecticut's first exoneree.) Finally, the CBF has a favorable reputation especially in the legal, judicial and political communities, which would likely be the source of much of the donations.

The actual disbursement of funds to the exonerees will be handled by Community Partners in Action, Inc. CPA will handle all paperwork with the exoneree, including execution of the loan and pledge documents. The CPA staff will deliver the advances to or for the benefit of the exoneree as directed by the Advisory Panel. CPA will be responsible for the record-keeping of advances to each exoneree, and for the administrative elements of obtaining repayment by the exoneree out of their compensation award. (The CPA and CBF will coordinate to assure that their records match.)

The CPA is an appropriate agency for the disbursing agent role because its mission and staff are well-suited to work with newly released persons to assist in re-establishing their lives. The CPA can also coordinate any other social services or other assistance that the exoneree might seek from the CPA with the advances being provided from the Innocence Fund.

An Advisory Panel will be established that will exercise judgment regarding eligibility, amounts and methods of advances to exonerees. The Advisory Panel will provide instructions to CPA as to each advance, and CPA will then carry out the administrative steps to make each advance. In the discretion of the Advisory Panel, the advances may be in the form of deposits to the exoneree's checking account, checks payable to a landlord or other provider of goods and services, or otherwise. The Advisory Panel will be chosen by the group leading the effort to establish this fund; its membership shall be acceptable to the CBF and CPA. Its membership will be self-renewing (i.e. it will nominate successors to members who leave), subject to the approval of the boards of CBF and CPA. The Advisory Panel will not be a legal entity; rather its members will be volunteers working under the auspices of the CPA, and protected by the liability insurance of the CPA.

We anticipate that the Advisory Panel will consist of 5 members. It should include at least one CBF Fellow. It should also include a diverse group of initial members who reflect the different geographical parts of the State, as well as the make-up of the likely exoneree population. We

will not require the Advisory Panel members to take a leadership role in fund-raising, though that would be an extra benefit and may play a role in its initial membership.

In addition to the Advisory Panel there should be a larger group of supporters who would provide guidance for the effort, including in fundraising, but without direct decision-making responsibility on exonerees' requests. This larger group, which might be called a "Council" or similar name, would include CBF Fellows and others willing to lend their names and support to the concept, and might include persons associated with the judiciary, state's attorney's offices, attorney general's office, and legislature. It is hoped that the Fellows will be well represented on the Council.

Eligibility

The eligible exonerees will be those released from the Connecticut State corrections system based on actual innocence, whether as clients of the Connecticut Innocence Project or by virtue of the efforts of other counsel. Their eligibility for assistance from this fund will be tied to the same standard as that in the statute:

- (a) A person is eligible to receive compensation for wrongful incarceration if:
 - (1) Such person has been convicted by this state of one or more crimes, of which the person was innocent, has been sentenced to a term of imprisonment for such crime or crimes and has served all or part of such sentence; and
 - (2) Such person's conviction was vacated or reversed and the complaint or information dismissed on grounds of innocence, or the complaint or information dismissed on a ground consistent with innocence.

(See <http://www.cga.ct.gov/2008/ACT/PA/2008PA-00143-R00HB-05933-PA.htm>)

The Advisory Panel will make a determination of the exoneree will likely succeed in proving eligibility under the statute. State compensation requires a dismissal, which may not occur for some time after release, when the exoneree's financial need commences. Therefore the Panel will have to evaluate, in its discretion, whether the exoneree is likely to receive a dismissal. This will require the Panel to assess the facts underlying the exoneree's release and potential further prosecution.

Documentation And Implementation

The arrangements underlying the Connecticut Innocence Fund will be documented by the participating entities through a Memorandum of Understanding setting out the relationship and duties of the entities. There will be a separate Memorandum between the CBF and CPA; there may also be a separate Memorandum between the Advisory Panel and the CPA.

The contributions to the fund will be in the form of checks made by donors, payable to "Connecticut Bar Foundation Innocence Fund" or words to that effect. (It might be advisable to

protect that name, and expected variations on it, as trademarks owned by the CBF.) The CBF will hold the funds until receiving a requisition from the CPA, at which point the CBF will transfer funds in the amount of the request to the CPA. The CPA will be responsible for returning the funds to the CBF upon repayment by each exoneree.

Before receiving any advances, an exoneree will execute an agreement with the CPA agreeing to the terms of the arrangement, and promising to repay the advances out of any compensation award or other settlement related to his or her wrongful conviction or incarceration. The document will be sufficient to constitute a lien on such proceeds to the extent recognized by law, and a copy of it will be provided to any attorney representing the exoneree with regard to such compensation.

While the CPA will be responsible for collecting the repayment of the loans, the CPA is not expected to undertake the cost and effort of any formal proceedings, should there be a default. The exoneree's pledge would be delivered to the exoneree's counsel and constitute a lien on any proceeds received by counsel, either from the State or from a personal cause of action. Should there be a default, that loss will fall to the fund itself and none of the entities involved (CBF, CPA, and Advisory Panel) will have any responsibility for that loss. We consider a default to be sufficiently unlikely that it is not worth planning for specifically. (That being said, it is likely that the State of Connecticut will not deem itself legally bound by a loan pledge of compensation award, and therefore that the repayment directly from the State could not be automatically secured by delivering to the Claims Commissioner a copy of the exoneree's pledge and current statement of amount owed.)

Tax and Financial Considerations

This proposal must comply with tax laws and financial reporting in several respects. It must be a permissible activity under the 501(c)(3) status of both CBF and CPA. The CBF holds, invests, and expends funds for purposes of furthering the rule of law in society and for providing legal services for the poor. The CPA expends funds to assist persons recently released from prison, including through direct financial support to assist the newly released in reestablishing life in society. Therefore, compatibility with their tax status appears likely but should nonetheless be confirmed.

Donations must be tax deductible. That would presumably follow from confirmation that the proposal is a valid activity for the CBF and CPA as 501(c)(3) organizations. Both CBF and CPA have consulted with tax counsel who have provided initial conclusions that the fund would be in compliance with the relevant tax regulations.

The fund will be reported by the CBF on its financial statements. The invested balance will earn interest which will accrue to the fund. Tax counsel will advise whether the advances to the CPA are carried on the CBF books as assets in the form of loans, or otherwise.

The reporting by the CPA is subject to further consideration. The CPA might record the advances from the CBF and the loans to the exonerees as revenues and equivalent expenses. Or they could be reported as loans received and equivalent loans made. Or the CPA could treat the

transfers as funds belonging to the CBF, with the CPA acting solely as agent rather than as principal.

For exonerees, the funds will be advanced in the form of loans, so they will not be taxable income to the exonerees; nor will their repayment out of compensation awards be taxable events.

The loans could be either interest-bearing or interest-free to the exonerees. We might conclude that it is best for them to be interest-free loans, since the exonerees will not be earning any return on the loan proceeds. But making the loans interest-free will tend to diminish the real value of the fund over time. This decision may depend on prevailing interest rates, and could be something left to the discretion of the CBF and the Advisory Panel to revisit in future years. It should also be determined whether making these as interest-free loans would constitute taxable income to the exonerees, though it appears that the amounts in question make that immaterial.

Fund-raising and Other Support

Neither CBF nor CPA will be obligated to undertake fund-raising on behalf of the Connecticut Innocence Fund. Other individuals and groups have communicated their commitment to its goals, and we will rely on them to lead the effort to raise the funds.

We may also organize a different group of volunteers who will help fundraising and will lend their names to the effort. This group would have no legal existence; rather its role would be publicity and urging people to contribute to the Fund.