

**Standing Committee on
Legal Aid and Indigent
Defendants**

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June 20, 2005

Victor M. Fortuno
Vice President for General Counsel
Legal Services Corporation
3333 K St., NW
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Dear Mr. Fortuno:

The American Bar Association, by its Standing Committee on Legal Aid and Indigent Defendants, submits these comments in response to the solicitation of suggestions for the possible clarification, modification, revision or deletion of existing LSC regulations.

We believe that it would be premature for LSC to focus any regulatory efforts on revision of Part 1614 (Private Attorney Involvement). We realize that other events may have brought attention to this regulation. However, all indications are that since this rule was promulgated, private bar involvement in legal services delivery, and in support for the legal services system generally, have steadily increased.

In 2005 we find that the organized bar has, in nearly every jurisdiction, formed what might be characterized as a strong public-private partnership with programs that serve the legal needs of the poor. Legal services programs across the nation have found effective ways to form partnerships with private lawyers and the organized bar. This was not true prior to the implementation of the PAI regulation. When LSC was first created, there was some concern within the organized bar that a national legal aid system would deprive private practitioners of paying clients, and would employ lawyers who did not reflect well upon the bar as a whole. It was through LSC's active outreach to the private bar, stimulated by Part 1614, that those concerns were overcome.

Through resources provided under Part 1614, hundreds of private attorney involvement programs were established - within legal services programs, within local bar associations, and within other social service providers and religious institutions. Those programs are flourishing, and serve many thousands of needy clients annually.

Participation in PAI programs has taught uncounted numbers of private lawyers about the legal problems encountered by the poor, and about the good work being done everywhere through the leadership of LSC. These lawyers, of all ages, levels of experience and diverse backgrounds, have acquired new skills and experiences. They are a vital part of the system for delivering legal services to the poor. While some such lawyers will not be as efficient in handling poverty law matters as full time, staff legal services lawyers, their contributions are important and valuable, and the bridges they represent between the profession and the client community are unique.

Beyond absorbing a portion of the overall caseload, private lawyers contribute to the maintenance and improvement of the legal services system in other important

ways. The organized bar, and many influential individual lawyers, have become important allies of the LSC and its local grantees. Such lawyers have supported LSC, its activities and its funding, in important political and other forums. As shapers of community opinion, bar leaders are very significant advocates for public funding of legal services efforts, and also often provide generous direct funding of legal services programs through individual contributions as well as bar dues additions, check-offs or funding allocations.

Flexibility is an important attribute of the current PAI system. The genius of the current Part 1614 is that it allows local programs broad discretion in designing innovative mechanisms for involvement of the private bar. Creativity and inventiveness have been fostered by the absence of strict rules and requirements. This is a complex area, one that is built upon careful cultivation of relationships and management of varying institutional interests. Local legal culture and history play a large role. These matters are inherently qualitative and the impacts are cumulative; they are susceptible to quantitative measurement and audit only to a limited extent. While it is important that the regulation exist, and that it require a meaningful share of resources be devoted to PAI, it is equally important that each program have broad discretion in how to implement its PAI program. LSC, the ABA and other stakeholders can best contribute to success in this area by fostering excellence and by catalyzing the exchange of effective ideas and models.

It is widely accepted in both the bar and legal services communities that an essential element of a quality program for serving the legal needs of the poor is full engagement and involvement of the private bar. This is evidenced by strong attendance by both legal services and bar leaders at the annual Equal Justice Conference. It is buttressed by the growth in sub-groups within the organized bar that have formed alliances with legal services programs; groups like the ABA Litigation Section's "Legal Services Project," and the ABA Commission on Homelessness and Poverty. Similarly, many legal services lawyers have become leaders within the organized bar, serving as bar presidents and chairpersons of bar association committees.

Having said all this, we of course acknowledge that there is room for improvement in the involvement of private lawyers in service to the poor. We need more volunteers, and need to use them even more effectively. We believe this will be advanced by supporting high quality, adequately funded legal services programs that utilize private attorneys as part of their delivery system. Rather than beginning with a focus on possible revision to Part 1614, we would be happy to join with LSC and other interested groups to foster renewed discussion and consideration of how pro bono and private attorney involvement systems can be improved so that there is a measurable expansion of the quality and quantity of services provided to clients nationwide. We look forward to participating in such a process.

We appreciate the opportunity to provide these comments, and would be happy to provide additional clarification or analysis if such is required.

Sincerely,



Bill Whitehurst
Chair

cc: Robert J. Grey, Jr., President, American Bar Association