

Topics and Related Items for Discussion
LSC Rulemaking Workshop—September 17, 2013

I. Key Points—Related to three topics and Additional Items for Discussion

Legal Action of Wisconsin supports these initiatives to allow more flexibility in defining the activities that constitute PAI activity and the categories of legal professionals that can be supported with PAI funds.

But we also believe that LSC must continue to focus on getting more private attorneys involved in representation because LSC-funded programs remain the primary provider of civil legal services throughout the country.

We are reluctant to devote more resources to developing incubator initiatives rather than maintaining an emphasis on extended service and focusing on improving systems for poor people. We do not want incubator initiatives to be given greater priority than representation. As an organization, we believe that it is very important to keep focused on what we were originally charged to do. While we observe the development of a number of activities designed to get volunteer lawyers involved in providing limited legal assistance to many people, we do not see new poverty law firms and programs opening to help all those who need representation to access our legal system.

While we continue to have more and more clients who truly need representation to protect their families than we can actually serve, we need to focus on getting more private lawyers to do the work our impoverished clients need them to do-- the work that only lawyers can do--rather than designing projects that make it “easier” to volunteer but do not offer representation.

We feel that our organization and LSC must remain focused on providing high quality legal services to address the legal needs of people who cannot afford to pay for the legal services needed to achieve equal

justice, and developing methods and programs to get private lawyers involved in the work that we have been committed to for many years.

While expanding the definition of what qualifies as PAI and how the PAI allocation can be applied, I encourage LSC to look more closely at adjusting the 12.5% allocation, especially during this period while financial resources are so limited. Adopting a “reasonable” definition for the allocation would make it easier for us to manage our various and variable funding sources. It is very challenging for a program like ours that serves a varied poverty community to manage the impact of the significant variations in the amount of the PAI allocation as funding increases and decreases, almost on a quarterly basis, during the difficult economic times we’ve experienced over the past several years.

Creativity in attracting more lawyers and legal professionals is good and valuable but it should not distract us from deploying those lawyers to meet the clients’ legal needs. Collaboration works most effectively when each organization does what each does best and thereby maintains a variety of opportunities and avoids unnecessary duplication.

While 1614 should be revised to enhance flexibility, the most valuable initiative will be working with the courts and bar associations to find more effective ways to promote and support pro bono participation. Expanding the opportunities under the rule must be accompanied by getting state and local bar associations more involved in promoting pro bono as a professional standard.

Topic #1

Legal Action supports counting resources spent supervising and training law students, law graduates (non-admitted), deferred associates and **paralegals** toward a grantee's PAI allocation. Allowing LSC programs to include additional categories of legal professionals will encourage flexibility and creativity in service delivery.

It will be particularly useful to include paralegals in the provision of PAI services and count the value of their hours. Many of our volunteer lawyers regularly report the number of hours invested by paralegals. Paralegals generally understand their role in the legal process and are probably the most effective of the non-lawyers. Their work is just as valuable to us as it is to the client.

Each LSC program must be mindful of admission standards, unauthorized practice of law rules and professional liability insurance requirements. Because Wisconsin is very strict about the unauthorized practice of law, the Volunteer Lawyers Project is currently reluctant to have lawyers who are not yet admitted in Wisconsin provide legal assistance including legal advice. Wisconsin also has very strict student practice rules which limit what a student can do without immediate supervision. However, it appears that our professional liability insurance (through NLADA) covers non-lawyers who volunteer on behalf of Legal Action.

Legal Action has successfully used inactive lawyer volunteers to work on case referral. They are able to assist with case evaluation and provide support to volunteer lawyers.

New categories of volunteers need more training about what they can and cannot do as volunteers. In addition, these "new" volunteers will need more oversight than many providers are able to offer. While our position is that the lawyer is in the best position to evaluate his or her competence to handle a particular case, I am not sure we can apply that standard with inactive or non-admitted lawyers.

It will be important to develop methods to track the time contributed by these other legal professionals so as to report the number of hours and services provided.

The real difficulty in recruiting lawyers for pro bono legal work is the lawyer's selectiveness about what they do as volunteers. It is challenging to get lawyers to take on the work that we need them to do for our clients.

Another possible expansion would be to include efforts by PAI staff to recruit and work with those who provide professional support services—accountants, vocational evaluators, interpreters etc.

We encourage increased support of creativity but not to the detriment of efforts to increase pro bono representation. The “care and feeding” of volunteers is expensive. Despite the attention paid to the increasing poverty population and their growing legal problems, we have not experienced an increase in the number of lawyers committing to provide pro bono legal services.

1-1 We favor almost anything that will provide more legal assistance. We understand that law students and many pre-admission law graduates need considerable oversight. Paralegals understand that their services, including advice-giving, must be supervised. A revised rule should articulate the range of services or activities to be considered and include a timekeeping requirement.

1-2 Legal Action has been involved in Unemployment Compensation Appeals Clinics at Wisconsin's two law schools. Students receive mentoring from private attorneys in representing UC claimants. The State Bar of Wisconsin's Legal Assistance Committee plans to petition the Wisconsin Supreme Court to revise our Rules of Professional Conduct to permit inactive or out-of-state lawyers to provide legal assistance under certain circumstances.

1-4 I am reluctant to make exceptions for underemployed lawyers receiving reduced fees because this requires us to make discretionary judgments relative to our loyal unpaid volunteers. What is underemployment? Why is the person underemployed? Why should we treat underemployed lawyers differently than we treat our solos?

1-5 In contrast, I support non-resident lawyers providing legal information so long as permitted by local bar rules. In fact, in Wisconsin the State Bar's Legal Assistance Committee has been working on a new rule that would permit such lawyers to register for pro bono publico status which would enable those lawyers to practice law so long as the work is affiliated with an appropriate provider and the lawyer is not compensated for the work.

Topic #2

We believe that it is very important to communicate and collaborate with other providers so that it is also very important for LSC grantees to be allowed to spend PAI resources to work with other legal services providers to enhance screening, advice, and referral programs.

I encourage LSC to withdraw previous External Opinion 2008-1001 and encourage LSC grantees to collaborate with other programs and providers to maximize service and support volunteers. In addition to supporting these efforts, these activities also appear to be a viable source of recruitment for extended service.

Legal Action does not participate in an integrated intake and referral system. There is not such a system operating in Wisconsin despite occasional conversation about it. We also believe that various LSC requirements for eligibility and the funding requirements imposed by some of our other funding sources that focus on particular types of cases complicate the prospects of integrating intake. Our intake screening requires a significant amount of training and experience and we have found that others may not be interested in taking on our “baggage.”

As the firm’s coordinator for PAI, we are always receptive to referrals from other organizations. We regularly receive calls from some of our colleagues in other legal services organizations asking whether we have volunteer lawyers who might handle a particular type of case.

We are also concerned that LSC PAI programs might get so caught up in designing creative projects and increasing the number of “new” volunteers that we lose our concentration on the hardest part of pro bono—getting experienced lawyers to make time for pro bono work.

2-1 I cannot recommend criteria and methods to track services other than to add to the list of time codes “PAI referral activities.”

2-2 Activities sponsored by law schools, bar associations, and the courts should be included but there should also be a requirement that such sponsors estimate a particular level of income for their customers based on fact-gathering.

2-3 Tracking PAI services may not always be tied to a particular case or client. Some PAI activities are dedicated to operating/maintaining the system, so that they need not be case specific.

Topic #3

This may be an appropriate time to reexamine the LSC case handling requirements as they are applied to PAI cases to determine which are essential and which should be revised.

For more than 20 years, Legal Action's Volunteer Lawyers Project in Milwaukee, has used volunteer lawyers to provide case evaluation and brief service as part of our service plan to use volunteer lawyers to expand the types of cases Legal Action handles and provide case evaluation to help recruit volunteers to take on extended service cases.

These clinics started with Bankruptcy and Consumer cases. Even 20 years ago, the VLP had difficulty getting volunteer lawyers to take on bankruptcy cases. In addition, those lawyers willing to represent bankruptcy petitioners wanted to know more about the cases before taking them on pro bono. We did not (and still do not) have staff lawyers handling bankruptcy or consumer cases in Milwaukee who could evaluate the cases for volunteers.

Through the years, we have had considerable success getting lawyers to come into the Milwaukee office on a regularly scheduled basis to interview clients, evaluate their cases and give advice. All clients must receive advice in the likely event that we are unable to refer their cases for representation. In addition, we are able to get sufficient information to determine which cases to prioritize for representation.

We have applied this same model to serve clients with unemployment compensation appeals, landlord-tenant money claims, and miscellaneous civil matters (non-probate property transfers, guardianship, etc.). Every Wednesday, the Volunteer Lawyers Project has three or four volunteer lawyers meeting with clients who called in the previous week for eligibility and case screening. These lawyers know who they will meet and the potential legal issues before the lawyer meets with the prospective client, so that the lawyer has an opportunity to prepare if necessary. We believe that our VLP lawyers like knowing

what legal problems their clinic clients will present. In a limited number of cases, the lawyer who met with the client accepts the case for further services

There's a large range of services that might be considered "support." I believe that there should be some guidelines for allocating PAI resources to support volunteer lawyers staffing brief service clinics. These guidelines would largely relate to whether the activity was for CSR work or simply support for volunteer lawyers affiliated with other providers. For casework, there should continue to be specific criteria for PAI cases to determine the outcome of the case and how the client benefited. Training pro bono lawyers can be viewed differently. It makes a lot of sense to share training resources—it's efficient and effective in generating more pro bono resources, as well as collaborating with other providers.

I believe that LSC has been quite effective in controlling fraud, waste and abuse. I would assume that LSC would apply similar standards to more flexible rules, but the ranges of flexibility still must be carefully defined.

3-1 LSC recipients should obtain some credit for supporting clinics that do not screen for LSC eligibility even in situations where the clinics provide services to eligible and non-eligible clients. Screening for eligible clients is a way of life for LSC-funded programs. Each LSC program spends a fair amount of time screening out ineligible applicants for services. The screening activities in this state are generally focused on poor people who are unable to afford to pay for legal services. With the understanding that a large number of those served by these activities would be eligible if screened, that is really not very different than what is done within our program. Denying programs PAI credit for efforts to collaborate will diminish collaborative efforts.

I propose that LSC recipients would maintain LSC standards on cases accepted for legal assistance by LSC recipients.

3-2 Clients referred for actual legal assistance by an LSC-funded program would still have to meet LSC eligibility requirements. In the interest of efficiency, I would propose that the eligibility screening track our current eligibility screening.

3-3 Just because the support from an LSC program might benefit some individuals who are not LSC-eligible should not be an absolute bar to such support, but there should be some demonstration that the majority (or some other such measurement) of the people served would be eligible. In addition, the amount of support permitted might be adjusted based on the user's statistics about the level of need. Support may also be based on the nature of the activity or service delivered. In that way, training activities could be supported differently than staffing the referral line. One important consideration is that a number of these clinics are operated by or with the courts that are not inclined to place restrictions on who can access screening and referral services.

There is always the hope that lawyers who participate in brief service will sometime take their pro bono to the next level and take on these cases for representation.

3-4 Permissible activities should include training and manuals. Staffing and direct legal assistance would not be allowed, although sharing knowledge on a consulting basis may be considered.

II. Summary of Qualifications

I have been the Attorney—Coordinator for Legal Action of Wisconsin's Private Attorney Involvement activities, including our Volunteer Lawyers Project for more than 9 years. Legal Action has sponsored the Volunteer Lawyers Project for more than 30 years. Since 2003, Legal Action's service area includes 39 counties ranging from poverty-plagued urban Milwaukee to several very rural counties. Legal Action operates out of six offices and there are one or two individuals in each office responsible for PAI activities. I work with all Legal Action staff to promote private attorney involvement and to assure compliance with LSC regulations and Wisconsin's Rules of Professional Conduct. In 2009, I was complimented to be invited to participate in an advisory group chaired by Helaine Barnett in which we discussed many of the issues raised by LSC's Pro Bono Task Force

Before joining Legal Action in early 2004, I spent 15 years in private practice focused on the wide-range of family law matters. I spent 8 years in a successful 2-attorney practice and the remainder in two small firms (5 attorneys). I was active in local bar associations and chaired sections in two of them. I am an experienced lawyer who understands and appreciates what it means for lawyers in solo and small firms to make time to provide pro bono legal services.

I have been involved in volunteer recruitment and support on a non-professional basis throughout my adult life in my church, the League of Women Voters and other community activities.

III. Complete Checklist of topics & items to be addressed. See Attachment

LSC PAI Rulemaking Workshop—September 17, 2013—Topics and Items for Discussion

Topic 1: LSC Pro Bono Task Force Recommendation 2(a) - Resources spent supervising and training law students, law graduates, deferred associates, and others should be counted toward grantees' PAI obligations, especially in "incubator" initiatives.

✓	How are legal service providers engaging new categories of volunteers? What are the needs of these new categories of volunteers?
✓	What are the obstacles to LSC grant recipients' full use of these volunteers?
✓	Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the supervision and training of these volunteers?
	How can LSC ensure against fraud, waste, or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?
	To the extent applicable, discuss how any approaches you recommend might be implemented.
	Other issues related to Topic 1

Topic 2: LSC Pro Bono Task Force Recommendation 2(b) - Grantees should be allowed to spend PAI resources to enhance their screening, advice, and referral programs that often attract pro bono volunteers while serving the needs of low-income clients.

✓	How are recipients currently using integrated intake and referral systems?
	Do LSC's current PAI regulations inhibit full use of integrated intake and referral systems?
✓	Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the resources used to create and staff integrated intake and referral systems?
	How can LSC ensure against fraud, waste or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?
	To the extent applicable, discuss your organization's ability to execute any recommended approaches.
	Other issues related to Topic 2

Topic 3: LSC Pro Bono Task Force Recommendation 2(c) - LSC should reexamine the rule, as currently interpreted, that mandates adherence to LSC grantee case handling requirements, including that matters be accepted as grantee cases in order for programs to count toward PAI requirements.

✓	How are recipients currently using or supporting pro bono volunteers in brief service clinics?
✓	What are the obstacles to recipients' use of pro bono volunteers in brief service clinics?
✓	Should LSC implement conditions and guidelines to allow LSC recipients to claim PAI credit for the resources used to support volunteer attorneys staffing brief service clinics?
✓	If LSC were to allow recipients to claim PAI credit for the resources used to support volunteer attorneys staffing brief service clinics under circumstances where the users of the clinics are not screened for LSC eligibility or accepted as clients of the recipient, how could that change be implemented in a manner that ensures compliance with legal restrictions on recipients' activities and uses of LSC funds?
	How can LSC ensure against fraud, waste or abuse related to implementing this recommendation? What caution should LSC exercise to ensure against any unintended consequences?
	To the extent applicable, discuss your organization's ability to execute any recommended approaches.
	Other issues related to Topic 3

A. Scope of Part 1614

Topic 1:

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| ✓ | 1. Please provide specific suggestions for definitions, limits, or guidelines relating to the potential addition of law students, pre-admission law graduates, or paralegals to the scope of Part 1614 activities. |
| ✓ | 2. Are there any other categories of non-lawyers whose work should be considered for inclusion in Part 1614? |
| | 3. If you recommend changing the definition of a private attorney, then please provide specific recommendations addressing the scope of the definition and how the proposed definition relates to the purpose of the rule. |
| ✓ | 4. Please provide specific suggestions relating to the potential inclusion in Part 1614 of underemployed attorneys receiving reduced fees (e.g., in "incubator projects") that may be their primary professional income. |
| ✓ | 5. Please provide specific suggestions relating to the potential inclusion in Part 1614 of attorneys who are not authorized to practice law in the jurisdiction of the LSC recipient but who may provide legal information or other Part 1614 services if permitted under local bar rules. |

Topic 2:

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| | 6. Should Part 1614 include the use of non-LSC funds as a subgrant to provide support to attorneys working at a staff-attorney model legal aid program that receives no LSC funds? This question specifically addresses the situation in Advisory Opinion 2009-1004. Please identify how involving attorneys at non-LSC, staff-attorney model legal aid programs relates to the purposes of Part 1614. |
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B. Tracking and Accounting for Part 1614 Work

Topics 2 and 3:

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| ✓ | 1. What criteria and methods should LSC recipients use to identify and track Part 1614 services to provide sufficient information for reporting and accountability purposes about attempts to place eligible clients with private attorneys, or others, and the outcome of those efforts? |
| ✓ | 2. Please identify what criteria should apply to referral placement organizations, such as bar association programs, for them to qualify for Part 1614. |
| ✓ | 3. Please identify how LSC recipients can account for and track PAI services while not creating conflicts for the recipient regarding future representation of clients, consistent with local bar rules. |

C. Support for Unscreened Work of Private Attorney Clinics

Topics 3:

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| ✓ | 1. Should LSC permit LSC recipients to obtain some credit under Part 1614 for support for these clinics if they do not screen for LSC eligibility and the clinics may provide services to both eligible and ineligible clients? Please provide specifics about screening concerns and methods to address them. |
| ✓ | 2. Should eligibility screening in these clinics for Part 1614 be the same as regular intake screening for LSC recipients or different? If different, then please identify methods or criteria for screening. |
| ✓ | 3. Please identify methods or criteria for LSC to ensure that LSC recipients providing support to these clinics, if permitted, are not improperly subsidizing either services to ineligible individuals or impermissible activities. |
| ✓ | 4. Please identify methods or criteria to distinguish between permissible activities supporting other entities and attorneys, such as general trainings, and impermissible subsidization. |